

Q&A EU-TURKEY DEAL

What is the EU-Turkey deal?

To discourage the arrival of people, including many children on the move who arrived in Europe, 27 countries, including the Netherlands, concluded an agreement with Turkey on 18 March 2016: Under the deal, a significant part of the people, including those seeking asylum, who arrived in the Greek islands would be sent back to Turkey, despite clear indications that it would be unsafe for them there.

For every person of Syrian nationality taken back, Europe would send a Syrian refugee from Turkey to the EU by air. Turkey must also take all necessary measures to stop people who want to cross to the Greek islands. Turkey will get 6 billion euro to improve the situation of refugees at home and Turkish citizens would be allowed to travel visa-free to Europe. This deal is the EU-Turkey deal.

What were the consequences of the EU-Turkey deal?

At the time the deal was concluded, it was already legally clear: Turkey could not and cannot be designated as a safe country to which people can be deported because Turkey does not offer sufficient protection to people who are fleeing. In practice, therefore, virtually nothing came of returning to Turkey after the deal was struck. EU member states are unwilling to take them in. They end up on Greek islands en masse. Greece could not cope with the volume of asylum applications which made people, including children, wait long (sometimes for years) for their asylum decision or resettlement. Moreover, other European member states did not fulfil promises to accept people from Greece.

As a result, thousands of people including children were trapped on the Greek islands and stayed there in deplorable conditions. There was overcrowding, lack of medical and sanitary facilities, excessively long asylum procedures, structural insecurity and exposure to physical and sexual violence, lack of adequate food and lack of education. The shelters on the islands were also not equipped to protect people including children from weather conditions such as extreme heat, cold and flooding. The hopelessness in the camps causes mental problems such as sleep problems, weight loss, anxiety symptoms, depression and a high number of suicide attempts, including among children.

Why are Boat Refugee Foundation, Amnesty International Netherlands and Defence for Children holding the Dutch state liable?

The EU Court of Justice previously ruled that the EU cannot be held liable for the EU-Turkey deal because the deal was not concluded with the EU as a whole, but was concluded by all individual member states. The Netherlands chaired the Council of the European Union at the time the deal was concluded, and played an important role in devising, drafting and implementing the deal. Therefore, as Dutch organisations, we hold the Netherlands liable for the human rights violations resulting from the deal.

Years of lobbying, various campaigns and the release of research reports did not change the Dutch government's attitude towards the deal. On the contrary: in July 2023, former Prime Minister Rutte, together with Italian Prime Minister Meloni and European



Commission President Von der Leyen, concluded a similar deal with Tunisian President Saied.

The EU-Tunisia deal was signed with no human rights conditions, no human rights impact assessment or monitoring and no mechanism to suspend cooperation in case of human rights violations.

The three organisations want to prevent the EU-Turkey deal from being used as a blueprint for future deals. Deals should not be concluded if this leads to foreseeable human rights violations. Deals should not be drafted in such a way that victims of them cannot hold anyone accountable, as the EU as an institution is not liable according to the Court of Justice. There should be no gap in legal protection that allows countries to avoid responsibility.

What was the government's response to the 20 March 2023 liability notice?

On 20 March 2023, the organisations held the Dutch state liable for the (foreseeable) consequences of the EU-Turkey deal. On 14 September 2023, the government announced that it did not recognise the liability, without further justification. Therefore, the organisations are going to court.

What is in subpoena?

Several documents show not only how big a role the Dutch government played in making the deal, but also in its implementation. The commitment of the Dutch government does not seem to have been to improve the situation, but to maintain and continue to implement the deal at all costs. Despite the fact that the Dutch state was aware of the situation on the islands and the fact that in practice it proved impossible to actually send people back to Turkey, it continued to oppose the possible solutions to bring about relief on the islands that the Netherlands has been repeatedly made aware of. Internal documents show that political reasons played a part in the resistance: both preventing more people from arriving in the EU and continuing to travel to other EU countries and thus possibly also to the Netherlands. The Netherlands even opposed transferring the most vulnerable people to the Greek mainland. The organisations argue that in doing so, the government has violated human and children's rights, the standard of care (the obligation of public authorities to act carefully and in accordance with the law when carrying out their duties and taking decisions) as well as various provisions of mandatory EU law.

What is being asked of the court?

Firstly, we ask the court to find that the State has acted unlawfully by co-designing and concluding the EU-Turkey deal and co-executing and maintaining the EU-Turkey deal. We ask the court that the Dutch government must ensure that the implementation of the EU-Turkey deal complies with national and international law. In that context, the court is asked to order the State to set up a mechanism capable of timely identifying and preventing (risks of) violations of applicable international law and the risk of harmful consequences for the people and children falling within the scope of the EU-Turkey deal. If the State is unable to comply, we ask the court to order the State to withdraw from the deal or suspend its operation.



What is the organisations position on deals?

The organisations are not against working with countries to make deals on migration. But as with all government actions, policies must be consistent with the international human rights obligations the government has. Cooperation should never involve pushing human rights aside. That is non-negotiable.

Organisations welcome agreements aimed at creating safe ways for people to cross national borders (by providing visas, for example) and fairly sharing responsibility for hosting people.

However, agreements are usually in reality aimed at reducing people's arrivals, in exchange for financial support or trade deals with countries that have problematic human rights records.

What do the organisations expect from the Dutch government?

Refugee camps such as those on the Greek islands should not be seen as a normal situation, which just continues to exist in the absence of a structural solution. We hope that the summons will lead to recognition that the Dutch government is responsible for the conclusion and implementation of the deal and the foreseeable human rights violations that followed. We want to prevent the Dutch government from making new deals like the EU-Turkey deal.

To what extent is it realistic what the organisations want? How feasible is this lawsuit?

It is certainly realistic for the illegality of the deal to be established because of the human and children's rights violations. With the European Court ruling that the EU-Turkey deal was not an act of the EU as a whole, but of all individual member states, liability must be sought from individual member states. And the Netherlands was by its own admission "the architect" of the deal, according to internal documents.

Why are the organisations holding the Dutch government liable, rather than the Greek government?

The Netherlands chaired the EU Council and played a major role in coming up with the EU-Turkey deal. We want countries that shift the responsibility for people and children fleeing and seeking asylum to other countries (as in this case to Greece and Turkey) that foreseeably cannot cope, to be held accountable. Despite human and child rights violations on the islands, the Netherlands has always encouraged the continuation of the deal. Therefore, in our view, the Netherlands is responsible for the consequences of the deal.

What would happen if we won the court case?

Boat Refugee Foundation, Amnesty International and Defence for Children ask the court to find that the Dutch state has acted unlawfully by drafting, concluding and implementing a deal that has caused foreseeable human and children's rights violations. We are not asking for damages.

We further ask that the government should ensure that this deal is only continued if it is in line with human and children's rights. We want to prevent further human rights



violations. If these conditions are not met, the government should withdraw from the deal.

We also want this lawsuit to prevent the EU-Turkey deal from becoming a blueprint for new deals. In addition, we want to prevent anyone from being held responsible for concluding and maintaining this deal.

What if we do not win the court case?

If the court finds that the Netherlands did not act unlawfully in concluding and implementing the EU-Turkey deal, the result will be that victims of this migration deal will have nowhere to turn for its consequences. The EU Court of Justice ruling makes it clear that the EU as an institution is not responsible. There should be no vacuum in which the countries involved cannot be held responsible for the consequences of migration deals like the EU-Turkey deal.

Does the current political climate reduce the chances of successful litigation?

The court reviews relevant international, European and national legislation and to what extent the Netherlands has complied with its obligations under it. Current politics are independent of this.