CHAPTER VIII

The Concept of Safe Third Country with Special Regard to the Greek Safe Third Country Declaration

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Abstract

This study explores the "safe third country" (STC) concept as outlined in the Dublin III Regulation of the European Union, focusing specifically on the Greek list of designated STCs. The concept of STC is viewed as a strategic tool used by developed countries to address challenges such as "asylum shopping" and "orbit" situations. However, there are significant concerns about its compliance with international law, especially the 1951 Refugee Convention. In 2021, Greece issued a Joint Ministerial Decision designating Türkiye as an STC for certain nationals. This designation was later expanded to include Albania and northern Macedonia. Despite criticism, the Greek authorities continued to implement their decisions, resulting in many applications being deemed inadmissible and applicants being ordered to return to Türkiye, even though such readmissions have been suspended since 2020. The Greek Council of States affirmed that designating Türkiye as a STC met the requirements of the Revised Asylum Procedures Directive. To be considered an STC, countries should typically have stable political environments, effective legal systems, respect for human rights, and established asylum procedures. However, the present study highlights how the interpretation of STC rules varies significantly. The effectiveness of the STC principle hinges on the provision of effective protections for asylum seekers. Although the standard for effective protection may be ambiguous, if used effectively, the STC concept can enhance the efficiency of asylum procedures without compromising the rights of asylum seekers' rights. The STC concept has the potential to improve the asylum process by reducing irregular migration and deterring human

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trafficking and smuggling. Nonetheless, a merit-based evaluation of individual applications, including asylum seeker's circumstances and conditions in designated STC, remains crucial.

Keywords: safe third country, safe country of origin, European safe third country, Greece, refugees, migration, national safe third country lists

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1. Introduction

The "safe third country" (STC) concept is one of the most contentious in international refugee law, and has been extensively debated over the last two decades. It has been seen as a legal and institutional barrier intended to prevent asylum seekers from reaching the borders of destination countries[1] and as a measure of deterrent policies targeting both illegal immigrants and forced migrants.[2] Frequently linked to abuse, this principle has been criticised as a component of governmental efforts to evade the international obligation to comprehensively and effectively assess asylum applications and make decisions regarding the international protection of asylum seekers.[3] It has been perceived as a practice of burden (or responsibility) shifting rather than one of burden (or responsibility) sharing, potentially undermining the principle of international solidarity.[4] Furthermore, it has been noted that standards of effective protection of refugees in designated STCs diverge from the rights framework established by the Refugee Convention and International Human Rights Law.[5]

The STC concept emerged in Switzerland in 1979 and was gradually extended to several other European nations during the 1980s. By the 1990s, it gained broad acceptance. It was officially integrated into European Union (EU) law via the Dublin Convention of 1990.[6] The main idea of the STC is that the State may decline asylum requests from individuals who have passed through countries typically considered safe, where it is believed that they could have sought appropriate international protection.[7] In such cases, the State has no responsibility for the asylum seeker or any obligation to examine the merits of his application; the applicant can be returned to the STC through which they passed. The prevailing perspective suggests that if effective protection exists in a third State, transfers can be considered acceptable under

1 Randall, 2014, p. 254.
2 Scheel and Squire, 2014, pp. 195–196.
3 Davinić and Krstić, 2013, pp. 97–98.
4 Garlick, 2016, p. 164.
5 Freier, Karageorgiou and Ogg, 2021.
6 McAdam, 2013, pp. 28–29.
7 Legomsky, 2003, pp. 570.

the Refugee Convention, even though it neither explicitly permits nor forbids them. A critical concern revolves around defining adequate protection criteria available to third countries. The dominant view asserts that a third country must adhere to all the obligations outlined in the Refugee Convention. However, the academic literature provides different minimal criteria for determining STCs.[8] In this study, the notion of STC was evaluated as a component of the broader concept of safe countries, as defined by Arts. 35-39 of the Asylum Procedures Directive (APD) 2013/32/EU.

While the STC principle may optimise asylum processes, its deployment warrants meticulous implementation alongside robust safeguards protecting against potential encroachments on the fundamental rights and security of refugees. Achieving equilibrium between efficiency and the protection of individual rights is pivotal, in order to establish a manageable system while upholding international refugee protection obligations.

