

# The European Union Migrant and Refugee Crisis in Greece

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## ABSTRACT

The European Union is currently facing one of the biggest challenges since its establishment. Thousands of migrants and refugees from the Middle East have been arriving the last years at its borders, mainly in Greece, seeking asylum and chasing a better life. This article discusses this migrant and refugee crisis, which takes part physically in Greece but has been handled to a large extent by the EU and has brought consequences to all its member states. The introductory part offers some clarifications on the issue, by providing a brief historical context of migration and explaining the reasons of the geographical placement of the crisis. Important definitions are also stated in order to avoid misunderstandings of commonly mixed terms. In the main part, there is an extensive analysis of the EU-Turkey Statement, supplemented by statistics and data, and an examination of its compliance with human rights. Finally, the article touches on the major issue of migrant and refugee minors, as they represent a high percentage of the total and they increase the complexity of the crisis.

**KEYWORDS:** Refugee Crisis, Migrant Crisis, Asylum, EU-Turkey Statement, Minors

## POVZETEK

Evropska unija se trenutno sooča z enim izmed največjih izzivov svojega časa. Njene meje minulih nekaj let, še posebej na ozemlju Grčije, neprestano prehaja na tisoče migrantov in beguncev z Bližnjega vzhoda, ki iščejo zatočišče in boljše življenje. Članek obravnava migrantsko in begunsko krizo, ki je dejansko sicer prisotna v Grčiji, a jo v veliki meri obvladuje Evropska unija. Posledično se njen vpliv tako širi na vse države članice. V uvodnem delu je ozadje krize pojasnjeno s kratkim vpogledom v zgodovino migracij in njen geografski položaj. Za boljše razumevanje besedila in v izogib napačnim razlagam, so podane definicije pogosto zamenjujočih se terminov. Jedro članka vsebuje obširno analizo dogovora, sklenjenega med EU in Turčijo, upoštevajoč statistične in druge podatke ter skladnost vsebine dogovora s spoštovanjem človekovih pravic. Članek se prav tako dotakne problematike mladoletnih migrantov in beguncev, ki predstavljajo visok odstotek prišlekov in pripomorejo h kompleksnosti krize.

**KLJUČNE BESEDE:** Begunska kriza, migrantska kriza, azil, dogovor EU-Turčija, mladoletniki

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## INTRODUCTION

“Every day, all over the world, people make one of the most difficult decisions in their lives: to leave their homes in search of a safer, better life.”

Amnesty International

In this article, we analyse the contemporary migrant and refugee crisis that is occurring mainly in Greece, and, as a logical extension, affecting the whole European Union. Although the crisis itself is a well-known fact, there are a lot of misconceptions around it that the article attempts to shed light on. Our purpose is to present the crisis in its real dimension and assess the effectiveness of the EU-Turkey Agreement, which is considered by the EU as its main “tool” to normalize the situation.

Firstly, we are going to give a very brief historical background of international migration, in order to clarify which is the flow that this contribution examines. We are also going to explain briefly that Greece’s geographical location constitutes a strong pull factor for migration but, in principle, this crisis concerns the whole European Union. Afterwards, we are going to define the terms of “refugee”, “asylum-seeker” and “migrant”, which differ significantly and play a crucial role to the status and rights of the individuals who try to make their way to the EU. In the main part, we are going to analyse the key elements of the EU-Turkey Statement, which forms a milestone in the years of the crisis and is supposed to serve as a panacea for the hordes of migrants and refugees that have been arriving to Greece since 2015. However, this article argues that, depending on the perspective from which the agreement is evaluated, one can conclude to contradicting results regarding its effectiveness. More precisely, the fact that the agreement has been characterised as a success by the EU does not necessarily mean that it has been beneficial for migrants and refugees or for Turkey, and vice-versa. In the same spirit, the article is going to examine the compliance of the agreement with human rights in the EU, and express doubts on whether it could be fully supported. As we will also observe with the use of statistics, the sole fact that the number of individuals seeking international protection in Europe has been reduced considerably, does not automatically mean that the EU has fulfilled its legal and ethical obligations towards the migrants and refugees. Finally, this contribution is going to refer to the very

specific and sensitive issue of migrant and refugee children. We will point out the main inefficiencies of the current system, while suggesting a way forward which could offer better protection to the most vulnerable actors involved in this crisis.

