Hellenic Republic
Ministry of Interior and Administrative Reconstruction
….. APPEALS COMMITTEE

Established under article 26 of P.D. 114/2010 as modified by P.D. 113/2013 and P.D. 167/2014 by the Joint Ministerial Decision GDPES/1-2-228A by the Alternate Minister of Interior and Administrative Reconstruction and the Minister of Finances (O.G. YODD 226/4-5-2016)

DECISION 05/133782
(29994)

In the location of Vyronas, Attica and at the premises of the Committee (Kallipoleos and Alatsaton str. formerly the Vyronas police station) on Thursday, 5 May 2016, following the relevant invitation by its president under 05/133782-160397 calling notice, the … Appeals Committee met, composed by:
1. ….. as the President
2. ….(member designated by the UNHCR), full member
3. …..(member appointed by the Minister of Citizen Protection from the relevant list established by the NCHR),

and in the presence of its Secretary, ….., police officer from the Aliens Department.

The Committee was invited to adjudicate on the appeal lodged on 22-4-2016 by the Syrian national, ….. (surname) …….(name) son of ….. and …., born on 28-1-1989, holding the identity card with number ……. issued by the Syrian Arab Republic, against decision number 29994, issued on 21-4-2016 by the Regional Asylum Service of Lesvos which rejected as inadmissible the applicant's application for international protection submitted on 12-4-2016.

The Committee took into account:

1. The provisions of Legislative Decree 3989/1959 (O.G. A' 201) on the ratification of the Convention relating to the status of refugees as amended

by the Obligatory Law 389/1968 on the ratification of the relating New York Protocol of 31 January 1967 (O.G. A' -125).

2. The provisions of Presidential Decree (P.D). 96/2008 on the "transposition into the Greek legislation of Council Directive 2004/83/EC from April 29, 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (L 304/30-9-2004) (O.G. A' 152) and P.D. 141/2013 (O.G. 225/21-10-213) "transposition into the Greek legislation of Council Directive 2011/95/EU from December 13, 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted».

3. The provisions of P.D. 114/2010 (O.G. A'-195) on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005) as amended by P.D. 113/2013 (O.G. A'-146/14.6.2013) and P.D. 167/2014 (O.G. A'-252/1.12.2014).

4. The provisions of Law 2690/1999 (O.G. A'-45) on the "ratification of the Code of Administrative Procedure and other provisions.

5. The provisions of Law 4375/2016 (O.G. A-51) on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU "on common procedures for granting and withdrawing the status of international protection (recast) (L 180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions.

6. The Joint Ministerial Decision GDPES/1-2-228A (O.G. YODD 226/4-5-2016) by the Alternate Minister of Interior and Administrative Reconstruction and the Minister of Finances.

7. Decision number 4000/1/70/a (O.G. B' 1725/2-8-2010) by the Minister of Citizen Protection on the Internal Regulation of the Appeals Committees set under P.D. 114/2010 and decision number 4000/1/70/b (O.G. B' 1167/13-5-

2013), decision number 4000/1/70/i (O.G. B' 2105/27-8-2013) and decision number 4000/1/70/74 (O.G. B' 2452/15-9-2014) modifying this latter.
8. The joint EU-Turkey Statement from 18-3-2016.
9. THE COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL. First Report on the progress made in the implementation of the EU-Turkey Statement. COM (2016) 231 final.
10. ANNEX to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL First Report on the progress made in the implementation of the EU-Turkey Statement COM (2016) 231 final (EU).
11. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL NEXT OPERATIONAL STEPS IN EU-TURKEY COOPERATION IN THE FIELD OF MIGRATION. COM (2016) 166 final.
12. Regulation 604/2013 (EU) of the European Parliament and the Council.
13. Letter under ref. ares. (2016) 2149549 – 5-5-2016 by the General Director for Migration and Home Affairs of the European Commission.
14. The appellant's application from 12/4/2016
15. The decision issued on 21-4-2016 by the Regional Asylum Service of Lesvos.
16. The appellant's appeal from 22/4/2016
17. The appellant's submission from 6/5/2016
18. The minutes from the appellant's interview from 12/4/2016
19. The opinion from the EASO expert on the admissibility of the application of the now appellant
20. All elements contained in the appellant's administrative file.

AND CONSIDERS ACCORDING TO THE LAW

I. Procedure

The appellant, who remains in the Lesvos Reception and Identification Center, applied for international protection to the Regional Asylum Service of Lesvos on 12/4/2016. The Regional Asylum Service of Lesvos rejected his application as inadmissible on 21-4-2016. The said decision was notified to him on 22-4-2016; he appealed against this decision on 22-4-2016 asking,

at the same time, to be heard orally by the Appeals' Committee.

