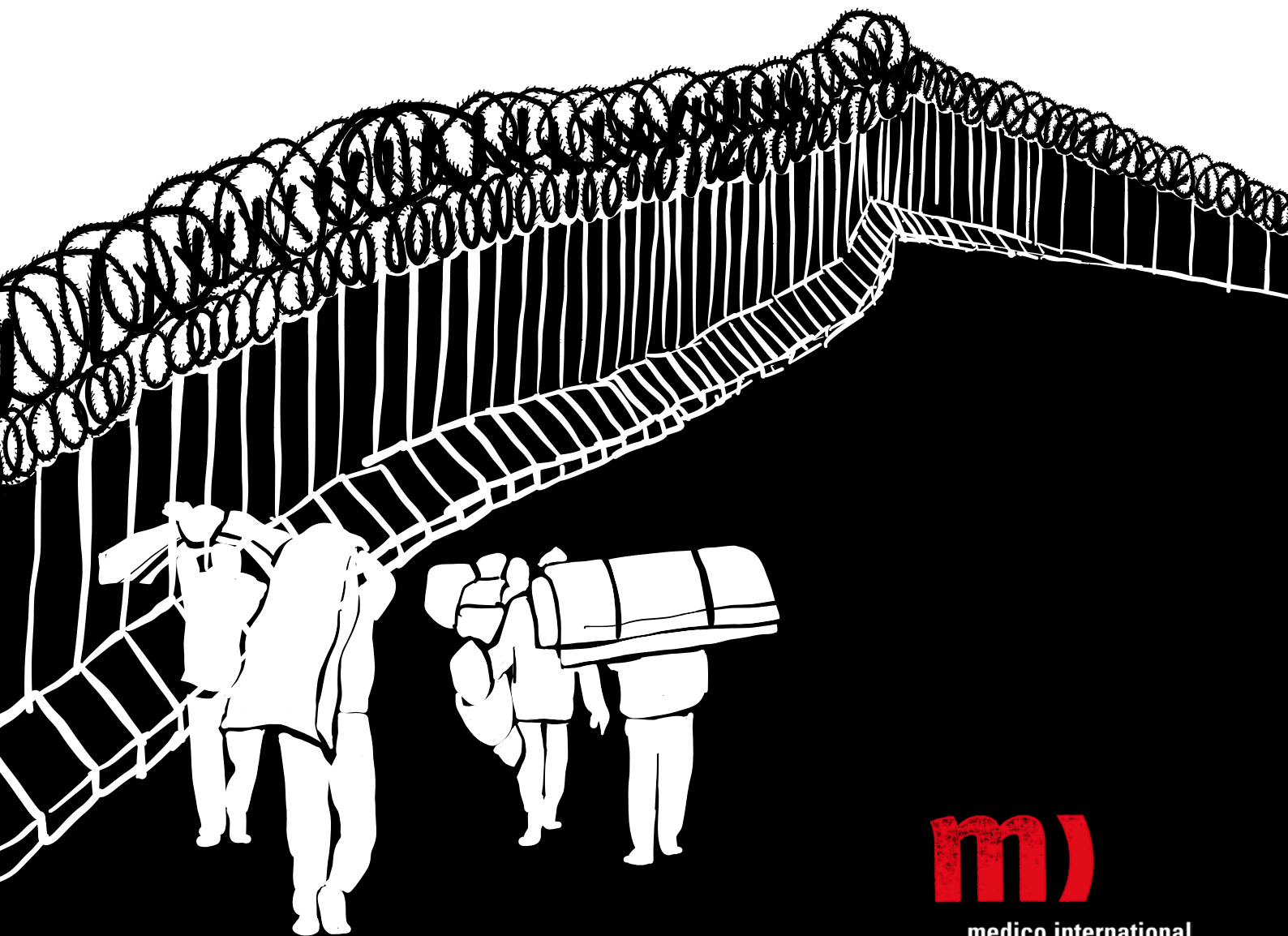


# “What safety are they talking about?”

Why Turkey cannot be  
considered a 'safe third country'-  
an expert opinion



medico international

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# Introductory remarks

The following expert opinion is based on a third party intervention by the European Association of Lawyers for Democracy and World Human Rights [ELDH],<sup>1</sup> the European Democratic Lawyers [EDL],<sup>2</sup> the Association of Lawyers for Freedom (ÖHD),<sup>3</sup> and the Progressive Lawyers' Association [ÇHD]<sup>4</sup> submitted to the European Court of Human Rights [ECtHR] in July 2022 related to 32 applications concerning 'pushbacks', i. e. the alleged refoulement from Greek territory (land and sea) to Turkey without prior procedure.<sup>5</sup> For the purpose of this expert opinion, the original research was extended. In total, 38 in-depth interviews with stakeholders, lawyers, NGOs, journalists and researchers were conducted between September 2021 and June 2023. In addition, the research, firstly, contains publicly available resources such as NGO reports and newspaper articles; secondly, is based on several informal conversations; and, thirdly, draws from diverse academic, as well as advocacy and litigation, experience of individuals who contributed to the present expert opinion. Events and political developments up to 10 July 2023 are taken into account.

The content of the present expert opinion is the result of an extended collaboration between ELDH, ÇHD and ÖHD. However, the following contributors should be acknowledged individually: Annina Mullis – lawyer registered in Bern, Switzerland, and collaborating with the Legal Centre Lesbos in Greece – interviewed the informants and drafted the present expert opinion. Fatih Aydın, lawyer in İstanbul, Turkey conducted the research in the Turkish language and compiled data provided in public sources. Cavidan Soykan – who is affiliated with Keele University in the UK and based in İzmir, Turkey and whose work has focused on the Turkish asylum system since 2008 – reviewed and amended the draft. S. T. is a Syrian journalist who, between 2009 and 2022, spent 13 years in Turkey. As of 2011, he was specifically working as a fixer/producer with international news agencies covering refugees in Turkey. Recently, he was forced to leave the country but nevertheless contributed with valuable input regarding the lived experience mainly of the Syrian community in Turkey. Rosemary Pritchett-Montavon, U. S. lawyer, greatly supported bringing the present expert opinion into shape through editing. Finally, the present expert opinion is designed by Andrea Ruhland and published by medico international (Germany). □



- 1 Association of Lawyers for Democracy and World Human Rights [ELDH]'s website, available at: <https://eldh.eu/en/>.
- 2 European Democratic Lawyers [EDL]'s website, available at: <http://www.aeud.org/>.
- 3 Özgürlükçü Hukukçular Derneği [ÖHD]'s website, available at: <https://ozgurlukicinhukukcular.org/tr>
- 4 Çağdaş Hukukçular Derneği [ÇHD]'s website, available at: <https://cagdashukukcular.org/>.
- 5 ELDH, EDL, ÖHD, ÇHD [2022], 'Third Party Intervention' submitted to the ECtHR.

# Executive summary

The extended scope and application of the 'safe third country' concept is an essential component of the European Union (EU)'s 'New Pact on Migration and Asylum' and the reform of the Common European Asylum System (CEAS). The 'safe third country' concept, in practice, allows asylum applications of people who have travelled through such a 'safe third country' to be deemed inadmissible. In other words, their asylum claims will not be considered. Making use of declaring a third country as 'safe' to effectively preclude 'exilees'<sup>6</sup> from accessing the European asylum system is, however, not new.

The 2016 EU-Turkey statement postulated that Turkey can be qualified as a 'safe third country' in accordance with Article 38 of the EU's Asylum Procedures Directive (APD) laying the basis for the return of any third-country citizen arriving on a Greek island back to Turkey. Then – and today – this classification was a political decision rather than the conclusion of an on-the-ground assessment centering the lived experience of 'exilees' in Turkey. Already at the time of the negotiation of and agreement on the EU-Turkey statement, human rights organisations criticised the approach and documented grave rights violations such as mass expulsions to Syria. Taking the EU-Turkey statement as a starting point, the present expert opinion illustrates how, in the following years, the situation of 'exilees' in Turkey has continuously deteriorated.

In its first section, the expert opinion outlines the 'safe third country' concept and details the practical relevance of its application in the EU's migration policy today (I.). In the following section, the relevant legal framework in Turkey is presented (II.): although Turkey is a member state to the 1951 Geneva Refugee Convention (Refugee Convention), the country still maintains the geographical limitation to the applicability of the Refugee Convention, and therefore effectively excludes all non-European citizens from receiving protection bases on this Convention (II.1.). Relatedly, people from non-European countries seeking protection in Turkey need to rely on the different types of protection or residence permits afforded by Turkish law (II.2.). These forms of protection are: firstly, Temporary Protection Status for Syrian citizens (II.2. a. & II.3.a.); secondly, Conditional Refugee Status and Subsidiary Protection Status (II.2. b & II.3. b.); and thirdly, residence permits based on the general migration legislation. However, these residence permits do not legally qualify as forms of protection (II.2. c.). In any case, none of these types of protection or residence permits are equivalent to protection in accordance with the Refugee Convention. In addition, specific protection or reception needs of, for example, survivors of torture, survivors of sexual and gender-based violence (SGBV), and members of the LGBTQIA+ community, are only insufficiently considered (II.3. c.). Related shortcomings towards specific groups of 'exilees' may violate the prohibition of discrimination that is set out in international law, may pose a threat to a person's life or liberty contrary to Article 38(1)(a) of the EU's APD.

As the main obstacle to obtaining protection in Turkey, the individuals interviewed for this expert opinion unanimously highlighted the restricted access to registration (III.). In 2018, the regional migration authority (PDMM at the time, now PPM), de facto stopped registering newly arriving Syrians, with the exception of vulnerable cases, in nine provinces, including big cities such as İstanbul and other provinces with a relatively high population of 'exilees'. Since then, there has been an increase in the number of cities 'closed' to new applications – for both temporary and international protection. In February 2022, it was announced that registrations for protection would not be accepted in 16 provinces. Since May 2022, the 'refugee population' in every neighbourhood is legally limited to 25 % of the total population. Following this new restriction, 781 neighbourhoods closed for registration or relocation of most foreign nationals with temporary protection, international →

6 The term 'exilee' in this text is used to describe non-citizens both in Turkey and the EU in the context of forced migration. The notion was chosen for two reasons: First, it is not tied to a specific legal status and therefore includes undocumented non-citizens, asylum seekers and protection status holders alike. Second, the term stands outside the binary [legal] 'refugee' and [illegal] 'migrant'. For context, see Rebecca Hamlin [2022], 'Migrants'? 'Refugees'? Terminology Is Contested, Powerful, and Evolving', Migration Policy Institute.

protection, or residence permits. As of 1 July 2022, the 'refugee population' is not allowed to exceed 20 % of the total population which caused the number of 'closed' neighbourhoods to climb to 1,169. However, NGOs and lawyers report difficulties to register new applications even in provinces which are not 'officially closed'. In any case, there is not any continuously updated information publicly available on the 'registration status' of a city or province sending applicants on what Human Rights Watch refers to as "wild goose chases"<sup>7</sup> from one regional migration office to the next, hoping to find an office which accepts to register their request for international protection. Additionally, starting in June 2022, applications for temporary protection had to be filed in one of the Temporary Accommodation Centres which are located along the Turkish-Syrian border. At the time of drafting this expert opinion, it has, however, become effectively impossible for Syrian citizens to register new applications. The condition stipulated in Article 38(1)(e) of the EU's APD – which is part of the 'safe third country' definition – is, yet again, not met in practice.

Without completing the registration, applicants for both temporary and international protection remain barred from exercising other rights and accessing social services. Those who do manage to obtain some kind of status or those who were issued an ID for applicants after registration, in theory, have the right to education, health care, and to request a work permit in Turkey (IV.). However, in practice, it is extremely difficult to actually exercise these rights. Precarious living conditions often force people under the temporary or international protection regime to leave their provinces of registration and move to bigger cities in order to make a living. Those who leave their assigned city, however, lose access to all social rights or services attached to their status. As explored in the present expert opinion, 'exilees' in Turkey are often forced to live in dire conditions, if not in complete destitution. According to the European Court of Human Rights (ECtHR)'s case law, the obligations under the non-refoulement principle pursuant to Article 3 of the European Convention on Human Rights (ECHR) may prevent a state party to the ECHR from returning an individual to a country if the material conditions in the receiving country were to be found inhuman and degrading. In addition, the discriminatory exclusion of a certain group of people from access to social services, as well as the failure to provide adequate material conditions for them although obligated, may amount to discrimination contrary to international law. Furthermore, the use of racist and xenophobic rhetoric in Turkish politics have led to rising anti-immigrant sentiments which increasingly turn violent, and effectively create a hostile environment in which many 'exilees' cannot not feel 'safe' (IV.5.). Additionally, this leads to a widespread risk for 'exilees' to be subjected to hate speech and racist violence – causing a potential conflict with Article 38 (1) (a) of the EU's APD.

Although Turkish legislation has formally incorporated the respective prohibition, even if status is obtained, this does not necessarily equal effective protection from refoulement. First, 'exilees', who are granted protection or manage to obtain a residence permit nevertheless face the possibility of arbitrary cancellations of their status (III.4. & V.1.). This subsequently exposes the affected individuals to a genuine risk of deportation in complete disregard for their personal circumstances, including individual risks or the duration of their stay in Turkey (VI.3.). Secondly, Turkey routinely forcibly removes citizens of non-European countries through coercive 'voluntary returns', meaning that, in practice, 'exilees' are either tricked or forced into signing the consent form for a 'voluntary return', e. g. to Syria (VI. 2.). Notably, in its July 2022 judgement *Akkad v. Turkey*, the ECtHR acknowledged Turkey's use of coercive methods to force people to 'voluntarily' return to Syria and found that coercive 'voluntary returns' violate an individual's human rights in multiple ways. Thirdly, Turkish 'security forces' systematically push people seeking safety back over the country's borders with Syria and Iran (VI.1.). As of May 2015 – prior to the EU-Turkey statement – the Turkish government turned away from their "open door policy towards Syria"<sup>8</sup> and started trying to close their border, including through a partially EU-sponsored border wall. As early as November 2015, reports started to emerge that Turkey is violently pushing Syrians back to war-torn Syria. More recently, in August 2022 and November 2022, Amnesty International<sup>9</sup> and Human Rights Watch<sup>10</sup> →

7 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 61.

8 Ilker Ataç, Gerda Heck, Sabine Hess, Zeynep Kaşlı, Philipp Ratfisch, Cavidan Soykan, Bediz Yılmaz [2017], 'Contested B/Orders. Turkey's Changing Migration Regime An Introduction', p. 13.

9 Amnesty International [2022], 'Afghanistan: "They don't treat us like humans": Unlawful returns of Afghans from Turkey and Iran'.

10 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey'.

released extensive reports detailing numerous pushbacks of Afghan citizens during which Turkish authorities inflicted severe violence. The aforementioned confirms that Turkey does not offer effective protection to 'exilees', and therefore, does not comply with the 'safe third country' criteria set out in Article 38 (1) (c), (d) and (e) of the EU's APD.

Prior to deportation, 'exilees' are usually held in detention (V.), potentially in inhuman and degrading conditions (V.2.). While there is a right to challenge both the deportation and the detention order, lawyers and NGOs interviewed for the present expert opinion have identified the lack of access to legal aid as a significant obstacle in accessing such rights (V.3.). In practice, most detainees remain without legal representation. Moreover, further deficiencies, such as insufficient information about rights, limited or no access to means of communication, short deadlines, or frequent transfers render it particularly difficult for migration detainees to exercise their legal rights. The many systematic obstacles detainees face when trying to secure legal representation from detention in the present context contributes to the assumption of the potential threat to an individual's liberty and at the same time to the assumption of Turkey's non-compliance with Article 38(1)(a) of the EU's APD.

In its final section, the present expert opinion discusses how the situation of 'exilees' developed after the devastating earthquakes in early February 2023 (VII.) Overall, more than 50,000 people were killed, and an estimated 2.7 million – including 'exilees' – were displaced in Turkey alone. Generally, in connection to the earthquakes, "living conditions for migrants have deteriorated", newly-increasing "racism has led to violent attacks",<sup>11</sup> and Syrians were – at least initially – excluded from aid distributions, and had difficulties receiving access to emergency shelters, such as tents. This discriminatory exclusion of a certain group of people from access to emergency relief, again, may amount to discrimination contrary to international law.

In conclusion, the present expert opinion finds that Turkey does not comply with the 'safe third country' criteria: neither under the current Article 38 of the EU's APD nor under the intended CEAS reform (I.) because Turkey does not offer 'effective protection' to non-European foreigners (VIII.). If there are substantial grounds to believe that the removal or return to a third country would expose an asylum seeker to treatment contrary to Article 3 of the ECHR – directly in that third country or indirectly, for example, through chain-refoulement – the ECtHR has confirmed the obligation not to expose an individual to such a risk, and therefore, not to deport them. This also includes the duty to consider the overall reception conditions for 'exilees' in the receiving state, as well as the respective person's individual situation. Most importantly, this duty remains intact, regardless of any political agreement labelling a specific country as 'safe' – including the EU-Turkey statement.

Recognising the contradiction between the assumption of Turkey being 'safe' and the lived experience of 'exilees' in the country, leaves only one remaining conclusion: the label 'safe third country' is a political, rather than a legal one. Drawing from Turkey as an example, the extended application of the 'safe third country' concept ultimately bears the risk of nothing less than the complete erasure of the right to asylum. □

<sup>11</sup> ELDH, ÖHD, ÇHD et al. [2023], '7th anniversary of the 2016 EU-Turkey Statement'; Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 13; TİHV [2023], 'Antep, Maraş, Hatay ve Malatya Merkezli, Depremler Sonrasında, 6-27 Şubat 2023 Tarihleri Arasında Yaşanan İnsan Hakları İhlalleri Raporu'.

# I. The 'safe third country' concept

The 'safe third country' concept – as set out in Article 38 of the European Union's [EU] Asylum Procedures Directive<sup>12</sup> [APD] – allows EU Member States to order asylum applicants to return to certain countries where the applicant would be 'safe'. To be considered 'safe' for an applicant, the third country must, among other requirements, be one with which the applicant has a connection such that it would be reasonable for them to move to that country.<sup>13</sup> Further, Member States may apply the 'safe third country' concept to an individual applicant only where, in the relevant third country, the applicant will be treated according to the following principles:<sup>14</sup>

- a. life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- b. there is no risk of serious harm as defined in Directive 2011/95/EU;<sup>15</sup>
- c. the principle of non-refoulement in accordance with the Geneva Refugee Convention [Refugee Convention] is respected;
- d. the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
- e. the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention.

