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Taking Stock of the EU-Turkey Statement in 2024

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Abstract

The EU-Turkey Statement of March 2016 aimed to end irregular migration from Turkey to the European Union (EU). Since 2016, the relationship between Turkey and the EU has undergone significant changes. While the EU fulfilled only two of its promises under the Statement, Turkey suspended the implementation of the return component of the Statement in 2020 and stopped readmitting third-country nationals from Greece. Meanwhile, recent judgments delivered by the European Court of Human Rights, such as *Akkad v. Turkey* and *G.B. and others v. Turkey*, have shed new light on conditions facing refugees, asylum seekers, and migrants in Turkey. This article aims to analyse the implementation of the EU-Turkey Statement as of 2024 by examining to what extent Turkey and the European Union, as well as its Member States, have fulfilled their pledges and acted in line with the course of action agreed under the Statement. It also aims to investigate to what extent Turkey's assumed status as a safe

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third country has changed over the years. Given that the number of irregular passages towards the EU through Turkey has decreased considerably and that the return component of the Statement is not currently implemented, we argue that the assessment of whether Turkey is safe should be made with reference to refugees, asylum seekers, and migrants contained in Turkey as a result of the EU-Turkey Statement arrangements not just those returned under the EU-Turkey Statement.

Keywords

EU-Turkey statement – non-refoulement – safe third country – migration cooperation – externalisation – containment

1 Introduction

On 18 March 2016, the European Union (EU) and Turkey adopted the EU-Turkey Statement¹ to end the irregular migration from Turkey to the EU. Much has changed between the European Union and Turkey since 2016, and today, the return component of the Statement is obsolete since Turkey stopped readmitting third-country nationals from Greece to Turkey as per the Statement arrangements in 2020.² Despite this, the EU-Turkey Statement remains a crucial medium for EU-Turkey cooperation in migration and asylum embodying financial components.³

The year 2024 marks the eighth anniversary of the conclusion of the EU-Turkey Statement. This article aims to take stock of implementing the EU-Turkey Statement of March 2016 by analysing to what extent Turkey, the European Union, and its Member States have fulfilled their pledges and the course of action agreed upon under the Statement. This analysis offers insight as to which components of EU-Turkey cooperation in asylum governance remain functional and which aspects have lost significance. It also aims to investigate to what extent Turkey's assumed safe third country (STC) status and the relevance of such STC assessment has changed over the years. Many academic studies have focused on the legality of the EU-Turkey Statement and

1 European Council (2016). EU-Turkey Statement, 18 March 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

2 See section 2 of the article.

3 European Commission (2023). Commission Staff Working Document, Türkiye 2023 Report, Brussels, 8.11.2023 SWD(2023) 696 final, https://www.eas.europa.eu/sites/default/files/documents/2023/SWD_2023_696%20Tu%CC%88rkiye%20report.pdf.

its impact on human rights,⁴ as well as Turkey's assumed safe third country status under the EU-Turkey Statement.⁵ Over the years, various studies have also

- 4 Ulusoy, O. and Battjes, H. 2017. Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement. *VU Migration Law Series*, No. 15; Carrera, S., den Hertog L. and Stefan M. (2017). It wasn't me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal, CEPS, <https://www.ceps.eu/ceps-publications/it-wasnt-me-luxembourg-court-orders-eu-turkey-refugee-deal/>; Alpes, M.J. et al. 2017. Post-deportation risks under the EU-Turkey Statement: what happens after readmission to Turkey?. MPC Policy Brief, Issue 2017/30, https://cadmus.eui.eu/bitstream/handle/1814/49005/PB_2017_30_MPC.pdf?sequence=1&isAllowed=y; Şimşek, D. 2017. Turkey as a "Safe Third Country"? The Impacts of the EU-Turkey Statement on Syrian Refugees in Turkey. *PERCEPTIONS: Journal of International Affairs* 22(3), pp. 161–182; Kaya, H. (2020). The EU-Turkey Statement on Refugees Assessing Its Impact on Fundamental Rights. Edward Elgar; Beach, D. and Smeets, S. 2020. New Institutional Leadership – how the new European Council-dominated crisis governance paradoxically strengthened the role of EU institutions. *Journal of European Integration* 42(6), pp. 837–854; Ineli-Ciger, M. and Ulusoy O. (2020). Why the EU-Turkey Statement should never serve as a blueprint. ASILE, <https://www.asileproject.eu/why-the-eu-turkey-statement-should-never-serve-as-a-blueprint/>; Schotel, B. (2022). The EU-Turkey Statement and the Structure of Legal Accountability in: *The Informalisation of the EU's External Action in the Field of Migration and Asylum*. The Hague: Asser Press, pp. 73–94; Vitiello, D. (2020). Legal narratives of the EU external action in the field of migration and asylum: from the EU-Turkey statement to the migration partnership framework and beyond, in: *Securitising Asylum Flows*. Brill Nijhoff, pp. 130–166; Saarikoski, A.A. (2020). In search of protection and judicial review: the legal nature of the EU-Turkey Statement under EU law. Faculty of Law, University of Helsinki; Poon, J. 2016. EU-Turkey Deal: Violation of, or consistency with, international law?. *European Papers-A Journal on Law and Integration* 2016.3, pp. 1195–1203; Bozkurt, K. (2022). The EU – Turkey relationships and evaluation of human rights axis of the relationship, <https://www.gedik.edu.tr/wp-content/uploads/Bozkurt-K.-The-EU-%E2%80%93-Turkey-relationships-and-evaluation-of-human-rights-axis-of-the-relationship.pdf>; De Vrieze, J. (2018). The legal nature of the EU-Turkey Statement Putting NF, NG and NM v. European Council in perspective. University of Ghent; Osso, B.N. (2019). Rethinking Rightlessness: the "Right to Have Rights" and the EU-Turkey Statement. Tampere University; A 2022 collection edited by Kassoti and Idriz focuses on the external dimension of the EU asylum and migration policy and various chapters analyse the EU-Turkey Statement from various legal perspectives and link it with European migration management policies cf. Kassoti, E. and Idriz N. (2022). *The Informalisation of the EU's External Action in the Field of Migration and Asylum*. TMC Asser Press; Peers, S. and Roman, E. (2016). EU Law Analysis: The EU, Turkey and the Refugee Crisis: What Could Possibly Go Wrong?. <http://eula.wanalysis.blogspot.com.tr/2016/02/the-eu-turkey-and-refugee-crisis-what.html>; Alpes, M.J. and others. (2017). Post-deportation risks under the EU-Turkey Statement: what happens after readmission to Turkey?. MPC Policy Brief, Issue 2017/30, https://cadmus.eui.eu/bitstream/handle/1814/49005/PB_2017_30_MPC.pdf?sequence=1&isAllowed=y.
- 5 Şimşek, D. 2017. Turkey as a "Safe Third Country"? The Impacts of the EU-Turkey Statement on Syrian Refugees in Turkey. *PERCEPTIONS: Journal of International Affairs* 22(3), pp. 161–182; Raijmakers, A. (2018). The EU-Turkey Deal and the Safe Third Country Principle does the EU-Turkey deal violate Art. 38(1)(e) and (2) of the Procedures Directive?. Tilburg University, the Netherlands; Radeva, A. (2016). A Need for Deconstruction of the Safe Third

sought to assess the implementation of the EU-Turkey Statement on different anniversaries of the Statement.⁶ However, this article is different from these studies. It builds on previous reports and research conducted within the scope of the ASILE Project,⁷ such as the Turkey Country Fiche,⁸ Turkey Country

