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Lessons Unlearned: Examining Greece´s Role in Shaping the EU´s New Pact on Migration and Asylum

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ABSTRACT

In 2021, amidst Europe's migration crisis, the Greek Government enacted a Joint Ministerial Decision mandating the return of nationals from Syria, Afghanistan, Pakistan, Bangladesh, and Somalia—those who had crossed from Türkiye to Greece—to Türkiye under the safe third country concept. This decision was issued within the framework of the EU-Türkiye Statement of 2016, which aimed to regulate the return of irregular migrants that had crossed to the Greek islands. However, the unilateral signing of this Joint Ministerial Decision by the Greek Government, without negotiations, Türkiye's consent, or the involvement of the European Union, raises significant legal and procedural concerns.

Complicating matters, Greece made this decision despite Türkiye's closure of its borders in 2020 due to COVID-19 restrictions, refusing to accept returnees from Greece—a closure that remains in effect. Consequently, nationals from these five countries find themselves in a legal limbo, unable to proceed with their asylum claims in Greece or seek protection in Türkiye.

This study delves into the violation of European and International law by examining the implications of Greece's decision on migration and fundamental rights. It contextualizes the Joint Ministerial Decision within the broader framework of the EU-Türkiye Statement, shedding light on Greece's approach to securitizing migration post-deal. Furthermore, it analyzes the alignment of Greek migration policies with the principles outlined in the New Pact on Migration and Asylum, hinting at potential inspirations drawn from Greece's recent migration strategies.

A note of the author and the reason for this thesis

When I worked in Athens in 2023 as a caseworker to assist people on the move, one of my tasks was to bring utilities to my clients to the Amygdaleza detention center. On one of those occasions, the security guard checking what I was bringing – mainly food – took away the glass jars of tomato paste and apologized saying that glass and aluminum cans were not allowed. He told me something along the lines of "I spend just eight hours of my day here and my only thought is that I want to get out and go home. If I left these people, who must remain here, get their hands on a material like that, they would cut their veins open". I could not do anything but wonder: how did we get here? How have we arrived at a situation like this, in Europe, where the help we are offering to vulnerable people is keeping them away from food jars in case they attempt to end their own life?

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LIST OF ABBREVIATIONS

APD	Asylum Procedures Directive
CJEU	Court of Justice of the European Union
CEAS	Common European Asylum System
DTM	Displacement Tracking Matrix
EASO	European Asylum Support Office
ECRE	European Council on Refugees and Exiles
ECHR	European Convention on Human Rights
EU	European Union
EURODAC	European Dactyloscopy
FRA	Fundamental Rights Agency
FRONTEX	European Border and Coast Guard Agency
GC	General Court of the European Union
GCS	Greek Council of State
IOM	International Organization for Migration
JHA	Justice and Home Affairs
JMD	Joint Ministerial Decision
LFIP	Law on Foreigners and International Protection
LGBT+	Lesbian, Gay, Bisexual, Transgender, and others
NGO	Non-Governmental Organization
RLS	Refugee Legal Support
RSA	Refugee Support Aegean
STC	Safe Third Country

TEU	Treaty of the European Union
TFEU	Treaty of the Functioning of the European Union
TPR	Temporary Protection Regulation
UDH	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees

INTRODUCTION

Context

Since 2015 Europe has grappled with the so-called migration or refugee crisis, driven by mass displacements from conflict-affected regions, mainly within the Middle East. Despite the urgency of the situation, the European Union´s approach has been marked by a lack of harmonization in its response, with the burden of the practical management predominantly falling on the first countries of arrival - those geographically closer or connected by sea to the affected regions. To alleviate European borders, the signature of bilateral agreements with transit countries based on the "safe third country" (STC) concept has become a growing trend since the signature in 2016 of the EU-Türkiye Statement[1], commonly known as the EU-Türkiye deal. This agreement aimed to contain the influx of people crossing from Türkiye by returning the ones arriving to the Greek islands through the Aegean Route.

Although the EU-Türkiye deal was initially successful in decreasing the arrivals and the number of deaths and missing people, its broader consequences have been rather fatal, as will be explored in detail. Especially in the aftermath of COVID-19, which led Türkiye to close its borders, tensions arose between Türkiye and Greece when Ankara decided to maintain this closure even after the pandemic was under control, due to the perceived lack of compliance with the agreement from the EU´s side.

In this context, in June 2021, the Greek government unilaterally expanded the provisions of the EU-Türkiye deal through a Joint Ministerial Decision (JMD) by stating that individuals from Syria, Afghanistan, Bangladesh, Pakistan, and Somalia that crossed from Türkiye - whether by sea or by land - would be returned to Türkiye on the grounds of the STC. This decision has left numerous asylum seekers in a legal limbo situation, unable to proceed with their claims in Greece or return to Türkiye to seek protection due to the border closures.

The repercussions of this legal limbo have a clear impact on the affected individuals, who find themselves in an irregular situation against their will, causing distress,

[1] The agreement was originally signed as the 'EU-Turkey Statement.' Following the official name change to Türkiye in 2022, this thesis uses 'EU-Türkiye Statement' instead.

insecurity, homelessness, and in devoid of access to any public assistance. Furthermore, there has been an increase in detentions, both in frequency and duration, in violation of European and international law.

Despite the evident breach of legislation and human rights principles that this decision entails, there has hardly been any reaction from the European Union, which has left Greece and Türkiye - already burdened and antagonized partners - to cope with the situation. As of the writing of this thesis in early 2024, the only ongoing process at the European level against the JMD is a request of the Greek Council of State to the Court of Justice of the European Union (CJEU) for a preliminary ruling, seeking clarification on the interpretation of the STC concept given the situation of said country refusing returns.

Research questions

In this thesis, I argue that the JMD violates European law, and it should be annulled promptly, not only on humanitarian grounds – since Türkiye should be not considered a safe country in the first place – but also due to the numerous asylum seekers trapped in a legal limbo. However, I also argue that the policy path taken by Greece in the aftermath of the EU-Türkiye deal has made Greece itself unsafe for asylum seekers as well. Furthermore, these policies seem to have inspired the principles currently being introduced by the EU´s New Pact on Migration and Asylum (New Pact), which started being negotiated in September 2020 and is now in the final stages of its approval. Therefore, given this context, even if the CJEU were to rule in favor of annulling the JMD, it is doubtful that the situation for migrants in Türkiye, Greece, or elsewhere in the EU would significantly improve, as the paradigm shift in migration management embodied by the New Pact has already demonstrated to be detrimental in the Greek stage.

Methodology

To address these research questions, the following methodology has been adopted. As the initial focus is on demonstrating the violation of international and European law by

the Greek JMD, an analysis of legal texts has been conducted – a compound of treaties, conventions, and case law. To gain insight into the situation of asylum seekers in Greece, I have conducted qualitative research by contacting several NGOs operating in Greece´s migration sector, supplemented by personal experience gained through a year of volunteering with one such organization. Furthermore, data and reports have been analyzed as well to assess the asylum seeker´s situation in Greece.

Given the ongoing nature of the issue, the examination of press coverage has been indispensable for understanding the current dynamics between Greece and Türkiye, as well as Greece's practices regarding migration. Finally, the provisions of the EU´s New Pact on Migration and Asylum have been in-depth assessed to establish the potential correlation with Greek practices in recent years.

Limitations and relevance

Both the limitations and the relevance of this thesis lie in the ongoing nature of the issue. Because the JMD is currently under discussion in the CJEU, there is still not a clear position from the European Union regarding its legality. At the same time, the New Pact is in the final stages of its approval, so the consequences of its implementation are yet to be observed. These ongoing developments limit the scope of the study, as the only facts subject to analysis are the ones up to the present moment, and the development of the situation might take different shifts.

However, the fact that the New Pact has yet to be implemented is what gives relevance to this thesis. Connecting the Greek practices over recent years, which have resulted in an institutional and humanitarian crisis, with the provision of this new set of measures, aims to highlight the potential ineffectiveness and adverse consequences of it. The New Pact strives to achieve harmony in migration policy, which is, indeed, needed, but the Greek example should be seen as a demonstration of its potentially erroneous approach.

Structure

The present thesis is structured in five chapters. The first one gives an insight on the European migration framework and its development, as well as a background of the

2015 refugee crisis. The second explores the reasons, content, and consequences of the EU-Türkiye Statement, elaborating on the STC concept and its regulation within European legislation. In the third, the context and the outcomes of the Greek JMD are presented with the help of the questionnaires answered by the NGOs. The fourth Chapter explores the breaches of law that this decision entails, and the last one connects the Greek practices since the signature of the EU-Türkiye deal with the provisions of the New Pact on Migration and Asylum.

CHAPTER I: AN OVERVIEW OF THE EU´S MIGRATION POLICY

This chapter seeks to present an overview of the development of the EU's migration policy framework and its response to the 2015 refugee crisis. It examines the establishment of the external European border and the initial measures for its management, the alterations made during the crisis period, critiques of the EU's approach, and a brief introduction to the New Pact on Migration and Asylum.

1.2. The institutional framework of the European migration policy: the Common European Asylum System

The debate on migration at the European level started relatively recently, in 1999, with the entry into force of the Amsterdam Treaty and the subsequent adoption of the Tampere Conclusions. Until that point, migration had remained an exclusive competence of the Member States, which dealt with the issue according to their domestic framework.

Before the Amsterdam Treaty and the Tampere Summit, some European instruments already referred to migration and asylum, acting as the groundwork for the following common framework. The Dublin Convention in 1990 addressed the discussion of the responsibility of the Member States in examining asylum applications. Regardless of this instrument undergoing several reforms – Dublin II in 2003 and Dublin III in 2013 – it established a base that remains nowadays, which refers to the prevention of asylum seekers from applying for protection in more than one Member State and the first country of arrival being responsible for examining applications.

The Maastricht Treaty (1993) had as one of its fundamental pillars the creation of the Justice and Home Affairs (JHA) policy area. JHA fomented cooperation among Member States in migration and asylum. However, these issues did not become a proper shared competence until the entry into force of the Amsterdam Treaty in 1999. This Treaty laid the foundation for the development of a common asylum system and established mechanisms for cooperation and coordination on migration issues. Months later, the Common European Asylum System (CEAS) was established through the Tampere Conclusions reached at the Tampere Summit.

The CEAS aimed for the harmonization of asylum procedures across Europe to ensure equal treatment for asylum seekers. The Tampere Conclusions also addressed the need to enhance cooperation on border management, to effectively and coherently apply the Geneva Convention, and to apply the principles of solidarity and burden-sharing among Member States[2]. As a result, the CEAS was built over the base of five legislative instruments: The Asylum Procedures Directive (APD), the Qualification Directive, the Reception Conditions Directive, the Dublin Regulation, and the EURODAC Regulation. Although these instruments form the basis of the CEAS, more legislation has been added throughout the years in order to complete and improve it; for example, the introduction of the European Asylum Support Office (EASO) in 2010[3]. Additionally, these five legislative pillars have not stayed static through the years, but rather undergone multiple reforms and amendments to adapt to the ever-changing circumstances. The biggest challenge to be faced by the European migration framework was the so-called migration or refugee crisis in 2015.

1.2. The refugee "crisis" and the 2015 Agenda on Migration Policy

The debate around migration started to take considerable public space as a consequence of the events happening in the Middle East and North Africa since 2011. The Arab Springs developed in a conflictive manner, provoking mass displacements and raising concerns in Europe for potential influxes of affected migrants. What is known as the "migration or refugee crisis" had its peak in 2015, the year in which various conflicts escalated and the number of people taking dangerous routes to enter the European Union increased considerably, flooding the media with violent images and raising humanitarian public concerns.

The crisis affected especially the frontline countries or first countries of arrival, namely Greece, Italy, and Spain. The pressure of receiving asylum seekers, while following the Dublin rules in having the responsibility to examine their asylum claims, placed an excessive burden on these countries. The developments of the response to the crisis

[2] The principle of solidarity and burden-sharing among Member States is regulated in the Article 80 of the TFEU.

[3] The EASO was created by Regulation (EU) No 439/2010 of the European Parliament and of the Council and is responsible for providing operational support, offering training and capacity building, collecting and disseminating information and analysis, supporting member states' asylum systems, and engaging in external cooperation.

evidenced many shortcomings of the European approach towards migration and asylum since it did not manage to alleviate the said burden.

To adapt to the crisis, the Commission presented in May 2015 the European Agenda on Migration. This set of measures comprised short-term strategies to address the crisis achieving immediate relief, and four pillars with the aim of improving the current migration policy with a view to the future. The four pillars were (1) reducing incentives for irregular migration, (2) Border management – saving lives and securing external borders, (3) Europe's duty to protect: a strong common asylum policy, and (4) A new policy on legal migration[4]. These pillars evidence the intention to direct the European migration policy toward a more restrictive approach, by focusing on the distinction of irregular or "bogus" migrants from asylum seekers and securitizing the borders.

The immediate action comprised the budgetary increment towards the European Border and Coast Guard Agency (FRONTEX) and joint missions, measures directed to the fight against smuggling, a relocation scheme, and a temporary distribution mechanism[5]. The truth is that the immediate action resulted in different measures than the ones initially set. The increment of financial aid and budget for migration management was maintained throughout the years of the crisis, but the solidarity mechanisms i.e. the relocation scheme and the temporary distribution mechanism, did not function as expected[6]. The reason was a general lack of solidarity among the Member States, which refused to attend to their obligations or obey the relocation quotas[7]. Immigration is a highly politized topic, which causes discrepancies between countries regarding asylum, risking the EU's intended harmony. This resulted in a spiral in which the frontline countries saw themselves more and more overwhelmed and with an increasing anti-immigrant sentiment as a result. The flooded asylum systems of these countries encountered many deficiencies that had detrimental humanitarian effects.

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[4] EU Commission. (2015). *Managing migration better in all aspects: A European Agenda on Migration.* Press Release. Retrieved From: https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4956
[5] Ibid.
[6] Geddes, A., Hadj-Abdou, L., Brumat, L. (2020) *Studying Migration and Mobility in the European Union*, London, The European Union Series, 2nd Edition, p. 2.
[7] Thym, D. (2016). '*The "Refugee Crisis" as a Challenge of Legal Design and Institutional Legitimacy.* 53 Common Market Law Review 1545. p 1550.

Other short-term measures that were taken within the context of the crisis were agreements with third partners in the management of migration, like the EU-Türkiye deal, or the introduction of derogations from the asylum law in frontline countries, like the fast-track border procedure or the implementation of movement restrictions. These provisions will be extensively examined throughout the next chapters.

The institutional and humanitarian crisis evidenced the shortcomings of the CEAS and the 2015 European Agenda on Migration. For this reason, the Commission proposed the New Pact of Migration and Asylum in September 2020, with a view to further harmonize migration and asylum policies and address the weaknesses of the current framework. However, the negotiations have been arduous, and agreements have not been reached until April 2024. As of the writing of this thesis, the legislative instruments agreed upon in the Parliament only have to undergo formal approval of the Council for the pact to be finalized. However, as will be exposed in the last Chapter, there are reasons to believe that past mistakes can be exacerbated rather than rectified.

CHAPTER II: THE EU-TÜRKIYE STATEMENT

This Chapter presents the EU-Türkiye Statement, one of the most contested measures taken by the European Union in the years of the refugee crisis. The agreement fostered collaboration between the EU and Türkiye to address the mass migration flows, and its consequences had a significant impact on both parties. The first section of the Chapter sets the context in which this deal came to be, and the second develops the content of the text and some of the issues that arise from its format. The third section explores the practical implementation of the agreement and the fourth one delves into the safe third country concept in which is based. The last section offers an assessment of the agreement´s success, taking into account the different actors involved.

2.1. Contextual background of the agreement

The collaboration between the EU and Türkiye regarding migration did not start with the EU-Türkiye Statement in 2016. Before this agreement, other instruments fostered said cooperation - being the most important up to date the EU-Türkiye Readmission Agreement of 2014. This piece of legislation aimed to combat illegal migration through the identification and return of the people who no longer fulfilled the criteria for entering, staying, or residing in Türkiye or the European Union. However, at that moment migration was not at the center of the agenda of any of the two parties.

In 2015 the situation changed due to the escalation of the Syrian conflict, which provoked a mass exodus of refugees. When the civil war started in Syria in 2011, Türkiye implemented an open-door policy, initially believing that the conflict would be temporary and therefore would not cause severe mass displacements[8]. Nevertheless, the development of the situation proved this wrong, starting a wave among the Member States in favor of strengthening collaboration with Türkiye in this regard.

In this context, and after numerous visits of the heads of the member states to Türkiye, the 2015 Joint Action Plan was drafted by the Commission in October 2015, which collected a series of compromises of both parties in the management of migration and the support of Syrian refugees, and recognized Türkiye as a safe third country. The

[8]Özalp, O. K. (2021). *A Failed Negotiation?: A Closer Look on the EU-Türkiye Deal of 2016.* Journal of International Relations and Political Science Studies, 5-20. p 10.

negotiations of these commitments did not only have a humanitarian nature, but the bargaining chip[9] of both parties was present from the beginning. 2015 was marked as the revival of the accession process for Türkiye[10], since promises related to the opening of new chapters, as well as visa liberalization, were used by the EU as an *"in exchange for the efforts made*" tool. The Joint Action Plan was finally launched in November 2015 and implemented through the EU-Türkiye Statement in March 2016.

2.2. Content of the agreement

The main objective of the agreement is the prevention of irregular influxes of migrants from entering the EU through collaboration with Türkiye, which compromises to take back the ones crossing to the Greek islands through the Aegean route and to prevent the opening of new routes of irregular migration. Regarding the returns from the Greek islands, it is explicitly established that they shall be done in accordance with EU and international law, excluding collective expulsions and respecting the non-refoulment principle.