Moreover, in applying this concept, Member States are required to conduct "case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe".<sup>16</sup> Member States are also required to allow "the applicant to challenge the application of the 'safe third country' concept on the grounds that the third country is not safe in his or her particular circumstances".<sup>17</sup>

As claimed by many human rights organisations, and as will be argued in the present expert opinion, "Turkey cannot be considered a safe country of asylum for non-European[s]".<sup>18</sup> Regardless, the 2016 EU-Turkey statement<sup>19</sup> postulated that Turkey was 'safe' as the basis for returning any third-country citizen arriving on a Greek island to Turkey.<sup>20</sup> The EU-Turkey statement is one example of how European migration policy is currently built on assessing the situation in a country based on its "EU-inspired asylum legislation"<sup>21</sup> and not according to the actual conditions. In other words, →

12 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [recast], OJ 2013 L180/60.

13 Article 38[2][a] of the EU's APD.

14 Article 38[1] of the EU's APD.

15 According to Article 15 of the Directive 2011/95/EU [Qualification Directive], serious harm consists of [a] the death penalty or execution; or [b] torture or inhuman or degrading treatment or punishment; or [c] serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [recast], OJ 2011 L 337/9.

16 Article 38[2][b] of the EU's APD.

17 Article 38[2][c] of the EU's APD.

18 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 12. Already in 2016, at the time of the first implementation of the EU-Turkey statement, legal experts and human rights organisations, e.g. Amnesty International, argued that Turkey cannot be considered 'safe'. e.g. Amnesty International [2016], 'Turkey: No safe refuge: Asylum-seekers and refugees denied effective protection in Turkey'; Orçun Ulusoy [2016], 'Turkey as a Safe Third Country?', Border Criminologies Blog.

19 European Council [2016], 'EU-Turkey statement', Press Release. For context, see PRO ASYL [2016], 'Despite subsequent improvements: EU-Turkey deal violates fundamental human rights!'.

20 PRO ASYL, RSA [2017], 'Refugees trapped in a buffer zone one year since the EU-Turkey Statement, Policy note and chronology of events', p. 2; Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 12.

21 Steve Peers, Emanuela Roman [2016], 'The EU, Turkey and the Refugee Crisis: What could possibly go wrong?', EU Law Analysis; Cavidan Soykan [2021], 'Seeking Refuge in Turkey: How and Why? The Experiences of Turkey's Asylum Seekers', Osnabrück: IMIS, p. 4.



the EU-Turkey statement “assumes that since there is a law to guarantee the rights of migrants, asylum seekers, and refugees, Turkey should be regarded as a safe third country”.<sup>22</sup> As explained herein, a “well drafted law” alone does not effectively provide basic rights to ‘exilees’ in Turkey.<sup>23</sup>

As Greece shares a land border with Turkey and given Turkey’s close proximity to the Greek Aegean islands, such as Lesbos, Samos and Kos, most ‘people on the move’ leaving Turkey in order to try to enter the EU- or Schengen-area, attempt entering Greece.<sup>24</sup> For the same reasons, most ‘exilees’<sup>25</sup> entering Greece have travelled through Turkey first. Under Greece’s International Protection Act (IPA), which was first introduced in November 2019 and then replaced in June 2022,<sup>26</sup> an asylum application is deemed inadmissible, if the ‘safe third country’ concept applies.<sup>27</sup> The Greek Asylum Law further defines the criteria for the application of the ‘safe third country’ concept.<sup>28</sup> Even though the criteria are generally consistent with Article 38 of the EU’s APD, a serious divergence arises. With the 2019 IPA an additional set of criteria was introduced – and later adopted in the new Asylum Law – concerning the relation of an asylum seeker with the potential ‘safe third country’: Under Greek law, a mere transit state can be deemed ‘safe’ under specific circumstances, if the applicant is considered connected to this ‘third transit country’ in such a way that it appears reasonable for the applicant to move there.<sup>29</sup> These specific circumstances regarding this ‘connection’ that may be considered are:<sup>30</sup>

- a. the time an applicant stayed in the transit country;
- b. any contact or objective and subjective possibility of contact with the authorities, for access to work or granting right of residence;
- c. possible, prior to transit, residence such as long-term visits or studies;
- d. existence of any, even distant, kinship;
- e. existence of social or professional or cultural relations;
- f. existence of property;
- g. connection with a wider community;
- h. knowledge of the language concerned;
- i. geographical proximity of the country of origin.

On 22 July 2019, the Turkish Minister for Foreign Affairs, Mevlüt Çavuşoğlu, announced the suspension of readmissions from Greece.<sup>31</sup> Effectively however, the “return of irregular migrants from the Greek islands under the EU-Turkey Statement” halted in March 2020, and continues to be →

22 Orçun Ulusoy [2016], ‘Turkey as a Safe Third Country?’, Border Criminologies Blog.

23 Ibid.

24 For context, see, e.g. Valeria Hänsel [2019], ‘Gefangene des Deals – Die Erosion des europäischen Asylsystems auf der griechischen Hotspot-Insel Lesbos’, bordermonitoring.eu.

25 The term ‘exilee’ in this text is used to describe non-citizens both in Turkey and the EU in the context of forced migration. The notion was chosen for two reasons: First, it is not tied to a specific legal status and therefore includes undocumented non-citizens, asylum seekers and protection status holders alike. Second, the term stands outside the binary [legal] ‘refugee’ and [illegal] ‘migrant’. For context, see Rebecca Hamlin [2022], ‘‘Migrants’? ‘Refugees’? Terminology Is Contested, Powerful, and Evolving’, Migration Policy Institute.

26 Current Greek Asylum Law, Law No. 4939/2022, in Greek: Κύρωση Κώδικα Νομοθεσίας για την υποδοχή, τη διεθνή προστασία πολιτών τρίτων χωρών και ανιθαγενών και την προσωρινή προστασία σε περίπτωση μαζικής εισροής εκτοπισθέντων αλλοδαπών. Law No. 4939/2022 replaced the former International Protection Act [IPA] which was first introduced in November 2019, Law No. 4636/2019, in Greek: Περί Διεθνούς Προστασίας και άλλες διατάξεις.

27 AIDA’s website [last accessed 18 August 2023], ‘Greece: Admissibility Procedure’.

28 Article 91[1] of the Law No. 4939/2022 which is equivalent to Article 86[1] of the former Law No. 4636/2019; AIDA’s website [last accessed 18 August 2023], ‘Greece: Safe Third Country’.

29 Article 91[1][f] of the Law No. 4939/2022 which is equivalent to Article 86[1][f] of the former Law No. 4636/2019.

30 AIDA’s website [last accessed 18 August 2023], ‘Greece: Safe Third Country’.

31 Valeria Hänsel [2019], ‘Warum hält die EU still? Zur Aufkündigung des EU-Türkei Deals und den Massenabschiebungen aus der Türkei’, Rosa Luxemburg Stiftung. For a comprehensive description of different legal frameworks connected to readmission from Greece to Turkey, see Neva Övünç Öztürk, Cavidan Soykan [2019], ‘Third Anniversary of EU-Turkey Statement: A Legal Analysis’, Heinrich Böll Stiftung.



suspended as of the publication of this opinion.<sup>32</sup> In parallel, Greece started to establish what we now know as a systematic practice of violent pushbacks.<sup>33</sup>

On 7 June 2021, a Joint Ministerial Decision (JMD)<sup>34</sup> issued by Greece's Deputy Minister of Foreign Affairs and Minister of Migration and Asylum declared Turkey as 'safe' for citizens of Afghanistan, Bangladesh, Pakistan, Somalia and Syria who transited through Turkey.<sup>35</sup> As mentioned before, the applicability of the 'safe third country' concept often leads to an asylum claim being rejected on admissibility. Therefore, the implications of the JMD are that applications lodged by citizens of the named countries "can be rejected as 'inadmissible' without being examined on the merits".<sup>36</sup> The rejection of an asylum request as inadmissible means in practice that a person's claims are not examined and that no status determination procedure is conducted – as happened in Greece in thousands of cases in 2022 alone.<sup>37</sup> Back in 2021, after the JMD was issued, the Greek Council for Refugees and Refugee Support Aegean together "filed a judicial review before the Greek Council of State for the annulment of the JMD".<sup>38</sup> On 3 February 2023, the Greek Council of State presented the Court of Justice of the European Union (CJEU) with the question of whether Turkey can actually be considered a 'safe third country',<sup>39</sup> given that for the past three years no readmissions were taking place from Greece to Turkey.<sup>40</sup> In late May 2023 however, Frontex, the European Border and Coast Guard Agency, published a call for tenders: until 29 June 2023, Frontex expects to receive applications for "Passenger Transfer Services by Sea"<sup>41</sup> from Mytilini, Lesbos, Greece, to Dikili, Turkey.<sup>42</sup> This public call for a ferry connection between Greece and Turkey is an indication for plans to resume readmissions – however, specific information is so far not available.<sup>43</sup> At the time of writing, both the CJEU's decision and any announcements concerning the result of Frontex's call for tenders were still pending. In parallel, however, Frontex might "suspend its activities in Greece" →

32 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 7.

33 Legal Centre Lesbos [2020], 'Collective Expulsions Documented in the Aegean Sea: March – June 2020'; Legal Centre Lesbos [2021], 'Crimes Against Humanity In The Aegean'. Further illustrative of the widespread and systematic practice is Forensic Architecture's platform "Drift-Backs in the Aegean Sea", which launched on 15 July 2022 and documented 1,018 pushbacks in the Aegean Sea, involving 27,464 people, from 28 February 2020 to 28 February 2022. Alongside many reports from international organisations and NGOs, as well as media articles, in January 2023, the Greek National Commission for Human Rights (GNCHR) published its first interim report based on testimonies of pushback survivors. The Mechanism recorded 50 incidents of informal forced return, amounting to a minimum of 2,257 people affected. GNCHR [2023], Recording Mechanism of Incidents of Informal Forced Returns by the Greek National Commission for Human Rights, 'Recording mechanism of incidents of informal forced returns: interim report'.

34 Joint Ministerial Decision 42799/2021, Gov. Gazette 2425/B/7-6-2021.

35 AIDA's website [last accessed 18 August 2023], 'Greece: Safe Third Country'; joint press release with 41 signatures [2021], 'Greece deems Turkey "safe", but refugees are not: The substantive examination of asylum applications is the only safe solution for refugees'.

36 AIDA's website [last accessed 18 August 2023], 'Greece: Safe Third Country'.

37 ecre's website [2023], 'Greece: Inadmissibility Decisions Continue – Türkiye Increasingly Unsafe, Decrease of Asylum Seekers in Greece as Pushbacks Continue'; RSA [2023], 'The Greek asylum procedure in figures in 2022, Analysis of main trends in refugee protection'.

38 AIDA's website [last accessed 18 August 2023], 'Greece: Safe Third Country'.

39 Greek Council of State, ΣτΕ Ολομ. 177/2023.

40 PRO ASYL [2023], 'Auf beiden Seiten der Ägäis: EU-Türkei-Deal liegt in Trümmern'.

41 Full description: "The subject of the contract is provision of passenger transfer services by sea. There are two types of services required under this contract: 1. Passenger transfer services by sea for passengers from Mytilini [LOCODE GRMJT] to Dikili [LOCODE TRDIK], provided by individual ferry fully reserved for FRONTEX and including:– the catering services and,– medical services; 2. Vessel availability for trainings conducted on board at the port of Mytilini [LOCODE GRMJT]". Frontex [2023], Frontex/2023/OP/525/KM.

42 Frontex [2023], Frontex/2023/OP/525/KM; Luca Rondi [2023], 'Frontex mette a bando un servizio di traghetti per riportare i migranti in Turchia', Altreconomia.

43 Information provided by a researcher on asylum and migration in Ankara [remote], June 2023.

after they the devastating 'Pylos shipwreck'<sup>44,45</sup> The further development of Frontex's engagement in the region has yet to be communicated.

For more than seven years, the reform of the Common European Asylum System (CEAS) has been the subject of "divisive negotiations" in the European Council.<sup>46</sup> Back in September 2020, the European Commission presented their draft for a 'New Pact on Migration and Asylum'.<sup>47</sup> In early April 2023, the European Parliament approved the principles of the draft which includes an extended application of the 'safe third country' concept.<sup>48</sup> Subsequently on 8 June 2023, the Interior Ministers of the EU Member States decided on their "General Approach... on the Pact on Migration and Asylum to reform EU asylum law" further eroding the definition of a 'safe third country' by, for example, allowing for the connection of an individual to a 'safe third country' to be reduced to "pure transit".<sup>49</sup> On 11 June 2023, "Team Europe", composed of the EU Commission president as well as the Italian and Dutch prime ministers, announced that the EU is "working with Tunisia on a comprehensive package" – migration, of course, is among the "five pillars" of the potential agreement.<sup>50</sup> In total, the EU considers to provide Tunisia with more than 1 billion Euros.<sup>51</sup> Less than one month after this announcement, a national radio news broadcast in Switzerland reported on the escalating situation and – what a journalist focussing on the region called – "progromlike atmosphere" in the Tunesian city of Sfax, including the subsequent bus transfer of hundreds, if not thousands, of 'migrants' from the city to desert areas in the South of the country.<sup>52</sup> These events unfolded in the same week as the aforementioned agreement between the EU and Tunisia was expected to be signed, and followed a statement of the Tunisian president according to which 'migrants' would be a "threat to the country's identity".<sup>53</sup> In this context, Tunisia cannot be considered 'safe' for the return of non-citizens who crossed the Mediterranean, for example, to Italy.<sup>54</sup>

At the time of writing a detailed analysis of the detailed texts of the 'New Pact on Migration and Asylum's General Approach were not yet available,<sup>55</sup> and the legal drafts still needed to be finalised by means of a 'trilog' between the European Council, Parliament and Commission.<sup>56</sup> Nonetheless, based on the severe grievances and serious violations of fundamental rights described herein, it can be presumed that the present conclusion – that Turkey cannot be considered as 'safe' – will still be valid after the foreseen adjustment of the criteria.

Against this backdrop, the question of whether Turkey can rightfully be considered 'safe' is highly relevant in the context of European migration policy today, especially as the designation of Turkey as 'safe' is completely at odds with the lived experience of 'exilees' in the country, as well as – if taken seriously – the EU's ASD and international law. □

44 On 14 June 2023, a fishing boat carrying around 750 people capsized and sank "roughly 87 kilometers from the Greek coast [...]. Only 104 survivors were rescued; 82 bodies have been recovered so far and it is estimated that around 500 men, women and children remain missing". Niamh Keady-Tabbal, Amanda Danson Brown [2023], 'Not the Wind, Not the Sea: Cruelty Caused the Pylos Shipwreck', Rebel. Further, e.g. Matina Stevis-Gridneff, Karam Shoumali [2023], 'Everyone Knew the Migrant Ship Was Doomed. No One Helped', New York Times.

45 Philippe Jacqu , Julia Pascual, Marina Rafenberg [2023], 'Frontex threatens to suspend its activities in Greece', Le Monde.

46 ecre's website [2023], 'A possible agreement on the reform of CEAS at the Council in June: What is at stake?'

47 European Commission's website [2020], 'A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity'; PRO ASYL [2020], 'Grenzverfahren unter Haftbedingungen – die Zukunft des Europ ischen Asylsystems?'. For context, see ecre's website [2023], 'Editorial: European Pact on Migration and Asylum – Latest Developments'.

48 PRO ASYL [2023], 'Haftlager an den Au engrenzen und Abschiebungen in Drittstaaten: Ist das die Zukunft?'; PRO ASYL [2023], 'Gipfel der Abschottung und Entrechtung: Erste Analyse von PRO ASYL zum Fl chtlingsgipfel'.

49 Catherine Woollard [2023], 'Editorial: Migration Pact Agreement Point by Point', ecre; Kerem Schamberger, Valeria H nsel [2023], 'Einig im Abschotten', medico international.

50 European Commission [2023], 'Press statement by President von der Leyen with Italian Prime Minister Meloni, Dutch Prime Minister Rutte and Tunisian President Saied', Statement.

51 E.g. Lisa O'Carroll [2023], 'EU may give Tunisia more than  1bn in aid to help finances and stem migration', The Guardian.

52 SRF, Echo der Zeit [2023], interview with Mirco Keilberth, minute 00:47.

53 Ibid., minutes 03:20–04:25.

54 Ibid., minutes 05:07–05:18.

55 Catherine Woollard [2023], 'Editorial: Migration Pact Agreement Point by Point', ecre.

56 PRO ASYL [2023], 'Haftlager an den Au engrenzen und Abschiebungen in Drittstaaten: Ist das die Zukunft?'

## II. Legal framework for protection in Turkey

### 1. Introduction

While Turkey is a member state to both the 1951 Geneva Refugee Convention (Refugee Convention) and its 1967 Protocol,<sup>57</sup> Turkey – when acceding to the Protocol in 1968 – stipulated that it would maintain the Refugee Convention’s ‘geographical limitation’.<sup>58</sup> As a result, Turkey still applies the Refugee Convention exclusively to people who have become ‘refugees’<sup>59</sup> in connection with events which have occurred in Europe; for example, people fleeing from Ukraine due to the Russian invasion in 2022 are potentially eligible for protection under the Refugee Convention.<sup>60</sup> In effect, this legislation bars citizens of West Asian or African countries from receiving protection under the Refugee Convention. Therefore, Syrians and Afghans, for example, are excluded from full refugee status according to the Refugee Convention and can only apply for either temporary or international protection – or residency in general – as provided under Turkish law.<sup>61</sup> Especially relevant for persons seeking protection in Turkey are the 2013 Law on Foreigners and International Protection<sup>62</sup> (LFIP) and the 2014 Temporary Protection Regulation<sup>63</sup> (TPR).<sup>64</sup>

By maintaining the geographical limitation to the applicability of the Refugee Convention, the LFIP effectively renders “the vast majority of persons seeking international protection in Türkiye” unable to “apply for fully-fledged refugee status but for ‘conditional refugee’ status and subsidiary protection only”, which is why the European Commission labels the asylum legislation in Turkey as only “partially aligned with the EU acquis”.<sup>65</sup>

As detailed before, EU Member States may apply the ‘safe third country’ concept only if the third country concerned, inter alia, respects the principle of non-refoulement<sup>66</sup> as set out in the Refugee Convention; provides for the possibility to request ‘refugee status’; and offers protection in accordance with the Refugee Convention [see p. 7].<sup>67</sup> As detailed below, under these requirements alone, Turkey already fails to meet the conditions necessary to be considered a ‘safe third country’ as no protection equivalent to the protection under the Refugee Convention is offered to non-European<sup>68</sup> foreigners.<sup>69</sup> □

57 Convention and Protocol relating to the status of refugees.

58 List of States that have acceded to the 1967 Protocol relating to the Status of Refugee including their respective declarations and reservations.

59 The 1951 Geneva Refugee Convention defines ‘refugee’ as “any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country”. Article 1[A][2] of the Refugee Convention.

60 Information provided by an NGO in İstanbul, November 2022.

61 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 20.

