

The hotspot approach at the service of the geographical containment of migrants.

Study on violations of migrants' rights on the island of Samos



Observation report - Mission carried out for Migreurop and Avocats Sans Frontières France by Mathilde ALBERT from 07/05/2019 to 06/10/2019.

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INTRODUCTION - The Greek islands at the service of a policy of deterrence: the legal framework of reception and identification centres

In response to the misnamed "migration crisis", the European Commission has included the "hotspot" approach in its European Migration Agenda of 15 May 2015. The aim was to set up an operational framework involving the relevant European Union agencies (Frontex, Europol, Eurojust and the European Asylum Support Office (EASO)) to assist the so-called "frontline" countries and deal with the increasing number of migrants arriving at their borders. This framework has therefore been designed for Greece and Italy, the first States concerned by the arrival of people in a migratory situation. It is in line with the European Union's policy of outsourcing and subcontracting migration policy.

Greek law has incorporated the beginnings of the hotspot approach into its legal framework by reforming the 2011 law establishing first reception services (L3907/2011)¹ by creating a first reception centre in Evros in 2013. Then, by a ministerial decision in December 2015, five new first reception centres were created in the Aegean Sea, on the islands of Lesbos, Kos, Chios, Leros and Samos, with a view to the conclusion of the EU-Turkey agreement of 20 March 2016. Under pressure from the European Union, the Greek government has reformed its asylum legislation: Law L4375/2016 of 3 April 2016 formalises the existence of reception and identification centres (*hotspots*). The purpose of these control areas is clear: to identify and sort asylum seekers, register them, process their application, relocate them in case of agreement or vulnerability, deport them to Turkey in case of rejection of their application². This is in line with the logic of the European Union: locking up to deter the arrival of migrants. According to the law, newly arrived persons may be held in a closed part of the centre for the first three days following their arrival. This deprivation of liberty may be extended to twenty-five days if the person could not be identified within the first three days.

In Greek hotspots, people are subject to a geographical restriction imposed upon arrival by the police and then by the Greek asylum services prohibiting them from reaching the mainland. According to the law, persons eligible for family reunification (Dublin Regulation) and persons recognised as vulnerable are not subject to this geographical restriction³. Despite this legislative provision, any person newly arrived at the hotspot is, without individual examination, subject to the geographical restriction for an unlimited period of time.

In Greek hotspots, geographical restriction has contributed to creating a situation of overcrowding leading to a considerable deterioration of living conditions and systemic violations of human rights.

1 **AIDA**, *Country report : Greece*, GCR, ECRE, 2018

2 Article 9(1) L4375/2016.

3 We will come back to this notion in more detail in the following section.

Using the example of the island of Samos, we propose to show how the hotspot approach is similar to a policy of containment, sorting and subcontracting. First we will present the situation in which the persons detained in the reception and identification centre of Samos are forced to live. We will then analyse the legal tools mobilised by the Greek and European authorities to organise what constitutes a mechanism for violating the fundamental rights of people in a migration situation: on the one hand, the accelerated border procedure set up on the Aegean islands and the concept of safe third countries, the cornerstone of the EU-Turkey agreement, and on the other hand, the use of the concept of "vulnerability" as a tool for managing migratory "flows" within the hotspots.

I/ The Reception and Identification Centre (RIC) in Samos or the non-respect of the fundamental rights of migrants

A/ A largely overcrowded semi-open camp

Located on a hill on the edge of the town of Vathy, the camp overlooks the road leading to the hospital. Vathy is the capital of the island and has a population of about 6,000. The land on which the camp was built is a former military base. It contains two entrances: the main one along the road leading to the hospital and giving access to the camp from below; the second one is by an annex road and gives access to the camp, in the upper part, to the various services and authorities. The doors of the camp have been open since 2016, so migrants can enter and leave the camp freely, which is not the case for people from outside the camp (associations, journalists, etc.), we will come back to this. At each entry point there is a police booth and checks can be carried out. The official part of the camp, i.e. the part originally planned for 648 people made of containers, is surrounded by rolls of barbed wire and surveillance cameras. In addition to the security system, the RIC is equipped with loudspeakers that allow the camp director, Mrs. Maria Dimitra Noutsikou, to call the people summoned to one of the services. These continuous calls throughout the day are particularly anxiety-provoking. Around the official part of the camp is the "jungle". This place is an extension of the "dwellings", outside the official zone, for lack of space in the latter. It stretches all around the official camp and is made of a stepped terrain dotted with olive trees. Most of the shelters outside the containers are Quechua tents for two or three people. Some people have also made hardwood cabins out of wood or any type of material found or purchased. These dwellings are extremely precarious, flood-prone and uninsulated from the cold, as well as largely overcrowded. Most of them are covered with tarpaulins donated by UNHCR. The entire camp is sloping, making access extremely difficult for vulnerable people. In addition, the slope implies systematic flooding of the shelters in case of bad weather. In order to protect themselves as much as possible from the water, the exiled raise their tents on pallets and secure them with stones. It should be stressed that the tents are given by the associations or resold from one person to another according to departures/arrivals but are in no case made available by the authorities for new arrivals.