The appellant expressed his intention to appeal against the a/m negative decision to …… staff from the European Asylum Support Office, as it appears from the document dated 22-4-2016 and drafted in English, which is included in the file. This document does not fulfill the conditions to be considered as a public document having full authentication value; however, given the nature of the right exercised through the appeal, the Committee is satisfied with the indications of the expression of intention (a document in English and its registration in the "ALKYONI" data base) and considered that the appeal has been lodged in due form and accepted the application for an oral hearing. The hearing took place, through a tele-phonic connection between the seat of the Committee in Vyronas and the RA Office of Lesvos, on 5-5-2016 in Greek and Arabic, the appellant's mother tongue, with the assistance of a competent interpreter from the NGO "Metadrasi" appointed by the president of the Committee and in the presence of the appellant's attorneys. ……. (Athens Bar Association number …) in the seat of the Committee and (Athens Bar Association number …..) in the RA Office of Lesvos.

II. The appellant's claims on the basis of his interview on 21-4-2016 and the oral hearing on 5-5-2016

The appellant was born on 28-10-1989 in Syria, he is an ethnic Arab, his mother tongue is Arabic, has a relationship with …. (surname) ….. (name), a Syrian national who is in Sweden, while the rest of his family (parents, three sisters, one brother) are in Syria, Aleppo. While in Syria, he resided in Aleppo.

He left his country on 6-4-2015 and went to Turkey where he remained for ten days. As concerns his stay in Turkey, during his first interview, he had declared that he initially went to the city of Gaziantep, where he had a Syrian friend and then moved to Antalya where he stayed for a long period, found a job to earn money but was not paid as he was promised. In the oral hearing before the Committee, he declared that he stayed in the small town of Manugat, near Antalya, in the house of his boss where he worked

illegally. He was paid very little and was forced to work for several hours. He does not have any relative in Turkey.

As far as the reasons that led him to leave his country, during his first interview, he had declared that he was called to draft in the army but he failed to report before the conscription office. If the Syrian authorities found out that he is in Turkey, they may take him back to Syria and imprison him. Because of his young age, he is also afraid that he may be forcibly enlisted into the ISIS. In Syria there is no stability and security.

As far as the reasons that he does not want to return to Turkey, during the oral hearing, he declared that his is afraid that in the camps near the border there may be Alevis who support the Assad regime and they may kidnap him and surrender him to the regime's authorities. During his stay in Antalya, twice, Alevis had approached him. The appellant described that, when he was working in construction works, a fellow worker approached him and started asking him questions as to whether he was in favor or against Assad. When the appellant replied that he was against the regime, his fellow worker told him "he should be slaughtered". The second time, some Alevis told him that, as a Syrian, he was responsible for Syria's destruction and attacked him with a sharp object. In addition, in Turkey he feels a change of treatment by Turks, who, after the terrorist attacks, consider Syrians to be responsible for the situation and he fears that he might "be in trouble". Finally he claimed that, in Turkey, he may be located by persons belonging to Isis, extremist movements, the Free Syrian Army or the Syrian regime which all may want to enlist him in their ranks due to his young age.

III. Legal basis

According to article 18 of Presidential Decree 113/2013 in force, the Determining Authority shall reject as inadmissible an application for international protection if, inter alia, another EU member state or a state bound by Council Regulation 343/2003 has taken the responsibility to examine the relevant application, pursuant to this Regulation, or if the applicant enjoys adequate protection by a country which is not an EU member state and is considered as a first country of asylum for him or if the

competent authorities deem that a country is considered a safe third country for the applicant, according to article 20 of the above p.d.

According to the Committee's opinion, from among the various alternative cases set by article 18 of Presidential Decree 113/2013, logic implies that the case of the first country of asylum should be examined before the case of the safe third country, since the former is an ascertained fact while the latter a potentiality, implying a certain degree of uncertainty.

Thus, the Committee **by majority** considers that, as the decision under appeal rejected the application on the basis that there is a safe third country (Turkey), it had implicitly examined and rejected the possibility that there has been a first country (whether the same or another) of asylum for the appellant. As a result, this part, as well as the other logically preceding reasons for inadmissibility, *are not transmitted through the appeal lodged by the appellant, since the Committee cannot, in principle, worsen his position and there is no rule of law which sets an exception to this general principle*.

The President notes that according to article 19 of Presidential Decree 113/2013 in force, a country (which is not an EU member state) shall be considered to be a first country of asylum for an applicant, if the applicant enjoys effective protection in that country, including benefiting from the principle of non- refoulement.

According to the dissenting opinion of the President, the appellant's claim should first be examined on the preceding reasons for inadmissibility, in particular the existence of another country (first country of asylum) where the appellant enjoys <u>other adequate protection</u> and the relevant decision clearly decides thereupon.

