

CASE REPORT _____

EASO's influence on inadmissibility decisions exceeds the agency's competence and disregards fundamental rights

Context: The EU-Turkey Statement and Inadmissibility Procedures in Greek Hotspots

According to the EU-Turkey statement, “[a]ll new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey”. As a consequence, the administrative procedures in the Hotspots were adjusted, significantly increasing the hardship faced by those who are subjected to them. New arrivals are not allowed to leave the islands before a decision on the admissibility of their cases is taken. The admissibility procedure prevents access to international protection by introducing an additional administrative step preceding the substantive examination of asylum applications. If Turkey is considered a safe third country or first country of asylum, claims are rejected as inadmissible and the person concerned faces being returned to Turkey. For the authorities, the (in)admissibility procedures form a cornerstone of the EU-Turkey statement. However, their enforcement endangers the fundamental rights of those who survive the maritime crossing from Turkey to the Greek islands, because it bars access to protection and the possibility to enter the asylum system.

Implementation: The Involvement of the European Asylum Support Office (EASO)

The interviews as to the admissibility of international protection applications in the Greek Hotspots are conducted by the European Asylum Support Office (EASO). EASO is an EU agency established in 2010 based on Regulation (EU) 439/2010 with the mandate to support Member States to provide international protection. EASO may be involved when Member States are perceived as facing exceptional difficulties to maintain their asylum systems, and the agency deployed numerous experts to the Greek Hotspots in order to assist with the “extraordinary measures” stipulated in the EU-Turkey statement. As outlined in EASO’s Special Operating Plan to Greece (EASO/DOP/OU/2016/1812) in the section concerning support with the implementation of the EU-Turkey statement (EASO Activity HEL 4), EASO’s deliverables in the Hotspots include “admissibility interviews conducted, opinions drafted and decisions recommended”.

In effect, EASO officers conduct interviews and recommend a decision to the Greek Asylum Service. EASO’s concluding remarks specify whether the safe third country concept may be applied in the particular case, and thereby provide the ground on which the application can be rejected as inadmissible. It is regular practice for the Greek Asylum Service to rely on EASO’s record without posing any direct questions to the applicant. The Greek Asylum Service’s decision is bound to heavily rely not only on EASO’s decision-making as to the conduct of the interview itself, but also on EASO’s final recommendation on admissibility.

Therefore, EASO officers exercise de facto power on decisions in relation to applications for international protection by conducting admissibility interviews and making recommendations.

The conduct of interviews by EASO officials fails to respect core standards of fairness. This is the conclusion of ECCHR's analysis of a series of admissibility interviews conducted on the Greek Islands by EASO officers after 20 March 2016. The interviews do not permit a fair assessment of individual cases, they do not give room for a thorough investigation of vulnerabilities and they lack a critical evaluation as to whether Turkey qualifies as a safe third country for the person concerned. Concretely, EASO officers often stick to a rigid questionnaire without giving the applicant sufficient opportunity to elaborate on their personal history of harm or persecution. Interviews consist of an overwhelming number of closed questions, the inappropriate use of suggestive questions, and a failure to ask follow-up questions concerning the vulnerability of the applicant. Moreover, EASO officers fail to give applicants the opportunity to clarify inconsistencies between their statements and information from other sources. Yet, these inconsistencies are systematically highlighted in EASO's concluding remarks to refute the applicant's account. In the most severe cases, the concluding remarks do not include crucial information on vulnerability raised by the applicant concerned. In sum, the interviews consistently fail to consider the individual experiences and vulnerabilities of the applicants. This is particularly critical, given that these vulnerabilities could significantly impact the assessment of Turkey as a safe third country and corresponding exemptions from inadmissibility. Persons recognized as vulnerable are not forced to stay in the Hotspots and instead allowed to transfer to mainland Greece.

Legal Framework: Limited Competences and Applicable Safeguards

Article 41 of the Charter of Fundamental Rights (CFR) stipulates the Right to Good Administration, which includes the right of every person to have a fair procedure and to be heard before any measure with potentially adverse effects is taken. EASO's influence on inadmissibility decisions constitutes a double violation of Art 41 CFR.

Firstly, EASO is exceeding its legal competences and acting without a basis in law, in violation of Article 4 of the European Code of Good Administrative Behaviour. Art 4 requires EU officials to act according to EU legislation, with particular emphasis on decisions which affect the rights and interests of individuals. However, EASO's involvement in the decision-making process of applications for international protection has no legal basis in the applicable Regulation (EU) No 439/2010 establishing the agency. To the contrary, the Regulation limits EASO's competences: "The Support Office shall have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection" (Preamble §14 and Art2(6)). EASO's mandate is to assist and support Member States to fulfill their obligation to provide international protection, not to take part in the decision-making process by conducting interviews and providing conclusions on inadmissibility.

Secondly, EASO's conduct of interviews amounts to a case of maladministration in violation of the right to a fair hearing guaranteed under Art 41(2a) CFR. EASO disregards its very own guidelines stipulated in the agency's Practical Guide for Personal Interviews. The guide emphasizes the obligation to provide the applicant with a fair opportunity to present the reasons for their application (Introduction), to maintain an atmosphere of trust (§2.1), to provide information (§2.4), to use appropriate interview techniques and types of questions (§3.5), to provide an opportunity to clarify inconsistencies (§3.6) and to gather information about past persecution or serious harm (§3.6). However, EASO's conduct of interviews systematically disregards their own guidelines and does not amount to an individual examination of applications for international protection. Given that an inadmissibility decision provides the legal ground for returning an applicant to Turkey, the denial of a fair hearing risks breaching the non-refoulement principle.

Demanding Accountability: ECCHR's Complaint to the European Ombudsman

ECCHR raises strong concerns as to the legality and legitimacy of EASO's actions in the context of the EU-Turkey statement. In March 2017, ECCHR contacted EASO to complain about the agency's maladministration in violation of EU law. In its reply, EASO conceded that its competence is limited to a supportive role and does not include decision-making capacity. Notably, EASO highlights that "in practice decisions [by the Greek Asylum Service] tend to be in line with the opinion of Member States' experts deployed by EASO".

Nevertheless, EASO claims to have no influence on the decision-making concerning individual applications for international protection and does not admit any shortcomings in the conduct of interviews.

Legal avenues to hold EU agencies to account for their actions are limited. However, as an EU agency, EASO can be investigated for maladministration under the mandate of the European Ombudsman. The Ombudsman was established as an independent and impartial institution to hold the EU administration accountable for failures to respect fundamental rights or legal principles. In April 2017, ECCHR asked the European Ombudsman to open an inquiry against EASO's involvement in inadmissibility decisions. ECCHR requested the suspension of EASO's involvement in admissibility interviews and the limitation of its activities to conduct that does not breach EU law. The complaint reprimands that EASO's role in the decision-making process amounts to maladministration: Not only does EASO violate its own guidelines in the way it conducts the interviews, but its involvement in the procedure is outside of its legal competence under EU law. Consequently, applicants for international protection are currently deprived of a fair hearing.

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European Center for Constitutional and Human Rights (ECCHR) e.V.

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