

Decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Agreement [*****](#)

Decision

Case 506/2016/MHZ - Opened on 29/07/2016 - Decision on 18/01/2017 - Institution concerned European Commission (No further inquiries justified) |

Case 509/2016/MHZ - Opened on 29/07/2016 - Decision on 18/01/2017 - Institution concerned European Commission (No further inquiries justified) |

Case 674/2016/MHZ - Opened on 29/07/2016 - Decision on 18/01/2017 - Institution concerned European Commission (No further inquiries justified) |

Case 784/2016/MHZ - Opened on 29/07/2016 - Decision on 18/01/2017 - Institution concerned European Commission (No further inquiries justified) |

Case 927/2016/MHZ - Opened on 29/07/2016 - Decision on 18/01/2017 - Institution concerned European Commission (No further inquiries justified) |

Case 1381/2016/MHZ - Opened on 07/11/2016 - Decision on 18/01/2017 - Institution concerned European Commission (No further inquiries justified) |

The issue in this case is whether the European Commission should carry out a human rights impact assessment in the context of an agreement signed between the EU and Turkey on 18 March 2016. The agreement concerns the return of irregular migrants in Greece to Turkey; it provides that for every Syrian being returned to Turkey, another Syrian is to be resettled to the EU. The complainants, Spanish NGOs and individual citizens, informed the Commission of alleged violations of the human dignity and fundamental rights of persons affected by the agreement (irregular migrants and asylum seekers, in particular women and children.) This is why they believe such a specific assessment is necessary. The Commission takes the view that, on the one hand, such an assessment is not required for the agreement because of its political nature; and on the other hand, the Commission's Communication of 16 March 2016, and its subsequent reports on the progress made in the implementation of the agreement,



constitute such an assessment.

The Ombudsman takes the view that the political aspect of the Agreement does not absolve the Commission of its responsibility to ensure that its actions are in compliance with the EU's fundamental rights commitments. The Ombudsman believes that the Commission should do more to demonstrate that its implementation of the agreement seeks to respect the EU's fundamental rights commitments. The Ombudsman closes the case with a suggestion to the Commission that it deal more explicitly with the human rights implications in its future reports on the agreement

The background to the complaints

1. The cases concern the agreement between the EU and Turkey (*'Agreement'* [1]) concluded on 18 March 2016 and the alleged failure of the European Commission to carry out a human rights impact assessment of the Agreement. The Agreement was concluded in response to the EU migration crisis [2] . On the day that the European Council adopted the EU-Turkey Agreement, it also decided that *'the Commission will coordinate and organise together with the Member States and Agencies the necessary support structures to implement it effectively'*.

2. The Agreement provides, among others things, that (i) *"all new irregular migrants and asylum seekers whose applications have been declared inadmissible crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey"*; and that (ii) *"for every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU from Turkey directly"*; and that (iii) *"Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU."* [3]

3. The complainants, Spanish NGOs (the Spanish Committee for Helping Refugees CEAR [4] , the Spanish Association of Young Lawyers [5] , and Women's Link Worldwide [6]) and Spanish individual citizens, contacted the Commission between April and August 2016. They were concerned by the impact of the Agreement on the human rights of the asylum seekers and the migrants subject to return to Turkey from Greece. Specifically, Women's Link Worldwide urged the Commission to carry out a human rights impact assessment of the Agreement, by focusing in particular on the situation of migrant women and children.

4. In their letters to the Commission, the complainants pointed out that under the Agreement, new migrants could be returned to Turkey from Greece after their asylum applications had been dealt with following an individual assessment of each case and if they were found inadmissible. The migrants whose applications for asylum were accepted would be allowed to move to the mainland and their asylum claims would be processed further. Because of the length of the asylum procedures, very few migrants have been actually returned to Turkey and the hotspots [7] on the Greek islands became overcrowded. The camps on the Greek mainland were also overcrowded. This had, according to the complainants, significant, negative consequences for migrants' fundamental rights.