According to article 33 of directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on "common procedures for granting and withdrawing international protection" (article 54 of law 4375/2016 to enter into force on 1st July 2016) the Decision Authorities <u>shall reject an application for international protection as inadmissible</u>, inter alia, if another EU member state or a state bound by Council Regulation 604/2013 of the European Parliament and of the Council has taken the responsibility to

examine the relevant application, pursuant to this Regulation or the applicant enjoys adequate protection by a country which is considered as a first country of asylum for him, or if they deem that a country is considered a safe third country for the applicant (article 54 of law 4375/2016 to enter into force on 1st July 2016).

In addition, according to article 35 of directive 2013/32/EU (article 55 of law 4375/2016 to enter into force on 1st July 2016) a country shall be considered to be a first country of asylum for an applicant provided that he/she will be re-admitted to that country, if the applicant has been recognized as a refugee in that country and can still enjoy of that protection or enjoys other effective protection in that country, including benefiting from the principle of non- refoulement.

Subsequently, the Committee examines the legal basis, based on which the decision under appeal rejected the application for international protection as inadmissible, considering that Turkey is a safe third country for the applicant, according to article 20 of p.d. 113/2013.

According to article 20 of p.d. 113/2013 (article 38 of directive 2013/32/EU and article 56 of law 4375/2016 to enter into force on 1st July 2016) a country shall be considered as a safe third country for a specific applicant when all the following criteria are fulfilled:

a. the applicant's life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion,

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

c. the applicant is in no risk of suffering serious harm according to Article 15 of Presidential Decree 96/2008 as modified by Article 15 of Presidential Decree 141/2013,

d. the country prohibits the removal of an applicant to a country where he/she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law,

e. the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Geneva Convention and

f. the applicant has a connection with that country, under which it would be reasonable for the applicant to move to it.

The Committee **by majority** notes that in the first place, the concept of a safe third country is a vague legal concept, which is applied (and interpreted if in need of interpretation) by the authority ruling on the application for international protection. The identification of a country as a safe third country through relevant acts by the executive or legislative powers of a member state or by the EU institutions may establish a presumption. Such an act would bind the authority ruling on the application for international protection and reverse the burden of proof to the applicant for international protection. Exactly for the reason of the reversal of the burden of proof, the presumption that a country has been identified as a safe third country should undergo judicial control as to the correct application of the criteria set by the law and, in particular, European law.

Following the Statement of 18-3-2016 between the EU and Turkey, the latter took over the obligation to readmit Syrian nationals who entered Greece on 20-3-2016 or later having crossed Turkey, while the member states of the former took over the obligation to accept for resettlement Syrian nationals from the territory of the latter.

The Committee **by majority** considers that this Statement, independently of its legal nature, does not in principle refer to the application for Turkey of the vague legal concept of a safe third country; rather it refers to the obligation of Turkey to readmit those Syrians whose application for international protection shall be rejected on that ground. Besides, a presumption under the Statement that Turkey is safe presupposes that such presumption must be invested the form of a regulatory or other act, which can be challenged before justice and be controlled as to its conformity with the vague legal concept of a safe third country.

The Committee, taking into account the appellant's claims as provided, **shall examine the concurrence of the five criteria in order to judge whether Turkey is a safe third country for the applicant**:

As to criterion (a), according to which one's life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion.

The Committee notes that today in Turkey there are about 2,290,000 Syrians, beneficiaries of «temporary protection», out of which around 290,000 residing in 25 refugee camps, located in ten provinces in the south of Turkey, while the rest are scattered all over the country in rented houses. Up-to-date research on Turkey published by international human rights organizations or government agencies do not contain references as to attacks, assassination, body harm or other violent acts against Syrian refugees in Turkey.

As a rule, "temporary protection" beneficiaries are not detained, although there is an exception to this general rule for persons excluded from "temporary protection" status on the grounds of article 8 of TPR (Temporary Protection Regulation) [1].

