The living conditions for migrants and refugees on the Eastern Aegean islands

Information Note

The geographical restriction

The standards of reception provided by the Greek State in the Eastern Aegean, compared with those required by the ECHR, must be assessed in the context of the restriction of freedom of movement of newly-arrived refugees and migrants confining them to the islands of Lesvos, Chios, Samos, Kos, Leros, and Rhodes as a measure taken in the context of the EU-Turkey Joint Statement,¹ which came into force on March 20, 2016², on the basis of Article 41 (1) (d) (iii) of Law 4375/2016.³

Despite the explicit requirement of a decision by the Director of the Asylum Service, the measure initially took the form of a stamp on the asylum applicants’ cards without any prior decision.⁴ The first official decision, which was issued in May 2017⁵, did not contain any reasons on the imposition of the restriction and was subsequently annulled by the Greek Council of State on 17 April 2018⁶. Three days later a new decision was issued⁷ including only a vague reference to Article 7 of Directive 2013/32/EU⁸ and stating that the measure is imposed for reasons of public interest “and especially for the purpose of implementing the EU-Turkey Joint Statement”.⁹ Under Recital no. 10 of the decision, it was noted that, according to the standard practice of Turkish authorities and in the context of the EU-Turkey Joint Statement, asylum applicants that do not remain on the Aegean islands are not readmitted to Turkey in case of rejection of their application for international protection.

³ Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC, Gazette 51/A/3-4-2016.
⁴ Supra no. 2.
⁵ Decision no. 10464/31.05.2017 of the Director of the Asylum Service (Gazette B’ 1977/07.06.2017).
⁹ Supra no. 7, see Recitals nos. 6, 10 and 11 (c).
This second decision was also challenged before the Council of State but was again replaced in October 2018\textsuperscript{10}, a few days before the Council of State hearing\textsuperscript{11}. The October decision was taken on the basis of Article 7 of the newly introduced Law 4540/2018\textsuperscript{12}, which provided the first but equally vague domestic framework for the imposition of the measure of geographical restriction. That decision was again replaced in June 2019\textsuperscript{13} following an amendment by L. 4609/2019, which provided that the Minister for Migration Policy is now competent to issue decisions on geographical restriction\textsuperscript{14}.

In line with this measure, all refugees and migrants arriving to Greece through any of the six islands after March 20, 2016, were confined to the territory of the island of arrival. At its initial stage of application, the measure also entailed mandatory short-term detention of applicants in the islands’ Reception and Identification Centres (the “hotspots”) for registration purposes\textsuperscript{15}. These centres were part of the European Union’s “hotspot approach”, the implementation of which was considered “closely linked” with the EU-Turkey Joint Statement\textsuperscript{16}. In line with the high arrival numbers, the “Moria hotspot” of Lesvos was designed to be the largest hotspot with a nominal capacity of 3,500 people\textsuperscript{17}. Gradually, the hotspots were reclassified as semi-open facilities where the applicants had to reside until the completion of the asylum procedure, including any appellate proceedings at second and third instance. In the same context, an exceptionally expedited procedure was introduced with Article 60 (4) L. 4375/2016, to manage extraordinary numbers of arrivals but was also “visibly connected to the EU-Turkey Statement”\textsuperscript{18}. The sole exceptions\textsuperscript{19} to the restriction of freedom of movement and the expedited procedure are vulnerable individuals and applicants falling under Regulation 604/2013 (Dublin III)\textsuperscript{20}.

Despite references to the proportional nature and duration of the measure in the last three decisions\textsuperscript{21}, there are no prescribed time limits on the measure and no periodic review of its necessity is foreseen, even after 3 years of implementation of the EU-Turkey Statement and purported improvements in migration flows and management in the region\textsuperscript{22}. The possibility of legal challenge against the measure was first introduced in December 2018\textsuperscript{23} but is practically impossible in the absence of a clear administrative act and lack of legal aid\textsuperscript{24}. According to Article