The returns are founded on inadmissibility, which means that the asylum applications registered in the islands are not assessed on merits i.e. examining their circumstances in the country of origin to determine the need for international protection, but only on the individual circumstances of the person on Turkish soil. If no specific danger or vulnerability is adverted, the person should be returned to Türkiye on the grounds of the

[9]Kaya, A. (2020). *Migration as a Leverage Tool in International Relations: Türkiye as a Case Study*. Uluslararasi Iliskiler, 17(68), 21-39. https://doi.org/10.33458/uidergisi.856870 . p 37.
[10]Özalp, O. K. (2021). *A Failed Negotiation?: A Closer Look on the EU-Türkiye Deal of 2016.* Journal of International Relations and Political Science Studies, 5-20. p 11.

safe third-country concept[11]. If Türkiye is deemed dangerous for the applicant he or she will be considered admissible and the claim will be assessed on merits in Greece[12].

In exchange for these efforts, the EU pledges Türkiye financial assistance[13], acceleration of the accession and visa liberalization processes, and an upgrade of the customs union. Additionally, the agreement introduces what is known as the 1:1 scheme, through which the EU commits to the resettlement of one Syrian into the EU for each Syrian returned to Türkiye from the Greek islands, favoring in this way a regular migration route and alleviating Türkiye from the burden.

Furthermore, contingent on the achievement of ending or substantially reducing the irregular crossings, the activation of a Voluntary Humanitarian Admission Scheme is mentioned, to which the Member States would contribute on a voluntary basis. Finally, both the EU and Türkiye commit to the improvement of the humanitarian conditions in Syria, especially in places near the border with Türkiye.

Before entering into the assessment of the implementation of the agreement and its consequences, it is important to address some of the issues of the text itself. First, it is significant to highlight that most of the benefits expected by the Turkish side are based on already existing matters. Türkiye has been an accession candidate since 1999, it started the visa liberalization process in 2013 and it has been part of the customs union since 1995, and the conditions to which those issues have been subjected – meeting the

[11] Initially, the STC was supposed to be applicable to non-Syrian nationals only, while Syrians were to be returned under the first country of asylum concept (FCA). This is due to the automatic temporary protection granted to them in Türkiye, which exempts them from going through an asylum procedure. See: UNHCR. (2016). *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Türkiye* (n 173). Retrieved from: https://www.unhcr.org/media/legal-considerations-returning-asylum-seekers-refugees-greece-Türkiye-under-safe-third-country. However, the FCA concept was never introduced in practice in the Greek islands as a sole inadmissibility ground. See at: AIDA. (2020). *Greece (2020 Update*). (n 169). p 146. Retrieved from: https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf. Nevertheless, the practical implications of the application of the STC and the FAC concepts are the same, which is why, for the purpose of this thesis, only the STC is analyzed.

[12] In practice this has been implemented differently. The STC concept – and, therefore, the admissibility procedure - has been applied differently depending on the nationality and the recognition rate and it has variated over the years. Syrian nationals´ applications have always been assessed first on admissibility, but for the non-Syrians it has fluctuated, and they have had their claims assessed both in admissibility and in merits in a merged procedure, or directly on merits. See AIDA country reports on Greece years 2016, 2017, 2018, 2019, and 2020.

[13] An initial quantity of 3 billion euros was set to be disbursed with the aim of funding projects for refugee assistance. Under the condition of meeting the rest of the requirements set in the agreement, an additional three other billion were set to be released by the end of 2018.

benchmarks laid down in the pre-existing agreements – are the same ones as stated in the EU-Türkiye deal. Even if some more detailed provisions are referred to[14], the text does not introduce anything essentially new but rather implies a vague closer or renewed form of cooperation between the parties in past commitments. The only new, measurable, and detailed points are the 1:1 scheme and financial assistance as the main incentive, which is also subject to Türkiye fulfilling the requirements of the deal[15]. In this regard, the vague language has even bigger implications, since at any point of the text is explicitly established how much the number of arrivals needs to decrease for the agreement to be considered effective and, hence, for the quantities to be released.

Lastly, assessing the form in which the EU-Türkiye Statement was negotiated and signed is crucial. The deal is a political agreement, announced in the form of a press release by the Council of the European Union on the 18th of March 2016, following the set of negotiations initiated in 2015. These negotiations happened in the context of the EU-Türkiye Joint Action Plan, where the meetings were attended by the Heads of State and Government of the Member States and the Turkish Prime Minister, which are the parties that agreed upon the EU-Türkiye Statement. This already poses an issue, since the competence of the Member States, acting outside their mandate as part of the Council to sign an agreement with a third party on an EU-shared competence upon which the EU has already acted[16], is highly contested[17].

This issue became evident when the legality of the EU-Türkiye Statement was challenged before the General Court of the EU (GC) by a Pakistani national who was affected by the scope of it when fleeing his country[18]. The GC did not judge the substance of the agreement since it determined that it fell outside of its competence, as it was not signed by an EU institution but by the Member States. Many worrying outcomes can be drawn from this ruling. First, the lack of effective judicial control over

[14] Mention of chapters to be opened on specific dates.
[15] Only the additional 3 billion euros are subjected to conditionality, not the initial financial assistance package.
[16] The EU-Türkiye Readmission Agreement (RA) was signed in 2014, indicating existing collaboration in the area of migration between the EU and the Republic of Türkiye.
[17] Idriz, N. (2017). *Taking the EU-Türkiye Deal to Court?* VerfBlog. https://verfassungsblog.de/taking-the-eu-Türkiye-deal-to-court/ DOI: 10.17176/20171220-100943.
[18] NF v European Council, Case T-192/16, Order of the General Court (First Chamber, Extended Composition), 28 February 2017.

the decision blinds the agreement against any potential review of its legality. Second, a blur in the determination of responsibility regarding its implementation and human rights concerns[19]. And the third is the shift of migration policy that this informal arrangement approach incarnates (instead of opting for formal cooperation) since it links EU actions to a form of crisis-led governance[20]. Moreover, these kinds of informal agreements leave the EU in a highly dependent and vulnerable position concerning the country partner, i.e. Türkiye[21].

Reflecting on the circumstances under which the agreement was signed—informally, contested from the outset, and beyond judicial control —it is challenging to comprehend the substantial influence it has had on EU migration policy in the following years. This issue will be examined in the following chapters.

2.3. Practical implementation of the agreement

As stated above, the EU-Türkiye Deal entered into force on the 18th of March 2016. The challenges that it entailed quickly became evident, starting with the logistic issues faced by Greece in the islands, which led to humanitarian and legal drawbacks. Because of the hotspot approach implemented in 2015, the closest islands to Türkiye[22] already counted with Reception and Identification Centers (RICs), but their objective had to change because of the implementation of the agreement, becoming a sort of detention and return centers[23].

In order to facilitate the returns to Türkiye under the EU-Türkiye Statement Greece needed to introduce certain changes, which were carried out through national law. First, it implemented the fast-track border procedure for the applicants subjected to the EU-

[19]Yilmaz-Elmas, F. (2020). *EU's Global Actorness in Question: A Debate over the EU-Türkiye Migration Deal*. Uluslararasi Iliskiler, 17(68), 170-191. p. 170.
[20]Carrera, S., et al. (2017). *It wasn't me! The Luxembourg Court Orders on the EU-Türkiye Refugee Deal.* CEPS Policy Insights, (2017-15). p. 8.
[21] Ibid.
[22] The five Greek Eastern Aegean islands: Lesvos, Samos, Chios, Leros, and Kos.
[23] Ziebritzki, C. (2018, June 22). *Implementation of the EU-Türkiye Statement: EU Hotspots and restriction of asylum seekers' freedom of movement.* EU Migration Law Blog. Retrieved from https://eumigrationlawblog.eu/implementation-of-the-eu-Türkiye-statement-eu-hotspots-and-restriction-of-asylum-seekers-freedom-of-movement/

Türkiye deal[24], which accelerates the pace of their asylum processes. Under this procedure[25], the Asylum Service must issue the first instance decision within seven days after the claim has been registered, and the deadline for submitting an appeal against a negative decision is ten days. It is worth mentioning that meeting the deadlines, by general principle and because of logistic issues, is not mandatory for the authorities, which in practice can take months to issue a decision, whereas the applicants shall observe them in any case[26]. At the same time, putting more pressure on the asylum authorities to issue decisions in a shorter period would affect the quality of the assessments[27], which has already been criticized from the beginning and still is nowadays[28].

The second change that Greece had to introduce to secure the returns to Türkiye under the Statement was the restriction of movement, which was deemed necessary from the point of view of the Greek Government and the EU Commission[29]. This restriction prevents the asylum seekers from moving from the island on which they arrive and register until they receive a decision on their case, in order to prevent movements to the mainland or secondary Member States[30]. Moreover, even if the restriction does not explicitly prevent people from residing outside of the hotspots, the lack of financial means and the communication of the asylum procedure steps done within them halts any attempt to do so[31]. This translates into the creation of camps, often described as

[24] Applicants who arrived on the Greek Eastern Aegean islands after 20 March 2016 and have submitted their applications before the Regional Offices of Asylum of Lesvos, Chios, Samos, Leros, and Kos.
[25] Regulated in Article 95(3) of the Asylum Code, L. 4939/2022 (Greece).
[26]FRA. (2019). *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy.* Retrieved from https://bit.ly/2HeRg79 , p. 26.
[27] Ibid.
[28] AIDA. (2021). *Country Report Greece, 2021 Update*, p. 100. Retrieved from https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf
[29] European Commission. (2017). *Fifth Report on the Progress made in the implementation of the EU-Türkiye Statement* (Report No. COM (2017) 204 final). Brussels.
[30] Ziebritzki, C. (2018). *Implementation of the EU-Türkiye Statement: EU Hotspots and restriction of asylum seekers' freedom of movement.* EU Migration Law Blog. Retrieved from https://eumigrationlawblog.eu/implementation-of-the-eu-Türkiye-statement-eu-hotspots-and-restriction-of-asylum-seekers-freedom-of-movement/
[31] Ibid.

open-air prisons[32], overcrowded and with conditions that are far from complying with the most basic humanitarian standards.

This restriction of movement, as well as the conditions in the camps and the average amount of time that migrants spend on them, have been criticized by international organizations, migration experts, and NGOs, for not complying with European and international law. This reflects some of the concerns and difficulties that the implementation of the EU-Türkiye Statement has brought to the borders of the EU because of the burden that has fallen onto Greece. However, even if the conditions of detention in the Greek islands are unacceptable, the return to Türkiye is far from improving them in many of the cases, which poses the issue of considering the latter as a safe third country.

2.4. The safe third country concept

This section aims to shed light on the safe-third country concept by understanding where it comes from and where it is regulated within the European Union´s framework. Subsequently, the reasons why Türkiye was designated as safe are presented, followed by an argumentation for why Türkiye should not be considered as such.

2.4.1. Definition and regulation

The safe third country concept is not regulated - nor prohibited - in the 1951 Convention Relating to the Status of Refugees (Geneva Convention), regardless of being closely related to refugees and their right to asylum. The STC notion stands on the idea that certain refugees may not be entitled to protection in the country where they've applied, as they could have sought it in another country they traveled through[33].

The concept was not created by international or European law but was initially included in several national legislations. The trend of considering third countries as safe started

[32] Iasmi Vallianatou, A. (2022). *Lesvos: How EU asylum policy created a refugee prison in Paradise. Chatham House*. https://www.chathamhouse.org/2022/07/lesvos-how-eu-asylum-policy-created-refugee-prison-paradise

[33] Foster, M. (2007). *Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State*. 28 Michigan Journal of International Law 223. pp 223–24.

growing among European states in the late 1980s and through the 1990s[34] under the name "host third country" as a response to an increase in mixed migration flows[35]. However, there was no coherence or harmonization between said legislations. The first international instrument to address this issue was the Conclusions nº 15 (XXX) of the Executive Committee of UNCHR[36] in 1979, which did not explicitly mention the concept nor put a name to it but did accept the transfer of asylum seekers from one state to another and lied down the criteria to do so. What these Conclusions essentially state is that asylum should not be refused solely because it could have been sought in another country, but it is accepted, if reasonable and fair, to call an asylum seeker to apply in a different state if he or she appears to have previous close links with it. The document also adds that the preferences of asylum seekers regarding the country to seek asylum should be taken into account as far as possible and that states should make an effort to lay down a coherent criterion to identify who is responsible for examining asylum claims.

The conclusions from the UNCHR Executive Council are not legally binding, so it was ultimately the responsibility of the States to decide under which criteria they could return an asylum seeker to a third country. The European Union has grown apart from these conclusions when legislating upon the STC concept since the focus shifts from the well-being of the asylum seekers[37] to the idea of externalizing the management of migration[38] (i.e. shifting the burden) and creating "categories of returnability"[39]. Berfin Nur Osso[40] suggests that the Member States consider people on the move who passed through these presumed safe third countries to not be in need of genuine protection,

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[34] Moreno-Lax, V. (2015). *The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties.* Guy S Goodwin-Gill and Philippe Weckel (eds). 666. p 671.
[35] Nur Osso, B. (2023). *Unpacking the Safe Third Country Concept in the European Union: B/orders, Legal Spaces, and Asylum in the Shadow of Externalization*. International Journal of Refugee Law 35. Oxford Press. 272–303. p 279.
[36] UNHCR Executive Committee. (1979). *Conclusion No 15 (XXX) 'Refugees Without an Asylum Country'.*
[37] In the UNCHR conclusions, the inclusion of provisions such as "connection or close links", "if reasonable and fair" or taking into account as far as possible the preferences of the asylum seeker implies that if a transfer from one State to another is made is because the applicant wishes to do so or would be more comfortable in the third State.
[38] Nur Osso, B. (2023). *Unpacking the Safe Third Country Concept in the European Union: B/orders, Legal Spaces, and Asylum in the Shadow of Externalization*. International Journal of Refugee Law 35. Oxford Press. 272–303. p 276.
[39] Ibid. p 281.
[40] Ibid.

since they are not fleeing their country of origin anymore but searching for better conditions. In this way, they are mislabeled as "economic migrants" or "bogus" who are taking advantage of an asylum system designed for "real" refugees[41].

The safe third country concept in European law is mainly regulated in the Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Asylum Procedures Directive, APD). It is also mentioned in Regulation 604/2013 (Dublin III), which establishes the criteria for determining the Member State responsible for examining asylum claims. This Regulation safeguards the right of the Member States to send an applicant to a STC, which shall be subjected to the rules and guarantees of the APD[42].

Article 38(1) of the APD states the criteria under which a Member State can apply the STC concept, which is related to the treatment to be received by the asylum seeker in the third country. The authorities of the Member States should be satisfied that (a) the applicant´s life or liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) that there is no risk of serious harm[43]; (c) that the non-refoulment principle is respected[44]; (d) that the prohibition of torture and inhuman treatment is respected; and (e) that there is a possibility to request refugee status and receive protection according to the Geneva Convention.

Furthermore, Article 38(2) of the APD establishes which rules should be included in national law to apply the STC concept, which should be regarding: (a) the connection between the applicant and the STC, (b) the methodology to be followed by the authorities to satisfy themselves that the STC concept should be applied to a particular applicant, (c) the possibility to challenge the decision on the grounds of unsafety in the STC or the lack of connection with it. Article 38(3) says that if an asylum claim is rejected solely on the grounds of this concept the applicant and the authorities of the third country should be informed accordingly. Article 38(4) establishes that if the third

[41] Karin de Vries. (2007). *An Assessment of "Protection in Regions of Origin" in relation to European Asylum Law'*. European Journal of Migration and Law 83. De Genova, 'Introduction' (n 14). p 7.
[42] Article 3(3) of Dublin III.
[43] As defined in Directive 2011/95/EU.
[44] In accordance with the Geneva Convention.

state does not allow the applicant to enter its territory the Member States should guarantee access to the procedure i.e. examine the application on merits, and 38(5) that Member States should inform the Commission periodically of the countries considered as safe.

2.4.2. The safe third country concept in the EU-Türkiye Statement

The signature of the EU-Türkiye deal was a result of the mass displacements caused by the Syrian conflict, which started in 2011 but escalated in 2015. Because of the geographical, religious, and cultural closeness, Türkiye established since the beginning of the conflict the open-door policy and granted automatic temporary protection[45] to displaced Syrians. With this provision, Syrians were exempted from the asylum procedure and were automatically protected by the Turkish government for the sole reason of their nationality.

As Türkiye is the main transit route from Syria to Europe and the EU had guarantees that Syrian nationals were protected on Turkish soil, it chose to support the settlement of Syrians there through the EU-Türkiye Statement. In this manner, the EU was protecting its borders while sending aid to Türkiye to improve the reception and integration of Syrian nationals. Furthermore, the EU was allegedly protecting this migrant group from potential hazards by introducing the admissibility procedure in the Greek islands, through which the individual circumstances of the applicant on Turkish soil are examined to consider the risks of being sent back. Greek authorities explicitly accepted the recognition of Türkiye as a safe third country in February 2016, the month before the deal came into force[46]

However, the scope of the EU-Türkiye deal included all irregular migrants crossing from Türkiye to Greece, not only Syrians. Regardless of nationality, all people crossing were supposed to be subjected to the admissibility procedure, and, therefore, bound to the safe third country concept. In the case of non-Syrians, the guarantees of Türkiye

[45] The temporary protection is a legal status granted to the Syrians as part of the Turkish domestic policy regarding the Syrian conflict. It is not internationally recognized as it is the refugee status, although it gives access to similar rights.
[46] Ekathimerini. (2016). *Hot spot work intensifies as Greece agrees to recognize Türkiye as 'safe' country*. Retrieved from: http://www.ekathimerini.com/205708/article/ekathimerini/news/hotspot-work-intensifies-as-greece-agrees-to-recognize-Türkiye-as-safe-country.

granting automatic protection were non-existent, having to trust the effectiveness of the Turkish asylum system to assess the claims of the returned applicants on merits. The reasoning of the EU to consider Türkiye as a safe country was clarified in a letter of the Commission addressed to the Greek Minister of Interior[47], in which it was established that Türkiye being the transit country of the affected individuals constituted a sufficient link with it to be considered as safe, fulfilling the requirement of Article 38(2)(a)[48] of the APD[49]. The vagueness of these affirmations and the context in which the Statement was signed suggest that what really drove the consideration of Türkiye as safe was the high refugee recognition rates of many of the nationalities arriving in the Greek islands[50]. Hence, they were likely to be recognized as refugees under the Convention if the claims were assessed on merits, without the possibility of returning them to Türkiye[51].

