Supporting Evidence document on HLHR's position on the refugee situation 03/2017

A. Introduction

The refugee crisis in Europe, which is a small part of a wider crisis resulting from multilateral armed conflicts and indiscriminate violence in the Middle East (among other places), has already led to the migratory influx of approximately one million people via Greece in 2015, while the sealing of the *Balkan route* as well as the EU-Turkey agreement/common statement "froze" movement through the imposition of a series of barriers. In spite of this, new, legally foreseen influxes, or others taking place outside of the allowed routes, are continuing to transform the situation in the field, in law, and in policy. As we have stated in our previous report from the beginning of 2016, despite the growing numbers of refugees from Syria, Iraq, Afghanistan, Eritrea, Somalia, and Sudan, the European Union (EU) has but a small number of refugees within its borders, relative to the overall picture. However, the management of the reception of refugees is causing disproportionate shocks to the political foundations of the EU, which in turn has very serious negative consequences for issues relevant to human rights protection.

To the erection of internal borders within the unified "security and justice space" are added policies of deterrence, designed to prevent the entry of those populations through military means on the external borders of the EU, which has serious consequences for the democratic plan for consolidation of the European rights acquis, especially because of the fact that the planning and architecture of border surveillance in Europe is apparently not subject to processes of accountability and transparency. On the other hand, to the extent that the end of armed conflicts is nowhere in sight in the near future, safe movement and guarantees for safe accommodation of refugee populations is perhaps an issue that is difficult to solve, because it requires long-term political analysis of needs, securing the means to welcome and accommodate refugees, as well as long-term integration policies. However, the political choices of the EU and the Greek government, following the agreement of March 2016, which activated returns to Turkey, uncritically considered a "safe country", clearly attempt to impose practices of deterrence, which mark a deviation from the enforcement of refugee law.

The Hellenic League for Human Rights is publicizing its positions following collective deliberations, which focused on the acquis of rights protection as articulated in the European and Greek legal order. The aim of our position statement is the identification of solutions, at smaller or larger scale, and are an extension of our recommendations to the Ministry of Interior with regard to pending legal issues relevant to the legal status of migrants and refugees, as defined in law 3907/2011, which was eventually, partially or wrongly, implemented (cf. http://www.hlhr.gr/?MDL=pages&SiteID=1165). These positions are, finally, complementary to the positions put forward by the League in 2013, on the broader issue of migration (cf. http://www.hlhr.gr/index.php?MDL= pages&SiteID=800) and, of course, build

on our positions from the beginning of 2016 (cf.
http://www.hlhr.gr/index.php?MDL=pages&SiteID=1195).

The legal reference framework for the issue of refugees

European asylum law ought to "follow the Geneva Convention"3. According to the Court of Justice of the European Union, the Geneva Convention "constitutes the cornerstone of the international legal regime for the protection of refugees"4. Moreover, the Charter of Fundamental Rights of the European Union provides further guarantees for the right to asylum5. Consequently, EU law ought to be harmonized with the content of the Geneva Convention, as should every interpretation of the concept of "sufficient protection" of Article 35 of Updated Directive 2013/32 on Asylum. Under this framework, Greek law also ought to align itself with the above, without substantial deviation.

B. The implementation of the EU-Turkey joint statement: the implementation of a downward spiral of European fundamental rights policy.

In all the texts of EU bodies produced since the outbreak of the refugee crisis, there is not only a strong regulatory confirmation of the control of external borders, but also a return towards the control of internal borders using "security" as a pretext. The adoption by the EU of the logic of security as "control" and not as "protection" is also confirmed by the creation of the European Border and Coastguard Agency (Frontex), which was approved by the European Parliament and the European Council in record time (nine months). The new Agency began its operations on 6th December 2016, and its aim is the immediate reinforcement and systematization of the control of European Union borders, seeing as it has permanent staff (which has doubled in number), and the required equipment, at its disposal. According to the European Commission, among the goals[1] of the new Agency will be the increase of returns from EU countries to third countries6. Already during the second half of 2016, border controls by Frontex were increased, and will be complemented by controls by Europol and NATO7.

Moreover, in the Commission report, the enhancement of border controls is linked to drastic measures to increase the number of returns from Greece to Turkey. In light of this, the action plan for the implementation of the EU-Turkey joint statement accompanying the report, stresses the need for changes to the process of granting asylum in Greece8. If implemented, these changes will result in further restrictions to the fundamental rights of people entering Greece from Turkey after 20.3.2016. This will happen regardless of the conditions in Turkey, and regardless of any protection guarantees which Turkey may offer.

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[1] 3 Article 78(1) of the Treaty on the Functioning of the European Union.
4 Case C-604/12 *HN* [2014] OJ C202/6, paragraph 27.
5 See Article 18: "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 on European Union and the Treaty on the Functioning of the European Union".