Concerning Alevis, the United Kingdom Home Office in a report[2] states that «Alevi is the term used for a large number of heterodox Muslim Shi'a communities with different characteristics. Alevis constitute the largest religious minority in Turkey and they differ considerably from the Sunni Muslim majority in their practice and interpretation of Islam. Alevis comprise 15 to 25 percent of Turkey's total population. The government considers Alevism a heterodox Muslim sect and does not financially support religious worship for Alevi Muslims. Alevis face problems in the construction of new places of worship; however, this does not prevent them in practice from worshipping in places that are not licensed as legal places of worship. They face unequal treatment in education, there are reports of them being mistreated by the authorities, in particular when repressing their demonstrations, and of isolated incidents of social discrimination and violence against them. Although there are reports that confirm that Alevis support the Assad regime in Syria, it is not confirmed

[1] Available at http://www.asylumineurope.org/reports/country/turkey/detention-framework-temporary-protection

[2] . United Kingdom Home Office, Country information and Guidance – Turkey: Alevis, February 2016 Version 1.o available in http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=56c182ee4&skip=0&query=Alevis&coi=TUR

that Sunni Moslem Syrians are ipso facto in danger because of their faith or their ethnic origin from Alevis, who, in any case, are a marginalized religious minority in Turkey. Moreover, there are no special characteristics in the person of the appellant which may differentiate him from the rest of the Syrian population residing in Turkey and which may lead to him being personally targeted.

From the above it ensues that the appellant's life or freedom are not threatened. The Committee rules therefore that **criterion (a)** of article 38 of the Directive is fulfilled.

As far as **criterion (b) is concerned**, namely respect of the principle of non-refoulement, in accordance with the Geneva Convention, and the related **criterion (d),** namely prohibition of removal to a country where the applicant risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, violating article 3 of the ECHR, the Committee examined the following:

According to article 4 of the Turkish law on Foreigners and international Protection «No one within the scope of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion»[3]. Furthermore, article 6 paragraph 1 of the Temporary Protection Regulation states that «no one within the scope of this Regulation shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion»[4]. Finally, according to the Asylum Information Data Base (AIDA), the new procedure for «granting international protection» provided for by the Law on Foreigners and

[3] . Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, PART ONE PURPOSE, SCOPE, DEFINITIONS AND NON-REFOULEMENT SECTION TWO Non-refoulement , article 4. May 2014

[4] . http://www.goc.gov.tr/files/_dokuman28.pdf

International Protection provides protection from refoulement which is valid equally for all asylum seekers, independently of whether they originate from a «European» or «non-European» country.

However the Committee notes that according to the UNHCR's opinion on the extraterritorial application of the principle of non-refoulement under international refugee law, the prohibition of *refoulement* to a danger of persecution is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or "renditions", and non-admission at the border. The Declaration on Territorial Asylum adopted by the United Nations General Assembly on 14 December 1967 states in article 3 that no person referred to in Article 1, para. 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution. Recently, non-governmental organizations have alleged that Turkey violates the principle of non-refoulement, specifically against Syrian refugees. The incidents are reported as massive and concern both a systematic refusal of entry with the use of force at the border, as well as systematic and mass returns to the Syrian territory.

Therefore the Committee concludes that there are indications that the principle of non-refoulement is not respected by the Turkish state and disputes the fulfillment of criterion (b). Similarly, due to the massive number of the incidents and given that the treatment of many Syrian nationals, if returned to their country of origin, might exceed the limits set by article 3 of the ECHR, there is a serious possibility that criterion (d) may not be fulfilled either.

As far as **criterion (c) is concerned,** namely the risk of serious harm for the applicant according to Article 15 of Presidential Decree 141/2013, the Committee points out the following: according to Article 15 of Presidential Decree 141/2013 "serious harm consists of: a) the death penalty or execution; or b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".

On the basis of what already stated above, the appellant, if returned to Turkey, does not risk the death penalty or execution, nor is he at risk of torture or inhuman or degrading treatment or punishment since Syrian refugees in Turkey are protected by the Temporary Protection Regime and on that basis they are granted access to basic rights and services. Finally there is not, in Turkey, a situation of indiscriminate or generalized violence, which could lead to the appellant being at risk of serious harm.

Accordingly, the Committee concludes that **criterion (c)** of article 38 of the Directive is fulfilled.

As for the fulfillment of **criterion (e),** namely the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Geneva Convention,

The Committee by majority points out the following:

The provisions of the Geneva Convention, viewed in their totality, point to the emergence of a core of required protection; if this is not fulfilled, then the protection provided is substantially different and cannot be considered to be in accordance with the Geneva Convention. This core contains, in any case:

a. The individualized, in principle, nature of the protection provided, which does not exclude the possibility of granting protection status *en masse*, but sets limits to the termination of the granted protection (a reasoned judgment as to the cessation of the risk of persecution) rather than the indiscriminate withdrawal from an entire group of population of the protection granted.

b. A real possibility for the refugee to be integrated, not only living under conditions of security but also as a member of the society. This possibility presupposes the granting of a residence permit for an assured period of time, naturally susceptible to withdrawal or revocation on the grounds of the exclusion, cessation or allowed exception from non-refoulement. Obviously, this possibility must be seen in conjunction with the number of refugees hosted in a given country and the country's possibilities to provide them with opportunities for integration. It cannot, however, be totally

cancelled through the granting of conditional residence permits, or permits with a very brief duration, or by excluding the refugee from any possibility to claim, even in perspective, a more stable residence status.

c. The exercise of the rights of freedom of movement and establishment and salaried employment on conditions similar to the rest of aliens, without discriminating against either refugees specifically or a particular group of refugees.