62 Law on Foreigners and International Protection (LFIP), Law No. 6458, in Turkish: Yabancılar ve Uluslararası Koruma Kanunu. Regarding the history of the LFIP’s introduction to Turkish law, see Orçun Ulusoy [2016], ‘Turkey as a Safe Third Country?’, Border Criminologies Blog.

63 TPR, Temporary Protection Regulation, Regulation 2014/6883, in Turkish: Geçici Koruma Yönetmeliği.

64 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021. For details, see Neva Övünç Öztürk [2017], ‘Reflections of the past, expectations for the future: a legal analysis on the development of asylum law in Turkey’, pp. 197-203.

65 European Commission, ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, 12 October 2022, p. 55.

66 “In its broadest sense, the refoulement prohibition protects foreign nationals from being expelled to a country where they face some form of serious harm”. Stephanie A. Motz [2022], ‘Widening the Scope of Non-refoulement? The CRPD and the Protection of Persons with Disabilities in Displacement’, p. 2.

67 Article 38[1][c] and [e] of the EU’s APD.

68 For the present purpose the Government of Turkey considers Council of Europe Member States as ‘European countries of origin’. AIDA, ‘Country Report: Türkiye, Update 2021’, pp. 20, 141.

69 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 13.

## 2. Different types of protection or residence permits in Turkey

In the context of people seeking protection, Turkish legislation provides for different legal 'tracks' to obtain the right to stay in Turkey. While Europeans can apply for protection under the Refugee Convention, Turkey offers different forms of protection to non-European citizens through its domestic laws.<sup>70</sup> Examined below, these forms of protection are, firstly, Temporary Protection Status for Syrian citizens as provided by the TPR; secondly, Conditional Refugee Status and Subsidiary Protection Status as set out in the LFIP;<sup>71</sup> and thirdly, residence permits based on the general migration legislation, again, as set out in the LFIP – although these permits do not legally qualify as forms of protection.<sup>72</sup>

### a. Temporary Protection Status for Syrian citizens

In October 2014, the TPR<sup>73</sup> introduced the Temporary Protection Status (Turkish: Geçici Koruma Statüsü) into Turkish legislation. It is defined<sup>74</sup> as protection provided to foreigners who, firstly, have been forced to leave their country of origin, and who are unable to return to the country from which they left, and secondly, whose request for international protection cannot be individually assessed as their crossing into Turkey occurred during a time of increased arrivals when “individual processing is considered both impractical and unnecessary”.<sup>75</sup> Temporary Protection Status is therefore designed for situations of high numbers of foreigners in need of protection entering Turkey, and “is not defined as a form of international protection but a complementary measure”.<sup>76</sup> While the TPR provides for a general legal basis for the “temporary protection regime”, its application to a specific situation needs to be explicitly declared.<sup>77</sup> Temporary Protection Status in Turkey has thus far been declared in relation to the war in Syria, which is why temporary protection addressed herein focuses on Syrians.

Related to Syria, Provisional Article 1 of the TPR<sup>78</sup> states that Syrian citizens, stateless persons and refugees who have arrived in Turkey “en masse or individually” due to the events occurring in Syria since April 2011 fall under the temporary protection regime.<sup>79</sup> In practice, Turkey's regional migration authorities<sup>80</sup> [see p. 16] require that applicants have initially entered Turkey directly from Syria in order to receive Temporary Protection Status.<sup>81</sup> Furthermore, during the period →

70 For a detailed discussion of the genealogy of the Turkish laws on asylum and protection law, see Cavidan Soykan [2017], 'Access to International Protection - Border Issues in Turkey', pp. 69-75.

71 Information provided by a legal counsellor for asylum seekers in Istanbul, October 2021; Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', pp. 13-14.

72 Council of Europe [2021], 'Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021', Doc. No. SG/Inf[2021]35, §18.

73 The legal basis of the 2014 TPR is Article 91 of the LFIP; as a piece of secondary legislation, the TPR must be compliant and consistent with the general normative framework laid down by the LFIP itself. AIDA, 'Country Report: Türkiye, Update 2021', p. 153.

74 Article 3[f] of the TPR.

75 AIDA, 'Country Report: Türkiye, Update 2021', p. 154.

76 Ibid., p. 153.

77 Ibid., p. 154.

78 The issuance of TPS, instead of providing access to the international protection procedure, is set to be applied to a specific situation upon a respective decision taken by the president [Article 9[1] of the TPR]. In relation to the conflict in Syria, the temporary protection regime already in practice was formalised through the incorporation of provisional Articles into the TPR itself. AIDA, 'Country Report: Türkiye, Update 2021', p. 154.

79 Provisional Article 1 of the TPR.

80 Today the PPMs act as Turkey's regional migration authorities.

81 AIDA, 'Country Report: Türkiye, Update 2021', pp. 154-155.

of temporary protection, individual applications from Syrians for international protection are not evaluated.<sup>82</sup>

Importantly, Temporary Protection Status – including its benefits – is tied to the place of registration, meaning that status holders can only enjoy the status' benefits in their province of registration. Temporary Protection Status in theory entitles a person to access health care and education, to apply for a work permit six months after the application, and to seek social assistance. However, if a person moves to another city – e. g. İstanbul in order to find work – then this person loses all rights attached to Temporary Protection Status.<sup>83</sup> Based on Article 26 of the Refugee Convention, each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances. According to the TPR however, a person under temporary protection is – if not exceptionally permitted otherwise – obligated to stay in the registration province and is not allowed to move to another province.<sup>84</sup> Re-registering in another city is not possible, and at the same time, receiving an official permission for transfer is not impossible, but extremely rare.<sup>85</sup> If a person fails to stay in the province of registration and is apprehended elsewhere, that person may face detention in order to be transferred back to the assigned province<sup>86</sup> and may also face the risk of deportation due to their violation of the TPR.<sup>87</sup>

Taken the above mentioned together, the protection offered by the Temporary Protection Status is not equivalent to protection in accordance with the Refugee Convention.

## b. International protection

Non-Syrian and non-European citizens can apply for international protection and can either be granted Conditional Refugee Status (Turkish: Şartlı Mülteci Statüsü) or Subsidiary Protection Status (Turkish: İkincil Koruma Statüsü).<sup>88</sup>

Conditional Refugee Status is granted to people who match the criteria of a 'refugee' as set out in the Refugee Convention if in relation to events which occurred outside a European country.<sup>89</sup> Again however, the protection offered is not equivalent to protection in accordance with the Refugee Convention: Namely, people with Conditional Refugee Status cannot access the social rights guaranteed in the Refugee Convention.<sup>90</sup> In addition, Conditional Refugee Status limits the per- →

82 Provisional Article 1 of the TPR; information provided by a lawyer in İstanbul, November 2021. In connection with the overriding application of the temporary protection procedure, Neva Övünç Öztürk in 2017 held, that despite "the fact that [temporary protection] provides a pragmatic solution for basic protection needs for mass-influx situations ... protracted application of [temporary protection] might bear the risk of creating a trap for persons in need of international protection where access to the regular asylum procedure and therefore to durable solutions other than repatriation could be deemed not possible". Neva Övünç Öztürk [2017], 'Reflections of the past, expectations for the future: a legal analysis on the development of asylum law in Turkey', p. 201.

83 Information provided by a migration scholar [remote], September 2021; by a stakeholder and by a Syrian journalist in İstanbul, October 2021; AIDA, 'Country Report: Türkiye, Update 2021', pp. 91-92.

84 Article 33[2][a] of the TPR.

85 Information provided by a migration scholar [remote], September 2021; an NGO in İstanbul [remote], April 2023.

86 AIDA, 'Country Report: Türkiye, Update 2021', p. 102.

87 Human Rights Watch [2018], 'Turkey Stops Registering Syrian Asylum Seekers'.

88 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021.

89 Based on Article 62 of the LFIP, a conditional refugee is a foreigner who, owing to events occurring outside European countries and having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of origin and who is unable or, owing to such fear, unwilling to avail themselves of the protection of this country, or a stateless person who, as a result of such events, is outside their country of former habitual residence and is unable or, owing to such fear, unwilling to return to it, is granted conditional refugee status after the status determination procedures. Conditional refugees are allowed to stay in Turkey until they are resettled in a third country.

90 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021.

mission to stay in Turkey “until the moment a recognised conditional refugee is resettled to a third country”.<sup>91</sup>

Subsidiary Protection Status is available for people who do not meet the criteria of a ‘refugee’ as set out in the Refugee Convention but would face the death penalty in their country of origin or usual residence; be subjected to torture, inhuman or degrading punishment there; or be deported to a situation of general violence.<sup>92</sup>

Regarding the implementation of these statuses, asylum lawyers in Turkey highlighted two aspects: Firstly, the huge backlog<sup>93</sup> is leading to lengthy procedures with applicants waiting several years to receive a first instance decision,<sup>94</sup> and secondly, the overall acceptance rate of applications for Conditional Refugee Status is relatively low.<sup>95</sup> This is also reflected in the numbers published by the European Commission, according to which Turkey granted international protection [full Refugee Status under the Refugee Convention, Conditional Refugee Status or Subsidiary Protection Status] to 13,227 applicants in 2021, while 11,908 requests – close to 50 % – were rejected,<sup>96</sup> despite the fact that in 2021, 75 % of the applicants were of Afghan origin,<sup>97</sup> and another 17 % were citizens of Iraq.<sup>98</sup> In practice, this leads to a situation where most citizens of West Asian or African countries do not apply for international protection in Turkey because they are afraid of deportation<sup>99</sup> or because they want to further move on to another country, e. g. Greece, as they are aware of the small chances of success and the lack of perspective if they were to try to legally stay in Turkey.<sup>100</sup>

Conditional Refugee Status, Subsidiary Protection and the status of an international protection applicant – including the related benefits – are again tied to the place of registration.<sup>101</sup> In accordance with the previous observations related to the Temporary Protection Status, the protection offered by the LFIP is not equivalent to protection under the Refugee Convention. →

91 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 55.

92 Based on Article 63 of the LFIP, Subsidiary Protection Status is granted to a person who does not qualify as a refugee or a conditional refugee, but is returned to their country of origin or country of residence if they will [a] be sentenced to death or the death penalty will be executed, [b] be subjected to torture, inhuman or degrading punishment or treatment, [c] face a serious threat due to indiscriminate acts of violence in situations of international or national armed conflict.

93 According to Human Rights Watch, Turkish migration authorities were only able to reduce the number of pending cases from 322,188 at the end of 2020 to 304,970 at the end of 2021. Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 60.

94 Information provided by a lawyer in İstanbul, September 2021; an NGO in İstanbul [remote], April 2023; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 49.

95 Information provided by a lawyer in İstanbul, September 2021; information provided by a lawyer in Ankara, October 2021.

96 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 19; Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 60.

97 According to Human Rights Watch, the protection needs of Afghan applicants are not duly considered when applying for protection in Turkey despite the Taliban regaining power. Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 60, 62-69.

98 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 9.

99 Information provided by a lawyer in İstanbul, September 2021; information provided by a lawyer in Ankara, October 2021; information provided by an NGO in İstanbul, October 2021.

100 Information provided by a researcher on asylum and migration in İzmir [remote], May 2023.

101 Information provided by an NGO in İstanbul, September 2021.

### c. Residence permits

The LFIP provides for several different types of residence permits: Short Term Residence Permit; Family Residence Permit; Student Residence Permit; Long Term Residence Permit; Humanitarian Residence Permit; Residence Permit For Victims of Human Trafficking.<sup>102</sup> Applying for<sup>103</sup> and obtaining a residence permit in Turkey may grant asylum seekers the legal right to stay in the country, and therefore, in practice, provide some kind of safety, as the residence permits legalise a person's stay in Turkey.<sup>104</sup> As residence permits are based on a legal framework completely separate from the 'asylum track', the issuance of such permits cannot legally be considered a form of protection from persecution from which an 'exilee' has fled, and therefore cannot be considered an equivalent to protection under the Refugee Convention. In addition, residence permits do not offer access to the social rights laid out in the Refugee Convention and are subject to a regular renewal process.

Generally, to obtain and then extend a residence permit in Turkey, the person has to, first of all, enter the country with the necessary authorisation.<sup>105</sup> This requirement already excludes most people on the move from applying for residency in Turkey as they are usually forced to cross borders unauthorised; this requirement also tends to exclude Syrian citizens as Turkey has not allowed them visa-free entry since 2016.<sup>106</sup> Secondly, applicants need to be in possession of a valid passport to apply for and then extend the residency permit. If the applicant's passport expires, and they are not able "to have it extended, they are no longer eligible for an extension of their residence permit".<sup>107</sup> However, the passport renewal – if even possible at an embassy or consulate in Turkey – is usually expensive. For example, a Syrian passport issued in Turkey is now valid for 2.5 years, and its extension costs 500-800 U.S. Dollars.<sup>108</sup> Finally, for a residence permit, a foreigner needs to have access to the necessary funds to cover all related expenses, as well as living costs, as "health care and other benefits are not accessible free of charge".<sup>109</sup> Adding to these obstacles, a work permit has to be requested through the foreigner's employer,<sup>110</sup> and it is attached to that specific job. If a person wants to change their job, a new work permit needs to be obtained through the new employer.<sup>111</sup>

That the requirements to obtain a residence permit in Turkey are most often onerous in the context of forced migration becomes evident by looking at the numbers: Based on official data, the European Commission stated that in May 2022, Turkey hosted 3,737,369 Syrians with Temporary Protection Status,<sup>112</sup> while at the same time only some 108,000 Syrians were residing in the →

<sup>102</sup> Short Term Residence Permit [Articles 31-33 of LFIP, and Articles 28 and 29 of the Regulation No 29656 on the Implementation of the LFIP ['Implementation Regulation']], a Family Residence Permit [Articles 34-37 of the LFIP, and Articles 30-34 of the Implementation Regulation], a Student Residence Permit [Articles 38-41 of the LFIP, and Articles 35-39 of the Implementation Regulation], a Long Term Residence Permit [Articles 42-45 of the LFIP, and Articles 40-43 of the Implementation Regulation], a Humanitarian Residence Permit [Articles 46 and 47 of the LFIP, and, Article 44 of the Implementation Regulation], and a Residence Permit for Victims of Human Trafficking [Articles 48 and 49 of the LFIP, and Articles 45 and 46 of the Implementation Regulation]. However, not all of these types of residence permits are of practical relevance in the context discussed here.

<sup>103</sup> According to Article 21[9][ç] of the Regulation on the Implementation of the Law on Foreigners and International Protection, those who apply for a residence permit are given a 'residence permit application certificate' and the applicant can legally reside in Turkey until the application is finalised. Regulation on the Implementation of the Law on Foreigners and International Protection, Regulation No 29656, in Turkish: Yabancılar Ve Uluslararası Koruma Kanununun Uygulanmasına İlişkin Yönetmelik.

<sup>104</sup> Information provided by an NGO in İstanbul [remote], April 2023.

<sup>105</sup> Article 21[2] of the Implementation Regulation to the LFIP; information provided by a Syrian journalist in İstanbul, October 2021; AIDA, 'Country Report: Türkiye, Update 2021', p. 155.

<sup>106</sup> AIDA, 'Country Report: Türkiye, Update 2021', p. 155.

<sup>107</sup> Ibid.

<sup>108</sup> Information provided by a Syrian journalist [remote], May 2023.

<sup>109</sup> AIDA, 'Country Report: Türkiye, Update 2021', p. 155.

<sup>110</sup> Information provided by a stakeholder and by a Syrian journalist in İstanbul, October 2021.

<sup>111</sup> Information provided by a researcher on asylum and migration in İzmir [remote], May 2023.

<sup>112</sup> By 8 June 2023, the total number of Syrians with Temporary Protection Status in Turkey had dropped to 3,358,813. Statistics as published by the PMM, the number indicated herein, are based on an update published on 8 June 2023.



country with legal residency.<sup>113</sup> By 19 April 2023, the number of residence permit holders from Syria had dropped to 94,943. At the same time, 50,561 Afghans lived in Turkey with a residence permit,<sup>114</sup> while an estimated 300,000 Afghan citizens reside in Turkey.<sup>115</sup>

Related to non-Syrian 'exilees', there is one type of resident permit which reportedly has gained practical relevance in application of the Turkish migration legislation: the Humanitarian Residence Permit.<sup>116</sup> A Humanitarian Residence Permit<sup>117</sup> is similar to a Short-Term Residence Permit, but, in contrast to the latter, the Humanitarian Residence Permit is also available to people who do not possess a valid biometric passport and who entered Turkey irregularly. However, the Humanitarian Residence Permit is still only accessible for people with the necessary financial means. While the Humanitarian Residence Permit is designed as an "exceptional"<sup>118</sup> permit,<sup>119</sup> lawyers have nevertheless reported an increased issuance of Humanitarian Residence Permits. This increase may be driven in part by the closure of several cities for registration of requests for international protection. When staff members at the regional migration authorities [see hereafter] refuse to accept a protection application, they might suggest that the applicant apply for a Humanitarian Residence Permit instead.<sup>120</sup>

In general, resident permits are always issued for a set time period and need to be renewed regularly. Therefore, residence permit holders face the ongoing risk of arbitrary refusal of renewal,<sup>121</sup> and increasingly so since 2022.<sup>122</sup> In this regard, lawyers have also reported numerous cases of clients where the renewal of the permit, e.g. the Humanitarian Residence Permit, was denied without reason – more often than not without a formal, written decision.<sup>123</sup> In sum, regular residence permits, which are completely separate from the 'asylum track', do not offer equivalent protection in accordance with the Refugee Convention, which also entails social rights not afforded by residence permit. □

### 3. Application procedure for protection in Turkey

#### a. Temporary Protection Status for Syrian citizens

Before the Directorate-General for Migration Management (DGMM, Turkish: Göç İdaresi Genel Müdürlüğü) – today, the Presidency of Migration Management (PMM, Turkish: İl Göç İdaresi Müdürlüğü)<sup>124</sup> – was established, local police stations were responsible for registering Syrians seeking protection in Turkey. While initially a verbal statement of a person's identity, including nationality, sufficed to complete the registration, the former DGMM later requested supporting documents verifying the identity of the applicant.<sup>125</sup> As stated before, the temporary protection regime is designed for situations of 'generalised need' for protection where an individual risk assessment would be "impractical and unnecessary".<sup>126</sup> Therefore, temporary protection "is meant to categorically apply to" every member of a defined group of people.<sup>127</sup> In the case of Syrians, this meant →

113 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD [2022] 333 final, p. 19.

114 Statistics as published by the PMM, most recent numbers, see PMM's website [last accessed 18 August 2023], statistics regarding residence permits, the number indicated herein are based on an update published on 19 April 2023.