The Samos RIC was originally planned for 648 people. As of 24 November 2019, 7,268 people were confined there (almost 12 times its capacity). On the rest of the island, eight people were in detention (in Samos police station); 258 people in UNHCR-provided accommodation outside the RIC and ten in emergency accommodation; for a total of 7,544 people⁴. Overcrowding has been increasing in recent months. Indeed, the arrivals were more important while at the same time very few transfers were made from the island to mainland Greece. The transfer of a vulnerable person is not mandatory under the 2016 Act. However, the latter indicates that the person recognised as vulnerable should be cared for in adapted

4 Hellenic Republic Ministry of Citizen Protection General Secretariat for Migration policy, reception and asylum service. *National situational picture regarding the islands at Eastern Aegean Sea (24/11/2019)* <https://infocrisis.gov.gr/6938/national-situational-picture-regarding-the-islands-at-eastern-aegean-sea-24-11-2019/?lang=en>

structures. Due to the absence of such structures on Samos, the majority of persons recognised as vulnerable should be able to be transferred to mainland Greece to more suitable places. When a person has the geographical restriction removed, he or she may, by his or her own means, reach mainland Greece. However, if it does so, it cannot benefit from the accommodation facilities provided on the mainland. Thus, most people (we should not forget that we are talking about families in most cases or sick people) are forced to wait for a transfer to a new accommodation in continental Greece, organised by the administration. Between May and September very few transfers were organised due to the lack of accommodation places on the continent. At the beginning of September, just over 1,000 people were awaiting transfer (i.e. they were kept on the island even though the geographical restriction had been removed). Here are the figures for transfers made between May and November 2019⁵:

Transfers from the island of Samos to mainland Greece - NB: Transfers are organized by First Reception⁶ with occasional support from UNHCR

<i>May</i>	395 people
<i>June</i>	302 people
<i>July</i>	235 people
<i>August</i>	374 people
<i>September</i>	804 people
<i>October</i>	1,112 people ⁷
<i>November</i>	549 people

By way of comparison, here are the figures for the number of arrivals over the same period⁸:

<i>May</i>	593 people
<i>June</i>	471 people
<i>July</i>	645 people
<i>August</i>	1,270 people
<i>September</i>	2,124 people
<i>October</i>	1,624 people
<i>November</i>	1,966 people

The insufficient number of transfers to mainland Greece creates an absolutely dramatic situation on the camp, whose population is now 12 times greater than the RIC's accommodation capacity.

⁵ Figures taken from UNHCR and Aegean Boat Report monthly reports.

⁶ Greek Administration

⁷ A major transfer was organised in October by the Greek authorities in response to the fire that ravaged part of the camp on the evening of Monday 14 October: <https://www.infomigrants.net/fr/post/20188/a-samos-une-violente-rixe-provoque-un-incendie-dans-un-camp-de-migrants>

⁸ Figures taken from UNHCR and Aegean Boat Report monthly reports.

B/ Inhuman and degrading living conditions within the RIC

Although States are obliged by international and European standards to provide decent material reception conditions, as stated in paragraph 11 of the Preamble to the Reception Conditions Directive,⁹ "Standards should be adopted for the reception of applicants that are sufficient to guarantee them a dignified standard of living and comparable living conditions in all Member States", living conditions in the Samos hotspot as well as in all the hotspots in the Aegean islands are deplorable and continue to deteriorate.

The whole camp is an accumulation of makeshift dwellings, with no free space and where there is no room for privacy. Promiscuity has reached an extremely shocking and worrying level. The insalubrity of this place is particularly striking; rubbish litters the ground, rats have invaded the area and snakes regularly invite themselves near the shelters. Because of the rats, migrants are forced to sew their tents permanently; it is impossible to keep any food.

Meals are distributed three times a day by the military. On average, exiled people are forced to wait 3 to 4 hours for each meal, to obtain food that is largely insufficient and of poor quality. Migrants are given similar meals almost every day:

- In the morning: a fruit + a fruit juice (35ml) + a croissant + 1.5 litres of water for the day.
- Lunch: a tray of rice with fish or chicken leg / or pasta with meatballs + a piece of fruit + a piece of bread.
- In the evening: a piece of pizza / or white rice with boiled eggs + a piece of fruit + a piece of bread.

It should be pointed out that sometimes people queue for three hours only to be told that there is nothing left when it is their turn. This waiting for access to food is a source of great tension and regularly generates violent altercations. In order to escape the queue and to compensate for the mediocrity of the food distributed, those who are able to do so contribute per community in order to do common shopping and cook together. However, the money received each month is not enough to (over)live one month. Indeed, beneficiaries are allocated the sum of 90 euros by the UNHCR, but due to bank withdrawal charges they actually receive only 80 euros per month. This amounts to an average of 2.60 euros per day.

In the jungle, there are no water points. In addition, the water rations given in the camp (1.5 litres) are insufficient, so people go to fetch water from a spring outside the camp, even though the association Médecins Sans Frontières (MSF) has proven that this water is non-potable and dangerous to health. In September 2019, she managed to win an arm wrestling match with the camp director to install water points in the jungle part of the camp¹⁰. However, this remains only a meagre victory in the face of the unhealthy and dramatic hygiene conditions.

Finally, the situation is deplorable with regard to health infrastructures. The showers and toilets have been designed only inside the camp, so for 648 people. Due to their largely insufficient number, the sanitary facilities are unhealthy and dilapidated; a significant number of showers and toilets no longer have doors.

⁹ Directive 2013/33/EU of the European Parliament of 26 June 2013

¹⁰ On the first day, a water point with eight taps was installed in a part of the jungle that is difficult to access for the majority of exiled people; after a week, five water points had been installed.