## **HISTORICAL BACKGROUND**

To begin with, it is important to cite some background historical facts that may reinforce our already existing knowledge on migration and will assist us in disassembling the different waves of migration that have taken place over the years.

The movement of people is a historical event since the ancient times. The intensity and magnitude of such movements have been influenced by different causes, such as climate change, demographic problems, or socio-economic events. The period from the mid-19th century until World War I is characterized by the dynamic entrance of Europeans into the underdeveloped world of Africa and Asia, deriving from their effort to find new markets and sources of energy, but also from their steadfast faith in the superiority of the western culture and their duty of exporting values.

However, international migration was interrupted in 1914 and during the interwar period because of xenophobia, financial hardship and certain institutional regulations like the Emergency Immigration

Act of 1921<sup>2</sup> and the Immigration Act of 1924.<sup>3</sup> When World War II was over, Europe had started accepting new migratory waves of thousands of people who were seeking work and, at the same time, were contributing to the reconstruction of the economy. In 1998, most of the population that was seeking asylum in European states was coming from Ukraine, Georgia, Romania, Bulgaria and Albania. Later on, for the last thirty years or so, Europe has been a pole of attraction for new and enormous dimensions of migration and refugee flows from Middle Eastern states, such as Syria, sub-Saharan Africa, such as the Democratic Republic of the Congo, Cameroon, Eritrea, Ethiopia and Nigeria, and Asia, such as Afghanistan and Pakistan. Therefore, the current migration and refugee crisis, which has mainly emerged

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2 An Act to limit the immigration of aliens into the United States, United States Law Pub. L. 67-5, May 19, 1921.

3 An Act to limit the immigration of aliens into the United States, and for other purposes, United States Law Pub. L. 68 - 139, May 26, 1924.

as a consequence of the war in Syria, is also related to the waves of migration that have been observed in recent years states in European territories. In this article, we will examine the crisis as a whole, involving both migrants and refugees, and, even if we will focus on Greece as the main entry point to Europe, we will inevitably, analyse the situation and the facts from a broader, European perspective.

### **THE GEOGRAPHIC LOCATION AS A PULL FACTOR**

In order to achieve a better understanding of the reasons of the placement of the crisis, it would be useful to explain the geographic location of Greece as a pull factor for migrants and refugees. After all, someone could easily wonder why a country with a relatively weak economy and a high percentage of unemployment would be attractive to so many people.

Greece, one of the southeast countries of Europe, being a crossroad of Europe, Asia, and Africa, is usually not the final destination for migrants from Asia and Africa but is seen as a gateway or stepping stone to the Schengen area by flows of immigrants, especially originating from the Middle East (Antonopoulos and Winterdyk, 2006). Greece's very particular geographic characteristics, such as the long coastline and the unusually large number of islands, make the policing of the migrants' entry an extremely challenging, if not impossible, task, although the situation has been admittedly improved over the past years. The fact that Greece is neighbouring with Turkey is also a major pull factor of immigration, especially illegal, since the vast majority of illegal immigrants are reaching Greece from that side. Accordingly, it does not come as a surprise that the majority of illegal immigration to the European Union flows through Greece's porous borders. In fact, in 2015, the year before the EU-Turkey Settlement, the illegal border crossings from Turkey to Greece reached their peak, with an estimate of 885,000 of people.<sup>4</sup> For these reasons, Greece is an attractive entry point to many immigrants who mainly try to gain access to the rest of the European Union.

### **DEFINITIONS**

For the better understanding of this article and, specifically, the section referring to the EU-Turkey Statement, it is also crucial to distin-

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<sup>4</sup> Frontex, Detections of illegal border-crossing statistics.

guish between the terms “refugee”, “asylum-seeker” and “migrant”. These terms are used to describe people who are on the move, who have left their countries and have crossed borders and, even if they are often used interchangeably, they have important differences. In order to enhance precision and clarity, we are going to state herein below the definitions of these terms:

**Refugee:** A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable to or, owing to such fear, is unwilling to return to it.<sup>5</sup>