For the purposes of this chapter, three different sets of rules must be distinguished: a safe country of origin, the STC, and a safe European country. A safe country of origin is a State whose nationals are perceived as not having a well-founded fear of persecution or other serious harm. An STC is a State in which applicants receive adequate international protection. Safe European countries have ratified the Geneva Convention and the European Convention on Human Rights (ECHR) and have regulated asylum procedures by law.[9] This paper consists of seven sections addressing these different areas. Section 2 examines the EU legal framework that regulates the concept of safe country of origin. This is followed by analyses of the STC concept (Section 3) and the European safe country concept (Section 4), as defined by the abovementioned APD. Section 5 scrutinises the recent jurisprudence of European courts related to the STC concept, while Section 6 offers a detailed analysis of issues around the national list of STCs in Greece and contextualises "the Greek case" within the general framework of the STC concept. The main findings are summarised in the conclusion.

2. Safe country of origin concept

Among all the safe country concepts, the concept of "safe country of origin" is generally deemed the least controversial. It rests on the assumption that, under specific circumstances, certain countries can be identified as generally safe for their citizens or for stateless individuals who are habitual residents. Member States are entitled to adopt further rules at the national level for the application of the safe

8 Legomsky, 2003, pp. 673–675.

9 Thym and many others add to this list the concept of the first country of asylum; Thym, 2023, p. 381.

country-of-origin concept;[10] the EU legislation does not directly specify its components.[11] According to Annex I of the recast APD,

> A country is considered a safe country of origin when, on the basis of the legal situation, the application of the law within a democratic system, and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment, and no threat due to indiscriminate violence in situations of international or internal armed conflict.

While this comprehensive definition establishes the criteria for designating safe countries of origin, Annex I provides additional guidelines that specify what should be evaluated during this process. Assessments should encompass the degree to which protection against persecution or mistreatment is ensured through a country's laws and regulations, including their implementation. Adherence to the rights and freedoms outlined in international and European instruments for human rights protection, compliance with the non-refoulement principle, and whether an effective system of remedies for addressing violations of rights and freedoms has been established.[12]

The most contentious aspect of the safe country-of-origin concept is the adoption of domestic lists of safe countries by EU Member States, which can be utilised in the examination of international protection applications. Third, countries are designated as safe based on information provided by various international organisations, including the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe, and other Member States.[13] One consequence of these lists is the presumption of adequate protection of human rights in the listed countries, which can be rebutted during the examination of individual applications. This special examination scheme requires applicants to present the overriding reasons for their particular situations. According to the Court of Justice of the European Union (CJEU), when there are no overriding reasons, the application may be rejected as manifestly unfounded.[14] In such cases, applicants whose applications are rejected are not permitted to remain in the State where the application was lodged.

Thus, the designation of safe countries of origin does not exempt competent asylum authorities from assessing individual applications; rather, it accelerates such proceedings.[15] This is highlighted in Recital 42 of the APD, which stipulates that

10 APD 2013/32/EU, Art. 36.
11 Thym, 2023, p. 382.
12 APD 2013/32/EU, Annex I.
13 APD 2013/32/EU, Art 37.
14 CJEU, *A v Migrationsverket*, Case C-404/17, Judgement of 25 July 2018, para. 26.
15 Thym, 2023, p. 382.

> The designation of a third country as a safe country of origin cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only consider the general civil, legal, and political circumstances in that country and whether actors of persecution, torture, or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, it is important that where an applicant shows that there are valid reasons to consider the country unsafe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

The majority of EU Member States implement the safe country-of-origin concept and have established lists of safe countries, including all Central European states except Poland.[16] EU candidates and potential candidate countries, particularly those in the Western Balkans, are commonly recognised as safe countries of origin and feature prominently on national lists maintained by European states. The designation of a safe country of origin may include exemptions pertaining to specific geographical areas or the profiles of asylum seekers. For instance, such exemptions are applied to the Transnistria region of Moldova in Czechia and Switzerland and to religious minorities (Christians and Muslims) from India in the Netherlands. In these cases, regular asylum procedures are followed as the safe country-of-origin concept does not apply.[17]

The former APD 2005/85/EC had envisioned the establishment of a 'minimum common list of third countries which shall be regarded by Member States as safe countries of origin'.[18] This provision was annulled this provision on institutional grounds.[19] In 2015, the European Commission proposed a regulation aimed at establishing a common EU list of safe countries of origin for Directive 2013/32/EU.[20] This initiative was formulated at the peak of the refugee crisis with the aim of designating the Western Balkan countries and Türkiye as safe countries of origin.[21] However, the EU Council failed to reach an agreement on the proposed regulation for a common list of safe countries of origin and it was withdrawn in 2019. Consequently, the existing legal framework does not include a common list of safe EU countries. Nevertheless, the new EU Pact on Migration and Asylum is expected to lead to the adoption of a common EU list. Within the Pact, the European Commission once again recognised the necessity for 'streamlined and harmonised rules related to safe countries of origin and safe third countries'.[22] Thus, we concluded that there is a tendency toward

