Submission for the Report on Externalization of Migration and the Impact on the Human Rights of Migrants
To the UN Special Rapporteur on the Human Rights of Migrants
Mr. Gehad Madi

This submission[1] concerns the externalisation of migration by Greece through the application of the STC concept and the continued refusal of the Greek authorities to examine the merits of asylum applications that have been deemed inadmissible based on Türkiye being considered an STC, despite readmissions to Türkiye having been suspended indefinitely since March 2020.

This practice has impacted the effective access to the right to seek asylum, as established by Article 14 of the UDHR, Articles 4 and 18 of the EUCFR, Article 3 of the ECHR and Article 3 of CAT, and has left thousands[2] in a legal and protection limbo.

The use of the 'safe third country' concept in Greece

In response to the significant increase of asylum seekers in Europe, the members of the European Council and Türkiye reached an agreement aimed at stopping attempts to reach European territory through Türkiye on March 18, 2016.[3] According to the joint *EU-Turkey Statement*,[4] all persons who had arrived irregularly from Türkiye to one of the five islands of the Eastern Aegean as from 20 March 2016 and whose asylum applications had been declared inadmissible should be returned to Türkiye.[5]

On April 3 2016, the Greek Parliament, under a proposal of the Greek government, passed Law 4375/201 (and subsequent amendments).[6] The new law introduced the fast-track border

[1] List of Abbreviations
CAT: Convention against Torture Other Cruel, Inhuman or Degrading Treatment or Punishment
CJEU: Court of Justice of the European Union
ECHR: European Convention on Human Rights
EU: European Union
EUCFR: European Union Charter of Fundamental Rights
FENIX: Fenix - Humanitarian Legal Aid
GAS: Greek Asylum Service
JMD: Joint Ministerial Decision
NGOs: Non-Governmental Organisations
STC: safe third country
UDHR: Universal Declaration of Human Rights
[2] In 2024, GAS issued 2090 decisions of inadmissibility on the basis of Turkey being considered an STC, Refugee Support Aegean, 'Asylum Procedure Statistics in Greece 2024: Four in Five Asylum Applications Granted - R.S.A.' (2025) <https://rsaegean.org/en/asylum-procedure-statistics-in-greece-2024/> accessed 13 May 2025.
[3] "More than 1 million asylum seekers and other migrants from Syria, Afghanistan, Iraq, and countries farther afield such as Pakistan and Nigeria arrived in European Union countries in 2015, the most ever recorded in a single year." Migration Policy Institute (8 April 2021), "The EU-Turkey Deal, Five Years on: A Frayed Controversial but Enduring Blueprint", Available at: https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on#.
[4] Council of the European Union (18 March 2016), "EU-Turkey statement, 18 March", Press Release, Available at: https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.
[5] 'All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 and especially these not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the provisions of the Asylum Procedures Directive will be returned to Turkey. The aforementioned procedure will be in full accordance with EU and international law and in respect of the principle of non-refoulement'. Council of the European Union (18 March 2016), "EU-Turkey statement, 18 March", Press Release, Available at: https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.
[6] Law no 4375, Organisation and operation of the Asylum Service, the Refugee Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, adaptation of Greek legislation to

procedure for asylum applications submitted at one of the five hotspot islands of the Eastern Aegean.[7] Moreover, the law established that asylum applications registered in the islands should first be examined to determine their admissibility.[8]

In practice, between 2016 and 2019, Greece assessed asylum applications lodged on the islands under the border procedure differently, depending on the nationality of the applicant. Non-Syrians from a country with a recognition rate of over 25% would have their asylum application assessed both in terms of admissibility and merits ('merged procedure'), while non-Syrians from a country with a recognition rate of under 25% would have their applications examined based only on merits. Further, Syrian nationals would have their application exclusively examined on admissibility (STC).[9]