Moreover, although not mixed in principle, the manner in which they are arranged does not offer any real privacy or sufficient security, especially for women. This, coupled with the general insecurity in the camp, means that they do not dare to go to the toilet at night for fear of being assaulted. Finally, the unofficial part of the camp is not supplied with electricity. Thus all night trips are made in total darkness.

Although known to the Greek and European authorities, these inhuman and degrading conditions continue to exist in the Aegean islands. On 24 October 2019, the European Court of Human Rights (ECHR) granted interim measures to a pregnant woman confined to the Samos camp because of the degrading treatment she was suffering there. The European Judge asked the Greek State to guarantee the applicant a satisfactory standard of living compatible with her state of health. Several other applications have been lodged with the ECHR for similar cases, all of which have resulted in convictions by the Greek State. Despite the decisions of the ECHR, the situation has persisted and worsened since August, with a sharp increase in the number of arrivals and the onset of winter, without any reaction from the European institutions.

C. A camp closed to the outside world

Mrs Maria Dimitra Noutsikou was appointed Director two years ago by the Ministry of the Protection of the Citizen¹¹. The latter manages in a very authoritarian way the organization and life of the camp as well as the relations with external interlocutors. If, as we have explained throughout this sheet, the RIC is open to exiled people, it is on the other hand closed for the majority of associations and NGOs; the director refuses any dialogue with the latter. On the camp are present the representatives of the authorities:

- *The First Reception, which corresponds to the Greek administration, headed by Mrs. Noutsikou.
- *The Greek police
- *The military
- *Greek Asylum Services
- *European Asylum Services
- *Medical services
- *Frontex
- *Europol
- *The International Organization for Migration (IOM)
- *The Office of the United Nations High Commissioner for Refugees (UNHCR)

As well as two associations: Praxis and the Red Cross. The other associations on the island do not have access to the RIC, except for a few of them to carry out certain activities, on an ad hoc basis, such as garbage

11 The Ministry of Citizen Protection is responsible for internal security, crime control, natural disaster management and border security. In 2015, the government of Tsipras had created the Ministry of Migration Policy, which was abolished following the elections of July 2019 and reinstated by the current government on 15/01/2020 "in order to accelerate the implementation of the government plan on the migration issue" (https://www.lexpress.fr/actualite/monde/la-grece-retablit-le-ministere-des-migrations-six-mois-apres-sa-suppression_2115048.html). During the period of our mission, the department in charge of migration issues was the Department of Citizen Protection.

collection or laundry. Lawyers have a right of access to the RIC in order to carry out any necessary steps for the legal follow-up of asylum seekers, as well as to accompany them during the asylum application interviews. However, this right of access is also tightly controlled. The legal centre of Samos, in which two associations, *Avocats Sans Frontières France* and the *Refugee Law Clinic of Berlin* practice, provides legal information to asylum seekers on the island and prepares them for asylum interviews. The director of the camp agreed that volunteers from the centre, lawyers or law graduates could accompany the migrants during their asylum interview in accordance with article 44 of the law L4375/2016. However, on numerous occasions, access to the RIC for these legal advisors was subject to several hours of monitoring by the police and the Director. These checks have sometimes delayed the legal advisers for the interview of the asylum seeker, thus negatively impacting on the proper conduct of the interview. This rigidity in access to the camp is also imposed on journalists, who in the vast majority of cases are denied access.

In conclusion, the RIC of Samos is an extremely opaque place on which the administration does not wish to give any visibility. This system makes it possible to conceal violations of the rights of people kept in the camp and contributes to the worsening of their living conditions. It is made possible thanks to a set of legal tools put in place by the European and Greek authorities.

II/ Containment, sorting and subcontracting policy: the accelerated border procedure and the concept of safe third country

A. Drifts of the accelerated border procedure

Article 60(4) of the Law of 2016 (L4375/2016) sets the framework for the accelerated border procedure. Initially introduced as a temporary and extraordinary measure for a period of six months, the accelerated procedure applied in reception and identification centres is applicable until today. Indeed, Greek parliamentarians have constantly amended the law in order to extend the validity of this procedure. The last amendment dates back to December 2018¹² and makes Article 60(4) applicable until December 2019. The specificities of the border procedure are mainly based on the time limits and competent staff to carry out the procedure and the geographical restriction imposed throughout the procedure.

The geographical restriction

The geographical restriction is a measure taken in the context of the EU-Turkey Declaration, incorporated into the Greek legislative framework through Article 41(1)(d)(iii) of Law 4375/2016. It restricts the freedom of movement of migrants to the hotspot. In addition to this measure, the law provides for the pre-trial detention of newly arrived migrants in hotspots for a period of up to 25 days. This measure is no longer

12 AIDA, *Country report : Greece*, GCR, ECRE, 2018, p74.

applied in the Samos camp, which has become a semi-open camp; however, we must be vigilant because this legislative provision can be reinstated at any time. In Samos, the construction of a new camp started at the beginning of September 2019 aims, among other things, to re-establish a temporary detention centre for new arrivals¹³.

With regard to the geographical restriction, a judgment of 17 April 2018 of the Greek Council of State had condemned its application, notified automatically to each person newly arrived on the Aegean islands. The Council of State considered the practice of the Greek authorities to be illegal and discriminatory. In response to this condemnation, the Greek Parliament reformed the Asylum Law in May 2018 (4540/2018), incorporating in Article 7 a framework (national transposition of European measures) for the imposition of a geographical restriction measure. However, as article 7 of Law 4540/2018 remained vague and unsatisfactory as a justification for imposing the geographical restriction on the Greek islands, an amendment was made in June 2019 (L4609/2019)¹⁴ giving the Minister of Migration Policy the competence to take decisions on geographical restriction¹⁵. It should be stressed, however, that the geographical restriction is not notified after an individual examination of the situation of the migrants but is imposed automatically upon their arrival. According to Article 7(3) of Law L4540/2018, the violation of the geographical restriction measure leads to the withdrawal of the material reception conditions (right to accommodation and monthly allowance). In reality, this usually leads to detention (of three months in many cases) and potential criminal prosecution.

