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Decentring the Study of Migrant Returns and Return Policies

# Readmission Agreements and the Evolving Landscape of the Externalized EU Return Policies: The Case of Turkey

Working Paper (WP2)

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# List of Abbreviations

| | |
|---|---|
| AVRR | Assisted Voluntary Return and Reintegration |
| DGMM | Directorate General of Migration Management |
| EC | European Commission |
| EP | European Parliament |
| EURA | European Union Readmission Agreements |
| EUTRA | EU-Turkey Readmission Agreement |
| EUTS | EU-Turkey Statement |
| FRIT | Facility for Refugees in Turkey |
| GAM | Global Approach to Migration |
| GAMM | Global Approach to Migration and Mobility |
| ICMPD | International Centre for Migration Policy Development |
| IGO | Intergovernmental Organisation |
| IOM | International Organization for Migration |
| JAP | Joint Action Plan |
| MFA | Ministry of Foreign Affairs |
| MPF | Migration Partnership Framework |
| MSs | Member States |
| NGO | Non-Governmental Organisation |
| N-AVRR | National Assisted Voluntary Return and Reintegration |
| PF | Partnership Framework |
| PMM | Presidency of Migration Management |
| RAs | Readmission Agreements |
| RPTG | Readmission Protocol of Turkey and Greece |
| TCNs | Third-Country Nationals |
| TCs | Third Countries |
| UNHCR | United Nations High Commissioner for Refugees |

# Abstract

As the European Union (EU) becomes one of the most popular immigration destinations globally, boosting removal rates has become a political priority. In response to the European humanitarian refugee crisis in 2015, a new generation and informal readmission tools were devised to mollify the growing concerns of the EU Member States and address weaknesses in existing readmission agreements supported by externalisation and differentiated integration. The EU return policy is analysed from a non-EU perspective, shedding much-needed light on third countries' cost-benefit calculations reflecting the macro and meso-level analyses. The paper questions how the EU-Turkey Readmission Agreement (2013) and the EU-Turkey Statement (2016) shape migration management and return policies between the EU and Turkey and the practical and legal implications of their implementation and suspension. Taking Turkey as a case study, the analysis focuses on two critical readmission instruments, namely the Agreement and the Statement and assesses the EU's return and external policy instruments from a de-centring approach. It draws on longitudinal research based on both desk research and fieldwork conducted in three stages (July 2010–March 2013, June 2018–October 2019, January- July 2024) in several provinces of Turkey, including Ankara, Edirne, Izmir and Istanbul.

**Keywords:** EU return policy, the EU–Turkey Readmission Agreement, the EU–Turkey Statement, externalisation, external differentiated integration, informalisation

# 1. Introduction[1]

For the last three decades, controlling irregular migration has been a priority for the European Union (EU) and its Member States (MSs). It has also become a central pillar of the external dimension of EU cooperation in justice and home affairs. The emergence of the European refugee humanitarian crisis in 2015 brought asylum and forced migration into the spotlight due to the increasing number of arrivals. In 2015 over 1.8 million irregular crossings at EU borders were recorded (Frontex 2017, 18). Addressing irregular migration and increasing the return rates became top priorities at the EU level. The 2015 crisis was instrumentalised in justifying controversial policies regarding irregular migration.

A pivotal component of the EU's strategy has been the externalisation of migration control, which involves shifting the responsibility of managing migration flows to non-EU countries through various agreements and partnerships. Among these, return and readmission policies play a crucial role. The EU readmission agreements (EURAs) aim to facilitate and accelerate the readmission of third-country nationals (TCNs) who reside without authorisation in EU countries, including rejected asylum seekers. Since 2015, traditionally formalised structured agreements have increasingly incorporated informal mechanisms. This shift towards informality reflects a broader trend of differentiated externalisation, where the EU tailors its migration management strategies to the specific contexts and capacities of third countries (TCs).

The paper analyses the EU return policy changes explicitly focusing on readmission agreements (RAs) in three periods: 1990–2003, 2004–2014 and 2015–present. The selected Turkey case offers a compelling case study for understanding the dynamics of the EU's return policy and readmission. Turkey exemplifies TCs' capacities and strategies to resist the EU's externalisation efforts and ability to resist and leverage externalisation, particularly return policy and readmission tools.

Regarding the return policy and readmission dimension, the EU-Turkey Readmission Agreement (EUTRA, 2013) is classified as a part of the second period, and the EU-Turkey Statement (2016) was the flagship of the new generation readmission tool. The paper assesses the EU's return and external policy instruments in this framework and analyses TCs' perceptions and strategies to resist EU externalisation efforts with a de-centring approach. Taking Turkey as a case study, the analysis focuses on two critical readmission instruments: the EUTRA and the EUTS.

The paper argues that the EU's return policy started considering the TCs' demands and expectations due to the non-functioning EURAs and adopting external differentiated integration since the 2015-16 European refugee crisis. Accordingly, the EU has adopted more tailor-made, informal, flexible, and differentiated externalisation strategies than formal and standardised cooperation with TCs (Cherubini, 2017; Spijkerboer, 2017; Vitiello, 2020).

There has been continuing political and societal debate and intensive research on RAs (Boswell 2003; Cassarino 2007; Kruse and Trauner 2008; Coleman 2009; Wolff 2014; Cortinovis 2018;

[1] The Author would like to thank the GAPs Co-Coordinators – Prof. Dr. Önver Andreas Cetrez and Soner Barthoma (Uppsala University, UU) and Dr. Zeynep Şahin Mencütek (Bonn International Centre for Conflict Studies, BICC) for their guidance and helpful comments in the preparation of this paper. Special thanks go to two experts who, at our kind request, prepared internal reviews of the paper, allowing us to refine and substantially improve it. These are: Dr. Şahin Mencütek (BICC) and Dr. Fatma Yılmaz-Elmas (GAPs Horizon Project Research Fellow). Also, for the initial version of the paper, invaluable feedback and suggestions were received from two external reviewers– Prof. Dr. Suna Gülfer Ihlamur-Öner (Marmara University) and Lea Müller-Funk (University for Continuing Education Krems). I also highly appreciate the format-based support from Hakan Ünay (Swedish Research Institute of Istanbul, SRII).

Carrera et al. 2019). The EUTRA and the EUTS have been intensively analysed from a legal perspective (Göçmen 2014; Eisele 2019; Carrera et al. 2019; Gatti and Ott 2019). While some scholars questioned whether the EUTS is an international agreement or a political statement (Heijer and Spijkerboer 2016; Arribas 2017; Peers 2017), some focused on the EUTS's incompatibility with international and European refugee law and human rights law standards (Amnesty International 2017; Öztürk and Soykan 2019; İneli-Ciğer and Ulusoy 2020; Ovacık et al. 2024). Nevertheless, the multi-level dynamics of the EU's relations with neighbouring countries and the capacity of agencies that EU externalisation policy targets remain underexplored. Also, there has been little comparative research on the EUTRA and EUTS together and none that offers longitudinal and concrete empirical data to advance our knowledge in the field.

This study draws from primary and secondary sources, as well as desk and multi-sited fieldwork conducted in three stages as longitudinal research. The fieldwork component was conducted in two tranches (July 2010–March 2013, June 2018–October 2019 and January–July 2024) in several provinces of Turkey (Ankara, Edirne, İzmir and İstanbul)[2]. In total, 96 meso-level interviews were conducted for the first tranche, 41 in the second and 20 for the third tranche.[3] The interviewees include high-level state officers, representatives and experts of ministries, directorates, and law enforcement agencies, which have a role in border management and the readmission process, institutions related to EU–Turkey relations, and intergovernmental organisations (IGOs) and NGOs.

This longitudinal case study enhances our understanding of readmission arrangements and externalisation policies by showcasing Turkey's strategic use of conditionality in EU negotiations. It contributes to the broader discourse on EU migration policy by elucidating the evolving externalisation strategies and addressing the macro and meso-level perspectives of relevant actors involved in the EUTRA and the EUTS processes and implementation through comprehensive fieldwork.

## 2. Conceptual and Theoretical Framework: Externalisation and External Differentiated Integration

The EU strives to develop strong partnerships with neighbouring countries irrespective of their potential for EU membership, aiming to foster stability and prosperity in these regions and within the EU. In this regard, by the 2000s, the "externalisation" concept emerged as a broader notion that captured the idea of EU influence beyond its territory through the export of EU forms of political organisation and governance to states not necessarily subject to prospective EU membership (Olsen 2002, Lavenex and Uçarer 2004). The concept implies that TCs adopt parts of the EU acquis in their national legal framework without being offered membership (Rijpma and Cremona 2007; Lavenex and Schimmelfennig 2009).

In the migration and asylum policy domain and from a critical point of view, externalisation aims to prevent irregular migrants, including asylum seekers, from entering the legal

[2] The field studies were conducted respectively as part of the doctoral research of the author (completed with A Multi-Level and Multi-Sited Analysis of the European Union's Immigration and Asylum Policy Concerning Irregular Migration and Its Implications for Turkey" dissertation, http://etd.lib.metu.edu.tr/upload/12616581/index.pdf), (completed with the and the following two EU funded research projects, called "RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020)" (https://www.respondmigration.com/) and "GAPs: De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond" (https://www.returnmigration.eu/).

[3] Not all the interviews provided direct focus on the article's focus, but they provided important insights regarding the implementation processes. All necessary ethics approvals by the Middle East Technical Univesity (PhD. research, İstanbul Bilgi University (RESPOND Project) and Özyeğin University (GAPs Project) are provided.

jurisdictions of the EU or to render such migrants legally inadmissible without considering the individual merits of their protection claims (Frelick et al. 2016). The "containment" (Aleinikoff 1992) refers to "instruments and arrangements aimed at preventing access, reducing admission and increasing the expulsion of asylum seekers to countries of transit or origin as including restrictive visa requirements, carrier sanctions, the use of the 'safe third country' concepts, readmission agreements and arrangements" (Tan and Vedsted-Hansen 2021, 7).

One of the key elements of this policy is to convince the TCs to export the EU's policies; thus, "conditionality", a "bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions" (Schimmelfennig and Sedelmeier 2004, 670). For the countries with membership prospects, the full membership can be seen as an essential innovation, but regardless of the membership dimension, the size and reliability of the reward are significant against the cost of compliance (Schimmelfennig and Sedelmeier 2005). Conditionality is also related to the bargaining power of the EU and the TCs concerning the degree of mutual dependence. From a decentralised perspective, recent studies focus on the bargaining and even "coercive" power or diplomacy of the TCs (Teitelbaum 1984: Greenhill 2010; Tsourapas, 2017; Gokalp Aras 2019a, 2019b) or framing as "reversed conditionality" (Cassarino 2007; Janvier 2023).

RAs have been the cornerstone of the EU's externalisation policies. Analysis of the content, negotiation and implementation of RAs is typically framed as part of the EU's 'burden-shifting' in its cooperation with TCs (Boswell 2003; Coleman 2009). This cooperation aims to control borders to block arrivals, but where this is not possible, to help transit and source countries outside of EU borders in readmitting migrants and managing the reception of asylum seekers (Geddes 2005; Thym 2013; Triandafyllidou and Dimitriadi 2014).

The Syrian mass migration and subsequent humanitarian refugee crisis in Europe gave more weight to external cooperation. This development started a new phase of EU externalisation when the crisis-driven 'the state of exception became the new normal', and the EU embarked on a differentiated integration policy to the needed flexibility to provide itself, the MS, and the TCs to overcome policy deadlocks within the EU (Gökalp Aras 2021).

Differentiated integration is a flexible form of integration frames that MS and non-EU states converge at different speeds in different EU policy areas with 'ins' and 'outs, encompasses 'all forms of participation below the threshold of full membership' (Lavenex and Krizic 2019, 3). External differentiation integration refers to some TCs selectively joining existing EU arrangements or regulatory structures in specific policy areas such as the internal market or the Schengen Area (ibid.). It allows TCs to "opt-out" and "opt-in" to policy proposals in the external area, which offers these countries a degree of agency that had hitherto been lacking. The external differentiated integration approach also includes incentives for TCs to join initiatives in specific sectors 'exporting' models devised in the EU to control and prevent unwanted population movements (Holzinger and Tosun 2019, 643).

Externalisation has generally foregrounded the powerful position of the EU vis-à-vis relatively weak target countries. Thus, as a part of the externalisation and return policy, RAs bring 'unbalanced reciprocities and different benefits for the EU and the signatory countries' (Cassarino 2010a, 2010b). However, as the EUTRA and the EUTS show, rather than being a passive policy receiver, Ankara has geared its policy decisions in this field towards the rational achievement of strategic aims, which means that instrumental considerations have been front and centre. Turkey has continuously tried to resist EU conditionality, the 'carrots' of which have been prospective membership, visa liberalisation, and financial aid to address the asymmetric burdens born by Ankara (Rumelili 2004; Özçürümez and Şenses 2011; Tolay 2012). The unprecedented waves of migration toward European shores have also opened opportunities to Turkey and other source and transit countries, which has been central to shifts in the EU's return policy and related tools.

# 3. EU Readmission Agreements: Origins, Objectives and Changes

The EU's readmission policy can be analysed from 1990 to 2003, 2004 to 2014, and 2015 to the present. The efforts to tackle irregular migration via return and readmission initiatives started in the 1990s in EU policy-making. In the first period (1990–2003), the critical developments were the Schengen Agreement (1985), which abolished internal borders and the Dublin Convention (1990) with its "safe third-country rule". The first-generation agreements were readmission clauses included in trade and cooperation agreements between the European Community and TCs rather than formal RAs (Cortinovis 2018, 4; Coleman 2009).

In the second period (2004–2014), cooperation with the TCs intensified, and from 2004, the European Neighbourhood Policy (ENP) emerged as a framework for externalisation and return policies. The first formal RA was signed in 2004, launching the second generation of EURAs. Since then, the EU has completed 18 RAs[4], including with Turkey, in 2013. In December 2005, the European Commission published its Global Approach to Migration (expanded as GAMM in 2011), which addresses irregular migration and human trafficking and manages migration and asylum through cooperation with TCs. In response, the Mobility Partnerships (MPs) were introduced by the EC in 2007 as the standard framework for migration cooperation with TCs (European Commission 2007). The GAMM (European Commission 2011) resulted in MPs with several countries' political agreements encompassing various issues, including readmission cooperation.[5]

The last period (2015–present) reflects the impact of the European humanitarian refugee crisis. TCs have become directly involved in EU policy-making. In this period, external differentiated integration has become more visible in addressing obstacles during the negotiation and implementation stages of EURAs (Cassarino 2007; Coleman 2009; Carrera 2016). The EURAs have proven ineffective, with return rates falling short of expectations. Alternative cooperation methods for readmissions have emerged in response to the European humanitarian refugee crisis. These methods include administrative arrangements, bilateral deals, and memoranda of understanding, which substitute formal readmission agreements. Informal, non-binding formats like standard operating procedures facilitate swift returns when formal agreements cannot be promptly concluded or implemented (Cassarino and Giuffré 2017; Cortinovis 2018, 3). Unlike formal treaties, they belong to soft law, creating expectations for compliance and conditionality, where cooperation on readmission is linked to benefits or sanctions, such as visa facilitation or restrictions.

The period started with the EU Action Plan on Return (European Commission 2015), which recognised that an effective return system for the readmission of irregular migrants should be prioritised concerning TCs. Then, the EC published a new communication for the new partnership framework (PF) with TCs under the European Agenda on Migration in 2016 (European Commission 2016a). This communication foregrounded tailor-made arrangements to address each case: "coherent EU and Member State coordination on readmission where the paramount priority is to achieve fast and operational returns, and not necessarily formal readmission agreements" (ibid., 7). Since then, numerous partnerships and informal deals,

[4] EUTRAs as of July 2024: Hong Kong SAR (2004), Macao (2004), Sri Lanka (2005), Albania (2006), Russia (2007), Ukraine (2008), North Macedonia (2008), Bosnia & Herzegovina (2008), Montenegro (2008), Serbia (2008), Moldova (2008), Pakistan (2010), Georgia (2011), Armenia (2014), Azerbaijan (2014), Turkey (2014), Cape Verde (2014) and Belarus. In addition to these agreements, legally non-binding readmission arrangements have also been concluded with: Afghanistan, Guinea, Bangladesh, Ethiopia, The Gambia, Ivory Coast (European Commission 2020d).

[5] Notably Moldova (2008), Capo Verde (2008), Georgia (2009), Armenia (2011), Azerbaijan (2013), Morocco (2013), Tunisia (2014), Jordan (2014), and Belarus (2016).

mainly political agreements covering various issues, including readmission cooperation, have been concluded at the EU level.[6]

On the other hand, the MSs have also been increasingly using these non-standard readmission agreements. As of July 2024, 344 bilateral agreements, both including standard and non-standard, were concluded that were linked to readmission states with non-EU countries, from the EEC-12 (which was only 23) to the EU-27, January 2023 (Cassarino et al. 2023, 22).

In 2016, the Resolution of the European Parliament (EP) was adopted to increase the efficiency of readmissions and to ensure the coherence of returns at a European level that requires the adoption of new EU readmission agreements, which should take preference over bilateral agreements between MSs and TCs" (European Parliament 2016). The EC introduced the Migration Partnership Framework (MPF) communication in the same year, which included enriched instruments and resources (European Commission 2016c).

In March 2017, the EC's new communication stressed the logic behind this period, "well-designed, flexible and streamlined instruments to address migration challenges" (European Commission 2017a, 8). In the same year, a Renewed Action Plan on Returns (European Commission 2017b) was introduced that presents recommendations on making returns more effective by working with TCs to solve the challenges of readmission. In 2018, the EC proposed a new EU Return Directive (European Commission 2018) to recast the Return Directive, but have yet to culminate in a finalised piece of legislation (Gökalp Aras et al. 2024).

In 2020, the EC's new communication, the EU Pact on Migration and Asylum (the Pact), was introduced (European Commission 2020a) and adopted in 2023 by the EP and the Council. One of the critical components of this Pact is the return, which gives political priority to enhancing return rates and managing migration more efficiently. Considering existing problems in finalising and implementing RAs, the Pact emphasises that the EU should mobilise all its potential policies, tools, instruments and incentives to enhance cooperation on readmission (ibid.).

Adopting Regulation 2021/947 in June 2021 established the Neighbourhood, Development and International Cooperation Instrument, calling for a "leverage-based approach" to migration. This strategic shift reflects a move from a normative to a more flexible approach in the EU's readmission policy but also potentially jeopardises the initial project of consolidating a European common readmission policy in line with EU treaties and international law (Carrera 2016).

The most important characteristic of the new and ongoing period regarding readmission tools and third generation of agreements is "informality" (Cassarino 2007, Tan and Vedsted-Hansen 2021, EuromedRights 2021, Gökalp Aras 2021, Poli 2023, Frasca and Roman 2023, Cassarino et al. 2023, Demirbas and Miliou 2024). Cardwell and Dickson (2023, 3122) define "formal informality" as "the appearance of formality, insofar as resembling familiar or established tools (Regulations, Directives, international agreements), but lacking the procedural safeguards, transparency and classification provided by law and legal processes. In particular, due to the third country's resistance, reversed conditionality and coercive migration diplomacy, there has been an increasing reliance on informal agreements favouring flexibility for both parties and allowing easier negotiations (Euromedrights 2021).

[6] Since 2015 three Common Agendas on Migration and Mobility were signed with Nigeria (2015), Ethiopia (2015), and India (2016). Also other forms of agreements were elaborated, such as a Joint Communiqué (Côte d'Ivoire (2016), Mali (2016), Joint Migration Declaration (Ghana (2016), Niger (2016)), Standard Operating Procedures (Mali (2016), Bangladesh (2017), and Good Practices (Ghana (2017), Guinea (2017), the Gambia (2018), Admission Procedures for the Return (Ethiopia (2018), EU Turkey Statement (2016), Joint Way Forward (Afghanistan (2016), the Memorandum of Understanding (MoU) with Tunisia (2023) and the Joint Declaration on the Strategic and Comprehensive Partnership with Egypt (2024).

Tan and Vedsted-Hansen (2021) provide a typology for the EU's new arrangements by arguing that the informalisation of the new generation of return instruments is strategically "designed to avoid the triggering of substantive EU law, thus potentially placing EU activities beyond the pale of EU law", which weakens transparency and accountability with the increased number of actors in implementation (Ibid., 57, 58). Casarrino et al. (2023) provide a more systematic typology under "The EU's Readmission System's Hybridity" that classifies two types of agreements: formal and informal. The non-standard informal ones are "secret agreements not ratified by national parliaments", "informal agreements that can feed into repressive practices and human rights abuses", and "documents may include clauses regarding cooperation on other matters" (ranging from trade or military cooperation to defence, energy security, etc.) (Ibid., 12). This hybrid system, driven by different intentions and factors, is more complex, with TCs now aware of interdependencies and using migration issues as coercive foreign policy tools.

The driving forces behind this hybrid system with more informalisation are often justified both by the EU and also the MSs as the need for "more effectiveness", "practical cooperation", and "to sustain a modicum of international cooperation despite uncertainties" as well as avoiding longer and complicated ratification procedure (Ibid., 23, 25). They are often embedded in broader frameworks of cooperation that include trade, security, and development aid, offering various incentives to TCs (Cassarino et al. 2024).

The rise of informal readmission agreements between the EU and TCs has brought various challenges and consequences. This flexibility allows TCs to express their interests and bypass ratification processes, but it results in a lack of parliamentary oversight in the field of readmission, posing a democratic challenge to the rule of law (Strik 2019; Ott 2020). Additionally, these informal agreements lead to uncertainties in implementation and migrant rights, raising human rights concerns and legal uncertainties (European Ombudsman, 2022). Despite their utility, informal agreements raise concerns about transparency, accountability, and compliance with international human rights standards. Finally, the tools used by the EU do not add significant effectiveness compared to formal readmission agreements due to lack of legal binding, limited accountability, variability in implementation, dependence on the political climate, operational challenges, and lack of monitoring and evaluation (Stutz and Trauner 2021), as the EUTS also sees it. But still, they might sometimes be more effective in facilitating returns than formal agreements, such as bypassing some of the bureaucratic and legal hurdles associated with formal EURAs.

# 4. The Readmission Aspect in EU–Turkey Relations

A readmission agreement between the EU and Turkey has been on Brussels' agenda since the late 1990s. The first round of negotiations opened in May 2005 but was broken off the following year. Negotiations later resumed and continued in fits and starts until 16 December 2013, when the EUTRA was signed pending ratification (in 2014). Turkey sought visa exemption from the EU countries as part of the deal. However, the MSs' resistance to implementing visa liberalisation saw the EU offer Turkey visa facilitation as an interim remedy, which Ankara saw as insufficient. The EU detailed a list of additional incentives short of full liberalisation in the Roadmap towards a Visa-Free Regime with Turkey in 2013 (European Commission 2016b). Turkey prepared its conditions in the Annotated Roadmap (MFA 2013).

Following the ratification of the EUTRA (2014), the number of entries at the EU border peaked. This development created another shift in EU-Turkey relations and a search on both sides for new cooperation tools since the EUTRA was not a sufficient mechanism to handle mass population movements. Because the provision for the readmission of TCNs will be applicable as of 1 October 2017. The response to the Syrian mass migration first started with the EU–Turkey Joint Action Plan (JAP) in 2015, which focused on cooperation in accelerating

procedures for the readmission of irregular migrants who were not in need of international protection. Then, the EU–Turkey Statement (or EUTS)—an informal readmission tool—was signed on 18 March 2016 (European Council 2016).

The legal status was intensively discussed when the Council and Turkey agreed on the EUTS. However, the Court of Justice of the European Union by the Case T-192/16 (EDAL 2016) in 2017, as well as its decision regarding the appeal (CURIA 2018), showed that the EUTS is not seen as an international agreement under international law but non-binding soft law instruments. Also, at the national level, the EUTS was approached as a political statement, not an agreement, and thus was not submitted to the Turkish Parliament for approval as an international agreement; but a Directive on 5 April 2016 requesting the full support of all governmental bodies and local authorities to support the Presidency of Migration Management/ PMM (former Directorate/ DGMM) for implementation of the Statement under "Combating with Irregular Migration" heading (Presidency 2016).

As a crisis-driven readmission tool, the EUTS is directly connected to Syrians, and as a flexible form of readmission tool, it has different articles regarding the EU-Turkey relations from an external differentiated integration perspective. Regarding return and readmissions, Turkey agreed to accept all irregular migrants and asylum seekers whose applications were declared inadmissible, crossing from Turkey to the Greek islands on 20 March 2016 (Article 1) by the EUTS. The EUTS's readmission-related commitments are also included in Arts 3 and 4 of the EUTRA. In this regard, the EUTS stepped within the terrain of the EU's readmission competence, and the authorities were determined as the Council and the EP (Article 218 TFEU/ The Treaty of Lisbon, 2007).

The EUTS also created a mechanism for the return of Syrians via the 'one-to-one' formula. Accordingly, for every Syrian returned to Turkey from the Greek islands, another Syrian would be resettled in the EU (Article 2). Since the EUTS is not an international agreement but a bilateral statement, it needed a legal basis: the 2002 Readmission Protocol of Turkey and Greece (RPTG)[7]. The Protocol introduced the notion of a 'safe third country'. Drawing on the Protocol, the EUTS paved the way for the immediate return of Syrian refugees arriving on the Greek islands because it defined Turkey as a 'safe third country'[8]. However, Turkey's "safe third country" position is criticised for several reasons: human rights violations that are reflected by the decisions of the European Court of Human Rights (ECtHR), lack of legal protections, substandard conditions, political and social instability and international criticism regarding Turkey's handling of asylum and migration, citing arbitrary detention, forced returns, and inadequate protection mechanisms (Ovacık et al. 2024). In particular, because its legal framework fails to provide adequate protection for non-Syrians, and the temporary protection regime for Syrians lacks the legal guarantees of the Geneva Convention (Yılmaz-Elmaz 2020).