In case these prerequisites are not fulfilled, the protection status cannot under any circumstance be considered to be in accordance with the Geneva Convention; it is rather similar to forms of temporary protection status, granted en masse. Such temporary protection status, granted *en masse*, could be considered to be in accordance with the Geneva Convention only if they contain clear and full safeguards that beneficiaries of such protection would, within a reasonable time, move from temporary protection to protection in accordance with the Geneva Convention.

Turkish legislation provides rules for the treatment of asylum seekers within the Turkish territory and establishes a system of protection, but limits the rights guaranteed by the 1951 U.N. Convention only to refugees originating from Council of Europe member states, keeping the geographical limitation for non-European refugees; it also sets limitations in the movement of refugees who have been granted temporary protection. On April 2013, Turkey adopted a new Law on Foreigners and International Protection – LFIP) which establishes a special framework for asylum and confirms the obligations of the country vis-à-vis those in need of international protection, irrespective of their country of origin. The new law provides for the establishment of a Directorate General of Migration Management – henceforth DGMM), as the institution responsible for setting up the new asylum system.

While the LFIP itself fully came into force in April 2014, it was not until October 2014 that the Temporary Protection Regulation (henceforth TPR) was finally published. Including more specific provisions, the TPR came to constitute the main piece of domestic legislation that was to govern and regulate Turkey's existing de facto "temporary protection" practice that was already in place since 2011 for persons arriving in Turkey from Syria.

Ever since, refugees from Syria benefit from a group-based "temporary protection" regime, which was formalized by the Temporary Protection Regulation of 22 October 2014. The decision to grant temporary protection status to aliens entering Turkey under the conditions set by article 1 of TPR is competence of the Council of Ministers following a proposal by the Minister of Interior (article 9 of TPR). This status grants beneficiaries the right to stay legally, protection from refoulement and access to a set of basic rights and services, including free healthcare (respectively articles 25,6 and 26 of TPR). The DGMM is the agency in charge of registering and granting this status. As of 7 December 2015, the number of beneficiaries of "temporary protection" was listed at 2,291,900 refugees. Of this population, about 263,000 are accommodated in 25 refugee camps spread across 10 provinces in the south of Turkey, whereas the remaining live in residential areas in private accommodation on their own resources and dispersed all over the country.

The "temporary protection" status in granted on a prima facie, group-basis, to Syrian nationals and stateless Palestinians originating from Syria. DGMM is the responsible authority for the registration and status decisions for persons within the scope of the "temporary protection" regime, based on article 91 of the LFIP and article 10 the Temporary Protection Regulation (TPR) of 22 October 2014. On the other hand, asylum seekers from other countries of origin, such as Iraq, Afghanistan or Iran, may lodge an application to receive international protection on an individual basis and fall in the status recognition procedure by DGMM. This said, the Provincial Offices of DGMM have only recently started to be fully operational and up till now have processed only a small number of cases examined and rulings issued for international protection status determination.

More specifically as to the temporary protection offered to Syrians who entered Turkey after 28 April 2011, as per articles 1 and 3 of TPR, "temporary protection" within the scope of article 91 LFIP, is a discretionary measure that may be deployed in situations of mass influx of refugees where individual processing of international protection needs is impractical due to the high numbers of beneficiaries. As such, "temporary protection" within the framework of TPR is not defined as a form of "international protection" but a complementary measure used in situations

where individual “international protection” eligibility processing is deemed impractical[5].

As per article 16 of TPR, any requests for international protection presented to competent authorities by beneficiaries of “temporary protection” shall not be processed as long as the “temporary protection” regime is in place. This principle is also reiterated in Provisional Article 1 of TPR, according to which beneficiaries of “temporary protection” who arrived in Turkey on 28 April 2011 or later shall be barred from making a separate “international protection” application. If they had already made an application for “international protection” before the publication of the TPR, these applications shall be suspended. It should be noted, at this point, that the UNHCR does not register beneficiaries of “temporary protection” and implements procedures for Refugee Status Determination under the United Nations High Commissioner for Refugees Mandate.

