



Why Member States should urgently review the EU-Turkey refugee agreement?

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Timeline

- ▶ 2015: EU set up the EU Facility for Refugees in Turkey, a mechanism coordinating financial resource for Turkey made available under the EU budget and contributions from the Member States and the Joint Action Plan aiming to strengthen EU-Turkey cooperation in terms of the migration management
- ▶ 2016: EU-Turkey statement of 18 March: **“All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU. It will be a temporary and extraordinary measure”**.
- ▶ 2018: in the 3rd annual report on the implementation of the mechanism, the European Commission informed that the number of arrivals of people seeking international protection has decreased sharply comparing to the year 2015, calling the EU-Turkey deal a success



Cooperation with the third-countries under the EU law

The EU shall develop relations and build partnerships with third countries which share the principles of **democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity,** and respect for the principles of the United Nations Charter and international law.

The EU's actions on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement.

(Art. 21 TUE)

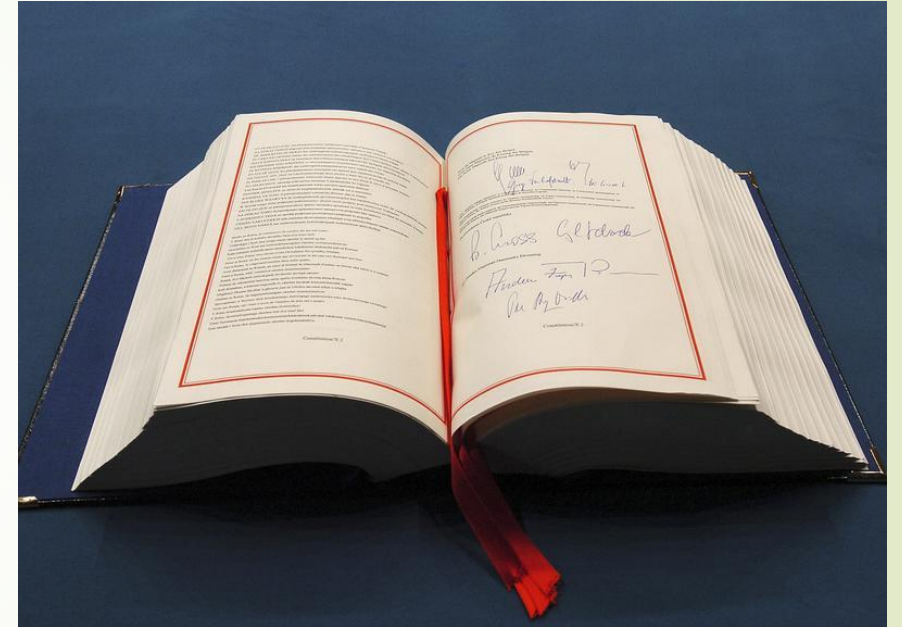


Photo credit: EU observer

Human rights concerns

- ▶ Turkey maintains the geographical limitation and grants asylum only to refugees with European origin
- ▶ Serious deficiencies of the Turkish asylum system
- ▶ Refoulement and push-backs cases
- ▶ Shootings of Syrians at the Turkish border
- ▶ Forcing Syrians to sign “voluntary return” forms and forcibly resettling them to Syria
- ▶ Ongoing military operation in the north-eastern Syria which some perceive as the *ethnic cleansing* of Kurds
- ▶ Lack of transparency about the usage of the EU funds