\textsuperscript{10} Decision 18984/05.10.2018 of the Director of the Asylum Service (Gazette B” – 4427 – 05.10.2018).
\textsuperscript{11} Greek Council for Refugees, Announcement on the second decision of geographical restriction, 9 October 2018 [in Greek]; the case is still pending before the Council of State.
\textsuperscript{13} Decision 13411/19.06.2019 of the Minister for Migration Policy (Gazette B” 2399 – 19.06.2019).
\textsuperscript{14} Article 62 of L. 4609/2019 (Gazette A’ 67/03.05.2019) amending Article 7 of L. 4540/2018.
\textsuperscript{15} European Council on Refugees and Exiles (ECRE), The implementation of the hotspots in Italy and Greece: A study, 5 December 2016, p. 38.
\textsuperscript{17} Supra no. 2, pp. 100-101.
\textsuperscript{18} Supra no. 2, pp. 58-65.
\textsuperscript{19} See Article 2 of the October 2018 (supra no.10) and June 2019 (supra no.13) decisions.
\textsuperscript{20} 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.
\textsuperscript{21} See recitals 13, 10 and 11 in the April 2018 (supra no. 7), October 2018 (supra no. 10) and June 2019 (supra no. 13) decisions respectively.
\textsuperscript{22} European Commission, Progress report on the Implementation of the European Agenda on Migration, 6 March 2019, p. 7.
\textsuperscript{24} ECRE, AIDA Country Report: Greece 2018 Update, p. 121.
7 (3) of L. 4540/2018, violation of the measure of restriction leads to withdrawal of material reception conditions but in practice the consequences include detention and potential criminal charges.25

Living conditions in the hotspots of the Eastern Aegean islands

The living conditions on the islands, which had already been described as chaotic by international actors in 2015,26 sharply deteriorated following the March 2016 developments despite the decrease in new arrivals. Conditions of severe overcrowding, substandard sanitation and safety, as well as mismanagement and a lack of information were documented in as early as May 2016.27 According to Médecins Sans Frontières (MSF), the conditions on Greek islands remained appalling throughout 2016 in what was described as “institutional neglect” and “forced immobility” with traumatic consequences, especially for vulnerable individuals.28 Security incidents and shelter challenges further intensified with the onset of winter.29

Similar concerns were also raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its 2016 visit, when it was emphasised that the situation in the three hotspots of Lesvos, Chios and Samos was characterised by inadequate and overcrowded facilities, insufficient health services, lengthy procedures, as well as lack of information and legal aid. These problems contributed to “increasing anxiety and frustration of foreign nationals due to uncertainty about the future”. The UN Special Rapporteur on the human rights of migrants also described conditions on Lesvos and Samos as “particularly shocking”, noting the lack of vulnerability assessment systems. With regard to the initial measure of hotspot detention, the Special Rapporteur observed that “[mandatory detention] coupled with uncertainty over the future, leads to an immeasurable amount of confusion, frustration, violence and fear among the migrants held in the reception and identification centres on the Greek islands”.33

Substandard reception conditions persisted in 2017 with hotspots hosting individuals at triple their capacity in squalid facilities and a general situation of significant risk to the applicants’ physical and mental well-being. In February 2017, UNHCR appealed to the Greek authorities to address serious reception gaps in the Eastern Aegean and to focus on speedy registration processes.35

References

25 Ibid.
26 UNHCR, UNHCR warns of deepening refugee crisis in Greece and calls for urgent and bold action, 07 August 2015, Médecins Sans Frontières (MSF), Thousands of migrants and asylum seekers stranded in precarious conditions across islands, Press Release, 20 July 2015; Human Rights Watch, Greece: Chaos, Insecurity in Registration Center, 12 October 2015.
28 Médecins Sans Frontières (MSF), Greece in 2016: Vulnerable People Get Left Behind, October 2016.
29 UNHCR, Shelter struggle in Greece as winter arrives, EU urged to speed relocations, 9 December 2016; Norwegian Refugee Council, Terrible conditions for refugees in Greece, 2 December 2016.
30 Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 April and 19 to 25 July 2016, 26 September 2017, p. 19. Ibid.
31 Ibid.
33 Ibid.
Sanitation was reported as alarmingly poor, the security situation was precarious, while food and water supply remained inadequate. Efforts by the Greek authorities to transfer vulnerable applicants to the mainland were outpaced by subsequent increases in arrivals in the summer of 2017. In addition, due to a change in the administrative practice of mainland transfers, vulnerable non-Syrian applicants of international protection were no longer exempt from the geographical restriction and had to remain on the islands at least until their personal interview took place. In December 2017, the Greek National Commission for Human Rights (GNCHR) voiced its concerns about the authorities’ failure to address basic reception needs of asylum applicants in the Eastern Aegean and called on the Greek government to “re-examine the policy of geographical limitation on the East Aegean islands, which on many occasions takes place without the appropriate rule of law guarantees.”