Notwithstanding the lack of legislative changes on this issue, the Greek authorities changed their practices concerning the examination of asylum applications on the five Eastern Aegean islands at the beginning of 2020. From January 2020, only Syrian nationals had their asylum application examined on admissibility while the rest of the applications were examined on the merits. This was despite the fact that an admissibility decision was not included in their GAS file and the Greek police were automatically issuing readmission decisions to Türkiye right after individuals' arrival to the Greek islands.[10]

Prior to 2020, Law 4375/2016 allowed exemptions for asylum seekers with vulnerabilities and in need of special procedural guarantees, permitting them to bypass the fast-track border procedure on the islands. As a result, their asylum applications were examined on the merits under the regular procedure. However, in 2020, with the introduction of Law 4636/2019,[11] the provision that exempted vulnerable asylum seekers in need of special procedural guarantees from the fast-track border procedure and their referral to the regular procedure was abolished.[12] This legislative change is contrary to Article 24(3) of the APD[13] and the jurisprudence of the CJEU.[14]

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the provisions of Directive 2013/32/EU of the European Parliament and of the Council "on common procedures for granting and withdrawing international protection status (recast)" (L 180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions. (Government Gazette A' 51/3-4-2016), Available at: https://www.taxheaven.gr/law/4375/2016 (Law 4375/2016).

[7] Article 60(4) of Law no 4375/2016.

[8] Articles 54 and 56 of Law no 4375/2016.

[9] European Council for Refugees and Exiles, AIDA Country report Greece - 2019 Update, available at: https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_gr_2019update.pdf

[10] Asylum Information Database (AIDA), *Country report: Greece, 2020 update*, Available at: https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf.

[11] Law no. 4636 (Government Gazette A '169 / 01-11-2019 and Corrections of errors Government Gazette A' 173 / 05-11-2019) on International Protection and other provisions, Available at:https://www.taxheaven.gr/law/4636/2019 (Law 4636/2019).

[12] Articles 39(5)(d), 58(2), and 90 of Law 4636/2019

[13] 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 OJ L 180, Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032 (APD).

[14] '[...]where the adequate support which applicants in need of special procedural guarantees are to receive cannot be provided to them the framework of a border procedure, within the meaning of Article 43 of that directive, Member States must not apply, or must cease to apply that procedure'. Case C-808/18 of the Court of 17 December 2020, European Commission v Hungary, Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1287012.

Finally, in June 2021, the Greek Ministry of Foreign Affairs and the Ministry of Migration and Asylum published a JMD[15] designating Türkiye as an STC for asylum seekers who are nationals of Syria, Afghanistan, Pakistan, Bangladesh and Somalia. The JMD applied to all asylum seekers whose asylum interview had not taken place, notwithstanding their date of arrival. With this decision, the Greek authorities can deem asylum applications inadmissible and refuse to assess material facts (the merits) of the application for international protection lodged by nationals of these five countries, which represent approximately 60% of all asylum applications filed in 2024 in Greece.[16]

The adoption of this JMD is contrary to European legislation.[17] It does not provide any legal reasoning to explain which principles the regulation was based on, or an explanation of the methodology by which the competent authorities satisfied themselves that the STC concept can be applied in the case of Türkiye for asylum seekers from the aforementioned five nationalities. The lack of a clear methodology and blanket presumption also gives Greek authorities discretion to apply the JMD differently in distinct moments of the procedure and without considering the individual vulnerabilities of asylum seekers when assessing whether Türkiye is an STC.

After a preliminary ruling by the CJEU[18] in 2024, the Greek Council of State[19] annulled the JMD designating Türkiye as an STC. In defiance of this judgment, the Greek ministries of Foreign Affairs and Migration and Asylum issued a new JMD designating Türkiye as an STC in April 2025.[20]

Human rights effects

Greece's practice of externalizing the responsibility for asylum applications has led to severe human rights violations both in Greece and in Türkiye.