In practice, the STC concept has not been applied uniformly in the Greek islands. The admissibility assessment has been applied to Syrian nationals consistently since the agreement entered into force, but it has variated for non-Syrians over the years. As the data gathered by ECRE in the AIDA country reports on Greece indicates[52], the tendency has been to assess on merits the claims of applicants with low refugee recognition rates (lower than 25%)[53], while assessing both on admissibility and on merits in a merged procedure the ones of high recognition rates (higher than 25%)[54]. This supports the idea of utilizing the agreement to return as many people as possible to Türkiye. However,

[47] European Commission. (2016). Ref. Ares (2016)2149549 - 05/05/2016. Retrieved from: https://www.statewatch.org/media/documents/news/2016/may/eu-com-greece-Türkiye-asylum-letter-5-5-16.pdf

[48] "The application of the safe third country concept shall be subject to rules laid down in national law, including: (a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country".

[49] The letter contains the EU's reasoning for why Türkiye can be considered as safe, but this reasoning has been challenged by the Greek Appeals Committees on many occasions, deeming, inter alia, that being a transit country does not constitute a sufficient connection between the applicant and the country (See as examples the 9th Appeals Committee Decision 15602/2017, and 11th Appeals Committee Decision 14011/2017).

[50] Nur Osso, B. (2023). *Unpacking the Safe Third Country Concept in the European Union: B/orders, Legal Spaces, and Asylum in the Shadow of Externalization*. International Journal of Refugee Law 35. Oxford Press. 272–303. p 291.

[51] Carrera, S. and Stefan, M. (2020). *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union: Complaint Mechanisms and Access to Justice*. Routledge (eds). p 179.

[52] See ECRE *AIDA Country report: Greece* from 2016, 2017, 2018, 2019 and 2020.

[53] Pakistan, Bangladesh, Morocco, Algeria, Tunisia, inter alia.

[54] Palestine, Iraq, Afghanistan, Somalia, Eritrea, inter alia.

this discrimination based on nationality ceased in 2020, in which all non-Syrian applications were assessed directly on merits[55].

The consideration of Türkiye as a safe country poses several problems for both Syrian and non-Syrian nationals. First, even if Türkiye is a signatory of the Geneva Convention and its 1967 Protocol[56], it kept the geographical restrictions. This means that, for Türkiye, refugee status can only be granted to people displaced from events occurring in Europe. The consideration of Türkiye as a safe third country violates Article 38(1)(d) of the APD, which establishes the possibility of requesting refugee status and receiving protection according to the Geneva Convention as a requirement for a country to be considered safe. This issue was addressed in the aforementioned letter of the Commission to the Greek Minister of Interior conveying that only a protection equivalent to the one provided by the Geneva Convention is required and that Türkiye fulfills the requirements to grant it. However, this is highly contested.

First, even if the protection granted by the Turkish asylum system was equivalent to the one in the Geneva Convention, the fact that the latter does not legally bind Türkiye already poses issues. If there is no shared legal framework regarding rights and protection, the guarantees of said protection being effective become blurred, and access to legal channels to challenge potential violations becomes significantly harder. As asylum is regulated solely through domestic laws, Türkiye can change them whenever without having to attend to international obligations. These domestic laws are mainly the 2013 Law on Foreigners and International Protection (LFIP) and the 2014 Temporary Protection Regulation (TPR), the latter aimed to regulate the status of Syrian nationals. The international protection that can be granted through these laws is temporary protection for Syrians and conditional refugee status or subsidiary protection for non-Syrians.

[55] AIDA. (2020). *AIDA Country report: Greece. 2020 Update*. p 58.
[56] The 1951 Geneva Convention was signed as a result of World War II, aiming to protect the displaced people who were before living in Europe. The 1967 Protocol was added to lift the limitations of the Convention for it to apply not only to people living in Europe and not only to people affected by the events that occurred before 1951.

Regarding Syrians, before the 2016 agreement, the TPR stated that the protection would terminate if the beneficiary left Türkiye on their own will[57]. However, with the introduction of the statement, the TRP was amended stating that returnees from the Greek islands *may* get back the temporary protection upon request[58]. The language used in the amendment suggests that the reinstallation of the protection is not guaranteed[59]. In practice, Syrians under the EU-Türkiye deal were arbitrarily detained upon arrival in temporary accommodation centers waiting for the reinstallation of the temporary protection. ECRE has described these removal centers as de facto detention centers[60].

In the case of non-Syrians, they were also detained upon arrival when returned and faced high difficulties accessing asylum, lacking information about the process and legal assistance[61]. Additionally, data demonstrates that most non-Syrian returnees get sent back to their country of origin[62]. If they end up getting international protection, the temporary nature of it[63] and the impossibility under the Turkish asylum framework of establishing long-term in the country[64] leaves them – as well as the Syrians – in a limbo of uncertainty.

Second, the situation of Türkiye regarding the rule of law and human rights is far from European standards, as has been stated by the EU in every country report regarding the accession of Türkiye. Especially in the reports of 2016 and after, following the coup d'état attempt[65] which occurred only four months after the deal entered into force, the

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[57] Article 12(1) of the Temporary Protection Regulation
[58] Regulation No 2016/8722 amending the Temporary Protection Regulation, Official Gazette No 29677, 7 April 2016. Retrieved from: https://www.resmigazete.gov.tr/eskiler/2016/04/20160407-18.pdf
[59] Nur Osso, B. (2023). *Unpacking the Safe Third Country Concept in the European Union: B/orders, Legal Spaces, and Asylum in the Shadow of Externalization*. International Journal of Refugee Law 35. Oxford Press. 272–303. p 295.
[60] ECRE. (2018). *AIDA Country report: Türkiye, update 2018*. p 121.
[61] EASO. (2019). *Türkiye: country information pack*. p 58.
[62] European Commission. (2017). *Sixth Report on the Progress made in the implementation of the EU-Türkiye Statement*. COM(2017) 323 final. p 6.
[63] The subsidiary protection and the conditional refugee status have an initial duration of one year. It can be renewed after the year has passed, but it can also be revoked. See article 83(2) LFIP.
[64] Türkiye does not grant beneficiaries of international protection the right to settle down in Türkiye or obtain Turkish nationality. The individual is supposed to search for a country that accepts them long term or stay in Türkiye indefinitely under the granted international protection until they can return to their country of origin. See: Refugee Rights Türkiye. (2017). *International Protection Procedure in Türkiye: rights and obligations*. Sorular and Yantilar, Ingilizce. p 3.
[65] On July 15th a fraction of the military tried to overthrow the AKP government but ultimately failed due to the resistance of the loyalist military and civil fraction. The aftermath of the coup attempt was marked by an increase of control from the government leading to arbitrary detentions of activists and journalists,

Turkish practices have been highly criticized by EU authorities for consisting in human rights violations. Deeming Türkiye ineligible for accession for not complying with humanitarian standards but at the same time considering it safe and capable of dealing with highly vulnerable individuals, seems contradictory. It suggests that the main reason for the signature of the deal was the protection of EU borders instead of guaranteeing effective protection for people fleeing conflict.

It has been recalled in multiple reports that both Syrian and non-Syrian nationals in Türkiye face poor living conditions in Türkiye. Access to the labor market is extremely difficult and work conditions are abusive, and a high number of children remain unenrolled from school and are often induced into child labor[66]. Syrian youth faces discrimination, exploitation, and psychological trauma, and women are highly vulnerable to discrimination and harassment, especially in the workplace[67]. Particularly the non-Syrian nationals face difficulties with finding accommodation, often pushed to a homelessness situation, since they are not entitled to state housing[68]. Inter-ethnic violence has also been reported, along with discrimination based on religion, gender, and belonging to the LGTBQ+ community[69]. This highlights that merely having a legal framework that provides international protection isn't sufficient. Instead, the situation and level of stability within the country should be adequate enough to ensure the effectiveness of that protection.

Lastly, it is fundamental to mention the non-refoulment principle. Respecting this principle is required for a country to be considered a STC[70]. At the time of the signature of the EU-Türkiye Statement, the legal framework of Türkiye counted with provisions

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dismissal from positions as civil servants, judges, or educators accused of disloyalty, erosion of judicial independence with the dismissal and arrest of persecutors and judges, censorship in the media and report of human rights violations and ill-treatment during the detentions.

[66] ICG. (2018). *Türkiye's Syrian Refugees: Defusing Metropolitan Tensions*. Europe Report no. 248. i. Retrieved from: https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/Türkiye/248-Türkiyes-syrian-refugees-defusing-metropolitan-tensions

[67] EASO. (2019). *Türkiye: country information pack.* pp 28-29. Retrieved from: https://rsaegean.org/wp-content/uploads/2021/06/2019-08_EASO_TürkiyeReport.pdf

[68] ECRE. (2018). *AIDA Country Report: Türkiye, Update 2018*, pp 72-73. Retrieved from: https://asylumineurope.org/wp-content/uploads/2019/04/report-download_aida_tr_2018update.pdf

[69] ICG. (2018). *Türkiye's Syrian Refugees: Defusing Metropolitan Tensions*. Europe Report no. 248. "Principal findings".

[70] Article 38(1)(c) from APD.

that included the non-refoulment principle[71]. However, there were already reports of pushbacks on the border with Syria, denounced by Amnesty International since 2014[72]. Moreover, in October 2016, an exception to the non-refoulment principle was introduced in Turkish domestic legislation, stating that a deportation decision "may be taken at any time during the international protection proceedings against an applicant for reasons of: (i) leadership, membership or support of a terrorist organization or a benefit-oriented criminal group; (ii) threat to public order or public health; or (iii) relation to terrorist organizations defined by international institutions and organizations"[73]. This amendment enables the unlawful deportation of affected individuals in the listed cases, which remain vague and could be interpreted widely[74].

Deportations under this regulation increased through 2018[75] and 2019[76], including cases in which the criminal investigations were not finished, and yet the persons were administratively detained for the purpose of removal[77]. Data is not sufficient to determine how many of the deportees are Syrians and how many are non-Syrians[78], but, apart from these cases of deportation under Article 54(2) LFIP, mass pushbacks on the border with Syria have been constantly denounced throughout the years by NGOs and civil society organizations[79].

In conclusion, the consideration of Türkiye as a safe third country violates multiple and fundamental points of Article 38 of the APD. The country´s situation regarding the rule of law and human rights prevents migrants from being effectively protected, violating Article 38(1)(a)[80] of the APD and potentially Article 38(1)(d)[81]. The geographical

[71] It is regulated both in the LFIP and in the TPR.
[72] Amnesty International. (2014*). Struggling to Survive: Refugees from Syria in Türkiye*. EUR 44/017/2014. pp 9-10 and 14.
[73] Article 54(2) LFIP, as amended by Article 36 Emergency Decree 676 of 29 October 2016. The provision cites Article 54(1)(b), (d) and (k) LFIP, the latter inserted by Emergency Decree 676.
[74] Information provided by Izmir Bar Association for the *AIDA Country Report: Türkiye. 2017 Update*. p 25.
[75] ECRE. (2018). *AIDA Country Report: Türkiye. 2018 Update*. p 23.
[76] ECRE. (2019). *AIDA Country Report: Türkiye. 2019 Update*. p 26.
[77] ECRE. *(2018). AIDA Country Report: Türkiye. 2018 Update.* p 26.
[78] See ECRE *AIDA Country Report: Türkiye* p 27 in 2019 report and p 33 in 2020 report.
[79] Amnesty International. (2019). *Sent to a war zone Türkiye's illegal deportations of Syrian refugees.* EUR 44/1102/2019.
[80] "Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion".
[81] 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".

restrictions kept by Türkiye when signing the 1967 Protocol violate Article 38(1)(e)[82] and the evidence of Türkiye not respecting the non-refoulment principle violates Article 38(1)(c)[83]. The inefficiency and unfairness of Türkiye's dealing with displaced people, which evidences why it should not be considered a STC by Greece or the EU, is one of the factors that led to the agreement´s failure, as it will be presented in the subsequent section.

2.5. Assessment of the agreement´s success

After having explored some of the issues that the text and its implementation pose, it is necessary to assess the success of the agreement in terms of achieving the objectives laid on it. This presents a challenging task, due to the circumstances in which it was signed, and the parties involved.

It could be argued that there are two primary stakeholders seeking to benefit from this agreement, namely the signatories: the European Union and Türkiye. Regarding the main objective of the deal - decreasing migration flows from Türkiye to the EU - data indicates a significant reduction in crossings since the entrance into force of the agreement in 2016. The number of crossings went from 856,723 in 2015 to 29,718 in 2017, and even if from 2017 to 2020 the figures have not decreased exponentially but rather had fluctuations, they never exceeded six digits again[84]. From 2020 onwards the success of the deal in this regard cannot be analyzed through data, due to the impact of the COVID-19 pandemic and Türkiye´s subsequent closure of borders, which significantly slowed down crossings. Türkiye's refusal to resume the procedures regarding takebacks has prevented the situation from normalizing after the pandemic, as it will be further examined.

Another objective of the deal was to achieve a decline in deaths and missing people in the sea. In this regard, the statement was also successful until 2020, despite a peak in 2018[85]. Although numbers were not close to surpassing pre-deal levels, the spike was

[82] "The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention".
[83] "The principle of non-refoulement in accordance with the Geneva Convention is respected".
[84] United Nations High Commissioner for Refugees (UNHCR). *Mediterranean Situation*. Retrieved from https://data.unhcr.org/en/situations/mediterranean/location/5179
[85] Ibid.

concerning given the drop in arrivals, and given that the cause was cost-cutting in rescue operations[86] as well as alleged pushbacks in the sea[87], which remarks the need for complementary measures alongside these types of bilateral agreements to meet humanitarian expectations. However, numbers after 2021 have increased relative to arrivals, particularly in 2022 and 2023[88]. This unfortunate rise is an indirect consequence of the Agreement since it is due to the escalating tensions between the parties, which will be assessed later on.

The Turkish counterpart, however, has not seen any of the expected benefits materialize. The decongestion from the implementation of the 1:1 scheme i.e. the resettlement of one Syrian into the EU for each Syrian returned to Türkiye, did not happen as expected since the allocated quotas do not align with the number of returns[89]. Regarding the accession negotiations, no new chapters have been opened since the signature of the deal[90]. There has not been progress in the visa liberalization issue either, and the Turkish government has expressed discontent as well over the pace and the way the second set of funds was released, since the promised aid for 2018 was finally released in 2020 and the quantities are still contested[91]. Due to the informality of the agreement, it has not been possible for Türkiye to hold the EU accountable through formal channels for not complying with its promises, which has led the country to opt for retaliation.

Tensions started to escalate in February 2020, when at least thirty-three Turkish officials were reported killed in a military operation in Iblid, northern Syria, a region in which the EU had compromised to help Türkiye stabilize. Erdoğan´s concern that the developments in the country could lead to a new influx of asylum seekers into Türkiye, added to the general discontent for the perceived lack of compliance of the EU with the

[86] United Nations High Commissioner for Refugees (UNHCR). (2019). *Mediterranean Situation: highlights*. Retrieved from https://data.unhcr.org/en/search?type=highlight&sv_id=11&geo_id=640
[87] Greece denies the claims of pushbacks, but in 2018 four cases were brought to the European Court of Human Rights and several NGO reports have collected data and affirmed the usage of the practice.
[88] IOM. *Dead and Missing*. Retrieved from https://dtm.iom.int/europe/dead-and-missing
[89] Yeginsu, C. (2016). Refugees Pour Out of Türkiye Once More as Deal with Europe Falters. New York Times. http://www.nytimes.com/2016/09/15/world/europe/Türkiye-syria-refugees-eu.html?_r=0
[90] Dagi, D. (2020). *The EU's Türkiye Migration Deal: Performance and Prospects*. European Foreign Affairs Review. 25(2), 197-216. p. 209.
[91] Özalp, O. K. (2021). *A Failed Negotiation?: A Closer Look on the EU-Türkiye Deal of 2016.* Journal of International Relations and Political Science Studies, 5-20. p 15-18.

deal, prompted him to announce on February 27th that he would no longer prevent migrants from crossing into the European Union. Moreover, a few weeks later, he announced the closing of borders on the grounds of the COVID-19 pandemic refusing to take people back, also violating in this sense the EU-Türkiye Statement[92].

From the 28th of February, violence spiraled in the borders. Human Rights Watch conducted a series of interviews[93] with people who crossed on those days, in which they claim that the borders were not only opened but that Turkish officials helped, or, in other cases, forced them to cross, transporting them to the northern land border of river Evros. Athens, facing the announcement, had reinforced the security in the area. The Greek officials acted violently, firing teargas and rubber bullets, pushing back people to Turkish soil, or detaining them in informal detention centers, in which they were reportedly stripped, tortured, sexually assaulted, and robbed of personal items before being sent back to Türkiye. The violence was confirmed by the inhabitants of the Turkish villages close to the borders, who were also interviewed by Human Rights Watch, by telling how on those first days of March they kept on assisting people who were sent back naked and injured, including women and children.