**Asylum seeker:** An individual who is seeking international protection.<sup>6</sup> In countries with individualised procedures, an asylum seeker is someone whose claim has not yet been decided on by the country in which he/she has submitted it.<sup>7</sup> Not every asylum seeker will ultimately be recognised as refugee, but every recognised refugee is initially an asylum seeker.<sup>8</sup>

**Migrant:** At the international level, there exists no universally accepted definition for “migrant”. According to the International Organization for Migration, migrant is an umbrella term, used for any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.<sup>9</sup> In line with this definition, the former IOM’s Director General William L. Swing has summarized the relationship between migrants and refugees as follows: “All refugees are migrants, but not every migrant is a refugee.”<sup>10</sup>

5 Convention relating to the Status of Refugees (adopted July 28, 1951 and entered into force April 22, 1954).

6 International Organization for Migration, Glossary on Migration, No 34, p.12.

7 *Ibid.*

8 *Ibid.*

9 Adapted from Art. 1A (2) of the Convention relating to the Status of Refugees (adopted July 28, 1951 and entered into force April 22, 1954).

10 Opening Remarks of William L. Swing, Director General of International Organization for Migration, to the Summit at the United Nations General Assembly in New York, United States of America, September 20, 2016.

## EU-TURKEY STATEMENT

The EU-Turkey Statement (often referred to as the EU-Turkey Agreement or the EU-Turkey Deal) is currently the most influencing tool on the migration and refugee crisis in Europe. On 18 March 2016, the European Union and the Republic of Turkey concluded this agreement, in the form of a Joint Statement, with the main goal of stemming the flow of refugees who have fled violence in the Middle East and civil war in Syria, passing through Turkey into the EU. The deal incorporates nine key elements, which will be stated below in a compressed way, focusing only on their essence:<sup>11</sup>

- 1) All new irregular migrants crossing from Turkey into Greek islands as of 20 March 2016 will be returned to Turkey, in accordance with EU and international law.
- 2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU.
- 3) Turkey will take all necessary measures to prevent new sea or land routes from opening from Turkey to the EU.
- 4) Once irregular crossings between Turkey and the EU have been reduced, a Voluntary Humanitarian Admission Scheme will be activated.
- 5) The visa liberalisation process will be accelerated with the view of lifting visa requirements for Turkish citizens at the end of June 2016, provided that all benchmarks have been met by Turkey.
- 6) The EU will fund Turkey with a total of 6 billion euros under the Facility for Refugees in Turkey.
- 7) The work on upgrading the Customs Union will continue.
- 8) The accession process will be re-energised.
- 9) The parties will cooperate on improving humanitarian conditions in Syria.

By reading just the first element, it is immediately understood that the distinction between the terms of irregular migrants and refugees forms an important factor of the agreement. Turkey has committed to take back the irregular migrants arriving in Greece and, according

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<sup>11</sup> Council of the European Union, Press Release, March 18, 2016.

to the second element, the parties have agreed to establish a one in, one out resettlement scheme. This means that migrants who either do not wish to apply for asylum within the EU, or whose application has been rejected, are expelled under the agreement.<sup>12</sup> The scope of irregular immigrants also includes those who apply for asylum but have arrived from a safe country where they could have claimed protection. The rest, apparently, acquire the status of refugees and are granted access to the EU.

As far as the aim of the agreement is concerned, as we move on to examine carefully all the elements, it becomes very clear that from the EU side, the agreement was seeking to discourage irregular migration to Europe and prevent people from resorting to the dangerous and illegal routes across the Mediterranean and the Aegean Sea, which result undoubtedly to a high rate of mortality within migrants. As the EU suggested in its statement one year after the agreement had come into force, indeed its main objectives were the “reduction of both the number of persons arriving irregularly to the EU and the loss of life in the Aegean, whilst providing safe and legal routes to the EU for those in need”.<sup>13</sup> These objectives are incorporated in the first and third point of the agreement. Specifically, the first point decreases incentives for migrants to try to reach Europe while the third point binds Turkey to prevent new sea and land borders from opening, as migrants might be in search of alternative routes to Europe than crossing through the sea. These policies, consequently, contribute to the reduction of the number of lives lost at sea.