115 Information provided by an NGO in İstanbul, October 2021. For detailed information on the situation of Afghans specifically, see PRO ASYL [2021], 'The Situation of Afghan Refugees in Turkey', Expert Opinion.

116 Information provided by an NGO in İstanbul [remote], April 2023; by a stakeholder and by a Syrian journalist in İstanbul, October 2021.

117 Such a permit is granted under the circumstances enumerated in Article 46 of the LFIP; Nuray Ekşi [2018], 'Mahkeme Kararları Işığında İnsani İkamet İzni', pp. 243-283.

118 Nuray Ekşi [2018], 'Mahkeme Kararları Işığında İnsani İkamet İzni', p. 245.

119 Information provided by a Syrian journalist in İstanbul, October 2021.

120 Information provided by an NGO in İstanbul [remote], April 2023.

121 Ibid.

122 Information provided by an NGO in İzmir, February 2023.

123 Information provided by an NGO in İstanbul [remote], April 2023.

124 AIDA, 'Country Report: Türkiye, Update 2021', p. 20; European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 52.

125 Information provided by an NGO in İstanbul [remote], April 2023.

126 AIDA, 'Country Report: Türkiye, Update 2021', p. 154.

127 Ibid.

that no further eligibility assessment was conducted apart from evaluating if the following criteria were met:<sup>128</sup> The applicant needed to be a Syrian citizen, a stateless person or a refugee who had come after 28 April 2011 directly from Syria to Turkey.<sup>129</sup> However, with time, more and more restrictions were implemented, increasingly limiting Syrians' access to Temporary Protection Status.<sup>130</sup>

Applications for temporary protection have to be lodged with one of the Provincial Presidencies of Migration Management (PPMM, Turkish: İl göç idaresi müdürlüğü) offices,<sup>131</sup> formerly called Provincial Directorate of Migration Management (PDMM, Turkish: İl göç idaresi müdürlüğü).<sup>132</sup> The years 2017 and 2018 reportedly marked a turning point for Syrians seeking refuge in Turkey. First, depending on their 'capacity', PPMMs started to 'close', refusing to accept applications for temporary protection. At the same time, there was – and is – no public list of PPMMs 'open' for registration where applications would be accepted.<sup>133</sup> In addition, most often asylum seekers would not be officially referred to an 'open' province when denied registration at a PPMM.<sup>134</sup> This insufficient access to registration, and therefore to protection, is discussed in detail in the following section (see p. 26).

Adding to these obstacles, additional elements were added to the eligibility process, progressively excluding applicants from actually receiving protection. While the former PDMMs used to accept identity documents that were provided through authorities in rebel-held areas, the practice shifted towards only accepting documentation issued by the Assad regime. This new approach either forces applicants without the necessary papers to have them issued through the consulate in Turkey – which requires them to pay disproportionate fees – or excludes them from Temporary Protection Status altogether.<sup>135</sup> Furthermore, in February 2022, the Turkish Ministry of Interior declared "that newly arriving Syrians who have not been registered will not automatically receive temporary protection status" anymore.<sup>136</sup> Rather, they would be "subjected to an assessment on whether they need temporary protection".<sup>137</sup> While there are no publicly available guidelines on the criteria of this eligibility assessment, lawyers have reported that the procedure now includes an evaluation of risk upon potential return to Syria.<sup>138</sup> Concurring, the European Commission stated that the new restrictions aimed at limiting "migratory movements from Syria for economic motives", even though, according to the TPR, "fleeing for economic reasons is not a valid reason for rejecting temporary protection applications".<sup>139</sup>

Furthermore, as of June 2022, applications for Temporary Protection Status could only be lodged in one of the so-called Temporary Accommodation Centres (Turkish: Geçici Barınma Merkezi) which are located along the Turkish-Syrian border.<sup>140</sup> These centres are located in Adana, Hatay, Karamanmaraş, Kilis and Osmaniye,<sup>141</sup> and were reportedly designed in such a way that bad conditions would incentivise Syrian citizens to voluntarily return to their country of origin.<sup>142</sup> Lawyers have described these centres as "legal black holes" because, for example, there was hardly any information available to them about the conditions inside, and the duration of the de-facto confinement was not legally delimited.<sup>143</sup> Furthermore, there were regular reports of large groups of Syrians being deported to Syria from these Temporary Accommodation Centres (see p. 48).<sup>144</sup> Prior to the 6 February 2023 earthquake which devastated the region, only one or two of them were still →

128 Information provided by an NGO in İstanbul [remote], April 2023.

129 AIDA, 'Country Report: Türkiye, Update 2021', pp. 154-155.

130 Information provided by an NGO in İstanbul [remote], April 2023.

131 AIDA, 'Country Report: Türkiye, Update 2021', p. 162.

132 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

133 Information provided by a lawyer in İzmir, February 2023.

134 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 56.

135 Information provided by an NGO in İstanbul [remote], April 2023.

136 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 55.

137 Ibid. The reported intention of the assessment is to "limit migratory movements from Syria for economic motives", although according to the TPR, fleeing for economic reasons is not a valid reason for revoking TPS or for rejecting a respective application.

138 Information provided by an NGO in İstanbul [remote], April 2023.

139 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 55.

140 Information provided by an NGO in İzmir, February 2023.

141 Information provided by a lawyer in İzmir [remote], May 2023.

142 Information provided by a researcher in London [remote], May 2023.

143 Valeria Hänsel [2023], 'Europas Türisteher und die Taliban', medico international.

144 Ibid.

open.<sup>145</sup> After the earthquake, however, the Temporary Accommodation Centres were reopened, but the remaining Syrians were removed to make space to shelter Turkish citizens who survived the disaster.<sup>146</sup> It has proven to be extremely difficult to follow up on the situation of 'exilees' in the wider area affected by the earthquake; nevertheless, lawyers and other actors consulted alike expressed deep concerns about the discriminatory treatment non-citizens are facing.<sup>147</sup>

In summary, the ability of Syrians to apply for and receive Temporary Protection Status in Turkey is continuously lessening. In 2021, it was described as "extremely difficult" for Syrians to obtain Temporary Protection Status in Turkey.<sup>148</sup> Now, in 2023, lawyers have explicitly stated that currently there is no effective pathway to registering for and obtaining Temporary Protection Status in Turkey.<sup>149</sup> This inaccessibility is connected to the intensifying anti-immigrant rhetoric in Turkish politics<sup>150</sup> [see p. 36] and may be further supported and legitimised by a deeply rooted belief that people are now fleeing from Syria not because they need protection, but because of economic reasons.<sup>151</sup>

As stated above, Temporary Protection Status provided to Syrians in Turkey does not correspond with protection under the Refugee Convention – but even if it would be considered as offering equal protection in theory, access to Temporary Protection Status has, in practice, become so difficult today that it cannot be considered a meaningful legal avenue for protection anymore [see p. 26]. Therefore, there is no real possibility for Syrians to request and receive protection in accordance with the Refugee Convention as required by Article 38(1)(e) of the EU's APD for the application of the 'safe third country' concept.

## b. International protection

Until September 2018,<sup>152</sup> UNHCR was involved in both the registration and assessment of applications for international protection in Turkey.<sup>153</sup> Before UNHCR's withdrawal from the process, the procedure to apply for international protection was divided into two stages: the initial pre-registration with UNHCR which assigned applicants to 'satellite cities',<sup>154</sup> followed by the subsequent registration in the respective city/province and the assessment of the claim.<sup>155</sup> This status determination procedure was conducted by the former DGMM, while UNHCR "assist[ed] in the registration and interviews of international protection applicants" and remained "a 'complementary' protection actor as it continue[d] to undertake refugee status determination [RSD] activities of their own"<sup>156</sup> as they were relevant for UNHCR's "resettlement referrals".<sup>157</sup> While the Turkish authorities were not bound by UNHCR's status determinations, DGMMs often implemented UNHCR's decisions.<sup>158</sup> In the last couple of years, however, PPMs have started re-evaluating UNHCR's →

145 Information provided by a researcher in London [remote], May 2023.

146 Information provided by a lawyer in İzmir [remote], May 2023; Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 10.

147 Information provided by an NGO in İstanbul [remote], April 2023; by a journalist and researcher in İstanbul [remote], April 2023; by a researcher in London [remote], May 2023.

148 Information provided by a migration scholar [remote], September 2021.

149 Information provided by a lawyer in İzmir [remote], May 2023; by an NGO in İstanbul [remote], May 2023.

150 Information provided by a migration scholar [remote]; by stakeholders in İstanbul, September 2021; by an NGO in İstanbul, October 2021.

151 Information provided by a researcher in London [remote], May 2023.

152 For the development of UNHCR's role in the Turkish 'protection system', see Cavidan Soykan [2017], 'Access to International Protection - Border Issues in Turkey', pp. 70-72.

153 AIDA, 'Country Report: Türkiye, Update 2021', p. 25; Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 14; UNHCR-leaflet [2018], 'UNHCR will end registration process in Türkiye on 10 September 2018'.

154 For a general introduction to the 'satellite city' system, see AIDA, 'Country Report: Türkiye, Update 2021', p. 89.

155 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021.

156 AIDA, 'Country Report: Turkey, Update 2017', p. 18.

157 Ibid.

158 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021.

status determination decisions by in some cases, inter alia, re-interviewing protection status holders and subsequently revoking the status previously afforded.<sup>159</sup>

Now, the PMM – the former DGMM – “is the main institution responsible for all [protection]-related procedures”.<sup>160</sup> The status determination process is conducted by the PPMMs – the former PDMMs – and “harmonised by the International Protection Bureaus [Decision Centres] in Ankara and Istanbul”.<sup>161</sup> In short, in order to lodge a request for international protection today, applicants first need to personally<sup>162</sup> approach one of the PDMMs which then will assign the applicant<sup>163</sup> to a ‘satellite city’. To complete the registration, the applicant must report to the ‘satellite city’ within 15 days.<sup>164</sup>

In theory, such applications for international protection are received in all 81 provinces in Turkey, although permanent stay is not allowed in all parts of the country.<sup>165</sup> If an applicant lodges their request in “one of the provinces where residence is not allowed”, they will be – similar to the two-stage procedure in the past – “referred to a province where longer-term residence is regulated”.<sup>166</sup> In practice however, since the responsibility lies with the PMM, applicants face major difficulties in registering their applications.<sup>167</sup> In this regard, individuals interviewed for this expert opinion unanimously stated that registering with the PPMMs is actually one of the most relevant obstacles foreigners face when seeking protection in Turkey [see p. 26].

Following an amendment to the LFIP in October 2018, PPMMs will no longer issue documents to show that a registration process has been initiated.<sup>168</sup> Only when a request for international protection is fully registered at the appointed province will the applicant receive an International Protection Applicant Identification Card (colloquially ‘kimlik’ – a generic word for ID in Turkish).<sup>169</sup> Therefore, when asylum seekers are required to travel from the PPMM of initial registration “to the assigned province without being provided documentation to attest their intention to seek international protection”, they face the risk of being “apprehended during police controls [and] transferred to a Removal Centre”.<sup>170</sup> Furthermore, international protection applicants are required to remain within the province allocated to them and, in addition, to personally prove their presence by signature.<sup>171</sup> If an applicant fails to fulfil the latter three times in a row, their application will be withdrawn [see p. 24 & p. 54].<sup>172</sup> At the same time, obtaining “permission to travel outside the designated province has become more difficult”, and “routine unannounced checks in the registered addresses of beneficiaries have also increased”.<sup>173</sup>

If the registration is completed, international protection applicants must wait for their eligibility interview. According to the law, this interview is supposed to be held within 30 days after registration,<sup>174</sup> and the decision is meant to be issued within six months<sup>175</sup> after the registration.<sup>176</sup> →

159 Information provided by an NGO in İstanbul [remote], April 2023.

160 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 55.

161 European Commission [2021], ‘Turkey 2021 Report’, Doc. No. SWD[2021] 290 final/2, p. 49.

162 Article 65 of the LFIP; information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

163 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 90.

164 Flow chart as illustrated by AIDA, ‘Country Report: Türkiye, Update 2021’, p. 23.

165 Information provided by a lawyer of the Bar Association in İstanbul [remote], November 2021; by lawyer in İzmir, February 2023.

166 UNHCR-leaflet [2018], ‘UNHCR will end registration process in Türkiye on 10 September 2018’.

167 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 43.

168 AIDA, ‘Country Report: Turkey, Update 2018’, p. 14.

169 Article 76 of the LFIP.

170 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 45.

171 Article 71[1] of the LFIP; the time interval for the ‘reporting duty’ differs from city to city: it might be once or twice a week, or every two weeks.

172 Article 77[ç] of the LFIP; information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

173 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 174.

174 Article 75[1] of the LFIP.

175 Article 78[1] of the LFIP.

176 These time indications apply to the ‘regular procedure’. For the purpose of this opinion, there is no need to differentiate between the ‘regular’ and the ‘accelerated procedure’. For an overview, see flow chart as illustrated by AIDA, ‘Country Report: Türkiye, Update 2021’, p. 23.

However, applicants often wait for several years for their applications to be processed.<sup>177</sup> In the past, UNHCR conducted the eligibility interview.<sup>178</sup> Now, however, the “competent PDMM is required to carry out a personal interview”.<sup>179</sup> One lawyer explicitly flagged that the quality of these interviews is poor: Often the interview is short and does not follow a standardised questionnaire, and sometimes there is not even an official transcript of the interview on record. Relatedly, that lawyer also noted that clients have reported to their lawyers that they were not able to present their claims; that notes taken during the interviews are usually not re-translated, and therefore can neither be confirmed nor corrected by the applicant; that clients often mention problems with translation in general as interpreters not necessarily are professionally trained;<sup>180</sup> and that applicants mostly are not aware of their right to be accompanied during their interview,<sup>181</sup> and therefore attend without any support.<sup>182</sup>

As stated before, the acceptance rate for international protection is considered to be low by lawyers working in the field.<sup>183</sup> There are no comprehensive official statistics publically available “on cases of international protection status granted per year and by province”,<sup>184</sup> on the number of rejections and on appeal rates.<sup>185</sup> The Special Representative on Migration and Refugees has criticised this “lack of accessible and comprehensive official data” as insufficient transparency.<sup>186</sup> In effect, applicants without material evidence to support their claims reportedly have very little chance to be granted Conditional Refugee Status.<sup>187</sup> While “decisions on refugee status determination are subject to administrative and judicial appeal procedures”, lawyers have expressed several concerns regarding the appeal process:<sup>188</sup> Firstly, only a “lucky minority”<sup>189</sup> has access to legal aid and representation.<sup>190</sup> Secondly, the quality of the decisions is, again, often rather poor due to the lack of specialised sections and experienced judges, as these positions at the administrative court are usually held by junior judges who have relatively short tenures in these courts – and thus lack time to gain the requisite experience – before being promoted to other positions.<sup>191</sup> Thirdly, the rise of anti-immigrant sentiments in Turkey is also reflected in ever-increasingly restrictive case law [see p. 36].<sup>192</sup> →

177 Information provided by a lawyer in İstanbul, September 2021; by a legal counsellor for asylum seekers in İstanbul, October 2021.

178 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021; by a lawyer of the Bar Association in İstanbul [remote], November 2021.

179 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 51.

180 Information provided by a researcher on asylum and migration in İzmir [remote], May 2023.

181 The applicant may be accompanied by: [a] a family member; [b] a lawyer; [c] an interpreter; [d] a psychologist, pedagogue, child expert or social worker; and [e] the legal representative where the applicant is a child. AIDA, ‘Country Report: Türkiye, Update 2021’, p. 51.

182 Information provided by a lawyer of the Bar Association in İstanbul [remote], November 2021; by a lawyer in İzmir, February 2023; Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §29.

183 Information provided by a lawyer in İstanbul, September 2021; by a lawyer in Ankara, October 2021; by a lawyer of the Bar Association in İstanbul [remote], November 2021; by a lawyer in İzmir, February 2023.

184 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §14.

185 Information provided by a lawyer in İzmir, February 2023; by a researcher on asylum and migration in İzmir [remote], May 2023.

186 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §14.

187 Information provided by a legal counsellor for asylum seekers in İstanbul, October 2021.

188 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 55.

189 Information provided by a lawyer in İzmir, February 2023.

190 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 55.

191 Information provided by a lawyer in Kırklareli/Edirne in September 2021; by a lawyer in İzmir, February 2023; European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 55; Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §25.

192 Information provided by a lawyer in İzmir, February 2023.

Nevertheless, for the previous three or four years, the main obstacle to receiving protection in Turkey has remained the inaccessibility of the status determination procedure due to blocked means of registration.<sup>193</sup> Illustrative of this, in October 2021 – and thus after the Taliban usurped control in Afghanistan – one lawyer explicitly stated that “for Afghans the asylum procedure is not accessible”.<sup>194</sup> Similar to the related conclusion regarding temporary protection, there is no possibility for non-European foreigners in Turkey to effectively request and receive international protection corresponding with the Refugee Convention. Again, the condition stipulated in Article 38(1)(e) of the EU’s APD – which is part of the definition of a ‘safe third country’ – is not met in practice.

### c. Insufficient consideration of specific protection or reception needs

There is a broad consensus that asylum seekers form a particularly ‘vulnerable’<sup>195</sup> group in need of special protection and that states have a positive obligation to provide material support and accommodation to asylum seekers.<sup>196</sup> Obligations under Article 3 of the European Convention on Human Rights [ECHR] might even prevent a state party to the convention from returning an individual to a country, if the material condition were to be found inhuman and degrading in the receiving country [see p. 30].<sup>197</sup>

According to both the LFIP and the TPR, a “person with special needs” is defined as an applicant or status holder who is an unaccompanied minor; a person with a disability; an elderly person; a pregnant woman; a single parent; or a person who has been subjected to torture, sexual assault or other serious psychological, physical or sexual violence.<sup>198</sup> Note has to be taken that “the LFIP as the fundamental legislation” of Turkey’s migration law, as well as the TPR, provides “no special arrangement for refugee women”.<sup>199</sup>

The LFIP further provides that people who are recognised as having “special needs” ought “to be given priority”, while it is not further specified in the law what constitutes priority consideration, if it applies during registration only or if it equally includes the status determination procedure.<sup>200</sup> Relatedly, an asylum law monitoring organisation stated that the law, apart from the regulations designed to protect unaccompanied minors,<sup>201</sup> “falls short of providing comprehensive additional procedural safeguards to vulnerable categories of international protection applicants”.<sup>202</sup> The TPR, however, explicitly “entitles beneficiaries to additional safeguards and prioritised access to rights and services”.<sup>203</sup>

Whether an applicant with specific protection or reception needs is actually given “priority” as set out in the law heavily depends, in practice, on the goodwill of the individual PPMM official receiving the registration.<sup>204</sup> Concurring, the Special Representative on Migration and Refugees of the Secretary General of the Council of Europe found that “the registration system [in Turkey] does not appear to contain any safeguards to ensure that vulnerable groups are identified and dealt with on a priority basis”, but that related screenings are instead characterised by “[r]ights organisations and legal counsellors” as “random and inconsistent”.<sup>205</sup>

Once an unaccompanied minor is identified, they will be placed under state care, accommodated in a facility under the auspices of the Ministry of Family and Social Services, and “must be →

193 Information provided by an NGO and a lawyer in İzmir, February 2023.

194 Information provided by a lawyer in Van [remote], October 2021.

195 For a critical examination of the concept of ‘vulnerability’, see Johanna Elle, Sabine Hess [2020], ‘Asyl und Geschlecht: Dynamiken und Fallstricke des Vulnerabilitätsparadigmas’.