In this context, on the 1st of March, the Greek government decided unilaterally to suspend the registration of asylum applications for a month and invoked article 78.3 of the TFEU[94] to ensure European support. Prime Minister Mitsotakis made this announcement through Twitter, finishing with a clear message: "Once more, do not attempt to enter Greece illegally – you will be turned back". Both the decision to suspend asylum applications and the tone of the Greek Prime Minister's words go against European and international law, which protects and guarantees the right to asylum, the non-refoulment principle, and forbids pushbacks, and arbitrary detentions.

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[92] Ankara had stopped accepting returns under the EU-Türkiye Readmission Agreement in 2018, therefore, the 2020 decision of refusing to take back people under the EU-Türkiye Deal blocked any return from the EU.

[93] Human Rights Watch. (2020). *Greece: Violence Against Asylum Seekers at Border*. Retrieved from https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border

[94] Art. 78.3 TFUE: "In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament."

However, on the 3rd of March, the heads of the European Institutions visited the land border between Greece and Türkiye and praised the actions of the Greek security forces, thanking the country for being the "European shield"[95]. Moreover, the Commission presented an Action Plan to support the Hellenic Republic financially and in border management, by enhancing the participation of FRONTEX and EASO (now EUAA) to coordinate a return program[96].

The Turkish response arrived on the 5th of March, by reinforcing the border with more security and reporting in Turkish media that the authorities were preparing a case for the European Court of Human Rights over Greece's treatment of asylum seekers, accusing them of killings and injuries. Athens replied with accusations about instrumentalization of migration, violation of the EU-Türkiye Deal, and usage of violence also from the part of Turkish authorities over migrants. What was supposed to be a collaborating partnership in the management of migration, spiraled into a political war in a matter of days.

Moreover, even if Greece ultimately resumed the registration of asylum claims, the consequences of the violent crisis of March 2020 did not finish then. Ankara held its decision to maintain the closure of borders indefinitely, even after the pandemic was under control, refusing to attend the petitions for resuming takebacks from both the Commission and Athens. This form of retaliation prompted Greece to reply with the same means, deciding in June 2021 to unilaterally intensify the provisions of the EU-Türkiye Statement by designating Türkiye as a safe country for all people from Afghanistan, Pakistan, Syria, Somalia, and Bangladesh who crossed into Greek territory, regardless of whether by land or sea route[97]. This decision will be analyzed in depth in the subsequent chapter, but it is evident that the legal limbo in which it has left a growing number of asylum seekers constitutes a breach of both legislation and human

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[95] European Commission. (2020). *Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel* [Statement]. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380

[96] European Commission. (2020*). Extraordinary Justice and Home Affairs Council: Commission presents Action Plan for immediate measures to support Greece* [Press release]. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/ip_20_384

[97] Greek Government. (2021). *Joint Ministerial Decision (JMD 42799/2021).* https://bit.ly/3uILhhf

rights. The decision would not have been taken without the framework provided by the EU-Türkiye Statement, therefore, these violations are a direct consequence of the deal.

It can be concluded that the 2016 attempt at collaboration between the EU and Türkiye has been a failure for all the parties involved. The EU halted migration flows for some time thanks to the agreement, but, as many scholars have signaled, closing or repressing a route does not fix the root causes of migration[98]. If no regular routes are opened as alternatives, people will keep finding their way in through more dangerous paths, so even if the data presents a decrease in arrivals and deaths and missing people in the Aegean route, it does not necessarily mean that the agreement was effective in reducing them in a general sense. For the EU, the agreement has also meant a deterioration of its relationship with Türkiye and a position of vulnerability towards it, which due to a lack of formal means to address the failures of the implementation of the deal has opted for threats and retaliation, that cannot be addressed either through formal channels.

For Türkiye, the agreement has been a failure in its totality. They have only perceived the financial benefits, growing further away from strengthening their already contested relationship with the EU. Additionally, the country is still hugely burdened in terms of the number of hosted asylum seekers. Furthermore, the hostilities with the Hellenic Republic have worryingly deepened, which poses a geopolitical issue considering the already existing enmity. In the case of Greece, the deal has not been successful either, since apart from causing these tensions with Türkiye, the country is still burdened, overwhelmed, and deviating more and more from humanitarian standards and observation of international and European law.

Lastly, the EU-Türkiye Statement has been a huge failure for its subject: the people fleeing conflict. The deal opened the door for using them as a bargaining tool[99] between two parties seeking personal benefits. The *telos* of all European legislation regarding asylum, which is safeguarding and guaranteeing the right to international protection, was forgotten in this deal. The center of an agreement in the matter of migration should

[98] Vermeulen, M. (2020). *War of the words: how Europe is exporting its migration philosophy*. Migration correspondent at De Correspondent. Retrieved from: https://thecorrespondent.com/240/war-of-the-words-how-europe-is-exporting-its-migration-philosophy/31739576880-b506ad0d

[99] Özalp, O. K. (2021). *A Failed Negotiation?: A Closer Look on the EU-Türkiye Deal of 2016.* Journal of International Relations and Political Science Studies, 5-20. p 14.

be the asylum seekers and their rights and, in this case, it was the personal interests of the signing parties. The deal has caused an increase in violence at the borders, including pushbacks, and a deterioration of the living conditions in the camps, which were evidenced by the 2020 fire in Moria[100]; a tragedy that shook up the world but that did not drive to any changes. People seeking asylum are being seen more and more as a unitary body that should be kept out of the European Union´s borders at all costs, even if it implies breaches of law, agreements with countries that do not respect human rights, or becoming an entity that does not respect human rights itself.

[100] Moria, a refugee camp on the Greek island of Lesbos, was severely damaged by multiple fires in September 2020. The fires left thousands of asylum seekers homeless and highlighted the dire living conditions and overcrowding issues within the camp. The exact cause of the fires remains unclear, with reports suggesting a combination of arson and accidental incidents amidst rising tensions and protests against quarantine measures due to COVID-19.

CHAPTER III: THE GREEK JOINT MINISTERIAL DECISION

3.1. Background of the decision

As it has been stated in the last chapter, Ankara decided on the closure of borders in March 2020, following the violent crisis on the borders, on the grounds of the COVID-19 pandemic. Greece implemented cautionary measures regarding testing and preventive confinement, but Prime Minister Erdoğan refused to resume takebacks and maintained an indefinite closure, even after the pandemic was under control.

On the 14th of January 2021, ten months after the closure, the Greek Minister of Migration and Asylum made a formal request to the EU Commission and FRONTEX to return 1,450 third-country citizens who had entered through Türkiye and were not entitled to international protection[101]. The Commission joined the Greek Government's efforts to press Türkiye into resuming its obligations under the EU-Türkiye Deal[102] but did not achieve any reaction.

The first group affected by the border closure was the Syrians in the Eastern Aegean Islands since the STC concept was applicable to them under the Statement and they were supposed to seek asylum in Türkiye if deemed inadmissible[103]. However, Greece did not adapt to the new situation in which returns were not possible and kept issuing inadmissibility decisions, leaving Syrian nationals in a legal limbo in which they could not get their claims assessed on merits, nor in Greece or Türkiye.

The situation was denounced multiple times, since the affected group was also left without access to material reception conditions[104], and in February 2021 questions were

[101] See at: https://migration.gov.gr/en/aitima-gia-enarksi-epistrofon-se-toyrkia/
[102] European Commission. (2021). *Türkiye 2021 Report* (SWD(2021) 290 final/2). p 17. Retrieved from https://neighbourhood-enlargement.ec.europa.eu/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en
[103] Initially, not only Syrians were subjected to the admissibility procedure (and, therefore, to the STC concept), but from 2020 Greece stopped to assess admissibility for all non-Syrian nationals and assessed their claims directly on merits.
[104] When deemed inadmissible the asylum seeker status is lost and, therefore, access to material reception conditions like cash assistance, accommodation, food, medical care, etc.

raised to the Commission[105]. In these parliamentary questions, the practice of issuing inadmissibility decisions under those circumstances was put in question for potential incompatibility with Article 38(4) of Directive 2013/32/EU[106], and Articles 13[107] and 3[108] of the European Convention on Human Rights (ECHR). Also, the removal of people and the prevention from accessing material reception conditions were put in question for potential incompatibility with Articles 4[109] and 18[110] of the EU Charter of Fundamental Rights.

The answer to the parliamentary questions[111] arrived in June 2021, and the Commission concluded that, in line with the Asylum Procedures Directive, applicants who had been declared as inadmissible should have the right to apply again, and the Greek authorities should take into account the current prospects of return possibilities when re-examining the claims. If there are no possibilities for returns, the claims shall be assessed on merits. It was also stated that, in the meantime, the applicants shall have access to reception material conditions.

Far from following the EU Commission´s observations, Athens issued four days later the Joint Ministerial Decision 42799/2021 (JMD), a document with a single article that entailed the preparation of a national list that included Türkiye as a safe third country for nationals from Syria, Bangladesh, Pakistan, Afghanistan, and Somalia[112]. This decision left people from these countries, both in the islands and the mainland, in the same limbo situation that Syrians in the islands had been dealing with for the past months.

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[105] P-000604/2021. See at: https://www.europarl.europa.eu/doceo/document/P-9-2021-000604_EN.html
[106] Article 38(4) of the Asylum Directive: "Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II".
[107] Article 13 of ECHR: "Right to an effective remedy: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".
[108] Article 3 of ECHR: "Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment".
[109] Also related to the prohibition of torture.
[110] Article 18 of the Charter "Right to asylum: The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community"
[111] See at: https://www.europarl.europa.eu/doceo/document/P-9-2021-000604-ASW_EN.html
[112] Greek Government (2021). *Joint Ministerial Decision 42799/2021* Gov. Gazette 2425/B/7-6-2021. Retrieved from: https://bit.ly/3gjEYcI

3.2. The document in question

Before analyzing the consequences of the Greek decision, it is important to recall some of the issues that the text itself poses. First, the designation of a third country as safe, as established in Article 86(3) of Greek Asylum Law 4636/2019 (International Protection Act, IPA), establishes that the designation of a third country as safe requires that the information used to consider it as such "(internal legislative framework of the third country, bilateral or multilateral intergovernmental agreements or agreements between the third country and the European Union, as well as internal practice) must be up to date and come from credible sources of information, in particular from official domestic and foreign diplomatic sources, EASO, the legislation of the other Member States in relation to the concept of safe third countries, the Council of Europe, and UNHCR*"*. Nevertheless, the JMD does not give any legal reasoning to consider Türkiye as safe and only refers to an Opinion of the Head of the Asylum Service, which was not public at the time of issuance of the JMD.

Access to this Opinion was requested by HIAS and Equal Rights Beyond Borders in order to assist their clients[113] with their claims, which were rejected on the grounds of the safe third country concept. Both requests were denied by the Head of the Asylum Service on the basis that the clients did not have a legitimate interest in knowing the reason why Türkiye was designated as safe for their nationalities[114]. Parliamentary questions were raised to the EU Commission in July 2021 regarding the compatibility of European Law on access to information and the right to challenge decisions on the basis of the third safe country, with the refusal of Greek authorities to grant access to the Opinion[115]. These questions were not answered until October[116], but in late July the

[113] A family from Syria and a man from Somalia respectively.
[114] HIAS & Equal Rights Beyond Borders. (2021). *The Greek asylum service finally shares the "opinion" on the basis of which Türkiye was designated as a safe third country and it only seems to be saying the contrary* [Press release]. Retrieved from https://hias.org/wp-content/uploads/greece-equal_rights_press_release_gas_opinion_1.pdf
[115] E-003532/202. See at: https://www.europarl.europa.eu/doceo/document/E-9-2021-003532_EN.html
[116] The reply of the EU Commission confirmed that the Opinion should be accessible to the applicants and their legal assistants. See at: https://www.europarl.europa.eu/doceo/document/E-9-2021-003532-ASW_EN.html

Opinion was already made public[117] after the legitimate interest was recognized by the public prosecutor of Athens, following another request of HIAS. As the latter along with Equal Rights Beyond Borders state, "the Opinion is simply a compilation of sources of information about Türkiye and contains absolutely no legal reasoning as to why these sources lead to the conclusion that Türkiye is a safe third country for asylum seekers from the five countries. In fact, the sources mentioned in the "Opinion" seem to rather substantiate the opposite conclusion".[118] Some of the numerous examples of these sources compiled in the Opinion that go against the consideration of Türkiye as safe are the 2021 report of the RESPOND project[119], the European Commission 2020 report[120], ECRE report on Türkiye[121], or the Refugees International 2018 report in Türkiye[122].

As Greece fails to justify why Türkiye should be considered safe for those nationalities specifically, looking at the data appears insightful. In the year 2020, 69% of people arriving in Greece were from Afghanistan, Syria, and Somalia[123], being the percentage of positive decisions issued 66.2%, 91.6%, and 94.1% respectively[124]. Considering

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[117] See Opinion at: https://hias.org/wp-content/uploads/greece_doc_save.pdf

[118]HIAS & Equal Rights Beyond Borders. (2021). *The Greek asylum service finally shares the "opinion" on the basis of which Türkiye was designated as a safe third country and it only seems to be saying the contrary* [Press release]. Retrieved from https://hias.org/wp-content/uploads/greece-equal_rights_press_release_gas_opinion_1.pdf

[119] "Four out of ten respondents experienced harassment, extortion, insults, blackmail, beating or another kind of violence in Türkiye. Four out of five survey participants also talked about discrimination, in particular when searching for accommodation, but also sometimes in the streets, when looking for work or at work." Opinion p. 23.

[120] "However, in the context where the majority of refugees and migrants in Türkiye continue to be employed in the informal sector, NGOs and media report an increased number of migrant and refugee minors at risk of, or involved in, child labour." Opinion p. 24., "there were many allegations of Syrians forcibly returned to Syria, as well as migrants of other nationalities in removal centres being coerced to sign voluntary return forms. Authorities denied that this was a systematic policy". Opinion p.22-23

[121] "The main public policy seemed to be to leave people unregistered and thus push them to leave Türkiye, especially Afghans, except in vulnerable cases. Afghans are thus kept as 'unregistered irregular migrants' in the migration system or they are treated under the accelerated procedure when their application for international protection is received." Opinion p. 49.

[122] "One of the main concerns for Afghan refugees without Turkish identity cards was their inability to access public health care. Türkiye has a generous health care system that is open to refugees and asylum seekers. However, a kimlik and its associated identification number are required to access these services. Interviewees without a kimlik told RI that they were left with the choice of paying high costs for private health care and medication or, if they could not afford it, going without treatment." Opinion p. 50.

[123] IOM. (2020). *QUARTERLY REGIONAL REPORT DTM, Europe, Displacement Tracking Matrix (DTM)*. Retrieved from: https://dtm.iom.int/sites/g/files/tmzbdl1461/files/reports/Q3%202020%20Narrative%20Overview_final.pdf

[124] RSA. (2021). *Asylum statistics for 2020, A need for regular and transparent official information*. Retrieved from: https://rsaegean.org/en/asylum-statistics-for-2020-a-need-for-regular-and-transparent-official-information/

Türkiye as safe for those nationalities meant a significant increase in inadmissibility decisions, consolidating in this manner the policy of externalizing asylum responsibilities that had been initiated with the EU-Türkiye Deal in 2016.

3.3. Direct consequences of the JMD

The signature of the JMD has had consequences in many realms. The breaches of law that it entails will be examined in chapter four, and the tightening of migration policies and practices will be assessed in chapter five, relating them to the provisions of the New Pact. However, it is essential to address as well two direct consequences of this decision: the implications on the Greek asylum system and the worsening of living conditions for the affected asylum seekers.

3.3.1. An overwhelmed and questionable asylum system

The signature of the JMD enlarged the scope of the EU-Türkiye Deal in two senses. First, Türkiye was considered safe for four nationalities more, added to the Syrians already affected by the Statement. Second, the JMD applied to those nationalities not only in the islands but also in the mainland, where there is no fast-track border procedure, and, therefore, applicants are subjected to regular deadlines in their processes.

Because of the signature of this document, there has been a huge spike concerning the issuance of inadmissibility decisions, going from 2,839 in 2020 to 6,424 in 2021, and, of those, 5,922 (92%) issued under JMD 42799/2021[125]. As Refugee Legal Support (RLS) points out in the questionnaire sent as part of the qualitative research for this thesis, the increase in inadmissibility decisions also means an increase in appeals and subsequent applications, these last ones more than doubling the number of the year before[126]. This increase has resulted in a highly overwhelmed Asylum Service and a shortage of accessible and available legal assistance[127].

[125] RSA. (2022). *The Greek asylum procedure in figures.* Retrieved from: https://rsaegean.org/en/asylum-statistics-2021/
[126] Ibid.
[127] Information provided by RLS in the questionnaire.

Regarding the Independent Appeal Committees, the general trend is to systemically repeat the inadmissibility of the first instance decision, without taking into account the impossibility of return to Türkiye, even if admitted by European[128] and national authorities[129]. This practice violates - as it also does in the first instance - Article 38(4) of the APD (transposed through Article 86(5) of the IPA)[130]. The subsequent applications submitted after a rejection based on the safe third country concept, which are supposed to be examined regarding new substantial elements, are also dismissed if no new elements arise in the matter of whether Türkiye is safe for the applicant or not. This entails another violation of Article 86(5) IPA, as well as a violation of Article 40(2) of the APD, as the assessment of subsequent applications should examine the existence of new substantial elements "which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU[131]".