16 European Union Agency for Asylum, 2022, p. 6.
17 European Union Agency for Asylum, 2022, pp. 5–9.
18 Council Directive 2005/85/EC, Official Journal of the European Union L 326/13, Art. 29.
19 CJEU, *European Parliament v. Council of the European Union*, Case C-133/06, Judgement of 6 May 2008, para. 67.
20 European Commission, 2015.
21 Thym, 2023, p. 382.
22 European Commission, 2020, p. 4.

creating a common European list of safe countries of origin. After several attempts to adopt such a list, it can be anticipated that the new act on migration and asylum will lead toward the adoption of harmonised rules on the concept of a safe country of origin.

3. The concept of safe third country

One of the most controversial elements of the EU asylum *acquis* is the notion of STC. This concept is based on the presumption that certain countries which are not EU members can be designated safe for asylum seekers. According to the APD, EU Member States may apply the STC concept only if competent authorities ensure that individuals seeking international protection in a third country are treated in line with specific principles. These principles include ensuring that life and liberty are not threatened by factors such as race, religion, nationality, membership in a particular social group, and adherence to a specific political opinion. Additionally, there should be no risk of serious harm, as defined in Directive 2011/95/EU, and a third country must adhere to the principle of non-refoulement as per the Geneva Convention. Furthermore, the prohibition of removal in violation of the right to freedom from torture and cruel, inhuman, or degrading treatment, as outlined in the international law, must be respected. Finally, individuals must be able to request refugee status and receive protection from the STC in accordance with the Geneva Convention.[23]

The application of the STC concept has to be regulated in detail by the national legislation of EU Member States. Such legislation should encompass rules on connection between the applicant and the third country (justifying the reasonableness for the person to go to that country), rules on the methodology employed by competent authorities to ensure the applicability of the STC concept to a specific country or applicant (this methodology involves a case-by-case evaluation of the country's safety for a particular applicant and-or may include the national designation of countries considered generally safe), and finally rules permitting examinations to determine the safety of the third country for a particular applicant. These rules should include effective legal remedies and allow the applicant to challenge the use of the STC concept by asserting that a third country is not safe in their specific circumstances, or to challenge the existence of a connection between them and the third country.[24]

The APD prescribes additional obligations to states when implementing the STC concept. They are required to inform the applicant and provide them with a

23 APD 2013/32/EU, Art. 38, 1.
24 APD 2013/32/EU, Art. 38, 2.

document in the language of a third country notifying the authorities of the STC in question that the application has not been examined for its merits. Additionally, the Directive addresses a specific scenario: If a third country denies entry to the applicant, Member States must ensure access to a procedure in accordance with the fundamental principles and guarantees outlined in Chapter II of the Directive. In other words, the Member State must grant full access to asylum procedures, including a thorough examination of the merits, in cases where the STC does not permit entry into the applicant. Finally, Member States are required to periodically update the European Commission on the countries to which the STC concept has been applied.[25] According to CJEU jurisprudence, the conditions stipulated in Art. 38 of the Recast APD are cumulative.[26]

Application of the STC concept varies across European states. Some have adopted national lists that explicitly identify STCs, whereas others lack such lists and assess each case individually based on relevant legal procedures. Still, others fall in between; while they may lack a national list, they have legal provisions outlining procedures for determining STCs on a case-by-case basis.[27] The current voluntary approach to the STC concept among EU Member States is set to change under the proposed new act on migration and asylum. This pact introduces a mandatory pre-entry screening procedure that deems individuals inadmissible if they can be returned to a designated STC.[28] This mandatory process aims to harmonise the application of the STC concept across the EU, thereby contributing to the improved management of migration flows.

4. The concept of European safe country

Member States can opt for a limited examination or no examination of an asylum application or of the safety of the applicant in their particular circumstances if it is established by a competent authority that the applicant has entered or is attempting to enter its territory illegally from a European safe third country. For a third country to be considered a European safe third country, it must ratify and adhere to the Geneva Convention without geographical limitations, have a legal asylum procedure in place, and ratify the ECHR, observing its provisions and standards for effective remedies. Applicants have the right to challenge the application of the European safe country concept based on the assertion that a third country is not safe in their

25 APD 2013/32/EU, Art. 38, 3–5.

26 CJEU, *Serin Alheto v. Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, Case C-585/16, Judgement of 25 July 2018, para. 121.