The EUTS also mentions upgrading the customs union between Turkey and the EU and 're-energising the accession process' for Turkey to obtain full membership. Incentives, such as capacity-building support and financial aid, were also included, with an additional €3 billion added to the amount agreed under the JAP. It has often been perceived as a blueprint for future cooperation models with other source and transit countries (Lehner 2019; Carrera et al. 2019; Gökalp-Aras 2019).

Although the Statement was mainly approached as an offer from the EU, both sides were willing to sign the EUTS. In particular, it suited Turkey's changing strategy vis-à-vis migration and asylum-related issues after 2015 as Ankara's demands—such as visa exemption, the customs union, and the accession process—were included. Naci Koru, who served as the Deputy Minister of Foreign Affairs (2012–2016) when the EUTS was being negotiated,

[7] For the full text of the Protocol: http://www.madde14.org/images/8/88/YunTurgerikabul.pdf
[8] The concept is based on the expresses the principle that refugees should seek asylum in the first safe country they are able to reach.

describes Turkey's negotiating proposal to the EU over the Statement as a 'game-changer' (Koru 2021a; GAR 2021):

> We did not have to readmit Syrians, even if we had bilateral agreements. At this stage, the Statement was a game-changer. We offered to readmit Syrians and the other TCNs if they entered any of the five [nominated] Greek islands through Turkey. We knew that the EU would accept our offer right away. We thought those living in Turkey could continue living there after we readmitted them. However, if they had come from other countries—for example, Morocco—we agreed to return them to wherever they had come from (Koru 2021b).

In agreeing to readmit Syrians and other nationalities, Turkey's demands were visa exemption, financial support, revision of the customs union and a reset in EU–Turkey relations. According to the EUTRA, readmission for TCNs was suspended until 1 October 2017. Thus, the EUTS accelerated the readmission of TCNs, and on 4 April 2016, Turkey accepted the first readmitted group from Greece as a part of the EUTS (AIDA 2021). The RPTG was used as the legal basis for readmissions in implementing the EUTS until the EUTRA became applicable for TCNs in 2017. However, Turkey suspended the RPTG unilaterally on 6 June 2018 in response to a decision by a Greek court to release eight former Turkish soldiers who had fled the country a day after the 15 July 2016 coup attempt (TRT 2018).

In addition, after 1 October 2017, the EUTRA could not be used for TCNs, only for Turkish citizens, due to the administrative measures taken by Turkey based on delays regarding the visa exemption process. On 22 July 2019, the Turkish government publicly announced the suspension of the EUTRA in response to the EU sanctioning Turkey's gas drilling operations in Cypriot waters. However, Prime Minister Cavusoglu stated that 'this was not only due to the EU's recent sanctions. The decision was also taken because the EU still had not introduced the agreed-on visa-free regime for Turkish citizens (Euractiv 2019). He added that "the readmission agreement and visa-free deal [must] be put into effect simultaneously" (Daily Sabah 2019). In parallel, the EU's official websites indicated that the EUTS was still operating (European Commission 2020b; EASO 2020).

In 2016, Turkey began to hint that it might open its borders if the EU failed to meet its demands. This 'coercive migration diplomacy' remained strictly rhetorical until 28 February 2020, when Turkish authorities opened the border and allowed thousands of migrants and asylum seekers to walk into Greece. This came in response to attacks against the Turkish military in Idlib, Syria, threatening to send waves of new Syrian migrants into Turkey (Reuters 2020). Significantly, neither the EU nor Turkey repudiated the EUTS as this new crisis unfolded. While the EU offered financial support to both Greece and Turkey, Ankara's actions came in for strong criticism. However, on 9 March 2020, Turkish President Erdoğan, EU Council President Michel and EU Commission President von der Leyen reaffirmed that the EUTS remained valid and that the remaining outstanding provisions would be completed (Milliyet 2020).

Throughout March 2020, immigrants and refugees from various countries, including Syria, continued to gather at land and sea border areas on the Turkish side, including Edirne, Çanakkale, and İzmir. They were confronted with severe humanitarian tragedies and human rights violations in attempting to cross into Europe. By 28 March, Turkish state actors had begun to round up most of these migrants and distribute them to satellite cities inside Turkey. When the crisis ended on 27 March, the EU Commission Spokesman Peter Stano stated, "Negotiations and evaluations regarding the EU–Turkey Statement [would] continue" (Anadolu Agency 2020). Against this backdrop, the new EU Pact (2020) explicitly mentions Turkey as the reference case and foregrounds the importance of the EUTS as a model.

# 5. Turkey's Approach Towards Readmissions and Returns

The findings of the first fieldwork conducted in 2010–2013 (İzmir, Edirne and Ankara) confirm Turkey's conditionality, reservations and critical approach to the EUTS. The results reflect the significant problems regarding EUTRAs and the Turkey case. The respondents repeatedly mentioned the risks that Turkey might become a migration "buffer zone" or "dumping ground" for the EU.

Respondents assessed Turkey's request for visa liberation as a fair demand that had successfully elevated the EUTRA as a negotiation leverage point. Also, the majority of respondents emphasised burden-sharing problems with both the EU and Greece, challenges in implementing RAs and Turkey's lack of capacity to expel migrants:

> If Turkey signs this Agreement [EUTRA], we must accept those who have been apprehended in Greece. They will insist that all those illegal migrants come from Turkey. Every migrant will be given a simple line to repeat over and over: 'I came from Turkey'. After taking these migrations back from Greece, how is Turkey supposed to return them to their origin countries without readmission agreements with those countries? This [return] is too costly for Turkey to implement (Interview with a local journalist, 2012, Edirne).

The following quote details Turkey's complex implementation of the RPTG and, more importantly, the further implementation of the EUTS.

> I do not think that Turkey will sign the Agreement [EUTRA]. Even if it is signed, it will be impossible to implement. We already have a protocol with Greece, but it has not been appropriately implemented. For example, if there are 100,000 units [migrants], we only accept 3,000 units, and only if there is sufficient evidence that they came from Turkey. The readmission agreement is a part of the bargaining process, and I do not think it can go beyond this (interview with a high-level public officer, 2013, Ankara).

The respondents who had a role in implementation provided a more precise picture of existing practices and problems and the possible future of the RPTG and the EUTRA. Most law enforcement officers emphasised the problems Turkey faced after readmission, particularly the economic burden of sending them to their country of origin and the lack of readmission agreements with those countries. A high-level Ministry of Foreign Affairs bureaucrat stated that "Turkey does not apply this Protocol [the RPTG] and will continue not to. Turkey will likely sign the readmission agreement with the EU, but it does not mean we will implement it" (interview with a high-level MFA officer, 2013, Ankara). Indeed, a few months after these interviews, the EUTRA was signed and then ratified, but as mentioned, Turkey has not implemented the provisions relating to third-country nationals despite these entering into force in October 2017 (European Commission 2020c).

The second fieldwork revealed continuity in Turkey's conditional approach and implementation challenges. The crisis-driven EUTS emerged as a more flexible, tailor-made deal compared to the standard EURAs, addressing the immediate demands of both sides. The respondents highlighted Turkey's conditionality and the potential implementation problems regarding the Agreement. Following the 2015 crisis, both sides could reach a consensus for the EUTS, a crisis-driven, more flexible and tailor-made deal responding to both sides' demands.

An NGO representative, who has been highly active in the field and provided regular support during the implementation of the EUTS, summarised the EUTS, its underlying rationale, and the implementation process from the perspective of both their organisation and their viewpoint.

> In 2015-16, following Merkel's announcement, the influx wasn't only for Syrians. While 6,000 Iranians used to come annually, in 2016-17, these numbers reached 60,000. Therefore, the EU and Turkey wanted to convey the message: "If you try to go to Europe through irregular means, we will send you back. But if you stay in Turkey and apply, we will take you". This was accepted for a while. However, from the second half of 2018, it stopped functioning due to the length of these waiting periods, the inefficacy of the one-for-one formula, and the unequal distribution of this responsibility among EU member states (interview with the representative of an NGO, 2018, Ankara).

The fieldwork showed that the readmission and return, specifically the EUTS and its implementation, became highly politicised and centralised. During the second fieldwork, Turkey was still under a state of emergency following the attempted coup d'état on 15 July 2016, and the field of migration and asylum had already been intensively centralised and securitised. The respondents stated the impact of the domestic policy through the coup attempt on 15 July 2016 in Turkey and the Fethullah Gülen Terrorist Organisation (FETO) operations,

> From our side [Turkey], there are no pushbacks, but Greece does. In particular, after the terrorist incidents [FETO], it needs to be reported if a bird flies over the sea. If someone crosses the border from the sea and does not stop, everybody [the coast guards] will face a severe problem (interview with the representative of an IGO, 2018, İzmir).

During the second fieldwork, the non-state meso level actors were excluded from the implementation of the EUTS due to the increased securitisation. Turkey's increasing concerns regarding securitisation and the visible domestic and foreign policy nexus regarding return policy appear to be significant observations in the field. Including the return and readmissions, the entire process has been centrally conducted as a closed box without proper oversight or monitoring.

The February-March 2020 events (known as Pazarkule) at the Turkey–Greece border meant the 'de facto' end of the EUTS, and the readmissions were stopped. Turkish Foreign Ministry Spokesperson stated that due to the COVID-19 outbreak worldwide and to protect public health, the EU temporarily suspended the important element of the EUTS resettlement program. For the same reason, Turkey also temporarily stopped the readmission process for refugees and reported this to the Greek authorities. The last readmission was completed in March 2020 with 23 readmissions (UNHCR 2020), confirmed by NGOs, IGOs and the EU representatives as part of the second tranche of fieldwork.

Data gathered during fieldwork's first and second parts reflect important continuities in Turkey's demands, particularly regarding the visa exemption. However, the impact of Syrian mass migration was most apparent in the second tranche of fieldwork. A critical theme that appears in particular for the second fieldwork is that the EUTS and EUTRA became parts of high politics, and securitisation increased due to domestic policy changes. Turkey has been emphasising its expectations from the EUTS, such as renewal of and also to continue operating while considering the other dimensions, such as accession perspective, updating the Customs Union, visa liberalisation, development of migration cooperation, cooperation in the fight against terrorism, high-level dialogue and operation of established institutional mechanisms (Kaymakçı 2022). Regarding the future of the EUTS, the permanent representative of Turkey to the EU, Faruk Kaymakçı, stated that a review is needed to reflect Turkey's emerging requirements and revise the financial component. He added that financial aid should be re-calculated according to current data—today, 4.7 million Syrian and non-Syrian migrants live in Turkey—and that the new agreement should be expanded to include other nationalities (ibid.). However, the future of the EUTS remains an essential and highly discussed question. Since March 2016, 2,139 returns have been completed under its terms (PMM 2021), and during the third fieldwork, the renewal of the EUTS is still expected, while the number of border crossings has started to increase again.

# 6. Current Situation, Practices, and Future Projections

As of the date this paper was written, the EUTS has completed its eighth year. Although Turkey suspended the implementation of the returns component in March 2020 and stopped readmissions of TCNs from Greece, the EUTS's effects and the expectations regarding its renewal remain prominent in both the political agenda and academic studies. Despite the suspension of the return component in March 2020 by Turkey, the EU kept its two promises regarding financial support (through the Facility of Refugees in Turkey/ FRIT as 6 billion) and the 1:1 resettlement scheme (to resettle a Syrian from Turkey to the EU for every Syrian being returned to Turkey from Greek islands), and still implementing. As of 4 July 2024, 67.441 Syrians have been resettled under the 1:1 resettlement scheme since 2016, while representing still a small proportion of the total number of Syrians is 3.1 million (PMM 2024).

As of 2017, the EU stopped reporting, especially for the EUTS, but the 7th evaluation report of the EC regarding the FRIT provides updates. Accordingly, the "One-for-One" resettlement scheme under the Statement continued, resettling 37,397 Syrian refugees from Turkey to the EU between April 2016 and February 2023. Since 2016, 2,140 migrants have been returned from the Greek islands to Turkey. However, Turkish authorities have maintained their March 2020 suspension of return operations, and no returns have occurred since then despite repeated requests from Greek authorities and the EC (European Commission 2023b, 3-4).

The EC's report (ibid.) emphasises the significant efforts of Turkey to host and address the needs of more than four million refugees and mentions that "The Statement continued to deliver results in 2022". The report also highlights the increasing number of irregular arrivals and their importance and reminds us of Turkey's suspension of returns from Greek islands.

However, from both sides, publicly available data is limited. We do not know how many returned persons could apply or have been rejected for international protection in Turkey, what are the selection criteria for the 1:1 settlement scheme, whether the EUTRA could be implemented for the Turkish nationals or the TCNs, details about the EUTRA's and the EUTS's suspension remain unclear, including the provisions of the Implementing Protocol between Turkey and Bulgaria (Ovacık et al. 2024).

There is no progress regarding visa liberalisation, full membership, the Customs Union or the Voluntary Humanitarian Admission Scheme (Ibid.). The 7th EC Report mentioned the precondition for the Scheme, which "sustainably reduced irregular crossings between Turkey and the EU" (European Commission 2023, 4). It seems the renewed priorities must be rediscussed as incentives for those who have lost their credibility and to strengthen relations and cooperation.

Despite these unclear dimensions, the third fieldwork provided important preliminary findings for the EUTRA and the EUTS. The number of interviews conducted with state actors is still limited. However, from the selected cities and the related meso level actors, there are significant findings for the practices during implementing the return component until March 2020 and future protections.

During the third and the most recent fieldwork (January-July 20024), the main focus of the meso level and mainly non-state or IGO respondents was on the EUTS, with its potential renewal, foresight regarding new conditions for its renewal and its implications in Turkey. The most important finding regarding the consequences of suspension is the increased pushbacks and informal returns. One of the most significant impacts of the EUTS's suspension has been increased informal returns, commonly called pushbacks. Greece, facing a substantial accumulation of migrants at its borders, has resorted to unofficial pushback practices. These actions, while not legally sanctioned, reflect the practical challenges and political tensions

surrounding the management of migration flows. While Greece's actions can be categorised as pushbacks, the term might not fully capture the nature of Turkey's response. Pushbacks typically imply the immediate expulsion of individuals attempting to cross the border. The respondents, mainly the NGO representatives and locals at the border cities, villages and critical border-crossing points, generally claimed that despite suspending the return component, Greece continued its action with pushback.

In contrast, the field study suggests that Turkey's actions involve not only expelling individuals but also facilitating their passage back towards Greece, a practice that might be more accurately described as "push-through"[9], which became publicly visible in 2020 (known as Pazarkule events) at the Turkey-Greece borders. However, according to the high number of respondents, including from the border villages, this action was started before Pazarkule and intensively continues after and now as being shifted from the Turkey-Greece border to the Turkey-Bulgaria border continues. It is also stated that Greece significantly stopped pushbacks to Turkey but now to Bulgaria, which also explains the changing location for Turkey's claimed "push-through" actions. In the context of Turkey's response to these pushbacks, "push-through" seems to be a more fitting term as capturing the idea that Turkey is not just returning individuals to their point of entry but is actively facilitating their movement back across the border into Greece. This proactive engagement goes beyond preventing entry and involves a deliberate effort to send individuals back through the border, reflecting a coordinated and systematic approach. Using "push-through" can help to differentiate between the more passive act of pushback and the active role that Turkey appears to be taking in ensuring these individuals are returned to Greece. This term emphasises the ongoing cycle of returns and highlights the dynamic and reciprocal nature of the migration management practices between the two countries. The following quotes from the NGO representatives' interviews highlight pushbacks, non-refoulment violations, and critiques for the EU and MSs.

> Actually, Greece discovered that unofficially conducting pushbacks was a practical and economical approach after the EUTS. They also realised that the enforcement power of the EU, EU criteria, principles, UN resolutions, and the European Convention on Human Rights was ineffective. Turkey can respond to the questions and criticisms with, "Well, we learned this from Greece,". It would be understandable. (interview with the representative of an NGO, 2024, Ankara).

Another NGO representative highlighted the reasons why the EUTS could not be implemented and how hypocrisy can arise when EU interests are at stake, particularly regarding human rights violations.

> The EUTS was not implemented and remained with only around 30,000 admissions. One of the reasons for this lack of implementation is the Greek authorities' limited capacity, but pushbacks reduced their migrant stock to Turkey. This situation is convenient for Greece and aligns with the broader EU perspective, which often prioritises EU interests before discussing human rights. For instance, when Süleyman Soylu said, "Since 2019, we have stopped 2,560,000 people at the border," it essentially means that we have violated non-refoulement. Of course, this is also understood by the EU and human rights defenders within the EU. But it means the EU borders are protected (interview with the representative of an NGO, 2024, Ankara).

[9] The author believes that, in the context of Turkey's response to these pushbacks, "push-through" seems to be a more fitting term as capturing the idea that Turkey is not just returning individuals to their point of entry but is actively facilitating their movement back across the border into Greece. This proactive engagement goes beyond the mere act of preventing entry and involves a deliberate effort to send individuals back through the border, reflecting a coordinated and systematic approach. Using "push-through" can help to differentiate between the more passive act of pushbacks and the active role that Turkey appears to be taking in ensuring these individuals are returned to Greece. This term emphasizes the ongoing cycle of returns and highlights the dynamic and reciprocal nature of the migration management practices between the two countries.

Regarding the pushback and push-through by Greece and Turkey, the following quote from a border village in Edirne shows the situation after Pazarkule and in recent days.

> Greece has been pushing them to our side for a long time. They come in all conditions, injured, beaten. Sometimes, we find bodies, too, as fish have eaten their legs or they have decayed. There were many in 2020 at Pazarkule. It continued for 6-7 months after the pandemic arrived badly. The governor's office provided clothes, thermal blankets, and food supplies. The smugglers are well-known here; as Greece pushes and deports them, we send [sallıyoruz10] them off from here. I'm a boatman, and there were weeks when I sent off 4-5 busloads. The military was already there, infantry soldiers. Before and after Pazarkule, even commandos and special forces came too; sometimes, they gathered here (village) in large numbers. In the village square, for example, I say 400, and you say 500 people. It has decreased a bit lately, but the village square was full just last week. Greece pushes them from there, and we send [sallıyoruz] them off from here (interview with a local and human smuggler, 2024, Edirne).

During the fieldwork, another significant finding was the foresight and perceptions about the renewal of the EUTS. While the state actors highlighted Turkey's expectation for the EU to support its cross-border development activities and expand the safe zone in the Northwest of Syria for returns in parallel to the second fieldwork's findings. It was stated that non-state actors believe the 1:1 formula could be applied more effectively this time with Greece and that the EU and Turkey are in new and significant cooperation regarding returns. There is an expectation that the EU's financial and capacity support for Turkey's evolving and increasingly visible national return mechanism will be included in the renewed EUTS.

Under the framework of the EU-Turkey Statement, the new agreement will likely establish a special positioning between Greece and Turkey regarding the Readmission Agreement and the new Statement. This policy will likely develop primarily through the one-for-one formula directly between Greece and Turkey (interview with the representative of an NGO, 2024, Ankara).

The following two quotes provide an understanding of Turkey's expectations for the EU in general regarding the return policy and, in particular, for the new conditions of the renewal of the EUTS.

> After our military operations, we approached those regions entirely from a humanitarian perspective and made many investments. Gaziantep University has a School of Health Sciences in the area. We established an industrial zone in Çobanbey, and even last week, an international fair was held with the participation of businesspeople from various Arab countries. We have hospitals and health services in the region. We are creating educational and job opportunities. However, the region needs more investment. The EU and other Western countries need to support these safe zones. In Gaziantep alone, the number of people I am concerned with is greater than the number of refugees in Europe (interview with the state official, 2024, Gaziantep).11

> We [Turkey] requested that the ESSN (Emergency Social Safety Net)12 support from the EU not be cut off when people return to Syria, and the EU did not accept our offer. These safe areas need to receive more investment, and development in the region needs to be encouraged (interview with the state official, 2024, Gaziantep).13

[10] The term "sallıyoruz" [in Turkish language] actually means facilitating illegal border crossings. This is how it is expressed locally. For Greece, the term "deportation" is predominantly used.
[11] This interview was conducted by Umutcan Yüksel, a researcher from the SRII team and his consent for using this quotation was obtained.
[12] The ESSN is the largest humanitarian cash programme that assisting over 1.5 million refugees, primarily individuals living under temporary and international protection in Turkey.
[13] See #8.

Regarding the financial dimension of the JAP and the EUTS, the following quote highlights the unfair share of responsibilities and miscalculations and assumptions of Turkey.

> In the Netherlands, the cost of one person to the state is 65 Euros per day. The annual cost for this person is approximately 23,650 Euros. For 1 million people per year, this amounts to 23 billion Euros. When we talk about a population of 4 million in Turkey at that time, this is roughly 100 billion Euros for one year. However, the amount offered to Turkey by the EU was 3+3 billion Euros. Turkey's biggest mistake is not doing these kinds of analyses and not sitting at the negotiation table. They act as if Turkey is obliged to host these people anyway (interview with the representative of an NGO, 2024, Ankara).

Regarding the practices during the initial implementation of the return component of the EUTS, the interviewed limited legal practitioners who had cases of the returnees as a part of the EUTS stated that although the readmissions were operated only at a town called Dikili (close to İzmir, Turkey), later, there were two main removal centres (RCs) were used. It is noted that as of 1 April 2016. initially, individuals were transferred from Greece's Lesbos Island to Dikili and were placed in Edirne and Kırklareli, which are two Turkish provinces. Pehlivanköy Removal Centre was specifically opened following the EUTS. There were logistical and procedural issues in implementing the EUTS, including the dual issuance of deportation orders by different administrative bodies, which led to legal challenges. For example, initial deportation orders by the İzmir Provincial Directorate of Migration Management were followed by additional orders by the Kırklareli Governorship, leading to court cases and subsequent annulments due to procedural violations. The process saw a significant involvement of administrative and judicial bodies, and despite initial procedural setbacks, the practice continued with the transfer of individuals to return centres in a remote province such as Kayseri by mid-2017.

The respondents highlighted multiple instances of human rights violations, which were reported by them during the process, including forced deportations and inadequate consideration of asylum claims. Many individuals, particularly non-Syrians like Bangladeshis, Myanmarese, and Pakistanis, were subject to rapid deportations without adequate legal recourse. Specific cases highlight the lack of effective legal oversight and the potential for abuse, such as forcing individuals to sign voluntary return forms under duress and inadequate protection for those at risk of persecution.

The findings for this initial period showed that the EUTS had faced numerous operational challenges, including the capacity limitations of Greek authorities to process returns, the bureaucratic complexity of the system, and the mixed effectiveness of implementation across different regions. The practices under the EUTS often involved significant variations in the treatment and processing of migrants depending on their nationality and specific circumstances.

Those legal practitioners and lawyers have also emphasised the pushback practices as a significant issue, which often involve the use of force and intimidation, and there are documented cases of severe mistreatment of migrants at the borders. It is stated that there have been systemic pushbacks from both Bulgaria and Greece, with different practices observed, such as the involvement of third-party nationals in executing pushbacks in Greece and direct military involvement in Bulgaria.

For the prospects regarding the EUTRA and EUTS, the third part of the research showed that Turkey has been developing its border management and taking the necessary measures to prevent the opening of any new sea or land routes for irregular migration from Turkey to the EU, such as re-introduction of visa requirements for those Syrians travelling to Turkey by air and sea from a third country in 2016 (Ovacık et al. 2024). However, despite the increased measures at the borders, there has been a steady decrease in irregular border crossings because

of domestic and foreign policy developments, such as the Taliban's takeover in 2021 and the completed border walls at the Syrian and Iran borders as of September 2023.

In addition, Turkey's national return mechanisms have advanced significantly, incorporating sophisticated technologies and coordinated efforts to manage migration. Such as the introduction of new migration control tools, the Mobile Migration Points (MMPs) equipped with advanced fingerprinting technologies for identification and Migrant Pre-Admission and Referral Centres that work 24/7, accelerated deportations, and cause invisibility. Most importantly, parallel to the new generation of readmission tools, they create "informality" along with the increased pushbacks. In addition, along with the voluntary return and reintegration programme (AVRR) with the IOM, which started in 2009, with the collaboration of the ICMPD, the national AVRR (N-AVRR) mechanism was established in 2022 (Mencütek Şahin 2023). However, the multi-sited fieldwork displayed severe legal and implementation problems regarding detention and deportation practices. Ovacık et al. (2024, 169) argue that concerning those practices in Turkey, including many cases, ECtHR ruled on the case Akkad v. Turkey (BVMN 2022) as that also fits the typical profile of the EUTS, Turkey should not be considered a safe third country for returns from EU Member States. However, rather than changing Turkey's "safe third country" status, the main expectation appears to be capacity building and financial support from the renewed EUTS.

# 7. Conclusion

This article has analysed the EU's return and external policy instruments using Turkey as a case study and focusing on two critical readmission instruments—the EUTRA of 2013 and the EUTS from 2016. The longitudinal research displayed the complexity of readmissions to the fore showcased, how readmission tools are interpreted and instrumentalised by the EU and Turkey, and how differentiated integration has become the norm of the EU return policy. It has shed much-needed light on TCs' strategies to resist EU externalisation efforts, particularly their cost-benefit calculations in engagement with the EU on returns and readmissions.