The European Union report more specifically recommends the abolition of exemption from accelerated examination procedures for asylum requests at the borders for vulnerable cases and for cases of family reunifications, according to the Dublin III regulation. Article 60 paragraph 4 of Law 4375/2016 foresees an exceptional process for recording and accelerated examination of asylum requests at the border for people crossing from Turkey after 20.3.2016. According to the same article, vulnerable cases and cases of family reunification are exempt from the process foreseen by the Dublin III Regulation. The European Commission recommends that asylum requests in cases of family reunification be examined at the border only when EASO and member states consider that it is possible to carry out family reunification from Turkey. Moreover[2], with regard to vulnerable cases, it is recommended that the asylum request be examined through the usual process, but only for victims of torture or other forms of violence, while it is recommended that all other vulnerable cases be examined through the accelerated procedure at the border. It is clear that the EU wishes to enhance border protection and to discharge a large number of incoming people as quickly as possible, at the expense of the protection of their fundamental rights, under a framework which protected these by respecting the protection of the family and of human dignity.

In addition, though L.N.4375/2016 does not foresee preferential treatment for the examination of asylum requests depending on nationality, it does however give priority to examination of the acceptability of asylum requests by Syrians, and the immediate in-depth examination (without examination of acceptability) of asylum requests from nationals of countries with low levels of granting refugee status, such as Pakistan, Bangladesh, Tunisia, Algeria, and Morocco. This practice of preferential treatment, which contravenes the principle of equal treatment, is reinforced by the recommendation of the European Commission for the creation of a fast-track asylum request examination process for the above nationalities, so that the recording, interview and decision be completed within a few days, thereby going beyond the boundaries set by L. 4375/2016[9]. In this manner, these people are being stripped of their fundamental right to access the asylum process.

The uncritical judgement by first-degree asylum examination committees, regarding asylum seekers on the islands, that Turkey is a safe third country, created a set of decisions by older second-degree committees (founded by

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[2] [6] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-euborders/fact-sheets/docs/20161006/a_european_border_and_coast_guard_en.pdf. The new authority will have most of its staff based in Greece (682 staff) and Italy (523), while it will also operate in Bulgaria, the Western Balkans, and Spain.

[7] European Union: European Commission, *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement*, 8 December 2016, COM(2016) 792 final, available at: http://www.refworld.org/docid/584ad1fb4.html .

[8] European Commission, Joint Action Plan of the EU Coordinator on the implementation of certain provisions of the EU-Turkey Statement, 8 December 2016.

Presidential Decree 114/2010) which accepted appeals against first-degree rejection decisions, thereby resulting in the non-refoulement of asylum seekers to Turkey, in line with the EU-Turkey joint statement. The rejection decisions were founded on the belief that Turkey, due to the condition the country is in, is not a "safe third country". Until June 2016, a total of 70 positive decisions and 2 rejections had been published[10]. The danger of failure of implementation of the EU-Turkey joint statement led to new legislation of 18th March 2017 (L.4399/2016), and to the creation of second-degree committees with the participation of administrative judges, which led to obvious questions on the manipulation of the process in order to ensure that the decisions made reflect the wish of the government that returns "not be hindered". In any case, the Council of State has already adjudicated that the change in the makeup of the committees is legal (CoS, decision 445/2017).

The European Commission bases its thinking on an axiomatic judgement, in several of its texts, that Turkey is a "safe third country"[11], and is calling for the implementation of the notorious EU-Turkey joint statement/agreement (which, it must be noted, is legally *non-binding* and, according to the Court in Luxembourg, is a "*non-agreement"*[12]) and for which it publishes a monthly monitoring bulletin. The Commission, considers crossing Turkey to be grounds for strong links with the country, thereby meeting the legal criteria for return, and argues that the guarantees provided by Turkey are sufficient to provide legal coverage for the collective readmission and return of asylum seekers and irregular migrants from Greece back to Turkey. However, case law of the Court in Strasbourg points to another direction, as it requires that specific, individual, and sufficient guarantees be provided, and, importantly, that member states prove in practice that *in reality* rights are not violated. We must keep in mind that the principle of *non-refoulement* is a binding obligation of many international human rights conventions, including the European Convention on Human Rights, which is binding for all European countries, including Greece. European Court of Human Rights case law has examined many cases of returns under the Dublin system, as well as of returns to countries that are not members of the Council of Europe, under the framework of the right that no one be subjected to inhuman or humiliating treatment[13].

It is useful at this point to examine the framework of EU law with regard to refugee rights, paying specific attention to the issue of return to Turkey. According to Article 38 (1) of Directive 2013/32, member states may apply the concept of safe third countries only as long as the responsible authorities consider that the treatment of the seeker of international protection meets the following criteria:
a) their lives and freedom will not be put in danger on grounds of race, religion, nationality, social class, or political beliefs,
b) there is no risk of serious harm, as defined in Directive 2011/95/EE,
c) the principle of non-refoulement is being applied according to the Geneva Convention,
d) the prohibition of removal in contravention to the right to avoid torture and harsh, inhumane treatment, as defined in international law and,

e) the possibility exists to grant refugee status and, in the event that the applicant is granted refugee status, that protection be provided according to the Geneva Convention.