The staff competent to carry out the procedure

Another particularity of the accelerated border procedure is that the registration of the asylum application as well as the notification of the decision and any other procedural documents can be carried out by the Greek police or the armed forces. This can be problematic for asylum seekers who are sometimes particularly traumatised by the police or armed forces (traumas which may be linked to events in their country of origin or during their migration process). In Samos, until September 2019, only one person was in charge of registering asylum applications. In view of the increase in arrivals from mid-August, it was decided to employ nine new people to carry out the registration of asylum applications, the majority of whom were police officers.

Article 60 of Law L4375/2016 also allows in its paragraph 4/b that EASO staff assists the Greek asylum services "exceptionally" and in case the arrivals are too important. EASO is a European agency created in 2010 with a mandate to support EU Member States when they face particular difficulties in maintaining their asylum systems. In Greece, an amendment to the law was introduced in June 2016¹⁶ to allow EASO staff to conduct asylum interviews. The May 2018 reform introduced the possibility for Greek EASO protection officers to participate in interviews under due process and not just accelerated procedure. Thus, since August

13 Samostoday.gr, 16 July/ voreioaigaio.ert.gr, 22 July

14 Article 62 of Law L.4609/2019 amending Article 7 of Law L.4540/2018

15 **ELENA, ECRE**, *The living conditions for migrants and refugees on the Eastern Aegean islands*, Information note, 2019.

16 Article 80(13) L4399/2016

2018, EASO officers have conducted interviews as part of normal procedure. In 2018, EASO deployed 175 protection officers from other EU Member States throughout Greece; 91 locally recruited officers; 29 vulnerability experts; 2 Dublin experts and 2 COI experts¹⁷.

In a 2018 opinion, the European Human Rights Defender highlighted his concern that the European agency EASO was under political pressure to act in a way that went beyond its mandate, in particular by having a significant role in the final decision on asylum applications. The Advocate refers here to Article 2(6) of the EASO Founding Regulation¹⁸ which states that "the Support Office shall not be competent to decide on individual applications for international protection lodged by the competent asylum authorities of the Member States". This opinion follows a complaint lodged by the European Centre for Constitutional and Human Rights, which considered that in Greek hotspots EASO was far exceeding its mandate¹⁹. Indeed, in the border procedure applied on the Aegean islands, after conducting an interview, EASO writes an opinion ('concluding remarks') and recommends a decision to the Greek asylum services, which themselves decide on the asylum application without ever having met the applicant:

- a summary of the applicant's statements
- a vulnerability assessment
- a summary of the material facts identified
- an assessment of credibility
- an assessment of the risk of persecution or serious harm.

The conclusion of the opinion is a recommendation as to whether the concept of "safe third country" can be applied to the particular case and whether the application should be accepted with regard to the granting of refugee status or subsidiary protection. In practice, a large majority of the recommendations issued by EASO to the Greek asylum services are adopted by the latter even though the drafting of an opinion and a recommendation is not provided for by Greek law. Through its agencies, the European Union therefore exercises a form of control and interference in Greek asylum policy.

Time limits for the procedure

Associations and NGOs expressed their concerns when introducing the accelerated procedure at the border in view of the extremely short deadlines: the procedure should be concluded in a very short period of time not exceeding two weeks; decisions on the asylum application must be taken one day after the interview and notified not later than one day after being taken; in the event of rejection, the appeal must be submitted within five days; after being registered, an appeal must be examined not less than two days and not more than three days after being registered. While such short deadlines are indeed worrying in terms of the effectiveness of the examination of asylum applications and respect for the rights of applicants, the reality of delays in hotspots is also very worrying. Indeed, the time limits for each stage of the procedure in the Aegean

17 GCR, ECRE, *Country report : Greece*, AIDA, 2018 update, p24

18 Regulation 439/2010

19 Pour en savoir plus sur la requête : ECCHR, « EASO's involvement in Greek Hotspots exceeds the agency's competence and disregards fundamental rights », Case report, March 2018, online : www.ecchr.eu

islands are of the order of several months. In Samos, since mid-August 2019, exiled people newly arrived on the island were not notified of a date for registration of their asylum application, and the majority of them were able to register their asylum applications in November, three months after their arrival. In addition, at the time of registration of the asylum application, asylum seekers are given a date for the asylum (and admissibility) interview, which is often scheduled for 2021 or 2022. In reality, migrants receive a new convocation with an earlier date for the interview; usually about a year after their arrival at the hotspot. It should be stressed that such "close" summonses are usually notified to persons a few days before their interview, which violates the right of any person to obtain legal assistance in preparation for and during the interview, as provided for in Article 22 of the European Union Procedure Directive²⁰. Finally, after the interview, it is common to wait a minimum of six months to hope to obtain the decision of the asylum services.

Conclusion: The accelerated border procedure in the Aegean islands is not expedited in terms of time limits but, on the contrary, is synonymous with the deprivation of liberties for many months. It keeps asylum seekers in a situation of prolonged confinement accompanied by violations of rights that we will discuss in greater detail throughout this fact sheet.