Now the major question that rises is to what extent, if at all, these objectives have been met, thus making this agreement successful. Although a following section will present in much detail, among others, the number of migrants and refugees that have managed to make their way into the EU over the last 4 years, we can briefly mention that the number of people crossing the sea from Turkey to Greece has decreased significantly, reaching at times a decrease of 97%.<sup>14</sup> It is safe, therefore, to consider the objective of discouraging irregular migration to Europe fulfilled. In the same spirit, considering that Turkey followed a policy that struck down hard on smugglers, there has been improvement on this area, too.

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12 *Ibid.*

13 European Commission, EU-Turkey Statement One Year On, March 17, 2017.

14 European Commission, EU-Turkey Statement, The Commission's contribution to the leader's agenda, December 2017, p.1.

However, the real, objective answer to how successful the agreement has been, depends on what goals are used as yardsticks for measuring any success. If the sole objective was to decrease the number of asylum seekers that reach Greece from Turkey, then the agreement has been an absolute success. Nevertheless, facing the situation from a humanitarian point of view, if the goal was to cut off dangerous journeys for migrants, or raise humanitarian standards for refugees, then it is doubtful to what extent these goals have been achieved. For instance, there has been no evidence that sufficient safe and legal routes have been created, in order to undermine the smugglers' business model. On the contrary, due to the fact that the options of getting to Europe have been minimised in one way or another, there are well founded concerns that immigrants might resort to even riskier routes to the EU, such as through Libya.

As far as Greece is concerned, while it is true that the number of people crossing the borders from Turkey to Greece has decreased overall, the number of asylum seekers has increased significantly. This is because, as we already mentioned, before the agreement, Greece was used mainly as a getaway to wealthier EU countries, while afterwards, the entry to the rest of the EU was blocked, shifting in this way the responsibility of reception in the EU onto Greece. As a result, Greece, which has been always receiving and still receives the vast majority of migrants and refugees coming to the EU, has become overwhelmed by the extremely demanding and constant task of processing asylum claims, while hosting refugees in camps, and, possibly, granting asylum (Collett, 2016). In addition, while it may seem that Greece could implement the agreement and simply return asylum seekers to Turkey, the reality is completely different. Greece's asylum system is not yet fully developed and the assessment requires a lot of time, running the risk, at times, of proceeding to not so legitimate returns. This shortcoming, combined with the reluctance of other EU states to assist, has also deteriorated the protection for refugees that the Greek system is capable of offering. Unfortunately, there are currently thousands of refugees that are living in challenging conditions, expecting Greece's overburdened system to process their asylum applications and provide for their basic needs. From this point of view, therefore, the agreement has managed to shift the burden from the EU, but at a significant humanitarian cost.

On the other side, the points of the agreement relevant to Turkey



have not seen much progress either. For instance, there have been taken no steps towards the implementation of the fifth point of the agreement, regarding the visa facilitation plan, and, as the EU reports, there are still seven outstanding benchmarks that need to be fulfilled by Turkey.<sup>15</sup> Two other highly desired topics for Turkey, incorporated in points seven and eight of the agreement, namely the upgrading of the Customs Union and the re-opening of accession talks, have also remained static, leaving the Customs Union agreement out-dated, and the accession talks paused. Furthermore, the Voluntary Humanitarian Admission Scheme, which is envisaged as a “system of solidarity and burden sharing with Turkey for the protection of persons forcefully displaced to Turkey as a result of the conflict in Syria”<sup>16</sup> has not yet been materialised, despite the relatively low rates of irregular migration. Thus, although Turkey is hosting an extremely big amount of refugees, it does not look like it has benefited from the deal. On the contrary, it feels that it has overloaded itself, accepting more people than it would do without the deal, due to its closer proximity to refugee countries of origin.

#### **COMPLIANCE OF THE EU-TURKEY STATEMENT WITH HUMAN RIGHTS IN THE EUROPEAN UNION**

In order to answer the question of whether the EU-Turkey Deal complies with human rights, we should try to analyse the relevant international and European Union law concerning the human rights of migrants and refugees. In this regard, the legal sources consist primarily of the Refugee Convention,<sup>17</sup> the European Convention on Human Rights (ECHR)<sup>18</sup> and primary and secondary EU law.