For the examination of the asylum request, thorough and individual evaluation is necessary, since every asylum applicant must first be recorded and identified. Moreover, according to Directive 2013/32, in the event that an asylum applicant is granted refugee status, protection must be provided according to the Geneva Convention[14][3]. The extent to which Turkey, which does not provide international protection due to geographical restrictions, is a "safe third country" under present conditions, is legally controversial. The conditions set out by the articles of the Directive must be examined with regard to the apparent distinction between "very safe" Third Countries (Article 39) and Safe Third Countries (Article 38). The provisions must be effectively implementable and always follow the spirit and the letter of the Geneva Convention. Even if the Directive were interpreted in such a way as to permit Turkey to be characterized (geographical restrictions notwithstanding) as a *potentially* safe third country, the abundance of field evidence indicates that, with regard to both the national (Turkish) legal rules as well as the *de facto* treatment of Syrian nationals, the conditions set out in Article 38(1) are not being met. For example, there are reasons to worry that the principle of *non-refoulement* is not being respected. Evidence refers to multiple cases of returns of Syrians from Turkey back to Syria[15].

Moreover, the rights stemming from the status of temporary protection according to Turkish law are insufficient to meet the guarantees on refugee rights according to the Geneva Convention (e.g. freedom of movement, access to the labour market, access to education, etc.). According to the Turkish Temporary Protection Regulation, Syrians returned to Turkey from Greece after 20th March 2016 *may*, if they request it, be granted temporary protection according to the Regulation. This discretion of Turkish authorities is not consistent with the general protection foreseen for all Syrians and stateless Palestinians who arrived directly from Syria after 20th April 2011, and who were initially covered by the Regulation. This approach appears to endanger the legal

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[3] 14 Directive 2013/32 on asylum procedures "incorporates a minimum common denominator of legislation at its lowest point", K. Costello, 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?', *European Journal of Migration Law* **7**(1), 2005: 37. See also: European Council on Refugees and Exiles (ECRE), 'The DCR/ECRE research on application of a safe third country and a first country of asylum concepts to Turkey' (2016).

15 Turkey: Syrians Pushed Back at the Border Closures Force Dangerous Crossings with Smugglers <www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border**,** EU urges Turkey to open its borders to Syrians fleeing war-torn Aleppo>, in <http://www.theguardian.com/world/2016/feb/06/eu-urges-turkey-to-open-its-borders-tosyrians-fleeing-war-torn-aleppo> και Syria calls for UN action on Turkish attacks on Kurds 15 February 2016, σε: <www.bbc.com/news/world-middle-east-35576153>

position of Syrians being returned following the EU-Turkey joint statement. Moreover, Article 16 of the Temporary Protection Regulation forbids the application of international protection to those who have been granted "temporary protection"16[4].

According to Article 35 of the Directive, member states may apply the concept of first country of asylum individually, so long as the individual: a) has been granted refugee status by that country, and is in receipt of relevant international protection, on the condition that they will be once more received by that country, or b) is in receipt of another form of sufficient protection in that country, benefiting from the principle of non-refoulement, on the condition that they will be once more received by that country. As previously mentioned, the protection provided to Syrians by Turkey does not constitute recognition of refugee status. Therefore, Article 35(a) cannot be applied. It could be argued that Article 35(b) defines the concept of "sufficient protection" in less strict terms, compared to the concept of "safe third country". However, the concept of *first country of asylum* must be interpreted by member states with respect for human rights: According to Article 35, "asylum seekers must be provided with the possibility to challenge the concept of first country of asylum with regard to their individual case". The interpretation of this concept must be done in such a way as to not breach international refugee law and human rights more generally. The Court in Luxembourg has also judged that "a provision of a Union Act could breach fundamental rights, if it imposed on member states the obligation, or covertly or overtly permitted them to adopt or keep enforcing national laws that are in breach of these rights"17. Besides, according to the above mentioned Strasbourg court case law, in order for return to be lawful, the state must be convinced that in a specific individual case, there are no grounds to suspect that the person in question will be in danger of their rights according to Articles 2 or 3, or in danger or refusal of other rights deriving from the Convention, such as the right to a fair trial, the right to freedom, the right to family life, even when the return has taken place or will take place to an EU member state. The risk of indirect refoulement must also be examined18.
Therefore, Turkey currently does not meet the conditions for being characterized as a "safe third country" or "first country of asylum", and therefore the return of persons to Turkey cannot be lawful (see also the Greece-Turkey readmission agreements19), so long as the current situation and the Turkish legal framework cannot provide guarantees for safety according to the Directive and the Geneva Convention.
Besides, as stressed by the European Ombudsman, the European Commission ought to periodically monitor the extent to which rights guarantees are being met, namely to *evaluate the risk* of human rights violations, thereby acknowledging the fact that the Commission did not do so prior to drafting the

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[4] 16 Asylum Information Database (AIDA) 2015, «Country Report: Turkey», European Council on Refugees and Exile (ECRE) 2015, http://www.asylumineurope.org/sites/default/files/reportdownload/aida_tr_update.i.pdf.
17 C- 540/ 03 *Parliament v Council* (Family Reunification) [2006] ECR I- 5769, par. 23.