Regarding second subsequent applications, a fee of a hundred euros was introduced as a pre-condition to register them through a legislative amendment of the IPA[132] in September 2021. The procedure to be followed by authorities was only made public in December 2021 through a Joint Ministerial Decision, which also added that, in the case of families, the fee was to be paid separately for each member even if the claim was made jointly[133]. The period between September and December resulted in practice in a refusal from part of the Asylum Service to register second subsequent applications, citing awaiting instructions[134]. The introduction of this fee goes against the effective access to the asylum procedure, which is safeguarded by EU and international law.

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[128] European Commission. (2021). *Türkiye Report 2021*. SWD (2021) 290, 19 October 2021, 48; Reply to parliamentary question P-000604/2021. Retrieved from: https://bit.ly/3IIx2hW
[129] Minister of Citizen Protection. (2021). Hellenic Parliament, Defence and Foreign Affairs Committee. Retrieved from: https://bit.ly/3g864nv
[130] Article 38(4) of the Asylum Directive "Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II".
[131] Qualification Standards Directive.
[132] Law 4825/2021.
[133] RSA. (2022). Greece arbitrarily deems Türkiye a "safe third country" in flagrant violation of rights [Legal note]. p 8-9. Retrieved from https://acrobat.adobe.com/id/urn:aaid:sc:EU:f9f4294f-1d7d-4ae8-b19c-6c3012a9d5a8
[134] Ibid. p 9.

Specifically, it goes against Article 6(1) of the APD, which highlights that the mere expression of the intention to lodge an application for international protection constitutes the "making" of said application. The EU Commission pronounced itself in January 2022 about the issue answering to parliamentary questions, stating that "the unconditional application of a EUR 100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure"[135]. However, the hundred-euro fee is still in force at the time of the writing of this thesis.

Finally, to be noted about the asylum system in the aftermath of the JMD, are the return orders. When a second negative decision is issued, the Independent Appeals Committees deliver it either with a readmission order regarding Türkiye or with an order of voluntary return in a specified period but without a specific destination[136], implying, in light of Article 3(3) of the Return Directive[137], that the applicant should go back to their country of origin or to another in which they would be accepted. This goes against all European and International law regarding asylum since it urges applicants to return without having their claims assessed on merits, and, therefore, without examining their need for international protection and the risks faced in their country of origin.

The issuance of readmission orders stopped after some months since the signature of the JMD. This was confirmed by the Readmission Unit of Hellenic Police in February 2022, on the grounds that Türkiye was not accepting people back[138]. This evidences the recognition and awareness of the authorities regarding the situation, as well as constitutes a violation of Article 38(3)(b) of the APD, which sets the obligation of the Member State to inform the authorities of the STC through the readmission order that the application was not assessed on merits.

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[135] E-005103/2021. See at: https://www.europarl.europa.eu/doceo/document/E-9-2021-005103-ASW_EN.pdf

[136] RSA. (2022). Greece arbitrarily deems Türkiye a "safe third country" in flagrant violation of rights [Legal note]. p 9. Retrieved from https://acrobat.adobe.com/id/urn:aaid:sc:EU:f9f4294f-1d7d-4ae8-b19c-6c3012a9d5a8

[137] Article 3(3) of the Return Directive: "Return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced - to: his or her country of origin, or a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted"

[138] Hellenic Police. (2022). 4666/3-123762.

3.3.2. Living conditions of the affected individuals

Being a recognized asylum seeker in Greece gives access to certain rights, which are: legal stay in Greece, schooling for children, move freely within Greece, access to free state accommodation (not mandatory), access to primary health care, right to work, and access to cash assistance, which varies depending on whether the living facility provides meals or not and on the size of the family[139].

However, when a decision on the application is negative, the asylum seeker status ceases terminating said rights. A decision that deems an asylum claim inadmissible on the safe third country grounds counts as a negative decision, and, therefore, terminates the asylum seeker status of the applicant. In a regular case, the status ends because the individual is supposed to be able to return to the STC to apply for protection, but in Greece, since June 2021, this is not possible. The affected individuals see themselves *illegalized* against their will and without the possibility of changing it in Greece or elsewhere. The limbo in which they find themselves trapped is not only legal but also vital, since their life changes suddenly without the possibility to move forward.

The legal uncertainty and the unprotection against apprehension and detention have disastrous consequences for mental health, as stated by RSL in the questionnaire sent for this research. Network for Children´s Rights, in the same questionnaire, adverts distress among children regarding their education and families´ situation, since they are obliged to withdraw from school as well as to undergo the admissibility assessment procedures, which is emotionally and mentally draining. Many individuals affected by the decision have been pushed to a homelessness situation since they cannot make use of the state facilities or housing programs tailored for asylum seekers. Without cash assistance and the impossibility of working, sustaining their families and making a living has become almost impossible, having to rely solely upon help from NGOs and civil societies, which is also limited since some of them require asylum seeker or refugee status to be assisted.

[139] UNHCR. (2024). *The Rights and Duties of Asylum Seekers*. Retrieved from: https://help.unhcr.org/greece/wp-content/uploads/sites/6/2024/04/help-unhcr-org-greece-rights-and-duties-rights-and-duties-of-asylum-seekers-.pdf

The JMD-affected individuals live in constant fear since their right to lawfully stay in the country is taken away by the negative decision. Systematic detention in pre-removal centers is widespread, even if there is no possibility of returning to Türkiye, and has been established by several courts that detention in these cases lacks legal basis[140]. Moreover, the practice of systematic detentions does not apply only to rejected asylum seekers but also to applicants affected by the JMD i.e. individuals with asylum seeker status, on the grounds that there is a reasonable doubt to believe that the application is submitted with the sole intention of delaying or preventing the return[141]. As it is the only option left to try to get protection, it cannot constitute a reason for detention.

The unbearable living conditions suffered by the people affected by the JMD with the breaches of law that it entails have awakened several reactions from NGOs and civil society organizations. Forty Greek NGOs signed an advocacy letter in the same month of the issuance of the JMD positioning themselves against it, denouncing the lack of legal basis for the consideration of Türkiye as a STC and adverting the dangers of the provision[142]. In March 2022 a list of twenty-seven organizations sent a letter to the European Commission addressing the lack of compliance by Greece with European law regarding the STC concept and asking for measures[143]. The Commission has been answering the parliamentary questions submitted to it regarding this issue[144], always in line with the correct application of EU law, however, as of the writing of this thesis, it has not taken any further measures towards the Hellenic Republic to ensure its correct enforcement.

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[140] Administrative Court of Corinth Decisions Π2424/24-06-2022, Π2806/ 19-07- 2022, Π3179/21-09-2022, Π3166/19-09-2022, Π2814/20-07-2022, Π4118/27-10-2022, Π4123/31-10-2022, Π4194/09-11-2022, Π3633/17-10-2022, Π4248/15-11-2022 Administrative Court of Athens Decision AP831/2022, Administrative Court of Kavala Decision AP779/2022, Administrative Court of Rhodes Decisions AP515/2021, AP514/2021, AP450/2021, AP136/2021, AP122/2021, AP96/2022, AP97/2022, AP98/2022, AP99/2022.

[141] Greek Council for Refugees. (2023). *Country Report: Grounds for detention*. Retrieved from https://asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/grounds-detention/

[142] See at: https://www.refugeesinternational.org/advocacy-letters/40-ngos-denounce-greeces-new-law-designating-Türkiye-as-a-safe-third-country/

[143] See at: https://rsaegean.org/wp-content/uploads/2022/03/CSO_Letter_CION_STC.pdf

[144] P-000604/2021; E-004131/2021; E-005103/2021

CHAPTER IV: BREACHES OF LAW

4.1. Violation of the safe third country concept

The consideration of Türkiye as a safe third country and the violations of the APD that it entails have been explored in section four of the second chapter. Some new insights on the topic have been mentioned as well in the last chapter, but a further assessment regarding the JMD and the violation of the STC concept is essential.

First, it is worth mentioning that Ankara has explicitly requested Greece to revoke the decision to consider Türkiye as a STC through the JMD, establishing that no returns under the EU-Türkiye Deal will be resumed until this happens[145]. Contrary to Türkiye´s request and EU recommendations, Greece has kept issuing inadmissibility decisions.

Second, the risks of determined applicants on Turkish soil have increased in comparison to when the EU-Türkiye Deal was signed. In March 2021, three months before the issuance of the JMD, Erdoğan made the decision through a presidential decree to withdraw from the Istanbul Convention. This Convention from the Council of Europe aims to prevent and combat violence against women and girls, including asylum seekers and refugees. Article 60 of the Convention recognizes gender-based violence as a form of persecution and serious harm and, therefore, as a reason to get international protection. It also recalls that the signatory parties should ensure gender-sensitive reception and asylum procedures. By withdrawing from the Convention, Türkiye withdraws from these obligations as well, rendering gender-based violence victims subject to the possibility of detention and refoulment.

Moreover, in Erdoğan´s public declarations about the withdrawal, he justified his decision by saying that *"*the Convention paves the way for vices such as homosexuality, which is condemned by Allah (…), imposes missions on women that are antithetical to their purpose of creation, and so seeks to destroy our moral structure and the family-

[145] European Commission. (2022*). Communication from the Commission to the Council and the European Parliament: Sixth Annual Report on the Facility for Refugees in Türkiye*. (COM (2022) 243 final). p 3.

based civilization that our ancestors handed down to us"[146]. Taking into consideration that Türkiye was the first country to sign the Convention in 2011 with strong support from the AKP[147] – Erdoğan´s political party – these declarations evidence the shift of his ideology and policies. Not only women and girls, an already vulnerable group, are left without protection, but the words of the Turkish Prime Minister also demonstrate the discrimination to which LGBTQ+ people are subjected under the AKP rule.

Second, as has been established in the last chapter, insisting on issuing inadmissibility decisions refusing to assess the claims of the affected individuals on merits, even after it was made clear by Türkiye that it will not take any returnees, consists in a clear violation of Article 38(4) of the APD (transposed through Article 86(5) of the IPA). This article establishes that where the STC does not allow the applicant to enter its territory, the Member State should ensure access to the procedure with the guarantees and safeguards set in the APD. This violation, plus the concerns about Türkiye having kept the geographical restrictions of the 1967 Protocol, the unsafety of the country, and the lack of reasoning regarding the decision to consider Türkiye as a STC, led the Greek Council for Refugees (GCR) and Refugee Legal Support (RSL) to file a judicial review of the JMD before the Greek Council of State (GCS) on October 7th, 2021.

While the judicial review was pending, on December 15th, 2021, the JMD was amended through a new JMD[148], updating the list of safe third countries. Many new countries were added, and Türkiye was again considered a STC for the same five nationalities, regardless of the pressure from the European Parliament and civil society organizations and of the pending judicial review. GCR and RSL lodged on the 3rd of March 2022 a request to resume the proceedings seeking annulment of the 15th of December decision,

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[146] Translation taken from Yükler, S. (2022). *How LGBT+ individuals were criminalized with the withdrawal of the Istanbul Convention?* Heinrich Boll Stiftung. Retrieved from: https://tr.boell.org/en/2022/06/24/how-lgbt-individuals-were-criminalized-withdrawal-istanbul-convention#:~:text=Erdoğan%2C%20greeted%20the%20decision%20with,of%20individuals%20attempting%20to%20normalize

[147] ICJ. (2021). *Türkiye's withdrawal from Istanbul Convention a setback for women and girls' human rights.* Retrieved from: https://www.icj.org/Türkiyes-withdrawal-from-istanbul-convention-a-setback-for-women-and-girls-human-rights/#:~:text=On%2020%20March%202021%2C%20Recep,Türkiye%20have%20criticized%20as%20unconstitutional.

[148] JMD 42799/2021

as it consolidated Türkiye as a STC for the second time. The Greek Council of State deemed the request as admissible.

In the ruling of the GCS, the majority stood in favor of the annulment of the JMD. They claimed that Article 38(4) of the APD should be interpreted not only based on the wording but also on the objectives of the provision, which in this case is "guaranteeing that applications for international protection are processed as rapidly as possible"[149]. Interpreted in this light, a country could not be considered as safe if the readmissions are not feasible, since it would extend the uncertainty of the applicant[150]. Moreover, the making of a generally safe third countries list requires the careful examination of the legal commitments taken with said country, as well as the examination of compliance in practice with those commitments[151]. In the case of Türkiye, the first requirement is fulfilled, since there are multiple agreements between the parties that regulate readmissions, but in practice, it does not comply with them[152].

However, the first dissenting opinion of two members of the GCS[153] states that to consider a country as safe only the criteria of Article 38(1) should be observed, regardless of whether the applicant can be readmitted or not. The latter should be verified at the moment of the enforcement of the decision, which would determine if the application should be assessed on admissibility or merits. In the case of Türkiye, where it is already known that returns are not happening, a decision cannot be rejected as inadmissible and should be examined on merits.

In the second dissenting opinion of another two members[154], it is considered that the possibility of being readmitted should only be examined when enforcing the decision of the national authority rejecting the application as inadmissible. Therefore, it is not a matter of the legality of the list of STC or of the decisions rejecting international protection under those circumstances.

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[149] CJEU. (2023). *Case C-134/23 "Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice"*. p 6 (10).
[150] Ibid. p 6 (11).
[151] Ibid. p 6 (12).
[152] Ibid. p 9 (18) (19).
[153] Ibid. p 7 (13).
[154] Ibid p 7 (14).

As there were three different opinions in the GCS´s ruling, a request for a preliminary ruling was submitted to the Court of Justice of the European Union (CJEU)[155]. It consists of a request to shed light on the interpretation of Article 38 of the APD based on the different opinions of the GCS[156]. The case is still pending as of the writing of this thesis, but the CJEU's answer will be highly relevant since it will determine if the decision to consider Türkiye as a STC is annulled or stays in force. This will have an impact, not only on the affected asylum seeker´s lives, but also on the relationship between Greece and the EU with Türkiye. Moreover, it will also affect the general migration policy of the EU and the Member States, since the elaboration of STC lists – many times including countries with contested humanitarian standards – is a growing trend with a view to be consolidated with the New Pact on Migration and Asylum.

4.2. Violations of European and international law

As established by the Greek Council of State in their ruling on the Joint Ministerial Decision, legislative provisions must be interpreted not only by their wording but also by their purpose or objectives. The right to asylum is enshrined and guaranteed in the most important human rights instruments. Article 14 of the Universal Declaration of Human Rights (UDHR) states, that "everyone has the right to seek and to enjoy in other countries asylum from persecution", and Article 18 of the Charter of Fundamental Rights of the European Union (CFREU) affirms this right. It is also incorporated into other specific instruments, such as the Istanbul Convention and the Convention on the

[155] CJEU. (2023). *Case C-134/23.*

[156] *"(1) Must Article 38 of Directive 2013/32/EU, (1) read in conjunction with Article 18 of the Charter of Fundamental Rights of the European Union, be interpreted as precluding national (regulatory) legislation classifying a third country as generally safe for certain categories of applicants for international protection where, although that country has made a legal commitment to permit readmission to its territory of those categories of applicants for international protection, it is clear that it has refused readmission for a long period of time (in this case, more than 20 months) and the possibility of its changing its position in the near future does not appear to have been investigated? Or (2) must it be interpreted as meaning that readmission to the third country is not one of the cumulative conditions for the adoption of the national (regulatory) decision classifying a third country as generally safe for certain categories of applicants for international protection, but is one of the cumulative conditions for the adoption of an individual decision rejecting a particular application for international protection as inadmissible on the 'safe third country' ground? Or (3) must it be interpreted as meaning that, where the decision rejecting the application for international protection is based on the 'safe third country' ground, readmission to the 'safe third country' need be verified only at the time of enforcement of that decision?"*

Rights of the Child (CRC), recognizing how the right to asylum intersects with the rights of various vulnerable groups.

Additional instruments, such as the Asylum Procedures Directive, the Dublin Regulation, and the Reception Conditions Directive, are designed to regulate the procedural and practical aspects of the right to asylum. However, when interpreting these instruments, the fundamental meaning of the right itself must not be overlooked. Individuals fleeing conflict have the right to seek asylum in another country and, as established by Article 31 of the Geneva Convention, they cannot be penalized for their unauthorized entry or presence. The Greek JMD represents a clear obstruction to the right to asylum by denying substantive assessment of claims. Focusing solely on the legality of procedure - such as the usage of the STC concept in both the initial and subsequent JMDs, and the additional admissibility step—is futile if the essence of the right is compromised. It can be said that the JMD, because of its practical application, violates the essence of the right to asylum and, therefore, all legislation regarding its protection and guarantee.

Moreover, the conditions to which affected individuals are systematically subjected against their will constitute a violation of human rights. Denying material conditions contravenes the Reception Conditions Directive, as highlighted by the European Commission in parliamentary questions in June 2021[157]. Denying children the right to education violates multiple pieces of international and European law, including the Geneva Convention[158], the CFREU[159], and the UDHR[160]. Children's rights are jeopardized not only due to the denial of education after their families receive inadmissibility decisions but also during the process itself. They are subjected to interviews and admissibility procedures[161], which puts them in distress and violates Articles 1 and 2 of the CRC, related to the obligation of acting in the best interest of the child, as well as Article 22, which calls for special treatment during asylum procedures.

[157] P-000604/2021.
[158] Article 22.
[159] Article 14.
[160] Article 26.
[161] Information provided by Network for Children´s Rights in the questionnaire sent for this thesis.