Country Concept Applied within the EU-Turkey Statement from March 18th, 2016. University of Windsor, Canada; Gkliati, M. 2017. The EU-Turkey deal and the safe third country concept before the Greek asylum appeals committees. *Movements, Journal for Critical Migration and Border Regime Studies* 3(2), pp. 213–224; Yenidogan, D.R. (2017). Turkey as a safe third country?. Unpublished bachelor thesis, Faculty of Law Lund University, Sweden; Lehner, R. (2019). The EU-Turkey-'deal': Legal challenges and pitfalls. *International Migration* 57(2), pp. 176–185; Ovacık, G. 2020. Compatibility of the Safe Third Country Concept with International Refugee Law and its Application to Turkey. *PERCEPTIONS: Journal of International Affairs* 25(1), pp. 61–80; de Vries, K. (2018). The EU-Turkey Statement: A Design for Human Rights Violations An examination concerning the compatibility of the EU-Turkey Statement with human rights in EU Law. MAIR Thesis European Union Studies, Leiden University; Aydın, E. 2018. Avrupa Birliği Mevzuatında Güvenli Üçüncü Ülke Kavramı ve Türkiye-AB Geri Kabul Anlaşmasına Yansımaları. *Public and Private International Law Bulletin* 38(1), pp. 11–40; Ulusoy, O. (2016). Turkey as a Safe Third Country?. <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third>; Carp, R. 2018. How Safe Shall be a Third Country for Asylum-Seekers from a European Perspective? The Human Rights Implications of the EU-Turkey Deal and the Assessment of the ECHR/General Court. *Journal of Identity and Migration Studies* 12(2), pp. 50–59.

- 6 Toygür, I. and Benvenuti, B. (2017). One year on: an assessment of the EU-Turkey statement on refugees." *Real Instituto Elcano*; Öztürk, N. and Soykan, C. (2019). EU-Turkey Statement: A Legal Analysis in the Third Year <https://gocarastirmalaridernegi.org/en/publications/analyses/126-eu-turkey-statement-a-legal-analysis-in-the-third-year-by-neva-ovunc-ozturk-and-cavidan-soykan>; Terry, K. (2021). The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint. MPI, <https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on>; Kirişçi, K. (2021). As EU-Turkey migration agreement reaches the five-year mark, add a job creation element, <https://www.brookings.edu/articles/as-eu-turkey-migration-agreement-reaches-the-five-year-mark-add-a-job-creation-element/>; Walter-Franke, M. (2018). Two years into the EU-Turkey 'deal': Impact and challenges of a turbulent partnership, Jacques Delors Institut, Berlin, https://www.delorscentre.eu/fileadmin/user_upload/20180315_Two_years-into-the-EU-Turkey-Deal_Walter-Franke.pdf; Erdoğan, M. Murat, Kemal Kirişçi, and Gökçe Uysal. "Improving Syrian Refugee Inclusion in the Turkish Economy." How Can the International Community Help (2021); M. Murat Erdoğan Laura Batalla Adam Onur Unutulmaz Friedrich Püttmann Nihal Eminoğlu, A New Era in EU-Turkey Cooperation- The Syrian Crisis and EU-Turkey Deal of 18 March 2016: The Perceptions of European and Turkish Decision Makers in: Economic Development Foundation (İKV), April 2023 (online) (https://www.ikv.org.tr/images/files/ikv_a_New%20Era_in_EU_Turkey_Cooperation_The_Syrian_Crisis_EU_Turkey_Deal.pdf).

7 ASILE Project, <https://www.asileproject.eu/>.

8 Ineli-Ciger, M. and Yigit, Ö. (2020). Country Fiche TURKEY. ASILE, https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_Turkey_Final_Pub.pdf.

Report,⁹ and the Asylum for Containment Report.¹⁰ Different from the outlined significant studies, the article aims to take stock of the implementation of the EU-Turkey Statement as of 2024 and includes recent developments and the European Court of Human Rights case law on deportation and immigration detention practices of Turkey. In doing so, this article seeks to assess the level of protection in Turkey and especially whether Turkey can be considered safe for refugees, asylum seekers, and migrants as of 2024.

We argue that the perspective taken on Turkey's position as a safe third country in 2016 was directed at possible returns from the EU to Turkey that were anticipated to occur with the implementation of the EU-Turkey Statement. Given that the number of irregular passages towards the EU through Turkey has decreased and stabilised considerably since the execution of the EU-Turkey Statement and that the return component of the Statement is not currently implemented, discussing whether Turkey is a safe third country in relation to returns from Greece to Turkey in 2024 is redundant. Instead, we put forward that the focus should be on the containment aspect of the Statement. Specifically, whether Turkey is safe should be analysed with reference to refugees, asylum seekers, and migrants contained in Turkey as a result of the EU-Turkey Statement arrangements, not just those returned under the EU-Turkey Statement. After all, "safety" within the meaning of the safe third country concept and "safety" of refugees, asylum seekers, and migrants who are already in Turkey are two sides of the same coin.

The article is divided into two main parts. The first part offers a stock-taking exercise based on the initial promises made by the EU and Turkey to each other and what each party have delivered so far. The second part of the article focuses on Turkey's controversial position as a safe third country and analyses to what extent Turkey's assumed STC status and the relevance of Turkey's assessment as a STC has changed over the years in light of the recent European Court of Human Rights jurisprudence concerning reception, detention and removal of foreigners in Turkey.

9 Ovacic, G., Ineli-Ciger, M., Ulusoy, O. and Spijkerboer, T. (2022). Country Report TURKEY, WP5. Country Reports https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Turkey-Country-Report-Final.pdf.

10 Tinni, B.A., Djurovic O., Djurovic R., Hamadou A., Ineli-Ciger, M., Ovacic, G., Raach F., Sha'ath, H., Spijkerboer T. and Ulusoy O. (2023). Asylum for Containment EU arrangements with Niger, Serbia, Tunisia and Turkey. ASILE, <https://www.asileproject.eu/asylum-for-containment/>.

2 A Statement of Unfulfilled Promises

In 2016, at the height of the extraordinary migration from Middle Eastern and African nations to Europe, European officials, under pressure from the new arrivals, decided to renegotiate the Readmission Agreement with Turkey. After numerous rounds of intense discussions, the EU and Turkey reached an agreement on major practical concerns to minimise irregular migration to the EU on 18 March 2016.¹¹ EU-Turkey Joint Action Plan¹² of 2015 preceded the Statement and outlined the essentials of the EU-Turkey cooperation focusing on addressing the root causes of the mass influx, supporting the refugee community in Turkey and preventing irregular flows to the EU. The suggested instruments roughly fall into two categories: a) provisions on an enhanced version of the EU-Turkey Readmission Agreement and b) incentive measures to encourage Turkey to sign and execute the Statement.¹³

The Statement (or the Deal) has generally been seen as a questionable externalisation policy of the Union. While the politicians and drafters of this Statement hail the agreement as a successful, game-changer instrument to control irregular migration, the reality in the field is far from being a success. The Statement is criticised for its negative impact on the human rights of the migrants and refugees,¹⁴ the degrading consequences on the international migration law,¹⁵ and instrumentalising the migrant lives in international politics and policy-making.¹⁶ Thus, the Statement's self-claimed success can be challenged for a good reason, as also noted by Tinni et al.¹⁷

11 European Council (2016). EU-Turkey Statement, 18 March 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

12 European Commission, EU-Turkey Joint Action Plan, 15 October 2015 https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860.

13 Gkliati, M. 2017. The Application of the EU-Turkey Agreement: A Critical Analysis of the Decisions of the Greek Appeals Committee. *European Journal of Legal Studies* 10(10), pp. 81–123.

14 Ulusoy, O. and Battjes, H. 2017. Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement. *vu Migration Law Series*, No. 15.

15 Helme, K. 2021. The Implications of the EU-Turkey Refugee Agreement on the EU's Role as an International Human Rights Actor. *Australian and New Zealand Journal of European Studies* 10(2), pp. 68–73.

16 Carrera, S., den Hertog L. and Stefan M. (2017). It wasn't me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal, CEPS, <https://www.ceps.eu/ceps-publications/it-wasnt-me-luxembourg-court-orders-eu-turkey-refugee-deal/>.