5. Relying on EU Directives (Return Directive [8] , Asylum Procedures Directive [9] , and Reception Conditions Directive [10]) and the Charter of Fundamental Rights of the European Union (right of asylum and the prohibition of collective expulsions), all the complainants pointed to a number of alleged fundamental rights breaches in the hotspots and reception centres in Greece [11] . Some complainants referred to their own field missions to Greece - as well as to missions undertaken by UNHCR, by Amnesty International and Human Rights Watch all of which (they claimed) confirm the ongoing violations of fundamental rights, and the very poor conditions refugees endure in hotspots and camps on the mainland. One complainant referred to what she observed when working as a voluntary provider of humanitarian assistance in the hotspots.

6. All of the complainants argued that the overcrowding in the hotspots, which in turn entailed breaches of human rights, was the result of the implementation of the Agreement. Moreover, they argued [12] ., Turkey is not a 'safe third country' within the meaning of the Asylum Procedures Directive and returns to Turkey may be contrary to the Charter principle of *non-refoulement*. [13]

7. The Commission either did not reply to the complainants' letters [14] or its replies were claimed to be inadequate. [15]

The inquiry

8. The Ombudsman opened a joint inquiry into these complaints and identified the following allegations and demands from the complainants.

Allegations:

The Commission failed to reply to some complainants or its replies were not adequate.

The Commission failed to carry out a human rights impact assessment of the Agreement despite claims by the Council of Europe [16] , the UN, [17] some NGOs and citizens, as well as many in the wider legal community [18] that the implementation of the Agreement would involve an infringement of fundamental rights.

Demands from the complainants:

The Commission should provide adequate replies.

The Commission should carry out a human rights impact assessment of the Agreement in particular from a gender perspective and including a focus on the promotion and protection of the welfare of children.

9. The Ombudsman contacted the Commission on 29 July 2016, asking it to address the



complainants' concerns and to explain how it is implementing the Agreement [19]. The Commission provided two replies. The first reply was sent on 29 July 2016 (on the same day as the Ombudsman's contact) and the second on 15 September 2016. The Commission sent these replies to Women's Link Worldwide. Since the content of the replies suggested that they reflected also the Commission's stance on the issues raised by the other complainants, the Ombudsman forwarded the Commission's replies to all of the complainants and invited them to comment. The CEAR and Women's Link provided comments by the end of October 2016. In view of the replies provided by the Commission, the Ombudsman takes it that the first allegation and claim (above) have been dealt with. In conducting this inquiry, the Ombudsman has had regard to the arguments and opinions of all the parties.

Alleged failure to carry out a Human Rights Impact Assessment of the EU-Turkey Agreement and the corresponding demand

Arguments presented to the Ombudsman

10. In its first reply, the Commission stated that the EU-Turkey Agreement is an agreement of a political nature. Its objective is to: (i) break the business model for smugglers; (ii) offer migrants an alternative to putting their lives at risk; (iii) reduce the risks to vulnerable people attempting to cross dangerous seas in unsafe vessels; (iv) ensure high standards of international protection in the first country of asylum, namely Turkey.

11. The Commission referred to its second report, dated 15 June 2016 [20] concerning the implementation of the Agreement ("*Second Report on the progress made in the implementation of the EU-Turkey Statement*"). According to this report, there had by then been a sharp decrease in the number of irregular migrants and asylum seekers crossing from Turkey into Greece. In the Commission's eyes, this showed "*the [Agreement/Statement's] effectiveness*". The Commission stated in the letter that "*a]ttention to vulnerable groups, including women and children ha[d] been mainstreamed*" in the report". The report also refers to EU financial assistance to Greece and Turkey, including humanitarian assistance.

12. The Commission stated that humanitarian imperatives and fundamental rights are the guiding principles of the EU's approach to refugees and migrants. Humanitarian aid in Greece and in Turkey is provided solely on the basis of needs and focuses on the most vulnerable. The Commission has concerns about the humanitarian conditions in the camps and the protection of vulnerable people, including unaccompanied children in Greece. "*However the actors involved in the crisis are dealing with a real and difficult situation and not an ideal scenario*". In the Commission's view, "*developments on the ground are being closely monitored*". The Commission said it supported the efforts of the Greek administration to improve the situation in the camps and to find appropriate solutions for vulnerable groups. It provided EUR 30 million in emergency assistance to the Greek army to procure the necessary services (food, medical and cleaning services).