The inescapable situation of continuous overcrowding and deplorable living conditions fuelled intracommunity violence in the hotspots and heavily affected the safety and health of hotspot residents. According to Amnesty International, security incidents recorded in 2017 among the hotspot residents included hate-motivated crimes against transgender women and gay men. The Greek Ombudsman further reported “significant omissions” in the identification and protection of persons who are persecuted on account of their sexual orientation or gender identity.

Serious deficiencies in healthcare provision and lack of access to any other necessary services contributed to feelings of isolation and imprisonment, which remained a widely reported concern among hotspot populations. A report by MSF documented the extent of the failure of island reception mechanisms to prevent a health emergency situation, whose characteristics include flawed vulnerability procedures and complete disregard towards medical conditions that develop on the islands. The vulnerability assessment system was reportedly seriously impacted by the extraordinarily short time limits set by the previously mentioned fast-track procedure with vulnerabilities being routinely overlooked. These procedural deficiencies, coupled with a lack of appropriate accommodation capacity, often resulted in a denial of special reception conditions for extremely vulnerable individuals. Excessively long screening times, as well as frequent changes in vulnerability forms are reportedly leading to stringent assessment procedures and contribute to a general lack of confidence towards hotspot healthcare provision.

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38 Supra no. 36, p. 130.
40 Supra no. 36, pp. 130-131.
41 Supra no. 37.
44 Médecins Sans Frontières (MSF), Confronting the mental health emergency on Samos and Lesvos: Why the containment of asylum seekers on the Greek islands must end, October 2017, p. 12.
45 AIDA, The concept of vulnerability in European asylum procedures, September 2017, p. 25.
47 Supra no. 36, p. 138.
The growing inability to address systemic flaws in site management, protection of vulnerable individuals and the provision of basic needs led to a severe deterioration of the situation in mid-2018, when more than 18,000 asylum applicants were reportedly stranded on the islands. According to UNHCR, overcrowding in the summer of 2018 reached levels that had not been seen since 2016 when arrivals were significantly higher and noted the dangers of makeshift shelters that people resorted to outside the designated hotspot areas. Transfer efforts continued to prove inadequate to alleviate the situation, as they had been slowed down significantly by a lack of mainland reception facilities and continuous island arrivals. Sanitary facilities were described as “woefully inadequate”, sexual violence incidents rose sharply and medical and psychological support remained insufficient. Children and vulnerable people were reportedly exposed to risks of rising incidents of self-harm and suicide attempts in a general context of an “unprecedented health and mental health emergency”. In October 2018, vulnerability assessments halted in the Moria hotspot following the resignation of the centre’s only doctor due to security reasons and a significant backlog of screenings remained unresolved well into 2019.

Following her visit in June 2018, the Commissioner for Human Rights of the Council of Europe reported omnipresent feelings of anxiety and a shared experience of being kept in “limbo”. The Commissioner emphasised that both the geographical restriction and the absence of transfers to the mainland of eligible applicants impede the decongestion of the islands. According to the report, the restriction measure has negatively affected vulnerability assessment procedures with approximately 3,000 people eligible for a mainland transfer remaining on the island. Among the Commissioner’s recommendations was the reconsideration of the use of the geographical restriction, particularly regarding people who are evidently unlikely to be returned. Additionally, in a statement released by the GNCHR, serious concerns were expressed over the human rights situation in the islands and the Greek government was urged to lift the geographical restriction and end “the entrapment of the applicants for international protection […]”. At the judicial level, two judgments by the Thessaloniki Court of Misdemeanour and the Piraeus Administrative Court on the cases of asylum applicants who had violated the geographical restriction both held that their act was justified due to the level of threat that the living conditions on Leros and Lesvos posed to their physical integrity.