The article displays that Turkey has leveraged conditionality in its favour rather than being a passive policy receiver. Since the Syrian mass migration, it has deployed migration as a foreign policy tool to accomplish various objectives. This was apparent in negotiations over the EUTRA in 2013, but Turkey had expanded its demands by the EUTS in 2016. The EUTS presented that this temporary and extraordinary measure or purportedly 'exceptional' readmission strategy has become the new norm, particularly after the EU Pact. Despite its failures, the EUTS has served as a blueprint for other countries, and the EU Pact confirms expectations regarding similar bilateral cooperation with non-European countries going forward.

The EUTRA and the subsequent EUTS represent pivotal moments in the externalisation of EU migration policy. Despite their significant aims, the practical outcomes and operational challenges highlight the complexities and limitations inherent in these agreements. The suspension of the readmission components of these agreements by Turkey since 2020 has led to a critical shift in migration dynamics in the region. Greece, facing substantial migrant accumulation at its borders, has resorted to informal pushback practices, which, although not legally sanctioned, illustrate the tensions and practical difficulties in managing migration flows. Turkey's response to these pushbacks has been characterised by actions that could be termed "push-through," where individuals are expelled and facilitated back towards Greece. This term captures the reciprocal and escalatory nature of border enforcement tactics between these two nations.

Moreover, the fieldwork conducted in Edirne and İzmir underscores the dual nature of Turkey's national return mechanisms. On the one hand, significant efforts are being made to facilitate voluntary returns to safe zones in Northern Syria, reflecting Turkey's strategic

interest in stabilising these regions and reducing its domestic burden. In this context, during the renewal process of the EUTS, there have been notable expectations for the support of Turkey's national return mechanism, particularly for capacity building and the strengthening and further expansion of the safe zone established by Turkey in Northern Syria were highlighted by the meso-level respondents.

The findings underscore the complexities and political sensitivities surrounding the EUTS and EUTRA. The evolving nature of EU-Turkey migration cooperation highlights the need for more balanced and comprehensive approaches that address immediate migration management needs and the underlying causes of displacement. Future agreements must reconcile the practicalities of border control with the imperatives of human rights and sustainable development, ensuring that policies are effective, ethical, and just. The EU's shift towards informalisation and differentiated externalisation must be carefully managed to avoid undermining the broader goals of stability, security, and respect for international law.

This case study enhances our understanding of readmission arrangements and externalisation policies by showcasing Turkey's strategic use of conditionality and leveraging its geopolitical position in EU negotiations. Future research should examine the evolving EU-Turkey migration dynamics, the long-term effects of informal readmission agreements, and the roles of other non-EU countries in similar externalisation agreements to gain broader insights into global migration governance.

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GAPS

Decentring the Study of Migrant Returns and Return Policies

# Externalisation of EU Migration Policies: The Case of Cooperation in the Georgian Citizens' Returns from Poland

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# Table of Contents

# List of Abbreviations

| | |
|---|---|
| AVR | Assisted voluntary return |
| COVID-19 | Coronavirus Disease |
| EaP | Eastern Partnership |
| EC | European Commission |
| ENIGMMA | Enhancing Georgia's Migration Management |
| ENIGMMA-2 | Sustaining Migration Management in Georgia |
| ENP | European Neighbourhood Policy |
| EU | European Union |
| Frontex | European Border and Coast Guard Agency |
| ICMPD | International Centre for Migration Policy Development |
| IDIs | Individual In-depth Interviews |
| IDPs | Internally displaced persons |
| IOM | International Organisation for Migration |
| n.d. | No date |
| NGOs | Non-governmental organisations |
| OFII | French Office for Immigration and Integration |
| RCMES | Readmission Case Management Electronic System |
| SCMI | State Commission on Migration Issues |
| UK | United Kingdom |

# Abstract

Migration remains an essential factor in the dynamics of EU politics. This working paper aims to broaden our understanding of the cooperation mechanism between the EU and Georgia in the context of the EU's externalisation of migration policies. We focus on the EU Member State – Poland, the sending country, and Georgia, the country receiving returnees, one of six Eastern Partnership members. We pay particular attention to the returns of Georgian citizens from Poland (with various levels of coercion), as they represent one of the largest groups of returned foreigners under Poland's return practices. At the same time, Georgia remains a country strongly committed to integration with the EU structures. The paper draws on the qualitative material and data collected during fieldwork on Georgia from February to May 2024. The main part of the research was carried out on-site in Tbilisi. Follow-up interviews were conducted in Poland, mainly online. We conducted 25 individual in-depth interviews with representatives of international organisations, public institutions, non-governmental organisations, and other experts who had knowledge about returns to Georgia and the reintegration of Georgian citizens. This work was supplemented with desk research regarding the legal framework and return infrastructure in Poland and Georgia and the reintegration framework in the latter. The results reveal the untapped potential of the cooperation between Polish and Georgian institutions, which could make the returns more satisfying for migrants and – consequently – more efficient for the EU policies. The paper suggests, among other things, strengthening 1) information dissemination to prospective returnees before departure and 2) the role of local organisations in Georgia in assessing business plans within the reintegration programmes.



**Keywords:** return migration, EU migration policies, Georgia, Poland, externalisation of migration policies

# 1. Introduction[1]

Since the so-called migration crisis with the outbreak in 2015, migration remains one of the most important factors shaping the dynamics of European Union (EU) politics. The European Commission (EC), as early as 2011, declared that 'migration is now firmly at the top of the EU's political agenda' (EC 2011). The EU policies in the field of migration and home affairs are based on the security principle, assuming the need for effective border control (Huysmans 2006; Delcour 2013; Trojanowska-Strzęboszewska 2018). Ensuring such a control pertains not only to regulating the entry of migrants into the EU territory but also their returns to the countries of origin. Importantly, this paper avoids using a dichotomy between forced and voluntary returns, assuming that various levels of coercion are present in the case of each return (Şahin-Mencütek et al. 2023).

To ensure the highest possible level of effectiveness of its migration policy, the EU externalises the application of migration control in the form of readmission agreements, visa facilitation agreements, and mobility partnerships being signed with different countries (van Munster, Sterkx 2006; Delcour 2013; Papagianni 2013; Tittel-Mosser 2019). Externalisation is, thus, understood in this working paper as seeking cooperation with non-EU countries on migration issues (Reslow 2018).

Regarding irregularly staying third-country nationals, the EU's migration policy focuses on efforts to effectively return this group of migrants and this approach, which remains a priority for the Member States practices regarding migratory issues (EMN 2017). However, the number of migrants returned remains much lower than the figures of those ordered to leave. In the years 2021-2022, in the EU, the former did not exceed a quarter of the latter (Eurostat 2023). Interestingly, the figures of migrants ordered to leave and those returned vary in terms of nationalities (and returning countries). While the citizens of Georgia are not within the top three of those ordered to leave in the last quarter of 2022 (see Figure 1.), they occupy the second place among the returnees (see Figure 2.). Moreover, while among the top three nationalities of those ordered to leave are only non-European countries, among the top three of those returned are two EU candidates: besides Georgia, there is also Albania (Eurostat 2023; see Figure 2.). This leads to the questions of how the potential accession to the EU impacts the cooperation in the return of migrants and what it means for the externalisation of the EU migration policies.

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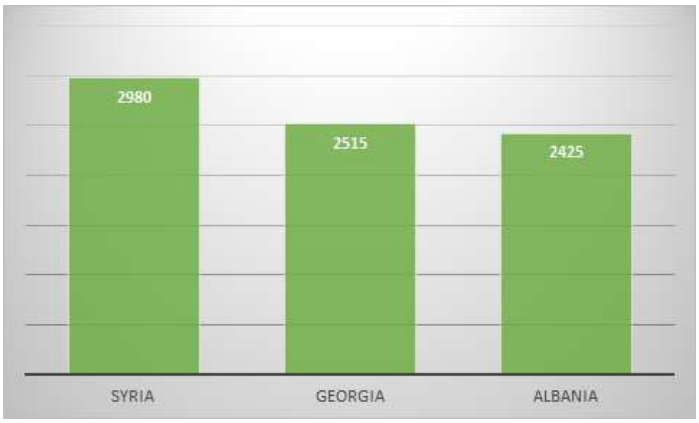
**FIGURE 1: TOP 3 NATIONALITIES ORDERED TO LEAVE THE EU IN Q4 2022**


*Source*: Eurostat (2023).

**FIGURE 2: TOP 3 NATIONALITIES RETURNED FROM THE EU IN Q4 2022**




*Source:* Eurostat (2023).

The returns of Georgian citizens are an especially salient element of migratory policies in some Member States. In Poland, since 2022, this group of migrants has become important for the country's return practices. At the same time, Georgia (despite recent political unrest[2]) remains a country strongly committed to integration with the EU structures. Since 14 December 2023, the candidate status of Georgia has been officially confirmed by the EC, following an application by Georgia in March 2022 (European Commission n.d.). Hence, Georgia has been chosen for the case study due to its ongoing integration process with the EU and the relevance of this country for the EU return policy.

This working paper aims to broaden our understanding of the cooperation mechanism between the EU and Georgia in the context of the EU's externalisation of migration policies. We focus on the EU Member State – Poland, the sending country, and Georgia, the country receiving returnees, one of six Eastern Partnership (EaP) members. We pay particular

[2] The proposed bill on tightening control over the NGOs led to mass demonstrations in May 2024. For more on the illiberal reforms in Georgia see Brender (2024).

attention to the returns of Georgian citizens from Poland (with various levels of coercion), as they represent one of the largest groups of returned foreigners under Poland's return practices. At the same time, Georgia remains a country strongly committed to integration with the EU structures. The paper draws on the qualitative material and data collected during fieldwork regarding Georgia from February to May 2024. The main part of the research was carried out on-site in Tbilisi. Follow-up interviews were conducted in Poland, mainly online. We conducted 25 individual in-depth interviews (IDIs) with representatives of international organisations, public institutions, non-governmental organisations and other experts having knowledge about returns to Georgia and the reintegration of Georgian citizens upon return. The interviews were conducted using the interview guidelines and were preceded by obtaining clearance from the Ethics Committee of the Centre of Migration Research at the University of Warsaw. The principles of informed consent and anonymous participation were crucial for the research team when conducting the interviews. This work was supplemented with desk research regarding the legal framework and return infrastructure in Poland and Georgia and the reintegration framework in the latter.

The results reveal the untapped potential of cooperation between EU Member States and Georgian institutions, which could make returns providing more opportunities for migrants, especially in terms of reintegration and—as a consequence—more effective from the point of view of EU policies. The analysis suggests, *among other things,* strengthening both the information dissemination before departure and the role of local organisations in Georgia in assessing business plans within the reintegration programmes.

The paper proceeds as follows. The context of the externalisation of EU migration policies is discussed at the beginning. Next, the practical dimension of migration in Georgia and the EU-Georgia cooperation is presented regarding both returns per se and reintegration, which constitutes a crucial factor in an effective return policy. Based on this analysis, the working paper points out the gaps in the current application of the return policy in the scope under study and offers recommendations to address them. In the conclusion, the broader dimension of the externalisation of the EU migration policies is briefly analysed, drawing on the research results.

# 2. Background

## 2.1. Externalisation of the EU Migration Policies

As already mentioned, the EU's externalisation of the migration policy is understood in this working paper as seeking cooperation by the EU institutions or the Member States with non-EU countries on migration issues (Reslow 2018). In the case of the EU, the main forms of externalisation are readmission agreements, visa facilitation agreements, and mobility partnerships (van Munster, Sterkx 2006; Delcour 2013; Papagianni 2013; Tittel-Mosser 2019) including very practical dimensions in the form of covering costs of bureaucratic procedures and detention facilities (Himmrich 2018: 4). Important examples of externalisation were the EU-Turkey deal of March 2016 (Pastore, Roman 2020), the cooperation arrangements launched in the summer of 2017 between Italian and Libyan authorities (Cassarino 2018), and a recent Italian agreement with Albania (Human Rights Watch 2024).

There is no strictly defined role for non-EU countries cooperating in the internalisation process. Ali Bilgic (2011) claims that the EU envisaged such roles for the external partners as filters of migration flow and asylum claims as well as a 'dumping ground' for unauthorised

migrants. The exact role assigned to a given country depends on its geographical location and negotiating capacities, which are, in turn, a result of different political settings.

Mobility Partnerships based on the EU's Global Approach to Migration and Mobility are a complex solution applied within the externalisation. These partnerships are focused on combining the prevention of unauthorised migration with looking for ways of legal migration and boosting the nexus between migration and development. As such, this measure should lead to a 'Win-Win-Win' situation for all the parties involved: migrants as well as sending and receiving countries (Brocza, Paulhart 2015). Therefore, the external dimension of the EU migration policy is not based solely on deterrence and combating unauthorised flows; it also envisages creating legal alternatives; however, returns of unauthorised migrants have priority over other goals (Pastore, Roman 2020). As the EC stated in 2016, efficient returns would be essential in the case of partnership with non-EU countries (European Council 2016a; 2016b). It aligns with the general principle of the EU migratory policies based on security and effective border control (Huysmans 2006; Delcour 2013; Trojanowska-Strzęboszewska 2018).

Migration issues remain salient also under the European Neighbourhood Policy (ENP) (Delcour 2013). Within the EaP (defined as an institutionalised forum for EU cooperation with Armenia, Azerbaijan, Belarus[3], Georgia, Moldova, and Ukraine), the Panel on Migration and Asylum has functioned since 2011 with the objective to 'strengthen the asylum and migration systems of Eastern partners and advance the dialogue on migration and asylum issues between the Eastern partners and the EU, as well as amongst the Eastern partners' (European Commission n.d. b). This kind of political mechanism can be understood as an example of trans-regional governance, which, as argued by Laure Decour (2013), links different regions, contributing to replacing formal multilateral bonds with a global institutional framework of migration governance. It is claimed that the EU is attempting to use the ENP to keep the identified threats out of the EU's door, which is being achieved, e.g. by exporting policy norms and templates to the cooperating countries (Balzacq 2009). Eastern European countries (including the Caucasus region) are an important part of the ENP, with six countries cooperating with the EU in the EaP scheme since 2009. Although the priority for the EU, in terms of preventing unauthorised migration, is Sub-Saharan Africa, not the post-Soviet area (Pastore, Roman 2020), the readmission agreements were initially signed mostly with Eastern European neighbours, which proves their importance for this kind of cooperation (Delcour 2013).[4]

Seeking solutions based on the externalisation measures was reinforced by the failure of internal EU solutions to migration challenges, such as the relocation scheme after 2015 (Pastore, Roman 2020). Externalisation can also be seen as a chance for the EU Member States to overcome obstacles to implementing more restrictive policies on migration (Lavenex 2006). On the other hand, for non-EU countries, it is an opportunity 'to capitalise on securitised perceptions of migration by positioning themselves as proxy implementers of restrictive migration policies of the EU' (Pastore, Roman 2020: 135). However, this pertains mostly to the transit role of some countries (e.g. Libya or Morocco in relation to migrants from Sub-Saharan

[3] After 2020 presidential elections, the EU-Belarus relations were reviewed and revised by the EU. The EU's support post-2020 has been reoriented towards non-state actors. Minsk regime's involvement in the full-scale Russian aggression against Ukraine led to the imposition of a series of individual sanctions and sectoral measures on Belarus. In 2021, the country's participation in the EaP was suspended by the Belarusian authorities. All this resulted in the factual suspension of readmission cooperation with Belarus. For more details, see EU website, e.g. European Commission (n.d. c).

[4] It should be also noted that the obligation to readmit not only own nationals, but also third country nationals and stateless persons who transited through the given state was problematic for South Mediterranean countries in the case of readmission agreements (Delcour 2013).

Africa), not the role of the countries of origin, as in the case of Georgia. Regarding the countries of origin, the interest in enhancing cooperation on returns lies mainly in the incentives made by the EU to develop possibilities of legal migration. In these terms, externalisation should be seen as a 'bargaining process' between the EU Member States and third parties (Pastore, Roman 2020: 139). However, as Laure Delcour (2013) points out, the governments of the state willing to join the Union possess less capacity to negotiate the conditions of cooperation than the others. As recent developments on the Polish (Lithuanian and Latvian)-Belarusian border show, this 'bargaining process' may mean threatening destabilisation by instrumental use of migrants smuggled through the borders (Górczyńska 2021).

The externalisation of migration policies impacts both the situation of migrants and the cooperating non-EU countries; its consequences are more far-reaching than expected and include side effects (Delcour 2013) or are considered to be a 'road to nowhere' since they have failed to prevent a new surge in irregular migration or even contributed to this new crisis (Martini, Megerisi 2023). Ferruccio Pastore and Emanuela Roman (2020) argue that externalisation shaped the number of migrants crossing the Mediterranean routes and political dynamics in African states. It did not stop the migration but changed the routes, and it also had a detrimental effect on the livelihoods of migrant families by curbing remittances (Delcour 2013). Externalisation was likewise criticised from the human rights perspective regarding deterring migrants from the EU borders (Gammeltoft-Hansen, Hathaway 2015; Spijkerboer 2013). In this regard, externalisation was accused of leaving migrants in the hands of authoritarian governments and at risk of chain refoulement (Delcour 2013). The object of criticism was also subcontracting other than state actors for implementing migration policies, seen as a 'business' or 'industry' (Andersson 2014) serving to 'maximise the effectiveness and minimise the costs and visibility of measures and operations' (Pastore, Roman 2020: 138).

## 2.3. A Brief Overview of the Emigration from and Returns to Georgia

Georgia is known as an emigration country. After regaining independence in 1991, high unemployment, poverty, and low salaries led many Georgian citizens to seek better opportunities abroad (Khishtovani et al. 2022). Despite the economic development in recent years, the outflow of people from Georgia increased by 7% from 2010 to 2020, exceeding 860,000 emigrants, which is 23% of the country's population (Khishtovani et al. 2022). The main destination for Georgian migrants, as of 2017, was Russia (approx. 450,000), followed by Greece (approx. 81,000) and Ukraine (approx. 65,000) (SCMI 2019). Around three-fourths of Georgian emigrants reside in post-Soviet countries, and this figure remains relatively stable. From 2010 to 2020, the share of the post-Soviet area as a destination for Georgian emigration slightly declined from 75% to 72%, while the shares of EU countries and the UK increased from 20% to 21% (Khishtovani et al. 2022). The main EU destinations for Georgians in 2017 were – besides already mentioned Greece – Germany (approx. 23,000), Cyprus (approx. 16,000), and Italy (approx. 12,000) (SCMI 2019).

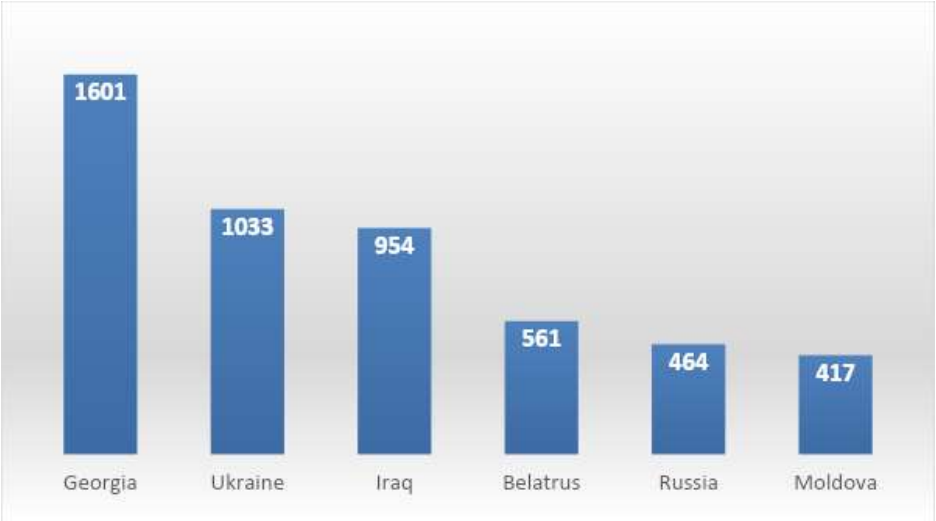
The 2017 EU-Georgia visa liberalisation agreement was followed by an increase in concerns about the activities of Georgian organised crime groups in the EU (IOM 2019). The number of asylum applications from Georgians in the EU/Schengen countries increased since the introduction of visa-free travel to this area for Georgian citizens. However, around 95% of these applications have been considered unfounded and rejected (as of 2018), and some EU Member States placed Georgia on the list of safe countries (SCMI 2019). Data from the Polish

migration agency (Office for Foreigners) show that in 2019-2023, there were 375 Georgian citizens applying for international protection, but none was recognised as a refugee, and only one person received subsidiary protection (Office for Foreigners n.d.)

Considering Georgia's emigration character, it is not surprising that the Georgian diaspora remains an important asset of the country, especially in economic terms but also in the case of advocacy for the country (SCMI 2020). Remittances from migrants working abroad play a salient role in Georgia's economy. For instance, in 2018, as many as 57% of Georgians abroad were sending money to their family in Georgia, and the total monetary value of remittances was higher than that of foreign direct investment in this country (SCMI 2019). The diaspora's saliency for economic growth is evident as remittances more than doubled from 2015 to 2021 (Khishtovani et al. 2022). In 2008, the Office of the State Minister for Diaspora Affairs was created, and in 2016, it was incorporated into the Ministry of Foreign Affairs of Georgia. The Georgian policy on diaspora seems to be balanced and encouraging to return.

At the same time, there was also an increase in the number of Georgians being refused entry to the EU/Schengen states, notably for reasons such as failing to justify their purpose and conditions of stay. Between 2015 and 2016, Poland was the first and, in the years 2017-2018, the second (after Greece) EU country to have the highest number of refusals of entry issued to Georgian citizens (SCMI 2019). Also, in 2018, Poland occupied fourth place among the EU Member States, with the highest number of Georgian citizens found illegally staying in the country (SCMI 2019). Since recently, Georgian citizens have dominated Poland's forced return policy (see Figure 3.), and this country was the fourth in the EU regarding the number of issued readmission requests to Georgia (see Figure 3.).

**Figure 3: Foreigners leaving Poland based on administrative decisions in 2022**




*Source*: Border Guard statistics. https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html (last accessed 26 April 2024).

**Figure 4: Readmission Requests received by Georgia from EU Member States in 2023**

| Country | Received | Approved | Rejected |
|---|---|---|---|
| Germany | 2771 | 2760 | 11 |
| France | 635 | 633 | 2 |
| Greece | 175 | 173 | 2 |
| Poland | 106 | 106 | 0 |
| Italy | 97 | 97 | 0 |
| The other countries | 399 | 394 | 5 |
| Total | 4183 | 4163 | 20 |

*Source*: Information received upon request from the Ministry of Interior of Georgia (2024).

Return migration constitutes an important element of the Georgian migratory landscape. The number of Georgians ordered to leave the EU increased from 6,345 in 2015 to 9,754 in 2018, and in the same period, the growth of figures regarding forced and voluntary returns was even higher – in sum, from 3,140 up to 6,625 (SCMI 2019). The large number of returns was especially visible as a corollary of the COVID-19 pandemic. As a result, in 2020, Georgia observed a positive net migration balance, which was quite an exceptional situation (Khishtovani et al. 2022). According to accessible data, as many as 23,000 Georgian citizens formerly residing abroad moved back into the country only in the first six months of 2021 (IOM 2021a). Yet, this phenomenon did not change the country of emigration character of Georgia.

## 2.3. Reintegration Infrastructure in Georgia

The increase in returns also contributed to the increase in the number of beneficiaries of reintegration programmes. However, not all returnees are entitled to reintegration programmes and not all of those entitled participate in them. The most important eligibility criteria for being a beneficiary of the reintegration programmes are linked to time spent abroad.

For instance, in 2015, there were 560 beneficiaries of reintegration programmes in Georgia, while in 2018, this number increased to 815. These numbers are not high compared to the figures on returns (3,140 and 6,625, respectively). Almost half (45%) of all beneficiaries of reintegration in this period came from Greece, and other significant countries in this regard were Germany (24%) and Belgium (15%). Poland occupied the seventh position (SCMI 2019). Most reintegration beneficiaries are returnees from EU states (SCMI 2020).

The reintegration of returnees was made the key priority for the Georgian government, along with preventing irregular migration to Georgia and applying for asylum by Georgian citizens in the EU. As Georgia's Migration Strategy declares, 'it is the country's priority to encourage the return of Georgian citizens from abroad and facilitate their reintegration upon return' (SCMI 2020: 36). However, at the same time, the Strategy envisages an important role for the Georgian diaspora, stating that the Georgian constitutes 'a valuable contribution to

Georgia's socio-economic development' (SCMI 2020: 39). As a public administration worker told us, 'it will be not clever to call all Georgians to return to their homeland because, uh, it's we have a not good enough resources to offer for everyone somehow houses, accommodation, job, etc.' (IDI_GE_11). This proves that reintegration is not only a matter of the individual situation of a given migrant but it heavily depends on the structural factors in the country of origin. For instance, even the best business project would not be successful if there is no supply on the local market for the offered products or services. Because of that, the return policy is strongly overlapping with economic and development policies.

Head of the Policy Department in the Ministry of Health, Labour and Social Affairs of Georgia, Giorgi Chavchavadze, stressed the importance of reintegration and pointed out development, social protection, education, and health programmes as crucial to establishing effective reintegration policy (IOM 2021a). The most common form of reintegration assistance is a grant to set an income generating project (usually a small business), while an identified shortage exists in psychological help (IOM 2021b). According to the International Organisation for Migration (IOM), the outcomes of Georgian returnees are poorer than global averages (IOM 2021b).