Joint Statement[20][5]. The matter became even more complicated because, as previously mentioned, the General Court of the EU judged that the Joint Statement is not an EU agreement but a set of agreements between member states and Turkey, thereby exonerating itself from all responsibility to judge on the lawfulness of the framework.

From the above, it is clear that the achievement of the political goal of the returns to Turkey – independently from its acceptance or criticism – cannot be contrary to fundamental principles and legal guarantees and conditions of legal safety for the people being returned.

C. The continuation of the deadlock national and European policy for the "safe passage, reception and accommodation of refugees"

The EU obligation to always receive refugees in conditions which will guarantee their personal and social safety, is reflected in both the regulatory framework for ensuring procedures of fair examination of requests for international protection to all, as well as in the revised Dublin III Regulation, which, between 2013 and 2017, has not been enforced in Greece due to the conditions imposed by the reality in the field.

However, L.4375/2016 identifies the weaknesses of the system with regard to adapting to an asylum examination procedure which is effective, fair and respectful to personal freedom, for those entering the Greek islands after 20th March 2016. Specifically the examination of asylum requests in hotspots, detention in hotspots while the asylum request is being processed, as well as the poor living conditions are all aspects of these weaknesses[21][6].

The systematic acceptance of the view that Turkey is a safe country of reception, especially in asylum decisions, in both first and second degree, results in

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[5] [18] See Aida, «Country Report, Turkey", 15/12/2015, in: <www.asylumineurope.org> and Ecre <http://ecre.org/component/content/article/70-weekly-bulletin-articles/1298-ecre-fears-humanrights-being-left-behind-in-the-rush-to-an-eu-turkey.html>. More specific reference to the case of Hirsi Jamaa and Others v Italy, Application No. 27765/09, Judgment of 23 February 2012. According to the ECtHR, the Italian authorities ought to examine *"the treatment to which the applicants would be exposed after their return" (§ 133) and to ascertain "how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees"* (§ 157.

[19] See L.3030/2002: Preamble to the Greece-Turkey Agreement on combating Terrorism, article 11, as well as EU-Turkey Readmission Agreement signed and Visa Liberalization Dialogue launched, 16/12/2013, article 18.

[20] Decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Agreement, 18.1.2017, at: http://www.ombudsman.europa.eu/da/cases/decision.faces/da/75160/html.bookmark

[6] [21] European Council on Refugees and Exiles, *The implementation of the hotspots in Italy and Greece -A study*, December 2016, available at: http://www.refworld.org/docid/584ad1734.html [accessed 14 January 2017.

undermining of the effectiveness of the procedure, as well as serving as a barrier to accessing the asylum procedure. The collective recognition of Turkey as a safe third country, without individual assessment for every newly-entering person submitting an asylum request, is obviously aiming to strengthen prohibition, even by force (e.g. NATO involvement in patrols of the Aegean), of entry of refugees to the West, and to the (legally controversial) return of those who have entered into European territory.

Moreover, the imposition of obligatory detention while the asylum request is being processed, indiscriminately and even in vulnerable cases, contravenes all guarantees of rights protection that the EU itself, as well as Greek law, foresee. Detention must be a last resort in attempts to meet the goal of finalizing the process, while other measures should replace it, particularly in cases of vulnerable persons, such as unaccompanied minors or people with chronic diseases.

The limited capacity of the Asylum Service to process asylum requests within a reasonable timeframe results in a long wait for the processing of asylum requests for people who have been trapped on the islands, and who are living in bas living conditions that are an insult to human dignity and which have led to riots and even to deaths. The conditions of reception are inappropriate for people to live in long-term. No common operational regulations have been established, not has high-level administrative staff been recruited through open procedures, based on the evaluation of qualifications, which must be relevant to the requirements of camp management. As regards vulnerable groups, there is a large deficit in social care. First of all, the lack of criteria and the lack of possibility of verification of true vulnerability, which is not always obvious, make matters worse. Those who are more vulnerable, such as e.g. unaccompanied minors, are living in these conditions for longer time periods compared to the rest, because the available places in suitable structures are very very few. At the same time, the lack of exact information and guidance on the procedures, due to constant changes in administrative practices and the lack of coordination between all administrative bodies involved, create even greater problems.