27 European Union Agency for Asylum, 2022, p. 13.

28 European Commission, 2020, p.13. See also: Nur Osso, 2023, p. 15 fn. 139.

particular circumstances. Member States must establish procedures in national law for implementing these provisions and the consequences of decisions, aligning with the non-refoulement principle, and may include exceptions for humanitarian, political, or public international law reasons. The same rules apply as in the case of an STC concerning notifications to the applicant and authorities of a European safe country, the issue of non-readmission, and the requirement to periodically inform the European Commission. [29]

The concept of a "European safe country" within the European context has faced criticism for its ambiguity, hindering its widespread implementation. Only three EU Member States have incorporated it into their domestic legislation; even in these cases, its practical application has been limited. For Switzerland, the concept appears redundant, given its application 'as the concept is applied in the context of safe third country in relation to the EU and EFTA Member States'.[30] It has been observed that in some EU Member States, asylum procedures are insufficient, leading to the removal of asylum seekers from countries where they could face persecution. Moreover, in the landmark case *M.S.S v. Belgium and Greece*, the European Court of Human Rights (ECtHR) concluded that Greece could not be deemed a safe country.[31] As a result, the concept of a "European safe country" has not been transposed into the legislation of many EU Member States; it has never been implemented and there is a significant likelihood that it will not be implemented in the future.

5. An overview of recent jurisprudence of European courts

The implementation of safe country concepts remains under the primary jurisdiction of national courts. The CJEU interprets relevant rules through preliminary rulings or evaluates the enforcement of infringement procedures. The ECtHR indirectly scrutinises safety country concepts while assessing human rights violations.

In the case *Khlaifia and Others v. Italy*, the applicants, who were Tunisian nationals, departed Tunisia by sea in September 2011, but their boats were intercepted by the Italian authorities, leading them to be taken to a reception centre in Lampedusa. They described deplorable conditions including inadequate hygiene, overcrowding, and limited water supply. A riot in the centre resulted in fire damage. After being transferred to Palermo, the applicants spent four days aboard ships before returning to Tunisia. They argued that their detention violated Art. 3 (prohibition of inhuman or degrading treatment), Art. 5 § 1, § 2, and § 4 (right to liberty

29 APD 2013/32/EU, Art. 39.
30 European Union Agency for Asylum, 2022, p. 16.
31 ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgement of 21 January 2011, paras. 362–368.

and security, right to be promptly informed of reasons for detention, and right to a decision on the lawfulness of detention), and Art. 13 (right to an effective remedy) of the European Convention. They also alleged that collective expulsion is prohibited under Art. 4 of Protocol No. 4. In its response, the Italian Government argued that Tunisia was 'a safe country which respected human rights, this being shown by the fact that the applicants had not reported experiencing persecution or violations of their fundamental rights after their return'.[32] However, the ECtHR found a violation of Art. 4 of Protocol 4 The Court asserted that an expulsion lacking a comprehensive assessment of the individual circumstances of a case and devoid of procedural safeguards heightened the risk of refoulement. The *Khlaifia* decision presented mixed outcomes for Italy and the other states. While it may force them to undertake the complex and time-consuming political process of revising their laws to guarantee proper legal procedures for migrants, it also offers them more flexibility in managing large influxes of migrants.[33]

In the case *D.L. v. Austria*, the ECtHR stated that simply designating a territory as a safe country of origin 'does not relieve the extraditing State from conducting an individual risk assessment'.[34] Specifically, the ECtHR found no violations of the ECHR when an individual was extradited to a territory deemed safe by domestic law. However, this decision was based on an extensive investigation demonstrating that individuals faced no real risk of harm under the ECHR provisions in that territory.