13. In its second reply, the Commission referred to its Communication of 16 March 2016 ('the 16 March Communication') [21]. The Commission stated that the Communication lays down six principles for further developing EU-Turkey cooperation on migration, "*in accordance with EU and international law.*" The Commission took the view that the human rights impact assessment as regards the return of irregular migrants from Greece to Turkey "*is fully reflected*" in the 16 March Communication and in the subsequent periodic reports on the progress made in the implementation of the EU-Turkey Agreement. In any event, since the Commission does not consider the Agreement to constitute an international agreement (within the meaning of Article 218 TFEU) but a political declaration, it expressed the view that an assessment of the impact of the Agreement on human rights is not necessary.

14. The Commission further stated that the 16 March Communication points out that the return to Turkey of all irregular migrants and asylum seekers newly arrived in Greece must be carried out whilst respecting European and international law. The legal safeguards protecting persons returned to Turkey, and all practical aspects of such returns, were "vastly" analysed in the 16 March Communication and in the periodic reports on the implementation of the Agreement. For instance, in the first and second reports, dated 20 April 2016 [22] and 15 June 2016 [23] respectively, the Commission found that the Agreement had started to bring results even though many challenges still existed. The most important factor, according to the Commission, is that since implementation of the Agreement, the number of lives lost in the Aegean Sea had decreased dramatically. The significant decrease in the number of irregular migrants and asylum seekers crossing from Turkey to Greece thus demonstrates the effectiveness of the Agreement which, according to the Commission, has broken down the business model of the smugglers. Migrants received a clear message that it does not make sense to get on a boat from Turkey to Greece and put their lives at risk, given that there is a legal and secure way to reach the EU via the resettlement procedure. The Commission stated that it will be attentive to the further implementation of the Agreement from a human rights perspective, on both EU and Turkish territory.

15. In their comments of 10 October 2016, the CEAR argued that the description of the Agreement, as a "political declaration" is not relevant in the context of the inquiry. The CEAR observed that the Commission cannot, in this particular instance, decide not to undertake a human rights impact assessment given that the Commission itself is tasked with overseeing the application of the Treaties and Charter. Thus, all actions of the EU institutions, including of the Commission, must be measured against the provisions of the Treaties and of the Charter. The Spanish Association of Young Lawyers and Women's Link Worldwide took the same view in their comments, submitted respectively on 24 and 26 October 2016.

16. The CEAR contended that the legal safeguards protecting persons returned to Turkey, and all practical aspects of such returns, had not (as claimed by the Commission) been "vastly" analysed in the 16 March Communication.

17. Also according to the CEAR, in accordance with Article 38 of the Asylum Procedures Directive, Greece should carry out an individual examination of each application as to whether



the third country concerned (Turkey) is safe for a particular applicant. In the complainant's view, the fast track approach imposed by the Agreement on asylum procedures makes it impossible to carry out a thorough individual examination of each application and does not allow for the identification of vulnerable situations. The high number of successful appeals from the first instance decisions on the inadmissibility of asylum applications confirms this view.

18. As regards Turkey, the CEAR pointed out that Article 39 of the Asylum Procedures Directive provides for conditions under which a third country may be considered a safe country. To be considered safe, a third country should have in place an asylum procedure prescribed by law, it should have ratified and should observe the provisions of the Geneva Convention without geographical restrictions, and it should have ratified and should observe the European Convention on Human Rights ('ECHR'). According to the CEAR, Turkey's legislation on asylum is not fully adequate: the asylum system is dysfunctional; and there is not equal access to asylum. Furthermore, the CEAR claimed that Turkey applies a geographical limitation on -the application of the Geneva Convention by excluding non-Europeans from being granted refugee status. Moreover, Turkey has not ratified Protocol No. 4 to the ECHR, which prohibits collective expulsions. The Spanish Association of Young Lawyers and Women's Link Worldwide expressed the same views. The Spanish Association of Young Lawyers proposed that the EU should check whether Turkey satisfies the requirements for being designated 'a safe country'.