The Refugee Convention forms the cornerstone of international protection of refugees. Apart from a widely accepted definition of a refugee, the Convention provides us with the basic refugee rights. Although it is not considered European Law *per se*, it is applicable in the European Union both directly, since all of the EU member states have ratified the Convention, and indirectly, as it is implemented in primary and secondary law of the Union. This means that EU mem-

<sup>15</sup> European Commission, Commission Staff Working Document, Turkey 2019 Report, May 29, 2019, p.49.

<sup>16</sup> Council of the European Union, Voluntary Humanitarian Admission Scheme with Turkey, December 5, 2017, p.13.

<sup>17</sup> Convention relating to the Status of Refugees (adopted July 28, 1951 and entered into force April 22, 1954).

<sup>18</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature November 4, 1950 and entered into force September 3, 1953).

ber states are bound by the provisions of the Convention and are supposed to safeguard the rights of the refugees, or run the risk of being held accountable for violating the obligations imposed by the Convention.

However, the Convention enabled states to make a declaration when becoming a party, pertinent to the application of the Convention, according to which the words “events occurring before 1 January 1951” are understood to mean “events occurring in Europe” prior to that date. This allowed certain states parties to adopt it with a geographical limitation, applying therefore only to people originating from Europe. Turkey is one of these parties, and only recognises European asylum seekers as refugees, which automatically means that people originating from Syria cannot be perceived as refugees, but solely as seekers of international protection. In other words, Turkey is not bound to apply the Convention towards them, raising the possibility of violations of human rights that are safeguarded in it.

In order to figure out, therefore, whether the EU complied with its human rights obligations under EU law when concluding the Agreement, we should examine the notion of the “safe third country”. The safe third country concept forms part of the EU law and, the fact that Turkey is considered a safe third country is the premise on which the transfer of asylum seekers from Greece is based on. The EU-Turkey Deal rests on the assumption that asylum applicants could have obtained international protection in Turkey and therefore Greece, or other EU states, are entitled to reject responsibility for the protection claim. Through this process, possible claims can be declared inadmissible even without a full examination of the merits. It is arguable, though, if Turkey constitutes indeed a safe third country. First, the sole fact that Turkey hosts over four millions of migrants and refugees means that it may not have the adequate resources to offer refugees a safe environment, where they can easily integrate and develop.<sup>19</sup> This can cause social tensions between the local populations and the refugees, turning the second into underclass civilians. Secondly, over the past years Turkey has returned refugees back to Syria multiple times, which is a direct violation of international refugee law that establishes that refugees shall not be returned to their countries of origin forcibly.<sup>20</sup>

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19 The UN Refugee Agency, Global Focus UNHCR Operations Worldwide, March 2020.

20 Amnesty International, Press Release Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-

Thirdly, there have been reports indicating that conditions at Turkey's refugee camps are inhumane and fail to meet basic needs, such as clean water, emergency medical services, and protection from dangers such as kidnappings.<sup>21</sup> Thus, the classification of Turkey as a safe third country is admittedly ambiguous.

Moving on to other legal instruments, internationally protected human rights in the EU also derive from the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This Convention was adopted in the Council of Europe, and applies to all its member states, even the non-EU ones, such as Turkey. Having said that, it should be pointed out that the issue here is that European Union itself is not a contracting party to the Convention, and, from a strictly legal point of view, it does not have to comply with the obligations that the Convention imposes. In contrast, all the members of the Council of Europe are bound by the ECHR and can be held accountable by the European Court of Human Rights, established by the Convention, if they violate the rights of any individual as specified in the Convention. For the record, the Treaty of the European Union stipulates that the EU shall accede to the Convention and that the fundamental rights of the ECHR form, anyway, part of the general principles of the EU.<sup>22</sup> However, since the provisions of the ECHR are not legally binding for the EU, its institutions and its organisations, it would be quite unfounded to support that the EU breaches its human rights obligations if it does not act in accordance with the Convention.

It is arguable, therefore, whether the EU-Turkey Statement complies with human rights. The answer cannot be straightforward and would probably vary based on multiple factors, such as which legal instruments are put under consideration, which side of the deal we refer to, or whether we examine the letter or the spirit of the law.

### **THE EU-TURKEY STATEMENT IN NUMBERS**

As it was mentioned earlier, it would be particularly helpful to cite some statistics and data that actually prove the results of the EU-Tur-

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Turkey Deal, April 1, 2016.