In the landmark case of *Ilias and Ahmed v. Hungary*,[35] the Grand Chamber of the ECtHR violated Art. 3 of the ECHR, as Hungarian authorities failed to evaluate the potential risks of the prohibition or ill treatment of applicants in Serbia. Additionally, the Court clarified that the applicants were not detained in the "transit zone" between Hungary and Serbia because of a lack of any direct risk in Serbia. This case establishes the crucial principles for safeguarding asylum seekers from refoulement and inhuman or degrading treatments before applying the STC concept. A merit-based examination is necessary to ensure that asylum seekers face no risk of denying access to the asylum procedure in the STC and are not at risk of expulsion, refoulement, or chain refoulement. The ECtHR emphasised that asylum applicants should not be removed from a third country if there are insufficient guarantees against refoulement. However, the Grand Chamber's decision faced criticism for breaking the connection between 'the qualification of behaviour as deprivation of liberty' (Art. 5 of the ECHR) and protection from refoulement (Art. 3 of the ECHR).[36]

These guiding principles and safeguards were reiterated in other cases, such as *M.K. and others v. Poland* where the ECtHR identified a violation of ECHR Art. 3 because of the removal of a third-country national to Belarus without proper

32 ECtHR, *Khlaifia and Others v. Italy*, Application No. 16483/12, Judgement of 15 December 2016, para. 223.
33 Goldenziel, 2018, p. 278.
34 ECtHR, *D.L. v. Austria*, Application No. 34999/16, Judgement of 9 April 2018, para. 59.
35 ECtHR, *Lias and Ahmed v. Hungary*, Application No. 47287/15, Judgement of 21 November 2019.
36 Stoyanova, 2020, p. 496.

consideration of the risk of chain refoulement and lacking effective guarantees against the real risk of inhuman or degrading treatment or torture.[37]

In March 2017, Serbian national A applied for asylum in Sweden and referred to the threats and assaults from an illegal paramilitary group between 2001 and 2003. The Immigration Board of Sweden rejected the application as unfounded, asserting that Serbia could provide effective protection. *A*n appeal, and the Court, uncertain about interpreting Art. 31(8) of Directive 2013/32, referred a question to the CJEU. The CJEU concluded that

> Article 31(8)(b) of Directive 2013/32, read in conjunction with Article 32(2), must be interpreted as not allowing an application for international protection to be regarded as manifestly unfounded in a situation such as that at issue in the main proceedings, in which, first, it is apparent from the information on the applicant's country of origin that acceptable protection can be ensured for him in that country and, second, the applicant has provided insufficient information to justify the grant of international protection, where the Member State in which the application was lodged has not adopted rules implementing the concept of a safe country of origin.[38]

A few cases have arisen because of the rejection of applications on the grounds that the applicant had reached the territory of the EU Member State through a State in which they could be granted sufficient protection and were not exposed to persecution or the risk of harm. The CJEU was asked to interpret Arts. 33 and 46(3) of Directive 2013/32/EU and Art. 47 of the EU Charter in a case involving the *LH* and the Immigration and Asylum Office of Hungary. The dispute arose when the *LH*'s request for international protection was rejected as inadmissible without examining its merits, leading to its removal and a ban on entry. The CJEU reiterated that the conditions laid down in the Directive were cumulative, and all of them must be satisfied to deny admissibility. In the present case, the connection between the applicant and STC was not met. Furthermore, the Court clarified that transit alone was insufficient to constitute a connection between the applicant and a third country within the meaning of Art. 38(2)(a) of Directive 2013/32.[39] The Court has repeated the same consideration in the joined cases *FMS and others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság.*[40]

37 ECtHR, *M.K. and Others v. Poland*, Applications nos. 40503/17, 42902/17, and 43643/17, Judgement of 23 July 2020, paras. 174–186.

38 CJEU, *A v. Migrationsverket*, Case C-404/17, Judgement of 25 July 2018, para. 35.

39 CJEU, *LH v. Bevándorlási és Menekültügyi Hivatal*, Case C-564/18, Judgement of 19 March 2020, paras. 40, 49.

40 CJEU, *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, Joined Cases C-924/19 PPU and C-925/19 PPU, Judgement of the Court (GC) of 14 May 2020, paras 148–165.

In the case of *Serin Alheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* the CJEU clarified that 'full and *ex nunc* examination of both facts and points of law' may extend to grounds of inadmissibility based on the safe country concept. The CJEU asserted that when examining the grounds of inadmissibility of the application for international protection, including the STC concept, the referring court must rigorously assess the satisfaction of each condition cumulatively and ensure that the applicant has the opportunity to express their views on the applicability of the grounds of inadmissibility.[41]

6. The STC concept: Greece as a case study

The main result of applying the STC concept is the return or removal of persons to an STC, dislocating them to a jurisdiction that is different from that of the removing Member State. This return or removal is operationalised through readmission agreements or special arrangements with third states, with the aim of preventing 'the risk of orbiting and refoulment'.[42] One such arrangement was applied in Greece following the EU-Türkiye Statement of 18 March 2016.