19. Finally, the CEAR stated that in its replies, the Commission had not mentioned the fact that as the result of the Agreement, the migratory flow had not stopped: migration routes simply changed. Following the implementation of the Agreement, according to the CEAR, migrants follow routes which are much more dangerous than those used beforehand, and the number of deaths in the Mediterranean Sea had doubled compared to the same period one year before.

20. Women's Link Worldwide argued that the Commission needs to act diligently and to comply with the principles of good administration by ensuring respect for human rights, from the perspective of gender and children.

21. In the opinion of Women's Link Worldwide, the 16 March Communication and the reports on the implementation of the Agreement do not use proper human rights impact assessment tools.

22. Women's Link Worldwide argued that, in the implementation of the Agreement, each action undertaken either by the EU Member States or by the EU Institutions or by Turkey directly affects migrants and refugees, in particular women and children. This is why the Commission should carry out a specific analysis of the impact of the Agreement on human rights in a way which allows it to identify any necessary mitigating measures. This applies in particular to the situation of women and children affected by the Agreement.

The Ombudsman's assessment

23. At the outset, and without expressing any view on the legal status or legitimacy of the



Agreement, the Ombudsman points out that she is aware of the controversy surrounding the Agreement. What matters for the Ombudsman, however, is the implementation of the Agreement which should be done in a manner consistent with the principles and values set out in the Treaties and in the Charter.

24. In its replies, the Commission made two arguments to justify why it does not need to carry out a human rights impact assessment of the Agreement. *First*, the Agreement is of a political nature. *Second*, the 16 March Communication and subsequent Commission reports on the implementation of the Agreement 'reflect' such a human rights impact assessment. The Ombudsman will assess these two arguments.

25. As regards the *first* argument, the Ombudsman takes the view that neither its political nature, nor indeed the title "Agreement" or "Statement", in any way diminish the responsibility of the Commission to ensure that its actions are in compliance with the EU's fundamental rights commitments. The Ombudsman notes her Office's longstanding view that good administration means, in the first place, observance of and respect for fundamental rights; where fundamental rights are not respected, there cannot be good administration. Accordingly, for **all** policies and actions of EU institutions and bodies which impact on human beings, any evaluation should contain an **explicit** consideration of the human rights impact of those policies and actions. Such impact assessments should have regard to the principle of proportionality. The Preamble to the Charter of Fundamental Rights of the European Union [24] provides that "*the Union is founded on the indivisible universal values of human dignity, freedom, equality and solidarity: it is based on the principles of democracy and the rule of law (...).*" Furthermore, Article 6.3 TEU provides that "*Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.*"

26. While the Agreement between the European Council and Turkey certainly has a political dimension, the Commission is in charge of its implementation through administrative actions. The Ombudsman is of the view that it would be in keeping with the spirit of the provisions mentioned above to carry out a human rights impact assessment of the Agreement as the very first step towards fulfilling the Commission's implementation obligations [25]. This is fundamental, since the implementation of the Agreement reasonably and necessarily has an impact (a) on the human rights of migrants (direct or indirect) and (b) on the ability of the EU and the Member States involved to fulfil their human rights obligations.

27. The Ombudsman concludes that the fact that the Agreement has a political dimension does not prevent the Commission from carrying out a human rights impact assessment of its implementation.

28. In light of this conclusion, and in order to deal with the Commission's *second* argument, the Ombudsman has thoroughly examined the 16 March Communication, and the Commission's subsequent reports on the progress made in implementing the Agreement, with a view to determining whether the Commission's findings therein may be considered a proper substitute



for a human rights impact assessment.