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[15] Joint Ministerial Decision No. 42799/2021, (Government Gazette 2425 / Β / 7-6-2021), Designation of third countries that are characterized as safe and compilation of a national list, according to the provisions of article 86 of Law 4636/2019, Available at: https://www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/koine-upourgike-apophase-42799-2021.html (JMD).

[16] Refugee Support Aegean (n 2).

[17] Article 38(4) of APD; *Somateio 'Elliniko Symvoulio gia tous Prosfyges', Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio' v Ypourgos Exoterikon, Ypourgos Metanastefsis kai Asylou* [2024] CJEU C-134/23; Ines Avelas and Aron Bosman, 'A Rare Win: Greek Asylum Practices Before the CJEU' (*Verfassungsblog*, 19 November 2024) <https://verfassungsblog.de/a-rare-win/> accessed 10 December 2024.

[18] *Somateio 'Elliniko Symvoulio gia tous Prosfyges', Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio' v Ypourgos Exoterikon, Ypourgos Metanastefsis kai Asylou* (n 17).

[19] Greek Council of State, 'Ανακοίνωση Του Προέδρου Του Σ.τ.Ε. Σχετικά Με Το Αποτέλεσμα Της Διάσκεψης Επί Υποθέσεων, Οι Οποίες Συζητήθηκαν Στην Ολομέλεια Στις 7 Φεβρουαρίου 2025 Και Αφορούν Τον Χαρακτηρισμό Της Τουρκίας Ως Ασφαλούς Τρίτης Χώρας.' (21 March 2025) <https://www.adjustice.gr/webcenter/portal/ste/pageste/epikairotita/anakoinwseis-proedrou;jsessionid=FH8w3YI1A6xl73EIv51BQ6LuK5N1xUwAiRutEKWPPGr6hu4Ta5sv!1455824798!-164750182?contentID=SNEWS-TEMPLATE1742568296785&_afrLoop=11746777689546371#!%40%40%3F_afrLoop%3D11746777689546371%26centerWidth%3D65%2525%26contentID%3DSNEWS-TEMPLATE1742568296785%26leftWidth%3D0%2525%26rigthWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26_adf.ctrl-state%3D17cgvay1tv_4>.

[20] Greek Minstry of Foreign Afairs and Greek Ministry of Immigration and Asylum, 'Η Τουρκία Παραμένει Ασφαλής Τρίτη Χώρα Για Τους Αιτούντες Άσυλο' (9 April 2025) <https://migration.gov.gr/i-toyrkia-paramenei-asfalis-triti-chora-gia-toys-aitoyntes-asylo/>.

Since 2022, a significant number of applicants have had their initial asylum applications rejected as inadmissible on the grounds of the STC status but later received positive decisions on admissibility. This change was not due to a shift in policy on considerations regarding Türkiye; rather, it resulted from the introduction of a criterion in the internal guidelines of the GAS that requires a sufficient connection to Türkiye. This criterion is not met if the applicants have been in Greece for more than one year. As a result, applicants had their subsequent application accepted as admissible at the preliminary stage on the basis that 'the absence of the applicant from [Türkiye] for more than a year is a new element' and that the link with Türkiye was 'weakened due to the lapse of a period of more than a year'.[21]

This 'solution' in the GAS' guidelines offers an escape from the previously existing dead-end in which people with an inadmissibility decision had no way to access their fundamental rights in Greece, while they also could not be readmitted or go back to Türkiye. However, this 'solution' has also threatened people's fundamental rights. During this one-year period individuals do not have legal documentation, no access to healthcare or regular work, and are at risk of social and economic exclusion and vulnerable to exploitation. Many find themselves homeless and at risk of detention for months until they can submit a new application. As the CJEU ruled that if people cannot be readmitted, their application cannot be declared inadmissible, the recent judgment gives people a clearer path to access asylum in Greece. They would not have to go through a year of legal uncertainty, sometimes paired with destitution, until their application is considered on its merits.[22]