17 Tinni, B.A., Djurovic O., Djurovic R., Hamadou A., Ineli-Ciger, M., Ovacik, G., Raach F., Sha'ath, H., Spijkerboer T. and Ulusoy O. (2023). Asylum for Containment EU arrangements with Niger, Serbia, Tunisia and Turkey. ASILE, <https://www.asileproject.eu/asylum-for-containment/>.

Here we provide an analytical account of the status of promises made by EU and Turkey to each other through the EU-Turkey Statement. Resulting picture essentially reveals which pledges proved to be indispensable in achieving the aims of the Statement and which pledges got side tracked along its life span.

2.1 *To What Extent Did the EU and the Member States Fulfil Their Promises under the Statement?*

2.1.1 What Did the EU and Its Member States Promise under the EU-Turkey Statement?

The EU and its Member States promised within the scope of the EU-Turkey Statement the following: first, to disburse 3 billion Euros (later on 6 billion Euros) under the Facility for Refugees in Turkey and second, to resettle a Syrian from Turkey to the EU for every Syrian being returned to Turkey from Greek islands, taking into account the UN Vulnerability Criteria. Third, the EU and the Member States promised to establish a Voluntary Humanitarian Admission Scheme once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced and to accelerate visa liberalisation roadmap vis-à-vis all participating Member States to lift requirements for Turkish citizens by the end of June 2016, provided that all benchmarks have been met. Finally, the EU and the Member States to advance accession talks and commit to re-energise the accession process, as set out in their EU-Turkey Joint Statement of 29 November 2015 and to work on the upgrading of the Customs Union.

2.1.2 Two Promises Fulfilled by the EU and the Member States

To this date, it is not clear whether the EU-Turkey Statement is an international treaty concluded by the EU and Turkey within the scope of the Vienna Convention on the Law on Treaties or just a soft law instrument concluded between the Member States and Turkey.¹⁸ The General Court of the CJEU in Case T-192/16, which sought to annul the EU-Turkey Statement, concluded on 28 February 2017 that, “*the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union.*”

18 See for different opinions: Maarten den Heijer and Thomas Spijkerboer (2016). Is the EU-Turkey refugee and migration deal a treaty?. EU Law Analysis, <https://eulawanalysis.blogspot.com/2016/04/is-eu-turkey-refugee-and-migration-deal.html>; Joined Cases C-208/17 P to C-210/17 P *NF and Others v European Council* ECLI:EU:C:2018:705. Cf. For a similar conclusion by the ECtHR, *JR and Others v Greece* Appl. no. 22696/16, Judgment of 25 January 2018, at para. 7.

Moreover, an appeal against this decision did not succeed.¹⁹ Hence, it can be assumed that according to the CJEU, the EU-Turkey Statement was not a treaty under international law concluded by Turkey and the EU but a soft law instrument.²⁰ Additionally, the Member States' pledges in the Statement were worded flexibly, far from imposing a strict obligation on the Member States. As a result, the disbursement of the initially promised 3 billion Euros (ultimately 6 billion Euros) and the 1:1 resettlement of Syrians from Turkey to the EU Member States were the only promises fulfilled by the EU Member States.

The EU has allocated and contracted €6 billion for the promised funding through the Facility for Refugees in Turkey. More than €5 billion has been disbursed to support humanitarian assistance, education, migration management, health, municipal infrastructure, and socio-economic support under the Facility for Refugees in Turkey (FRiT) projects.²¹ In 2020, the EU initiated an additional allocation of €3 billion from 2021 to 2023 to supplement humanitarian support and ensure the continuation of crucial FRiT interventions.²²

The projects funded under FRiT, such as the Emergency Social Safety Net (ESSN),²³ Project on Supporting the Integration of Syrian Kids into the Turkish Education System (PIKTES),²⁴ Project for Improving the Health Status of the Syrian Population under Temporary Protection (SIHHAT),²⁵ and Conditional Cash Transfer for Education (CCTE),²⁶ have been instrumental in providing essential support to Syrian refugees in Turkey. These projects also contribute to the self-reliance of refugees and, to a certain extent, ease pressure on Turkey.²⁷

19 Joined Cases C-208/17 P to C-210/17 P *NF and Others v European Council* ECLI:EU:C:2018:705.

20 Cf. For the EU's increasing use of informalisation in migration partnerships Paul J. Cardwell, (2018) 'Tackling Europe's migration 'crisis' through law and 'new governance' Global Policy 9.1, 67–75. Paul J. Cardwell, & R. Dickson, (2023). 'Formal informality' in EU external migration governance: the case of mobility partnerships. *Journal of Ethnic and Migration Studies*, 49(12), 3121–3139.

21 European Commission, EU Support to Refugees in Türkiye, https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye/eu-support-refugees-turkiye_en.

22 *ibid.*

23 Cf. Emergency Social Safety Net (ESSN) <https://kizilaykart.org/>.

24 Cf. Project on Supporting the Integration of Syrian Kids into the Turkish Education System (PIKTES), <https://piktes.gov.tr/Home/ProjeninAmaciENG>.

25 Cf. Project for Improving the Health Status of the Syrian Population under Temporary Protection (SIHHAT) <https://www.sihhatproject.org/>.

26 Cf. Conditional cash transfer for education (CCTE) <https://www.unicef.org/turkiye/en/press-releases/conditional-cash-transfer-education-ccte-programme-syrians-and-other-refugee>.

27 These projects need to observe the local labour market considerations in Turkey. Cf. Sanlier Yuksel, 2022, ASILE Country Report Turkey p. 34.

However, as our previous analysis suggests,²⁸ the sustainability of the FRiT projects is problematic since it depends on the continuation of EU funding.

The second promise fulfilled by the EU under the EU-Turkey Statement is the resettlement scheme. In the Statement, the Member States agreed that for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU, taking into account the UN Vulnerability Criteria. As of January 2024, 40,254 Syrians have been resettled under this 1:1 resettlement scheme.²⁹ However, considering that Turkey hosts more than 3.2 million Syrians holding temporary protection status in Turkey, the number of resettled persons under the EU-Turkey statement may not be considered significant.³⁰ Yet, it is undeniable that this promise has been fulfilled, considering the number of Syrians resettled from Turkey to the EU is considerably more than those returned from Greece to Turkey under the Statement arrangements.

2.1.3 Promises Unfulfilled by the EU and the Member States

The EU Member States have failed to fulfil most of their pledges under the EU-Turkey Statement. No visa liberalisation for Turkish citizens has taken place, and there is no real prospect of Turkey becoming an EU Member soon.³¹ Moreover, no concrete steps have been taken to upgrade the Customs Union.³² Furthermore, the foreseen Voluntary Humanitarian Admission Scheme in the Statement has never been established. The most significant of these unfulfilled promises is the failure to deliver on the promise of visa liberalisation for Turkish citizens; this promise was one of the reasons that Turkey concluded the EU-Turkey Statement in 2016.³³

28 Ovacik, G., Ineli-Ciger, M., Ulusoy, O. and Spijkerboer, T. (2022). Country Report TURKEY, WP5. Country Reports https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Turkey-Country-Report-Final.pdf.

29 Republic of Turkey Ministry of Interior PMM. 2023. <https://www.goc.gov.tr/gecici-koruma5638>.

30 UNHCR. (2023). Syria Regional Response, <https://data.unhcr.org/en/situations/syria/location/113>.

31 Terry, K. (2021). The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint, 8 April 2021, MPI, <https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on>.

32 Stanicek, B. (2020). EU-Turkey customs union: Modernisation or suspension? EPRS | European Parliamentary Research Service, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659411/EPRS_BRI\(2020\)659411_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659411/EPRS_BRI(2020)659411_EN.pdf).