21 *Ibid.*

22 Treaty on European Union (Consolidated Version), (opened for signature February 7, 1992 and entered into force November 1, 1993), Art. 6.

key Agreement. To begin with, it is interesting to see the immediate effect after the deal was signed. The daily average of irregular crossings from Turkey into the Aegean islands fell from 1,794 in the period from January to 16 March to 80 from its activation to 7 March 2018.<sup>23</sup> In more general terms, we can say that more than 1 million refugees arrived in Europe in 2015, but by 2017, the total dropped to 200,000, and further to 150,000 in 2018. In the first half of 2019, about 40,000 arrivals were recorded— just 37 percent of those during the same period in 2018— while the number of people crossing in the Aegean Sea also fell off dramatically, from a high of 10,000 arrivals a day in 2015 to fewer than 100.

However, the numbers are not so encouraging as far as the returns of all new irregular migrants from Greece to Turkey are concerned. The pace of returns to Turkey from the Greek islands under the Statement has been very slow from the beginning, especially concerning Syrians, with only 2,745 migrants in total returned since March 2016. The European Commission has blamed Greece directly for this thorn, stating that the major obstacle to progress is linked to the lengthy asylum procedures currently in place. Greece, however, has made significant changes in the Greek law in order to accelerate returns from both the mainland and the islands, even in an already overburdened system. Needless to say, further actions are still required to address the pre-return processes, but they would be more effective if the Commission was contributing to them and the situation was tackled by the EU as a whole.

Moving on to the numbers concerning the resettlement of Syrian refugees to EU member states, we should start by mentioning the 72,000 “cap” included in the deal, as a feasible limit to EU’s capabilities.<sup>24</sup>

However, the EU fell well short of this limit, managing to find a home to only around 26,500 Syrians who were living in Turkey, almost all of whom landed in wealthy countries, such as Germany, The Netherlands, France and Finland. But even if this limit had been fulfilled, it would still need to be noted that 72,000 is by itself a paltry number compared to the enormous burden shouldered by Turkey (Hockenos, 2020), and the number of 108,000 that international aid agencies,

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23 European Commission, Commission Staff Working Document, Turkey 2018 Report, April 17, 2018, p 46.

24 European Commission, Press Corner: EU and Turkey agree European response to refugee crisis, March 19, 2016.

such as the International Rescue Committee, claimed that would be a fair contribution by some of the world's richest countries.<sup>25</sup> Moreover, the limit falls far short of the demand, as there have been millions of migrants and refugees since 2015 who attempt to enter the EU.

Hence, we can see that both the returns of all new irregular migrants from Greece to Turkey and the resettlement of refugees under the Statement are continuous challenges, which require strong will and commitment from the EU in order to be implemented. The situation forms definitely a multi-layered problem, which, in a nutshell, requires political pressure, public support and the capacity and logistics to be dealt with. In any case, it is crucial that the EU acts decisively and assumes its responsibilities, as one of the wealthiest continents in the world. At the same time, the burden needs to be shifted from Greece and Turkey, which are currently hosting the vast majority of migrants and refugees, while their resources are already strained. After all, we cannot forget that the future rebuilding of currently refugee-producing states will be for the sake of everyone. In the long term, it will be the same people who are now fleeing from conflict-torn states like Syria that will contribute to the reconstruction of their countries of origin when the conflicts are over (Betts, 2016). But for refugees to rebuild, they need to be provided now for an opportunity to health, education, work and, above all, an opportunity to a decent life.

### **THE ISSUE OF REFUGEE AND MIGRANT CHILDREN**

As we are approaching the end of this article, it is absolutely necessary to draw attention to the major issue of migrant and refugee minors. Since the beginning of the migrant and refugee crisis in Europe, more than one in four of the total of the people who have crossed the Mediterranean Sea to the EU is a child.<sup>26</sup> Children are among the most at risk of migrants and refugees. For some children, the adventure ends when they manage to step foot on Greek land, after perilous border crossings or rough sea, while some others tragically never arrive at their destination.<sup>27</sup> In any case, either during their journey or during their temporary stay in Greece as asylum seekers, children are very often exposed to various misfortunes, such as sicknesses or

25 International Rescue Committee, Press Release: The proposed EU-Turkey deal won't work. March 17, 2016.

26 Latest statistics and graphics on refugee and migrant children, Data by UNICEF, UNHCR and IOM.

27 One migrant child reported dead or missing every day, UN calls for more protection. *UN News*.

injuries, while they may even face violations of their rights and threats to their lives and well-being. The list of difficulties can get even longer when referring to the children who travel without a parent or guardian and claim asylum in Europe as unaccompanied.