The “temporary protection” framework laid down by the TPR provides a domestic legal status to beneficiaries, granting legal stay in Turkey, protection from criminal punishment for illegal entry or presence and protection from refoulement. However, article 25 of TPR explicitly excludes “temporary protection” beneficiaries from the possibility of long-term legal integration in Turkey. According to article 25 of TPR, the “temporary protection” identification document issued to beneficiaries does not serve as “residence permit” as such, nor may it lead to “long term residence permit” in Turkey in accordance with Articles 42 and 43 LFIP. Time spent in Turkey, as a “temporary protection” beneficiary, may not be interpreted to count into the fulfillment of the requirement of 5 years uninterrupted and legal residence as a precondition in applications for Turkish citizenship.

Furthermore, according to article 15 of the TPR, temporary protection may be limited or suspended by the Council of Ministers “for a specific period or indefinitely” in the event of circumstances threatening national security, public order, public security and public health. In such cases, the Council of Ministers has the discretion to decide on the future of “temporary

[5] . ECRE Asylum Information Data Base national country information report Turkey. December 2015 pp. 102 and foll.
http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_update.i.pdf

protection" beneficiaries, without any explicit guarantee that these persons would have access to the procedure for receiving international protection status. According to article 10 of the TPR, the Council of Ministers may decide to grant temporary protection regime, in response to a specific situation of mass influx and has the discretion to decide on the duration of that regime and the conditions to prolong it after its initial duration. Thus, this regime may be terminated at any moment by a Council of Ministers decision. In addition, as per article 11 TPR, where this regime is terminated, the Council of Ministers may decide on a specific course of action concerning treatment of former beneficiaries. In particular, the Council of Ministers may a) order the return of all former beneficiaries to country of origin, b) order the granting of international protection status to all former beneficiaries on prima facie basis, c) order for the individual processing and determination of international protection requests and d) allow for the stay of former beneficiaries subject to conditions to be laid down within the framework of the LFIP.

The protection provided to the appellant in Turkey in the context of the Temporary Protection Regulation (TPR) manifestly falls short of the legal guarantees enshrined for recognized refugees in the Geneva Convention which refer to the right of free movement in the territory of the contracting country (article 26 of the 1951 Convention), the right to citizenship (article 34 of the 1951 Convention) and the right to employment (articles 17,18,19 of the 1951 Convention).

More specifically as to the freedom of movement, article 26 of the 1951 Convention provides that refugees have the right of free movement and choice of their place of residence, subject to any regulations applicable to aliens generally in the same circumstances. Article 33 TPR provides that beneficiaries of "temporary protection" regime are obliged to comply with administrative requirements, failure of which may result in administrative sanctions. Among other requirements, they may be "obliged to reside in the assigned province, temporary accommodation center or other location" while in August 2015, the Turkish authorities introduced, with a special written instruction, controls and restrictions in the movement of Syrians in Turkey. This instruction was issued by DGMM, signed by the Minister of Interior and circulated to all the Governorates across the country, includes a number of measures for the control and restriction of the movement of

Syrians in Turkey, among them frequent document checks on inter-city highways. Any Syrians identified to have left the province where they were registered without written permission, are to be referred or taken back to their province of legal residence. This instruction introduces a discriminatory treatment of Syrians compared with the treatment provided to other aliens.

As to the right of employment, the Geneva Convention provides that refugees should receive favorable treatment and, in any case, not less favorable than that accorded to aliens generally. However, the European Economic and Social Committee report states that, according to law, each employer is obliged to hire 10 Turkish nationals for each Syrian hired and 5 Turkish nationals for each non-Syrian alien hired.

Furthermore, according to a resolution adopted on 20-4-2016 by the Parliamentary Assembly of the Council of Europe[6], point 2.5 mentions, inter alia, that returns of asylum seekers, whether Syrians or not, to Turkey as a "safe third country" are contrary to European Union and international law, as Turkey does not provide them with protection in accordance with the 1951 Convention relating to the Status of Refugees, while there have been reports of onward *refoulement* of both Syrians and non-Syrians.

Besides the other conditions which must be fulfilled for a country to be considered as safe for a particular applicant for international protection, it must be possible for him to apply for refugee status and, if he is recognized as a refugee, to receive protection in accordance with the Geneva Convention. The text of article 38 of Directive 2013/32/EU, transposed with the same phrasing into Greek legal order by article 56 of law 4375/2016, raises the question of the level of protection corresponding to the Union legislation requirements for a country to be considered a safe third country.

Article 39 of the Directive on the European safe third country and article 35 on the first country of asylum establish a highest and a lowest level protection, in the middle of which lies article 38 on the safe third country. Article 39 provides for a high level of protection offered by a country which

[6] . Resolution 2109 (2016). The situation of refugees and migrants under the EU-Turkey Statement of 18 March 2016. Available at http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=22738&lang=2

has ratified the Geneva Convention without geographic limitations, which means in practice that, on the one hand it offers 100% of the protection stipulated by the Convention and on the other that article 36 of the Convention is fully applicable and the country falls under the control mechanisms of the Convention. On the other side, article 35 is satisfied with the refugee protection provided or other adequate protection, whose core is the application of the non-refoulement principle.