The administrative measure which restricts the personal freedom of movement for people on the islands towards mainland Greece, without justification, without time restriction, and without the possibility for the interested parties to file a lawsuit challenging this practice, contravenes both Article 5 of the Greek Constitution as well as Articles 5 and 13 of ECHR, and the Geneva Convention.

Besides, paragraph 2 of Article 60 of L.4375/2016, as well as Article 6 of Presidential Decree 220/2007 both foresee the possibility to enter and remain in the country for asylum seekers, while, according to Article 14 paragraph 2 of L. 4375/2016, it is foreseen than the above possibility can be provided with the decision of the camp Governor, due to increased arrivals or to facilitate due conclusion of procedures. Therefore, it is wrong to judge that the EU-Turkey joint statement is not contravened by asylum seekers moving to mainland Greece.

In light of the above described imposition of a "dual-zone" to the rights of asylum seekers, the recently published position of the Chios Bar Association[22] states that the imposition of a geographic restriction to all persons entering Greece after 20th March 2016 from the islands results in the trapping of persons in unsuitable spaces, which is not an express provision of the EU-Turkey joint statement.

Greek society should re-examine its position in the issue, with a view to effectively protecting human dignity and freedom.

D. Rights adjoined to prolonged insecurity and permanence

The non-regulatory provisions of the Greek migration law with regard to *integration* (L.4251/2014) must be replaced by ambitious and innovative plan to create true possibilities for integration (e.g. teaching the Greek language in Greek schools, professional training, links to local communities, etc.). For those asylum seekers remaining in Greece, and for recognized refugees[23] living in Greece, the responsible Ministries are legally obliged[24][7], by European Directives[25] to:

A. Create reception facilities for asylum seekers and vulnerable groups[26], for the creation of which they are already in receipt of European funding[27].

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[7] [22] Opinion of the Chios Bar Association Committee on the EU-Turkey agreement and the stay of refugees and migrants on the Greek islands, 4/2/2017, at: <bit.ly/2mrQVTO>
[23] Recognition of refugee status and supplementary protection by year, 2013: 379, 2014: 2.137, 2015: 640, 2016: 2.986, 4-year cumulative total 2013-2016: 6.142, at: http://asylo.gov.gr/?page_id=615
[24] E.g., see: *Al. K. v. Greece* (no. 63542/11), *Mohamad v. Greece* (no. 70586/11, 15/12/2014, *Horshill v Greece*, (no. 70427/11) 1/8/2013, *MSS v. Belgium and Greece*, (no 30696/09), 21/1/2011.
[25] Crucial to this is the incorporation of Directive 2013/33/EU of 26th June 2013, on laying down standards for the reception of applicants for international protection, facilitating access to work for asylum seekers and refugees
[26] . E.g. see Article 8 A L. 3907/2011 and 5A Presidential Decree 102/2012 and Directive 2013/33/EU of the European Parliament and Council, of 26th June 2013, on the standards for reception of applicants for international protection.
[27] Regulation 1304/2013, European Social Fund, and ministerial decisions on the "Co-financing of the Ministry of Public Order and Citizen Protection European Development Programmes Management Service" (e.g. ministerial decision no. 16859/ Special Management and Monitoring Service for Other Development Programmes 355 (Gazette B' 947/15/04/2014) "Capacity building for national asylum and migration systems", *Common Ministerial Decision 121//2014 (Ministerial Decision 12104/* Special Management and Monitoring Service for Other Development Programmes *275 Gazette B 781 2014): Definition of the management-control system for the implementation of EEA 2009-2014 Funding Mechanism & distribution of funds).*
[28] *The right to work, which has not been established for people who have been pre-registered but not definitively registered for asylum, through no fault of their own, is an important issue, because it excludes these people from the labour market and from becoming integrated into society.*
[29] *Article 38 Presidential Decree 113/2014 and Article 4 Ministerial Decision 398//2014 (Ministerial Decision 39892/ΓΔ1.2 Gazette B 3018 2014).*
[30] *Common Ministerial Decision 53619/735/25.11.15*

B. To integrate asylum seekers and recognized refugees into the labour market, education, and to *social protection programme*[28]
C. To ensure that recognized refugees receive a *minimum guaranteed income*[29].

It is worth noting an attempt to tackle the latter issue was made, through a Common Ministerial Decision[30] which, unfortunately, grants access to the labour market only partially, with restrictions, in only selected sectors of the economy, and not throughout Greece, unjustifiably, in our view (e.g., why are Xanthi, Evros and Rodopi excluded, despite the fact that agricultural and livestock farming activities also take place there?). equally problematic for the Greek legal system is the express exclusion of these groups from the possibility of accessing any programme of social integration, when these aliens are required to pay social insurance contribution, and are not exempt from taxation: in the end, do we or do we not want to smoothly (re)integrate – even in the long run – these people into the social fabric of the country? Or do we just let them work for a certain period in Greece, while excluding them from and possibility of integration (insecurity/transit/ constant vigilance)? People on pre-registration lists must immediately be granted the right to access the labour market, for the reasons discussed above.