At the height of the European migration crisis in 2015, more than 850,000 irregular migrants transited from Türkiye to Greek islands.[43] In an attempt to manage this unprecedented influx, the EU and Türkiye reached a deal in the form of a press statement, endorsing the returnability of illegal migrants.[44] Although the EU decided to regulate this process differently from the 2014 Readmission Agreement between the EU and Türkiye, it was concluded in a form that would not produce any legally binding effects,[45] including judicial scrutiny.[46] While the STC concept was not explicitly mentioned in the EU-Türkiye Statement, its implementation – including the examination of asylum applications under the STC notion [47]– led to the *de facto*

41 CJEU, *Serin Alheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, Case C-585/16, Judgement of 25 July 2018, paras. 121–130.

42 Moreno-Lax, 2015, p. 673.

43 UNHCR, 2023, Mediterranean Situation: Greece. Available at: https://data2.unhcr.org/en/situations/mediterranean/location/5179 (Accessed: 30 October 2023).

44 Council of the European Union, 2016.

45 Moreno-Lax, 2017, p. 28.

46 UN Human Rights Council, 2017, pp. 5–6. The Report refers to a *NF, NG and NM v. European Council* case in which the General Court of the EU determined the Statement to be non-reviewable. *NF v European Council* (T-192/16), *NG v European Council* (T-193/16) and *NM v European Council* (T-257/16), ECLI:EU:T:2017:128. The appeal was also unsuccessful. Order of the Court (First Chamber) of 12 September 2018 — *NF (C-208/17 P), NG (C-209/17 P), NM (C-210/17 P) v European Council*, Official Journal of the European Union C 399/13. Furthermore, the ECtHR determined that the EU–Türkiye Statement is a migration agreement between EU Member States and Türkiye. ECtHR, *J.R. and Others v. Greece*, Application No. 22696/16, Judgement of 25 January 2018, para. 7.

47 Drakopoulou, Konstantinou and Koros, 2020, p. 176.

designation of Türkiye as an STC. The issue arises from the fact that Türkiye does not comply with the conditions set by the recast APD for designation as an STC. One significant reason is that it maintains a geographical limitation on the 1951 Refugee Convention, denying convention-based protection to individuals from non-European countries.[48] The European Commission, aiming to uphold the Statement, issued a Communication in which it clarified that the STC notion, as defined in the recast APD, 'requires that the possibility exists to receive protection in accordance with the Geneva Convention, but does not require that the STC has ratified that Convention without geographical reservation'.[49] That is, the conditions specified in the recast APD were relaxed; it was considered sufficient that protection comparable to or similar to that of the Geneva Convention was considered sufficient.[50]

Moreover, implementing the STC concept in the case of Türkiye raises the issue of assessing whether there is a connection, as defined in the recast APD, between the applicant and the STC, and whether it is reasonable for them to go to that territory. The European Commission again supported the deal with Türkiye, stating that

> The question of whether there is a connection with the third country in question, and whether it is therefore reasonable for the applicant to go to that country, can also consider whether the applicant has transited through the STC country in question or whether the third country is geographically close to the country of origin of the applicant.[51]

As previously mentioned, the CJEU does not deem transit alone adequate to establish a connection between the applicant and a third country. This perspective is also shared by the UNHCR, which has noted that 'transit alone is not a "sufficient" connection or meaningful link, unless there is a formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards'.[52] It can be concluded that the EU-Türkiye Statement has revealed how the STC concept may be interpreted and adjusted in ways that enhance its effectiveness in processing asylum applications but potentially compromise the protection of applicants' rights.

The STC concept was transposed to Greek national law following the announcement of the EU-Türkiye Statement, along with other provisions of the APD. Since then, multiple legal frameworks have governed the removal of third-country nationals from Greece.[53] The return of Syrian nationals to Türkiye followed the STC concept, whereas non-Syrians initially returned on grounds of unfounded applications, indicating that they were not genuinely in need of international protection.

48 Moreno-Lax, 2017, pp. 28–30.
49 European Commission, 2016, para. 62.
50 Dimitriadi, 2016, p. 5.
51 European Commission, 2016, para. 62.
52 UNHCR, 2016, p. 6.
53 Drakopoulou, Konstantinou and Koros, 2020, p. 183.