From the combination of these provisions it ensues that a safe third country must provide international protection substantially similar to that of the Geneva Convention; not a different ("other") from it, without having had to ratify without geographic limitations the Convention and to fall totally under its control mechanisms. Such protection represents international protection and lies beyond the non-refoulement principle (which is stipulated separately under condition (b) covering the most important part of the rights stipulated in the Convention.

For the above reasons, the Committee considers that the temporary protection, which Turkey may grant the appellant, as a Syrian national, does not recognize to him rights similar to those stipulated in the Geneva Convention. Hence, if the appellant is returned to Turkey, he will not receive international protection equivalent or corresponding to that granted to refugees in accordance with the Geneva Convention. Thus, criterion (e) of article 38 of the Directive is not fulfilled.

As for condition (f) of article 38 of Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013, it should be examined if the applicant has a connection with the said third country, under which it would be reasonable for the applicant to move to it.

As far as the connection with the third country, the relevant position of the United Nations High Commissioner for Refugees[7] refers to the literal meaning of the article claiming that it implies the requirement of a

[7] . Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept. 23/3/2016 available in http://www.unhcr.org/56f3ec5a9.pdf

"sufficient" connection with the third country. In UNHCR's view, transit alone is not a 'sufficient' connection or meaningful link. Transit is often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection. Similarly, a mere right to enter does not constitute by itself a substantial connection on the basis of which it might be reasonable for the person to return to that country. Examples of such connections could be the presence of family links, including distant relatives. In some cases, the connection with a wider community could also constitute a form of connection with the third country. A meaningful link could also be considered the previous residence in that country, such as long visits, studies and linguistic or cultural links. Such links should be required, in addition to the mere transit from the country.

The Committee, by majority, ruled that is it not expedient to examine the fulfillment of this condition, since the law requires that all conditions are fulfilled and, in the present case, the Committee already considered that criterion (e) is not.

The dissenting opinion of the President as to criteria (e) and (f) and in view of the adverse frame of time and up-to-date information and research, stresses the following:

- The individualized nature of the protection offered by the Geneva Convention.
- The *en masse* granting of protection is not excluded from the Geneva Convention, on condition that the termination of protection takes place following a reasoned judgment on the termination of the risk of persecution (cessation), rather than an indiscriminate withdrawal of protection granted from the totality of beneficiaries of protection.
- Temporary regimes granted *en masse* may be considered to be in conformity with the Geneva Convention, if they contain clear and full safeguards that beneficiaries of such protection would, within a reasonable time, move from temporary protection to protection equivalent with the Convention.
- «Temporary protection" by virtue of the LFIP is a discretionary measure that may be deployed in situations of mass influx of

refugees where individual processing of international protection needs is impractical due to the high numbers of beneficiaries.

- "Temporary protection" within the framework of the Temporary Protection Regulation (TPR) is a complementary measure used in situations where individual "international protection" eligibility processing is deemed impractical.
- The "temporary protection" framework established by the TPR provides its beneficiaries with a domestic legal status, guaranteeing their legal stay in Turkey, protection from criminal punishment for illegal entry or presence and protection from refoulement.
- According to article 10 of the TPR, the Council of Ministers decides to grant temporary protection regime in response to a specific situation of mass influx and has the discretion to decide on the duration of that regime and the conditions to prolong it after its initial duration.
- The publication of the Temporary Protection Regulation (TPR) regulated Turkey's existing de facto "temporary protection" practice that was already in place since 2011 for persons arriving in Turkey from Syria. Refugees from Syria benefit from a group-based "temporary protection" regime, which was formalized by the Temporary Protection Regulation.
- This status grants its beneficiaries the right to stay legally, protection from refoulement and access to a set of basic rights and services, including free healthcare (respectively articles 25,6 and 26 of TPR).
- The up till now operation of the Directorate General of Migration Management – henceforth DGMM), as the institution responsible for setting up the new asylum system and the agency in charge of registering beneficiaries of "temporary protection", granting this status and issuing relevant decisions.
- As of 7 December 2015, the number of beneficiaries of "temporary protection" was listed at 2,291,900. Of this population, about 263,000 are accommodated in 25 refugee camps spread across 10 provinces in the south of Turkey, whereas the remaining live in residential areas in private accommodation on their own resources and dispersed all over the country.
- The "temporary protection" status in granted on a prima facie, group-basis, to Syrian nationals and stateless Palestinians originating from Syria.