E. Specifically as regards Education

The provision of education to migrant and refugee children is of course part of the wider framework of intercultural schools, and the legal framework for supplementary teaching of Greek, which in previous years was aimed at repatriated Greeks and migrants, with the best interests of the child always at the forefront. With L. 4415/2016 (Gazette A 159) "Regulations for Greek language education, intercultural education and other provisions" there is provision for the teaching of another language (see Article 21 par.9, L. 4251/2014), when the language needs of pupils require it. Article 38 authorizes the Ministers of Education and Finance, through a common ministerial decision, to establish facilities for the education of refugees, to determine their organization, operation, education programme in special structures providing education, as well as the criteria and procedures for staffing these facilities. Thus, Common Ministerial Decision 152360/ΓΔ4, (Gazette3049 B, 2016), establishes reception facilities for refugee education (RFRE), starting from school year 2016-17, which are already in operation, both inside schools and in refugee reception centers. These facilities are branches of nearby schools, at the level of preschool, primary, and secondary education. The children who are residing inside cities with their families can attend their local school. Implementing the framework developed for the needs of refugee children, the Minister of Education decision 131024/Δ1 (Gazette B 2687/2016) defines Zones of Educational Priority (ZEP), establishes Reception Classes (RC) within ZEPs, Supplementary Remedial Classes (SRC) in ZEPs and Reception Facilities for the Education of Refugees in ZEPs (RFERZEP) in pre-university education establishments. The logic of the new framework is aligned with the idea of intercultural education with the goal of integration, smoothly and in a manner equivalent to the Greek educational system, for pupils from abroad, since it is correctly established that Greek is not

their mother tongue, and as such they cannot meet the language needs to follow lessons appropriate for their age.

The process for providing education to refugee children (approximately 5000 will be in school in mid-2017[31]) should take the best interests of the child into account, a key concept for selecting those with grounds for enjoying these rights, and its implementation. In practice, it appears that the first phase of implementation was badly prepared, met with resistance from local communities, while educators did not possess the requisite skills, and educational material was not appropriate, all of which contributed to a degradation in the quality of education provided to refugee children. Education within camps cannot but be of a supplementary nature. Nor can it only be provided in the afternoon, but it must be integrated into the regular school programme, while the pupil population must be dispersed in a balanced way. Moreover, special provision must be made for children over 15 years old. Finally, the time for which children remain in Greece, or the certainty with which relocation to another country will take place, is critical for the design and implementation of educational policy (would it not be possible, for example, to teach the language of the country of relocation, in collaboration with that country?).

F. What solutions are there?

Therefore, instead of creating these conditions of reception and integration which could indeed enhance the substantive protection and safety of all EU residents, the majority of European leaders, and, chiefly among them, EU bodies themselves, adopt a dangerous conflation of "security" with "deterrence" and with the "risk of terrorism", a conflation which has direct negative consequences for the European acquis of rights protection and, of course, for those directly affected by European and national policies.

On the contrary, it is clear that national and European borders are not under threat, but are being crossed by masses of people who justifiably have a right to file requests for asylum, and to protection more generally[32]. Moreover, the fact that, based on the international situation, the borders are not and cannot be closed, as are for example, the borders of North Korea, is disregarded. Borders are, by their very nature, porous[8], yet safe passage and transit of special social groups (e.g. refugees or the forcibly displaced or vulnerable population groups, such as unaccompanied minors), should be permitted to safe passage and transit.

National and European policies on the issue of refugees ought to harmonize themselves with, first of all, the demands of refugee law (as mainly enshrined in the Geneva convention of 1951, as well as in European directives which have been incorporated into Greek law), and with superior rules for the protection of fundamental rights at national and regional level (national constitutions,

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[8] *[31] http://www.dikaiologitika.gr/eidhseis/koinonia/138688/mexri-to-telos-tou-mina-sto-sxoleioalla-3-000-paidia-prosfygon*

[32] For number of arrivals, see: <http://data.unhcr.org/mediterranean/country.php?id=83>

European Charter on Human Rights), namely with the so-called European acquis of rights protection. They must also ensure the protection of rights of special vulnerable groups, as defined by the international community (e.g. International Convention for the Rights of the Child). These critical provisions certainly regulate the nexus of safe passage, through the guarantee of a fair examination procedure for asylum requests in a safe living environment. This nexus concerns the population on the move as a whole, which (could) fall within the remit of refugee law. This includes recognized refugees, those who meet the conditions for filing a request for international protection, as well as those who have already filed such a request, independently of their place in the queue or their country of origin.