196 ECtHR, *M.S.S. v. Belgium and Greece*.

197 Ibid., §§249–264; ECtHR, *Tarakhel v. Switzerland*, §§116–122.

198 Article 3(1) of the LFIP and Article 3(1) of the TPR.

199 Cavidan Soykan, Kristen Biehl, Ceki Hazan [2021], ‘Women Refugees and Gender Equality Mapping and Monitoring Study Extended Summary’, Ceid Publications, p. 36.

200 Article 67(1) of the LFIP.

201 Article 66 of the LFIP which refers to Turkey’s Child Protection Law [Law No 4395].

202 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 70.

203 Article 48 of the TPR; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 198.

204 Information provided by an NGO in İstanbul [remote], April 2023.

205 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35 §31.



assigned a guardian”.<sup>206</sup> During their time under state custody, unaccompanied minors have the right to access education. Their protection status, however, will not be determined conclusively until they are adults which is why unaccompanied minors have to re-register their applications after they turn 18.<sup>207</sup> Again, whether the minor receives support by their social worker to prepare the application heavily depends on the goodwill of the individual caretaker. Unfortunately, “ex-minors” regularly face being evicted from their accommodation and left with no support apart from some financial benefits provided by UNHCR.<sup>208</sup> While there are no official statistics on the number of unaccompanied minors, the aforementioned Special Representative on Migration and Refugees reported in November 2019 that there are an estimated 600 unaccompanied minors in Turkey – a number which is “surprisingly low” and in practice is probably “much higher, as many of them are under the responsibility of a wide range of relatives, hiding with the aim of continuing their journeys, unregistered (including many young Afghans) or trafficked”.<sup>209</sup> A further obstacle in accessing protection afforded to recognized unaccompanied minors is the risk of being re-aged and wrongfully registered as an adult [see p. 28].

According to the LFIP, survivors of torture, sexual assault or other serious psychological, physical or sexual violence shall be provided with adequate treatment to remedy the damage caused by such acts.<sup>210</sup> As for access to all rights and services, such adequate treatment is only available to those registered [see p. 30]. Pursuant to Article 14(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), survivors of torture have the right to rehabilitation, among other remedies. If a survivor of torture is an applicant or a protection status beneficiary in Turkey, they can theoretically access the healthcare services available to their status, including psychiatric – but not psychological – care provided through public hospitals [see p. 34].<sup>211</sup> In practice however, difficulties in communicating with medical personnel due to language barriers, as well as restrictions in geographical accessibility of the necessary facilities, reportedly preclude people affected from accessing health care.<sup>212</sup>

Even if registered, survivors of sexual and gender-based violence (SGBV) face serious challenges in effectively accessing support and protection mechanisms in Turkey. Firstly, there is no information provided to women “about legal mechanisms they can use for protecting themselves against violence”.<sup>213</sup> Secondly, in practice, they particularly struggle with language barriers and face discrimination when approaching protection services.<sup>214</sup> In general, the relevant legislation in Turkey “has no arrangement sensitive to gender and gender equality” which would protect women in “the process of application for international protection and while temporary protection continues”.<sup>215</sup> Adding to these obstacles, the capacity of women’s shelters in Turkey is still insufficient: Every municipality in Turkey with more than 100,000 inhabitants is legally obliged to establish a shelter. Based on these numbers, 201 shelters should have been existing in November 2021. However, at that time, Turkey only had “a total of 144 shelters (for all women in need, not only refugee →

206 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 71. Such “child protection units” are located in Ağrı, Konya, Yozgat, Gaziantep, Bilecik, Erzincan, İstanbul and Van. Ibid., p. 199.

207 Information provided by an NGO in İstanbul [remote], April 2023.

208 Ibid. AIDA, ‘Country Report: Türkiye, Update 2021’, p. 72.

209 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §33.

210 Article 67(2) of the LFIP; Article 14(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT] pursuant to which each “State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.

211 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 205.

212 GOAL [2021], ‘Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin’, p. 38.

213 Cavidan Soykan, Kristen Biehl, Ceki Hazan [2021], ‘Women Refugees and Gender Equality Mapping and Monitoring Study Extended Summary’, Ceid Publications, p. 37.

214 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022; Burcu Karakaş [2016], ‘Alo 183’ten şiddet mağduru için yanıt: Ama o kadın değil ki mülteci bayan’, Diken; Mültecilerle Dayanışma Derneği [2018], ‘Mülteci Kadınların Durumuna İlişkin Bir Değerlendirme: “Hem Mülteci Hem Kadın: Mülteci Kadınlar Ne Yaşıyor? Ne Yapmalı?”’.

215 Cavidan Soykan, Kristen Biehl, Ceki Hazan [2021], ‘Women Refugees and Gender Equality Mapping and Monitoring Study Extended Summary’, Ceid Publications, p. 37.



women] spread across 79 municipalities” offering capacity for 3,454 people.<sup>216</sup> At the same time, gaining access to these shelters is incomparably more difficult for ‘exilee’ women.<sup>217</sup> For example, when an unregistered woman goes to the police to lodge a complaint related to domestic violence or other abuse, she “can be sent to removal centres and may face deportation”, instead of being offered a place at a shelter.<sup>218</sup>

LGBTQIA+ are not mentioned in the cited definition of people with special protection or reception needs under Turkish law.<sup>219</sup> The “lack of a gender-sensitive registration procedure” impacts the ability to disclose “sexual orientation or gender identity” and precludes LGBTQIA+ from “being registered as persons with special needs”.<sup>220</sup> Furthermore, there “are no shelters for LGBTI +” in Turkey, while it is simultaneously more difficult for “persons who do not fit in the predominant gender roles” to secure and maintain housing.<sup>221</sup> A further obstacle for LGBTQIA+ in accessing protection is that big, more diverse and cosmopolitan cities are closed for registration [see p. 26].<sup>222</sup> Because urban environments have shown to be more tolerant of LGBTQIA+, the respective community, as well as related support provided by NGOs and individuals, is concentrated in bigger cities, especially İstanbul.<sup>223</sup> Nonetheless, violent attacks also occur in these urban centres.<sup>224</sup> Generally, “hate speech, violence and intolerance” against LGBTQIA+ has been on the rise in the last years under “the increasingly authoritarian and conservative [AKP] rule”.<sup>225</sup> For example, “İstanbul Pride has been banned since 2015”,<sup>226</sup> while the Ankara governor’s office imposed “a ban on all LGBTQIA+ cultural events” in 2017.<sup>227</sup> In 2021, Turkey withdrew from the İstanbul Convention and “justified its withdrawal ... using hostile rhetoric against LGBTQ”.<sup>228</sup> Most recently, in the run-up to the 2023 elections, LGBTQIA+ were repeatedly verbally attacked in campaign speeches by members of the ruling AKP government, including Recep Tayyip Erdoğan, further fueling an environment of general “intimidation against women and LGBTQ+”.<sup>229</sup> This general rise of anti-LGBTQIA+ sentiment in Turkish society, of course, particularly affects LGBTQIA+ seeking protection in Turkey.<sup>230</sup> In June 2023, the Pride march was “banned for the ninth consecutive year” in İstanbul “as were all other pride events in the city”.<sup>231</sup> As protestors gathered anyway on 25 June 2023, the police arrested →

216 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §49.

217 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

218 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 109.

219 Ibid., p. 111; Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §54. For context, see Hayriye Kara, Damla Çalik [2016], ‘Waiting to be “Safe and Sound”: Turkey as a LGBTI Refugees’ Way Station’, Kaos GL; Masha Gessen [2018], ‘The L.G.B.T. Refugees in Turkey Who Refuse to Be Forgotten’, The New Yorker.

220 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §54.

221 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 111.

222 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §54.

223 Information provided by an NGO in İstanbul, October 2021; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 111.

224 See, e.g. Duvar English [2021], ‘Syrian refugee trans woman injured in acid attack in İstanbul’s Beyoğlu’.

225 Kültigin Kağan Akbulut [2021], ‘COVID-19 Pandemic Makes LGBT Lives in Turkey More Difficult’, Balkan Insight. For context, see Kaos GL [2020], ‘Human Rights Of Lgbti+ People In Turkey: 2019 Report’; ILGA [2023], ‘Europe’s Annual Review Of The Human Rights Situation Of Lesbian, Gay, Bisexual, Trans And Intersex People Covering Events That Occurred In Europe And Central Asia Between January–December 2022’, Section on Turkey, pp. 146–148.

226 Kültigin Kağan Akbulut [2021], ‘COVID-19 Pandemic Makes LGBT Lives in Turkey More Difficult’, Balkan Insight. The article additionally states that in April 2020, the Directorate for Religious Affairs [Diyanet], used his traditional Friday sermon to blame the COVID-pandemic on LGBTIQ+ people and those infected with HIV-AIDS. Ibid.

227 Kareem Shaheen [2017], ‘Turkish LGBTI activists condemn ‘illegal’ ban on events in Ankara’, The Guardian.

228 Başak Çali, Laurence Helfer [2022], ‘The Gender of Treaty Withdrawal: Lessons from the İstanbul Convention’, EJIL:Talk!. Further, see Amnesty International [2021], ‘Turkey’s withdrawal from the İstanbul Convention rallies the fight for women’s rights across the world’.

229 Ruth Michaelson, Deniz Barış Narlı [2023], ‘We’re against LGBT’: Erdoğan targets gay and trans people ahead of critical Turkish election’, The Guardian. Further, see Elçin Poyrazlar, Christian Oliver [2023], ‘Erdoğan finds a scapegoat in Turkey’s election: LGBTQ+ people’, Politico; Kaos GL [2021], ‘Homophobia And Transphobia Based Hate Crimes In Turkey, 2020 Review’.

230 For context, see Kaos GL [2019], ‘Türkiye’nin Lgbti Mülteciler İle İmtihani’.

231 Human Rights Watch [2023], ‘Turkey: Mass Detentions at Pride Marches’.

113 people.<sup>232</sup> Among those detained is an Iranian LGBTQIA+ refugee under international protection who was subsequently transferred to Şanlıurfa Removal Centre. At the time of writing, despite the danger he would be subjected to in Iran, he faces deportation to Iran due to his participation in a demonstration.<sup>233</sup> [see p. 25]

Taken together, the asylum practice in Turkey displays a clear lack of specialised reception conditions. These systematic shortcomings towards specific groups of 'exilees' may amount to violations of the prohibition of discrimination as set out in international law.<sup>234</sup> In addition, the lack of protection and insufficient reception conditions, in some cases, may even amount to a threat to a person's life or liberty on account of being a member in a particular social group, such as survivors of torture or SGBV in Turkey, as well as members of the LGBTQIA+ community. Therefore, the information available regarding the insufficient consideration of specific protection or reception needs in Turkey – at the very least – raises "serious doubts"<sup>235</sup> about the respective reception conditions complying with international human rights law as well as Article 38(1)(a) of the EU's APD, thus conflicting with the general assumption of Turkey being 'safe' [see p. 7]. □

#### 4. Loss of legal right to reside in Turkey

The legal framework in Turkey provides for different reasons for an international protection applicant to lose the right to stay in Turkey, thus cancelling that applicant's 'kimlik'. Firstly, as previously mentioned, international protection applicants are required to remain within the province assigned to them, and, in addition, have to personally prove their presence by signature.<sup>236</sup> Failure to comply with these obligations has serious consequences: An application for international protection is considered implicitly withdrawn – and their 'kimlik' is cancelled, posing a deportation risk – if the applicant fails to fulfil the reporting duty three times in a row, does not go to their assigned province or leaves their place of residence without permission.<sup>237</sup> Similarly, Syrians under the temporary protection regime face the risk of deportation "if they do not comply with their reporting duty three times consecutively".<sup>238</sup> In general, a deportation order includes the termination of any legal right to reside in Turkey.<sup>239</sup> Nevertheless, precarious living conditions often force people under the temporary or international protection regime to leave their assigned cities of registration in order to go to İstanbul, İzmir or Gaziantep where the informal labour market holds more opportunities to either be informally employed or start a small business.<sup>240</sup> Then again, foreigners who are found working in Turkey without a work permit may face a deportation order.<sup>241</sup>

Secondly, a deportation order is issued to those foreigners who enter or exit Turkey in violation of the law or who try to do so.<sup>242</sup> In addition, temporary protection beneficiaries lose their status upon voluntary departure from Turkey.<sup>243</sup> These legal provisions are especially relevant for 'push- →

232 Human Rights Watch [2023], 'Turkey: Mass Detentions at Pride Marches'. For a comprehensive overview of the 2023 pride events and incidents around them, see ILGA Europe [2023], 'Monitoring Pride In Turkey 2023'.

233 Kaos GL [2023], 'İstanbul Onur Yürüyüşü'nde gözaltına alınan İranlı mülteci Urfa'ya götürülmüş!'.

234 A general prohibition of discrimination is, e.g. set out in the ECHR, or the International Covenant on Civil and Political Rights [ICCPR]. In addition, several specialised human rights treaties enshrine more specific non-discrimination obligations – such as non-discriminatory access to rights and services – towards the group of people protected under the respective treaty. Turkey is party to the following United Nations [UN]: Convention against Torture [CAT], the Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], the Convention on the Rights of the Child [CRC], the Convention on the Rights of Persons with Disabilities [CRPD], or the International Convention on the Elimination of All Forms of Racial Discrimination [CERD].

235 ECtHR, *Tarakhel v. Switzerland*, §115.

236 Article 71[1] of the LFIP.

237 Article 77[1][ç] of the LFIP; information provided by an NGO in İstanbul [remote], April 2023.

238 AIDA, 'Country Report: Türkiye, Update 2021', p. 169.

239 Information provided by an NGO in İstanbul [remote], April 2023.

240 Information provided by a Syrian journalist [remote], May 2023; Merve Tahiroğlu [2022], 'Göç Politikaları: Türkiye'deki Mülteciler ve 2023 Seçimleri', Heinrich Böll Stiftung.

241 Article 54[1][ğ] of the LFIP.

242 Article 54[1][h] of the LFIP.

243 Article 12[1][a] of the TPR.

back'<sup>244</sup> survivors as their 'kimliks' – if possessed beforehand – became invalid upon leaving Turkey voluntarily, e. g. to try to reach Greece.<sup>245</sup> Furthermore, in practice there is no possibility to reobtain a new 'kimlik'.<sup>246</sup> If a person did not possess a 'kimlik' before, they might have the opportunity to apply for protection, if the deportation order was challenged within the seven-day deadline or a PPMM exceptionally agrees to annul the deportation order.<sup>247</sup>

Of practical relevance is, thirdly, that deportation shall follow when a foreigner is alleged to pose a threat to public order or safety.<sup>248</sup> Lawyers have described this as a “catch-all rule” allowing terminations of residence permits to be based on “criminal reasons in the broadest sense possible”.<sup>249</sup> Revoking a 'kimlik' does not require that an actual criminal investigation be lodged.<sup>250</sup> One lawyer mentioned the case of a client, a Syrian human rights advocate, who was deported to Syria based on the allegation that he posed a “national threat” in connection with his support for fellow Syrian 'exilees' in Turkey.<sup>251</sup> According to the İstanbul branch of the Human Rights Association (Turkish: İnsan Hakları Derneği [İHD] İstanbul Şubesi), protection status holders are afraid to file complaints with the police or other judicial authorities due to fear of deportation<sup>252</sup> as merely being named in a police report – even as a witness or victim – might be reason enough to be considered a 'threat'.<sup>253</sup> Illustrative of the arbitrary use of this 'catch-all rule' is the case of S.T., a Syrian journalist who lived in Turkey for 13 years and collaborated for 11 years with international news agencies researching, among other things, the situation of 'exilees' in Turkey. Reportedly, after persistent pressure from the Turkish National Intelligence Agency (Turkish: Millî İstihbarat Teşkilâtı [MİT]) to provide information on the activities of foreign media outlets in Turkey starting in spring 2021, S.T. was ultimately forced to leave the country in early December 2022. Subsequently, his residence permit was terminated, and an entry ban<sup>254</sup> was issued.<sup>255</sup> A further example is the aforementioned case of an Iranian LGBTQIA+ refugee, who now faces deportation after he was detained in connection with a banned Pride march in İstanbul in June 2023, regardless of the risks that the deportation to Iran would pose for him [see p. 24].

These various scenarios – all of which may automatically and without individualised assessment lead to losing the right to legally stay in Turkey, involving arbitrary cancellations of 'kimliks', and exposing the concerned individuals to a risk of deportation – illustrate the insufficient protection from human rights violations in Turkey. Specifically, violations of both non-refoulement under the Refugee Convention and the prohibition of removal stemming from Article 3 of the ECHR undermine the right to freedom from torture and cruel, inhuman or degrading treatment set out in international law [see p. 48].<sup>256</sup> In other words, Turkey does not comply with the 'safe third country' criteria pursuant to Article 38(1)(c) and (d) of the EU's APD. □

244 BVMN [2022], 'The Black Book of Pushbacks, expanded & updated edition - Volumes I-IV'; BVMN [2020], 'The Black Book of Pushbacks-Volumes I & II'; platform on mapping 'Drift-backs' in the Aegean Sea, launched by Forensic Architecture in July 2022.

245 Information provided by a lawyer in İstanbul, September 2021.

246 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

247 Information provided by an NGO in İstanbul [remote], May 2023.

248 Article 54(1)(d) of the LFIP.

249 Information provided by an NGO in İstanbul [remote], April 2023.

250 Information provided by a lawyer of the Bar Association in İstanbul [remote], November 2021.

251 Information provided by a lawyer in Ankara, October 2021.

252 İHD İstanbul [2022], 'Yaşamın Kısıtlı İndakiler- Mültecilere Yönelik Hak İhlalleri Raporu - 2021', p. 4.

253 Information provided by an NGO in İstanbul, September 2021; by an NGO in İstanbul [remote], April 2023.

254 For context and further examples, see İnsan Hakları ve Mazlumlar İçin Dayanışma Derneği İstanbul Şubesi [2020], 'Göçmenlerin ve Mültecilerin Sınır Dışı Edilmesinde Konuşulmayan Alan: Tahdit Kodu Mağdurları Raporu'.