- The right of a refugee to live as a member of the society and, thus, to receive a residence permit for an assured period of time, must be seen in conjunction with the number of refugees hosted in a given country and the country's possibilities to provide them with opportunities for integration. Furthermore, the legislation of all countries provides for the reassignment, withdrawals etc. of a residence permit.
- The adoption by Turkey, in April 2016, of a new, modified, legal framework for aliens and international protection (Regulation amending the Temporary Protection Regulation (Cabinet Decree no 2016/8722 of 6 April 2016), Regulation on work permit of international protection applicants and international protection status holders (Official Journal of 26 April 2016)) which sets rules for the treatment of asylum seekers in the territory of the country and establishes a new system of protection in order to respect Turkey's obligations vis-à-vis those in need of international protection, independently of their country of origin.
- The present decision the international sources refer to a period of time preceding the EU-Turkey Statement while it does not include international references on the period after the new legal framework of Turkey.
- The European Commission, European Union institution competent with the legislative initiative and responsible for the correct application of EU legislation, through the letter of the Director-General of Migration and Home Affairs, under reference ref. Ares (2016)2149549 - 05/05/2016, points out that following the subsequent legislative changes adopted by Turkey (in April 2016) in conjunction with the assurances provided by Turkey by letter of 24 April 2016 (2016/70946263-A VOIR DT/10830418), it is indicated that each non-Syrian – which the European Court of Human Rights decided to take into consideration in its judgments- The European Commission considers that Turkey has taken all the necessary measures mentioned in Communication COM (2016) 166 final, which, inter alia, contained clearly all measures that Turkey should take in order for Greece to be allowed to reject an application for asylum as inadmissible according to article 33 (2) (b) or (c) of the Asylum procedures directive (directive 2013/32/EU "on common

procedures for granting and withdrawing the status of international protection). The European Commission underlines that the (temporary) protection offered on the basis of the legislation by Turkey to Syrian nationals is equivalent to that foreseen by the Geneva Convention.

- The Joint EU-Turkey Statement provides, as additional action point that «All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure, which is necessary to end the human suffering and restore public order. Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps».
- The COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL- First Report on the progress made in the implementation of the EU-Turkey Statement (COM(2016) 231 final) states that "There has been good progress in making the Statement operational. Joint efforts by the Greek and Turkish authorities, the Commission, Member States and EU agencies have made headway in setting up a framework for processing increasing number of asylum applications in Greece, returning irregular migrants safely to Turkey, ensuring that asylum seekers receive the necessary protection in Turkey if needed, and opening a legal pathway to Europe via resettlement».
- It also stresses that «The Commission will remain fully engaged in implementing all elements in the next phases, including by accelerating the disbursement of the Facility and launching projects that will support refugees from Syria in Turkey. Further efforts are required by Turkey to make sure that those who need international

protection receive the support they require, including through the Facility».

- The European Parliament and the Council should swiftly finalize the decision-making process on the Commission proposal of 21 March 2016 to use for resettlement purposes the 54,000 places originally foreseen for relocation.
- The Commission will present its Second Report on the progress made in the implementation of the EU-Turkey Statement in early June 2016.

Thus, according to the dissenting opinion of the President, if the appellant returns to Syria, he may enjoy the necessary international protection, equivalent to that of the Geneva Convention (and also within a framework of regular review of the correct application of international standards) and thus condition (e) is fulfilled.

As for condition (f), namely the applicant's connection with the said third country, under which it would be reasonable for the applicant to move to it, the President points out that:

- The now appellant stayed for 10 months in Turkey and, while there, he lived in the town of Manugat, near Antalya, in the house of his boss where he worked in order to earn money for his onward travel. He claimed he was paid 30 Turkish liras for 12 hours and in 9 months he made 1000 dollars, 700 of which he would use for continuing his trip to Europe.
- He did not contact the competent Turkish authorities in order to obtain, through legal means, a temporary protection status, foreseen in the case of this very massive refugee influx, characterized as a refugee crisis; nor did he apply for a work permit.
- Nevertheless, during the 10 months he spent in Turkey, he worked, was hosted, earned money; it is thus easily concluded that the appellant has established a connection with the said third country where he enjoyed fundamental rights, such as the right to life and work, and has established a connection with it, on the basis of which it is reasonable for him to return there. As a result criterion (f) is also fulfilled.

FOR THE ABOVE REASONS

THE COMMITTEE RULING BY MAJORITY

Annuls the decision of the Regional Asylum Office of Lesvos

Considers the appeal to be admissible

Returns, in accordance with article 26, paragraph 6 of p.d. 113/2013, the case to the Regional Asylum Office of Lesvos in order to examine in substance the application for asylum.

Done and decided in secret deliberation, without the presence of the appellant

The President The Secretary

For the copy

(signature)

The Secretary

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