



President Ursula Von der Leyen
Vice-President Margaritis Schinas
Commissioner Ylva Johansson
European Commission
Rue de la Loi / Wetstraat 200
1049 1049 Brussels
Belgium

25th March 2020,

Dear President Von der Leyen,
Dear Vice-President Schinas,
Dear Commissioner Johansson,

Over the past weeks, we have been witnessing a serious deterioration of fundamental rights and the rule of law that lead us to write to you today to call on you to act as the guardians of the Treaties to urgently investigate, monitor and act. We welcome in this regard recent statements of President Von der Leyen and Commissioner Johansson on the need to respect fundamental rights and the right to asylum, but these statements need to be translated into actions to ensure that the current deficiencies are addressed.

First of all, we have serious concerns regarding the use of COVID 19 epidemic to justify denial of the right to seek international protection at our borders, detention of asylum-seekers and forced returns to situations of danger. As pointed by a group of UN human rights experts on March 16, 2020, “emergency declarations based on the COVID-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health”. We call on you to ensure that travel bans and restrictions on freedom of movement are not discriminatory nor have the effect of denying people the right to seek asylum or of violating the absolute ban on being returned to where they face persecution or torture. We would like to recall that solutions exist, as indicated by UN High Commissioner for Refugees on March 19, 2020 to manage the arrival of asylum-seekers in a safe manner, while respecting international refugee protection standards, with testing, quarantine and other measures. We are also very concerned by the measures announced by the Greek authorities to prevent COVID 19 in the hotspots together with the decision to transform several hotspots into closed detention centers. We share the concerns expressed by MSF on March 23, 2020 in their letter to the Greek authorities. We call on you to look into the discriminatory nature and health impacts of such decisions as well as its compatibility with EU and international law. As medical professionals pointed out, detention of people in situations where it is impossible to comply with minimum preventive and protective measures puts people at greater risk.

Secondly, we would like to call on you to act regarding the serious deficiencies that have started in Greece before the COVID-19 outbreak and keep deteriorating. This relates, notably, to the right of access to asylum and international protection, the obligations foreseen in the Charter of Fundamental Rights and the provisions under the Return Directive, the Schengen Borders Code and the use of the Schengen Information System. Since the 1st of March, and following the adoption of a Presidential Decree, the right to claim asylum has been suspended for a month. This is not to be understood as a “monthly delay” in the possibility to lodge an application but, literally, as banning access to all asylum procedures for the people who enter the country irregularly in seek of international protection, whilst there are no legal entry possibilities provided. In practice, and as reported by several sources including official ones, the persons having entered Greece since the 1st of March, including minors and at least ten unaccompanied minors, do not have the right to claim for asylum, they are all immediately and massively detained, and are either brought to court for irregularly entering the country or are automatically given return/readmission “decisions” in Greek by the local Police Authorities who tell them to sign, and registered in the SIS II with entry-bans for up to five years. The two presidential decrees, one to ratify the suspension of the right to claim asylum, and the detention until return of all the persons having entered irregularly since the 1st of March and the second to ratify the requisition of land in three islands (Lesvos, Chios and Samos) to build detention centers for asylum-seekers will be voted by the end of this week by the Greek Parliament.

In addition, several reports of extreme violence and abuse of human rights at the borders have come to our attention. We share the concerns expressed by Felipe Gonzales Morales, UN Special Rapporteur on the human rights of migrants, on March 23, 2020 who expressed alarm at the reports of assaults and violence against asylum-seekers by Greek security officers and unidentified armed men to push them back to the Turkish side of the border and the rise of the hostility and violence against humanitarian workers, human rights defenders and journalists working in the border area and in the Greek islands.

To our understanding, such a procedure goes against Member States’ obligations for ensuring the best interest of the child, their obligations for international protection as enshrined in EU law and Article 18 of the Charter of Fundamental Rights, against the very recent decision by the CJEU which clearly states that “the problems which States may encounter in managing migratory flows or in the reception of asylum-seekers cannot justify recourse to practices which are not compatible with the Convention or the Protocols thereto. ... In that regard it should be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective” and against, at least, Articles 3, 4, 7 and 13 of the Schengen Borders Code referring to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement, the respect of fundamental rights, the conduct at borders and the need to proceed to returns under the Return Directive.

In light of these allegations of violations of EU and international law, we also fear that FRONTEX border surveillance and return operations would risk of being involved in violations of fundamental rights or international protection obligations that are of a serious nature that would lead to the suspension or termination of the operation in accordance with article 46 of its regulation. We are urgently calling in this regard for an investigation of the orders being given by the Poseidon coordination Center that appear to be violating international law and have led FRONTEX Danish crew to refuse to obey to them.

In light of the above, we would like to ask you to urgently proceed with all the necessary actions in order to investigate the breaches of EU law and immediately address the situation and ensure the full respect of all fundamental rights and the provisions of the relevant legislation, and to properly inform the LIBE Committee during the process.

We thank you for your attention and action on this particularly pressing issue.

Sincere regards,

Cornelia Ernst, Member of European Parliament, GUE/NGL Group

Birgit Sippel, Member of the European Parliament, S&D Group

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