# 3. Externalisation of the EU Migration Policies – The Case of Returns to Georgia

## 3.1. Cooperation Between the EU and Georgia in Combating Irregular Migration and Performing Returns

The integration of Georgia with the EU is an essential factor in developing migration policies in this country. As Georgia's Migration Strategy declares, 'development of migration management system in Georgia was given a strong impetus by an accelerated process of Georgia's approximation with the European Union' (SCMI 2020: 6). The cooperation between Georgia and the EU is shaped by different arrangements: on the EU-Georgia level as well as within both bilateral and multilateral agreements between the Georgian government and various EU Member States. Since November 2009, Georgia has cooperated with sixteen EU Member States within a *Joint Declaration on cooperation in the framework of EU's Partnership for Mobility*. This initiative focuses on fighting against illegal migration and the promotion of legal migration paths. Readmission and reintegration are important elements of this cooperation. Moreover, it provides arrangements for circular migration, inevitably linked to returns and re-returns (SCMI n.d. a).

In the case of Georgia, an effective policy on returns is a condition for such incentives as visa regime liberalisation. The EU-Georgia visa liberalisation agreement recognises that 'visa facilitation should not lead to illegal migration' and pays 'special attention to security and readmission' (Agreement 2011a: preamble). This agreement was signed together with the one on readmission (Agreement 2011b). It was decided that it shall only enter into force on the date of the entry into force of the agreement on readmission (Agreements 2011a: art. 14). Although there is an emphasis on reciprocity in the agreement (Agreement 2011b: preamble), the obvious aim of the deals were the effective returns of Georgian citizens from the EU rather than *vice versa*. The readmission agreement stipulates means of evidence regarding nationality of a migrant (art. 8), time limits of the readmission procedure (art. 10), transfer modalities and

modes of transportation (art. 11), as well as transit procedures (art. 14). It also sets up Joint Readmission Committee with the competences of monitoring the application of the agreement, deciding on implementing arrangements 'necessary for the uniform application' thereof, proposing amendments and exchanging information (art. 18). The full implementation of the readmission agreement was also included in the EU-Georgia Association Agreement (2014: art. 16). Therefore, the effective returns remain an expectation from Georgia in case of the general integration process with the EU.

Two crucial EU-funded projects related to migration were implemented in Georgia across the Mobility Partnership and visa facilitation scheme: ENIGMMA and ENIGMMA-2. The first one stands for *Enhancing Georgia's Migration Management* and was implemented in 2013-2017 by the International Centre for Migration Policy Development (ICMPD). The project focused on developing a labour migration strategy, circular migration, and diaspora involvement. It also envisaged expanding the analytical capacities of Georgian migration institutions (SCMI n.d. b). The same agency implemented the second project, *Sustaining Migration Management in Georgia*, in 2016-2023. Despite the lack of explicit focus on returns, the project aimed at minimising the risks of irregular migration, developing 'legal channels for regularisation of Georgian migrants in irregular situation', and generally strengthening cooperation of migration agencies (Eu4Georgia.eu n.d.). According to our interviewed stakeholders, both projects considerably improved data protection in the area of migration in Georgia, so they not only led to more effective returns from the sending country's point of view but also had some positive impact on the rights of migrants.

The EU praised Georgia for the implementation of readmission procedures. During a conference organised by the IOM on the occasion of the third anniversary of the EU-Georgia visa liberalisation agreement, EU Ambassador Carl Hartzell claimed that 'visa-free travel available to citizens of Georgia has demonstrated its worth by bringing the EU and Georgia closer together'. The general feeling, he noted, is that Georgia has demonstrated a laudable commitment to cooperating with the authorities of EU Member States in decreasing the pressure of irregular migration (IOM 2019).

Apart from cooperation at the EU level, bilateral agreements are also an essential part of the externalisation of migration policies by EU Member States. Germany plays an important role in this regard, having an agreement with Georgia regarding seasonal workers (Agenda.ge 2021) and an agreement to facilitate the returns of rejected asylum applicants (AA 2023). Importantly, the agreement facilitating returns offers academic exchange programmes for Georgians (AA 2023). This aligns with the policy of offering incentives in exchange for readmission enhancements.

Some projects in the field of returns are co-funded by the EU and a sending member state. This was the case of the project Strengthening the Development Potential of the EU Mobility Partnership in Georgia through Targeted Circular Migration and Diaspora Mobilization funded by the EU and the German Federal Ministry for Economic Cooperation and Development and implemented in 2013-2016 (SCMI n.d. c). The co-funded (by the EU and Member States) cooperation also included returns of Georgian citizens. According to our respondents, assisted voluntary returns (AVR) are funded by the EU funds and the governments of the sending countries. Within this form of cooperation, combined flights are also organised. As one expert involved in the assistance for returnees in Georgia said, 'in most cases, all the migrants from the European Union [were] combined in Germany and they were deported from this state [to Georgia]' (IDI_GE_14-15). Furthermore, as one of the public administration employees told us: 'Minister of Internal Affairs is in charge of this. They're

sending a plane with staff, for example, in Poland, in Germany, and they accompany these returnees on the [basis of the] readmission agreement' (IDI_GE_11). As noted by our interviewees, representatives of the Ministry of Internal Affairs of Georgia participate in the Collecting Return Operations organised by Frontex and ensure escort for Georgian returnees (IDI_GE_21). Representatives of the Georgian Ombudsman randomly monitor the flights.

Also, with the EU funding and support of IOM, the Readmission Case Management Electronic System (RCMES) has been developed. This system is a web-based, secure platform which facilitates the exchange of necessary information with partner countries and competent Georgian authorities and significantly simplifies the procedure of receiving and processing requests on readmission (IDI_GE_21). Thus, the externalisation of the EU policy on return also involved the development of technologies and capacities of Georgian migration agencies.

## 3.2. Cooperation Between the EU and Georgia in Organising the Reintegration of Returnees

*Overview*

Reintegration assistance after return to Georgia is an important element of Georgian migration policy. The *State Programme for Supporting Reintegration of Returned Georgian Migrants*[5] offers assistance such as medical services, social projects, vocational education, and temporary livelihood to Georgians irregularly residing abroad for more than one year and rejected or accepted asylum applicants. As observed by a public administration employee interviewed, the state reintegration programme was elaborated in cooperation with the IOM. The project also covers starting a business and provides up to six-day accommodation after arrival to Georgia.

Since 2003, IOM has implemented a separate EU-funded programme for those who have unlawfully stayed abroad or rejected asylum applicants (SCMI n.d. d). The IOM programme offers consulting, temporary accommodation provision, necessary medication purchase, training and job placement, and assistance in income-generating activities (together with funding) (IOM n.d.; SCMI n.d. d).

There are also other programmes for returnees. Frontex supports EU Member States and Schengen Associated Countries in providing reintegration assistance both during the first days following the arrival in the country of origin (post-arrival assistance), as well as longer-term assistance up to 12 months (post-return assistance). Frontex is not implementing these activities but subcontracting implementing partners (Frontex n.d. a). In the case of Georgia, Frontex works in formal partnership with Caritas International Belgium, which cooperates with Caritas Georgia. The assistance provided by Caritas Georgia within this scheme includes airport pick-up or reception at the place of arrival, temporary accommodation, in-country travel assistance, special assistance for vulnerable people, referral for urgent medical care and cash assistance as post-arrival assistance. Furthermore, post-return assistance is available through business start-up assistance, long-term housing support, social, legal and medical support, job placement, schooling and language training, vocational training, and cash assistance (Frontex n.d. b).

[5] The programme has annual editions, see e.g. the 2018 edition, see more: (SCMI n.d. e).

There are also programmes developed by countries returning Georgians (sending countries). The returnees can benefit from both the state programme and those implemented by the sending country. For example, the German and French governments developed important programmes. One of the components of the project *Strengthening the Development Potential of the EU Mobility Partnership in Georgia through Targeted Circular Migration and Diaspora Mobilization* (2013-2016) was assistance in the reintegration offered for 40 professionals of the nursing and hospitality sector as well as encouraging 45 Georgians trained in Germany to return home and set up enterprises (SCMI n.d. c). Since 2017, Germany has developed the *Starthilfe* project (implemented by IOM); however, Georgians are eligible only for one-off financial support because reintegration support should be covered within the EU Reintegration Programme (BAMF 2024). There is a special repatriation programme for highly qualified returnees from Germany. Also, the French Office for Immigration and Integration (OFII) supports the programme for Georgian returnees, which aims to assist them in starting businesses. The programme includes social and medical assistance as well as support for professional and economic projects (OFII 2022). Poland has neither introduced any particular reintegration programme nor cooperated with any Polish NGOs on the issue of return and reintegration with the Georgian side.

The statistics on the beneficiaries of all the programmes are as follows. According to the IOM, between 2015 and 2019, there were 4,929 beneficiaries within four programmes: the programme implemented by the IOM (2,607), the Government of Georgia's State Reintegration Programme (987), the project implemented by Caritas (732), and the OFII's reintegration programme (603) (IOM 2021b: 11).

Implementation of the Programmes in Practice

As we were informed within the field study, 'effective implementation of return and readmission policies represents one of the top priorities of the Ministry of Internal Affairs of Georgia' (IDI_GE_21). However, as one of our interviewees admitted, 'the State Migrations Reintegration Programme is simply too small. Basically, it has no impact.' (IDI_GE_8-9-10). Another interviewee explained: 'last year, over 900 persons applied for the state reintegration programme, of which only 278 were eligible and provided with support' (IDI_GE_8-9-10). As the study conducted by IOM revealed, the State Programme was used mainly by proactive and independent migrants due to the way of applying for participation (IOM 2021b: 11). Therefore, the programmes developed by various EU Member States seem to fill the gap in the assistance provision of returnees in Georgia. Generally – despite various funding sources – the reintegration support is not offered to all returnees, and the difference between the level of support and services offered to returnees might be confusing.

It is important to remember that externalisation in the case of reintegration of returnees is not limited to the territory of Georgia but also pertains to the pre-departure activities in the EU Member States. As one Georgian NGO worker said, 'the reintegration starts before they [migrants] even are deported. That the first, you know, information about the opportunities in Georgia is given back' (IDI_GE_2-3-4). Thus, the information provision seems to be the crucial factor of reintegration effectiveness.

Strong social links in Georgian society support the effectiveness of the programmes. The employee mentioned above ensured that in the case of accommodation, Georgians can rely on their relatives because, as he said: 'we are believing that if someone find[s] our relatives in the

street, it's our shame' (IDI_GE_11). Other interviewees expressed similar opinions.[6] Thus, the culture of strong family ties, in particular, is an important element supporting the reintegration of returnees in Georgia, and the reintegration is, to a considerable extent, dependent on social networks. As the recent IOM study revealed, 68% of Georgian returnees from Germany expressed strong community belonging in Georgia (IOM 2024: 48).

The assistance often also encompasses travel arrangements and administrative aid for travel preparations. The businesses set up by returnees are usually small-scale undertakings such as hairdresser salons, washing car services, or tailor workshops (People in Need 2024). There are situations when there is a special need to reintegrate children who spent most (of all) of their life abroad, and they need to 'get private tutoring to enhance their Georgian language skills so that they can join their peers and not the lower grades that correspond to their age because of their language problems' (IDI_GE_8-9-10). Therefore, the programmes developed by the EU Member States also attempt to cover specific needs which are not included in the other programmes.

The NGOs engaged in the reintegration process work closely with beneficiaries to write or correct the business plans. Often, the role of advisors (also known as return/reintegration counsellors) in this process is crucial – one of our interviewees admitted: 'in most cases, we change their business plan with the very close cooperation and negotiation of the beneficiary, because (…) their view about what they can do in Georgia, in Tbilisi, in Kutaisi is much different, different from what they really can do' (IDI_GE_2-3-4). As our interviewees stressed, the organisations implementing the reintegration programmes are also responsible for procuring goods, as the beneficiaries do not receive money for setting up their businesses. Instead, the NGOs purchase necessary items and hand them out to the returnees. The NGO worker quoted above declared: 'We have a very good procurement division that works actively over that because we are eager to find everything with best specifications and lowest prices'. Another person engaged in the preparation of the business plans process said that it 'might spend months working with one beneficiary in terms of making a business plan' because the advisors are 'narrowing down the plan to as tight and suitable for the beneficiary as possible' (IDI_GE_2-3-4). Another person responsible for reintegration programmes listed the most common forms of businesses: 'dairy farms, goat farms, fishery, like land cultivation, like greenhouses, production of dairy products, small production sites, like furniture production or sewing workshops, depending on the experience of a person' (IDI_GE_8-9-10).

The implementing agencies are obliged to monitor the further development of the businesses, which is usually done after one or two years. As our interviewees admitted, the success rate is quite high[7] , and one of our interviewees pointed out that 'there have been some cases [of people] who have been very good and who have expanded their businesses, who have employed some other people' (IDI_GE_8-9-10). However, almost all businesses are rather small and have no employees. The same interviewee summarised the assistance provided within reintegration schemes as crucial for returnees because 'otherwise they would be just returning with their empty hands and then thinking again of going someplace'. However, regarding the monitoring of the businesses of returnees, it is not always possible to reach the beneficiaries. One NGO worker admitted: 'sometimes you're planning your monitoring visit to Kutaisi, for example. They say, are you? […] Okay, come, I come and they don't answer the phone' (IDI_GE_16-17).

[6] However, some interviewees pointed out that the pool of accommodation within the state programme is sometimes not sufficient to cover all needs, so the social networks play the crucial role in this case.
[7] One interviewee estimated it at 85% (IDI_GE_8-9-10).

The funding provided within the partnership with the external actors, the EU included, is crucial for the work done to reintegrate the returnees. Some of our interviewees emphasised the role of external partners and were sceptical about cooperation with the Georgian government. As one of the NGO workers stated: 'We do not work with the government (…) because [the] government do[es] not really have any kind of programmes to support people who are returning for us to cooperate with them. Okay. Basically, whatever we do about the returnees, about the… this project, what we implement, we work with our partner in [name of the country]. That's it' (IDI_GE_2-3-4). Importantly—as our interviewees explained—the money the beneficiaries receive often depends on the country from which they return.

# 4. Identified Gaps and Shortcomings

According to the opinions of our interviewees, the cooperation between the EU and Georgia on the returns of Georgian citizens will gain importance in the coming years. This will pose a difficulty for the reintegration systems and increase the need to develop the existing programmes or new ones in cooperation with the sending countries or the EU as a whole. Moreover, an NGO worker interviewed by us doubted the successful development of programmes for returnees because – according to this person – 'the government's main policy… policies and political like vision about returnees is internal returning and support IDPs, mainly [those] who lost their homes' (IDI_GE_2-3-4). Therefore, the still unsolved situation of the IDPs (internally displaced persons) from the occupied territories of Abkhazia and South Ossetia can be a burden for the effective development of assistance for returnees from abroad. Our interviewees also doubt the possibility of externalisation in the form of an agreement similar to the UK-Rwanda one (aimed at sending some migrants ordered to leave the UK to Rwanda) or the Italy-Albania one (aimed at keeping the asylum-seekers, who applied for the Italian asylum system, on the territory of Albania). According to the experts we talked to, there is no political discussion about such solutions right now. One of our interviewees ensured that it is 'unthinkable to create [on Georgian territory] some programme like British people want to do in Rwanda' (IDI_GE_18-19).

The most significant gaps identified within the study pertain to problems with the effectiveness of the reintegration programs, which make returnees emigrate again to the EU. Also, some structural problems were identified, which could be the factors pushing Georgians to emigrate. One expert involved in the implementation of reintegration policies we interviewed stressed that returnees sometimes do not have trust in the state reintegration programme due to prolonged procedures, and another problem is the short time of the programme (IDI_GE_12). Some interviewees assessed the state integration programme as not satisfying the needs. One public entity representative pointed out that not enough funding was allocated to the reintegration: 'it [the reintegration programmes] needs to increase their budget because one of the biggest problems is related to the budget' (GE_14-15). In sum, as one of the international organisations' representatives told us: 'Georgians keep on applying for asylum, even though they know that they will not get eligible. But they keep on going there. And the State Migration Reintegration Programme is simply too small. It has no impact.' (IDI_GE_8-9-10). Based on the research material collected, this migrants' strategy is difficult to explain. Even the organisations interviewed that draw attention to it do not know what is behind it.

Another problem is the access to information, which makes some returnees unaware of the assistance they can receive. As the official data of Georgian migration institutions show, some

returnees do not know about the reintegration programmes available in Georgia (SCMI 2020). As one of our interviewees claimed, 'one of the most important component[s] [of the reintegration process] is the information access' (IDI_GE_8-9-10). A former worker of one international organisation said: 'using the example of Poland, I can say that Georgian citizens located in Poland, in any voivodeship, do not receive information regarding the possibility of return' (IDI_GE_25). Some other interviewed experts mentioned misinformation[8] in Polish detention centres before the departure, which resulted in anger after arrival.

Moreover, those who stayed illegally abroad especially encountered difficulties with reintegration. One of the most problematic issues is the recognition of education certificates and the need for retraining to meet the market demands (SCMI 2020). As one of the public administration employees noted, 'the professions which Georgian citizens have, it's not in line with the market demand' (IDI_GE_11). Unfortunately, the language skills gained during emigration are not always an asset in Georgia because, as one interviewee said, there is no 'a huge spectrum of international companies' which can hire people based on a specific foreign language they speak (IDI_GE_13).

Our interviewees also emphasised that in public opinion, returnees may not need much help because they should possess resources achieved during migration: 'in Georgia, if you stop somebody on the street and ask about migrant, in his or her eyes, [a] migrant is a person with money, with opportunities, and with everything he or she needs' (IDI_GE_2-3-4). Another interviewee depicted this attitude with the words: 'When you come back from abroad, everyone thinks of you as rich, no one knows what you earned there, you don't have anything there, and now you have to help everyone. Well, I think it's also very burdensome for these people' (IDI_GE_24). In the opinion of the NGO workers who talked to us, this social attitude towards returnees impacts the psychological state of non-quite-successful returnees and, as a consequence, encourages them to re-emigration. Also, strong pressure on migrants to send as much money home as possible can push them into a precarious position abroad and lead to the need for return.

Another problem is that the national health service does not cover 100% of the costs of medical treatment. According to our interviewees, this can be a push factor for people with serious illnesses if they cannot afford the medical costs. Also, our interviewees noted that it is a problem that some of the business plans are assessed abroad without full knowledge of the market and cultural reality in Georgia.

# 5. Conclusions and Recommendations

Following Russia's full-scale aggression against Ukraine and the relative ban on the return of Ukrainian citizens to their country of origin from 2022 onwards, it is Georgians who have become one of the dominant groups of foreigners against whom return decisions are issued both in the EU and Poland. Georgia's cooperation with the EU allows for the smooth implementation of return decisions and the participation of Georgian services (relieving Frontex in this role). Reintegration programmes offered to Georgian citizens on return decisions are not always sufficient to convince Georgian citizens to return. They are also not complete enough, in particular financially, to convince returnees to persist in their resolve to return to their country of origin. It is worth considering extending the reintegration package

[8] Misinformation about the money available after return is an example. The returnees have not received cash which they were promised and which returnees on the same flight but from other countries were receiving.

and coordinating the amount of support of the various reintegration programmes, which vary widely.

The cooperation established by the EU with Georgia in organising return appears to be working quite well. The involvement of Georgian actors in organising flights and reintegration assistance after return significantly relieves the burden on the EU side (Frontex or individual Member States). However, the question remains whether the 'pushing' of the tasks of carrying out air return operations does not entail a reduction in the guarantees to which returned foreigners are entitled. This relates, for example, to issues such as security on board the aircraft and compliance with health protection requirements for persons belonging to vulnerable groups (sick persons, persons with disabilities and pregnant women). Furthermore, whether the Georgian side sufficiently monitors these operations should be considered.

Based on the identified gaps and shortcomings, we recommend what follows. Strengthening access to relevant information prior to departure seems crucial for the effective reintegration process. Information dissemination is essential at all stages of the return process and should be accessible both prior to departure and upon arrival in Georgia, namely in strategic places of first contact like airports, railway stations, and bus stations. Hence, it should be an important part of the cooperation between migration agencies in the EU Member States and in Georgia. We also recommend that, if possible, the training should be accessible before departure so the returnee can find a job immediately after arrival. Furthermore, the results of our study suggest the need to strengthen the role of local NGOs in the implementation of reintegration programmes, which means that as much contextualised knowledge as possible is needed to increase the efficiency of such programmes. This is particularly important in remote mountainous regions of Georgia and those inhabited by ethnic minorities. It would also be beneficial for the effectiveness of reintegration programmes to enhance cooperation between the NGOs supporting migrants in the sending countries and Georgia. Last but not least, we recommend organising information campaigns that can alter the social attitude towards returnees and the requirements that are imposed on them based on the assumption that they are able to support relatives in Georgia instead of requiring support themselves.

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Decentring the Study of Migrant Returns and Return Policies

# Procedures of irregularisation in Greece: spatial, carceral and temporal aspects

## Working Paper (WP2)


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## List of abbreviations

| | |
|---|---|
| ADET | Uniform-Format Residence Permit |
| AMKA | National Insurance Number |
| AVRR | Assisted Voluntary Return and Reintegration |
| CCAC | Closed Controlled Access Centres |
| CJEU | Court of Justice of the European Union |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EIL | Enforcement of immigration legislation |
| EU | European Union |
| GAS | Greek Asylum Service |
| GCR | Greek Council for Refugees |
| IO | International Organisation |
| IOM | International Organization for Migration |
| JMD | Joint Ministerial Decision |
| MMA | Ministry of Migration and Asylum |
| MS | Member State |
| NGO | Non-Governmental Organisation |
| PAAYPA | Temporary Insurance and Health Care Number |
| PRDC | Pre-Removal Detention Center |
| RIC | Reception and Identification Center |
| RMI | Return Migration Infrastructure |
| SOP | Standard Operating Procedures |
| TCN | Third-country national |

# Abstract

This working paper explores how the irregularisation of migration is produced and reproduced through the workings of the legal and institutional framework of migration and asylum in the case of Greece. Irregularity is not considered here only as a legal status (or the absence of it), but as the outcome of policies, institutional arrangements, and the formal and informal practices of various actors within the wider political and socio-economic context. We thus discuss irregularisation as a process rather than a state of things, one in which many (also 'regular') people may be involved, in sequences of (ir)regular statuses. Irregularisation entails a sum of diverse informal or 'irregular' or 'illegal' practices that also people with 'regular' statuses develop in order to navigate in the otherwise hostile migration and asylum regime.

The paper examines in short how irregularisation has emerged through the immigration system over the last three decades including the complicated pathways to regularisation procedures, and the police practices. It then focuses on the labyrinth of irregularisation that has been reproduced through the newly established asylum system after 2015-16, in all the stages of an asylum application: the initial registration of the asylum claim; the asylum procedure and the multiple categories of deservingness/undeservingness it creates; the so called inadmissible claims related to the safe third country rule and the recent suspension of readmissions to Turkey; the irregularisation and criminalisation of asylum seekers' practices by reducing or withdrawing reception provisions; the appeal procedure; and the return policy framework characterised by coercion reinforcing irregularisation, even in cases of self-proclaimed 'voluntary' returns.

The paper also analyses the spatial and temporal dimensions of the process of irregularisation, starting from even before border-crossing and extending during the diverse routes along which legislation and institutional practices create borders and categorise people. Moreover, the crucial role that is reserved for migrants' deprivation of liberty (even for those applying –or having already applied– for asylum) calls for a separate examination of the carceral dimension that affects dramatically migrants' pathways in space and time in the contemporary migration regimes.

The spatial and temporal boundaries among the figures of the (il)legal, the (ir)regular, the registered, the detained, the returnee, the deportee, and the asylum-seeker are blurred, as are the experiences and the statuses of those emplaced in these spaces and temporalities. Overall, as the paper argues, irregularisation is both produced by laws and their implementation but is also productive in itself in spatial, temporal and carceral terms. As some recent developments in the EU system of migration governance show, Greece can be considered as a showcase and a field of experimentation for irregularisation in Europe.



**Keywords:**

Process of irregularisation, migration and asylum policies, asylum procedures, space-time, detention, Greece

# 1. Introduction[1]

The aim of the Working Paper is to explore and critically analyse the notion of irregularisation, and particularly to examine how it emerges through legislation and institutional procedures in the case of Greece. Its objective is twofold. First, to discuss irregularisation not in terms of the status of irregularity, but as a dynamic and evolving process in which many (also 'regular') people may be entangled. The process of irregularisation consists of sequences of regular and irregular statuses, but also of informal, or 'irregular', or, 'illicit', or 'illegal' practices that also people with 'regular' status may develop in their efforts to navigate the complex and restrictive legal frameworks of asylum and immigration. Second, the paper aims to unpack and explore the different dimensions in which irregularisation as a process unfolds, namely the procedural, the spatial, the temporal, and the carceral. We seek to explore how irregularisation is (re)produced at the intersections of these overlapping layers.

More precisely, our research questions are the following:

i. What are the institutional procedures that irregularise individuals and groups? What is the place of these procedures in the legal framework on migration and asylum and in its implementation in practice?
ii. What is the temporality of irregularisation? How does it change in the long run of changing migration and asylum policies? What are the tempos, the paces and the duration of irregularisation procedures in the sort run of individual trajectories?
iii. What is the spatiality of irregularisation? Which are the geographical routes that are affected and the places where it occurs?
iv. How is irregularisation entangled with the detention of migrants and asylum seekers?