29. There is no universally held view on how human rights impact assessments should be conducted. There is however a common view that this tool is not intended to pass a judgement on the actual human rights situation or to decide which mitigating measure may be the most adequate. In practice, this tool is used either in advance of an agreement with a likely impact on human rights, or after such an agreement has been put into operation, or both. The Ombudsman has already defined her understanding of human rights impact assessments. In her decision on the complaint 1409/2014/MHZ, concerning the Commission's failure to carry out a human rights impact assessment of the free trade agreement between the EU and Vietnam, the Ombudsman pointed out that “ *the human rights impact assessment is not a collection of data or a response to public opposition, but rather an analytical tool for demonstrating that all necessary factors and circumstances have been taken into account in framing a policy.* **The human rights impact assessment tool identifies the sources of risks and the human rights impacts on the affected stakeholders at each stage of the project's life. Its role is preventive in the first place because when negative impacts are identified, either the negotiated provisions need to be modified or mitigating measures have to be decided upon before the agreement is entered into.** ” [26]

30. Regrettably, in this case, no human rights impact assessment was done before the Agreement was signed. At this stage however, after the Agreement has already been put into operation, it is essential that its impact on the human rights of migrants is assessed on a continuing basis throughout the course of the Agreement. Such an assessment would ideally include an analysis of the human rights impact of the implementation of the Agreement in light of the human rights obligations set out in the Charter and in international human rights law. Ideally, the assessment would provide **in a systematic way** answers to three questions: (i) what is the impact (direct and indirect) of the implementation of the Agreement on the human rights of individuals directly affected by it, particularly of women, children and people with disabilities? (ii) to what extent are the relevant EU agencies and the Member States involved able to fulfil their human rights obligations in the context of the implementation of the Agreement? (iii) what mitigating measures are needed, if any?

31. The Ombudsman is satisfied that the 16 March Communication, and the progress reports issued so far, identify broadly those areas which are most likely to have an impact on human rights (returns, reception facilities, new sea or land routes). These documents identify possible mitigating measures in the case of these problem areas [27] . The Ombudsman also notes that the question of whether Turkey is a “safe country” is addressed (albeit briefly) in these documents [28] and the number of migrants returned referred to [29] . However, these references are at a level of generality and do not meet the need to identify explicitly those aspects of human rights which may be affected negatively by the implementation of the Agreement. Moreover, there is no full analysis of the reasons for the rather low number of migrants returned to Turkey under the Agreement; though one such reason must be decisions of the Greek courts concerning the status of Turkey as a Safe Third Country. [30]

32. In the Ombudsman's view, the progress reports should include a separate section focusing



on those specific areas where the implementation of the Agreement has the potential to have a significant negative impact (direct and indirect) on identified human rights. Furthermore, the progress reports should identify the measures required in order to minimise the potential negative impact on human rights. In the absence of this, and in the light of the findings in paragraph 31 above, the reports cannot be considered a proper substitute for a human rights impact assessment.

33. The Ombudsman is conscious of the need for the EU to be seen to live up to the exacting principles and standards which it has set for itself in the Treaties, in the Charter and in its relevant Directives. The Ombudsman agrees that the arrangements with Turkey, at issue here, are political in nature. The Ombudsman appreciates also the political realities facing both EU institutions and Member States in attempting to deal with the very urgent situation which the Agreement is intended to address. However, political actions must be judged by those same principles and standards which are intended to inform all of the actions of the EU institutions. The Ombudsman believes that the Commission, in this case, can do more to demonstrate that its implementation of the Agreement seeks to respect the EU's fundamental rights commitments. Accordingly, the Ombudsman closes this inquiry with a suggestion to the Commission for improvement in its forthcoming reports on progress in the implementation of the Agreement.

The suggestion for improvement

The Commission should include, in its forthcoming reports on progress made in the implementation of the Agreement ('EU-Turkey Statement'), a separate section focusing on specific aspects of the implementation which carry significant risks for human rights compliance and on measures aimed at minimising the negative impact on human rights.