Given that the large majority of those arriving in Greece are from countries of mainly refugee "production" (e.g. Syria, Iraq, Somalia, Eritrea), the country of reception should not only refrain from policies barring entry to incoming displaced populations, but, on the contrary, it should record them and swiftly begin the procedure for examining asylum requests, if the individuals arriving wish to. Critical to this point is the implementation of what has been agreed with regard to relocation of claimants to international protection, as foreseen by Decisions 2015/1523 and 2015/1601 of the European Council33[9].

This highlights the unwillingness of EU member states to truly contribute to a solution to the refugee crisis in a manner that is effective and which respects human rights. As of 28th December 2016 and over the preceding year, the number of relocations from Greece was 7,286, while from Italy it was 2,654[34], while the goal is for 66,400 people to be relocated by September 2017. By 28th February 2017, 9,000 asylum seekers had been relocated from Greece, while 20,000 had a right to relocation, thereby leading to an estimate that the process can be successful for up to 1,000 per month[35].

Access to the relocation procedure is already restricted, given that participation is open to nationals of countries for which over 75% of applicants are granted refugee status at European level, while claimants should have entered the country between 16 September 2015 and 20 March 2016. The manner of processing applications both by Greece and other EU member states restricts the number of applications being accepted even further. The fear of terrorism and the refusal of EU member states to tackle it effectively lead to a series of rejections by the countries to which asylum applications are filed, due to a risk to public order or national security, without any justification and without the claimant being able to object to the rejection decision. The European Union has highlighted the existence of unjustified rejections by member states several

[9] *33 See also Decision (EU) 2015/1601 of the council of 22nd September 2015 on instituting temporary measures for international protection in Italy and Greece (EEL 248/24.9.2015). This was preceded by Decision (EU) 2015/1523 of the Council of 14th September 2015 (< http://eur-lex.europa.eu/legal18 content/EL/TXT/HTML/?uri=CELEX:32015D1523&qid=1452674859175&from=EL >). For a timeline of actions see <http://europa.eu/rapid/press-release_IP-15-6134_en.htm>*

times36[10]. However, the relocation request may also be rejected by the Greek Asylum Service during initial processing. More specifically, the Asylum Service, prior to forwarding the request to another member state, checks three databases in order to find out whether the claimant is being or has been prosecuted. If the result of the search is positive, then the request for relocation is rejected, even if, for example, the name of the claimant is a common one, so there is a possibility that the person identified in the databases is in fact someone else. Neither in this case can the claimant sue against this procedure.

Also critical to the guarantee of safe passage and the eradication of illegal trafficking networks is the implementation of the system of resettlement of persons in need of protection by the EU, and who are not in EU territory, but in third countries, such as turkey, Lebanon, and Jordan. For the implementation of this programme, the EU has only made 20,000 places available, while only 16 have been filled to date37, a number which clearly indicates that there is no serious will to offer protection and to eradicate illegal human trafficking. To the contrary, barriers are constantly being erected even in the legal travel procedure for Syrians to third, non-EU countries, because, under EU pressure, Lebanon and Jordan require visas from Syrians entering these countries, while Turkey in turn requires a visa in order to allow Syrians entering from these countries38[11].

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[10] *34 IOM, EU Relocation Programme https://greece.iom.int/sites/default/files/relocation%20updated%2028.pdf.*
35 European Council on Refugees and Exiles, The implementation of the hotspots in Italy and Greece - A study, December 2016, available at: http://www.refworld.org/docid/584ad1734.html [accessed 14 January 2017. See also Monthly report of the Committee on the implementation of the common statement, February 2017: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-wedo/ policies/european-agendamigration/20170302_tenth_report_on_relocation_and_resettlement_en.pdf?utm_source=ECRE+Newsletters&utm_campaign=bcb5da7db9EMAIL_CAMPAIGN_2017_03_03&utm_medium=email&utm_term=0_3ec9497afd-bcb5da7db9-422297753
36 AIDA, Admissibility, responsibility and safety in European asylum procedure, September 2016, www.ecre.org/wp-content/uploads/2016/09/ECRE-AIDA-Admissibility-responsibility-and-safetyin-European-asylum-procedures.pdf content/EL/TXT/HTML/?uri=CELEX:32015D1523&qid=1452674859175&from=EL>). For a timeline of actions, see <http://europa.eu/rapid/press-release_IP-15-6134_en.htm>

[11] *37 See Commission, Recommendation of 8.6.2015 on a European resettlement scheme. «The scheme should consist of a single European pledge of 20 000 resettlement places for persons to be resettled. The duration of the scheme should be two years from the date of the adoption of the Recommendation». Under this system, with the cooperation of UNHCR, a special visa is granted for refugee populations, so that they can travel directly to the receiving country. See also Brussels, 14.10.2015 COM(2015) 510 final Communication from the Commission to the European Parliament, and the Council Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration: "Resettlement Workshop on 2 October developed practical solutions to ensure the effective application of resettlement. The first resettlements have now taken place. Member States should now provide the Commission with information on the number of people they will resettle over the next six months, and from where"- available at: <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/europeanagenda-migration/proposal-implementationpackage/ docs/communication_on_eam_state_of_play_20151014_en.pdf>.*

Equally revealing is the fact that only 162,151 Syrian refugees have been resettled through this system throughout the world, namely only 4% of the 4 million Syrians currently outside of Syria, and only 2% of Syrian refugees[39].