# 2. Methodology

Methodologically, the Working Paper is based on both desk and primary research conducted as part of the GAPs 'De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond' project. Desk research, included the study of the institutional framework, national laws and legal provisions, policy documents, official reports, statistical data, EU-related documents, as well as reports from a number of actors involved in the field of migration and asylum such as International Organisations (IOs) and Non-Governmental Organisations (NGOs). Primary research included mainly qualitative methods exploring the concept of 'Return Migration Infrastructures' (RMIs). Research on RMIs aims to bring to the fore how return migration governance is put into practice, by focusing on: the actors involved in the operation of returns, their relationships and networks, their everyday practices, the different steps of the return process, and the materials and technologies that shape the ways in which returns take place on the ground. In Greece, research on RMIs involved sixteen (16) semi-structured interviews with stakeholders and actors engaged in the implementation of returns, a focus on the Assisted Voluntary Return and Reintegration (AVRR) program, run by the

[1] The authors would like to thank the GAPs coordinators Zeynep Şahin Mencütek (Bonn International Centre for Conflict Studies) and Soner Barthoma (Uppsala Universtity), as well as Anna Triandafyllidou (Canada Excellence Research Chair in Migration and Integration, Toronto Metropolitan University) for their constructive comments and suggestions that improved the paper. The authors are also grateful to the members of the Stakeholder Experts Panel formed in Greece and their invaluable insights provided during the first SEP & EKKE team meeting that was held on the 4th of October 2023, as well as to actors' representatives that accepted to be interviewed for the needs of the GAPs project.

International Organization for Migration (IOM), as an 'entry point' for the research, as well as ethnographic methods in constituting parts of the particular RMI.

More particularly, interviews were conducted with representatives of national authorities, IOs, and NGOs, as well as of migrant and refugee communities and organisations. The selection of stakeholders started by focusing on the actors implementing the AVRR program, particularly IOM and its different teams/departments responsible for the implementation of the different parts of the return procedure. Gradually, a number of other actors were approached related to the management and planning of AVRR in other scales, including state authorities, such as the Ministry of Migration and Asylum (MMA). Participants also included actors engaged with other types of RMIs in Greece, notably forced returns and pushbacks: NGOs, institutional bodies, and commissions related to the monitoring of returns, human rights and legal advocacy. In an infrastructural perspective, these interviews constituted a tool to explore the relations and interactions between actors, materials, and technologies that together mediate the ways in which returns take place. The majority of interviews were conducted in the actors' premises, while few were conducted online or at National Centre for Social Research's (EKKE's) offices. Most lasted about one hour, while some lasted much more, approaching the two hours. In all cases, participants offered their informed written consent.

Field research also included ethnographic visits and observations in different localities, places, premises, and offices, all being constituent parts of the RMIs in Greece. These included the IOM headquarters where a number of services are provided and where most procedures take place, the Athens airport as part of the material dimensions of the AVRR infrastructure, and the Open Centre for migrants registered for AVRR (OCAVRR), where beneficiaries are provided temporary accommodation in Athens. The research team conducted ethnographic research through field visits and guided tours by IOM representatives in these three places, strictly adhering to the 'do no harm' principle towards research participants and other people present in these places at the time of the visits.

# 3. Conceptualising irregularisation

In this Working Paper **irregularity is understood as a *process* rather than a fixed condition, a state of things, a characteristic or 'quality' that certain people possess** (also in Näre et al., 2024); a process which is 'above all a product of the law' (Jacobsen & Karlsen, 2020: 10) deriving from the ever restrictive and highly complex migration and asylum policies (Näre et al., 2024; Triantafyllidou & Spencer 2020; Ambrosini, 2016; De Genova, 2002). Irregularity entails a number of informal, or 'irregular', or 'illegal' practices that both 'irregular' and 'regular' people develop in order to navigate within the otherwise hostile migration and asylum system along their shifting migratory projects and trajectories.

Irregularity has increasingly been a major reference point in dominant public discourses concerning migration. Irregularity becomes defined through normative antithesis: regularity or actually legality. Thus irregularity is interpreted through a simplified lens of a binary good (legal, regular) and problematic (irregular which gets equated with illegal) that may easily be employed in scapegoating 'irregulars' as threats to the social and political (national and EU) body.

The 'illegal' migrant together with the 'bogus' asylum seeker have been pivotal figures around whom political discourses on migration (control) and migration and asylum policies have been shaped and reshaped over the past decades (see also Balibar, 2010; Mezzadra, 2015). Yet the 'shades' of il/legality, ir/regularity and un/deservingness are never so clear-cut as they

are often presented to be. Rather they entail multi-faceted and complex categorisations that reflect the changing political conjunctures and employment/labour needs in a particular context that deem a migrant as deserving.

Irregularity involves multiple categories, conditions and experiences, 'including those who remain on state territory after having overstayed their visa, having had their residency revoked or asylum application rejected or never having applied for residency or asylum' (Jacobsen & Karlsen, 2020: 1; similarly in Triandafyllidou & Spencer, 2020: 2). Notions of 'semi-legality' or 'befallen irregularity' (see Triandafyllidou & Bartolini, 2020; Triandafyllidou, 2023) have been coined to describe not only the multiple categorisations but also the transience of ir/regularity. In order to represent the diverse ways that people might end up in irregular statues, Näre et al (2024: 10) in their comparative report for I-CLAIM project, identify three main routes into administrative irregularity and precarity in the six I-CLAIM countries: the administrative, the demographic and the geographic one. As Savatic et al. (2024: 3) argue, 'the distribution across categories depends upon visa and asylum policies' and 'states are trapped in a circular logic: migration and asylum policies determine how many border-crossers are counted and whether they are labelled as "refugees" or "(ir)regular migrants" making states the origin of the distinction that then subsequently requires distinct policies'.

This complex categorisation and hierarchical positioning of migrants along the spectrum of ir/regularity is, according to De Genova (2015: 3-4), 'the work of immigration regimes and citizenship law' as well as product of 'the bordered definition of state territoriality that constitutes particular forms and expressions of human mobility as 'migration' and classifies specific kinds of people who move as '"migrants"'. Criminalisation along with illegalisation frame the ways irregularity and irregularisation is understood in many EU policies (Näre et al., 2024: 9), while its conceptualisation is territorially bounded to the irregular crossing of the external Schengen borders (ibid) and on irregularly staying in an EU country.

Since states often consider deportations difficult to conduct, apprehending mobility is prompted by an array of measures for securitising and militarising the multiple borders, by criminalising border-crossings (Macias-Rojas, 2021) as well as by de-territorialising asylum claims (as for example in the case of 'the fiction of non-entry' in the New Pact). Moreover, as Klaus and Szulecka (2023) discuss 'another technique often used is the creation of a hostile environment on legal, practical, economical or discursive levels to try to encourage people to depart, to leave the country "voluntarily"'.

Deportability, bearing the 'ability' to be deported at any time, relies exactly on demarcations of (migrant but not only) illegality and their border practices. Despite claims for being ineffective, deportation regimes and deportability per se, impact on the exploitation, the vulnerability but also on the broader economies of migration and security regimes (see also Karadag & Sert, 2023). Hence, De Genova (2010) contends that deportability of migrants has 'to be seen in a continuum with "detainability"' as well as with other modalities of 'captivity and confinement'.

Actually, and increasingly, someone can be labelled as 'illegal' even before any legal decisions or irrespective of them (as has been the case in 2020 with the tensions in Evros at the Greek-Turkish borders and elsewhere). Thus illegality becomes a de facto attribute inscribed into the bodies and identities of migrants crossing borders (albeit not to all migrants' groups since it tends to be nationality driven). As Jansen writes, 'and today, while Frontex is operating on the European borders—which have been extended far beyond the EU—and people regularly drown, suffocate or suffer and die by other means, it is their "illegal" movement which still tends to be perceived first and colours perception of their death, detention or deportation' (Jansen, 2015: 16).

As (illegalised) migrants continue to incarnate a major 'threat' in European discourses, migration is increasingly perceived as something 'irregular' and thus managing this irregularity and securitising the core body of the EU becomes a key priority, resulting in the proliferation of border practices and bio- and necro-political governance of migrants (see De Genova, 2015). As Jansen et al argue (2019: ix), 'the irregularisation of migration and the increase of border policing are processes standing in close connection to the free flow of labour, commodities and money in a globalised economy. The smoothing of mercantile space goes hand in hand with —and indeed seems to facilitate— an ever more complex stratification of geographical space and a dismantling of rights and political agency. In that context, borders could be said to differentiate among populations —to create different spaces for different populations even— and increasingly so, down to the level of the individual'. Similarly, Mezzadra and Neilson (2013: 7) observed that border practices instigate a form of 'differential inclusion' that 'select and filter people and different forms of circulation in ways no less violent than those deployed in exclusionary measures'. Yet this practice of differentiation, also results in differentiated rights for different categories of people depending on the place and time of border practices and on people's nationality. It may also result in differentiated 'deportability' and 'inhabitation' of the grey spaces of irregularisation that we will see further on.

Finally, illegality is not only produced but is productive in itself. As several scholars have discussed (De Genova, 2002; Triantafyllidou & Spencer, 2020; Ambrosini, 2016) irregularisation produces an exploitable and vulnerable workforce living under constant threat. Ruben Anderson (2014: 7, 15) studied the 'illegality industry' flourishing in European borderlands, to highlight 'not the repressive but the productive nature' of migration and border controls, in particular 'how the "management" of irregular migration is a particularly expensive -and lucrative- field'. The concept, he argued, 'allows for the consideration of a dispersed "value chain", or the distinct domains in which migrant illegality is processed, "packaged", presented, and ultimately rendered profitable' for a wide and diverse array of actors including rentier states and employers, smuggling networks and security companies, border guards and aid workers, the media and academia (Anderson, 2014) This industry, 'feeding on the illegality it is meant to control, only produces more and increasingly distressing forms of it' (Anderson, 2014: 24).

There are several insights from the literature on the so-called migration industries (e.g. Gammeltoft-Hansen & Sorensen, 2013) and political economic critiques to migration controls which are relevant here. From lobbying strategies of private contractors managing detention facilities who push for expanding detention (Conlon & Hiemstra, 2014), to Frontex's incentives to count more irregular/illegal border crossings in order to depict unauthorised migration as a problem 'which requires a securitised response - a response that it can provide if given more resources' (Savatic et al., 2024: 25). In the carceral landscape of the wider borderlands, according to Achtnich (2022: 112, 98-9), 'the precarious migrant body becomes part of a transnational system of economic production..., subjected to multiple rounds of value extraction'. Along similar lines of thought, Martin (2021: 747) argued that 'legal categorisation is foundational' in producing what she calls 'carceral economies of migration control', analysing, among others, how 'status value' is created by the 'illegalisation of mobile people' allowing for the commodification of migrant life not 'as property but as assemblages of services, bed space, data and mobility'.

Although a great part of this discussion oscillates between legalities and illegalities, analysing the complexities of the multiplicities of laws (akin to the multiplication of borders) and taking into consideration the ad-hoc legal suspension (Sundberg, 2015: 210; also Agamben, 2006) that is increasingly 'normalised' (as for example the recent and now

institutionalised border closures depriving asylum seekers from their rights) can provide an additional vantage point for analysing irregularisation. Hence, in this multitude of laws and regulations, one could argue that irregularisation, besides being a product of political will and interests, is also engendered by an over-regulation and an obscured/invisibilised implementation (that exploits the legal 'gaps' and 'invisibilised' practices such as pushbacks etc.).

Considering the spectrum that constitutes irregularisation and the fact that irregularisation unfolds in multiple spatialities, temporalities and legalities, the socio-spatial notions of informality and of 'grey spaces (Yiftacel, 2009a; 2009b) might further enrich its theorisation. Sahin-Mencutek and Triandafyllidou (forthcoming) contend that although informality has been explored as a way 'in which migrants navigate mobility or immobility', its role 'in migration governance has not been sufficiently theorized'. Therefore, they suggest that 'formality and informality intersect in governing returns leading to a sort of "messy governance"' which is intentional.

The intentional aspect of informality has been extensively discussed in the respective scholarship. By bringing in dialogue research on migrant illegalisation and critical poverty scholarship, De Genova and Roy (2020) argue that 'the study of practices of illegalisation allows critical poverty scholarship to better discern how sociopolitical categories and classifications that are central to wider processes of marginalisation and domination may arise or be reinforced as effects of the state's legal productions of illegality'. Correspondingly, seeing migrant irregularisation through the lens of informalisation supports our understanding of informality as a process that takes place both at the edges of the legal and illegal and at the whole spectrum in-between, 'in the shadows of formal and informal' and handled 'by employing a range of delegitimising and criminalising discourses, regulations and violence' (Yiftachel, 2009b: 243).

Writing on informality and on the 'coming apartheid' in Israel, Yiftachel (2009a; 2009b), with a more spatial outlook, describes grey space as referring to 'developments, enclaves, populations and transactions positioned between the "lightness" of legality/approval/safety and the "darkness" of eviction/destruction/death. Grey spaces are neither integrated nor eliminated, forming pseudo-permanent margins of today's urban regions, which exist partially outside the gaze of state authorities and city plans'. Discussing about practices of illegalisation of migrant and non-migrant populations, De Genova and Roy (2020) refer to cut-off dates (for legalisation or amnesties) as a powerful spatio-temporal technology, reinscribing legality and illegality and renewing relationships of political loyalty and dependency. Scholarship on urban informality has paid close attention to cut-off dates as a way of understanding the 'temporal rhythms' of statecraft, especially in relation to those 'who live on the margins of the state' (De Genova and Roy, 2020: 7). Temporariness, and specifically permanent temporariness is also a key feature of grey spaces (Yiftachel, 2009a; 2009b) but also of irregularisation whereby immobilisation, lack of foreseeable future, 'temporary accommodation' or 'temporary protection visas' complement the aforementioned 'temporal rhythms' of the state.

Wanting to underline the deeply racialised and exclusive /expelling aspects of deportability, Kalir (2019) employs the notion of 'departheid'. 'Departheids formal goal to maintain a national territory vacated of illegalised migrants is to be achieved by the deployment of legal, psychological, and physical violence at three key sites: first, at the point of entry, states fortify and protect borders to pre-emptively deny entrance to those who, it is suspected, will become illegalised migrants; second, inside their sovereign territory, states segregate and confine illegalised migrants to specially designated waiting zones'—neighborhoods, camps, hotspots, prisons, and detention facilities—from where surveillance and controlled removals can be

more easily managed; third, at the point of exit, states oblige illegalised migrants to "voluntarily leave" or be forcefully deported' (Kalir 2019: 20).

Triantafyllidou and Bartolini (2020: 13) suggest conceptualising irregular migration 'as a continuum of different statuses between regularity and irregularity'. In this sense, we can conceptualise irregularisation (the process of becoming irregular) as a process navigating multiple grey spaces, temporalities and legalities that produce transient and transitional irregularities.

# 4. The immigration policy framework in Greece: a regime of irregularisation

The notion of 'multifaceted labyrinth', through which Tsitselikis (2019) characterised the complex asylum system established in Greece after 2015, is probably appropriate to describe the entire immigration regime as it has been established since the 1990s. It is when Greece is known to have transformed from a country of emigration to a destination and transit country due to the increase of immigrant arrivals mainly from Balkan and Eastern European countries, predominantly from Albania.

Back then, the state's unpreparedness and the lack of a coherent immigration policy were marked in practice by a contradictory combination. Migrant irregularity was, on the one hand, criminalised through excessive policing (Kourtovic, 2001), involving border patrols, internal controls and mass deportations (Baldwin-Edwards & Fakiolas, 1998; Maroukis, 2008). On the other, it was tolerated for serving a quasi-laissez-faire approach feeding the labour market with needed cheap and flexible work (Lazaridis & Poyago-Theotoki, 1999; Hatziprokopiou 2006). Early institutional arrangements have contributed to the creation of an ethnic hierarchy as migrants considered as of Greek origin were the only ones to receive some kind of integration assistance (Triandafyllidou & Veikou 2002; Kandylis 2006). The majority encountered strict requirements for legal residence and complicated and discouraging regularisation procedures that forced them into a perpetual state of limbo between legality and illegality (Triandafyllidou & Veikou 2002; Marvakis 2004; Kandylis 2006; Hatziprokopiou 2006).

Since the late 1990s, successive Greek governments focused on regulating the stay and work of people already living in the country. In light of the forthcoming 2004 Olympic Games, and in parallel with the deepening xenophobic and racist perceptions towards migrants (Ventoura, 2004), large-scale regularisation processes took place in order to ensure the worker status of previous undocumented migrants (Lazaridis & Poyago-Theotoky, 1999). Cheap and precarious migrant labour, especially in construction, agriculture and domestic services, contributed to the high rates of economic growth of that period. Despite seemingly decreasing, deportations of irregular migrants never ceased to take place, with a number of them constituting land pushbacks.

The post-2008 debt crisis significantly impacted the sociopolitical circumstances, as well as experiences of irregularisation. Situations of 'befallen irregularity' (Triandafyllidou, 2023) with the sharp rise in unemployment affecting disproportionally migrants, as the longstanding requirement of submitting proof of formal employment in order to renew a stay permit led

many settled immigrants back to irregularity (Pratsinakis et al., 2017)[2]. Deepening inequalities affecting the migrant population have been very much due to 'periodic transitions from legal to illegal residence status and long-lasting periods in an ambiguous legal status' which 'remained the norm for many of the established immigrants and most newcomers' (Kandylis & Maloutas, 2017: 136). Worsening life conditions were exploited to augment xenophobia, racist discourses, and discrimination against migrants. Meanwhile, naturalisation, the sole route to full participation rights, has been notably difficult to access for the majority (Mavromatis, 2018; Gogonas & Tramountanis, 2023).

The early 2010s were characterised by a dominant discourse insisting on the 'war against illegal migration' (Papatzani & Petracou, 2022). Specific policies were implemented in this regard, with a shift of emphasis to sealing the border. The Law 3907/2011 was adopted to transpose the Directive 2008/115/EC on common standards and procedures for returning illegally staying TCNs. Securitisation of borders was enhanced, especially through the adoption of the 'Integrated Border Management Program for Combating Illegal Immigration' in 2011, whose main targets were 'the protection of both the EU and national borders', and the 'reduction of the illegal migration' (Ministry of Citizen Protection, 2011). This program included -among others- the construction of the Evros fence in the southeast borders of Greece, described as a 'technical barrier' that will combat 'illegal' migration (Ministry of Citizen Protection, 2011). Despite its cost in a period of economic crisis, 'national-level discourse by political actors reveals that the construction of the fence was linked to the wider EU-level migration and border control practices, as well as to the national-level perception of migration as a security issue' (Grigoriadis & Dilek, 2019: 171). At the same time, a system of pre-removal detention centres was established with a Ministerial Decision in 2015, regulating already existing detention facilities.

Even though border controls had been tightening, applying for asylum (even if one is aware of the limited possibilities for a positive decision and that the application could involve detention in case of arrest), had been a main pathway to some kind of regularity. Asylum, after all, has long been a main 'corridor' for many migrants entering Greece in search of safety and/or better life prospects in the country or some other EU member state, even well before 2015 (Papatzani et al., 2022a). In the absence of legal routes and in the context of limited opportunities for regularisation, a significant number of undocumented migrants were granted residence permit for humanitarian reasons ('Humanitarian status'). The Humanitarian Status was granted to undocumented migrants based on the Law 4251/ 2014 (art.19A, par.1) and Law 4375/2016 (art. 22) mainly until 2015 as a first instance decision. Until 2020 it was granted at second instance and referred to a significant number of positive decisions. Recently, these provisions were abolished by the Law 4825/2021 (art.72).

During the last few years, two legal arrangements were adopted that promoted migrants regularisation. The first is the Memorandum of Understanding 'for immigration and mobility' signed by Greece and Bangladesh ratified by Law 4959/2022. The Memorandum sets out the conditions of entry and temporary residence of Bangladeshi nationals who have been staying in Greece before 9 February 2022 for the purpose of temporary employment. The permit is valid for 5 years, the permit holders are required to return to Bangladesh for at least 3 months per year, and once the permit expires, they have no right to renew or apply for another residence permit and are required to leave the country. This legislation put about 11,000 irregular workers, mainly in the agricultural economy, in the process of regularisation, aiming

[2] Additional legislation came to address what has been, e.g. by reducing the number of social insurance stamps required as proof of legal employment, by speeding up procedures for permit renewals, or by opening up access to longer duration of residence permits (Triandafyllidou, 2014).

to end the phenomena of exploitation revealed by the landmark judgment of the ECtHR 'Chowdhury and others VS Greece' (2017), the well-known case of Manolada (Kerasiotis, 2024). The same year Greece and Egypt signed an Agreement ratified by Law 5009/2023 for the employment of seasonal workers in the agricultural sector. The second legal arrangement is the Law 5078/2023 (art. 193) granting a new type of residence permit for work, acting as a broad regularisation for undocumented migrants. The main characteristics of this three-year permit, among others, include the requirement of three years of previous residence in the country and a certificate from the employer that the person is going to work for him/her; and the possibility of subsequent renewal to any other type of residence permit.

Pragmatic labour market considerations seem to be at the heart of these recent legal initiatives, following about a decade of policies aimed primarily at regulating asylum and building a reception system at the expense of established migrants and their offspring (Christopoulos, 2020). Our interviews revealed, on the one hand, that a number of asylum seekers whose applications have been rejected, especially from nationalities with 'low recognition rates' (e.g. Pakistan), apply for residence permit, giving an – at least temporal until the decision on their application – end to their irregular status that followed the asylum decision on their cases. On the other, it has been argued that the initial attempts to implement the aforementioned measures have been problematic, as immigration services across the country interpret the law in different ways. A striking example is the requirement for undocumented migrants to present a rent contract in their name when applying, despite the Immigration Code clearly stating that contracts cannot be issued to TCNs without legal documents (Kerasiotis, 2024). Additionally, various issues arise concerning the proof of uninterrupted three-year residence in the country. Decentralised administrations often reject documents of certain date despite the not restrictive mention in the law's circular, and despite the fact that it is widely known that undocumented individuals often lack any form of documentation. These examples of administrative abuse put a significant portion of the population at risk and the regularisation will likely benefit far fewer people than anticipated (Kerasiotis, 2024).

Irregularisation does not derive solely by regulations on paper, but also from institutional practices that have been implemented throughout the years. As already mentioned, the large-scale deportations of irregular Albanian migrants- widely known as 'sweep operations' - were performed by the police on the streets, as a means to combat irregular migration enjoying wide coverage in the national media, yet on the fringes of official legal rules (Baldwin-Edwards & Fakiolas, 1998; Maroukis, 2008). Such police practices were enhanced within the context of the economic crisis, when xenophobia and racism re-increased substantially (Baldwin-Edwards, 2014). During the early 2010s, as part of the aforementioned 'Integrated Border Management Program for Combating Illegal Immigration' the 'Xenios Zeus' police 'sweep' operation was launched in urban centers since 2012. The operation - ironically called Xenios Zeus akin to the ancient God of hospitality - had the explicit purpose of combating 'illegal migration and criminality' (Xenakis & Cheliotis, 2013). It has been implemented through patrols and raids targeting immigrants on the streets, followed by massive arrests aiming at identifying and subsequently deporting irregular migrants. What this campaign brought about was not so much an increase of deportation, but a significant increase of the number of people imprisoned in harsh conditions in pre-removal detention centres around Greece, even for periods longer than two years (HRW, 2012; 2013). The daily interactions between the police authorities and migrants marked by regularly reported incidents of violation of rights and abuse and associated with massive detention (Pavlou, 2009; Karamanidou, 2016), while controls and search of documented migrants on the streets put also them in situations of

uncertainty in everyday life (Papatzani, 2021) blurring the boundaries between regularity and irregularity.

Overall, we could argue that the legal, policy, and institutional framework of immigration has diachronically reproduced a regime of irregularisation, since the transformation of Greece into a destination country in the 1990s. Both the regulations on paper, including their transformations over the years, and the institutional practices implemented by different actors, especially on the part of the police authorities, have determined the protracted nature of irregularity as a condition and the different sequences of regular and irregular statuses that define immigrants' irregularisation as a process. The above have also determined migrants' experiences, which have mostly been characterised by legal limbo and a series of restrictions, followed by periods when residence permits offered more opportunities to improve living conditions, before being restricted again, e.g. after the expiry of the permits, due to their short-term nature.

# 5. The Greek asylum system: an emerging labyrinth of irregularisation

Prior to 2011, the asylum system in Greece suffered from chronic structural deficiencies. It was characterised by extremely low recognition rates of only few asylum applications with the majority rejected at the first instance. Indicatively, from 2009 to 2013, there were approximately 10,000 to 15,000 asylum applications per year, with fewer than 4% ultimately approved (Tramountanis, 2023). The system was also characterised by the non-proper transposition and implementation of EU Directives, the enhanced role of the police in decision-making, poor utilisation of available EU funds, limited administrative capacities, minimal and sporadic protective measures, excessive use of detention, and substandard living conditions in reception and detention facilities, among others (Black, 1994; Sitaropoulos, 2000; Papadopoulou, 2004; Papageorgiou, 2013). It is characteristic that in 2011, the European Court of Human Rights and the Court of Justice of the EU ruled that systemic deficiencies in the Greek asylum procedure violated the European Convention on Human Rights and EU law (Tramountanis, 2023). Before the so called 'refugee crisis', Greece had not yet established an asylum system able to respond to the existing needs. It is indicative that it was only in 2011 that the Greek Asylum Service (GAS) was established, while it started operating in 2013. In the following, we analyse how the newly established asylum system, the asylum laws, policies and institutional framework after 2015 have had an impact on the reproduction of irregularisation.