Until the Joint Ministerial Decision (JMD) of June 2021,[54] only asylum claims by Syrian nationals were assessed under the STC concept, and Türkiye was considered safe for most Syrians without examining the substance of their requests. However, the merits of non-Syrian applications were not evaluated until June 2021. The JMD expanded the STC provisions to include additional populations and extended their application from the Greek islands to the mainland, designating Türkiye as an STC for Afghans, Bangladeshi, Pakistani, Somali, and Syrian refugees. The JMD was amended in 2021, and the list was expanded to include Albania and North Macedonia for individuals who arrived irregularly in Greece and sought protection.[55] This will be confirmed in 2022 by a new ministerial decision.[56] The JMD allows the rejection of asylum applications from these nationalities without a merit-based examination, resulting in a blanket application of the STC concept across Greece.

Returns and readmissions under the EU-Türkiye Statement faced a temporary interruption following the attempted coup in Türkiye on 15 July 2016. Starting in March 2020, Turkish authorities indefinitely suspended readmissions from Greece, citing the challenges posed by the coronavirus pandemic. Despite these developments, Greece has persisted in processing asylum applications using the admissibility procedure and STC concept since March 2020.[57]

The implementation of the STC concept by Greek authorities has been widely criticised. The resulting denial of asylum affected the location and content of the protection for Greece's refugees. The use of the STC concept in Greece instils constant fear of removal to Türkiye and, ultimately, to countries of origin, violating the prohibition of direct and indirect refoulement. The second repercussion is the right to enjoy asylum, as the misuse or dilution of protection standards under international and EU laws exacerbates the denial of asylum in Greece. The JMD's designation in June 2021 of Türkiye as an STC has led to automatic inadmissibility and return orders, further reducing protection standards. Thus, the STC concept in Greece, in its current form, leaves thousands of refugees in a state of "orbit", excluding asylum procedures.[58]

54 Κοινή Υπουργική Απόφαση Αριθμ. 42799/2021 (Koini Ypourgiki Apofasi Arithm. 42799/2021, JMD No. 42799/2021) Καθορισμός τρίτων χωρών που χαρακτηρίζονται ως ασφαλείς και κατάρτιση εθνικούκαταλόγου, κατά τα οριζόμενα στο άρθρο 86 του ν. 4636/2019 (Α' 169) (Kathorismos triton choron pou charaktirizontai os asfaleis kai katartisi ethnikou katalogou, kata ta orizomena sto arthro 86 tou n. 4636/2019 (A' 169), Determination of third countries characterised as safe and preparation of a national list, as defined in Art. 86 of Law 4636/2019 (A' 169), ΦΕΚ 2425/Β/7-6-2021 (FEK, Official Gazette No. 2425/B/7-6-2021).

55 Υπουργική Απόφαση Αριθμ. οικ. 458568/2021 (Ypourgiki Apofasi Arithm. oik. 458568/2021, Ministerial Decision No. internal 458568/2021), ΦΕΚ 5949/Β/16-12-2021 (FEK, Official Gazette No. 5949/B/16-12-2021).

56 Υπουργική Απόφαση Αριθμ. 734214 (Ypourgiki Apofasi Arithm. 734214, Ministerial Decision No. 734214), ΦΕΚ 6250/Β/12-12-2022 (FEK, Official Gazette No. 6250/B/12-12-2022).

57 Nur Osso, 2023, p. 25.

58 Nur Osso, 2023, p. 25.

Nonetheless, certain Greek authors have provided arguments that justify the designation of Türkiye as a safe country for asylum seekers, according to Art. 38 of the recast APD. Greek authorities determined that following the failed coup d'état on 15 July 2016 widespread violations of constitutional guarantees were not recorded and did not affect asylum procedures. The ECtHR has adopted a similar stance when dealing with appeals from Turkish citizens. Consequently, a person's life and liberty are not threatened, fulfilling the first condition stipulated by the APD (Art. 38, 1a). Furthermore, Türkiye respects the prohibition of refoulement, which is proved by the presence of millions of refugees remaining within the Turkish territory. Furthermore, the Turkish government has provided the European Commission with assurances that Türkiye respects the principle of non-refoulement and those assurances are confirmed by reliable sources. In addition, there is no risk of serious harm, as the death penalty is prohibited and no evidence of torture has been uncovered.[59]

One of the main controversies surrounding Türkiye's designation as an STC relates to the ratification of the Refugee Convention with a "geographical reservation". This reservation limits Türkiye's obligation to protect refugees to those originating from European countries. However, two arguments have been presented that suggest a different approach. First, a systematic interpretation suggests that when the EU legislator intended to have a third country ratify the Geneva Convention, it explicitly prescribed it, as in the case of a safe European country. Second, a historical interpretation points out that the initial proposal for a Directive dated 24 October 2000 explicitly stated that the third country was not obliged to ratify the Convention. The layout of the provision was completely changed, but there was no indication of the intention to modify its essential content.[60] These arguments create a legal grey area around countries designated as STCs. They highlighted the complexities of interpreting the STC concept and applying it in specific situations.