Emilly O'Reilly

European Ombudsman

Strasbourg, 18/01/2017

Annex of the decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-794-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Agreement

The 16 March Communication:



On page 4 (*“ the infrastructure in the hotspots would need to be reconfigured to accommodate the readmission and asylum offices and to deal adequately with vulnerable groups; “a substantial increase in the reception capacities in the island (...)”; “ the number of asylum claim is likely to rise. The first requirement would be to put in place accelerated asylum procedures (...) the capacity of the Greek Asylum Service should be increased (...) the EASO should also be called upon to support the Greek authorities ”; “ Support from the EU budget would be needed at the level of around EUR 20 million a month ”*), and on page 5 (*“ Resettlement scheme will function if Member States make a sufficient number of resettlement pledges ”*).

The First Report:

On page 5 (*“ all new arrivals put an extra strain on already crowded reception capacities, particularly given the need to pay particular attention to children and vulnerable groups and to guarantee essential services such as cleaning, catering and medical support .”; “ the number of asylum applications had risen (...) The long procedures would put a further strain on the already overstretched Greek Asylum Service. Therefore accelerated procedures for all stages (...) are now being set up on the islands in line with the requirements of the Asylum Procedures Directive .”*), on page 6 (*“ key challenges/next steps (...) increasing detention /closed reception capacity proportional to increasing the number of asylum applicants while ensuring proper conditions for those facilities (...) paying particular attention to children and vulnerable groups by Turkey .”*), on page 8 (*“ Stemming flows on one route risks increasing pressure on other routes. Smugglers will continue to see to exploit vulnerable migrants and try to find new routes. (...) The situation is being monitored closely .”*), and on page 13 (*“In the context of supporting Greece, Member States need to step up their efforts - not only to further improve the processing of asylum applications on the islands, but also to help Greece address the humanitarian situation, notably through a swift implementation of relocation commitments.”*)

The Second Report:

On page 6 (*“ The ongoing support (..) and improvements to Turkish asylum and reception capacity will further facilitate the individual assessment of asylum applications. This illustrates the fragility of the implementation of the Statement so far.”; (...) around 8450 migrants remain on the Greek islands which exceeds the reception capacity designed to accommodate 7450 people. This leads to overcrowding and excessive pressure on facilities, including for minors and other vulnerable groups. Shortcomings in the coordination in the hotspots by the authorities continue to hamper the effective management of this situation ...”; “ The total reception capacity on the mainland and on the islands needs urgently to be significantly increased. Greece has started transferring migrants between islands and the most vulnerable groups to specific facilities. This should be stepped up, in particular by moving those whose asylum application has been found admissible from the islands .” ; “(...) security in Greek reception centres and hotspots still needs to be enhanced, to protect migrant and field workers given the overcrowding, frustration and recurrent unrest between migrant groups .”; “ This funding will create better conditions for vulnerable migrants and strengthen the registration and asylum process with*



additional resources, better IT infrastructure, increased availability of interpreters and better access to information .”);

On page 7 the entire section ‘Key challenges and next steps’;

On page 15 (*“ Successful implementation depends mainly on the political determination of all sides to take the necessary actions .”; “ Greece should increase its capacity to deal with the individual assessment of asylum applications and appeals and in the most timely manner to ensure returns and readmissions (...) as well as enhance the reception capacity on the islands and improve the day to day management and coordination of the hotspots, with the coordinated support of the EU and its Member States .”; “ The EU and its Member States should consolidate resettlement efforts from Turkey to the EU .”*)

The Third Report:

On page 2 (*“ additional pressure is put on the reception facilities on the Greek islands ”*);

On page 6 (*The Greek hotspots are increasingly overcrowded, creating difficult and sometimes dangerous conditions (...) The total number of migrants present on the islands is 13 863 on 27 September, significantly larger than the reception capacity of only 7450.”; “The situation can only be alleviated by reducing the number of people required to stay on the islands. (...) this needs the faster processing of asylum applications under the border procedure applicable to applications on the islands, to allow for increased returns to Turkey of those whose asylum applications are deemed inadmissible or unfounded. “;” The reality of the current overcrowding also points to the need for a swift expansion of reception facilities (...) Unaccompanied Minors should also be urgently transferred to dedicated facilities (...) the Commission (...) made funding available for additional reception capacity and has been encouraging Member States to relocate higher number of Unaccompanied Minors .”;*

On page 7 and 8, the entire section ‘Key challenges and next steps’.