33 M. Murat Erdoğan Laura Batalla Adam, Onur Unutulmaz, Friedrich Püttmann, Nihal Eminoglu, A New Era in EU-Turkey Cooperation- The Syrian Crisis and EU-Turkey Deal of 18 March 2016: The Perceptions of European and Turkish Decision Makers in: Economic Development Foundation (IKV), April 2023 (online) (<https://www.ikv.org.tr/images/files>)

The EU and Turkey initiated the Visa Liberalization Dialogue on 16 December 2013 to make progress towards the elimination of the visa obligation currently imposed on Turkish citizens travelling to the Schengen area for a short-term visit.³⁴ The Dialogue is based on the Roadmap, which requires Turkey to fulfil 72 benchmarks related to document security, migration management, public order and security, fundamental rights, and readmission of irregular migrants.³⁵ In 2018, the European Commission confirmed that Turkey had met 65 of the 72 benchmarks of the Roadmap. If visa liberalisation took place, all Turkish citizens with biometric passports could travel for short stays (i.e. 90 days within any 180 days) in the Schengen Area without a visa for business, family, or tourist purposes. Yet, as of 2023, visa liberalisation for Turkish citizens did not happen. This unfulfilled pledge can be regarded as one of the reasons that Turkey stopped implementing the EU-Turkey Statement arrangements, particularly its efforts to curb migratory movements towards Europe and admit Syrians who have arrived in Greece irregularly through Turkey.³⁶

2.2 *To What Extent Did Turkey Fulfil Its Promises under the Statement?*

2.2.1 What Did Turkey Promise under the EU-Turkey Statement?

Within the scope of the EU-Turkey Statement, Turkey agreed to take any necessary measures to prevent the opening of any new sea or land routes for irregular migration from Turkey to the EU, to accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece, and to take back all irregular migrants intercepted in Turkish waters.

2.2.2 Did Turkey Prevent New Arrivals to the European Union?

Turkey, following the EU-Turkey Statement, initially stepped up its cooperation in preventing new arrivals by sea in Greece. Before 2016, Syrians did not need visas to enter Turkey, but this policy changed following the EU-Turkey Joint Action Plan and the adoption of the EU-Turkey Statement. Turkey introduced visa requirements for those Syrians travelling to Turkey by air and sea from a third country on 8 January 2016. In 2016, Turkey started building walls on its borders with Iran and Syria; as of September 2023, Turkey built an

/ikv_a_New%20Era_in_EU_Turkey_Cooperation_The_Syrian_Crisis_EU_Turkey_Deal.pdf, p. 21.

34 Delegation of the European Union to Turkey, Visa Liberalisation Dialogue, <https://www.avrupa.info.tr/en/visa-liberalisation-dialogue-6896>.

35 *ibid.*

36 Erdoğan et al, *A New Era in EU-Turkey Cooperation*, p. 21.

873-kilometre wall along its border with Syria and a 140-kilometre wall on its Iranian border.³⁷

Yet, there was a turning point in 2020 for the implementation of the EU-Turkey Statement: following an attack on the Turkish troops in Idlib, in February 2020, Turkish President Erdogan declared that he had opened his country's borders for migrants to cross into Europe, saying that Turkey could no longer handle the number of refugees and migrants fleeing the war in Syria.³⁸ This worsened the relationship between Turkey and the European Union and marked a reversal in Turkey's role in the Statement as the gatekeeper of Europe.

Nevertheless, there has been a steady decrease from 2015 onwards. According to UNHCR, in 2015, over one million refugees and migrants arrived irregularly in Europe by sea, whereas arrivals to Greece accounted for 80 per cent of this one million.³⁹ In 2016, 173,450 and 2017 29,718 sea arrivals from Turkey to Greece were recorded.⁴⁰ This number was 32,494 in 2018 and 59,726 in 2019.⁴¹ Sea arrivals from Turkey to Greece were minimal in 2020 (9,714) and 2021 (4,331), partly due to the pandemic and its impact on borders and mobility. There was a slight increase in 2022; there were 12,758 sea arrivals from Turkey to Greece. Between 1 January 2023 and 5 November 2023, 38 448 sea arrivals were recorded in Greece.⁴² UNHCR figures suggest that irregular arrivals to Greece by sea have decreased considerably since the adoption of the EU-Turkey Statement. Although it is clear that the Statement played a role in this, the extent to which it has contributed to the decrease in the number of irregular arrivals to Greece is not clear.⁴³ For instance, it is argued that changing

37 Şener, N. (2021). Güvenlik duvarı 1079 kilometreye ulaştı, *Hürriyet*, <https://www.hurriyet.com.tr/yazarlar/nedim-sener/guvenlik-duvari-1079-kilometreye-ulasti-41924175>; NTV (2023). Van-İran sınır hattında yapılan duvarın 140 kilometresi tamamlandı. <https://www.ntv.com.tr/galeri/turkiye/van-iran-sinir-hattinda-yapilan-duvarin-140-kilometresi-tamamlandi,Pa7oSwiaKEyDIDiYIZcMCQ>.

38 Ineli-Ciger, M. and Yigit, Ö. (2020). Country Fiche TURKEY. ASILE, https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_Turkey_Final_Pub.pdf; Beste İşleyen, Sibel Karadağ, 2023. Engineered migration at the Greek – Turkish border: A spectacle of violence and humanitarian space. *Security Dialogue* 54(5), pp. 475–492.

39 UNHCR, Operational Data Portal, Greece <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

40 *ibid.*

41 *ibid.*

42 *ibid.*

43 T. Spijkerboer, (2016), 'Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?', (<https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/fact-check-did-eu>); T. Reitano and M. Micallef, (2016). Breathing space: the impact of the EU-Turkey deal on irregular migration ISS paper 297; Van Liempt, I. and others (2017). Evidence-based

migration routes, increased border controls on the Western Balkan route, the right to work given to Syrians in Turkey in 2016 and media campaigns also played a role in the diminishing number of new sea arrivals to Greece.⁴⁴ As for the decrease in sea arrivals in recent years, Greece's systematic pushback practices at the Aegean⁴⁵ as well as the sub-standard conditions in the hotspots on Greek islands⁴⁶ can also be accounted for such a decrease. *Safi v. Greece*, decided by the ECtHR in 2022, shows that Greece's pushback practices contradict the ECHR and fundamental rights such as the right to life and prohibition of inhuman or degrading treatment.⁴⁷

Identifying the EU-Turkey Statement as the sole reason for the decrease in irregular arrivals to Greece would be incorrect. While the Statement has played a role in reducing irregular arrivals through Turkey, it is not the only factor. Turkey has its own national agenda on asylum and migration, which is closely connected to its politics, economy, human rights record and increasing public distaste for the growing refugee population in Turkey.⁴⁸ In recent years, Turkey introduced visa requirements for nationals of African countries and increased return rates substantially. The Turkish Presidency of Migration Management has been recently criticised for forcing migrants detained in Removal Centers to return to Syria despite the potential risk of refoulement. The ECtHR condemned this policy in *Akkad v. Turkey*⁴⁹ in 2022, and in the 2023 case, *Abdulkerim Hammud*, the Turkish Constitutional Court, reached a similar conclusion.⁵⁰ Although this practice is not in line with the ECHR and the Turkish Constitution, it somehow serves the primary purpose of the

assessment of migration deals the case of the EU-Turkey Statement, Utrecht University; N. Reslow, 2019. Horizontal and Vertical Diversity: Unintended Consequences of EU External Migration Policy. *The International Spectator* 54(1), pp. 31–44.

44 T. Spijkerboer, (2016), 'Fact Check'; S. Adar and others. (2020). The refugee drama in Syria, Turkey, and Greece: why a comprehensive approach is needed. SWP Comment, 16/2020, Berlin: Stiftung Wissenschaft und Politik -SWP- Deutsches Institut für Internationale Politik und Sicherheit; Ayselin Yıldız (2020). Avrupa Birliği-Türkiye İlişkilerinde Geri Kabul Süreçleri: Kuramsal Yaklaşım ve Uygulamalar, in: *Türkiye'de Mültecilik, Zorunlu Göç ve Toplumsal Uyum*, Bağlam Yayıncılık.