255 Information provided by S.T. [remote], April 2023. In addition, S.T. provided documentation for his allegations which, however, are not publicly available.

256 Protection from refoulement is not exclusively provided of the ECHR, but also pursuant to the ICCPR, the CAT, the CEDAW, the CRC, or the CRPD.

# III. Insufficient access to protection

## 1. Barriers to registration of protection applications

As stated above, the individuals interviewed for this expert opinion unanimously highlighted that the restricted access to registration is currently the biggest challenge when seeking protection in Turkey. In July 2018, Human Rights Watch reported that Turkish authorities have – besides building a wall along the land borders with Syria<sup>257</sup> and Iran, supported by EU funding<sup>258</sup> – “stopped registering” Syrian temporary protection applicants “in Istanbul and nine provinces on or near the Syrian border”.<sup>259</sup> Since then, there has been an increase in the number of cities ‘closed’ to new applications – for both temporary and international protection.<sup>260</sup> As of early 2020, the following cities have reportedly been closed to all except vulnerable cases: İstanbul, Edirne, Tekirdağ, Kırklareli, Kocaeli, Çanakkale, Bursa, Balıkesir, İzmir, Aydın, Muğla, Antalya, Hatay and Yalova.<sup>261</sup> In February 2022, it was announced that registrations for protection would not be accepted in 16 provinces, as further described below.

After September 2018, following the former DGMM’s takeover of the international protection procedures, applicants for international protection faced severe obstacles in accessing the application process: “While nationals of countries other than Afghanistan [were] instructed to appear before the PDMM in 6 to 9 months with a view to undergoing registration, the earliest registration appointments given to Afghan nationals [were] for 2021”.<sup>262</sup> These obstacles are also reflected in the number of applications registered in the years after UNHCR’s withdrawal: While 114,537 international protection registrations were received in 2018,<sup>263</sup> registrations decreased by 74 % to 29,256 in 2021 [see p. 18].<sup>264</sup>

Following the events in Altındağ [Ankara] in August 2021, when a fight between Syrian and local youngsters triggered attacks on shops and homes belonging to Syrians,<sup>265</sup> Turkish authorities “officially closed down registration of temporary protection applications in 16 provinces (including in major provinces, such as Ankara, Istanbul, Izmir, Bursa) in an attempt to balance refugee population” across Turkey in February 2022.<sup>266</sup> According to Human Rights Watch, the 16 provinces closed were İstanbul, Edirne, Tekirdağ, Kırklareli, Kocaeli, Çanakkale, Bursa, İzmir, Aydın, Muğla, Antalya, Hatay, Yalova, Ankara, Düzce and Sakarya.<sup>267</sup>

Shortly after, the Turkish government started a so-called ‘dilution project’<sup>268</sup> to limit the ‘refugee population’ to 25 % of the total population in every neighbourhood:<sup>269</sup> “Since May 2022, it is against the law for any region or area in Türkiye to have a population of foreign nationals that is more →

257 AIDA, ‘Country Report: Türkiye, Update 2021’, pp. 160-161.

258 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 26-27.

259 Human Rights Watch [2018], ‘Turkey Stops Registering Syrian Asylum Seekers’.

260 Information provided by two lawyers [remote], July 2022.

261 AIDA, ‘Country Report: Turkey, Update 2020’, p. 80.

262 AIDA, ‘Country Report: Turkey, Update 2018’, p. 14.

263 Ibid., p. 9.

264 Ibid., Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §24, stating that the very low numbers of applicants for international protection confirm the protection gap.

265 E.g. observers.france24.com [2021], ‘‘A nightmarish night’: Syrian neighbourhood in Ankara attacked after deadly fight’.

266 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 55.

267 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 59.

268 BirGün [2022], ‘‘Seyreltme’ projesinin detayları: 16 il Suriyelilere kapatıldı’.

269 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

than one-quarter of the total population”.<sup>270</sup> As a consequence, 781 neighbourhoods<sup>271</sup> were then closed for registration or relocation of foreign nationals with temporary protection, international protection or residence permits – apart from some exceptions, e. g. the registration of newborns.<sup>272</sup> Places with a large Syrian community such as İstanbul, Gaziantep, Hatay and Şanlıurfa,<sup>273</sup> but also Adana, Adıyaman, Ankara, İzmir, Kahramanmaraş, Kilis, Mardin and Mersin – along with several other cities – were especially impacted by this ‘dilution project’.<sup>274</sup> According to Human Rights Watch, the population of foreign nationals in any given place would not be allowed, as of 1 July 2022, to exceed 20% of the total population; this regulation caused “the number of neighbourhoods closed for foreigners’ registration” to climb to 1,169.<sup>275</sup>

Beyond ‘closing’ provinces officially, “NGOs and lawyers repeatedly referred to de facto closure of international protection registrations in other provinces too, save for highly vulnerable cases”.<sup>276</sup> There is no continuously updated information publicly available on the ‘registration status’ of a city or province. If applicants approach a PPMM which is ‘closed’ at that time, they are either asked to come back the next day, the next week, the next month – with no guarantee that the application will be accepted when they come back after the stipulated waiting period – or turned away completely usually without being referred to an ‘open’ province.<sup>277</sup> Human Rights Watch refers to this practice as “wild goose chases” and reports that interviewees said “they were sent from office to office or given appointments months later, that would then be rescheduled yet again”.<sup>278</sup> According to medico international (Germany), in Van, for example, where the place for ‘exilees’ to register is located adjacent to the police station, people are regularly sent “next door” when they try to register an application for protection. At the police station, they are then often detained and transferred to a removal centre.<sup>279</sup>

Consequently, without completing the registration, applicants for both temporary and international protection remain barred from exercising other rights and accessing social services, like education and health care.<sup>280</sup> In the words of the European Commission, “barriers to registration hinder access to all other essential services and put asylum seekers in an irregular situation if apprehended”.<sup>281</sup> In November 2019, when comparing the findings of their 2016 report, the Special Representative on Migration and Refugees of the Secretary General of the Council of Europe identified an ongoing lack of clarity that “should be addressed” regarding ‘open’ and ‘closed’ provinces and the arbitrary practice of denying or delaying registrations in theoretically ‘open’ cities.<sup>282</sup>

The Special Representative in their November 2021 report further “observed that all major cities were closed for registration of young Afghan men, leaving them unregistered, with no documents certifying their intention to apply for asylum, and thus unable to access protection or basic services and subject to removal”.<sup>283</sup> Additionally, as stated above, starting in June 2022, applications →

270 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 91.

271 PMM’s ‘Neighbourhood Closure Announcement’ [May 2022], including an excel list with 781 neighbourhoods to be closed.

272 GAR [2022], ‘Suriye’den Göçün 10. Yılında Sivil Toplum: Aktörler, Süreçler ve Öngörüler’, GAR-Rapor No: 8, p. 12; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 91.

273 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 56.

274 PMM’s ‘Neighbourhood Closure Announcement’ [May 2022]; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 91.

275 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 60; PMM’s ‘Neighbourhood Closure Announcement’ [June 2022], including an excel list with 1,169 neighbourhoods to be closed; Menekşe Tokyay [2022], ‘Turkey introduces new restrictions on refugees’, Arab News.

276 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 56.

277 Information provided by a lawyer in İzmir, February 2023; Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 59.

278 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 61.

279 Valeria Hänsel [2023], ‘Europas Türsteher und die Taliban’, medico international. In October 2021, a lawyer in Van confirmed that people who register with the Van branch of the migration office are often detained and transferred to the local removal centre.

280 Information provided by an NGO in İzmir, February 2023.

281 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 56.

282 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §23.

283 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §24.

for Temporary Protection Status had to be lodged in a Temporary Accommodation Centre.<sup>284</sup> At the time of drafting this expert opinion, it has, however, become effectively impossible for Syrian citizens to register new applications [see p. 16]. One lawyer reported that PPMM officials offered to register his client's temporary protection application if the client paid 2,000 U.S. Dollars to the officials.<sup>285</sup>

These practical obstacles to effectively apply for either temporary or international protection often leave 'exilees' seeking safety in Turkey undocumented, and therefore, stripped from access to social rights and services.<sup>286</sup> This deliberate exclusion from access to legal processes set out in Turkish law solely based on a person's status as asylum seeker may amount to discrimination contrary to international law.<sup>287</sup> In addition, in its case law, the ECtHR "has found violations of Article 13 [of the ECHR] taken in conjunction with Article 3 [of the ECHR] when a person present on the territory was unable to lodge an asylum application".<sup>288</sup> In Turkey, undocumented non-citizens are exposed to a considerable risk of refoulement, again, in violation of international law.<sup>289</sup> As detailed below, an increasing number of reports bear witness to the systematic practice of unlawful removal of 'exilees' by Turkish authorities [see p. 48]. Considering the above again leads to the conclusion that Turkey fails to meet the 'safe third country' requirements set out in Article 38(1)(c), (d) and (e) of the EU's APD. □

## 2. Unaccompanied minors registered as adults

Minors, especially those near age 18, face specific risks of being attributed the age of majority, detained, ordered to be deported, and thus precluded from seeking protection in Turkey.<sup>290</sup> Illustrative of this, the Border Violence Monitoring Network (BVMN)<sup>291</sup> reported on the case of an unaccompanied minor from Afghanistan who arrived in Turkey in April 2022. He was in possession of his original passport, including an original visa which had allowed him to travel from Afghanistan to Iran, showing that he was 17 years old at the time. Accompanied by an officially recognised NGO in Turkey, the minor presented himself to a District Police Department Juvenile Office in İstanbul to be registered as an unaccompanied minor a couple of months after his arrival. Only because of the NGO's persistence on site, the police officers finally agreed to register the minor who then was placed in a Children Support Centre [Turkish: Çocuk Destek Merkezleri] on the western outskirts of İstanbul. After his transfer from İstanbul to Ankara some weeks after his registration, Turkish authorities decided to conduct an age assessment despite the minor having an original passport with an original visa to Iran to prove his identity, including his age. The examination, which consisted solely of wrist X-rays, concluded that the minor was 18 years old, contradicting the age indicated in his passport. Subsequently, he was registered as being exactly one year older than the age indicated in his passport, and a deportation order was issued. The minor was placed in a removal centre for adults in Ankara and subsequently transferred twice [see p. 43] – at the time of this research, the minor had been in detention for more than six months and still had not been released.<sup>292</sup>

This case is not an exception, but rather one of many examples of Turkey's common practice of registering minors as adults. If a minor approaches the police station or a PPMM without supporting →

284 Information provided by an NGO in İzmir, February 2023.

285 Information provided by a lawyer in İstanbul [remote], April 2023. Bribery allegations were also discussed in the press and the parliament, see Hacı Bişkin [2022], 'İl göç idaresinde rüşvet iddiası: Ticaret yaptık', Gazete Duvar; Hacı Bişkin [2022], 'Şanlıurfa İl Göç İdaresinde neler oluyor?', Gazete Duvar.

286 Information provided by an NGO in İzmir, February 2023.

287 E.g. obligations as set out in Article 3 of the ECHR, or the ICCPR, the CAT, the CEDAW, the CRC, the CRPD and the CERD to all of which Turkey is a party to.

288 Council of Europe [2021], 'Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021', Doc. No. SG/Inf[2021]35, §83, with reference to ECtHR, *A.E.A. v. Greece*.

289 Especially the non-refoulement principle according to Article 33 of the Refugee Convention, and protection from refoulement based on Article 3 of the ECHR, and on the ICCPR, the CAT, the CEDAW, the CRC, or the CRPD.

290 Council of Europe [2021], 'Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021', Doc. No. SG/Inf[2021]35, §35.

291 Border Violence Monitoring Network [BVMN]'s website, available at: <https://borderviolence.eu/>.

292 This summary is based on confidential BVMN documents made available for this research. These documents, however, are not publicly available.



documents for their age, they will be immediately subjected to an age assessment.<sup>293</sup> Beyond that, the aforementioned case shows that age assessments are also conducted if there are original documents attesting to the age claimed by a minor.<sup>294</sup> The case above is further illustrative of the conduct of the assessment: Age assessments are regularly based on “bone tests”,<sup>295</sup> and further examinations are usually only conducted through the efforts, for example, of an NGO. X-rays, when used for age assessments, entail a wide margin of error,<sup>296</sup> and the Council of Europe’s related guide for policy makers considers it “unacceptable to rely solely on the results of medical examinations when determining a child’s age”.<sup>297</sup> An age assessment process which does not include a psychological evaluation or a sociological assessment cannot estimate age accurately – these types of evaluations are even more important if an applicant is relatively close to turning 18.<sup>298</sup> According to Human Rights Watch, boys aged 16 or 17 consistently reported “that Turkish authorities listed their ages as 18 or that they made no age assessment whatsoever”.<sup>299</sup> Relatedly, Human Rights Watch further published the cases of two unaccompanied minors who testified to being registered as adults without even being asked their age first.<sup>300</sup>

When unaccompanied minors are arbitrarily classified as adults, either through substandard or no age assessment at all, the fundamental rights of the children affected are violated.<sup>301</sup> In any such case, the “best interests of the child” cannot be considered a “primary consideration” in the procedure, including the age determination, constituting a violation of Article 3 of the Convention on the Rights of the Child (CRC).<sup>302</sup> Furthermore, the child’s right to be heard<sup>303</sup> – and, if the attribution of an age does not match identification documents on record, the right to preserve their identity<sup>304</sup> – may be violated.

Theoretically, age assessment decisions can “be appealed against but most of the time, the persons concerned do not have the decisions in writing to be able to challenge them”.<sup>305</sup> Being estimated and registered as an adult, notably, bears heavy consequences: As in the case documented by BVMN, applicants who are categorised as adults after an age assessment are detained and issued a deportation order.<sup>306</sup> Because registering a protection application from detention is particularly difficult [see p. 46], the practice of detaining minors and ordering them deported after registering them as adults allows Turkey to effectively bar them from applying for protection altogether which again precludes Turkey from fulfilling the definition of a ‘safe third country’ set out in Article 38(1)(c), (d) and (e) of the EU’s APD. □

293 Information provided by an NGO in Istanbul [remote], April 2023.

294 The dismissal of the probative value of identification documents provided may constitute a violation of Articles 3 and 12 of the CRC. Furthermore, the attribution of an age that does not match the information on the identification documents on record amounts to a violation of Article 8 of the CRC. Views adopted by the Committee on the Rights of the Child [CRC] in the case of *A.L. v. Spain*, §§12.9-12.10.

295 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 69.

296 The accuracy of such tests can vary between two years older or younger, nevertheless the authorities tend to interpret the assessments in the upper range. Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §35.

297 Council of Europe [2019], ‘Age Assessment For Children In Migration: A human rights-based approach’, p. 15; EASO [2018], ‘EASO practical guide on age assessment’, Second edition, pp. 34-37.

298 Information provided by BVMN [remote], April 2023.

299 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 44.

300 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 44-46.

301 CRC, *A.L. v. Spain*; CRC, *M.B. v. Spain*.

302 CRC [2013], ‘General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration’, Doc. No. CRC/C/GC/14.

303 Article 12 of the CRC.

304 Article 8 of the CRC.

305 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §35.

306 Information provided by an NGO in Istanbul [remote], April 2023.



## IV. Inadequate reception conditions in Turkey

Those who manage to obtain a 'kimlik' through being granted either Temporary Protection Status or international protection or those who after registration were issued an ID for applicants, in theory, have the right to education and health care and the right to request a work permit in Turkey.<sup>307</sup> In practice however, it is extremely difficult to actually exercise these rights. As stated above, precarious living conditions often force people under the temporary or international protection regime to leave their assigned provinces and move to bigger cities in order to make a living.<sup>308</sup> Those who leave their assigned city, however, lose access to all social rights or services attached to their status – including primary health care for both adults and minors.<sup>309</sup> Those who do not manage to register their application for protection do not have access in the first place.<sup>310</sup> As explored below, 'exilees' in Turkey are often forced to live in dire conditions, if not in complete destitution.

Pursuant to ECtHR's case law, insufficient reception conditions may amount to a violation of Article 3 of the ECHR – the prohibition of torture, as well as inhuman and degrading treatment. In *M. S. S. v. Belgium and Greece*, the ECtHR acknowledged that the applicant – an asylum seeker who had been returned from Belgium to Greece – had found himself “for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs”.<sup>311</sup> In that context, the Court considered “that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation”.<sup>312</sup> As a result, the Court concluded “that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3” of the ECHR.<sup>313</sup>

Separately, in *Tarakhel v. Switzerland*, the ECtHR had to evaluate whether the removal of a family with six children from Switzerland to Italy would amount to a violation of Article 3 of the ECHR. Contrary to *M.S.S. v. Belgium and Greece*, the Court in *Tarakhel v. Switzerland* did not consider that the “overall situation of the reception arrangements” in Italy can in themselves “act as a bar to all removals of asylum seekers to that country”.<sup>314</sup> However, the Court held that if there is information available which raises “serious doubts”, for example, about the “capacities of the [asylum] system” in the receiving country,<sup>315</sup> individual guarantees that ‘returnees’ would be “taken charge of in” an appropriate manner – which, in *Tarakhel v. Switzerland*, meant “in a manner adapted to the age of the children” – must be obtained.<sup>316</sup> Because Switzerland failed to comply with this obligation, the ECtHR found that the family’s return to Italy would in fact constitute a violation of Article 3 of the ECHR.<sup>317</sup> Therefore, the obligations under the non-refoulement principle pursuant to Article 3, →

<sup>307</sup> Information provided by a migration scholar [remote], September 2021.

<sup>308</sup> Information provided by a Syrian journalist in Istanbul, October 2021; Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 70-72.

<sup>309</sup> Information provided by an NGO in Izmir, February 2023; by a lawyer in Hatay at that time [remote], May 2023. GOAL’s Protection Monitoring Report listing as one of their key findings that a substantial number of target group members had invalid identity documents due to residing in a province other than registered, and thus could not reach rights and services. GOAL [2021], ‘Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Sanliurfa, Adana and Mersin’, p. 2.

<sup>310</sup> Information provided by an NGO in Izmir, February 2023.

<sup>311</sup> ECtHR, *M.S.S. v. Belgium and Greece*, §263.

<sup>312</sup> Ibid.

<sup>313</sup> Ibid.

<sup>314</sup> ECtHR, *Tarakhel v. Switzerland*, §115.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid., §122.

<sup>317</sup> Ibid.

inter alia,<sup>318</sup> might prevent a state party to the ECHR from returning an individual to a country, if the material conditions in the receiving country were to be found inhuman and degrading.