B. The concept of 'safe third country': a highly questionable tool for sorting by nationality

Within the hotspots, the Greek authorities do not only examine the merits of the application of the persons who have come to seek asylum; they first examine the admissibility of the application. As we mentioned in the introduction, asylum seekers may be admitted on the basis of family reunification (Dublin III) or on the basis of their vulnerability (we will come back to this in the last part). Article 54 of Law 4375/2016 sets out the situations in which asylum applications are to be considered inadmissible. Paragraph 1/d states that an application is to be considered inadmissible if the authorities "consider a country to be a safe third country for the applicant under Article 56"²¹. According to Article 56(1), "*a country should be considered a 'safe third country' for an applicant when all of the following criteria are met ...*":

(a) The applicant's life and liberty are not threatened on the grounds of race, religion, nationality, membership of a particular social group or political opinion; (b) The applicant's life and liberty are not threatened on the grounds of race, religion, nationality, membership of a particular social group or political opinion; (c) The applicant's life and liberty are not threatened on the grounds of race, religion, nationality, membership of a particular social group or political opinion

(b) This country respects the principle of non-refoulement, in accordance with the Geneva Convention.

(c) The applicant runs no risk of suffering serious harm within the meaning of Article 15 PD 141/2013 transposing the Qualification Directive.

(d) The country prohibits the expulsion of an applicant to a country where he/she is at risk of being subjected to torture or any form of cruel, inhuman and degrading treatment as defined in international law.

²⁰ Directive 2013/32/EU, of 26 June 2013 on common procedures for granting and withdrawing international protection.

²¹ Article 54(1)(d) Law 4375/2016 of 3 April 2016.

(e) *The possibility of applying for asylum exists and if the applicant is recognised as a refugee, he/she has the possibility of receiving protection under the Geneva Convention.*

(f) *The applicant has a connection with that country by virtue of which it would be reasonable for him/her to settle there".²²*

Greece has not adopted a list of safe third countries, so this concept is only applicable in the context of the EU-Turkey declaration which makes Turkey a safe third country and is therefore only applicable in the context of the accelerated border procedure. We will see how this measure has created a process for screening asylum seekers based on their nationality. In addition, we shall see how the current situation in Turkey for a number of nationalities is extremely worrying and raises serious questions about the fulfilment of the criteria set out in Article 56(1) of the 2016 Law.

The hotspot eligibility procedure is applied as follows: applications registered by Syrian nationals are examined only on eligibility under the safe third country concept (and not on the merits of the application). Applications from persons of non-Syrian nationality with a protection rate of less than 25 per cent²³ are considered only on the merits (no admissibility procedure). Lastly, applications registered by persons of non-Syrian nationality with a protection rate of more than 25 per cent are examined on both admissibility and merits ("merged procedure"). It should be pointed out that this practice of applying a different procedure according to nationality is extremely arbitrary and has, according to our research, no legislative basis (neither in European nor in Greek law). Moreover, it violates the principle of non-discrimination as conceived by article 3 of the 1951 Geneva Convention relating to the Status of Refugees²⁴.

In 2018, 25,540 first instance decisions were made on eligibility, of which 399 applications were declared ineligible due to safe third country (compared to 912 in 2017)²⁵. In 2018, only 116 positive eligibility decisions on the safe third country concept were issued. This is extremely small compared to the 21,020 positive eligibility decisions made on the basis of vulnerability, which we will come back to. These figures allow us to question the purpose and logic of such a measure. Since only 515 admissibility decisions (positive and negative) have been made with regard to the safe third country, even though this concept is at the root of the existence of hotspots, why maintain such a system of deprivation of liberty?

In most cases, the asylum services consider that criterion (e) of Article 56(1), relating to international protection, is not met. Moreover, according to our observations, criterion (a), concerning discrimination on the grounds of race or religion, is not met for a number of migrants from sub-Saharan African countries. Finally, criterion (d), relating to expulsions, is not met for persons of Syrian or Afghan origin, since Turkey

22 Article 56(1) L4375/2016

23 The protection rate is the percentage of asylum seekers who have received a positive response (refugee status or subsidiary protection) after examination of their asylum application. For the purposes of the admissibility procedure, the rate of protection taken into consideration is that corresponding to the European average for each nationality.

24 Geneva Convention relating to the Status of Refugees: Article 3. -- Non-discrimination: "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin".

25 AIDA, ECRE, *Fast-track border procedure (Eastern Aegean islands)*, 2018, p.4, publié sur Asylum Information Database (www.asylumineurope.org)

expels to these countries despite the risks incurred by the applicants²⁶. Since mid-2016, the same decision-making models have been used to declare the asylum claims of persons of Syrian origin inadmissible. These decisions are not only identical and not subject to individual evaluation, but are also outdated as they do not take into account the geopolitical and legislative developments in Turkey. Thus, for several months now, Turkey has been violating the principle of non-refoulement for persons of Syrian origin and Greece continues to examine admissibility under the safe third country concept.

In May 2019, the NGOs Refugee Support Aegean (RSA) and Pro Asyl urged EASO to publish a document entitled "Country information pack, the asylum system in Turkey" because of the essential information it contains on the Turkish asylum system²⁷. A draft dated 2016 was provided to them. NGOs claim that this document is proof that Turkey cannot be considered as a safe third country. At the beginning of the document, the Turkish legal system is presented, which provides four types of protection for asylum seekers:

- Temporary protection = for Syrians
- Conditional refugee status: for non-European and non-Syrian nationals²⁸.
- Refugee status = for Europeans
- Subsidiary protection = except for Syrian nationals.