7. Concluding remarks

This study examines the intricate mechanisms of implementing the STC concept, as articulated in the EU's Dublin III Regulation, with a specific focus on its application in Greece. The STC concept has emerged as a strategic tool employed by developed nations to address challenges within their refugee and asylum systems, particularly in dealing with issues such as "asylum shopping" and "orbit" situations.[61] However,

59 Παπαϊωάννου (Papaioannou), 2023, p. 16.
60 Κοφίνης (Kofínhs), 2019.
61 Nur Osso, 2023, p. 31.

concerns persist regarding the alignment of this concept with international law and the 1951 Refugee Convention.[62]

Controversies often revolve around the designation of certain countries as STCs and their assessment of whether they have fulfilled the conditions stipulated by international law. The adoption of national lists of STCs to operationalise this principle has been used to justify the automatic refusal of asylum applications. The final elements of this concept include readmission agreements and arrangements with third countries to regulate the relocation of applicants whose applications have been refused.

The STC concept should be interpreted and operationalised in a way that balances practical limitations with upholding fundamental human rights obligations. This is evident from the presumption of STC safety, which is based on effective legal guarantees. The example of Türkiye, which has not ratified the Refugee Convention for individuals coming from outside Europe, highlights that ratification is not a prerequisite as long as effective protection is available in law and practice. However, this should not lower the thresholds of effective and appropriate refugee protection standards that must be accessible within the STC.

On 7 June 2021 Greece issued JMD 42799/2021, designating Türkiye as an STC for nationals from Syria, Afghanistan, Somalia, Pakistan, and Bangladesh. This list was expanded to include individuals from Albania and North Macedonia who arrived irregularly in Greece and sought protection. However, civil society organisations have criticised the Greek government's decision, stating that it does not comply with the APD. Despite concerns raised, Greek authorities continue to implement the JMD, resulting in numerous applicants having their applications dismissed as inadmissible and being ordered to return to Türkiye (even though readmissions to Türkiye had been suspended since 2020). The Greek Council of State concluded that qualifying Türkiye as an STC meets all the requirements set by the recast APD. Conversely, numerous scholars and NGOs have found that Türkiye does not comply with all the relevant APD provisions. This indicates that the criteria for designating countries as safe are prone to arbitrariness, and should be regulated more consistently.

The rules on the STC should focus on the essential concern regarding the effective protection of asylum seekers. Although the standard of effective protection may seem blurred, it can enhance the efficiency of the STC principle without undermining the protection of asylum seekers' rights. The STC concept has the potential to enhance the efficiency of asylum procedures and reduce irregular migration; it can discourage asylum seekers from engaging in irregular migration and consequently undermine human trafficking and smuggling activities.

The New Pact on Migration and Asylum will likely 'expand the scope for defining third countries as safe'[63] and introduce a minimal European list of safe countries of origin and STCs, harmonising rules on safe countries at the EU level, and enhancing

62 Goodwin-Gill and McAdam, 2021, pp. 600–607.
63 Vedsted-Hansen, 2022, p. 108.

legal certainty. This enhancement will likely affect Western Balkan countries by potentially categorising them as safe at the EU level. This represents a significant development, particularly considering its inclusion in most national lists of safe countries of origin. However, if Western Balkan countries are designated safe, there is a potential risk of creating refugee hotspots on their borders with EU Member States. To prevent this scenario, these countries may seek to initiate gradual implementation of the STC principle, resulting in the return of asylum seekers to eastern and south-eastern EU Member States.

The overall focus should remain on the merit-based examination of individual applications, considering factors such as the individual circumstances of the asylum seeker, prevailing conditions in the STC, and legal and human rights frameworks in place. Therefore, Member States must be provided with updated, thorough, and independent information on the conditions prevailing in the STC. Countries that commonly consider themselves as STCs tend to have a stable political situation, effective legal systems, and respect for human rights. Examples include countries with well-established asylum procedures, adherence to international conventions, and a history of protecting refugees. Assessing whether a specific country is safe for a particular applicant remains a challenge, indicating that STC implementation will continue to occur in many different forms, thus remaining a relevant legal topic.

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