In addition, the discriminatory exclusion of a certain group of people from access to social services, as well as the failure to provide adequate material conditions for them although obligated,<sup>319</sup> may amount to discrimination contrary to international law.<sup>320</sup>

## 1. Accommodations

The legal framework in Turkey does not require government-provided shelter for asylum applicants, international protection beneficiaries<sup>321</sup> or holders of Temporary Protection Status.<sup>322</sup> While the LFIP<sup>323</sup> clearly states that “international protection applicants and status holders shall secure their own accommodation by their own means”<sup>324</sup>, the TPR<sup>325</sup> allows Turkish authorities to establish Temporary Accommodation Centres to accommodate people under the temporary protection regime.<sup>326</sup> According to İHD İstanbul, the number of Syrians living in such camps has gradually decreased over the past years from 228,251 people in early 2018 to 50,351 as of 26 May 2022.<sup>327</sup> In other words, in May 2022, less than 1.5% of the population of temporary protection beneficiaries in Turkey were accommodated in Temporary Accommodation Centres.<sup>328</sup> After the devastating 6 February 2023 earthquake, Syrians were reportedly removed from the few Centres still operating at the time in order to allow these Centres, together with the facilities reopened for this purpose, to shelter Turkish citizens who survived the disaster (see p. 59).

For those seeking accommodations by their own means, there are many difficulties. The majority of the people seeking protection in Turkey work in the informal labour market, and therefore are mostly paid less than the official minimum wage – as described in the following subsection (see p. 32). In addition, administrative fines can be imposed on those who offer accommodation or rent an apartment to non-citizens without valid ‘kimliks’ or travel documents.<sup>329</sup> This, in combination with discrimination against foreigners, makes it particularly difficult for people under the temporary or international protection regime, or people trying to register their protection applications, to find affordable and suitable accommodations. Often, people are only able to find a place to live through informal networks.<sup>330</sup> ‘Exilees’ are not only “forced to live in districts far from the city centre, hospitals, education centres and public buildings”,<sup>331</sup> but more often than not live →

318 The refoulement prohibition is enshrined in various other international and regional human rights treaties – Article 7 of the ICCPR, Article 3 of the CAT; CEDAW [2014], ‘General recommendation No. 32’, Doc. No. CEDAW/C/GC/32, §5; CRC [2005], ‘General Comment No. 6’, Doc. No. CRC/GC/2005/6, §§26–28; CERD [2004], ‘General Recommendation 30’, Doc. No. CERD/C/64/Misc.11/rev.3, §§25, 27; CRPD Committee’s first decision on refoulement in *N.L. v Sweden* – although its precise scope varies somewhat between the different legal regimes. Stephanie A. Motz [2022], ‘Widening the Scope of Non-refoulement? The CRPD and the Protection of Persons with Disabilities in Displacement’, p. 2.

319 In its case law, the ECtHR has held that appropriate care and protection needs to be provided to people who come within the class of highly vulnerable members of society, see ECtHR, *Rahimi v. Greece*, §87; ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, §55]. Asylum seekers are per se considered to be a particularly vulnerable group. ECtHR, *M.S.S. v. Belgium and Greece*, §232].

320 E.g. obligations as set out in the ECHR, the ICCPR, the CAT, the CEDAW, the CRC, the CRPD and the CERD to all of which Turkey is a party to. Then again, discrimination may even amount to a violation of Article 3 of the ECHR – and its parallel articles in other international conventions – if the discriminating treatment must be considered a targeted attack on human dignity of members of a specific group which is segregated and treated differently on the basis of the characteristics of the group, and thus qualifies as degrading treatment, see ECtHR, *Moldovan and others v. Romania*, §144; ECtHR, *Cyprus v. Turkey*, §309.

321 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 92.

322 Ibid., p. 178.

323 Article 95[1] of the LFIP.

324 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 92.

325 Article 37[1] of the TPR.

326 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 178.

327 İHD İstanbul [2022], ‘Yaşamın Kıyısındakiler- Mültecilere Yönelik Hak İhlalleri Raporu – 2021’, p. 3.

328 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 179.

329 Article 102[2] of the LFIP.

330 Information provided by an NGO in İstanbul, October 2021.

331 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 94.

under precarious conditions in substandard apartments or shared accommodations, if they are able to secure housing at all.<sup>332</sup> One of many examples is the case of a Syrian woman who lived in İstanbul at the top of an extremely steep hill with her elderly parents and three children after her husband had been deported to Syria [see p. 54]. In order to support her family, this woman was forced to beg for money in the streets.<sup>333</sup> The six people shared two small rooms and an even smaller “wet area” where the toilet, shower and kitchen were jointly located.<sup>334</sup>

Furthermore, the COVID-19 pandemic further aggravated many people’s living conditions. Illustrative thereof is the case of a family with four children living in İstanbul. After the outbreak of COVID-19, the husband lost his job causing the family to struggle with both paying rent and affording food. The father was regularly forced to ask everyone he knew to support him with some money in order to provide shelter and food for his family; buying hygiene products to protect themselves from the spread of the pandemic was financially impossible.<sup>335</sup> According to a survey SGDD-ASAM conducted among 1,162 temporary and international protection beneficiaries published in May 2020, respondents reported having difficulties in paying for their rent, utility bills and necessities. Sixty-three percent of those surveyed stated that they had problems accessing food, and 53 % reported struggling with affording to implement basic hygiene measures recommended.<sup>336</sup> □

## 2. Labour

Since 2016, holders of Temporary Protection Status have access to work permits.<sup>337</sup> Six months after a person is granted temporary protection, an application for a work permit may be lodged.<sup>338</sup> The same applies to international protection applicants: six months after registering for protection in Turkey, applicants may apply for a work permit.<sup>339</sup> However, applying for a work permit is a burdensome and costly procedure which has to be initiated by the employer. In addition, a work permit is attached to one specific job only. In case a person wants or is forced to find a new job, they will have to find again an employer who is willing to apply for a work permit.<sup>340</sup> Furthermore, the website of the Ministry of Labour and Social Security indicates that the number of working foreigners who have Temporary Protection Status in the workplace cannot exceed 10 % of the number of Turkish citizens in the same workplace.<sup>341</sup> Foreign health care or education professionals first need to obtain an authorisation from the Ministry of Health or from the Ministry of National Education and the Presidency of the Council of Higher Education respectively,<sup>342</sup> and some professions, such as dentistry, are completely reserved for Turkish citizens.<sup>343</sup>

Although there is no official data on employment of foreigners, survey data shows that only half of the two million adult Syrians registered under the temporary protection regime in Turkey have jobs. At the same time, the overwhelming majority of the estimated one million Syrians working in Turkey works informally.<sup>344</sup> Only approximately 60,000 Syrians are in possession of a work →

332 Information provided by a stakeholder in İstanbul, April 2022; by stakeholders in İstanbul, November 2022.

333 A similar case was documented by Amnesty International. Amnesty International [2019], ‘Sent to a War Zone: Turkey’s illegal deportations of Syrian Refugees’, p. 5.

334 Information provided by a Syrian journalist [remote], May 2023.

335 Ibid.

336 SGDD-ASAM [2020], ‘COVID-19 Salgınının: Türkiye’de Mülteciler Üzerindeki Etkilerinin Sektörel Analizi’, p. 13.

337 Information provided by a migration scholar [remote], September 2021.

338 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 181.

339 Ibid, p. 95.

340 Information provided by a researcher on asylum and migration in İzmir [remote], May 2023. For those, who will work in agriculture and animal husbandry, an exemption applies, see Ministerial Decree Number 2016/8375 [Turkish: Karar Sayısı].

341 Information provided by a lawyer in İstanbul [remote], May 2023 based on Ministry of Labour and Social Security’s website [last accessed 2 June 2023].

342 Information provided by a researcher on asylum and migration in İzmir [remote], June 2023. For full context, see the Ministry of Labor and Social Security’s application guide for exemptions for work permits [2021], ‘Geçici Koruma Sağlanan Yabancıların Çalışma İzni Ve Çalışma İzni Muafiyetine Dair Uygulama Rehberi’.

343 Information provided by a researcher on asylum and migration in İzmir [remote], June 2023.

344 Merve Tahiroğlu [2022], ‘Göç Politikaları: Türkiye’deki Mülteciler ve 2023 Seçimleri’, Heinrich Böll Stiftung.

permit – they mostly work for NGOs or the Turkish government, e. g. as interpreters – which means that almost 95 % of Syrian employees work in the informal sector.<sup>345</sup>

Working without the respective legal permit usually forces people into “irregular jobs often below the official minimum wage and with poor working conditions”.<sup>346</sup> Reports show that undocumented ‘exilees’ and people without work permits are subjected to exploitive labour conditions,<sup>347</sup> e. g. in the leather, textile and footwear industry where men and women between the ages of 15 and 35 – and sometimes even younger children – work in factories for over 12 hours per shift,<sup>348</sup> at times even six or seven days a week.<sup>349</sup> Although there are no official numbers on child labour in Turkey, child labour is nonetheless likely a widespread practice – as indicated by the large number of children who are not attending school.<sup>350</sup> A teacher in Gaziantep who founded an NGO focussing on reintegrating children working in Gaziantep’s many factories into education reported that it usually was difficult to convince parents to let their children go back to school, as the households were often dependent on the income their children generated.<sup>351</sup> Boys in a family without a father present are especially at risk to be subjected to child labour.<sup>352</sup> Beyond exploitation, working in these sectors also entails a great risk to health for adults and children alike.<sup>353</sup> The İzmir branch of the Association of Workers in the leather, textile and footwear industry (Turkish: Deri Tekstil ve Kundura İşçileri Derneği) reported that at least 81 “refugee and migrant children” were killed in work accidents between 2014 – 2020.<sup>354</sup>

Furthermore, COVID-19 “had a disproportionately negative effect on vulnerable groups including refugees and internally displaced persons” as many “refugees lost jobs in the informal sectors”.<sup>355</sup> According to the aforementioned survey conducted by SGDD-ASAM, unemployment rates increased from 18 % before the pandemic to 89 % after COVID-19 broke out.<sup>356</sup> According to the report published by the İzmir branch of the Association of Workers in the leather, textile and footwear industry, in families with reduced income due to the pandemic, children were expected to contribute to the household’s budget or support the household through domestic labour. Additionally, because distance learning and school closures during the pandemic often physically prevented children from accessing education, children in families seeking protection were again increasingly pushed into working.<sup>357</sup> □

345 Information provided by a migration scholar [remote], September 2021; Kemal Kirişçi, Gökçe Uysal [2019], ‘Syrian refugees in Turkey need better access to formal jobs’, Brookings Institution.

346 Asli Demirci-Kunt, Michael Lokshin, Martin Ravallion [2019], ‘A New Policy to Better Integrate Refugees into Host-Country Labor Markets’, Center for Global Development; Merve Tahiroğlu [2022], ‘Göç Politikaları: Türkiye’deki Mülteciler ve 2023 Seçimleri’, Heinrich Böll Stiftung.

347 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 70.

348 Hayata Destek Derneği [2022], ‘Türkiye’ye Yeni Gelen Ezidilerin Kayıt Sorunu Koruma İzleme Raporu’, p. 1; AIDA, ‘Country Report: Türkiye, Update 2021’, pp. 96-97; Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 47.

349 Information provided by a stakeholder in İstanbul, November 2022.

350 Information provided by an NGO in İstanbul, September 2021; by a Syrian journalist [remote], May 2023; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 100; Deri Tekstil ve Kundura İşçileri Derneği [2021], ‘Pandemi’de Mülteci Çocuk İşçiliği Raporu’, Sivil Toplum Geliştirme Merkezi Derneği, p. 8. Furthermore, GOAL addresses child labour in the agricultural sector in their 2021 Protection Monitoring Report. GOAL [2021], ‘Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin’, p. 46.

351 Information provided by a Syrian journalist [remote], May 2023.

352 Ibid.

353 Hayata Destek Derneği [2022], ‘Türkiye’ye Yeni Gelen Ezidilerin Kayıt Sorunu Koruma İzleme Raporu’, p. 14.

354 Deri Tekstil ve Kundura İşçileri Derneği [2021], ‘Pandemi’de Mülteci Çocuk İşçiliği Raporu’, Sivil Toplum Geliştirme Merkezi Derneği, p. 9.

355 European Commission [2021], ‘Turkey 2021 Report’, Doc. No. SWD[2021] 290 final/2, p. 17.

356 SGDD-ASAM [2020], ‘COVID-19 Salgınının Türkiye’de Mülteciler Üzerindeki Etkilerinin Sektörel Analizi’, p. 14.

357 Deri Tekstil ve Kundura İşçileri Derneği [2021], ‘Pandemi’de Mülteci Çocuk İşçiliği Raporu’, Sivil Toplum Geliştirme Merkezi Derneği, p. 49.

### 3. Medical care

Persons with Temporary Protection Status are covered by the 'General Health Insurance' (GSS) scheme and have – within the province of their registration – the right to access health care services.<sup>358</sup> However, persons seeking protection who cannot access the registration procedure or who live outside their assigned province are precluded from accessing free or at least affordable health care in Turkey. If a non-citizen does not have insurance in Turkey, hospitals will charge 'tourist prices' which constitute a multiple of the usual costs.<sup>359</sup> Therefore, many people under the temporary or international protection regime do not go to the hospital even in cases of serious illness. In addition, they risk deportation if apprehended by the authorities.<sup>360</sup>

Adding to these obstacles, language barriers and the distances to health care facilities for people in remote areas are reportedly among the major challenges in accessing health care.<sup>361</sup> While there is some support offered by self-organised initiatives or individual volunteers – such as a Syrian nurse who is well known in the Syrian community in İstanbul as she is taking care of compatriots on a voluntary basis who cannot access medical care by other means<sup>362</sup> – these initiatives are by far not able to make up for the systemic shortcomings in state-sponsored and accessible services.<sup>363</sup>

According to the European Commission, Syrians under the temporary protection regime still “benefit from free-of-charge healthcare provided in 177 Migrant Health Centres funded by the EU through its Facility for Refugees in Turkey and in Turkish hospitals”.<sup>364</sup> However, for Syrians who have been precluded from completing their temporary protection registration but are eligible to receive Temporary Protection Status, they “have only access to emergency medical services and health services pertaining to communicable diseases”.<sup>365</sup> In their Protection Monitoring Report published in August 2021, the humanitarian aid organisation GOAL additionally stated that participants in focus group interviews “emphasized that not only [is it] hard” to afford medicine or hospital visits, but that seeing a doctor “also means a day off from work and consequently one less per diem”.<sup>366</sup>

Under the LFIP,<sup>367</sup> applicants or international protection status holders who cannot afford health insurance are also covered by the GSS scheme for one year following their registration.<sup>368</sup> While this one-year limit does not apply to people “with special needs”,<sup>369</sup> international protection beneficiaries are often unaware that vulnerable groups are not included in the limitation.<sup>370</sup> Furthermore, “[o]bstacles in accessing health care continued in 2020 during the COVID-19 pandemic”.<sup>371</sup> According to the May 2020 SGDD-ASAM survey among temporary and international protection beneficiaries, 68 % of people who needed regular medication stated that they could not obtain their medication. In addition, the survey also contained specific questions directed at people who were pregnant or breastfeeding at the time, or people with a disability, chronic illness or other serious health problem; these questions were answered by 302 people, of which 15 % stated that they could not access health care services needed.<sup>372</sup> □

358 AIDA, 'Country Report: Türkiye, Update 2021', p. 194.

359 Information provided by a migration scholar [remote], September 2021.

360 İHD İstanbul [2022], 'Yaşamın Kısıyındakiiler- Mültecilere Yönelik Hak İhlalleri Raporu-2021', p. 9.

361 GOAL [2021], 'Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin', p. 38.

362 Information provided by a Syrian journalist [remote], May 2023; Heather Murdock [2020], 'Syrian Refugee Nurse Is on Mission in Turkey', VOA News.

363 Information provided by two representatives of a Community Centre in İstanbul, February 2023.

364 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 20.

365 AIDA, 'Country Report: Türkiye, Update 2021', p. 194.

366 GOAL [2021], 'Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin', p. 36.

367 Article 89[3] of the LFIP.

368 AIDA, 'Country Report: Türkiye, Update 2021', p. 102; Hayata Destek Derneği [2022], 'Türkiye'ye Yeni Gelen Ezidilerin Kayıt Sorunu Koruma İzleme Raporu', p. 12;

369 Article 89[3][a] of the LFIP.

370 AIDA, 'Country Report: Türkiye, Update 2021', p. 102.

371 AIDA, 'Country Report: Türkiye, Update 2021', p. 106.

372 SGDD-ASAM [2020], 'COVID-19 Salgınının: Türkiye'de Mülteciler Üzerindeki Etkilerinin Sektörel Analizi', pp. 17-18.

#### 4. Education

Children with a Temporary Protection Beneficiary Identification Card can enrol in public schools in their province of registration.<sup>373</sup> In parallel, the LFIP allows applicants or International Protection Status holders and their family members to benefit from primary and secondary education services.<sup>374</sup> In practice, however, there are various reports on difficulties in exercising these rights. For example, the GAR-Report No. 8 includes accounts of problems such as the school administration demanding money from Syrian parents with children enrolled in free public schools, or Syrian students being subjected to bullying by peers.<sup>375</sup> Next to racism and discrimination, language barriers and economic constraints are reported to be common difficulties related to education.<sup>376</sup> At the same time, parents encounter difficulties finding an authority responsible for receiving these complaints.<sup>377</sup>

Previously established Temporary Education Centres – all gradually closed by 2020 – had provided education for children registered under the international protection or temporary protection regime, as well as children who could not yet be registered. These centres provided instruction in Arabic according to the revised Syrian curriculum. After these centres closed, children were to enrol in Turkish schools under the Ministry of National Education.<sup>378</sup>

Turkey reportedly made an effort to ensure wider access to schooling for these children, which is reflected in the slowly increasing numbers of children enrolled in formal education: 684,728 children with some kind of protection status in 2019; 768,839 in 2020;<sup>379</sup> and 742,000 in 2021.<sup>380</sup> Nevertheless, by December 2021, more than 400,000 school-aged children were still “out-of-school and did not have any access to education opportunities”.<sup>381</sup> Based on data provided by the Ministry of National Education, in the 2021-2022 academic year, 65% of the children under the temporary protection regime and 67.53% of the children under the international protection regime were enrolled in school.<sup>382</sup>

Before 2021, the ‘guest student’<sup>383</sup> practice allowed children who had registration problems or were waiting for a registration appointment for their protection application to attend the school closest to their address. However, this practice was terminated in September 2021, rendering it no longer legally possible for unregistered children to attend school.<sup>384</sup> Given that the access to registration process has become increasingly difficult, this new limitation effectively excludes a huge number of children from education.<sup>385</sup> In addition, it has been observed that enrolment rates of non-citizen children drop significantly after primary and secondary school.<sup>386</sup> It has been further observed →

373 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 187.