According to the General Directorate of Migration Management, Office of the Turkish Ministry of Interior, in 2018, 114,537 persons applied for international protection²⁹. These figures include Iraqi, Afghan, Iranian, Somali, Pakistani, Palestinian, Yemeni, Uzbek and Turkmen demands. In addition, 3,628,120 Syrian nationals were under temporary protection in 2018. No applications for protection from persons of African origin, with the exception of Somalis, are mentioned, which raises questions. These figures are not insignificant and are indicative of the situation in Turkey for people of African origin. They can be compared with the information provided in the EASO document on asylum in Turkey: whenever the document refers to persons from the African continent, they are mentioned as an entity and not by nationality and no information is given about them. Thus, in part 4/ on the *specific situation by nationalities, ethnic groups or religious groups*, paragraph 4.6. which concerns "Africans" is filled in as follows: [...] .³⁰ This legal vagueness is particularly worrying because it does not prevent EASO from conducting an eligibility interview on the concept of safe third country for people of African origin. The situation is all the more worrying as there is a real opacity in the way the Greek asylum services and EASO conduct interviews. In Samos, until early summer 2019, people of Congolese and Cameroonian origin were not questioned about

26 **ECRE**, « Turkey responds to increasing arrivals of Afghans with mass deportation », 13.04.2018 : <https://www.ecre.org/turkey-responds-to-increasing-arrivals-of-afghans-with-mass-deportation/>

Amnesty International, "Refugees illegally deported to the Syrian war zone", 25.10.2019: <https://www.amnesty.ch/fr/pays/europe-asie-centrale/turquie/docs/2019/des-refugies-illegalement-deportes-vers-la-zone-de-guerre-syrienne>

27 For more information, see the note published on the RSA website: <https://rsaagean.org/en/pro-asyl-and-refugee-support-aegean-urge-easo-to-release-crucial-report-on-asylum-system-in-turkey-for-the-interest-of-transparency/>.

28 In this respect, it is important to underline that Turkey "has never lifted the geographical restriction of the scope of the 1951 Geneva Convention: non-European refugees therefore do not benefit from the protections offered by this text" (Migreurop, Note 5 "All-out outsourcing: from the EU-Turkey arrangement to Compact Migration in Africa").

29 **ECRE**, *Country report: Turkey*, AIDA, update 2018, p9, available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2018update.pdf

30 **EASO**, *Country Information Pack ; The Asylum system in Turkey*, Last updated 15.06.2016, p32 : https://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2018update.pdf

the admissibility of their asylum application with regard to the safe third country during their interview. As of August 2019, EASO has been examining the asylum applications of a number Congolese, all of whom were interviewed for at least two hours on their passage through Turkey, their living conditions in the country and the administrative steps they had taken there to obtain protection.

In 2018, the European Defender of Human Rights highlighted his concerns about this procedure: "the quality of admissibility interviews and the procedural fairness of their conduct raise real concerns".³¹The figures mentioned by the Turkish Ministry, the little legal information available (even for European services) on the protection of people of African origin, the testimonies of the latter regarding the racism and discrimination they have suffered in Turkey, as well as the deportations to countries such as Syria or Afghanistan are proof that Turkey cannot be considered as a safe third country.

Conclusion: The admissibility procedure with regard to the concept of safe third country, which is the very basis of the existence of hotspots, is a system of sorting by nationality which makes it possible to justify the maintenance in a situation of confinement and deprivation of liberty of migrants present on the Greek islands, even though the concept of safe third country is not legally applicable to the majority of the applicants.

III/ Vulnerability: a tool for managing migration "flows".

A. Eligibility procedure and vulnerability

The use of the term "vulnerable" is questionable as it creates a categorization of asylum seekers arriving in Europe who are vulnerable in view of their traumatic experiences and the events they may have suffered in their country of origin. However, in order to understand what is at stake and how hotspots work, we need to understand this concept according to the definition given by Greek law, which itself derives from the definition given by the European Union in the Directive on the Reception of Asylum Seekers (2013/33/EU). Article 14 of the 2016 Act defines eight categories of persons to be recognized as "vulnerable": a/ unaccompanied minors, b/ persons with disabilities or suffering from a serious or incurable disease, c/ elderly persons, d/ pregnant women or women who have recently given birth, e/ single parents with minor children, f/ victims of torture, rape or other serious forms of psychological, physical or sexual violence or victims of any other form of exploitation, persons suffering from post-traumatic stress disorder, in particular survivors or families of shipwreck victims, g/ victims of trafficking in human beings³². Article 20(1) of the Law of 22 May 2018 (L4540/2018) transposing the Reception Conditions Directive redefines the list of vulnerable persons; although not exhaustive but indicative, it omits persons suffering from post-traumatic stress disorder.

31 **European Ombudsman**, Decision in case 735/2017/MDC on the European Asylum Support Office's' (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews, 5 juillet 2018, disponible sur : <https://bit.ly/2XVUfXq>, para 33.

32 L4375/2016, Article 14(8).

In 2018, of the 25,540 people admitted to Greece (following an admissibility interview conducted from the five hotspots), 21,020 were admitted because of their vulnerability³³. This means that two-thirds of the people kept on the Aegean islands are recognised as needing special conditions for the processing of their application, and that their retention in the hotspot is recognised as incompatible with their state of health or status. However, the process of assessing vulnerable persons often takes many months, during which time they are kept in undignified conditions.