The impact extends beyond children to other vulnerable groups. Article 21 and subsequent articles of the Reception Conditions Directive stipulate that vulnerabilities[162] must be considered when assessing international protection claims, and authorities must act accordingly. Despite being aware of the conditions faced by migrants after receiving inadmissibility decisions, the JMD still applies to individuals with vulnerabilities. No one, especially those with vulnerabilities, should be forced into homelessness without access to any form of public assistance. Vulnerability assessments are required in every asylum process, including those subjected to the JMD, potentially leading to the applicant being deemed admissible and having their claim assessed on its merits. However, it has been observed that vulnerability assessments are not conducted in every case and are sometimes implemented partially, considering only certain vulnerabilities while neglecting others[163].

The fact that Greek State authorities are consciously and continuously pushing people into a situation of uncertainty, unsafety, and poor material conditions could potentially lead to considering it as inhumane treatment. NGOs have denounced the psychological damage (and, in certain cases, physical harm, since homelessness often leads to poor hygiene conditions that can cause health issues) resulting from the consequences of the JMD. This hazard is persistent over time and cannot be resolved until the decision is overturned. Being forced to live on the streets or in detention centers indefinitely, with the only alternative being to return to a country of origin where danger is guaranteed, contradicts all the values on which the EU is founded: "human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities"[164].

The prohibition of torture and inhumane and degrading treatment is enshrined in the main instruments related to human rights[165], as are the principles of non-refoulement[166]

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[162] The Directive counts as vulnerabilities: "*minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation".*

[163] Information provided by ELIX and RLS in the questionnaire sent for this thesis.

[164] Article 2 of the Treaty of the European Union.

[165] Article 4 of the CFREU, Article 3 of the ECHR, Article 5 of UDHR.

[166] Article 33 of Geneva Convention, Article 3 of ECHR, Article 19(2) of CFREU.

and the prohibition of arbitrary detention[167]. Finally, the compatibility of the JMD with the principle of non-discrimination, as established by the Geneva Convention[168], is also in question, since the JMD targets specific individuals solely based on their nationality.

[167] Article 9 of UDHR.
[168] "*The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin".*

CHAPTER V: THE NEW PACT ON MIGRATION AND ASYLUM AND THE GREEK MIGRATION PRACTICES

The JMD is only one of the examples of how Greek migration practices and policies have toughened throughout the years after the signature of the EU-Türkiye Statement. However, regardless of the humanitarian and legal drawbacks that this trend has entailed, it seems to have inspired the New Pact on Migration and Asylum. This Chapter sheds light on these provisions that seek to institutionalize what has been happening in Greece at the European level, intending to highlight the potential risks of this new set of measures. For the purpose of this thesis, only the provisions with a connection with the Greek stage are being analyzed, which does not preclude the existence of other aspects of the New Pact that might result in the detriment or benefit of asylum seekers.

5.1. What is the New Pact on Migration and Asylum

The New Pact is a result of the so-called migration crisis and the unsuccessful approach of the Member States and the European Union in its management. The Migration Agenda enforced during the crisis was cataloged by many as a failure due to the lack of unity and harmony in policy implementation[169]. The criticism was exacerbated in September 2020 after the fire in Moria, which destroyed one of the biggest refugee camps in Greece located on the island of Lesbos. The incident, which left dead and injured, evidenced the infamous conditions of the camps, alerting human rights experts and the general public. Only a few weeks after the incident, the Commission presented the text of the New Pact on Migration and Asylum.

This compound of measures aims at, in the words of the Commission, "strengthening and integrating key EU policies on migration, asylum, border management and integration. With firm but fair rules, it is designed to manage and normalize migration for the long term, providing EU countries with the flexibility to address the specific

[169] Cattalfamo, V. (2022). *The New Closed-Controlled Access Centres in Greece. Samos as Testing Ground for the EU Migration Policies.* Panteion University of Athens. p 28.

challenges they face, and necessary safeguards to protect people in need"[170]. This set of rules attempts to improve what was considered a failure, by strengthening coherence and harmony within the EU´s migration policy.

Something that must not be overlooked is the mention of the Commission on the normalization of migration in the long term. Another common critique of the EU´s policy was the short-term approach since it was led by the crisis caused by the unexpected influx of displaced Syrians. Both the hotspot approach and the EU-Türkiye deal were designed as short-term measures to address the critical circumstances. Institutions and experts[171] stated from the beginning that they were not credible as long-term solutions. However, the practices have been normalized, becoming the rule in migration management and causing the many drawbacks examined throughout this thesis. The evidence of the detrimental consequences of the measures, which peaked with Moria´s fire, should have led the Commission to move further away from the approach. Nonetheless, the proposal presented in September 2020 seemed to be directed toward the institutionalization in the long term of the measures designed led by the crisis.

The New Pact stands on four pillars. The first one aims to secure external borders through the implementation of new screening processes, border procedures, and crisis management policies. The second is directed to achieve fast and efficient procedures by harmonizing policies and standards. The third refers to the new solidarity mechanism, which allows the Member States to choose if they want to relocate asylum seekers or contribute financially to their reception and integration in other Member States. The last pillar aims to strengthen cooperation with partners i.e. non-Member States, through collaboration of security in borders, the signature of readmission agreements and the promotion of legal pathways into the EU. As it will be examined subsequently, these

[170] European Commission. (2024). *What is the Pact on Migration and Asylum?* Retrieved from: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en

[171] The Parliament welcomed the EU-Türkiye Statement but explicitly stated that "outsourcing was not credible as a long-term solution" (Rapporteur: Kait Piri). Retrieved from: https://acrobat.adobe.com/id/urn:aaid:sc:EU:50192387-f3c6-4a0b-af3e-08dc8bc82719. The European Court of Auditors expressed its concerns about the lack of sustainability prospects in the long term of the hotspot approach in their report *The EU response to the refugee crisis: the 'hotspot' approach (Special Report No. 06/2017).* Retrieved from: https://www.eca.europa.eu/Lists/ECADocuments/SR17_6/SR_MIGRATION_HOTSPOTS_EN.pdf

practices closely relate to the ones implemented by Greece in the years prior to the New Pact proposal.

The New Pact has been under negotiations from September 2020 until April 2024, when the Parliament approved the text in the third reading, giving the green light to the last set of amendments from the Council. The text now has to go through formal approval from the Council and it will start applying in two years.

5.2. The safe third country concept in the new pact

The instrument that regulates the safe third country concept in the New Pact is the Asylum Procedures Regulation (APR), which substitutes the current APD. The first aspect worth mentioning is the change in the format from a directive to a regulation. Directives do not have an immediate effect in the Member States and, although the objectives laid down on them are legally binding, the means to achieve them can be chosen by each country. They can decide how to adapt their domestic legislation to the targets during the transposition deadline. However, regulations are binding in their entirety, and they have direct legal effect in the Member States. This ensures uniformity since it provides the same legal framework across the EU.

The new provisions related to the STC concept in the new APR are not far from the ones in the APD, but there is a clear intention to make them more flexible in order to facilitate the relocation of people outside of the EU borders (i.e. externalization of the burden). First, the APR addresses the issue regarding the requirement of a country to provide refugee status and protection according to the Geneva Convention. The consideration of Türkiye as safe, being Türkiye a signatory of the Convention but with geographical restrictions (therefore, not applicable to the asylum seekers entering the country at the present moment), was highly criticized for not complying with this requirement. The EU is “fixing” the issue by loosening the provision, accepting that “the third country otherwise provides for effective protection in law and in practice in accordance with basic human rights standards such as access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation

of that hosting third country, access to healthcare and essential treatment of illnesses and to education under the conditions generally provided for in that third country. Such effective protection should remain available until a durable solution can be found"[172]. This provision facilitates the consideration of Türkiye or any other country that has not ratified the Geneva Convention as STCs.

The primary aim of the New Pact on Migration and Asylum is to ensure consistency in implementation practices across Member States. As part of this effort, the APR introduces the EU list of safe third countries, intending to address disparities among Member States[173]. However, the APR allows Member States to designate their own safe third countries without many limitations[174], which raises concerns about its ability to achieve harmonization effectively. This provision leaves room for Member States to continue designating countries as safe, regardless of their inclusion in the European list, which perpetuates past practices. Moreover, while Member States can request the Commission to add specific countries to the list after conducting research on the country´s situation[175], they are not obligated to do so. This discretionary aspect maintains the potential for discrepancies between the European and national lists.

Additionally, the blur becomes even more problematic with the new provision introduced by Article 59(4), which states that the STC concept can be applied to countries designated by the EU or nationally as safe, but also to any other country provided that it can offer to the specific applicant effective protection as stated in Article 59(1) of the APR. This allows the relocation to countries that have not passed the formalities to be considered and included in EU or national lists, meaning, for example, the exhaustive consultation of information to profile the living conditions in said country[176], which is subjected to review and monitoring from the Commission. Once again, the objective of harmonizing EU policies among Member States is

[172] Recital (46) of the APR.
[173] Recital (81) of the APR.
[174] The only limit to national designation of a safe third country is the impossibility to include countries that have been explicitly suspended by the European Union´s list for not complying with standards of protection, following the procedure set in Article 60(4) APR. However, the Member States have the right to request the Commission for the re-inclusion of said country as a STC if they believe there has been a change in the situation that allows it.
[175] Recital (87) of the APR.
[176] Article 59(3) APR.

jeopardized by the inclusion of discretionary clauses that the Member States can easily abuse. Additionally, Article 59(7) states that if previous agreements have been taken with partners regarding the readmission of migrants which include effective protection according to international standards, the requirements set in the APR may be presumed to be fulfilled. This would mean that these partner countries are not subjected to the revision of safety set in the APR, but to whatever mechanisms are set in the pertinent agreement.

The flexibility within the STC framework does not only relate to the designation of countries. It extends as well to the consideration of safety even in cases where certain regions within a country are unstable (hence, only those areas would be considered unsafe)[177]. This indirectly allows countries with localized conflicts to be considered for inclusion in the list. Furthermore, the scope of the STC extends to unaccompanied minors, who are now susceptible to relocation under this concept[178]. A provision like that has never been included in any EU migration instruments until now. The emphasis on the principle of the best interest of the minor and family reunification within the EU[179] has translated into not applying the STC concept as a general rule to unaccompanied minors in practice[180]. However, the New Pact institutionalizes the application of the STC to unaccompanied minors, which, although constrained by the best interest of the minor, diverges from the general trend of considering this group as vulnerable and thus assessing their claims on merits instead of admissibility.

Despite previous criticisms, the APR does address the issue currently occurring in Türkiye, where the safe country refuses to admit individuals under the STC concept. Article 59(9) establishes that when the third country in question does not admit or readmit the applicant to its territory, he or she shall have access to the procedure in accordance with the basic principles and guarantees provided in the APR. This provision mirrors Article 38(4) of the APD, which has failed to be applied in Greece

[177] Recital (46) APR.
[178] Article 22 APR.
[179] Articles 6 and 8 of Dublin III.
[180] UNHCR. (2017*). Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*. United Nations High Commissioner for Refugees. Retrieved from: https://www.refworld.org/docid/59d5dcb64.html

even though it has been transposed into domestic legislation. However, it is worth noting that this provision has not been removed or weakened in the New Pact.

In conclusion, it can be said that the failures derived from considering Türkiye as a safe country – humanitarian concerns, political retaliation, the position of vulnerability towards the partner, lack of harmony and disagreements between national and European levels, using migrants as a bargain and breaches of international law – are likely to be repeated within the framework of the New Pact. Especially humanitarian concerns are at risk of rising since the tendency in the last years has been contracting agreements to halt migration flows from entering the EU with countries with developing countries with questionable humanitarian standards and living conditions[181].

5.3. From hotspots to closed controlled access centers: Greece's precedence in the new pact

The hotspot approach was first implemented by the 2015 EU Migration Agenda with the aim of alleviating the burden in first-arrival countries. The hotspots, in the case of Greece, materialized through the construction of Reception and Identification Centers (RICs) in the Eastern Aegean Islands. The first-screening procedures carried out in the RICs had the objective of "swiftly identify, register and fingerprint incoming migrants"[182]. After the approval of the EU-Türkiye Deal, the RICs became pre-removal detention centers, since the restriction of movement was implemented to facilitate the returns. In practice the approach resulted in more prolonged detentions than expected because of administrative and logistic deficiencies[183]. As exposed throughout this thesis, the conditions in the centers are below basic humanitarian standards; overcrowded and with a lack of resources, medical assistance, and hygiene.

After the tragedy of Moria´s fire in 2020, the European Commission committed to improving the conditions in the Greek islands. With that objective, the EU and Greek authorities collaborated for the design and construction of the new EU-funded Closed

[181] Examples of these agreements are the compacts with Jordan and Lebanon.
[182] European Commission. (2015). *A European Agenda on Migration.* COM(2015) 240 final. Brussels.
[183] Cattalfamo, V. (2022). *The New Closed-Controlled Access Centres in Greece. Samos as Testing Ground for the EU Migration Policies.* Panteion University of Athens. p 20.

Controlled Access Centers (CCACs)[184]. The project found strong opposition from the residents in the islands and civil society organizations because of concerns regarding the degradation of the islands and the rights of the migrant population[185]. However, the project proceeded, inaugurating the first CCAC in Samos in September 2021. Up to date, there are CCACs - functioning or in the process of construction - in Samos, Kos, Leros, Chios and Lesbos.

The CCACs were supposed to improve the living conditions of the third-country nationals staying in these facilities, but the truth is that they are built with containers and in remote locations, preventing accessibility to populated areas and integration with the local population[186]. Although the CCACs were not designed initially to function based on movement restrictions, the construction work revealed the intentions of the Greek State. Walls and NATO-type barbed wire fences were built around the new centers and the existing RICs[187]. A qualitative investigation[188] was carried out, including visits to the CCAC of Samos and interviews with NGO workers, revealing multiple flaws within these centers.

First, restriction of movement is imposed upon arrival and only holders of valid asylum cards can leave the center between 8 am and 8 pm. Concerns about this decision were raised to the Greek Ombudsperson, who concluded that the lack of a valid asylum seeker card does not constitute a legal basis for a restriction of movement. However, the inquiry has not produced any changes in practice. Second, the study reveals precarity in vulnerability assessments due to the lack of well-formed professionals, fast procedures, and superficiality in the interviews. The shortage of doctors and mental health professionals inside the CCAC, along with the isolation and psychological impact of permanent and threatening-looking surveillance[189], have been demonstrated to be detrimental to the individuals in the facilities.

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[184] CCAC is the term chosen for these centers by the Greek Authorities. In the EU documents they are referred to as "Multi-Purpose Reception and Identification Centers (MPRIC).
[185] ECRE. (2023). *AIDA Country Report: Reception and Identification Procedure.*
[186] Ibid.
[187] Médecins Sans Frontières. (2021). *Constructing Crisis at Europe's Borders: The EU plan to intensify its dangerous hotspot approach on Greek island*s. p 22.
[188] The information given in the next paragraph is taken from the qualitative research done for the thesis: Cattalfamo, V. (2022). *The New Closed-Controlled Access Centres in Greece. Samos as Testing Ground for the EU Migration Policies.* Panteion University of Athens.
[189] Security personnel, dressed in uniform and armed, are consistently present. The perimeter is defined by tall walls and fences topped with barbed wire. Entry and exit involve mandatory physical checks and metal detector screenings. The overall structure resembles that of a prison.

However, the provisions introduced by the New Pact imply and promote these types of centers. The new extensive screening processes sustain themselves in what is known as the fiction of non-entry. This legal fiction allows denying the entrance into the territory to third-state nationals, despite being physically in the territory. This denial, implicitly regulated in the Regulation introducing the screening of third-country nationals at the external borders (Screening Regulation), the APR, and the Regulation establishing a return border procedure (Return Border Regulation), applies to any individual entering irregularly into the territory as set in the Schengen Borders Code[190], whether they have applied for international protection or not. As individuals are obliged to be available to the authorities until the screening process is finalized[191] and the prohibition of entrance into the territory is in force until then[192], closed controlled centers are deemed as necessary. The screening consists of a preliminary health check, a preliminary vulnerability assessment, identification or verification of identity, a security check through a revision of databases in order to check if the individual poses a security threat, the filling out of a screening form with the information gathered and the referral to the appropriate procedure[193]. The last point refers to the return or deportation if the individual has not applied for international protection during the screening or to the asylum procedure in case they have[194].

The screening process has a normal duration of seven days in the border and three days if the person is found already within the territory, since this group is also subjected to the procedure[195]. To a certain extent, this provision implies the institutionalization of the hotspot approach, in which the RICs had the role of identifying and registering people upon arrival. This approach, initially thought out as temporary, evidenced many shortcomings. The screening in the New Pact is much more exhaustive and is supposed to be carried out in a very limited time, which suggests a repetition, if not exacerbation, of past mistakes. As expressed above, the CCAC in Samos is already presenting deficiencies, especially in the case of vulnerability assessment. The Médecins sans Frontières (MSF) mobile unit

[190] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders.
[191] Recital (11) of the Screening Regulation.
[192] Article 6 of the Screening Regulation.
[193] Article 8(5) of the Screening Regulation.
[194] Article 18 of the Screening Regulation.
[195] Article 8 of the Screening Regulation.

working in Samos was able to identify a high number of missed vulnerabilities[196]; an issue that will probably increase with the implementation of the New Pact given the deadlines.

Moreover, the deficiencies in Samos are not the only proof of disregard for vulnerabilities in Greece. In 2021, the government announced the termination of ESTIA II, a program to relocate vulnerable asylum seekers from the camps into temporary private accommodation. By 2022 all the beneficiaries from this program had to leave their houses where they had been living sometimes for years, forcing children to withdraw from their schools and adults to move away from their jobs and neighborhoods. They were relocated again to camps taking a step back from their integration journey in Greece. The closure of ESTIA can be understood as part of the broader policy of confining asylum seekers where they can be controlled and secluded far from the local population[197], as the chosen location of the new CCACs evidence.