Although the most hazardous part for children is considered to be their journey to a land of the EU, their arrival to Greece can actually be equally challenging. When they reach the borders or shortly after they arrive at a Greek island, children are stopped – either together with, or without their family members – and held for a short period to clarify what actions are to be taken. This short period of detention is already difficult to justify and to implement in line with fundamental rights and definitely not in the children’s best interests. Children are held at police stations, holding rooms close to the borders or special facilities, usually for a few hours or overnight, pending a decision as to whether they are to be placed in an open facility, ordered into detention or returned to Turkey or to their land of origin.<sup>28</sup> In principle, the detention period cannot be extensive. However, in cases where it is considered absolutely necessary for the asylum procedure or for the preparation of an individual’s removal, the detention period might be longer, and EU member states are obliged to notify swiftly the person concerned of this decision.<sup>29</sup> In most cases, this decision requires the involvement of judicial authorities to order detention, and the judges normally have a maximum of 72 hours to confirm the deprivation of liberty.<sup>30</sup>

Experts report that detention undeniably affects children, and can have short and long-term consequences on their mental health, and affect them long after their release (Newman, 2013, p.218). Particularly unaccompanied children are even more vulnerable in detention facilities, as they lack the support of a parent or a guardian. This is why the detention of unaccompanied children who are applying for asylum is allowed only in exceptional circumstances, separately from adults, and never in prison accommodation.<sup>31</sup> In practice, though, detention of unaccompanied children seeking asylum at airports or other borders is not uncommon. Furthermore, even if Greek le-

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28 European Union Agency for Fundamental Rights, European legal and policy framework on immigration detention of children, p.12.

29 *Ibid.*

30 *Ibid.*

31 Directive 2013/33/EU of the European Parliament and of the Council of June 26, 2013 laying down standards for the reception of applicants for international protection, Art. 11(3).

gislation states that in the absence of a parent or a guardian, the Public Prosecutor for Minors shall act as a provisional guardian,<sup>32</sup> the reality is that it is impossible for the Public Prosecutors to deal with the enormous number of unaccompanied minors who are referred to them for protection. As a result, there are numerous cases of unaccompanied children in Greece who are completely neglected and run a high risk of being exposed to human rights violations or criminal channels.

In addition, what is not uncommon is that even though there is a regulated Age Assessment Procedure,<sup>33</sup> children are not properly identified and their ages are often assessed incorrectly. Although according to the relevant law,<sup>34</sup> until the Age Assessment ruling is issued, the person shall be considered to be a minor, this principle is not always followed. Due to the limited human resources and costs involved, as well as the complicated nature of the law itself, police and coast guards rarely comply with this principle.<sup>35</sup> This means that, inevitably, many teenagers are registered as adults by the authorities and end up falling outside the protection regime for children. Thus, they are placed in camps alongside adults and are deprived of any guardianship assistance they may actually be entitled to. Most importantly, their registration may have a detrimental effect on the examination of their asylum claims, since they may be returned to Turkey in the context of the EU-Turkey Agreement.

Moreover, due to the fact that Greece's system is already drained, there is a huge lack of proper detention facilities. Although Greece is one of the EU states that have established specialised facilities for children, conditions in these facilities are not always as child-friendly as they are supposed to be. For instance, many of them are like prisons, surrounded by barbed wire and inspected by officers who wear fatigues.<sup>36</sup> On top of that, these facilities often reach their maximum capacity, which means that children may end up living in overcrowded camps by the sea, with no access to education or entertainment. Sometimes, they also live under poor hygiene conditions, while there have even been reports indicating that there are minors who have

32 Official Government Gazette A 63, Presidential Decree 61/1999.

33 Official Government Gazette B' 2745/29.10.2013, Ministerial Decision 92490/29.10.2013, Art. 6.

34 Official Government Gazette A 51/03.04.2016, Law 4375/2016, Art. 14 (9).

35 Defence for Children, 2017, p.5.

36 European Union Agency for Fundamental Rights, European legal and policy framework on immigration detention of children, p.7.

been exposed to the threat of violence or sexual assault.<sup>37</sup> This situation, obviously, is a big risk to the well-being and development of children and can cause severe consequences to their mental state and, in some cases, even increase the risk of self-harm.