The identification of a person's vulnerability can be done at two levels: at the beginning of the procedure at the first medical appointment or during the procedure by the asylum services. The medical and psychological assessment³⁴ is carried out, at the beginning of the procedure, by the staff of the Greek Ministry of Health known by the acronym KEELPNO. This assessment results in a categorization of vulnerabilities: A, B or C. Category A means that the person is recognised as vulnerable within the meaning of Article 20(1) of Law 4540/2018. Category B means that the person has significant health problems that require special attention but does not fall within the list of vulnerable persons as defined in the law. Finally, category C means that the person does not have a health problem.

The main consequence of vulnerability status is that the person is not kept into the accelerated procedure at the border and moves on to the normal asylum procedure³⁵. The geographical restriction is then lifted and the person cannot be returned to Turkey. The examination of her application will focus solely on the reasons that led her to leave her country of origin. Moreover, the asylum interview must be organised and adapted to the specific needs of the person. This vulnerability status does not necessarily mean the transfer of the hotspot to the mainland³⁶; however, due to the lack of suitable infrastructure for this type of public on the island, recognition of vulnerability is usually synonymous with transfer (which can however take several months).

In Samos, the assessment of people's vulnerability is an essential issue which, due to a lack of means and competent personnel, often results in a failure to protect these people. Many rights are violated, and people in vulnerable situations are left for months on end in conditions that are unworthy and inappropriate to their situation.

B. Failure to identify and protect vulnerable people in the Samos hotspot

The legislation does not provide for a specific time frame within which the medical examination and assessment of the person's vulnerability should be carried out. Indeed, section 50 of the 2016 Law on Persons in Need of Special Procedural Safeguards only states that after registration the person must be assessed

33 AIDA, ECRE, *Fast-track border procedure (Eastern Aegean islands)*, 2018, p4, publié sur Asylum Information Database (www.asylumineurope.org)

34 « Medical and psychological screening »

35 Attention, this may change with the new asylum law adopted on November 2019.

36 L4375/2016, article 14 alinéa 8, « persons belonging to vulnerable groups can remain in Reception and identification centres in special areas until completion of the procedures [...] Reception and identification Services shall take special care to cater for the particular needs and the referral of families with children under the age of 14, especially infants and babies ».

within a "reasonable time"³⁷. This approximation leaves room for practices that violate the rights of the most vulnerable. In Samos, for example, migrants who arrived on the island in mid-August 2019 were not given a date for their first medical examination; some of them have still not been assessed three months later. The main reasons for this failure are lack of medical staff, lack of qualified personnel and lack of interpreters.

The PHILOS project "Comprehensive Emergency Health Response to Refugee Crisis" has been designed by the European Union to support the structures of the Greek health system, which has had to cope with an increase in the number of treatments following the arrival of people in migration in 2015. According to KEELPNO, 3.4 million euros have been granted in 2015 by the Internal Security Fund (ISF) to health structures in the Aegean islands³⁸. In 2016, the PHILOS 1 project was launched thanks to the Fund for Asylum, Migration and Integration (FAMI). Despite the resources made available, the project's ability to deploy staff to meet the needs on the islands was and remains a failure. An important part of the budget allocated by the European funds (PHILOS 1 and 2) was used to cover the needs of Greek hospitals in terms of infrastructure and equipment but not in terms of staff.

In the Samos camp only two doctors are in practice, only one of whom is competent to sign medical certificates, giving them value with the Greek administration and the asylum services. The medical team is also composed of five nurses, a midwife, two cultural mediators, a military doctor (who does not have the competence to sign vulnerability certificates), two social workers and normally a psychologist who has not been present for several months. If asylum seekers have, once registered, the right to access the island's hospital, they must first go through the camp doctor's container to obtain an appointment. With more than 7,000 people in November 2019, access to the camp's medical services and to the only doctor qualified to identify people with special needs means queues of several hours. People sleep in front of the container hoping to get a date.

In addition to the lack of medical personnel, there is also a lack of skills of personnel who are not qualified to deal with the particularities of people in exile. Doctors / psychologists are not specialised in the traumas of victims of torture or sexual violence. However, article 23 of Law 4540/2018 now requires medical certificates for victims of torture and/or sexual violence to be drawn up by medical professionals from the public hospital, the military hospital or a qualified doctor from a public medical facility. The islands do not have personnel qualified in these traumas. The consequence is that no certificate issued by Médecins sans Frontières can be taken into account by the services of the reception and asylum centre in order to recognise a person's vulnerability. No medical certificate or treatment has yet been established for victims of torture or sexual violence.

In addition to this flaw, there are two other problems; the lack of interpreters in certain dialects (notably Pashto and Somali) and the fact that the only doctor competent to carry out the first medical examination is a

37 L4375/2016, art 50, *Applicant in need of special procedural guarantees*, « The receiving authorities shall assess within a reasonable period of time after an application for international protection is made, [...] whether the applicant is in need of special procedural guarantees, especially when there are indications or claims that he/she is a victim of torture, rape or other serious forms of psychological, physical or sexual violence.

38 **RSA, Pro Azyl**, *Structural failure : Why Greece's reception system failed to provide sustainable solutions*. June 2019

man. Many women (and men), do not feel able to tell a man, often accompanied by a male interpreter, about the violence they have suffered. The first medical examination, an essential step for the rest of the procedure, is therefore in many cases not representative of the person's physical and psychological situation. These shortcomings in the health care system in the hotspots have serious consequences for the procedure for asylum seekers, since the latter, because of all the difficulties we have just mentioned, sometimes mention certain health problems or traumas many months after their arrival, leading the institutions to doubt the veracity and credibility of the suffering they mention. Migrants face an imperative of truth regardless of the conditions under which medical examinations are carried out.