Continuing with the New Pact provisions, once the screening is finalized, the asylum procedure may take the form of a border procedure, as regulated in Article 43.2 of the APR. The border procedure is deeply extensive in regulating who might be subjected to it since it includes all individuals who made the application at the border or transit point, who were apprehended in connection with an irregular crossing of the border, who arrive following disembarkation as a result of a search and rescue operation or following relocation from another State. Individuals subjected to the border procedure are not authorized to enter the Member State territory[198], remaining in the fiction non-entry until it finishes in a maximum period of twelve weeks[199]. This provision can be considered as the institutionalization of the fast-track border procedure introduced as a temporary measure in the islands after the approval of the EU-Türkiye Statement. As explained in section 2.3 of Chapter II, the practical implementation of the fast-track border procedure revealed a systematic noncompliance of the authorities with the terms, which resulted in the normalization of prolonged and unlawful retentions. The New Pact faces the same risk on a larger scale since more people will be subjected to these procedures, and not only in the islands.

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[196] Cattalfamo, V. (2022). *The New Closed-Controlled Access Centres in Greece. Samos as Testing Ground for the EU Migration Policies.* Panteion University of Athens. p 65.
[197] RSA. (2022*). A step backwards for protection and integration: On the termination of the ESTIA II housing programme for asylum applicants*. Retrieved from https://rsaegean.org/en/termination-of-the-estia-ii-for-asylum-applicants/
[198] Article 43(2) of the APR.
[199] Article 51(2) of the APR.

Once the border asylum procedure is finalized, the New Pact regulates the returns through the Regulation of establishing a return border procedure (Return Border Procedure Regulation). Article 4(1) expands the fiction of no entry to the people rejected in the border procedure, establishing that they do not have the right to enter the Member State territory. Article 4(2) provides that rejected applicants should remain in premises close to the external borders[200] for the purpose of removal, for a maximum period of twelve weeks (on top of the twelve in which the border procedure develops). Paragraph (5) of the same Article sets fifteen days as the period for voluntary return, which can be denied if there is a risk of absconding, if the claim was manifestly unfounded, or if there is a risk to public or national security. Following the restrictions, Article 5 regulates the possibility of detention of rejected applicants. Detention has a maximum duration of twelve weeks[201] and is applicable to asylum seekers detained during the border procedure[202] and if there is a risk of absconding or the individual hampers the preparation for return[203]. Article 5(1) establishes that detention shall be the last resort, but, as the practice in the RICs and CCACs has demonstrated, the whole border procedure constitutes a de facto detention.

Moreover, the Return Border Procedure Regulation contains provisions regarding times of crisis. The New Pact extensively focuses on regulating situations of crisis in a regulation made specifically for this purpose, as it will be presented in the following section. However, the Return Border Procedure Regulation provides as well its own derogations. Article 6(1)(a) allows the Member States to prolong the detention period for another six weeks and Article 6(3) allows the Member States to impose national restrictions on NGOs that provide legal assistance to detainees for reasons of public order or administrative management of the facility, provided that, in principle, said legal assistance should be accessible. As a conclusion, what can be drawn from the mirroring and expanding the scope of the fast-track border procedure in the New Pact is a more

[200] The article adds that if there is no capacity on the premises close to the border, there is the possibility of transferring the rejected applicants to other facilities within the territory.
[201] Article 4(5) of the Return Border Procedure Regulation.
[202] Article 4(2) of the Return Border Procedure Regulation.
[203] Article 4(3) of the Return Border Procedure Regulation.

restrictive approach and a new focus on returns over granting asylum in the EU´s stance towards migration.

Moreover, the mandatory screening procedures and the expansion of the border asylum processes increase the pressure on the frontline countries, since they are the ones to implement them in most cases. Relocation to other Member States is included in the New Pact, not only after asylum is granted, but to carry out screening and asylum assessments as well[204]. However, the new solidarity mechanism, through which the Member States can choose to relocate or give financial assistance, added to the increasing anti-immigration sentiment across Europe in recent years, suggests that the first countries of arrival will experience the burden even more than before. Despite funding and support from the European Union, acquiring the essential resources to effectively conduct screenings and border procedures remains exceedingly challenging. Additionally, it was proven with the fast-track border procedure that the increase in the issuance of negative decisions, which is deemed to happen even more with the New Pact, means an increase in appeals. An excess of appeals blocks the asylum system, provoking delays and prolonging de facto detentions. These factors contribute to overcrowding, impacting both the country's institutional capacity and the facilities where third-country nationals are housed. As a result, conditions in the camps or centers deteriorate, exacerbating the mental health challenges faced by individuals already grappling with the uncertainty arising from prolonged processes.

5.5. The institutionalization of crisis-led policies and the instrumentalization of migration

This thesis has extensively focused on the incident known as the 2020 crisis. In March of that year, Prime Minister Erdoğan opened the land border of River Evros, allowing and favoring the mass entrance of migrant population into Greece. The latter reacted by suspending the registration of asylum applications for a month through a legislative decree and by strengthening security forces at the borders. Along the Evros River, Turkish and Greek security officials engaged in a short but intense violent battle, which included rubber bullets, smoke grenades, and tear gas used against each other and toward the migrant population to prevent them from entering. During the days of the

[204] Article 7(2) of the Screening Regulation.

crisis around 5,000 people were reported to have been pushed back to Türkiye[205]. This specific case is not the only one in which the Hellenic Republic has been accused of pushbacks, since after the incident, the flows shifted toward the islands resulting in pushbacks at the sea[206].

The securitization of migration in Greece has been forging since the approval of the EU-Türkiye Statement, which implied the construction of closed centers, the focus on returns, the increment in surveillance in the islands, and normalized de facto detentions. The March 2020 incident exacerbated the securitization by the deployment of forces also across the land border, who were assisted by Greek civilian spontaneous militias in apprehending migrants and pushing them back to Türkiye[207]. The practice of the civilian local population acting as authorities in migration issues has become more and more popular in Greece[208], accompanying the general and increasing anti-immigrant sentiment. However, Greek authorities never pronounced themselves about the allegations regarding these sort of militias during the 2020 crisis[209].

The result of these restrictive measures has resulted in the systematic usage of pushbacks in land[210] and sea[211] borders. However, Greek authorities have replied with the same arguments, based on accusations of instrumentalization of migration to

[205] Human Rights Watch. (2020*). Greece: Violence Against Asylum Seekers at Border: Detained, Assaulted, Stripped, Summarily Deported.* Retrieved from: www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border
[206] ECRE. (2020). *AIDA Country Report Greece 2020 Update*. p 38.
[207] Human Rights Watch. (2020). Greece: Violence Against Asylum Seekers at Border. Retrieved from: https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border
[208] During the summer of 2023 Greece suffered the worst fires in its history, especially located in the region of the River Evros. The suspicion of the migrant population hiding in the forests and islands of the river being responsible for causing the fires grew among the Greek population. A video became viral on social media of a Greek man recording a group of migrants in a van, calling for others to go out "hunting" for them in the forests. These "huntings" were popularized in telegram channels.
[209] EPRS | European Parliamentary Research Service. (2023*). Proposal for a regulation addressing situations of instrumentalization in the field of migration and asylum* (PE 753.156). p 170.
[210] We Move Europe and Oxfam International. (2020). *Complaint to the European Commission concerning infringements of EU law by Greece*. Retrieved from: https://reliefweb.int/report/greece/complaint-european-commission-concerninginfringements-eu-law-greece-behalf-wemove
[211] Kingsley, P. and Shoumali, K. (2020), "Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea", The New York Time, 14 August available at https://www.nytimes.com/2020/08/14/world/europe/greece-migrantsabandoning-sea.html

Türkiye[212], as well as the need and the right to protect their borders. The Greek government stated in a letter replying to pushbacks allegations from FRONTEX that their non-refoulment obligations need to be assessed "against the general background of the situation at the eastern Aegean as well as the specific conditions of the event"[213], being this event the March 2020 crisis.

Greece was not the only one to justify its actions in the borders, but also the EU officials who visited the Evros border after the incident praised the actions of the Greek government in dealing with Erdoğan´s "hybrid threat"[214]. Moreover, in December 2021 the Instrumentalization Regulation proposal, in the context of the New Pact, was presented by the Commission. This proposal suggested the regulation of the concept of "instrumentalization of migration" at the EU level, and included provisions through which the Member States were allowed to withdraw from their asylum obligations in such cases. The proposal found strong opposition and could not achieve a majority in the Council[215]. However, the new document that addresses this issue and forms part of the New Pact on Migration and Asylum does not differ too much from the initial proposal. Nevertheless, it should be pointed out that it includes some clear improvements, like the prohibition of derogations from the rules related to material reception conditions[216].

The Regulation of addressing situations of crisis and force majeure in the field of migration and asylum (Crisis Regulation) expands its scope when compared with the first proposal. It establishes the possibility of the Member States to withdraw from certain asylum obligations and/or trigger mechanisms of solidarity with other Member States when dealing with migration crises. The situations susceptible to be considered as crises are regulated in Article 1.4 of the Regulation and are the mass arrivals by sea or

[212] Gkliati, M. (2023). Let's call it what it is: Hybrid threats and instrumentalisation as the evolution of securitisation in migration management. *European Papers, 8*(2), 561-578. p 566. Retrieved from: https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2023_I_023_Mariana_Gkliati_00675.pdf
[213] Letter from I Plakiotakis (Hellenic Republic Ministry of Maritime Affairs and Insular Policy) to F Leggeri (Frontex Executive Director) Ref: ORD/FDU/TUH0/3115/2020 available at www.statewatch.org
[214] Ibid.
[215] ECRE. (2022). *ECRE reaction: No majority for instrumentalisation regulation*. Retrieved from https://ecre.org/ecre-reaction-no-majority-for-instrumentalisation-regulation/
[216] Recital (9) of the Crisis Regulation.

land that overflow the Member State well-prepared asylum system, instrumentalization situations in which migrants are used by a third-state or a hostile non-state actor with political aims, and force majeure situations i.e. abnormal and unforeseeable circumstances. In order to withdraw from obligations or trigger the solidarity mechanisms, the Member State should submit a founded request to the Commission, which shall assess the situation[217]. If a crisis situation is adverted, the Commission shall make a proposal to the Council for its implementation and inform the Parliament[218]. In the Commission's assessment, the institution must specifically determine whether the asylum system of the affected Member State has become non-functional due to mass arrivals, thereby rendering that Member State unable to manage the situation[219]. This provision seems particularly lax and readily applicable in frontline countries, where existing deficiencies already affect their asylum procedures.

The measures set in the Regulation have a temporary nature; a maximum duration of three months, with the possibility of requesting another three-month extension[220]. The proper measures are regulated in Chapter III and Chapter IV of the Regulation, and they comprise solidarity measures and derogations respectively.

In terms of the solidarity measures, they represent an improvement compared to the initial proposal of the Instrumentalization Regulation, which did not place significant emphasis on them. They include the relocation of applicants and beneficiaries of international protection, financial measures, and the possibility of requesting another Member State to examine applications[221]. It is worth noting that mandatory relocations appear only in the Crisis Regulation since the regular solidarity mechanism implies the decision of the Member States to relocate or pledge financial assistance. Although a scheme of mandatory relocations would effectively alleviate the burden on frontline countries, it is restricted to situations of crisis.

For their part, the derogations of Chapter IV pose some issues. Article 10 allows the Member State to extend the registration of asylum claims up to four weeks after it has

[217] Article 2 of the Crisis Regulation.
[218] Article 4 of the Crisis Regulation.
[219] Article 3(6)(a) of the Crisis Regulation.
[220] Article 5 of the Crisis Regulation.
[221] Article 8 of the Crisis Regulation.

been made. Moreover, it permits the Member State to do so only by informing the Commission and before the Council´s approval, although only for ten days. Similarly, Article 11 allows the extension of the border procedure for six more weeks (on top of the initial twelve weeks). These provisions endorse the prolonged in facto detentions that have been happening in the Greek islands since the approval of the EU-Türkiye deal, which will seem to be incremented with the screening and border procedures of the New Pact. Moreover, Article 11(6) provides that border procedures will apply to all migrants subjected to instrumentalization, sort of punishing the asylum seekers instead of the state author.

Article 12 allows the derogation of deadlines regarding take charge requests i.e. asking another Member State to take responsibility for examining claims. In cases of crisis, states have four months instead of two to make the request, two months instead of one to reply to a request, and one year instead of six months to make the transfer. This provision also entails the prolongation of the uncertainty of the asylum seekers, which is psychologically detrimental and puts at risk the right to access asylum.

In conclusion, this Regulation provides a framework for the Member States to withdraw from their asylum obligations upon request, which affects the harmony of the European Asylum System and obstructs access to asylum in most cases. It is also dangerous to regulate the concept of instrumentalization, deemed by several NGOs as unnecessary and disproportionate[222]. It is worth noting that instrumentalization coming from a hostile state can be addressed effectively through other means, like it was done with the Ukrainian refugees by subjecting them to the Temporary Protection Regulation. These cases should be addressed with migration diplomacy policies with the third state, and not imposing restrictions or obligations upon the asylum seekers.

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[222] ECRE. (2022). *Joint statement: NGOs call on Member States: Agreeing on the Instrumentalisation Regulation will be the final blow to a COMMON European Asylum System (CEAS) in Europe*. Retrieved from: https://ecre.org/joint-statement-ngos-call-on-member-states-agreeing-on-the-instrumentalisation-regulation-will-be-the-final-blow-to-a-common-european-asylum-system-ceas-in-europe/

In relation to pushbacks, while the Regulation does not legalize them, it nonetheless normalizes such practices by introducing safeguards and justifications for actions that have already become commonplace in practice[223]. The expansion of border procedures, deadlines, securitization, and de facto detentions in Greece has led to the institutionalization of pushbacks, and the Crisis Regulation is now establishing a legal framework to support this. Moreover, this provision of the New Pact is not the only one that poses a risk of exacerbating pushbacks. The extension of the STC also fosters a sense among Member States of diminished responsibility toward individuals. Consequently, they may feel justified in pushing individuals back for others to address, as evidenced by the events between Greece and Türkiye in March 2020. Additionally, the growing trend of signing agreements with third parties to foster returns increases the probability of the partners using instrumentalization as retaliative measures.

[223] Gkliati, M. (2023). *Let's call it what it is: Hybrid threats and instrumentalisation as the evolution of securitisation in migration management.* European Papers, *8*(2), 561-578. P 576.

CONCLUSIONS

This master's thesis emerged from my personal experience as a caseworker in Athens. Over the course of a year, I witnessed firsthand the dire conditions faced by asylum seekers in Greece. My role involved assessing individuals' needs to refer them to appropriate NGOs and providing tailored information about the asylum process. Despite the numerous NGOs operating in Greece, I found that assistance is very limited. Government restrictions make housing nearly impossible to find and provide, vulnerable individuals are often overlooked, and violence from security officials in the camps is widespread.

The peak of my frustration was regarding the individuals affected by the Joint Ministerial Decision (JMD), to whom we had to tell that there was no available recourse for their situation. These individuals found themselves in a legal limbo, unable to move forward or return, with their only option being to appeal and reapply to buy time. Despite what seemed to me a blatant violation of asylum laws, this issue was largely unaddressed in public discourse. Consequently, I decided to dedicate this research to exploring this issue, aiming to complement my practical experience with academic rigor. This is particularly pertinent given the imminent approval of the New Pact on Migration and Asylum, which represents a paradigm shift in migration policy within the EU.

The thesis has focused on analyzing the aftermath of the EU-Türkiye Statement in Greece to substantiate three primary points. First, the JMD, which is a direct consequence and extends the scope of the EU-Türkiye Statement, violates fundamental principles of European and international asylum law. This violation stems from the unjustified designation of Türkiye as a STC and the resultant legal limbo imposed on affected asylum seekers. Second, the JMD is not the sole measure enacted by Greece post-agreement that has deteriorated the conditions for asylum seekers and the overall asylum system. These actions have rendered Greece an unsafe environment for people on the move, making it scarcely better than Türkiye. Lastly, to enhance the relevance of this research, the repercussions of the statement were linked to the New Pact on Migration and Asylum, which is expected to be effectively implemented within two years. The analyzed provisions of the New Pact appear to be significantly inspired by

the policy trajectory adopted by Greece, legitimizing these detrimental measures by providing a formal legal framework. Consequently, there are substantial reasons to believe the New Pact will perpetuate similar adverse effects.

In Chapter I, by exploring the development and challenges of the EU's migration policy framework, particularly during the 2015 refugee crisis, the first shortcomings of the approach are evidenced. The establishment of the CEAS aimed to harmonize asylum procedures across Member States. However, the 2015 crisis exposed significant deficiencies, with frontline countries bearing the burden. The European Agenda on Migration introduced immediate measures and long-term strategies, but lack of solidarity among Member States and ineffective relocation schemes highlighted the EU's inadequate response. This led to temporary short-term relief measures, which often had adverse humanitarian outcomes.

One of these measures was the signature of the EU-Türkiye Statement, which is considered the turning point in this thesis and is extensively explored through Chapter II. The deal framed all the measures subsequently carried out in Greece that made the country a hostile environment for asylum seekers since they were necessary to ensure its implementation. The agreement marked the beginning of a more restrictive approach towards migration, with the excuse of the crisis and the need to manage the mass influxes in frontline countries. The way in which it was signed – out of judicial control – and the contested consideration of Türkiye as a STC led the agreement to a general sense of failure, which was evidenced with the 2020 crisis in the Evros border. Notwithstanding, regardless of the failure, the subsequent measures implemented to facilitate the enforcement of the deal remained. The hotspot approach, the fast-track border procedure, and the restrictions of movement became ingrained in the Eastern Aegean islands.