45 ECRE (2023). Country Report: Greece, <https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>.
46 *ibid.*

47 ECtHR, *Safi and Others v. Greece* Appl. no. 5418/15, Judgment of 7 July 2022.

48 M. Tahiroğlu. (2022). Immigration Politics: Refugees in Turkey and the 2023 Elections. Heinrich Böll Stiftung, Washington DC <https://us.boell.org/en/2022/08/17/immigration-politics-refugees-turkey-and-2023-elections>.

49 ECtHR, *Akkad v. Turkey* Appl. no. 1557/19, Judgment of 21 June 2022.

50 Constitutional Court of the Republic of Turkey, *Abdulkerim Hammud Application* Appl no. 2019/24388, Judgment of 2 May 2023.

EU-Turkey Statement, which is to contain refugees and migrants in the region and country of origin. Nevertheless, assuming the EU-Turkey Statement is the sole reason why Turkey's asylum and migration policies have become much more restrictive, and the decrease in irregular arrivals in Greece would be disregarding the fact that Turkey is an independent actor that takes its own decisions on asylum and migration management.

2.2.3 Did Turkey Accept the Rapid Return of All Migrants Not in Need of International Protection Crossing from Turkey to Greece?

There is a legal element to returns under the EU-Turkey Statement, which proves that the returns under the EU-Turkey Statement have lacked a legal basis in international law since 2019. A Q&A document of the EU-Turkey Statement⁵¹ published by the Commission noted that the legal basis for returning irregular migrants from the Greek islands to Turkey is the bilateral readmission agreement between Greece and Turkey.⁵² This was to be succeeded by the EU-Turkey Readmission Agreement, following the entry into force of the provisions on readmission of third-country nationals of this agreement.⁵³ However, according to the Commission, Turkey does not implement provisions relating to third-country nationals in the EU-Turkey Readmission Agreement, in particular, Article 4 of the EU-Turkey Readmission Agreement establishing a duty for Turkey to readmit third-country nationals and stateless persons (non-Turkish nationals), which entered into force in October 2017.⁵⁴ Turkey maintains its position as of 2024 that it would not implement the provisions concerning third-country nationals of the EU-Turkey Readmission Agreement until the

51 European Commission (2016). Implementing the EU-Turkey Statement – Questions and Answers 15 June 2016, Brussels, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1664.

52 Arner and Kader argue that “the personal scope of the EU-Turkey Readmission Agreement does not cover asylum seekers and that there are no subsequent agreements or practices by the parties that amend the scope of the Agreement to include asylum seekers”. Cf. Hakkı Onur Arner and Yiğit Kader (2022). On the Removal of Asylum Seekers to Third Countries and the Scope of the EU-Turkey Readmission Agreement. *International Journal of Refugee Law* 34(3–4), pp. 416–439.

53 *ibid* 416–439.

54 European Commission (2022). Commission Staff Working Document, Türkiye 2022 Report. Brussels, 12.10.2022 SWD (2022) 333 final, [https://www.ab.gov.tr/siteimages/resimler/T%C3%BCrkiye%20Report%202022%20\(1\)\(2\).pdf](https://www.ab.gov.tr/siteimages/resimler/T%C3%BCrkiye%20Report%202022%20(1)(2).pdf); Delegation of the European Union to Türkiye (2023). Key findings of the 2023 Report on Türkiye, https://www.eeas.europa.eu/delegations/t%C3%BCrkiye/key-findings-2023-report-t%C3%BCrkiye_en.

visa requirement for its citizens travelling to the Schengen Area is lifted.⁵⁵ Turkey noted that implementation of the EU-Turkey Readmission Agreement would be stopped if the ultimate goal to obtain a visa-free regime failed in the Annotated Roadmap of the Visa Liberalisation.⁵⁶ When the EU-Turkey Readmission Agreement is not considered, the only legal instrument that applies to returns from Greece to Turkey is the Greece-Turkey Readmission Protocol. However, it is reported that Turkey unilaterally suspended its readmission agreement with Greece in 2018 as a response to a Greek court decision to release eight former Turkish soldiers who fled the country a day after the July 15, 2016 coup attempt.⁵⁷ This means the question we identified in an earlier publication⁵⁸ remains: if the Turkey-Greece Readmission Protocol is suspended and the EU-Turkey Readmission Agreement's provisions on readmission of third-country nationals cannot be implemented, would all returns from Greece to Turkey under the EU-Turkey Statement take place under a legal vacuum? This question is hypothetical, at least at the time of writing, since Turkey unilaterally suspended the return of irregular migrants from the Greek islands on public health grounds in March 2020 but did not lift this suspension after the pandemic ended.⁵⁹ In the 2023 Commission Report, Turkey is called upon to resume accepting returns under the EU-Turkey Statement.⁶⁰ The number of rejected asylum seekers and migrants returned from Greece to Turkey under the Statement arrangements remains relatively low. As of the end of 2023, the number of persons readmitted by Turkey under the EU-Turkey Statement remains at 2,140.⁶¹

55 European Commission (2022). Commission Staff Working Document, Türkiye 2022 Report. Brussels, 12.10.2022 SWD (2022) 333 final, [https://www.ab.gov.tr/siteimages/resimler/T%C3%BCrkiye%20Report%202022%20\(1\)\(2\).pdf](https://www.ab.gov.tr/siteimages/resimler/T%C3%BCrkiye%20Report%202022%20(1)(2).pdf).

56 Ahmet Apan. 2018. The Readmission Agreement Between EU and Turkey: The Visa Liberalisation Dialogue Knot. *Türk İdare Dergisi* 90, pp. 425–458.

57 Reuters (2018). Turkey suspends migrant readmission deal with Greece. <https://www.reuters.com/article/us-turkey-security-greece/turkey-suspends-migrant-readmission-deal-with-greece-hurriyet-idUSKCN1J31OO>.

58 Ineli-Ciger, M. and Ulusoy, O. (2021). Why The EU-Turkey Statement Should Never Serve As a Blueprint. ASILE <https://www.asileproject.eu/why-the-eu-turkey-statement-should-never-serve-as-a-blueprint/>.

59 European Commission (2022). Commission Staff Working Document, Türkiye 2022 Report. Brussels, 12.10.2022 SWD (2022) 333 final, [https://www.ab.gov.tr/siteimages/resimler/T%C3%BCrkiye%20Report%202022%20\(1\)\(2\).pdf](https://www.ab.gov.tr/siteimages/resimler/T%C3%BCrkiye%20Report%202022%20(1)(2).pdf).

60 European Commission (2023). Commission Staff Working Document, Türkiye 2023 Report, Brussels, 8.11.2023 SWD(2023) 696 final, https://www.eeas.europa.eu/sites/default/files/documents/2023/SWD_2023_696%20Tu%CC%88rkiye%20report.pdf.