These failures aggravate the physical and mental health of the people kept on the island. A study carried out by Médecins Sans Frontières, Epicentre and the London School of Hygiene and Tropical Medicine shows that 96.5% of the population interviewed in the Samos camp suffer from moderate or severe psychosomatic disorders. Indeed, the study shows that the main stress factors encountered among the refugee populations of Samos are living conditions, waiting, bureaucratic complexity, feelings of discrimination - particularly strong among non-Syrians - and the lack of educational or professional activities³⁹. One of the major problems is the lack of transparency and access to information for the persons concerned. Indeed, it is very difficult for both lawyers and the individuals concerned to understand how the vulnerability assessment is carried out, the timeframes and the context in which it is carried out. In addition, the vulnerability assessment report (which indicates whether the person is category A, B or C) is never given to refugee claimants. Only those who have a lawyer can obtain a copy by requesting access to their entire file. This complexity generates a great deal of stress for the people kept on the island.

Conclusion: As Elodie Boubilil and Laure Wolmark point out, « the notion of vulnerability raises ethical and political questions related to the evaluation of suffering in the examination of asylum claims and its consideration in reception policies »⁴⁰. In the Aegean islands the authorities categorize and sort the vulnerabilities of migrants by prioritizing distress situations and trauma. The concept of vulnerability has been instrumentalized; it is now a means of managing migratory "flows". Moreover, the lack of means and personnel prevents the effective protection of these so-called vulnerable populations.

39 **PERRIN Clément**, " Samos, une île grecque au service d'une politique de dissuasion migratoire " dans *Méditerranée : des frontières à la dérive*, Editions : The stowaway, 2018

40 **Elodie Boubilil and Laure Wolmark**, "Vulnerability, care and reception of asylum seekers", La Revue des droits de l'homme [Online], 13 | 2018, Online since 05 January 2018

CONCLUSION -

Originally presented as places of reception, identification and sorting between economic migrants and refugees, Greek hotspots turn out to be places of confinement and deprivation of liberties in which sorting is similar to sorting between nationalities but above all to sorting between vulnerabilities. If with this approach the European Union has indeed provoked the shutting in of Europe's doors, the reception is in fact synonymous with abuse and unbearable waiting for up to two years. The disastrous consequences of the policy of generalized encampment as a deterrent to migration flows are perfectly illustrated in places like Samos. All the hotspots are just one stage in the outsourcing process that the EU dreams of; they are laboratories for the remote location of migrants that the EU wishes to replicate outside Europe. If, when they were set up, the hotspots had a real impact on the paths taken by migrants, making the logic of dissuasion effective, the year 2019 and the migration policy conducted in the Central Mediterranean Sea, in Libya, as well as the geopolitical situation in Turkey and Syria have once again made Greece the first point of entry into the European Union, with 35,848 arrivals between January and 29 September 2019⁴¹. In this respect, the hotspot approach has in no way relieved the country of the "excessive" burden of receiving migrants; moreover, the relocation program touted by the European Union ended in 2017. The role played by the European agencies in the Aegean islands reflects its main objective, which is that of control, to the detriment of the right of asylum. In close cooperation, the Turkish Coast Guard intercepted 38,400 persons between January and 30 September 2019⁴².

If Greece is responsible for the inhuman and degrading living conditions it imposes on asylum seekers in the camps, as recalled by the decisions of the European Court of Human Rights, the European Union is responsible for the very existence of these places. Unfortunately, the encampment at the gates of Europe does not seem to be coming to an end since, as an example on the island of Samos, the construction of a new camp began on 16 September 2019. This camp will reinforce the marginalization of the migrants since it is located three kilometers from the town of Mytilene in the island's lands, far from associations, shops and without means of transport to reach the main town of Vathy. This new, more remote and therefore less visible camp is financed by the European Union⁴³. It should consist of 230 containers for 6 persons, 10 containers in a "secure area" for unaccompanied minors and 26 containers in a closed centre for the return of migrants (*pre-removal centre*). Thus the administration intends to re-establish a holding area on the island of Samos. On 20 November 2019, the Greek government of Kyriakos Mitsotakis went even further by announcing the forthcoming closure of the camps of Lesbos, Samos and Chios in order to replace them with closed

41 Source: **AFP, Le Monde**, "La Grèce va fermer ses trois plus grands camps de migrants près des côtes turques", *Le Monde*, 20.11.2019, available online: https://www.lemonde.fr/international/article/2019/11/20/la-grece-va-fermer-ses-trois-plus-grands-camps-de-migrants-pres-des-cotes-turques_6019881_3210.html

42 Ditto.

43 Samostoday.gr, 16 July/ voreioaigaio.ert.gr, 22 July

structures tripling the "reception" capacity⁴⁴. Asylum seekers would be kept there throughout the entire procedure.

Although the migration policy of the European Union and its Member States is already deadly, the institutions are focusing on a pile of devices that will only reinforce the violations of the rights of people in a migration situation.

44 To find out more about this ad: https://www.lemonde.fr/international/article/2019/11/20/la-grece-va-fermer-ses-trois-plus-grands-camps-de-migrants-pres-des-cotes-turques_6019881_3210.html