In this context, the Greek government signed the JMD as a form of retaliation towards Türkiye for the crisis at the border and the subsequent closure of borders. The JMD, as presented throughout Chapters III and IV, lacks a legal basis and violates the fundamental rights of the affected individuals by systematically illegalizing them without leaving them any other option and vulnerable to detention and poor living

conditions. It is presently in the hands of the CJEU to determine if the usage of the STC concept by the Greek government in the JMD is legitimate and how the country should proceed.

Lastly, the first two first points, namely the JMD and the rest of the Greek practices in the aftermath of the EU-Türkiye deal being detrimental for asylum seekers, are connected with the New Pact. Chapter V explores how this new set of measures at the European level seeks to institutionalize and, in certain cases, expand, what Greece has been implementing in the last years. Screenings, border procedures, returns, and crisis-related policies take the central space in the New Pact. Regardless of the observable consequences in the Greek stage, the EU has chosen that path to be the one instituted in the long term. As established in Chapter I, the main flaw of the EU migration framework during the 2015 crisis has been the lack of solidarity of the Member States and the consequent excessive burden on the frontline countries. However, the EU has legislated by deepening this issue instead of addressing it. Relocation is now substitutable for financial assistance, giving, especially the richer countries, the opportunity to further away from their asylum obligations if they can afford it. In this manner, the burden still falls on the first-arrival countries, which can be expected to increase because of the new border procedures.

In conclusion, it can be said that Greece has chosen a path of securitization of migration since the signature of the EU-Türkiye Statement, entailing the introduction of different types of restrictions that have caused humanitarian and legal drawbacks. The EU, further from reprimanding the country and imposing consequences, has praised its actions and used it as a testing ground for future potential EU policies. Based on this research, the prediction is a repetition, or even exacerbation, of past mistakes. The frontline countries will keep carrying the burden, causing the anti-immigrant and anti-EU sentiment to increase, as well as risking an increment in practices like pushbacks to avoid the responsibility. The only way of alleviating the burden will be through cooperation with third parties, where there are few guarantees of compliance with humanitarian standards. Moreover, these partnerships put the EU in a position of vulnerability, while using migrants as a bargaining chip stays at the center.

The EU's chosen migration policy direction raises concerns about its foundational principles. A robust and fair migration policy framework should always obey three vertices, enshrined in international and European law. The first one comprises Article 14(1) of the UDHR – “Everyone has the right to seek and to enjoy in other countries asylum from persecution” – and the 1951 Geneva Convention to regulate this right. This implies the design of a framework that does not obstruct access to the right of asylum because of undue barriers. These barriers, in the current stage, take the form of fast processes, admissibility procedures, the focus on returns, and relocation to third partners in which the asylum regulation is outside of the EU´s scope. The second vertex is Article 80 of the TFEU, regulating the principle of solidarity and fair sharing of responsibility between the Member States. Relocation should be central in migration policy and the fair sharing of responsibility should consider each Member State's means. Instead of focusing on relocating people to non-Member States with fewer financial and institutional capacities, the EU should be able to effectively organize and harmonize its faculties to guarantee the right to asylum and avoid the burden falling in frontline countries. The last vertex comprises the core values enshrined in Article 2 of the TEU in which the EU stands: “Human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities”. Yet, current trends in migration policy risk compromising these values, eroding the EU's international standing. As the EU navigates its migration challenges, it must realign its policies with its founding principles to uphold its credibility and commitment to fundamental rights on the global stage.

BIBLIOGRAPHY

1. . LEGISLATION

- Council of Europe. (1950). *European Convention on Human Rights*.
- Council of Europe. (2011). *Council of Europe Convention on preventing and combating violence against women and domestic violence.*
- European Parliament & Council of the European Union. (2008). *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.*
- European Parliament & Council of the European Union. (2011). *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.*
- European Parliament & Council of the European Union. (2011). *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.*
- European Parliament & Council of the European Union. (2013). *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).*
- European Parliament & Council of the European Union. (2013). *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).*

- European Parliament & Council of the European Union. (2013). *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.*
- European Parliament & Council of the European Union. (2013*). Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.*
- European Parliament & Council of the European Union. (2016). *Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).*
- European Parliament & Council of the European Union. (2019). *Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 on common rules for the internal market in electricity and amending Regulations (EC) No 2019/715, (EU) 2019/716 and (EU) 2019/1142.*
- European Parliament & Council of the European Union. (2019). *Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the*
- *European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.*
- European Union. (1992). *Treaty on European Union (Maastricht Treaty).*
- European Union. (1997). *Treaty of Amsterdam.*
- European Union. (2000). *Charter of Fundamental Rights of the European Union.*
- European Union. (2000). *Charter of Fundamental Rights of the European Union.*
- European Union. (2012). *Treaty on the Functioning of the European Union (TFEU).*

- European Union. (2014). *EU-Türkiye Readmission Agreement.*
- European Union. (2016). *EU-Türkiye Statement.*
- Greek Government. (2013). *Law on Foreigners and International Protection (LFIP).*
- Greek Government. (2019). *Law 4636/2019 on International Protection*.
- Greek Government. (2021). *Joint Ministerial Decision 42799/2021*.
- Turkish Government. (2014). *Temporary Protection Regulation*.
- United Nations. (1948). *Universal Declaration of Human Rights.*
- United Nations. (1951). *Convention Relating to the Status of Refugees*.
- United Nations. (1967). *Protocol Relating to the Status of Refugees.*
- United Nations. (1989). *Convention on the Rights of the Child.*
- European Council. (1999). *Presidency Conclusions, Tampere European Council*, 15 and 16 October 1999.

2. REPORTS AND DATA

- Amnesty International. (2014). *Struggling to Survive: Refugees from Syria in Türkiye*. EUR 44/017/2014. pp 9-10 and 14.
- Amnesty International. (2019). *Sent to a war zone Türkiye's illegal deportations of Syrian refugees*. EUR 44/1102/2019.
- EASO. (2019). *Türkiye: country information pack.*
- ECRE. (2016). *AIDA Country report: Greece. 2016 Update.*
- ECRE. (2016). *AIDA Country report: Türkiye, 2016 Update.*
- ECRE. (2017). *AIDA Country report: Greece. 2017 Update.*
- ECRE. (2017). *AIDA Country report: Türkiye, 2017 Update.*
- ECRE. (2018). *AIDA Country report: Greece. 2018 Update.*
- ECRE. (2018). *AIDA Country report: Türkiye, 2018 Update*.
- ECRE. (2019). *AIDA Country report: Greece. 2019 Update.*
- ECRE. (2019). *AIDA Country report: Türkiye, 2019 Update*.
- ECRE. (2020). *AIDA Country report: Greece. 2020 Update*.
- ECRE. (2020). *AIDA Country report: Türkiye, 2020 Update*.
- ECRE. (2021). *AIDA Country report: Greece. 2022 Update*.

- ECRE. (2021). *AIDA Country report: Türkiye, 2021 Update.*
- ECRE. (2022). *AIDA Country report: Greece. 2021 Update.*
- ECRE. (2023). *AIDA Country Report: Greece. Reception and Identification Procedure*.
- FRA. (2019). Update of the 2016 FRA *Opinion on fundamental rights in the hotspots set up in Greece and Italy.* Retrieved from https://bit.ly/2HeRg79.
- Greek Council for Refugees. (2023). *Country Report: Grounds for detention*. Retrieved from https://asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/grounds-detention/ .
- Human Rights Watch. (2020). *Greece: Violence Against Asylum Seekers at Border.* Retrieved from https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border.
- ICG. (2018). *Türkiye's Syrian Refugees: Defusing Metropolitan Tensions.* Europe Report no. 248. i. Retrieved from https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/Türkiye/248-Türkiyes-syrian-refugees-defusing-metropolitan-tensions.
- IOM. *Dead and Missing.* Retrieved from https://dtm.iom.int/europe/dead-and-missing.
- IOM. (2020). *QUARTERLY REGIONAL REPORT DTM, Europe, Displacement Tracking Matrix (DTM).* Retrieved from https://dtm.iom.int/sites/g/files/tmzbdl1461/files/reports/Q3%202020%20Narrative%20Overview_final.pdf.
- Médecins Sans Frontières. (2021). *Constructing Crisis at Europe's Borders: The EU plan to intensify its dangerous hotspot approach on Greek islands.*
- RSA. (2021). *Asylum statistics for 2020, A need for regular and transparent official information.* Retrieved from https://rsaegean.org/en/asylum-statistics-for-2020-a-need-for-regular-and-transparent-official-information/.
- RSA. (2022). *A step backwards for protection and integration: On the termination of the ESTIA II housing programme for asylum applicants*. Retrieved from https://rsaegean.org/en/termination-of-the-estia-ii-for-asylum-applicants/.

- RSA. (2022). *The Greek asylum procedure in figures.* Retrieved from https://rsaegean.org/en/asylum-statistics-2021/.
- RSA. (2022). *Greece arbitrarily deems Türkiye a "safe third country" in flagrant violation of rights* [Legal note]. p 8-9. Retrieved from https://acrobat.adobe.com/id/urn:aaid:sc:EU:f9f4294f-1d7d-4ae8-b19c-6c3012a9d5a8.
- UNHCR. (2016). *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Türkiye* (n 173). Retrieved from https://www.unhcr.org/media/legal-considerations-returning-asylum-seekers-refugees-greece-Türkiye-under-safe-third-country.
- UNHCR. (2017). *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation. United Nations High Commissioner for Refugees*. Retrieved from https://www.refworld.org/docid/59d5dcb64.html.
- UNHCR. (2024). *The Rights and Duties of Asylum Seekers.* Retrieved from https://help.unhcr.org/greece/wp-content/uploads/sites/6/2024/04/help-unhcr-org-greece-rights-and-duties-rights-and-duties-of-asylum-seekers-.pdf.
- United Nations High Commissioner for Refugees (UNHCR). *Mediterranean Situation*. Retrieved from https://data.unhcr.org/en/situations/mediterranean/location/5179.

3. ACADEMIC SOURCES

- Carrera, S. and Stefan, M. (2020). *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union: Complaint Mechanisms and Access to Justice*. Routledge (eds).

- Cattalfamo, V. (2022). *The New Closed-Controlled Access Centres in Greece. Samos as Testing Ground for the EU Migration Policies*. Panteion University of Athens.

- Dagi, D. (2020). *The EU's Türkiye Migration Deal: Performance and Prospects. European Foreign Affairs Review*. 25(2), 197-216.

- EPRS | European Parliamentary Research Service. (2023*). Proposal for a regulation addressing situations of instrumentalization in the field of migration and asylum* (PE 753.156).

- Foster, M. (2007). *Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State*. 28 Michigan Journal of International Law 223.

- Geddes, A., Hadj-Abdou, L., Brumat, L. (2020). *Studying Migration and Mobility in the European Union.* London, The European Union Series, 2nd Edition.

- Gkliati, M. (2023). *Let's call it what it is: Hybrid threats and instrumentalisation as the evolution of securitisation in migration management*. European Papers, 8(2), 561-578.

- Karin de Vries. (2007). *An Assessment of "Protection in Regions of Origin" in relation to European Asylum Law'.* European Journal of Migration and Law 83. De Genova, 'Introduction' (n 14).

- Kaya, A. (2020). *Migration as a Leverage Tool in International Relations: Türkiye as a Case Study.* Uluslararasi Iliskiler, 17(68), 21-39. https://doi.org/10.33458/uidergisi.856870.

- Moreno-Lax, V. (2015*). The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties*. Guy S Goodwin-Gill and Philippe Weckel (eds). 666.

- Nur Osso, B. (2023). *Unpacking the Safe Third Country Concept in the European Union: B/orders, Legal Spaces, and Asylum in the Shadow of Externalization.* International Journal of Refugee Law 35. Oxford Press. 272–303.

- Özalp, O. K. (2021). *A Failed Negotiation?: A Closer Look on the EU-Türkiye Deal of 2016*. Journal of International Relations and Political Science Studies, 5-20.

- Thym, D. (2016). *The 'Refugee Crisis' as a Challenge of Legal Design and Institutional Legitimacy*. Common Market Law Review 53 (2016), 1545-1574.

- Yilmaz-Elmas, F. (2020). *EU's Global Actorness in Question: A Debate over the EU-Türkiye Migration Deal.* Uluslararasi Iliskiler, 17(68), 170-191.

4. NEWSPAPERS AND WEBSITES

- ECRE. (2022). *ECRE reaction: No majority for instrumentalisation regulation.* Retrieved from https://ecre.org/ecre-reaction-no-majority-for-instrumentalisation-regulation/

- ECRE. (2022*). Joint statement: NGOs call on Member States: Agreeing on the Instrumentalisation Regulation will be the final blow to a COMMON European Asylum System (CEAS) in Europe*. Retrieved from: https://ecre.org/joint-statement-ngos-call-on-member-states-agreeing-on-the-instrumentalisation-regulation-will-be-the-final-blow-to-a-common-european-asylum-system-ceas-in-europe/

- Ekathimerini. (2016*). Hot spot work intensifies as Greece agrees to recognize Türkiye as 'safe' country.* Retrieved from: http://www.ekathimerini.com/205708/article/ekathimerini/news/hotspot-work-intensifies-as-greece-agrees-to-recognize-Türkiye-as-safe-country.

- HIAS & Equal Rights Beyond Borders. (2021*). The Greek asylum service finally shares the "opinion" on the basis of which Türkiye was designated as a safe third country and it only seems to be saying the contrary* [Press release]. Retrieved from https://hias.org/wp-content/uploads/greece-equal_rights_press_release_gas_opinion_1.pdf.

- Human Rights Watch. (2020). *Greece: Violence Against Asylum Seekers at Border: Detained, Assaulted, Stripped, Summarily Deported*. Retrieved from: www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border.
- ICJ. (2021). *Türkiye's withdrawal from Istanbul Convention a setback for women and girls' human rights.* Retrieved from: https://www.icj.org/Türkiyes-withdrawal-from-istanbul-convention-a-setback-for-women-and-girls-human-rights/#:~:text=On%2020%20March%202021%2C%20Recep,Türkiye%20have%20criticized%20as%20unconstitutional.
- Idriz, N. (2017). *Taking the EU-Türkiye Deal to Court?* VerfBlog. https://verfassungsblog.de/taking-the-eu-Türkiye-deal-to-court/ DOI: 10.17176/20171220-100943.
- Iasmi Vallianatou, A. (2022). *Lesvos: How EU asylum policy created a refugee prison in Paradise.* Chatham House. https://www.chathamhouse.org/2022/07/lesvos-how-eu-asylum-policy-created-refugee-prison-paradise.
- Kingsley, P. and Shoumali, K. (2020). *Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea,* The New York Times, 14 August. Retrieved from: https://www.nytimes.com/2020/08/14/world/europe/greece-migrantsabandoning-sea.html.
- Vermeulen, M. (2020*). War of the words: how Europe is exporting its migration philosophy*. Migration correspondent at De Correspondent. Retrieved from: https://thecorrespondent.com/240/war-of-the-words-how-europe-is-exporting-its-migration-philosophy/31739576880-b506ad0d.
- We Move Europe and Oxfam International. (2020). *Complaint to the European Commission concerning infringements of EU law by Greece*. Reliefweb. Retrieved from: https://reliefweb.int/report/greece/complaint-european-commission-concerninginfringements-eu-law-greece-behalf-wemove.
- Yeginsu, C. (2016). *Refugees Pour Out of Türkiye Once More as Deal with Europe Falters.* New York Times. http://www.nytimes.com/2016/09/15/world/europe/Türkiye-syria-refugees-eu.html?_r=0.

- Yükler, S. (2022). *How LGBT+ individuals were criminalized with the withdrawal of the Istanbul Convention?* Heinrich Boll Stiftung. Retrieved from: https://tr.boell.org/en/2022/06/24/how-lgbt-individuals-were-criminalized-withdrawal-istanbul-convention#:~:text=Erdoğan%2C%20greeted%20the%20decision%20with,of%20individuals%20attempting%20to%20normalize.
- Ziebritzki, C. (2018). *Implementation of the EU-Türkiye Statement: EU Hotspots and restriction of asylum seekers' freedom of movement.* EU Migration Law Blog. Retrieved from https://eumigrationlawblog.eu/implementation-of-the-eu-Türkiye-statement-eu-hotspots-and-restriction-of-asylum-seekers-freedom-of-movement/.

5. CASE LAW

- Administrative Court of Athens Decision AP831/2022
- Administrative Court of Corinth Decision Π2424/24-06-2022
- Administrative Court of Corinth Decision Π2806/19-07-2022
- Administrative Court of Corinth Decision Π2814/20-07-2022
- Administrative Court of Corinth Decision Π3166/19-09-2022
- Administrative Court of Corinth Decision Π3179/21-09-2022
- Administrative Court of Corinth Decision Π3633/17-10-2022
- Administrative Court of Corinth Decision Π4118/27-10-2022
- Administrative Court of Corinth Decision Π4123/31-10-2022
- Administrative Court of Corinth Decision Π4194/09-11-2022
- Administrative Court of Corinth Decision Π4248/15-11-2022
- Administrative Court of Kavala Decision AP779/2022
- Administrative Court of Rhodes Decision AP122/2021
- Administrative Court of Rhodes Decision AP514/2021
- Administrative Court of Rhodes Decision AP515/2021
- Administrative Court of Rhodes Decision AP96/2022
- Administrative Court of Rhodes Decision AP97/2022

- Administrative Court of Rhodes Decision AP98/2022
- Administrative Court of Rhodes Decision AP99/2022
- CJEU. (2023). Case C-134/23 "*Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice*".
- NF v European Council, Case T-192/16, Order of the General Court (First Chamber, Extended Composition), 28 February 2017.