61 *ibid.*

3 A Fresh Assessment of Turkey's Position as a Safe Third Country

Whether Turkey can be considered a safe third country is a question that has received significant attention from scholars, NGOs and policymakers in view of the EU-Turkey Statement.⁶² Answering this question naturally requires consideration of certain aspects as to the standards of treatment available in that country. UNHCR Executive Committee Conclusion No. 58 identifies required minimum standards for safe third country transfers, which include protection against refoulement, absence of danger to safety or freedom and treatment in accordance with recognised basic human standards.⁶³ Obviously, it is not an easy task to pinpoint the elements of such treatment, but analysis of previous efforts reveals common elements.⁶⁴ These include treatment in compliance with the prohibition of torture, the prospect of a genuinely accessible and durable solution, lack of risk of arbitrary deportation or deprivation of liberty, adequate and dignified means of subsistence, respect for family unity and integrity, and recognition of specific protection needs including those related to gender or age.⁶⁵ Whereas the lowest common denominator appears to be the fulfilment of civil and political rights, remarkably, the ECtHR's interpretation of what constitutes degrading treatment in *MSS v. Belgium and Greece* expanded to denial of socio-economic rights in the context of expulsion-related cases.⁶⁶ An alternative approach to defining the minimum standards of treatment upon safe third-country transfers relies on the understanding of complicity in international law. This means the sending state may not transfer the individual to a third state where he/she will be treated in a manner that the first state would not be allowed under the Refugee Convention and human rights law.⁶⁷

62 See footnotes 4, 5 and 6 above.

63 UNHCR Executive Committee (1989) Conclusion No. 58 (XL) on the problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection para. (f) and (g).

64 For a detailed analysis, please see Ovacık, G. (2021). *Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept*. On İki Levha Publications.

65 Lambert, H. 2012. Safe Third Country in the European Union: An Evolving Concept in International Law and Implications for the UK. *Journal of Immigration, Asylum and Nationality Law* 26(4), pp. 318–336.

66 ECtHR, *M.S.S. v. Belgium and Greece*, Appl. no. 30696/09, Judgment of 21 January 2011.

67 S.H. Legomsky. 2003. Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection. *International Journal of Refugee Law* 15(4), pp. 567–677; Costello, C. 2005. The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?. *European Journal of Migration and Law* 7(1), pp. 35–70.

All in all, a state has to factor in the human rights situation in the third country in order for a safe third country transfer to be permissible under international law⁶⁸ and immigration detention and deportation practices undoubtedly constitute crucial elements within such assessment. Recent legal developments relevant to Turkey in this regard shed light on a fresh assessment of Turkey's position as a safe third country. Since the execution of the EU-Turkey Statement, there have been several cases communicated to the ECtHR against Turkey concerning deportation and detention practices, which are indicative of how the new legal framework in Turkey is being implemented. Despite the long-standing EU efforts to make Turkey a safe third country for removals from EU Member States, ECtHR judgments and the surrounding domestic administrative and judicial practices demonstrate that fulfilment of this role by Turkey, in the aftermath of the EU-Turkey Statement, still remains at best doubtful. This section will provide an analysis as to how Turkish practices which were condemned by the ECtHR constitute a definitive attestation of the earlier concerns raised by academics and rights advocacy groups on the EU-Turkey Statement.

3.1 *Safety of Turkey with Regard to Deportation Practices*

In June 2022, ECtHR ruled on the case *Akkad v. Turkey*⁶⁹ concerning a Syrian national whose return to Syria was found in violation of the ECHR. What is striking is that the applicant and his family represent the typical profile that the EU-Turkey Statement seeks to contain in Turkey. The applicant was apprehended while attempting illegal crossing to Greece from Turkey in 2018 in the hopes of eventually reuniting in Germany with his family, who has been granted refugee status there. His father reached Germany earlier in 2015 in a similar manner through illegal crossing to Greece, and other family members were able to follow him through a family reunification visa, which the applicant could not obtain on account of not being a minor anymore as of 2017. After his return to Syria, the applicant's imminent subsequent attempts at illegal border crossings proved to be successful, and he reached Germany by the end of 2018.⁷⁰

After his apprehension, the applicant was immediately returned to Syria by Turkish authorities, which they claimed to have been carried out upon the applicant's demand. However, the Court found the applicant's claims that he

68 M. Foster. 2008. Responsibility Sharing or Shifting? 'Safe' Third Countries and International Law. *Refuge: Canada's Journal on Refugees* 25(2), pp. 64–78.

69 ECtHR, *Akkad v. Turkey* Appl. no. 1557/19, Judgment of 21 June 2022.

70 *ibid.*, at paras 250–251.

was not aware of the contents of the voluntary return form he was made to sign and that his return was forcible are more convincing in the normal course of life. The Court took into consideration that it is not reasonable for the applicant to give up the temporary protection status he has held in Turkey since 2014 to return to the conflict region in Syria while his family is in Germany, as affirmed by the applicant's subsequent journey to Germany.⁷¹ ECtHR also relied on the fact that UN organs advise against forced returns to Syria due to ongoing violence as well as on the temporary protection status granted by Turkey and the refugee status granted by Germany as proof of real risk of treatment against the prohibition of torture, inhuman and degrading treatment enshrined in Article 3 of the ECHR. Thus, in failure of its duty to investigate the possible risks upon return, Turkey has been found in violation of this provision.⁷²

The right to an effective remedy guaranteed by Article 13 of the ECHR is also found to have been violated by Turkey in returning the applicant to Syria. Whereas a deportation order has not been issued due to the alleged voluntariness of the return, the applicant was not given a copy of the voluntary return form he signed. Also, the form lacked the signature of a UNHCR or NGO representative, which could prove the genuineness of the applicant's desire for voluntary return and prevent abuse of authority by government officials. Moreover, the ECtHR viewed the fact that the return took place a very short period after the applicant's apprehension, most of which was spent on the applicant's transfer from the Greek border to the Syrian border, as an obstruction of the use of legal remedies by the applicant that could prevent his return to Syria.⁷³ The applicant's claims as to non-voluntariness of return were also ignored by domestic courts on account of the lack of a deportation order.⁷⁴ Thus, the Court concluded that the applicant was deprived of the legal remedies against removal with suspensive effect through rash and misleading actions of the officials.⁷⁵

The Court's reference to Amnesty International's intervention in the case is crucial in terms of broader implications of the judgment, projecting that the case is representative of the general practice in Turkey as to returns to Syria and not a single individual violation. The ECtHR confirmed that the conditions surrounding the case align with the reported returns of many Syrian nationals in a similar manner by forcing or misleading them into signing voluntary return forms without the opportunity to use legal safeguards against return.⁷⁶

71 *ibid.*, at para 39.

72 *ibid.*, at paras 70–76.

73 *ibid.*, at paras 82–88.

74 *ibid.*, at para 91.

75 *ibid.*, at para 90.

76 *ibid.*, at para 89.

Less than a year following the judgment on *Akkad v. Turkey*, the Turkish Constitutional Court reached similar conclusions in a case with similar facts and claims. Abdulkерim Hammud's Application⁷⁷ was made by a Syrian national who was under temporary protection in Turkey. He was returned to Syria allegedly on a voluntary basis within a few days upon his involvement in a fight and the issuance of a deportation order against him based on being a threat to public order, security or health.⁷⁸ Since 2016, Turkish law has allowed the deportation of international protection applicants or status holders on this basis and on grounds related to terrorism, which is in itself problematic in terms of the principle of non-refoulement.⁷⁹ Significantly, the applicant signed a voluntary return form and was returned on the same day that his lawyer appealed the deportation order, which was successful only after he was already in Syria.⁸⁰ The Court identified real risk upon return with reference to recognition in the deportation order itself and in various UN reports on Syria, so then the legal issue becomes whether the applicant's alleged voluntary return decision is well-informed.⁸¹ Lack of signature of a UNHCR, Turkish Red Cross or another NGO representative in the voluntary return form; the generic nature of the statements in describing the information provided on the country of origin without any details as to the personal situation of the applicant and the fact that the applicant's lawyer has not been notified of the applicant's voluntary return request, were taken as indicators overshadowing the genuineness of the voluntary return request.⁸² Moreover, the Court did not find it plausible that the applicant's decision for voluntary return only one day after instructing his lawyer to challenge the deportation order was consensual and well-informed and thus, his return to Syria constituted a violation of the right to life and prohibition of ill-treatment.⁸³ In connection with this, the applicant's right to an effective remedy was also violated because his lawyer, UNHCR or a national NGO were not informed of the applicant's return as understood from the lack of their signature on the voluntary return form. Remarkably, the Court also problematised the non-suspension of return during judicial appeal

77 Constitutional Court of the Republic of Turkey, *Abdulkерim Hammud Application* Appl no. 2019/24388, Judgment of 2 May 2023.