Photo credit: Human Rights Watch

Selected reports

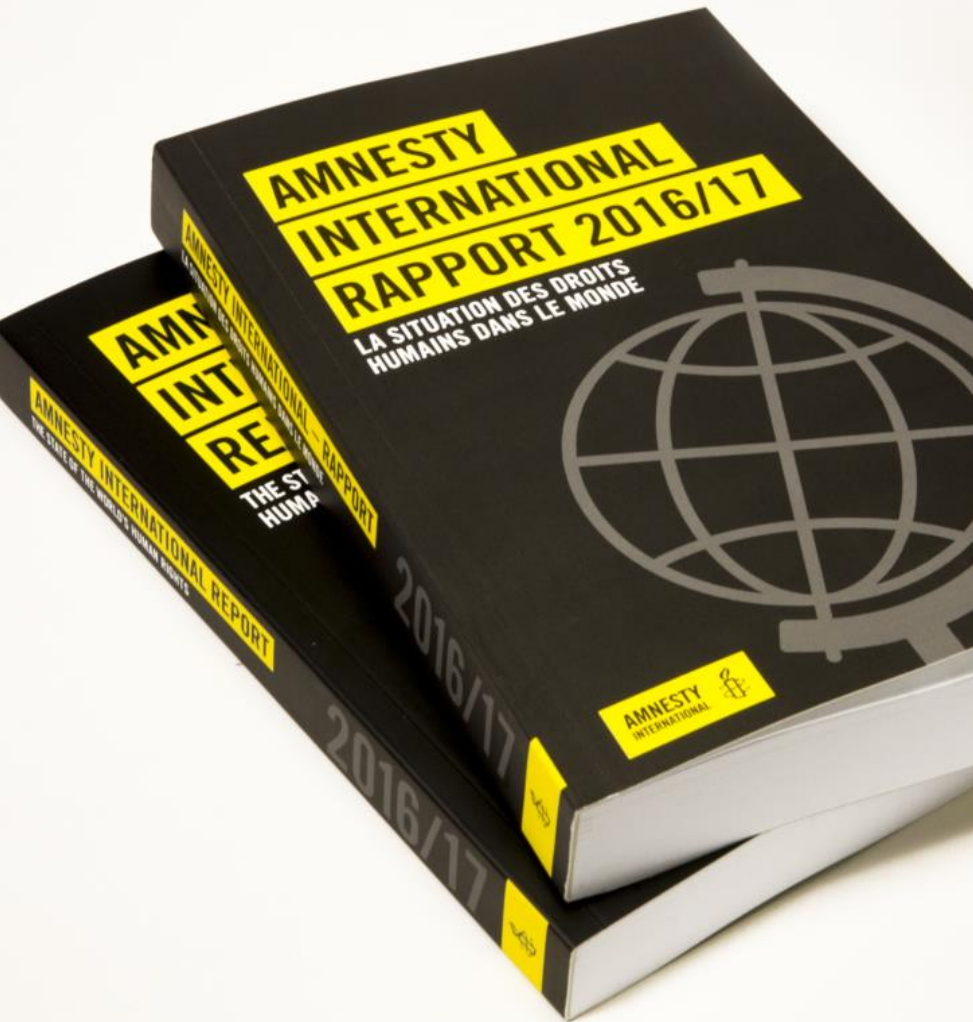


Photo credit: Amnesty International

- **2014 Amnesty International** informed about serious deficiencies of the Turkish asylum system
- **2015 Human Rights Watch** reported refoulement cases of Syrian refugees
- **2016 Special Representative of the Secretary General on migration and refugees, Ambassador Tomáš Boček**, raised his concerns about situation of asylum-seekers in Turkey
- **2016 Amnesty International** reported push-backs and shootings of Syrians at the Turkish border
- **2016 EASO** redacted report on the situation in Turkey raised more doubts than provided answers
- **2018 European Court of Auditors** not able to monitor the cash-flow of some of the EU humanitarian projects in Turkey
- **2019 Human Rights Watch** informed about Syrians being forced to sign “voluntary return” forms

Legal status of the EU-Turkey deal

- Art. 79(3) TFEU – readmission agreements
- Art. 218(6)(a)(v) TFEU - consent of the European Parliament
- Art. 263 TFEU - The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. (...)
- **T-192/16, T-193/16 and T-257/16 (CJEU, NF, NG and NM v European Council) – CJEU ruled it had no competence to judge the legality of the EU-Turkey deal as “neither the European Council nor any other institution of the EU decided to conclude an agreement with the Turkish Government on the subject of the migration crisis”.**
- Externalisation of borders & concluding agreements outside of the EU legal framework - bypassing EU legal procedures?



Possible violations in each case of the returned asylum seeker

- **Art. 3 ECHR** - returning an asylum seeker to the country where he faces the risk of refoulement and/or appalling reception conditions, reaching the level of inhuman or degrading treatment (ECtHR, *M.S.S.*, para. 365-368).
- **Art. 4 of the Charter of Fundamental Rights** – prohibition of torture (CJEU, *N.S. and M.E.*, para. 86).
- **Art. 4 Protocol 4 ECHR** – returning migrants in the collective manner (ECtHR, *Hirsi Jamaa*; ECtHR, *Sharifi and Others*).
- **Art. 33(1) of 1951 Geneva Convention** – returning refugees to the country which does not fully protect them against the refoulement (possible chain-refoulement) (ECtHR, *Ilias and Ahmed*).

Who should be held responsible for these violations as the EU-Turkey refugee agreement, according to the CJEU judgement, cannot be attributed to the EU?

The need to review the EU-Turkey agreement

In the light of the:

- ▶ reported human rights violations
- ▶ ongoing Turkish military offensive in Syria
- ▶ unclear legal status of the EU-Turkey refugee agreement

Member States should take immediate actions to look for a better solution addressing the issue of Syrian refugees than continuing sending them back to Turkey.

Art. 2 TEU - The Union is founded on the **values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.** These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.





Thank you for your attention!

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