[*] The Ombudsman's decision, issued in July 2016, uses the term "EU-Turkey Agreement". Please note that, in its decisions of 28 February 2017 (in cases T-192/16, T-193/16 and T-257/16), the General Court of the EU considered that the statement cannot be regarded as a measure adopted by the European Council, or by any other institution, body, office or agency of the EU. The Court found that it was in their capacity as Heads of State or Government of the Member States that the representatives of those Member States met with their Turkish counterpart.

[1] The Ombudsman notes that there is no consistent use of the word ‘Agreement’. While in



May 2016 the Commission used the term EU-Turkey **Agreement** in the press release 'Fact sheet - Implementing the EU-Turkey Agreement Questions and Answers', in its first Report on the implementation of the Agreement dated April 2016, it used the term EU-Turkey **Statement** . The Ombudsman has decided to use the term '**Agreement**' throughout this Decision.

[2] *" The term 'migration crisis' refers to an unprecedented migration flow, started in 2015, involving a rising number of persons travelling across the Mediterranean Sea and/or through South East Europe to seek asylum in various European countries. It is a crisis because of the loss of life involved, the hardship to which these persons are exposed and the difficulties encountered by the authorities in the recipient countries in their efforts to accommodate them "* (excerpt from the 'Report of the fact-finding mission to Greece and the former Yugoslav Republic of Macedonia' by Ambassador Tomas Bocek, Special Representative of the Secretary General of the Council of Europe on migration and refugees 7-11 March 2016, page 4).

[3] The Commission' press release dated from 18 March 2016 (http://europa.eu/rapid/press-release_IP-16-942_en.htm [Link]). See also: http://www.consilium.europa.eu/press-releases-pdf/2016/3/40802210113_en.pdf

[4] CEAR is the acronym for the Comisión Española de Ayuda al Refugiado, that is the Spanish Committee for Helping Refugees. The website is www.cear.es [Link]. The complaint to the Ombudsman was supported by roughly 300 organisations and 11 thousand citizens in Spain.

[5] Confederación Española de Abogados Jóvenes, <http://ceaj.es/> [Link]. The complaint to the Ombudsman was submitted on behalf of 50 thousands members of the organisation.

[6] Women's Link Worldwide is present in Europe and Latina America (<http://www.womenslinkworldwide.org>)

[7] In the European Agenda on Migration, a 'Hotspot' is characterised by specific and disproportionate migratory pressure, consisting of mixed migratory flows, which are largely linked to the smuggling of migrants, and where the Member State concerned might request support and assistance to better cope with the migratory pressure. The triggering of the 'Hotspot' approach is based on both the assessment of the Member State concerned and the risk analysis provided by the relevant EU Agencies, in particular Frontex and EASO.

[8] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008, L 348, p. 98.

[9] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection(recast), OJ L 180, 29.6.2013, p.60.

[10] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013, L



180, p. 96.

[11] For instance, Women's Link Worldwide provided the following examples from the hotspots:

- (i) A photograph of a migrant who has been given a bar code which bears no personal identification such as the individual's name (the use of just a number for identification is degrading and amounts to a breach of the fundamental right to dignity);
- (ii) Often shared facilities are used for showering and going to the toilet. These are not safe and not well lit. There are reports that women feel unsafe because of these factors and have taken extreme measures such as reducing or stopping food and water intake in order to avoid the necessity of going to the toilet;
- (iii) Demands of security forces and state agents for sexual favours in exchange for border crossings or protection (according to a report from UNHCR these violations are reported only if they have caused severe health problems for the victim).

[12] The complainants quoted concerns expressed by several UN committees in this respect, among others by the Committee against Torture, the Committee on the Protection of the Rights of All Migrant Worker and Members of their Families, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. The UN committees drew particular attention, for instance to the lack of arrangements for reception and for processing asylum claims in Turkey as well as the lack of assurances against *non-refoulement* before refugees started being returned from Greece under the Agreement.