In 2015 Greece became one of the main entry point to Europe for nearly one million refugees and migrants. This –initially transit– movement was soon disrupted by the EU-Turkey Statement in March 2016, which –among others– was a return agreement under which migrants and asylum seekers with unfounded or inadmissible claims would be 'returned' from Greece to Turkey. While its implementation resulted in the decrease of departures from Turkey, it did not really increased the numbers of actual returns that remained very low in comparison with the number of arrivals. At the same time, other EU agreements with third countries were paving the way for deportations of specific nationals. Moreover, following the EU 'Hotspot Approach', five hotspots were established in the islands of Lesvos, Chios, Samos, Leros and Kos, while the Balkan Route was closed by March 2016. A Ministry of Migration Policy was established for the first time in Greece in 2016 (later MMA). Since then, extensive and substantial amendments of the Greek asylum law took place. As part of conforming to and implementing its obligations as a guardian of EU borders at the Union's south-eastern corner,

the asylum system was highly complex, constantly shifting, and adapting with mushrooming legislation (Tsitselikis, 2019)[3].

## 5.1 Who deserves protection? Registration, complex asylum procedures and profiling

For a refugee[4] in Greece, this labyrinth of irregularisation starts at the very beginning of the asylum process, especially during the registration of an asylum claim, or better, as part of **the procedure towards the registration**. On the one hand, those on the eastern border islands, are confronted with particular procedures deriving from the Hotspot Approach during their stay in the formerly Reception and Identification Centres (RICs), recently re-established as Closed Controlled Access Centres (CCACs). These may include their ad-hoc detention in the RICs or CCACs before registering their asylum claim, and their 'geographical restriction of freedom of movement' on the islands during the examination of their asylum application: both form spatial and carceral aspects of a process distinguishing those 'deserving' from those 'undeserving' protection and asylum. On the other hand, **those at the mainland who wish to register for asylum may end up irregularised** even if they should be considered as asylum seekers. Since September 2022, access to the asylum procedure on the mainland includes, first, the booking of an appointment through an online platform for the electronic pre-registration of asylum seekers and then the completion of the registration and the application in one of the two registration facilities in Diavata (Thessaloniki) or Malakasa (Attica). However, access to this has not always been possible, and in some cases, appointments for registration are assigned many months later. For example, some asylum seekers have waited over twelve months after initially applying for pre-registration before receiving an appointment (GCR-ECRE, 2023: 54). Moreover, in numerous cases, appointments were unavailable, underscoring the insufficient capacity of the facilities and resources. During this waiting period, applicants remain undocumented without access to reception provisions, medical care, or essential services, while they are not protected from detention (GCR-ECRE, 2023: 19-20).

> '*There is also a part, before you go to the asylum procedure, if you have passed without ending up in a RIC or CCAC, hence you did not have access to asylum, then you have to make an appointment on a platform, appear in Malakasa (RIC), be subjected to de facto detention […], and until you do all this you are in fact again in a limbo, even the document you get for your appointment does not give*

[3] To name but just a few, the main laws adopted since 2015 related to asylum, protection and reception of refugees are the Law 4375/2016 'Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, etc.' and its amendments; Law 4540/2018 'Adaptation of Greek legislation to the provisions of Directive 2013/33/EU etc.'; Law 4636/2019 'on international protection and other provisions' and its amendments; and Law 4939/2022 'Ratification of the Code on reception, international protection of TCNs and stateless persons, and on temporary protection in cases of mass influx of displaced migrants' and its amendments.

[4] In this paper, we avoid differentiating between the terms 'migrant', 'refuge', 'asylum seeker', etc., due to our understanding of the movement of refugees as a component of the broader migration phenomenon. The use of the term 'asylum seekers' is because it is the official designation used by the asylum system that we examine, and although conformist, the term highlights the tenuous distinction between migrants and refugees.

*you any rights. You may be arrested while holding this document*' (GAPs_GRstakeholder13_2024).

As the above indicate, such long, complex and lengthy procedures lacking basic safeguards create frustration among refugees, disincentivise asylum applications functioning as a form of deterrence, and eventually push asylum seekers into different forms of irregularisation. As mentioned by a lawyer, representative of a Greek NGO, this development also indicates a policy of expelling refugees and the refugee issue from the public sphere and from visibility. It should be mentioned that before the adoption of this procedure (since 2014), access to the asylum procedure on the mainland took place through an appointment system via Skype, also characterised by structural difficulties. Its shortcomings were primarily due to its limited capacity and availability of interpretation services, as well as barriers hindering applicants' access to the internet. As a result, individuals seeking asylum often had to make numerous attempts over several months before successfully connecting to the Skype line to secure an appointment for the full registration of their application. This process exposed them to the risk of potential arrest and detention by the police, while they were denied the support typically offered to asylum seekers, notably access to reception provisions (GCR-ECRE, 2023: 53).

The labyrinth of irregularisation is reproduced through asylum procedures themselves, which have become too complex. Different procedures are defined in Law but amended several times during the last few years, making the system extremely complicated. These include: 1) the Regular procedure (which may be either a i) Prioritised examination for applications likely to be well-founded or made by vulnerable applicants, or a ii) fast-track processing which aims at accelerating the processing of specific caseloads as part of the regular procedure, without reducing procedural guarantees), 2) the Admissibility procedure, 3) the Border procedure (which includes two types, i) the 'normal border procedure' and ii) the 'fast-track border procedure', 4) the Accelerated procedure (which entails lower procedural safeguards, whether labelled as 'accelerated procedure' in national law or not.) among others (GCR-ECRE, 2023: 25).

Moreover, a number of other ad hoc procedures also exist, that in cases contradict the rule of Law, but affect refugees' experiences and may reproduce aspects of irregularisation. An indicative example emerged during the first years of the 'refugee crisis' and its management on the Aegean border islands. More particularly, since 2017 a 'pilot project' known as the 'Low-Profile Scheme' has been implemented in Lesvos, Kos and partly Leros (Leivaditi et al., 2020). The 'Low Profile Scheme' refers to a highly systematised and arbitrary practice of detention which is not legally defined in the legislation. Newcomers belonging to particular nationalities, whose country of origin has low recognition rates in the EU due to the safe country of origin concept (such as people from Algeria, Morocco, Egypt, sub-Saharan countries, the Sahel, Pakistan and Bangladesh), were immediately placed in administrative detention upon completion of reception and identification procedures and remained there for the entire asylum procedure (GCR, 2018). Another more recent example, as explained by a lawyer, representative of an NGO, is that a process that provides refugee status to particular groups without an asylum interview has been implemented on the CCACs on the islands since September 2023. The procedure is called 'prima facie' and concerns people from Sudan, Yemen, and Palestine who after registration receive refugee status only through their files, without the need to conduct an interview (GAPs_GRstakeholder13_2024). Such practices constitute ad hoc decisions of actors in the field, permitted through the asylum system, giving room for arbitrary decisions to be made, by thus reproducing and redefining different categories of people; those 'deserving' and the 'undeserving' asylum and protection, as

categories that are highly fluid and unstable and may irregularise particular groups or individuals in not always visible ways.

As the above indicate, the asylum laws, policies, regulations and the institutional framework as they have been established and transformed since 2015-2016, reproduce a labyrinth of irregularisation for refugees in Greece. What is crucial is that irregularisation is reproduced in all stages of an asylum application, as also discussed in the following sections. It forms part of the procedure towards the registration of the asylum claim, when asylum seekers encounter the discouraging temporalities of the asylum system and its carceral dimensions through their detention. It is also reproduced through the multiplicity of asylum procedures that refer to -and at the same time construct- different categories of people, mainly around the axes of deservingness/undeservingness. Categorisations such as refugees VS asylum seekers, have already given their place to a range of categories based on different criteria or concepts, i.e. the 'safe country of origin' division. Such procedures derive –not from the 'gaps' of the asylum system– but from its very core, and systematically irregularise people and discourage asylum applicants of their right to asylum.

## 5.2 Criminalising asylum seekers' practices by depriving them from reception provisions

After the EU-Turkey Statement, the Hotspot approach, and the closure of the Balkan route, people on the move have been obliged to stay in Greece and undergo asylum procedures, by that time as the only possible pathway of regular migration towards Europe (Papatzani et al., 2022a). This pathway constitutes –till today– an option giving access to the status of asylum seeker, regular in its legal basis, but with a range of obstacles related to people's movement, settlement, and integration trajectories in the country.

The most prominent example is the increasing number of regulations that concern asylum seekers' reception stage during the examination of their asylum claim. Asylum seekers are obliged to follow a number of rules during their asylum examination, otherwise the reception conditions they are entitled to, or other reception provisions they receive during their stay in camps may be reduced or even terminated. More particularly, according to Article 61 (1), (2), (3) and (4) of the Asylum Code, reception provisions may be reduced or -in exceptional and specifically justified cases- withdrawn, following a decision of the competent reception authority, where applicants: a) If provided with accommodation in the context of reception, abandon said accommodation without informing the competent administration or without permission, or abandon the geographical location of residence which has been determined for them in the case of the geographical restriction on the Aegean islands; b) Do not comply with the obligation to report personal information, such as address and employment contracts, or do not attend in person or do not respond to requests for information or do not attend, in the process of the examination of their application for international protection, a personal interview within the deadline set by the receiving and examining authorities; c) Have lodged a subsequent application (GCR-ECRE, 2023: 150). Secondly, the reception authority reduces material reception conditions if it determines that the applicant has not submitted an application for international protection promptly upon arrival in Greece without a valid reason. Thirdly, the reception authority may withdraw material reception conditions if it is found that the applicant has concealed financial resources, thereby unjustly benefiting from these conditions.

Moreover, in 2021, a new regulation was introduced for the newly established CCAC on the islands. This includes the possibility of terminating accommodation and withdrawing material reception if applicants are unjustifiably not identified during two consecutive regular census-verifications of the resident population, although no separate procedure is outlined for this. Such census-verifications are also implemented in mainland camps regularly, and asylum seekers that are absent may lose their accommodation places in the camp (Papatzani et al., 2022a).

Based on the above regulations, asylum seekers, even if usually are not in risk of return or detention as they are considered as a 'regular' category, they are not permitted to implement a number of practices related to mobility and settlement in the country, as the asylum system renders these practices 'irregular'. As the Greek Council for Refugees has reported, between June and December 2020, material reception provisions were withdrawn for 4,957 individuals—2,964 of whom were residing in camps and 2,033 in the ESTIA accommodation scheme—following either status recognition or a second-instance negative decision (GCR-ECRE, 2023: 152).

Yet such 'irregular' practices may include asylum seekers' trans-regional or trans-local movements between different reception facilities in the country, their absences for reasons of employment before the period of six months after which they are entitled to work 'legally', their movements between different places e.g. from the camps to the nearest cities in order to cover daily needs, or needs of health and education, or maintain networks and relationships, among others (Papatzani 2022a; 2022b). Nevertheless, the labyrinth of complex regulations and highly restrictive rules, mainly related to asylum seekers' reception and accommodation, essentially **irregularises such everyday practices of asylum seekers**, as people with regular status, through a range of punitive measures (e.g. by withdrawing or reducing material reception services and provisions). It thus may reproduce processes of irregularisation even during the examination of an asylum claim, thus during people's entitlement to asylum provisions and to 'regularity'.

## 5.3 Safe third country inadmissibility & suspension of readmissions to Turkey

Among other aspects of the increasingly complex asylum system, the admissibility procedure mentioned above has acquired a crucial role in the last few years relating to processes of irregularisation emerging especially since 2015. Under Article 89 of the Asylum Code, an application can be considered inadmissible, among others, when the 'safe third country' concept is applied.

The examination of the safe third country concept in practice used to take place under the scope of the fast-track border procedure since 2016. More specifically, from 2014 until June 2021, it was applied to **Syrians who fell under the EU-Turkey Statement**, namely those who had entered Greece via the Greek Aegean islands and who were subject to a 'geographical restriction of freedom of movement'. They were **eligible to a fast-track procedure examining their cases** and often resulting in the granting of refugee status[5]. This situation

[5] This procedure also applied to those who formerly resided in Syria who could provide original documents such as passports, or who had been identified as Syrians/persons with a former residence in Syria within the scope of the Reception and Identification Procedure; provided that the EU-Turkey Statement and the fast-track border procedure did not apply in their case.

changed significantly after the Joint Ministerial Decision (JMD) 42799/2021[6], designating Turkey as a safe third country for asylum applicants coming from Syria, Afghanistan, Somalia, Pakistan, and Bangladesh without providing any legal reasoning (GCR-ECRE, 2023: 83). As a result, applications for international protection lodged by persons of the aforementioned nationalities, this time **throughout the Greek territory (borders and mainland**) (and not only at the borders) are examined under the safe third country concept; they are now channelled into the admissibility procedure upon arrival, to assess whether Turkey is a safe third country and whether their cases are admissible and should be examined on the merits. Three out of the five nationalities mentioned in the JMD are those who are most often recognised as refugees in Greece. The following table presents the numbers of inadmissibility decisions issued in 2022 and 2023, including decisions based on the border procedure and the safe third country concept.

***Table 1*. Inadmissible Decisions in 1st & 2nd Instance, including those based on the border procedure and the safe third country concept**

| **Inadmissible Decisions in 1st & 2nd Instance, including those based on the border procedure and the safe third country concept** | | | | |
|---|---|---|---|---|
| | **first instance inadmissibility decisions** | **first instance based on the border procedure and the safe third country concept** | **second instance inadmissibility decisions** | **second instance based on the border procedure and the safe third country concept** |
| **2022** | 8,962 | 3,601 | 6,043 | 2,708 |
| **2023** | 8,901 | 3,454 | 5,030 | 1,237 |

*Source*: Ministry of Migration and Asylum, 2023, 2024, & authors' elaboration

Contrary to Art. 38 (4) of the Asylum Procedure Directive, applicants are not provided with an in merits examination. The overwhelming majority of those decisions concerned the procedure on the mainland. Subsequent applications lodged following a final rejection of an application for international protection as inadmissible are channelled again into admissibility procedures and dismissed based on the safe third country concept or due to a lack of new elements.

> *'The adoption of a national list on the designation of Turkey as a "safe third country" for citizens of Afghanistan, Syria, Pakistan, Somalia and Bangladesh has led to the arbitrary rejection of numerous asylum applications as inadmissible. As a result of the EASO, the Asylum Service rejects the international protection applications of applicants from these five countries without examining their merits, i.e. the reasons why they left their countries'* (GAPs_GRstakeholder6_2023).

At the same time, readmissions to Turkey have been suspended since March 2020 as a result of geopolitical antagonisms between Greece and Turkey, manifested through the events in

[6] Amended by JMD 485868/2021 and 734214/2022

Evros region, after which Greece suspended the registration of asylum applications for one month and foresaw immediate deportation for those entering the Greek territory, while Turkey declared the suspension of readmissions presumably due to the COVID-19 outbreak (RSA, 2020). The suspension of readmissions to Turkey has created a wide 'grey zone' and exposed thousands of applicants for international protection, including vulnerable persons, to a number of significant risks (Hatziprokopiou et al., 2024). Particularly, refugees whose applications have been/are rejected as inadmissible based on the 'safe third country' concept end up **in a state of legal limbo, exposed to a direct risk of destitution and detention**, without access to an in-merit examination of their application and without the possibility to lodge a subsequent asylum application (GCR-ECRE, 2023: 83). This also leads to the **exclusion of people from reception conditions**, resulting in no access to dignified living standards or to cater for their basic subsistence needs, including health care and food (GCR-ECRE, 2023: 130). Despite this, the Asylum Service continues not to apply Article 38(4) of the Procedural Directive to applicants whose application is examined on the admissibility under the safe country concept vis-a-vis Turkey. As stated repeatedly by the EU Commission, 'to the extent the applicant is not permitted to enter the territory of the safe third country, in particular if the underlying situation preventing entry persists since 2018 or 2020, the MS shall ensure, in accordance with the Asylum Procedures Directive, that access to a procedure is given to the applicant' (GCR-ECRE, 2023: 20-21).

> *'People whose asylum claim is rejected under the safe third country [...] And at the same time, since March '20, before the Common Ministerial Decision, Turkey does not accept anyone back, okay? The Directive says that these people should normally, if they can't be returned, should have access to a merits examination. [...] We are talking about refugees. Syria, Afghanistan, Somalia. [...] in Greece there is no [...] automatic procedure as required by the Directive, that (since) you cannot be returned, I will examine you on merits and you will be granted refugee status. [...] Yeah, so there were a lot of people who are Syrian citizens, who are refugees and they make an asylum claim in Greece, it is rejected, as unacceptable, and they are left in a legal limbo. And then they have to reapply, reapply for asylum to have their claim examined'* (GAPs_GRstakeholder13_2024).

In October 2021 this situation changed drastically. An internal Standard Operating Procedures (SOP) of the Asylum Service, still in force, declared that asylum seekers of these nationalities that had crossed from Turkey **a year ago or more must be considered as not having a special link with Turkey or that, in any case, this link had been breached**. Subsequently, this was applied to the majority of cases examined on the Aegean islands, leading, eventually, to admissibility decisions and the examination of the asylum applications on their merits. Thus, several first instance decisions with the same reasoning have been issued since October 2021, since the aforementioned SOP started to be implemented. **This has been of great importance for all Syrian cases, and even Afghanis and Somalis stuck in 'limbo' in Greece for more than a year**, many of whom were waiting for the examination of their subsequent applications.

> *'At some point in 2022, the Asylum Service said, [...] "if you've been in Greece for a year, then I don't consider you to have a connection with Turkey, so I consider your application admissible" [...] so in that one year, waiting for the one year to pass you are in limbo, so you are in limbo. Also, if you've made an asylum claim in this year e.g. you don't have proper legal advice, how would you know that*

> *trick, that's a trick we're talking about. […] but we end up saying to a person, "don't make an asylum claim yet, wait…". Yes, but if you make an asylum application and it is rejected because the year has not passed, for example, and you go to make a second subsequent one as soon as the year has passed, you have to pay a fee of one hundred euros. And if you're a family of six, it's 600 euros'* (GAPs_GRstakeholder13_2024).

The above-mentioned 'trick', as one legal representative described it, managed to provide a temporary solution for people who were stuck in a legal limbo because their applications were deemed inadmissible due to the fact that Turkey was considered a safe third country, but at the same time they couldn't be returned to Turkey due to the suspension of readmissions. By waiting for a year, they could prove that they had no ties with Turkey, but during this 'waiting' they remained irregularised in Greece, without any rights. If they were lucky enough to have well-informed legal advice, they would be able to have their applications considered admissible after this one year - if not, they would have to make another application, paying a fee. The complex situation described above is only one of many that place refugees in a position of obligatory protracted irregularity, to be finally followed (after the late issuance of the authorities' decision) by the admissible examination of their asylum claim, which will hopefully lead to international protection at a later stage. In other words, when international protection is acquired, it follows a sequence of irregularity.

## 5.4 Irregularisation during processes of notification of decision and appeals

Aspects of irregularisation are also reproduced during processes of notification of the asylum decisions as well as processes of appeal. As regards the notifications of first instance decisions, it should be mentioned that the International Protection Act further introduced the possibility for decisions not to be communicated in person to the applicant ('fictitious service'/ *πλασματική επίδοση*) or to be communicated to the applicant by administrative authorities other than the Asylum Service. Both practices were maintained in the Asylum Code throughout 2022 and may significantly underestimate the possibility for the applicant to be informed about the issuance of the first instance decision and/or the content of this decision and/or the possibility to lodge an appeal. Consequently, deadlines for submitting an appeal against a negative first-instance decision may expire without the applicant being actually informed about the decision. As the Greek Ombudsman has noted with regard to the provisions of fictitious service, they effectively limit the access of asylum seekers to legal remedies (GCR-ECRE, 2023: 60). Concerning the notification of second instance decision, similar to the 'fictitious service' at first instance, both the International Protection Act and the Asylum Code also provide the possibility of a 'fictitious service' of second instance decisions as described above. Once again, as a result of this provision - which triggers the deadline for lodging an appeal – these deadlines for legal remedies against a negative second instance decision may expire without the applicant being actually informed about the decision (GCR-ECRE, 2023: 67-68), In other words, the applicants may remain irregularised without knowing it, and may lose their chance to appeal.

As far as appeals are concerned, first instance decisions of the Asylum Service are appealed before the Independent Appeals Committees under the Appeals Authority. Appeals before the Appeals Authority had automatic suspensive effect in all procedures under the previous law. The International Protection Act abolished the automatic suspensive effect for certain appeals,

in particular, those concerning applications rejected in the accelerated procedure or dismissed as inadmissible under certain grounds (GCR-ECRE, 2023: 65). The Asylum Code that came into force in the second half of 2022 has maintained these provisions. Thus, appeals submitted against decisions rejecting applications in the accelerated procedure or dismissed as inadmissible on certain grounds do not have an automatic suspensive effect despite the fact that these decisions also incorporate a return decision with immediate effect (GCR-ECRE, 2023: 20). In such cases, the appellant may submit an application before the Appeals Committees, requesting their stay in the country until the second-instance appeal decision is issued. However, considering the significant lack of an adequate system for the provision of free legal aid, it is questionable if such appellants will in fact be able to submit the relevant request. Suspensive effect covers the period during the time limit provided for an appeal and until the notification of the decision on the appeal (GCR-ECRE, 2023: 65).

According to the IPA, and regarding the process of judicial review, applicants for international protection may lodge an application for annulment of a second instance decision of the Appeals Authority Committees solely before the Administrative Court of First Instance of Athens or Thessaloniki within 30 days from the notification of the decision. According to the International Protection Act, following the lodging of the application for annulment, an application for suspension/interim order can be filed. The decision on this single application for temporary protection from removal should be issued within 15 days from the lodging of the application. The effectiveness of these legal remedies is severely undermined by a number of practical and legal obstacles, including – among others – that the application for annulment and application for suspension/interim order do not have automatic suspensive effect. Therefore between the application of suspension/interim order and the decision of the court, there is no guarantee that the applicant will not be removed from the territory (GCR-ECRE, 2023: 68-69).

Overall, the above legal provisions, as well as their particular implementation and the obstacles encountered tend to reproduce certain pathways to irregularisation, and at the same time do not protect from the risk of return or detention. The above remind what was earlier mentioned that irregularisation in Greece is reproduced in all stages of an asylum claim examination.

## 5.5 An ambiguous return framework of coercion that reinforces irregularisation

As Hatziprokopiou et al. (2024) recently noted, returns in Greece are governed by an ambiguous legal framework mainly due to preceding legal arrangements on 'administrative expulsion' that remain in force. More particularly, the co-existence of Law 3907/2011 which transposed the Return Directive 2008/115/EC into the Greek legislation and determines the operation of returns, and Law 3386/2005 regarding administrative expulsions of third country nationals in the Greek legal order seems to produce ambiguity regarding the respective scopes of the two laws. A number of inconsistencies emerge in this regard, including the fact that the state administration often bypasses the procedures of the Directive and apply the deportation procedures of Law 3386/2005 (Hatziprokopiou et al., 2024).

This is the case, for example, with expulsion decisions issued against TCNs illegally entering Greece at the borders even if the TCNs subsequently apply for international protection and obtain a permit to stay in the country; something that raises issues of compatibility with the Return Directive and the Return Handbook (European Commission, 2017). In Greece, TCNs irregularly entering Greece at the borders are arrested, detained and an expulsion decision is

issued against them in dereliction of the reception and identification process set out in Law 4939/2022 (art. 38). Additionally, CJEU has ruled that the term 'in connection with the irregular crossing' in Article 2(2)(a) of the Directive requires a 'direct temporal and spatial link with that crossing of the border'. It thereby applies to persons 'apprehended or intercepted by the competent authorities at the very time of the irregular crossing of the border or near that border after it has been so crossed'[7]. Subsequently, in the event that a TCN applies for international protection, s(he) obtains an authorisation to stay in the country and his/her expulsion is suspended until the completion of the examination of his/her application. If the application is rejected, the expulsion decision is executed in accordance with the procedures of Law 3386/2005. This procedure raises issues of compatibility with Article 2 para. (2) (a) of the Return Directive which clarifies that an exception from the scope of the Directive can only occur if TCNs who were caught irregularly crossing the border were not subsequently granted the right to remain in the country (National Commission for Human Rights, 2021).

> *'The (Return) Directive sets a framework and explains when it is allowed an exception, derogation from the framework of the Directive […] What has been observed over the last 7 years in the islands of the Eastern Aegean is that this derogation is being systematically used, but without the relevant conditions for the use of this derogation, i.e. there is no closely linked arrest of a person in the border. […] The police systematically issues a deportation order to exist, which is often not delivered. […] so that an administrative individual file can be opened and an administrative readmission procedure can be initiated. […] This practice is doubly problematic because, on the one hand, a decision ordering an illegal removal (expulsion) is issued, since the asylum seeker is not expelled, while the asylum procedure is ongoing, on the basis of the principle of non-refoulement, and, on the other hand, it is issued with the wrong procedure because it does not legally derogate from the Return Directive'* (GAPs_GRstakeholder6_2023).