The practice of externalisation does not just affect Greece itself; in October 2024, an investigation by journalistic collective *Lighthouse Reports* revealed that the money that the EU has paid Türkiye to 'manage' migration has been used to violently detain and deport Syrians and Afghans.[23] Since 2015, the EU has paid Türkiye over €11 billion to shelter, support, and 'manage' the almost 4 million Syrians who fled the civil war.[24] This 'management' is mostly aimed at stopping people from crossing into Europe, while they face continued unsafety in Türkiye. The reporting reveals that hundreds of millions of euros are used to violently detain and deport Syrians and Afghans. This is despite the EU considering these countries too dangerous for organized returns. The reporting shows that EU leaders are well aware of how the funding is used, but continue to support this practice and ignore warnings from civil servants, diplomats, lawyers, and NGOs that have brought up fundamental rights concerns.

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[21] Fenix Humanitarian Legal Aid, 'Regional Asylum Office of Thessaloniki Recognises a Vulnerable Single Woman from Syria as a Refugee after Accepting Her Subsequent Application as Admissible' (2022) <https://www.fenixaid.org/articles/regional-asylum-office-of-thessaloniki-recognises-a-vulnerable-single-woman-from-syria-as-a-refugee-after-accepting-her-subsequent-application-as-admissible>.

[22] Avelas and Bosman (n 17).

[23] Lighthouse Reports, 'Turkey's EU-Funded Deportation Machine - Lighthouse Reports' (11 October 2024) <https://www.lighthousereports.com/investigation/turkeys-eu-funded-deportation-machine/> accessed 23 October 2024.

[24] Zia Weise and others, 'The EU Is Helping Turkey Forcibly Deport Migrants to Syria and Afghanistan' (*POLITICO*, 11 October 2024) <https://www.politico.eu/article/the-eu-is-helping-turkey-forcibly-deport-migrants-to-syria-and-afghanistan/> accessed 23 October 2024.

Experience from the Ground

Client: "Syria does not accept us, Türkiye does not accept us, now Greece does not accept us. Where can we be safe?"

Client: "My family and I stayed inside our room for the month we were in Türkiye, we were very afraid that we would be arrested and deported back to Syria."

Client: "My mother, wife and two young children are still in Türkiye, I live in constant fear. When the earthquakes happened my family was kicked out of the sports hall they were sleeping in. My two-year-old daughter had to sleep on the streets for weeks in the freezing February cold."

Caseworker: "Do you think you can return to Türkiye?", Client: "If that was possible, I would not have come here."

These Turkish deportation centres form a blueprint for newly endorsed European 'deportation hubs' in third countries.[25] People whose applications for asylum are rejected would be expelled from the EU to these centres, awaiting deportation to their country of origin. This is despite the European Commission having previously concluded that such centres would be contrary to EU law.[26] The centres would also likely be illegal under the Refugee Convention which states that people cannot be penalised for applying for asylum and the European Convention of Human Rights (ECHR) which imposes strict limits on situations of detention, which are likely to occur.[27]

The systematic move by Greec and the EU towards a further externalization of migration results in inadmissibility decisions without any prospect of readmission to Turkey and undermines effective access to the fundamental right to seek asylum enshrined in Article 14 of the UDHR and Article 18 of the EUCFR and may lead to violation of the fundamental principle of non-refoulement enshrined in Article 3 of the ECHR, Article 3 of the CAT, Article 33 of the Geneva Convention for Refugees and Article 4 of the EUCFR.

[25] Conclusions - European Council 17 October 2024 para 37.
[26] European Commission, 'The Legal and Practical Feasibility of Disembarkation Options.' 5 <https://www.statewatch.org/media/documents/news/2018/jul/eu-council-com-paper-disembarkation-options.pdf>.
[27] Convention for the Protection of Human Rights and Fundamental Freedoms art 5; Convention Relating to the Status of Refugees 1951 (189 UNTS 137) art 31.