[13] According to the UNHCR, the principle of *non-refoulement* is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in other countries asylum from persecution, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is returned to persecution or danger.

[14] The Commission failed to reply to the letters of the complainants in cases 506/2016 and 1381/2016.

[15] In the CEAR complaint, the complainant contacted the Commission on 4 May 2016. On 23 May, the Commission replied to the complainant. This was however a standard holding reply used in the cases of complaints against the Member States for breaches of EU law, while the CEAR letter was not a complaint against any Member State but concerned the implementation of the Agreement, which in the complainant's view resulted in infringements. In the Women's Link complaint, the complainant contacted the Commission on 4 and 5 May 2016 at the correct address, by mail addressed to the Secretariat-General and by e-mail. The Commission did not reply. The complainant also sent the same complaint via the Commission's website ec.



europa.eu/contact. Europe Direct replied to this correspondence on 5 May. It did not however reply to the complainant's concerns but stated that it could provide information on human rights.

[16] See Council of Europe: Resolution 2109 (2016) on the situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22738&lang=en/> [Link].

[17] See <http://www.unhcr.org/news/press/2016/3/56ec533e9/unhcr-eu-turkey-deal-asylum-safeguards-must-prevail-implement.html> [Link], in particular this note refers to concerns over the implementation of the Agreement.

[18] See, for instance, <http://www.ecre.org/eu-leaders-agree-on-eu-turkey-deal-despite-serious-concerns-over-its-consequences-for-human-rights> [Link]

[19] Following the European Council's decision that ' *the Commission will coordinate and organise together with the MSs and Agencies the necessary support structures to implement it effectively* ', President Juncker appointed an EU coordinator to implement the Agreement. The coordinator has been given his own organisational structure to support his tasks.

[20] Communication from the Commission to the European Parliament, the European Council and the Council Second Report on the progress made in the implementation of the EU-Turkey Statement (COM(2016)349 final).

[21] Communication from the Commission to the European Parliament, the European Council and the Council 'Next operational steps in EU-Turkey cooperation in the field of migration', dated 16 March 2016 (COM(2016)166 final).

[22] Communication from the Commission to the European Parliament, the European Council and the Council First Report on the progress made in the implementation of the EU-Turkey Statement (COM(2016).231final).

[23] See footnote 18 above.

[24] The Charter originally proclaimed on 7 December 2000 was given binding legal effect equal to that of the Treaties following the entry into force of the Lisbon Treaty on 1 December 2009. The EU became a party to the UN Convention on the Rights of Persons with Disabilities, which is an integral part of EU law, in 2011.

[25] In its first report on the progress made in the implementation of the EU-Turkey Statement (COM(2016)231final), the Commission states: " *The EU Coordinator is responsible for support provided to the Greek authorities by the Commission, the EU Agencies and the other EU Member States. He also coordinates the actions of Member States for the implementation of the resettlement programme from Turkey. He is supported by a coordination team responsible for the overall strategy direction and relations with key stakeholders; an operations group*



responsible for analysing all relevant data, planning and deployment of Member States experts; and a team focused on resettlement .”

[26] <http://www.ombudsman.europa.eu/cases/decision.faces/en/64308/html.bookmark>

[27] Refer to Annex of this Decision.

[28] The 16 March Communication, page 3: *“(...) the [Asylum Procedures] Directive defines conditions (...) in the case of Turkey, this applies in areas like the renewal of temporary protection status for Syrians who had left Turkey, access to effective asylum procedures for all persons in need of international protection, (...) and ensuring that protection equivalent to the Geneva Convention is afforded to non-Syrians, notably those returned. (...) The principle of non-refoulement should be respected by Turkey in all cases, in line with its existing international obligations. Provided these safeguards are respected by (...) Turkey this scheme will be in accordance with European and international law .”*

[29] **The Third Report** , page 5: *“(...) which brings the total number of migrants returned to Turkey following the EU-Turkey Statement to 578 ”*

[30] See: <http://www.bbc.com/news/world-europe-36345990>