78 *ibid.*, at paras 7–10.

79 Ovacık, G. (2021). *Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept*. On İki Levha Publications, pp. 164–168.

80 Constitutional Court of the Republic of Turkey, *Abdulkерim Hammud Application* Appl no. 2019/24388, Judgment of 2 May 2023, at paras 14–16.

81 *ibid.*, at paras 53–54.

82 *ibid.*, at paras 56–59.

83 *ibid.*, at paras 60–62.

procedures in terms of the right to an effective remedy.⁸⁴ This was despite the fact that, at that time, the law allowed immediate enforcement of deportation orders based on the threat to public order, security or health.⁸⁵ Abdulkerim Hammud judgment showcases that the Turkish Constitutional Court is willing to follow in the footsteps of the ECtHR in *Akkad v. Turkey*. Although there is no official information as to whether there are any other similar cases pending before the Constitutional Court, the authors are aware of several similar cases concerning so-called voluntary returns against which lawyers have initiated domestic judicial procedures.

The latest decision of Turkish Constitutional Court published in January 2024⁸⁶ provides a recent account on risks associated with returns to Syria. The applicant who is a Syrian national under temporary protection in Turkey was subject to a deportation order for posing threat to public order based on driving under the influence of alcohol. Upon his appeal the administrative court upheld the deportation order due to existence of safe zones within Syria and lack of serious indicators as to personal danger. Constitutional Court relied on ECtHR judgments and UNHCR reports as to the situation in Syria and pointed to the ongoing temporary protection regime as an admission by the government of risk of returns to Syria. The Court concluded that the administrative authorities and court disregarded the risk of refoulement and thus violated the prohibition of torture, inhuman and degrading treatment.

Finally, two recent decisions of the ECtHR finding violations of right to life and prohibition of torture, inhuman and degrading treatment is significant in terms of assessment of deportation practices in Turkey although not related to Syria. *J.A. and A.A. v. Turkey*⁸⁷ concerns applicants from Iraq who entered Turkey lawfully with their four children in 2014 as a result of the armed conflict involving ISIS. Few months after their arrival a deportation order was issued against them based on threat to public security and they were kept under administrative detention for one month.⁸⁸ The Court found that lack of any assessment whatsoever of their claims of risk of ill-treatment in Iraq by the administrative and judicial authorities in Turkey failed the standards of the ECHR.⁸⁹ The other

84 *ibid.*, at paras 70–73.

85 The legislative amendment in October 2016 that removed automatic suspensive effect of judicial appeals against deportation orders was retracted in December 2019.

86 Constitutional Court of the Republic of Turkey, *Hüsam İbrahim Application* Appl no. 2020/20131, Judgment of 4 October 2023.

87 ECtHR, *J.A. and A.A. v. Turkey* Appl. no. 80206/17, Judgment of 6 February 2024.

88 *ibid.*, at paras 6–13.

89 *ibid.*, at paras 73–75.

case, *B.S. v. Turkey*⁹⁰ was also lodged in 2019 by an Iranian woman who fled domestic violence and converted to Christianity while in Turkey. Her asylum application was rejected, which led to a deportation order, and she claims that her threatened deportation would result in a violation of the prohibition of torture, inhuman and degrading treatment.⁹¹ The Court found that her claims related to her conversion have not been adequately assessed by Turkish authorities and courts.⁹² Based on imminent risk of irreparable damage, the ECtHR issued an interim measure decision in this case earlier to prevent enforcement of the applicant's removal.⁹³ These judgments showcase the generalized state of problematic deportation practices in Turkey that reflects to the Syrian context, especially with respect to lack of *ex nunc* assessment of claims of risks that would be faced by applicants upon return.

As for the trajectory before ECtHR, in addition to *Akkad v. Turkey*, *J.A. and A.A. v. Turkey* and *B.S. v. Turkey*, there is one more pending case on the deportation practices of Turkey. *NR v. Turkey*⁹⁴ was lodged in 2019, a few months after the application in *Akkad v. Turkey*. The application concerns a Tajik national with fear of persecution based on religious beliefs who claims that his threatened deportation and alleged absence of an effective remedy to challenge the deportation decision constitute a violation of Articles 3 and 13 of the ECHR. It is significant that in this case as well, the ECtHR issued interim measures preventing the applicant's removal, indicating its conviction that the applicant faces imminent risk of irreparable damage.

While the ECtHR currently awaits party submissions, conditions and legal processes surrounding this case signals that problems related to removal practices in Turkey are not confined to the context of voluntary returns of Syrians. This is also confirmed by earlier research that criticises Turkish court decisions conceding the excessive discretion that administrative authorities use in enforcing removal grounds.⁹⁵

90 ECtHR, *B.S. v. Turkey* Appl. no. 14820/19, Judgment of 21 March 2024.

91 *ibid.*, at paras 1–8.

92 *ibid.*, at paras 17–18.

93 *ibid.*, at paras 19.

94 ECtHR, *Communicated Case N.R. v Turkey* Appl. no. 5137/19.

95 Ovacık, G. (2021). *Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept*. On İki Levha Publications; Ovacık, G. 2020. Türk Anayasa Mahkemesi'nin İçtihadı Işığında Sınır Dışı Kararlarına Karşı Yargısal İtirazın Hukuki Etkisi. *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 26(2), pp. 1047–1062.

3.2 *Safety of Turkey with Regard to Detention Practices*

Another important dimension for assessing Turkey's position as a safe third country concerns administrative detention practices. Since the enactment of the new legislative framework and execution of the EU-Turkey Statement, there have been two ECtHR judgments that found Turkey to be in violation of the prohibition against torture, inhuman and degrading treatment and the right to liberty and security in relation to deprivation of liberty in the deportation context.

In *Akkad v. Turkey*, the Court found a violation of the right to liberty and security on several bases. Upon his apprehension at the border with Greece, the applicant was first kept in the quarters of the Edirne Provincial Directorate for Migration Management and then transferred to the Syrian border through a bus ride, during most of which he was handcuffed. This de facto detention did not rely on a detention order or a removal order that, according to the law, is the prerequisite of a detention order. The applicant was not officially notified or in any way informed that he was taken under detention, nor was he informed of the reasons for his detention. On the contrary, with a view to facilitating his transfer, he was deliberately misinformed that he was being transferred to a refugee camp in Gaziantep, where he was being taken to Syria. Thus, the Court found the detention to be unlawful within the meaning of ECHR.⁹⁶ ECtHR also noted that the applicant did not have the opportunity to challenge the lawfulness of his detention during the entire duration until his return to Syria; he did not have any access to a lawyer or anyone else, although the alleged voluntary return request would require contact with a translator or a UNHCR or NGO representative. Thus, Turkey was found in violation of the applicant's right to access legal remedies by which the lawfulness of detention can be made subject to judicial review, as well as his right to compensation for unlawful detention.⁹⁷ Moreover, the Court considered the conditions surrounding the bus journey from Edirne to Hatay, which lasted 20 hours, during which the applicant was mostly handcuffed, and found that he was subjected to degrading treatment in violation of the prohibition of torture, inhuman and degrading treatment.⁹⁸ This recent judgment is in parallel with earlier research based on an analysis of domestic case law and administrative practices of detention in the immigration context without the issuance of a formal detention order, as reflected in more than 20 cases.⁹⁹ Such practices often take place in places

96 ECtHR, *Akkad v. Turkey* Appl. no. 1557/19, Judgment of 21 June 2022, at paras 103–105.

97 *ibid.*, at paras 107–109.

98 *ibid.*, at paras 114–115.