It is beyond doubt, therefore, that immigration detention of children remains a major challenge in the EU. As every individual, children need and have a right to protection,<sup>38</sup> as well as a right to liberty and security.<sup>39</sup> This is why EU member states should be sparing with placing children in detention facilities and maximise their efforts to speed up asylum claims processing. They should also comply fully with the strict procedural safeguards – such as the right to judicial review, access to free legal aid and linguistic support – that protect children from arbitrary deprivation of liberty.<sup>40</sup> These safeguards are further complemented by the duty to conduct procedures and provide information in a child-friendly manner, as well as the duty to assign a legal representative to unaccompanied children.<sup>41</sup> Finally, although it is not explicitly envisaged in the EU standards for reception, the specialised facilities should employ staff who have received specific training on child protection and are able to understand their needs and promote their well-being. Along the same lines and given the fact that a permanent guardian system is not yet established, national child protection authorities should aim at playing a more decisive role, such as actively take part in deciding whether or not a child should be detained, or in monitoring detention facilities. All in all, the EU should make sure that children’s right to protection and care and the principle of the best interests of the child are the driving force behind every policy regarding the migrant and refugee crisis.

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37 ECPAT Country Overview: A report on the scale, scope and context of the sexual exploitation of children in Greece, 2019, p.6.

38 Charter of Fundamental Rights of the European Union, Art. 24.

39 Charter of Fundamental Rights of the European Union, Art. 6 and Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature November 4, 1950 and entered into force September 3, 1953), Art. 5.

40 Directive 2013/33/EU of the European Parliament and of the Council of June 26, 2013 laying down standards for the reception of applicants for international protection, Art. 9(3),(4),(6) .

41 *Ibid.*, Art. 24.



## CONCLUSION

The migrant and refugee crisis is not a simple problem and there is definitely no straightforward way to eliminate it. In order to achieve a sustainable solution, the EU, before all, needs to identify and tackle its root causes. Obviously, it would be naive to support that the EU can modify its geographic location or have an impact on the situation in the Middle East. So by root causes of the crisis, we mostly refer to the inadequate management of the flow of people seeking international protection and the insufficient protection of their human rights.

As this article tried to prove through the analysis of the EU-Turkey Statement, legal instruments and statistics, the EU may have managed to reduce the number of people who cross the Mediterranean Sea, but its overall contribution to the alleviation of the situation is ambiguous. After all, no one can deny that there are still thousands of migrants and refugees who put their lives at risk by attempting to enter irregularly in the EU, or live under challenging conditions in migration camps in Greece, waiting for their claims to be processed. And in order to be realistic, we shall add to this sequence of dramatic facts the crucial issue of minors. As we pointed out, the sole fact that this crisis involves an outrageous number of children gives to the situation a different dimension, leaving no margin of discretion as to whether or not to take action urgently and decisively.

This is why it becomes imperative for the European Union to adopt a comprehensive and coherent immigration and asylum policy, which needs to be based on mutual trust and the sharing of responsibilities between member states. It is of utmost importance that the crisis is dealt by EU as a whole, and that the burden is not shifted between states in an effort to wriggle out of their responsibilities. Instead, the member states should aim at creating safe passages for migrants and refugees, improve their national asylum processing systems and strengthen their monitoring system to ensure that the most vulnerable ones, such as minors, are identified and protected. Moreover, member states should try to find ways to increase the numbers of resettlement places available and put in place measures and practices that enhance the integration of migrants and refugees into local societies. At the same time, as always, the EU will continue to protect its borders and put the maximum effort into upholding the rule of law and protecting human rights.

Above all, it needs to be guaranteed that every set of measures and every policy is based on the principles of equality, solidarity, and fairness. Human rights must be embraced and become the force that drives towards the end of this crisis, where every single migrant and refugee will live within a framework of normality, with dignity and respect, like any other citizen of the European Union.

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