Another type of irregularisation may emerge even during the assisted 'voluntary' returns from Greece, and particularly the Assisted Voluntary Return and Re-integration Programme (AVRR), implemented by the International Organization for Migration (IOM). While participation in AVRR is voluntary in the sense that any participant has the right to withdraw at any time, the wider context in which the program operates is one of coercion (Hatziprokopiou et al., 2024). Other scholars also argue about the character of AVRR program as a project of 'self-deportation' (Spathopoulou et al., 2022). This is because AVRR is also addressed to migrants issued with a return decision and even detainees and thus, it risks being a 'facade' of 'voluntariness' for migrants who face 'the tough dilemma of absconding or departing "voluntarily"' (Triandafyllidou & Ricard-Guay, 2019). Besides, the interplay of formal polices and informal practices in returns may reveal the nuances in the forced and voluntary return dichotomy, and more importantly the coerced nature even of the 'voluntary' procedures (Sahin-Mencutek & Triandafyllidou, forthcoming). Furthermore, there exist relations between AVRR and detention, as IOM's practices include close interventions and communication in detention centers, as people registered in AVRR may also be kept in detention. On the one hand, this applies to those who register for AVRR while in detention and remain detained despite their declared willingness and consent to return. On the other hand, it may also apply to those who register in AVRR while at liberty but get arrested by the police

[7] CJEU, Case C-47/15 Affum b Préfet du Pas-de-Calais and Procureur général de la Cour d'appel de Douai, 7 June 2016, para 72; Case C-444/17 Arib, 19 March 2019, para 46.

afterwards and are held in detention, again despite that AVRR procedures have already started (Hatziprokopiou et al., 2024).

Even more crucially, registration in the AVRR involves an implicit coercion leading to the acceptance of an irregular status, as enrolment in the program and its provisions presupposes that the migrants should abandon or withdraw their efforts on asylum applications, to refrain from any rights coming with a regular status – either of an asylum seeker or of an international protection beneficiary or a migrant on a valid stay permit – and remain in an irregular status for a few days before applying for return.

> *'The whole part of the returns is based on the free will of the person [...] Even a recognised person, a migrant who has received international protection, can give up his status if he wants to, and go through the process normally. [...] Then there is the case of a person coming to us, being an asylum seeker here, that is, with an active asylum claim, but wishing to leave. In that case, the resignation procedure should be promoted, i.e. the person should give up the asylum, so that the resignation can act as a decision to return. Again, it is done with a referral from us in cooperation with the asylum service, an appointment is made and the person can go to the asylum service and withdraw from the asylum claim'* (GAPs_GRstakeholder1_2023).

What the above reveal is that irregularisation is directly reproduced by the legal and institutional framework of governing returns in Greece. This framework allows the authorities to employ detention and deportation procedures even for people who claim asylum immediately. In parallel, in the case of 'voluntary' assisted returns, questions of coercion arise (Sahin-Mencutek et al., 2023; Sahin-Mencutek & Triandafyllidou, forthcoming), in an otherwise self-proclaimed 'voluntary' program based on the free will of people and their informed decision.

## 5.6 Irregularisation as process: The stories data (don't) tell

In the previous sections we showed how irregularisation is (re)produced in Greece through the immigration policy framework and asylum system, focusing on specific procedures and practices within the latter as evolved since 2015 and especially considering recent developments. The complexity of pathways to and from (ir)regularity as well the ambiguity, fluidity and hence precarity of status unveiled a rather messy situation in sharp contrast with the clear-cut on/off or either/or categories of documented vs illegal that politicians like to portray and that official statistics often imply. For example, the structure of Eurostat data under the topic 'Enforcement of immigration legislation' (EIL) consists of four sub-topics: refusal of entry at the external (Schengen) border; individuals found to be illegally present in the territory of a Member State (MS); individuals ordered to leave a MS (not including those transferred to another MS under the Dublin mechanism); and those who 'returned', i.e. left a MS following an order to leave (Eurostat 2022)[8].

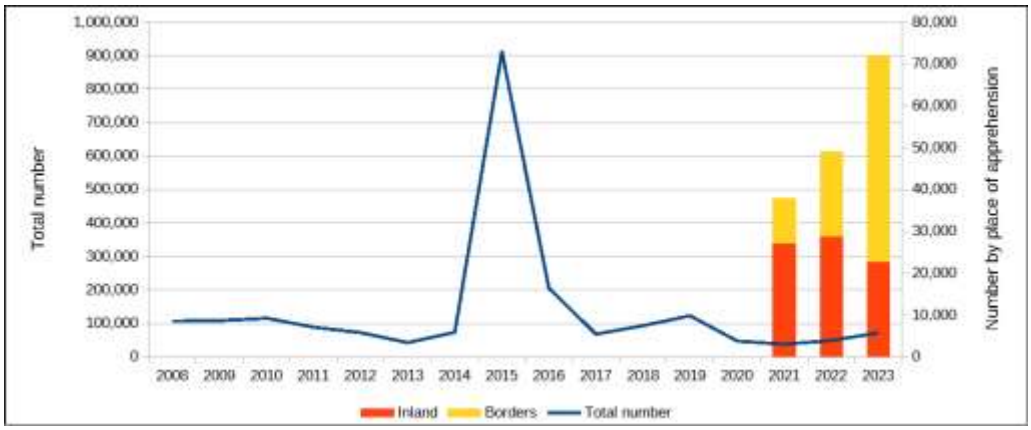
This is a structure apparently suitable for two connected purposes. The first is to evaluate and assess law enforcement, especially by comparing the number of those returning to the larger pool of those ordered to leave and the even larger of those illegally present. The second is to

[8] Also see Reference Metadata at: [https://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm]. Accessed: July 14, 2024.

create the impression that irregularity, albeit being by definition a difficult to measure phenomenon, is supposedly captured and monitored by official statistics. In other words, official statistics tend to shrink the complex process of irregularity/irregularisation into a simplistic linear succession of apprehension – order to leave – return. Paradoxically, detention statistics are not included, despite that detention is a key element of legislation enforcement, at least in the Return Directive (2008/115/EC). Similarly, there is no data about how many migrants were stopped by law enforcement agencies for the purpose of checking their documents and *not* found to be illegaly present.

According to Eurostat data, the number of 'TCNs found to be illegally present' in Greece ranged from approximately 40,000 to slightly over 100,000 for most of the period from 2008 to 2023, with one notable exception in 2015-2016, years of the so-called 'refugee crisis' (Figure 1, blue line). Available data for past three years 2021-2023 reveal that the distribution between those who were apprehended in border regions and those apprehended in the inland is roughly equal, albeit showing some yearly fluctuation (Figure 1, yellow/red bars). As for the reason for apprehension, the vast majority of the cases are officially recorded by Eurostat as 'illegal entry' and only a few hundred each year as 'overstay'. Obviously, this means that numerous migrants are apprehended for illegal entry in places of the inland practically unconnected with official or unofficial entry points at the borders.

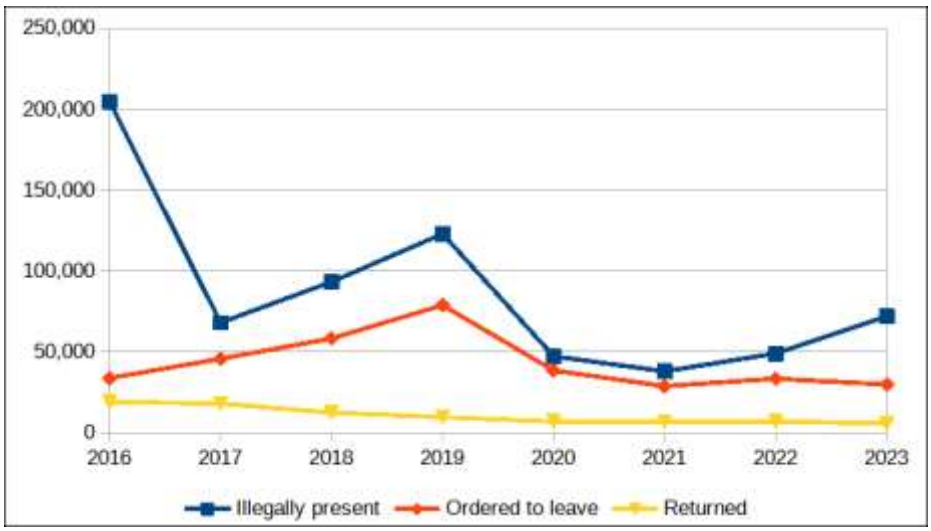
***Figure 1:*** **Number of TCNs found to be illegally present in Greece, 2008-2023**




*Source*: Eurostat database [migr_eipre]

The number of TCNs ordered to leave showed a sharp increase after 2015 and then decline over 2020-23, with an exception in 2022, following a relatively parallel trend with the data described above (Figure 2). At the same time, the number of those who returned following an order represents a steady minority only of those receiving such an order. Moreover, an overview of the main nationalities of the individuals who were identified as illegally present between 2016 and 2023 shows that seven out of ten were citizens of five countries: Syria comes first (with 25%) and is followed by Afghanistan (17%), Albania (11%), Iraq (10%) and Pakistan (10%). The same countries figure in the top of the list of those receiving a return decision, but in a different order: Albania (17%), Pakistan (17%), Syria (12%), Afghanistan (10%) and Iraq (8%). Concerning migrants who did 'return' to another country during the same period, either by a forced return operation, an assisted 'voluntary' return operation or as non-assisted, the main countries of citizenship include Albania which comes first with 51%, Pakistan (11%), Georgia (10%), Iraq (7%), and Afghanistan (3%), but returns to the country have effectively ceased since 2022).

***Figure 2:*** **Number of TCNs found illegally present, ordered to leave and returned, Greece 2016-2023 (rounded)**




*Source*: Eurostat database [migr_eipre], [migr_eiord], [migr_eirtn].

There are two main conclusions that derive from these statistics. First, Albanians, by far the biggest migrant group in the country and a long-established one, also constitute the biggest group of those returned from Greece to their country of origin. Despite that most 'irregular' Albanians are apprehended for illegal entry in Greece, they mainly get arrested in inland areas. We may reasonably assume that at least a number of them and subsequently of those returning are not newcomers, but people who have lived for longer or shorter periods in Greece, possibly moving 'back' and 'forth' between Greece and Albania, albeit not being able to get and/or renew a legal migrant status[9]. Second, several other third country nationals continue to be identified as 'illegally present' and subsequently ordered to leave, despite being citizens of countries where return is practically impossible, for whom high levels of recognition as beneficiaries of international protection are recorded. Apart from Syrians and Afghans, this also applies to migrants from smaller communities in Greece, such as Palestinians and Iranians. Thus, irregularity can be seen as a condition that affects various migrant groups, either those with members that have longer presence in the country and have experienced previous and current periods of legal stay, or those with members who face life conditions directly linked to what international rules determine as refugee status.

The national system for collecting and processing EIL-statistics starts with the Regional Services of the Hellenic Police which register data in an application called 'Mapping of Migrants'. Two centralised police agencies, namely the Border Protection Division and the Migration Management Division are responsible to 'receive' and 'extract' data from this application and then to 'fill into Eurostat's template' and 'validate the results'. Despite that there is no external validation and data quality assessment mechanism, the related National Reference Metadata published by Eurostat[10] reports no accuracy issues. However, beyond the quality of data as such, the procedures followed by the Hellenic Police and other collaborating

[9] Eurostat data remain silent about the period of stay or the date of arrival of the apprehended and the 'returned' in a MS. Failing to collect such information, individual trajectories prior to apprehension or return are effectively effaced.

[10] See [https://ec.europa.eu/eurostat/cache/metadata/EN/migr_eil_esqrs_el.htm]. Accessed: 14 July 2024.

agencies while enforcing the immigration legislation are out of the question for the National Reference Metadata – similarly as in the case of other aspects of institutional practices producing irregularisation shown in this chapter.

Furthermore, migrants' trajectories often follow paths that fall beyond the scope of the clear-cut categories and sequential stages unfolding in the linear way as the data imply. As mentioned earlier, applying for asylum in Greece is one of the few possible regular migration pathways towards Europe. Nevertheless, as we have shown, the asylum processes entails multiple aspects of irregularisation, even in cases of regular status, e.g. that of the asylum seeker. At the same time, the hardships that asylum seekers encounter in Greece affect future mobilities and decisions. It is not rare, for example, asylum seekers, or beneficiaries of international protection to decide to irregularly leave Greece towards other European countries where circumstances are better. Most usually complete the asylum process and attempt to reach their desired destinations once they receive international protection status in Greece, yet there are some who leave Greece before completing the process (Papatzani et al., 2022a). This practice results in irregularity in their new destinations, as asylum seekers in Greece will have to confront the Dublin Regulation on the 'first country of asylum' and the implications it may bring, while recognised refugees are allowed to travel to other EU countries for three-month visits only. Despite this, there exist institutional pathways permitting refugees recognised in Greece to settle in other EU countries, on the grounds of harsh living conditions and limited integration prospects; these include a number of courts' decisions in line with the 2011 judgment M.S.S. v. Belgium and Greece that did not permit refugees recognised in Greece to be returned[11].

At the same time, the labyrinthique asylum system and the strict and complex policies and procedures that are meant to deterrence may lead people on the move to **decide not to apply for asylum in Greece and skip entirely the system from the very beginning**, by trying to avoid being arrested and fingerprinted at the borders or in mainland Greece (Papatzani et al., 2022a). In other words, some migrants may choose to remain **self-irregularised** during their short stay in Greece, while making arrangements for their next mobility steps, and remain undocumented in different areas in the country, usually the large urban centers, while their everyday life mainly involves a continuous search for ways to leave Greece. As undocumented, they are constantly under the fear and threat of arrest by the regular police controls on the streets, which could lead to their detention and deportation from Greece. This is why, as research has shown in the case of Athens, they usually avoid spending time in public, they use to hide from the police, change their routes during their everyday mobilities, thus living in the shadows of the city even if at the same time residing at its very center (Papatzani, 2021).

[11] e.g. https://www.courthousenews.com/refugees-cannot-be-returned-to-greece-german-court-rules

# 6. Intersecting Layers of Irregularisation

## 6.1 Temporal

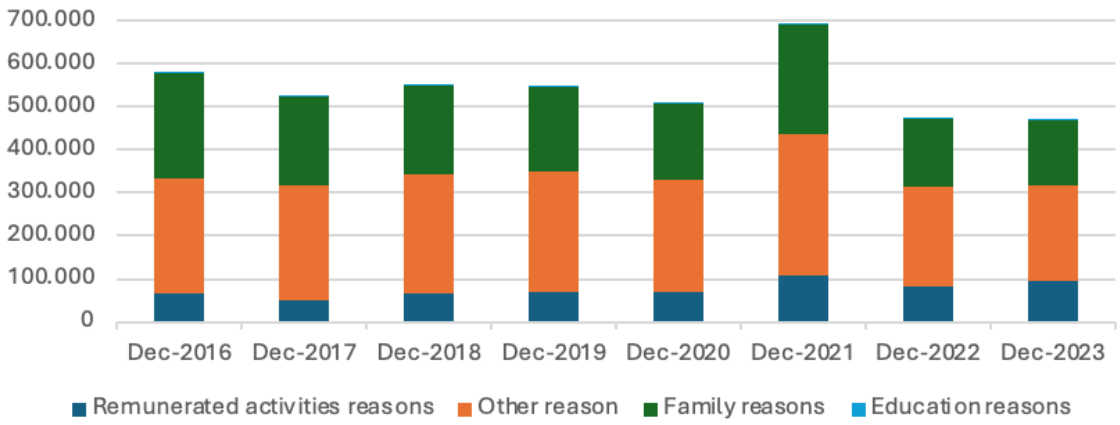
Conceptualising irregularisation as a process implies a temporal layer. As evidenced throughout chapter 5, for various normatively defined categories of migrants, the Greek migration regime is characterised by different stages and sequences, diverging paces and tempos, timeframes and deadlines, durations and temporalities as well as temporal inconsistencies. This section brings to the fore some of the temporal dimensions in processes of irregularisation stemming from the legal framework, administrative procedures and their implementation in practice that have already been discussed in the previous chapter. Moreover, it situates these in a historical overview of how Greek migration and asylum policies have evolved over time.

Irregularity may be a product of the law, but it begins at the borders even before they are crossed. The observation by van Liempt et al. (2023: 4) that 'in the 21st century, irregularity is inherently related to the lack of legal migration channels' holds true in our case. Indeed, the vast majority of newly arriving migrants enter the country without authorisation, mainly due to the unavailability of alternative (legal) routes. This may paradoxically bare similarities with the early 1990s, i.e. when Greece first emerged as a destination and most migrants arrived by irregularly crossing the border due to the virtually absent provisions for regular entry (and stay). Even when legal pathways to regularisation came by, in the late 1990s, these proved to be complicated in practice, due to the spirit of these measures but also their administrative handling (Hatziprokopiou, 2006), and were marked by several temporalities: stages, overlaps and setbacks, waiting, time inconsistencies.

A first 'amnesty' programme, for example, initiated in 1998, involved two stages: people would receive a temporary permit at a first place before being able to apply for a stay permit of longer duration; but tight criteria including proof of regular employment had deterred many from passing on to the second stage. This is why the applicants in subsequent large-scale regularisation programmes (2001, 2005) partly overlapped, either because a previous application was rejected, or because criteria for renewal were impossible to meet (Triandafyllidou, 2014). Long queues of people waiting to submit applications or receive documents from various authorities were common, sometimes resulting in casualties that have never been investigated (Kandylis, Papatzani, Polyzos, forthcoming). The short duration of most stay permits, coupled with administrative deficiencies such as severe delays in the issuing or renewal of a permit would often result in the absurd situation of receiving the documents after they had expired (Hatziprokopiou, 2006). In the meanwhile, short-sighted planning had resulted in legal gaps that left certain categories of people with migrant background in a limbo, again involving temporal layers entailing setbacks to irregularity. Coming of age is an example: when the children of immigrants would reach adulthood, they lost their status as dependents covered by their parents' stay permit. In the lack of provisions specific to them, applying for a stay permit often led to bureaucratic absurdities such as being asked to submit a birth certificate from their parents' country of origin even if the applicants were born in Greece[12] .

[12] An amendment to the Citizenship Law 3838/2010 came to provide a relatively easy path to citizenship for children born or schooled in Greece, yet this was later annulled by the Council of State, before being partly reinstalled through provisions for a special 'second generation' permit (Law 4251/2014) and subsequent measures facilitating access to citizenship (Law 4332/2015). The recent Immigration Code (Law 5038/2023) has been criticised for reintroducing difficulties for some categories of children born

***Figure 3:*** **Valid resident permits in Greece, 2016-2023**




*Source*: Ministry of Migration and Asylum, Authors' elaboration

Even though many long-settled migrants are now holders of long term or indefinite duration stay permits, precarity remains order of the day. A look at stay permit statistics over time reveals high fluctuations in the numbers of legally residing migrants (see Figure 3): a significant growth of about 185,000 valid permits between 2020 and 2021 was followed by substantial decrease of more than 221,000 permits by the end of 2022. This may be partly explained by increased numbers of stay permit applications that the bureaucracy falls short to process: between 2021 and 2022 the number of applications for new permits grew by 47%, while those for renewals grew by 40%; within 2023, alone more than 121,000 applications for new permits were launched, more than double the number of 2022. As a result, there has been a rise of applications pending to be examined for both new stay permits and renewals: respectively 87,358 and 83,747 at the end of 2023. The point implied here has to do with the repercussions in the lives of the people concerned, revealing recurring patterns of lasting legal ambiguity for significant numbers of migrants. What is more, different types of stay permit expectedly are of different durations. Stay permits for dependent employment last for relatively short periods of time, while permits for seasonal work e.g. in agriculture give access to the Greek labour market for up to 9 months annually for a total period of up to 5 years. The aforementioned 'Memorandum of Understanding' signed in 2022 with Bangladesh (see chapter 4) had similar provisions. Similar timeframes are set in the ongoing larger scale regularisation giving access to a 3-year residence permit for employment to migrants who can prove three years continuous stay in Greece.

As mentioned earlier, even before 2015 asylum has long been a main 'corridor' for many migrants heading to Europe: asylum claimants in the 2000s would receive an application certificate (the so-called 'pink card') which would grant them temporary status, albeit precarious, though giving time to regularise their status or attempt onward movement (Papadopoulou, 2004; Christopoulos, 2020). To some extent this went on after establishing competent bodies, and continued, in the absence of any provisions for alterative pathways to regular entry, or safe passages for refugees, albeit in different ways amidst tightening border

or schooled in Greece who reach adulthood, as they can only be granted a stay permit provided they were holders of a different type of stay permit as minors.

controls, increasing restrictions and mushrooming legislation following the 'long summer of migration', as already documented in detail.

Registering for asylum involves multiple stages, temporalities and waiting periods. Registration at the border involves a period of confinement on the islands, often starting with ad hoc detention (see bellow) followed by stay in a RIC (or more recently a CCAC). Lately this is set to last for no more than 25 days, at least on paper. In cases of people who have crossed a land border or have otherwise managed to somehow bypass the island-based "hotspots" may involve much longer waits (over 12 months) between the moment of (online) pre-registration and the actual timing of a registration appointment, while in the meanwhile applicants remain in practice undocumented, without having access to reception provisions or services, neither protection from detention (GCR-ECRE, 2023: 19-20).

At the implementation level, however, there diversions from the Law. For example, since 2016, for every new arrival 'the Greek police systematically issues a deportation decision involving the newcomer's detention, with the aim of readmission to Turkey'. This was noted by one of our expert interviews (GAPs_GRstakeholder6_2023), who explained that the police does so by invoking the provisions of Law 3386/2005 on deportation as well as Law 3907/2011 yet on derogation from the Directive; even if this is rarely implemented, it serves 'to open an administrative individual file and to be able to initiate an administrative readmission process'. All too often, no time difference is stated on the document 'between the arrival and the issuing of the decision'. Yet, in many cases, the decision is not handed to the persons concerned, hence they are not aware that there's a deportation decision which comes before all other procedures that follow.

The asylum procedure itself, as earlier detailed, is characterised by different tempos and varying paces: prioritised or fast-track *regular* procedure, fast-track *border* procedure, *accelerated* procedure. Moreover, expectedly as it may be in any bureaucratic system, different phases and steps in the asylum procedure involve specific timeframes, as well as tight deadlines. For instance, the MMA website informs asylum claimants: that their application may take between 2- days to six months to be processed; that, in case of a negative decision, an appeal must be lodged within a deadline specified in the decision; that, if granted Geneva refugee status, their Uniform-Format Residence Permit (ADET) is valid for three years and can be renewed by applying via e-mail no later than 30 calendar days expiry; and many more. Failure to meet deadlines in these cases does not deprive refugees from their rights, but involves expensive penalty fees.

However, such prescribed timeframes do not always work in practice, thus subjecting migrants and asylum seekers to further precarity and irregularisation. As mentioned, until recently, long periods of waiting and uncertainty (for an asylum decision, of staying in a camp, etc.) were followed by periods marked accelerated speed to meet several tight deadlines to complete several formalities. As we have seen in section 5.6, there have been cases of asylum seekers bypassing the reception system in order to move on with their lives and join family or other social networks elsewhere in the country (Papatzani et al., 2022a). This was of course before recent legal amendments which have increased punitive restrictions involving penalties, such as losing benefits or even revoking the asylum application (section 5.2). Moreover, when the 'safe third country' concept was initially introduced in legislation for specific nationalities (section 5.3), it was retrospectively applied for people who had been already waiting in a camp for an outcome on their asylum applications, which risked being revoked.

Further, deadlines for submitting an appeal against a negative first-instance decision may expire without the applicant being actually informed about the decision (section 5.4). Whether following a negative first instance decision or the outcome of an appeal, migrants receive an

order to willingly leave the country within a set period of time (subject to extension). However, not all migrants comply with this order, for a number of reasons. In a recent paper, Tsavdaroglou et al. (2024: 2) narrate the story of one of their interlocutors in Thessaloniki, a migrant from Algeria who crossed through Turkey in 2017: after spending two years in a camp, he received a negative decision, stayed homeless and undocumented before seeking 'refuge, like many other migrants without papers or unregistered newcomers, to the abandoned train wagon areas in the western part of the city'. Going invisible and 'under the radar', however, as discussed in 5.6, may appear as a reasonable option for desperate asylum seekers who are separated from close family members and are tired of waiting for an asylum decision. Papatzani et al (2022a: 4396) recall the experience of a young Afghan woman who, at the time of her interview in 2020, resided in a subsidised (ESTIA) apartment in Athens after having lived in a Lesvos hotspot and a camp in Attica since her arrival in 2016, still waiting for her asylum interview. She was determined to follow her parents and siblings to join a sister in Germany, even if that meant traveling irregularly: 'No, I don't want to wait for that… I have a plan to go, informally… There is no other choice'. The authors observe that 'the boundaries between different mobility types are blurred and porous, as are the sequences of "legal" or 'irregular' statuses to which they lead and with which they closely interrelate', concluding that 'if 'legality' – that is, going through the Greek asylum system – entails multiple layers of immobilisation, then moving at the margins, bypassing restrictions, or opting out of the system may facilitate mobility in multiple scales, local or transnational, albeit unauthorized' (Papatzani et al., 2022a: 4396).

## 6.2 Spatial

As evidenced in the previous chapter, the labyrinth of irregularisation procedures has its own equally labyrinthine spatiality. We could argue that irregularisation is an inherently geographical process that starts before border-crossing and entails diverse routes along which legislation and institutional practices categorise people and places (and emplaced people for that matter). Geography can be detrimental throughout the asylum process, impacting at the assessment of asylum applications as well as on the treatment of all the categories of migrants. Expectedly, the spatiality of irregularisation involves national borders but not only as lines that separate states. As has been discussed in an already vast but still burgeoning literature in border studies inspired especially by migration ethnographies borders may and do extend beyond border zones, both externalising outside and internalising within the nation-state (e.g. Parker et al., 2009; Mekdjian, 2015; Chattopadhyay, 2019; Fauser, 2024).