Safe passage, as a political and regulatory goal, both towards Europe and within Europe, is by now a critical issue. The closure, in several places, of the borders, along the route which would be followed by refugees, spanning from the Turkish-Syrian border to the Austrian-Hungarian borders, and, mainly, the EU-Turkey agreement, constitute in practice the withdrawal of the right to safe passage, and dramatically increases the danger of death for people attempting to cross the Aegean as an ultimate means to reach safety. In an extreme oxymoron, the walls and the deal sealed specific parts along the route, thereby diverting the flow at the expense of any concern for the personal safety of refugees. Thousands of people are already finding ways to move from Greece to Germany and elsewhere, thereby exercising their rights in practice, and overcoming legal barriers posed by European law and Greek and European policies. Some have found the conditions in relocation countries or in Greece to be so unacceptable, that they are returning using their own means, ultimately through trafficking networks, back to Greece (e.g. via Romania) or to Turkey, respectively.

Greece already is a country in which people settle long-term, for different reasons, and to people who, potentially against their will, will remain in the country in the medium to long term. The administrative, political and social reception of these people requires the implementation of rights-based policies. Policies which are far removed from immediate removal, and closer to full social integration. Preparation for this day, which may be “tomorrow”, must take place today, with full knowledge of past failures and mistakes. Those “trapped” can no longer remain in camps and in legal limbo. Apart from the other issues, it is impossible to build a policy of long-term integration on the basis of uncertainty. Internal relocation to cities (Athens, Thessaloniki, Livadia, and elsewhere) is encouraging. Yet integration policies are required with regard to housing, education, and access to the labour market.

The implementation of the Dublin III regulation beginning 15th March 2017 – for those asylum claimants “crossing European borders illegally” (using the terminology of the Commission) from that date onwards – seeing as Greece is now a “safe country”[40], in that it provides all guarantees for safe accommodation and effective asylum and return procedures, complicates matters even further, at legal, political and field level, by creating and intra-European flow back into Greece. Greece will have an ever increasing number of *sans papiers*, while those who have a right to international protection will be diverted to other European countries.

G. Invisible People

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[38] See T. Spijkerboer, (2016) Europe’s Refugee Crisis: A Perfect Storm, at: <www.law.ox.ac.uk/research-subject-groups/centrecriminology/centrebordercriminologies/blog/2016/02/europe’s-refugee>
[39] T. Spijkerboer, ibid

On the other hand, it appears that no provision is made for those not meeting the requirements for asylum. Along with those who have been arrested and released under delayed removal, society is also legally obliged to ensure that these people will live in dignified temporary accommodation, run by the state or by a charitable organization, and that their immediate basic needs will be covered, as will access to health care and education. If there is a failure to meet these needs, then, legally, work permits and insurance coverage should be granted instead41[12].

It is certain that the increase in the number of "sans papiers" migrants will put to the test the procedures which have already failed in Greece in recent years (see series of ECHR decisions on the legality of detention and detention conditions, as well as on the rights of special categories, such as minors). "Sans papiers non-refugees" should be managed using criteria that reflect the rule of law, the goal being either for them to return to their country of origin, if of course, this is possible (see spaces and length of detention) or to remain in the country under special provision (e.g. Exceptional reasons for granting a residence permit, labour exploitation, legality conditions). The "we will make their lives unlivable" policies as a measure of deterring entry, are a long way away from any logic reflecting the rule of law. The deprivation of freedom as a means of deterrence42 is reminiscent of dark arguments which cannot be tolerated.

European Court of Human Rights case law has already pointed to some of the issues with regard to illegal detention and detention conditions. Some other issues concern the possibility of integration and procedures of legalization for exceptional reasons, these being the only exit from the grey zone of non-legality, which is a continuum from exploitation of every kind to delinquency.

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[12] *40 http://europa.eu/rapid/press-release_IP-16-4281_en.htm*

41 Article 37.5, v.3907/2011 incorporating Directive 2008/115/EP.

42 E.g. see Decision 8.2.2017, (Ministry of Interior, Hellenic Police Headquarters) according to which a new detention facility for aliens is established on Kos. This decision directly alludes to the operation of the centre as a deterrent: f. The construction of detention facilities will act as a deterrent for new migration flows.