In September 2018, a joint statement by 19 international and national NGOs alerted the Greek authorities to a chronically flawed reception system in the Eastern Aegean region, which saw further reductions in healthcare personnel due to an unsustainable working environment and an

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49 UNHCR Greece, Aegean Islands Weekly Snapshot, 10-16 September 2018.
50 UNHCR, UNHCR urges Greece to address overcrowded reception centres on Aegean islands, 31 August 2018.
51 Médecins Sans Frontières (MSF), Self-harm and attempted suicides increasing for child refugees in Lesbos, 17 September 2018.
52 Supra no. 24, p. 87.
53 Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018, p. 17.
54 Ibid., para. 47.
55 Ibid., para. 28.
56 Ibid., para. 57.
58 See supra 24, p. 131
59 Joint NGO Statement for Conditions on the North Aegean Islands: Conditions at Moria are “shameful”, 13 December 2018.
alarming neglect towards extremely vulnerable individuals. At the same time, the Regional Authority of the Northern Aegean warned that the Moria hotspot would have to close down on public health grounds if the Ministry of Migration Policy does not address the appalling conditions. Despite the urgent transfer of 6,500 people to the mainland, the situation remained critical for all islands as 11,000 individuals arrived in the autumn. At the end of 2018, the Moria hotspot still hosted individuals double its capacity, while the Samos hotspot population was at five times its capacity. The documented increase in suicide attempts among children in 2018 prompted the MSF to urge the Greek government to end the restriction and stop relying on the “cycle of emergency decongestions”.

UNHCR assisted in another transfer of 2,000 applicants to the mainland in December but the numbers remained practically unvaried in the beginning of 2019 as 2,000 individuals arrived in January. Throughout the first semester of 2019 population numbers were consistently high with approximately 14,000 individuals being hosted in island hotspots and a further increase to 16,400 individuals by mid-June 2019. On the third anniversary of the EU-Turkey Joint Statement, 25 international and domestic NGOs urged European leaders to end the “recurrent and endless cycle of overcrowding, substandard living conditions and extremely poor access to services”, while MSF also called for an end to the steady deterioration of the health of thousands of migrants on the islands since the entry into force of the Statement. In April 2019, the Parliamentary Assembly of the Council of Europe expressed its concern over the substandard conditions and reports of violence and human trafficking on the Greek islands, noting that the implementation of the “hotspot” approach is not in line with the Geneva Refugee Convention and the European Convention on Human Rights. Greek authorities were further invited to rapidly improve living conditions and to revise the practice of mainland transfers away from a vulnerability-centred model.

The standards of material reception conditions in Greece were referred to as “a great concern” in the 2018 EASO Annual Report on asylum in the EU, where the worrying situation of vulnerable applicants and the prevalence of sexual violence were particularly noted. Overcrowding was singled out as a significant factor that placed heavy pressure on reception and medical services and contributed to tensions between migrants and the local population. In the recent update of the 2016 opinion of the European Union Agency for Fundamental Rights on the Greek and Italian hotspots, the agency noted that the infrastructure on the Greek islands is not appropriate for longer

60 Oxfam Report, Oxfam, Vulnerable and abandoned: How the Greek reception system is failing to protect the most vulnerable people seeking asylum, 9 January 2019, pp. 4-6.
61 Kathimerini, Moria migrant camp faces closure over living conditions, 10 September 2018.
62 UNHCR, UNHCR urges Greece to accelerate emergency measures to address conditions on Samos and Lesvos, 6 November 2018.
63 Supra no. 24, p. 129.
64 Supra no. 51.
65 UNHCR, Thousands of asylum-seekers moved off Greek islands, 27 December 2018.
66 Kathimerini, About 2,000 migrants arrived on Greek islands in January, 11 February 2019.
68 25 NGOs, Letter to European Leaders, 14 March 2019.
69 Médecins Sans Frontières (MSF), EU-Turkey deal continues cycle of containment and despair, 18 March 2019.
72 Ibid, p. 10
stay, which results “in interference in a wide array of individuals’ rights including right to human dignity, rights of the child and others [...]”\textsuperscript{73}. The update analyses the structural situation of the reception mechanisms and considers coordination and staffing challenges as contributing factors to delays in actions to improve the living conditions\textsuperscript{74}. Excessively long age assessment procedures\textsuperscript{75} and vulnerability identification\textsuperscript{76}, as well as serious gaps in the safety of hotspot residents\textsuperscript{77}, are also considered in a systemic analysis. The living conditions as a result of long-standing structural and management deficiencies of the island reception system were also the subject of an analysis by Refugee Support Aegean and PROASYL\textsuperscript{78}.

\textsuperscript{73} Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy, February 2019, p. 23
\textsuperscript{74} Ibid, pp. 27-32
\textsuperscript{75} Ibid, p. 40.
\textsuperscript{76} Ibid, p. 47.
\textsuperscript{77} Ibid, pp. 50-54.
\textsuperscript{78} RSA Aegean & PROASYL, Structural Failure: Why Greece’s reception system failed to provide durable solutions, 18 June 2019.