99 Ovacik, G. 2020. A Judicial Review of the De Facto Detention of Foreigners in Turkey. *Border Crossing* 10(2), London, UK, pp. 143–153.

such as police stations or airports and, more often than not, are paradoxically disregarded by courts based on the lack of a formal detention order, which is the very source of the unlawfulness of detention. When thought in combination with these earlier examples, it becomes clear that *Akkad v. Turkey* is not an isolated case but reflects a common practice.

In an earlier decision dated October 2019, *G.B. and Others v. Turkey*, the ECtHR has found multiple violations by Turkey concerning detention pending expulsion of a mother and her three children, all Russian nationals. They were apprehended during their attempt to irregularly cross to Syria and were held under detention at Kumkapı Removal Centre for three months and at Gaziantep Removal Centre for close to three weeks.¹⁰⁰ Complaints under the right to liberty and security were submitted by minor applicants, considering that the detention order only mentioned their mother and not them, and by all applicants due to not having been released for five more days after a court decision ordering their release. Accordingly, the Court found a violation as to the detention of minor applicants without an official detention order and as to the unjustified delay in the release of all applicants.¹⁰¹ While concluding on the failure of domestic courts to conduct an effective and prompt review of the lawfulness of the applicants' detention, the Court specified that the legal remedies prove to be ineffective in the context of detention of minors without a detention order.¹⁰²

The applicants also complained about the material conditions of detention and the lack of effective domestic legal remedies for their complaints in that regard.¹⁰³ As to detention conditions in Kumkapı Removal Centre, the ECtHR took into consideration its earlier violation judgments, the reports of the visits by the National Human Rights Institution and the Committee for the Prevention of Torture, the relevant Turkish Constitutional Court decisions that all made note of problems such as overcrowding, poor hygiene and lack of outdoor exercise.¹⁰⁴ Noting the prolonged length of detention and especially the heightened effects of adverse conditions on children even in short periods of detention, emphasizing the absolute nature of the prohibition of torture and inhuman and degrading treatment, the Court found violation based on the material conditions of detention in Kumkapı Removal Centre as well as Gaziantep Removal Centre.¹⁰⁵ The Court also ruled on the lack of an effective

100 ECtHR, *G.B. and others v. Turkey* Appl. no. 4633/15, Judgment of 17 October 2019, at paras 6–23.

101 *ibid.*, at paras 149–155.

102 *ibid.*, at para. 188.

103 *ibid.*, at para. 95.

104 *ibid.*, at paras 102–106.

105 *ibid.*, at paras 111–117.

remedy that is capable of ending the treatment in violation of the prohibition of torture, inhuman and degrading treatment. A purely compensatory remedy was not found sufficient considering that the detention of applicants was ongoing at the time of their complaint in domestic courts.¹⁰⁶

Although the ECtHR expressed that its finding as to the ineffectiveness of legal remedies in the case *G.B. and Others v. Turkey* does not cast a doubt on the general effectiveness of judicial mechanisms available in Turkey concerning immigration detention,¹⁰⁷ other cases pending before the Court calls for assessment of this matter from a more general outset. It is remarkable that the applicants in *Dana Ebrahimnezhad v. Turkey*¹⁰⁸ and *Salih Braim Ahmed Ahmed v. Turkey*¹⁰⁹ are Iranian and Iraqi nationals who were apprehended in Greece after their illegal crossing and who were returned to Turkey, where they were held under detention pending their expulsion. *Z.A and K.S v. Turkey*¹¹⁰ were initiated by Russian and Kyrgyz nationals who were also detained in Turkey for several months in different facilities. *A. A v. Turkey*¹¹¹ similarly concerns an Iranian applicant who fled to Turkey due to fear of religious persecution and was placed under administrative detention for a short period of time.

Lastly, the case *B.T v. Turkey*¹¹² is also pending before ECtHR, which triggered extensive legal debate in Turkey. Before escalating to ECtHR, the same case triggered a change of direction in the case law of the Turkish Constitutional Court concerning the matter of effective redress for unlawful detention and detention conditions.¹¹³ With the B.T. application, the Constitutional Court started to accept full remedy action as a prerequisite for the exhaustion of legal remedies. This is especially problematic considering the inconsistent judicial practices by Turkish courts in this regard, and it is now for the ECtHR to finalise the debate as to whether full remedy action before Turkish administrative courts is to be considered an effective remedy and should be exhausted before applying to the Turkish Constitutional Court. The general tendency of Turkish administrative courts in full remedy actions appears to be the rejection of compensation claims based on self-contradictory reasons that indicate that

106 *ibid.*, at paras 136–137.

107 *ibid.*, at para 188.

108 ECtHR, *Communicated Case Dana Ebrahimnezhad v. Turkey* Appl. no. 53614/19.

109 ECtHR, *Communicated Case Salih Braim Ahmed Ahmed v. Turkey* Appl. no. 56562/19.

110 ECtHR, *Communicated Case Z.A. and K.S. v Turkey* Appl. no. 36449/17.

111 ECtHR, *Communicated Case A.A. v. Turkey* Appl. no. 50158/18.

112 ECtHR, *Communicated Case B.T. v Turkey* Appl. no. 42151/18.

113 Constitutional Court of the Republic of Turkey, *B.T. Application* Appl no. 2014/15769, Judgment of 30 November 2017.

the judges are far from comprehending the legal regime regulating deportation and detention mechanisms.¹¹⁴

All of these cases, for which the ECtHR addressed its questions to the parties, concern the lawfulness and conditions of detention as well as the effectiveness of legal remedies in that regard. In all cases, detention practices have taken place after the new legislative framework established by the LFIP entered into effect. The existence of several communicated cases pending before the ECtHR signals that the two cases analysed above will not be the last ones calling Turkish administrative detention practices into question.

4 Conclusion

The EU-Turkey Statement marks a milestone in the relations between the EU and Turkey surrounding migration and asylum issues. The pre-Statement era was dominantly composed of efforts aligning the Turkish legal and administrative framework on migration and asylum with that of the EU with a perspective of Turkey's accession to the EU. Meanwhile, the post-Statement era is largely shaped by an externalisation perspective in response to the changing dynamics of the asylum realm in the region.

Meanwhile, as of 2024, many of the promises that made up the EU-Turkey Statement remained unfulfilled by the parties. The account of status of mutual pledges reveal which aspects of the EU-Turkey Statement are continued to be regarded as carrying importance by the parties. The most tangible operational component of the EU-Turkey Statement remains the financial support by the EU for the reception of refugees in Turkey. Nevertheless, the irregular passages from Turkey to the EU diminished considerably anyhow. Regardless of to what extent the Statement has contributed to these movements, one thing is certain: The fluidity that characterised the days that led to and followed the execution of the EU-Turkey Statement does not exist as of 2024. With all factors combined, the efforts for containment of the refugee population in Turkey seem to have panned out. Recognition of this shift is important in the assessment of Turkey's positionality.

Around 2016, the prominent question was whether Turkey could be considered a safe third country for returns from EU Member States. Deficiencies in Turkish reception conditions, asylum procedures, detention and removal

114 Ovacık, G. (2021). *Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept*. On İki Levha Publications, pp. 236–243.

practices were assessed with a view to preventing or criticise returns from the EU. As of today, as the return component is neither crucial nor existing, the discussion of Turkey's fulfilment of safe third country criteria is also obsolete. This is not to say that Turkish reception conditions, asylum procedures, detention and removal practices are not worth discussing with respect to European externalisation policies. On the contrary, considering the course of ECtHR case law and Turkey's ongoing status as the top refugee hosting country in the world, the assessment of standards of treatment in Turkey is ever important. It should be recognised that the reasons for opposition to Turkey's position as a safe third country expressed around 2016 are very much valid today against the background of today's reality of successful containment. It is time to change the conversation around the EU-Turkey Statement, being mindful of the fact that safe third country practices and containment both are manifestations of externalisation policies.

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