To begin with, migrants' nationality determines in multiple ways their access to asylum and the outcome of their claims. In 2015 SIA (Syrian, Iraqi, Afghan) was a shortcode implying the faster and relatively easier access to the asylum process by nationals of these countries. Gradually, this relative ease was attributed solely to Syrians and more recently, not even to them as discussions about 'returning' Syrian refugees to safe areas there thrived recently. This is further reflected in the newer procedures (especially the border one) where migrants coming from countries with lower than 20% recognition rate will be directed to.

The route that migrants follow in order to reach Greece / the EU is also impacted by EU border control policies, including Frontex operations. This means migrants being directed to more dangerous crossings in order to avoid being apprehended, being more dependent on the traffickers and the information they provide and often finding themselves in highly vulnerable and risky situations before and during crossings; situations that clearly result in their multiple irregularisation. But even when they have reached or are about to reach the borders, migrants

might find themselves in the midst of state's (and implicitly EU's) illegal and informal practices of pushbacks. Numerous reports have traced and described the processes and often deadly outcomes of pushbacks. Even when not deadly, pushbacks pull migrants into yet another cycle of irregularisation and obstruction of filing an asylum application. If people escape being pushed back, when they are arrested at the borders, they immediately have a deportation order filed for them – even if it's not executed due to the filing of an asylum claim. As this is not something communicated with those arrested, people might find themselves into an irregular status while in Greece without even knowing it.

As several of our experts / interviewees pointed out, at present, there are minimal chances that a migrant can file an asylum application without being detained either during the identification process or as a result of the apprehension and arrest. Detention, along with the transformation of camps into 'Closed control access centres' create (carceral) zones of waiting and uncertainty at or close Greece's eastern (mostly) borders. In line to observations of several researchers, the border and the irregularisation it imposes is encountered not only at a country's territorial edges but also within.

Moreover, the assemblage of spatial entities involved in 'reception and identification', accommodation and return processes at times blurs the boundaries of (il)legal, (ir)regular, registered, detained, to-be-returned, deportee, asylum-seeker further. This assemblage consists of RICs, CCACs) which contain RICs and detention and/or pre-deportation facilities, Controlled Access Facilities of Temporary Accommodation (previously called *Open* Facilities), and Pre-Removal Detention Centers (PRDCs). The geography of these facilities extends to the Eastern border of Greece (Lesvos, Chios, Samos, Leros, Kos, Evros) plus Attica (Malakasa), Thessaloniki (Diavata) and the outskirts of smaller cities. Within these, people may acquire changing statuses and spectrums of (il)legalisation as they are transferred from one space to another. The aforementioned registration identification and return infrastructures / assemblage are also coupled with PRDCs, managed by the Greek police, at Korinth, Athens, Drama, Fylakio and Xanthi, as well as with police cells who operate as pre-departure 'facilities' (see Greek Ombudsman, 2023: 23).

The 'typical' process states that after identification TCs are transferred to inland facilities in order to either file and be assessed as recipients of international and subsidiary protection or to be re-admitted (to Turkey), returned or deported. Yet 'typical' often becomes rather un-typical in the way the whole processes unfold. As one of our experts explains:

> *'There is an explicit obligation for the police/coast guard, as soon as they come into contact with a person who does not have the legal documentation, to take him/her to a RIC/CCAC to start the identification process. In practice this does not happen: on the islands they can be transferred to the RIC/CCAC, but if someone is arrested without papers in the centre of Athens the same thing will not happen, they will be transferred for detention to a police station and then to a PROKEKA (detention center) (e.g. Amygdaleza), while there is a RIC in the mainland, e.g. in Malakasa. In other cases, although new arrivals on the islands have been subject to a reception/identification procedure and have applied for asylum, a deportation order is issued against them, which is not served, but exists even though the asylum seeker is not deportable'* (GAPs_GRstakeholder6_2023).

For a significant period of time, the enforcement of geographic restrictions from 2016 onwards trapped people in the islands leaving scant options for being transferred to inland facilities. Furthermore, as of 2020 re-admissions to Turkey (in line with the EU-Turkey

statement) have been suspended, leading to an increase of people 'incarcerated', detained for long periods of time as their future was 'pending'.

Last but not least, as already mentioned in the previous section, the designation of safe third countries (Albania, North Macedonia and Turkey for Syrian, Afghan, Pakistan, Bangladesh and Somali nationals) as well as of safe countries of origin (Egypt, Nepal, Benin, Ghana, Senegal, Togo, Gambia, Morocco, Algeria, Tunisia, Albania, Georgia, India, Armenia, Pakistan, Bangladesh and Ukraine (?)) have strongly and adversely impacted the whole asylum (and return) process by 'fast-tracking' re-admissions and returns and by rejecting asylum-claims. As a result, migrants spend increasing periods of time in legal limbo (waiting for appeals, etc.) as well as in spatial and temporal limbo as re-admissions and/or return operations might not be feasible (interview13) and, in practice, are transformed into indefinite detention.

> *'We officially know that the Afghans from 2021 onwards, because we sent a question to the headquarters of the Greek Police, that they are not being returned. And this has to do with the Taliban taking power. However, the single male Afghans, up to the end of 2022, continued to be detained in Greece for extended periods of time. This was a completely illegal detention. To our opinion, it was purely a means of discouragement and deterrence and of new entry. The idea was that we would give the message that we, here, are detaining the Afghans, which is completely stupid. I mean, we overestimate the deterrent power of detention. As if, they won't leave Afghanistan or Turkey to come here because we're going to detain them'* (GAPs_GRstakeholder13_2024).

Interestingly, the variability of border procedures seems to be further institutionalised in the EU's new Pact on Migration and Asylum (2024). Especially the Screening Regulation with its border procedure and accelerated procedures form a very restrictive (legally, temporally, spatially and subjectively) framework for assessing the 'right' to asylum and for distinguishing the 'real' from the 'bogus' (namely economically/poverty driven) refugees. Specifically, 'people who "pose a security risk, who mislead the authorities by providing false information or withhold information, or who are coming from countries with a low recognition rate' will be subjected to a 'border procedure' with the result that they will not remain at liberty in the country while their claim is being examined, but be obliged to remain at specific facilities at or near the border, for a maximum period of 12 weeks until it is decided whether they will move on to the 'in-territory' asylum procedure –the normal asylum procedure– or to expulsion (González Enríquez, 2024). The accelerated screening process is supposed to take place within seven days, deciding upon whether the person should be transferred to the traditional asylum procedure, be returned or go through the border procedure.

Detention, especially at the borders and nearby areas, becomes the de facto material and institutional way of 'managing asylum', since 'the border procedure will often take place in detention, as will the new "pre-entry" screening process' (Woollard, 2024). Both the screening process and the accelerated border procedure as well as the expansion of the use of detention, are founded on the legal method of 'fiction of non-entry'. The 'fiction of non-entry' maintains that although a person is physically on the territory of a MS, legally his/her arrival at EU territory is not recognised as such thus placing her/him in a gray/limbo/transit zone (Woollard, 2024; Schug, 2024; González Enríquez, 2024). Woollard (2024) argues that both for border and accelerated procedures (which can be cumulative) 'the pretence of non-entry applies, even when they take place away from the border, elsewhere on the territory, which is allowed'. Statewatch (2024) contends that the fiction of non-entry leads to lower safeguards and heightens the risk of human rights violations and pushbacks at borders.

## 6.3 Carceral

The link between return and detention is quite straightforward in the EU Return Directive (2008/15/EC), which set up 'common standards and procedures for returning illegally staying third-country nationals'. In it, detention is prescribed as a means 'to prepare the return and/or carry out the removal process' of those who are 'subject to return', namely those who do not fulfil the Schengen conditions or other conditions for entry and stay in a MS. Thus, the Directive seems to imagine a linear procedure starting from illegal entry or stay and leading in turn to identification to a return decision to detention to removal. It is commonplace to remark that things are much more complicated during law implementation than on paper. What we further argue here is that implementation procedures work in a somewhat inverse trajectory, one in which the intention to remove migrants is the starting point and illegality is the ongoing outcome.

The Directive stipulates more precisely that detention is implemented when there is a risk of absconding or a TCN avoids or hampers the return process. To these already general reasons for detention the Greek law that transposed the Directive (Law 3907/2011) adds one more, that of national security concerns. In practice, detention is the rule rather than the exception whenever a return or expulsion decision is issued in Greece and, as the Greek Ombudsman has repeatedly observed, detention decisions are very often based on public security and public order reasons, pertaining to sentences for the possession of forged documents or non-possession of documents (Greek Ombudsman, 2019). As a result, third country nationals end up being detained for the sole reason of entering the country.

Migrants' detention in Greece comes indeed very early after border crossing. First of all, the rule is that all newcomers have to be transferred by the police to one of the RICs or CCACs, where they are immediately deprived of their liberty for a period of up to 25 days for reasons of identification or screening. Since this is a general measure of detention practically applied to all newcomers, it seems to violate the EU Directive on reception standards for applicants of international protection (2013/33/EU) that stipulates that no one should be detained for the sole reason of being an applicant for international protection. Despite that it is generally known (and admitted by the authorities, see RSA, 2024) that most people in these facilities do apply for international protection, in practice this period of initial detention is imposed on everyone, no matter their individual circumstances and intention to submit an application.

> *'The European Commission has initiated an infringement procedure for this [...]. What we have in our legislation allows us to detain anyone without pointing to the reasons, without justifying. The infringement procedure means that you have transposed the EU legislation in the wrong way, that you have a legislation that permits something not permitted by the EU law'* (GAPs_GRstakeholder6_2023).

Even individuals who have expressed their intention to apply for international protection via the devoted digital platform of MMA are detained for the same period of 25 days as soon as they arrive at the RICs in the mainland (GAPs interviews, Stakeholder 13). Both in RICs and in CCACs, migrants have reportedly been detained for a 'waiting period' even before their registration (and the 25 days) started.

> *'Technically speaking (...) people who wish to apply for asylum in Greece have to put themselves in a status of deprivation of liberty. You cannot apply for asylum while at liberty in Greece'* GAPs_GRstakeholder6_2023.

Another layer of even earlier resort to detention has been introduced since 2016 and the infamous EU-Turkey Statement. During the period of its partial implementation, but also after its freezing by Turkey in 2020, the Hellenic Police continuously invoke the Statement in order to issue decisions of deportation accompanied by detention as soon as they encounter newcomers, for the purpose of readmission to Turkey. Interestingly, this procedure is officially applied in derogation from the Return Directive and based on the older Law 3386/2005.

In some cases, these decisions concern individuals who have declared their intention to apply for international protection (GAPs interview, Stakeholder 6). But even when an application for international protection is not finally submitted, this practice is legally contested since it affects people who are not arrested at the borders but in other areas, even several days after border crossing. Moreover, it is quite common for these readmission decisions not to be handed to those affected. On the other hand, undocumented migrants who are not arrested in the (sea or land) border regions but are caught for the first time in the mainland are not transferred to RICs but immediately held in detention in police stations and in the PRDCs.

Additionally, individuals who have already applied for international protection may be detained even after their application. This practice is grounded in the Reception Conditions Directive (2013/33/EU) which includes a list of reasons for detention, based on individual assessment. As Falsone (2021) remarks, in 2018 one in four applicants had been detained. Asylum seekers in Greece are not necessarily detained in separate facilities. They may be detained in PRDCs together with non-applicants, also in violation of the related provision of the Directive. In all these cases, it becomes quite evident that *de jure* or *de facto* detention is a generalised measure by which the Greek authorities communicate to newcomers that their arrival is irregular and that they should preferably comply to leave the country from the very first moment.

However, not only newcomers are exposed to the risk of detention. Established migrants also face various challenges in getting access to legal documents or renewing expired ones. In the past, police operations of massive arrests, as the aforementioned 'Xenios Zeus' operation, especially in the city of Athens, based on racialised characteristics ended up in detention in the PRDCs. Since most of those arrested have reportedly been found not to violate the conditions of legal stay, the spectacle of these operations that has been repeatedly circulated in public media and propagated by authorities as a means to re-establish public order have cultivated a common sense of massive irregularity. Detention has again a key role in this, since it has been used both as an excessive means for identification and as a 'remedy'.

Official statistics reveal the key role of detention in the overall infrastructure of forced removal in Greece. According to data published by Refugee Support Aegean (RSA, 2024), 29,869 removal orders were issued by the Hellenic Police in 2023:[13] about two out of three return orders were based on Law 3907/2011 transposing the Return Directive, and one out of three based on Law 3386/2005, in derogation from the Return Directive[14]. During the same year, the Hellenic Police issued more than 24,000 detention orders. Among them more than 10,000 were under Law 3907/2011 and roughly the same number were under Law 3386/2005.

[13] In comparison with roughly 30,600 in 2022 and 21,000 in 2021.

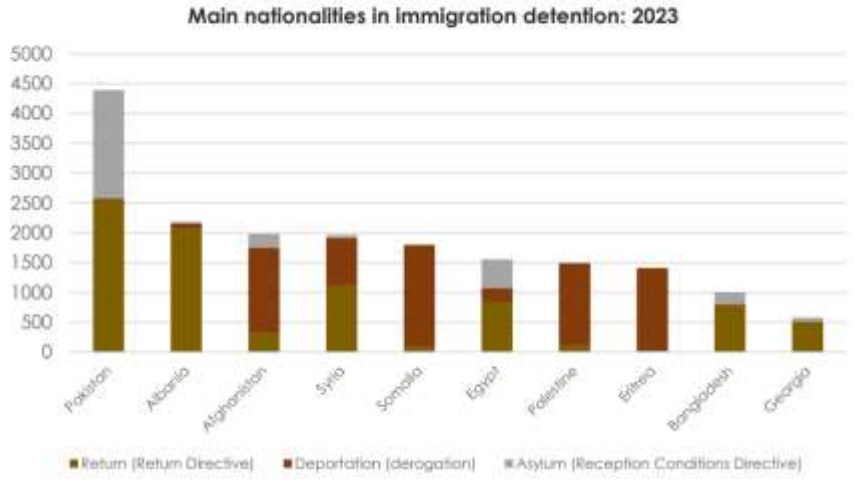
[14] Return and deportation procedures are based in two different legal acts, one transposing the return Directive (Law 3907/2011) and one earlier concerning deportation (Law 3386/2005). Their different scope is not well defined but in practice the older law is implemented in combination with a derogation from the newer one and the former leads to a much higher proportion of detention than the latter (RSA & PRO ASYL, 2022).

This means that more than 53% of return decisions according to the Return Directive and more than 96% of deportation decisions outside the scope of the Directive ended up in detention orders. Another more than 3,600 detention orders were issued for applicants of international protection, namely under the Reception Conditions Directive. At the end of the year there were 2,303 migrants in detention, 2,042 in the six PRDCs and 261 in police stations.

The detention orders are rather seldom contested. The first existing mechanism to challenge a detention order is an administrative appeal before the police, i.e. the same authority that issues detention orders in the first place, in a deadline of five days. Only 1.2% of those issued in 2023 were appealed and among these only 6% were accepted, that is merely 22 cases among almost 30,000 detention orders. According to RSA (2024), the reason behind this is the absence of any free legal assistance that persists in the country, despite the Council of the EU recommendation to Greece to revise this practice. Secondly, detainees may challenge administrative detention by lodging an objection before administrative courts. In 2023 approximately 5,000 such objections were lodged and almost half of them were granted. In various cases the ECtHR has found the objectives procedure to be ineffective, failing to examine the lawfulness of detention, including detention conditions (GCR-ECRE, 2024). The absence of free legal assistance applies here as well. Thirdly, an automatic procedure of *ex officio* review of detention orders (or of the extension of the detention period) by the administrative courts also exists. Despite that this procedure uses the same criteria and is performed by the same courts which judge objections, it turns out to no more than 0.5% of orders found unlawful (RSA, 2024).

The nationalities of detainees reveal some important patterns. In 2023 almost 4,500 detention orders concerned Pakistani citizens. They were followed by citizens of Albania, Afghanistan, Syria and Somalia, while other countries of origin of those detained include Egypt, Palestine, Eritrea, Bangladesh and Georgia. Interestingly, different countries of origin exhibit different distributions among the various pathways to detention. Thus, the population of Pakistani detainees is almost equally divided between those detained under the Return Directive and asylum seekers detained under the Reception Conditions Directive. Other third country nationals, especially the Albanians and to some extent Bangladeshis and Georgians are mainly detained under the Return Directive. Interestingly, people from countries with high percentages of recognition as beneficiaries of international protection and where return is practically impossible (Afghanistan, Somalia, Palestine, Eritrea and to some extent Syria) are mainly detained under the deportation procedure, in derogation from the Return Directive. It seems that the Hellenic Police use the derogation form the Return Directive in order to detain people who have greater possibility to be recognised as refugees and thus to irregularise them in advance.

***Figure 4:*** **Main nationalities in immigration detention: 2023**




*Source*: RSA, 2024.

The period of detention is often prolonged. The maximum period of six plus twelve months stipulated by European law is often exhausted and sometimes violated, no matter whether a removal is practically feasible or not. Nonetheless, even after a release, one can be arrested and detained again.

As for detention conditions, they have repeatedly been found to violate basic human rights and dignity by various agents, such as the Greek Refugee Council, the Greek Ombudsman and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). According to the last update of the AIDA country report (GCR-ECRE, 2024) several issues persisted up to 2023 in PRDCs, including 'a carceral, prison-like design, the lack of sufficient hygiene and non-food items, including clothes and shoes, clean mattresses and clean blankets, the lack of recreational activities, and overcrowding'. The conditions for those detained in police stations are even harsher, for example with no outdoor access, lack of natural light and insufficient food[15].

Medical staff shortage has also been repeatedly confirmed, but only marginal improvement occurred, if at all. For example, in 2023 there were two doctors in the PRDC of Amygdaleza (near Athens) for an official capacity of 1,000 detainees, only one doctor in the PRDC in Corinth for an official capacity of 1,344 and no doctors in the PRDCs of Paranesti and Kos.

[15] See GCR-OXFAM (2021) for a collection of telling testimonies from detention centres and police stations.

# 7. Concluding remarks

This working paper explored how irregularisation as a process is reproduced through the legal and institutional framework of migration and asylum in the case of Greece. Irregularisation was examined and discussed as an outcome of migration and asylum policies, institutional frameworks, the political and socio-economic contexts, as well as their interplay with the formal and informal practices of various actors. The above was examined by focusing on the functioning of the European asylum system since 2015 and its particular implementation in Greece, highlighting how these reproduce aspects of irregularisation.

As noted in section 2, the irregularisation of migration is by no means a Greek phenomenon. Other member states and the EU as a whole continue to perceive migration as a major threat and in tandem with securitisation of the European borders, irregularisation has been a key priority for the European migration regime(s). However, developments in Greece may have been the model for wider policy reorientation and have offered institutional tools to implement it. For example, the events at the Greek-Turkish borders in March 2020 for which the European Commission President, Ursula von der Leyen praised Greece for being the shield of Europe, seem to have been one of the founding acts of the European discourse on 'hybrid threats' and the instrumentalisation of migration by third countries. Similarly, commenting on the whole array of regulations and procedures introduced by the 2024 Pact, Statewatch (2024) argues that 'the newly introduced screening and border procedures will lead to more people, including children and families, being held in prison-like detention facilities modelled on the Closed Controlled Access Centres already operating in Greece'.

Irregularisation in Greece, is reproduced in various ways by the migration regime and the recently transformed asylum system. The present Working Paper analysed a number of relevant procedural and institutional aspects interrelated with the three different layers of irregularisation, the spatial, the temporal, and the carceral. More particularly, the Working Paper examined how irregularisation is reproduced through the immigration system and its transformations over the last three decades including both the extremely difficult and complicated regularisation procedures and regulations on paper, and the institutional practices of the actors involved, such as the police operations that impact irregularisation processes and experiences. Increasing restrictions and legal complexity, together with supranational arrangements and geopolitical currents, have made 'regularity' more difficult to reach, as it is subject to preconditions that are often too demanding or impossible, while certain types of regular status are now for many more uncertain, precarious and fragile.

Irregularisation was also redefined after the changes in asylum laws that followed the so-called 'refugee crisis' of 2015-'16, which created a 'labyrinth' of asylum procedures that were difficult to navigate. In this labyrinth, spatialities and temporalities of irregularisation may vary, as procedures are usually characterised by temporal discontinuity and are differentiated according to distinct geographies. As also noted in the Working Paper, law implementation is much more complex than procedures on paper, while an inverse trajectory is observed, one in which the intention to remove migrants is the starting point and illegality is the outcome. In this regard, detention is also a determinant of this labyrinth. Detention is a common practice during the asylum application and registration process both in the border islands (at the RICs or the CCACs), and in the mainland (through the process of the online platform and the appointment in a camp). It may also concern people who have already applied for international protection and are detained even after their application. Even though border controls had been gradually tightening, applying for asylum, even if knowing that this had limited possibilities for a successful outcome and being aware that it could involve detention in case of arrest, had been a main pathway to some kind of regularity.

The asylum procedure involves different and extremely complex types of procedures, which are spatially different (between the borders and the Greek mainland), and which are not only defined in regulations on paper but also evolve over the years in an ad hoc manner, in cases that are contrary to the rule of law. Moreover, aspects of irregularisation refer to a range of 'irregular' practices that people with 'regular' status, such as asylum seekers, may use to navigate the restrictive asylum and reception system. These may include practices of mobility and settlement that are not permitted by the system –or are even criminalised by it– as asylum seekers who engage in them may lose certain asylum and reception provisions. This fact illustrates how irregularisation may be reproduced even during the examination of an asylum claim, i.e. while people are entitled to asylum provisions.

Irregularisation in the case of Greece also emerges due to the process of safe third-country inadmissibility and its particular implementation in the country, combined with the fact that readmissions to Turkey have been suspended since March 2020. A wide 'grey zone' has been created and thousands of applicants for international protection were exposed to legal limbo, the risk of detention, and exclusion from protection and reception conditions. Furthermore, irregularisation emerges during the processes of asylum decision notification which may expire without the applicant being informed about asylum rejections; the same concerns processes of appeals and judicial reviews since in particular cases, they do not have an automatic suspensive effect of the return decision they incorporate. As regards the return framework this is characterised by ambiguity, by reproducing aspects of irregularisation due to the co-existence of different Laws. This fact permits the maintenance of the police practice of issuing expulsion decisions against TCNs irregularly entering Greece at the borders even if they subsequently apply for international protection and obtain a permit to stay in the country. Also, self-irregularisation emerges during the AVRR program. This is because enrolment in the program and its provisions presupposes that the migrants should abandon or withdraw their asylum applications or any rights deriving from a regular status and remain in an irregular status for a short (but indeterminate) period before their return.

The Working Paper also attempted a conceptual and theoretical contribution concerning the notion: irregularisation is not perceived as a stable or static characteristic of an individual or a group of people, or as a fixed category of legal status that some migrants do not possess while others do. Rather, irregularisation emerges as a process in which many people (also of 'regular' status) may be involved, in sequences of (ir)regular statuses, a process unfolding at the intersections of the spatial, the temporal, and the carceral layer, as an inherently spatio-temporal process.

Spatiality and temporality in the process of irregularisation is constitutive even before border-crossing, but also during the diverse routes along which legislation and institutional practices categorise people, places, and periods of time. The spatialities of irregularisation are interconnected with the spatiality of borders, not merely the lines that separate states, but those multiplied and transferred beyond border zones, both externally and internally within the nation-state. At the same time, irregularisation is not only reproduced at the borders, but through procedures and institutional frameworks that create borders, categories, restrictions, carceralities. Indicatively, as argued in the paper, spaces of irregularisation are defined through the asylum system itself, during the entire process of applying for asylum, including different facilities that range from those of detention to those of refugee identification, reception and accommodation. The boundaries of spaces of (il)legal, (ir)regular, registered, detained, to-be-returned, deportee, asylum-seeker are blurred, as are the experiences, statuses, and spectrums of irregularisation of those emplaced in these spaces. Time is also essential. The migration and asylum system is characterised by different stages and sequences,

diverging paces and tempos, timeframes and deadlines, durations and temporalities. These are not given or stable but rather fluid as they may change over time along shifts and changes in laws and policies, and reflect variably on migrants' subjective experiences, coping practices and adapting trajectories in periods of waiting or acceleration, in moments 'before', 'during' and 'after', in forward moves but also reversals or even loops. In its temporal dimension, irregularisation begins at the borders, sometimes before their crossings, and accompany migrants' trajectories throughout the migration and asylum system, the asylum procedure, the spaces of waiting for –or acceleration of– the procedures.

Space and time, inherently interconnected in the constitution of irregularisation as a process define migrants' experiences. Irregularisation involves multiple categories and conditions of irregularity, characterised as fluid and not clear-cut, not only at the edges of the legal and illegal but also at the whole spectrum in between. Moreover, irregularisation as a process is broader than the sequences and the interplay of the multiple and different (ir)regular statuses as it may also include a number of informal or irregular practices that 'regular' people develop in order to navigate in the otherwise hostile migration and asylum system. The interrelations of irregularisation to the changing political conjunctures, the socioeconomic contexts, and the employment/labour needs that deem a migrant as 'deserving' protection, asylum, regularisation, etc. may thus reveal how irregularisation is not only produced by laws and their implementation but is productive in itself.

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