374 Article 89[1] of the LFIP.

375 GAR [2022], ‘Suriye’den Göçün 10. Yılında Sivil Toplum: Aktörler, Süreçler ve Öngörüler’, GAR-Rapor No: 8, p. 18; GOAL [2021], ‘Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin’, p. 34.

376 Mültecilerle Dayanışma Derneği [2021], ‘Küçük Küçük Ülkeler Yaratmak Ebeveyn ve Gençlerin Gözünden Türkiye’de Yaşayan Mülteci Çocukların Eğitime Erişimi Araştırması Raporu’, Heinrich Böll Stiftung, p. 12.

377 GAR [2022], ‘Suriye’den Göçün 10. Yılında Sivil Toplum: Aktörler, Süreçler ve Öngörüler’, GAR-Rapor No: 8, p. 18.

378 Information provided by a migration scholar [remote], September 2021; Mültecilerle Dayanışma Derneği [2021], ‘Küçük Küçük Ülkeler Yaratmak Ebeveyn ve Gençlerin Gözünden Türkiye’de Yaşayan Mülteci Çocukların Eğitime Erişimi Araştırması Raporu’, Heinrich Böll Stiftung, p. 5.

379 European Commission [2021], ‘Turkey 2021 Report’, Doc. No. SWD[2021] 290 final/2, p. 17.

380 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 20.

381 Ibid.; Merve Tahiroğlu [2022], ‘Göç Politikaları: Türkiye’deki Mülteciler ve 2023 Seçimleri’, Heinrich Böll Stiftung.

382 Mültecilerle Dayanışma Derneği [2021], ‘Küçük Küçük Ülkeler Yaratmak Ebeveyn ve Gençlerin Gözünden Türkiye’de Yaşayan Mülteci Çocukların Eğitime Erişimi Araştırması Raporu’, Heinrich Böll Stiftung, pp. 9-10.

383 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 187.

384 Hayata Destek Derneği [2022], ‘Türkiye’ye Yeni Gelen Ezidilerin Kayıt Sorunu Koruma İzleme Raporu’, p. 14.

385 Mültecilerle Dayanışma Derneği [2021], ‘Küçük Küçük Ülkeler Yaratmak Ebeveyn ve Gençlerin Gözünden Türkiye’de Yaşayan Mülteci Çocukların Eğitime Erişimi Araştırması Raporu’, Heinrich Böll Stiftung, p. 13.

386 Mültecilerle Dayanışma Derneği [2021], ‘Küçük Küçük Ülkeler Yaratmak Ebeveyn ve Gençlerin Gözünden Türkiye’de Yaşayan Mülteci Çocukların Eğitime Erişimi Araştırması Raporu’, Heinrich Böll Stiftung, p. 12.



that children who are not attending school are at higher risk of being subjected to child labour. As previously mentioned, the COVID-19 pandemic contributed to an increase in child labour because of school closures and the shift to distance learning, which often precluded children in families seeking protection from attending school.<sup>387</sup>

Additional risks related to children not being enrolled in school include child marriage<sup>388</sup> and social adaptation problems due to insufficient participation in social life. Problems in accessing education also negatively affect children's physical, cognitive, psychological and social development.<sup>389</sup>

After the earthquakes in February 2023 (see p. 59), higher education continued in a hybrid format all over Turkey. The primary and secondary education in the affected area is provided remotely.<sup>390</sup> □

## 5. Racist violence, hate speech and increasing risk of physical attacks

Over the last years, violent attacks targeting 'exilees' have increased in Turkey.<sup>391</sup> This violence can also be observed by following the increasing hate speech on social media platforms which remains unsanctioned.<sup>392</sup> The general escalation of racist sentiments should be viewed in conjunction with the inflammatory political rhetoric targeting 'refugees' and 'migrants' and alongside the severe deterioration of the economic situation in Turkey.<sup>393</sup> The population of 'exilees' has become the most important political issue in Turkey, as both voters and politicians see it as one of the country's biggest and most pressing problems, alongside the unprecedented inflation and high unemployment.<sup>394</sup> Moreover, 'exilees' are scapegoated as one of the causes of the economic crisis in the country.<sup>395</sup>

In connection with the national elections held on 14 May 2023, the opposition used anti-immigrant sentiment as leverage against the government during the campaign.<sup>396</sup> Although the "parliament has taken a back seat"<sup>397</sup> after the introduction of Erdoğan's presidential system,<sup>398</sup> the →

387 Deri Tekstil ve Kundura İşçileri Derneği [2021], 'Pandemi'de Mülteci Çocuk İşçiliği Raporu', Sivil Toplum Geliştirme Merkezi Derneği, p. 4; Mültecilerle Dayanışma Derneği [2021], 'Küçük Küçük Ülkeler Yaratmak Ebeveyn ve Gençlerin Gözünden Türkiye'de Yaşayan Mülteci Çocukların Eğitime Erişimi Araştırması Raporu', Heinrich Böll Stiftung, p. 13; GOAL [2021], 'Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin', pp. 34-35. Furthermore, the Special Representative on Migration and Refugees of the Secretary General of the Council of Europe reported in November 2019 that distancing measures and school closures were feared to have also increased children's vulnerability to sexual abuse and gender-based violence. Council of Europe [2021], 'Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021', Doc. No. SG/Inf[2021]35, §§43, 46.

388 Information provided by an NGO in İzmir, February 2023; GOAL [2021], 'Protection Monitoring Report: Syrian Nomadic and Semi-Nomadic Communities in Gaziantep, Şanlıurfa, Adana and Mersin', p. 45.

389 Hayata Destek Derneği [2022], 'Türkiye'ye Yeni Gelen Ezidilerin Kayıt Sorunu Koruma İzleme Raporu', p. 15.

390 Information by a researcher on asylum and migration in İzmir [remote], June 2023.

391 AIDA, 'Country Report: Türkiye, Update 2021', p. 83.

392 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

393 Information provided by a migration scholar [online call], September 2021, by stakeholders and by an NGO in İstanbul, October 2021; Amnesty International [2019], 'Sent to a War Zone: Turkey's illegal deportations of Syrian Refugees', pp. 8-9. Ümit Özdağ, leader of the far-right and anti-refugee Victory Party [Turkish: Zafer Partisi], has launched a new campaign dubbed "Bus to Damascus" aimed at deporting Syrian refugees from Turkey, see Stockholm Center for Freedom [2023], 'Leader of far-right party launches campaign to deport Syrian refugees from Turkey'.

394 For context, see The Economist [2013], 'The economy, The Turkish economy is in pressing need of reform and repair'; Liz Alderman [2023], 'Turkey's Reeling Economy Is an Added Challenge for Erdogan', The New York Times.

395 Merve Tahiroğlu [2022], 'Göç Politikaları: Türkiye'deki Mülteciler ve 2023 Seçimleri', Heinrich Böll Stiftung; Ruth Michaelson, Deniz Barış Narlı [2023], 'Turkish opposition stirs up anti-immigrant feeling in attempt to win presidency', The Guardian.

396 GAR [2022], 'Suriye'den Göçün 10. Yılında Sivil Toplum: Aktörler, Süreçler ve Öngörüler', GAR-Rapor No: 8, p. 29; Joshua Levkowitz [2023], 'Turkey's Xenophobic Turn Targets Stateless Syrians', FP.

397 Seán Clarke [2023], 'Turkey elections 2023: latest presidential and parliamentary results', The Guardian.

398 E.g. Kareem Shaheen [2017], 'Erdoğan clinches victory in Turkish constitutional referendum', The Guardian; Angela Dewan [2017], 'Turkey referendum: What happened and what comes next', CNN.

outcome of the parliamentary election in May 2023 has brought about an increased representation of conservative and far-right parties which employ racist rhetoric against 'exilees'.<sup>399</sup> None of the presidential candidates, however, could win the presidential election in the first round of voting of the national elections. In the two weeks leading up to the presidential runoff against President Erdoğan, the opposition staked its campaign on, firstly, willingly over exaggerating the number of 'exilees' in the country as more than 10 million, and secondly, promising to send all Syrians back to Syria as soon as CHP candidate Kemal Kılıçdaroğlu's victory by, for example, using billboards with the slogan "They will go".<sup>400</sup> On 28 May 2023, Recep Tayyip Erdoğan was reelected as Turkish President after receiving approximately 52 % of the votes.<sup>401</sup> Nevertheless, the fomented "anti-refugee sentiment across the country and ... racist discourse on immigration" appear "set to stay long after the election".<sup>402</sup> Therefore, the government is expected to continue its violent approach towards 'exilees', as documented herein, and further expand its deportation policies.<sup>403</sup>

Further illustrative are two surveys from 2021 and 2022: In the first poll conducted by the Metropoll Research Company (Turkish: Metropoll Stratejik Ve Sosyal Araştırmalar Merkezi) in August 2021, 67 % of respondents said that Turkey should completely close off its borders for 'exilees'; the second poll, conducted by UNHCR in March 2022, found that 48 % of Turkish citizens wanted the government to send Syrians back to Syria, which marked a fourfold increase compared to the same survey three years prior.<sup>404</sup> This political climate has contributed to increased disinformation and violence against people assumed to be 'exilees',<sup>405</sup> especially people perceived to be Syrian.<sup>406</sup> In early July 2023, the police in İzmir, for example, started removing business signs written in Arabic letters.<sup>407</sup>

Rising anti-refugee sentiments have increasingly turned violent: In July 2019, an unconfirmed news report of Syrian refugees committing sexual violence against minors in an İstanbul neighborhood led to waves of violence, with refugees' homes and businesses being stoned.<sup>408</sup> In November 2021, three Syrian workers were burned to death at their workplace in İzmir.<sup>409</sup> In 2021, a total of 825 "human rights violations against refugees" were reported İHD İstanbul, while a press review counted a total number of 1,869 additional violations.<sup>410</sup> The violent attacks in Altındağ (Ankara) also occurred in 2021, as previously mentioned [see p. 26]. Another example of extreme violence occurred in January 2022 in İstanbul when masked and armed men entered the home of Nail Alnaif, a 19-year-old Syrian, and stabbed him to death.<sup>411</sup> This incident is not an exception, but rather "marks an alarming trend" as the headline of the news story covering Nail Alnaif's →

399 For example, 2018 the Nation Alliance, consisting of the kemalist Republican People's Party [CHP], the İYi Party, and the Felicity Party, won a total of 189 seats, in 2023 only CHP and İYi Party taken together made a total number of 213 seats. At the same time, the Nationalist Movement Party [MHP] managed to increase their number of seats from 49 in 2018 to 50 in 2023. In addition, Sinan Oğan, the 2023 presidential candidate of a right-wing electoral alliance, managed to win 5,2% of the votes which can be considered significant, see Seán Clarke [2023], 'Turkey elections 2023: latest presidential and parliamentary results', The Guardian; Coco Chai [2019], 'Turkey under Erdogan: the 2018 Turkish General Elections', The Yale Review of International Studies.

400 Information provided by an NGO in İstanbul, May 2023; e.g. Ruth Michaelson, Deniz Barış Narlı [2023], 'Turkish opposition stirs up anti-immigrant feeling in attempt to win presidency', The Guardian; Al Jazeera English [2023], 'Turkey's Kılıçdaroğlu promises to kick out refugees post-election'.

401 E.g. Ruth Michaelson, Deniz Barış Narlı [2023], 'Recep Tayyip Erdoğan wins Turkish presidential election', The Guardian.

402 Ruth Michaelson, Deniz Barış Narlı [2023], 'Turkish opposition stirs up anti-immigrant feeling in attempt to win presidency', The Guardian

403 Information provided by two stakeholders in İstanbul [remote], June 2023.

404 Merve Tahiroğlu [2022], 'Göç Politikaları: Türkiye'deki Mülteciler ve 2023 Seçimleri', Heinrich Böll Stiftung.

405 Merve Tahiroğlu [2022], 'Göç Politikaları: Türkiye'deki Mülteciler ve 2023 Seçimleri', Heinrich Böll Stiftung.

406 Information provided by a researcher on asylum and migration in Ankara [remote], June 2023.

407 Information provided by a researcher on asylum and migration in İzmir [remote], July 2023; Yusuf Körükmez [2023], 'İzmir'de Arapça tabela operasyonu: Buna izin verilmemesi gerekiyor', Cumhuriyet.

408 Ibid.

409 Gazete Duvar [2022], 'Avukatlardan yakılarak katledilen Suriyeli işçilerin davasına çağrı'.

410 İHD İstanbul [2022], 'Yaşamın Kıyısındakiler- Mültecilere Yönelik Hak İhlalleri Raporu - 2021', pp. 5-6.

411 Umar Farooq [2022], 'How killing of Syrian refugee marks an alarming trend in Turkey', Al Jazeera.

death puts it.<sup>412</sup> Although xenophobic sentiments in Turkey tend to target Syrians, as there are approximately 3.5 million Syrians in Turkey,<sup>413</sup> also other nationalities or ethnicities may become the victims of racists attacks.<sup>414</sup>

Overall, the use of racist and xenophobic rhetoric in Turkish politics has led to a hostile environment in which many 'exilees' do not feel 'safe'.<sup>415</sup> Furthermore, this leads to a widespread risk for 'exilees' to be subjected to hate speech and racist violence – causing a potential conflict with Article 38(1)(a) of the EU's APD, besides also violating an individual's fundamental rights.<sup>416</sup> □

412 Umar Farooq [2022], 'How killing of Syrian refugee marks an alarming trend in Turkey', Al Jazeera. Regarding further killings of young Syrians, see, e.g. The New Arab [2022], 'Syrian woman found handcuffed, stabbed to death in southern Turkey'; The Syrian Observer [2022], 'Another Young Syrian Killed in Istanbul'; The New Arab [2022], 'Syrian newlywed barber killed outside his shop in Istanbul: reports'.

413 Information provided by a researcher on asylum and migration in Ankara [remote], June 2023.

414 See, e.g. Duvar English [2021], 'Somali businesses attacked in Ankara after newspaper's racist reporting'.

415 Information provided by a stakeholder in Istanbul, November 2022.

416 This happens in extreme cases, such as the right to life pursuant to Article 2 of the ECHR or Article 6 of the ICCPR.

## V. 'Pre-removal' or deportation detention

Currently, there are 30 active removal centres (Turkish: Geri Gönderme Merkezi) in 25 cities across Turkey, including two temporary facilities.<sup>417</sup> The centres in İzmir (Harmandalı), Kırklareli, Gaziantep, Erzurum, Kayseri and Van (Kurubaş) were constructed with the support of EU funding, and initially intended as Reception and Accommodation Centres for international protection applicants. After the EU-Turkey statement however (see p. 7), the said facilities were repurposed as removal centres where 'exilees' are detained instead of registered as asylum seekers.<sup>418</sup> Besides formal removal centres, Turkish authorities operate holding rooms for 'exilees' in airports,<sup>419</sup> at police stations and at 'informal' detention sites along the borders.<sup>420</sup> According to one lawyer, if the removal centre in Van, for example, is overcrowded, Turkish authorities regularly transfer detainees to military outposts and then push them back to Iran (see p. 48).<sup>421</sup> Prior to the devastating earthquake on 6 February 2023 (see p. 59), the so-called Temporary Accommodation Centres established along the Turkish-Syrian borders can also be counted among the facilities where Syrian 'exilees' were held (see p. 17).<sup>422</sup> In addition, these Temporary Accommodation Centres included specific detention facilities separated from the general area.<sup>423</sup>

### 1. Detention order

While the "TPR does not feature any explicit provision governing administrative detention of persons within the scope of temporary protection",<sup>424</sup> the LFIP differentiates between administrative detention<sup>425</sup> "of international protection applicants during the processing of their applications"<sup>426</sup> and deportation – or 'pre-removal' – detention.<sup>427</sup> While there are no public statistics on the migration detention population available,<sup>428</sup> the number of apprehensions is publicly reported: "The number of irregular migrants apprehended in Türkiye stood at 162,996 in 2021, compared to 122,302 in 2020".<sup>429</sup> In addition, the PMM reported "that it was holding nearly 19,000 migration detainees" as of 18 June 2022.<sup>430</sup> As part of the public performance of a strict migration policy (see p. 36), the PMM started to announce the numbers of apprehensions, people in detention and deportations on Twitter.<sup>431</sup> On 17 June 2023, for example, the PMM posted the weekly statistics for 9 to 15 June →

417 Information provided by an NGO in İzmir, February 2023; PMM's website, information about removal centres [last accessed 2 June 2023].

418 Deportation Monitoring Aegean [2019], 'Surrendered to Harmandalı Removal Prison - How EU policies lead to expulsion and maltreatment of migrants deported to Turkey'; AIDA, 'Country Report: Turkey, Update 2018', p. 65.

419 Based on information provided by a lawyer in İstanbul in September 2021, the conditions in the holding area at the airport are especially dire for detainees: they have no daylight but are surrounded by artificial light 24 hours per day; have no fresh air; have only sandwiches for food; are usually not provided with any hygienic products; and it is also more difficult for lawyers to visit their clients.

420 Global Detention Project [2021], 'Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe', pp. 6, 45-46; Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 30.

421 Information provided by lawyer in Van [remote], October 2021.

422 Valeria Hänsel [2023], 'Europas Türsteher und die Taliban', medico international.

423 Information provided by a lawyer in İzmir [remote], May 2023.

424 AIDA, 'Country Report: Türkiye, Update 2021', p. 165.

425 Article 68 of the LFIP.

426 AIDA, 'Country Report: Türkiye, Update 2021', p. 115.

427 Article 57 read in conjunction with Article 54 of the LFIP.

428 Global Detention Project [2021], 'Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe', p. 35.

429 European Commission [2022], 'Türkiye 2022 Report', Doc. No. SWD[2022] 333 final, p. 53; Global Detention Project [2021], 'Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe', p. 36.

430 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 33.

431 Information provided by a lawyer in İzmir, February 2023; by a researcher on asylum and migration in İzmir [remote], May 2023; by a researcher on asylum and migration in Ankara [remote], June 2023.

2023: In that week, 3,125 “irregular migrants” were apprehended, and a total of 16,269 people were in detention – 4,244 from Afghanistan; 1,306 from Pakistan; and 10,719 from other countries.<sup>432</sup>

In practice, people under either the temporary or international protection regime are routinely subject to arbitrary detention in Turkey [see p. 44 & p. 48].<sup>433</sup> As previously mentioned, people face detention upon being apprehended outside their assigned ‘satellite city’ without the necessary authorisation [see p. 13].<sup>434</sup> People might be administratively detained if they, for example, submit their protection application at the border.<sup>435</sup> Individuals also face detention upon readmission to Turkey from other countries,<sup>436</sup> i. e. Greece following a pushback.

Further, people are put in ‘pre-removal’ detention if they were issued a deportation order and are at flight risk or if they did not leave Turkey within the deadline set for them without an ‘acceptable excuse’ to stay.<sup>437</sup> The LFIP<sup>438</sup> “provides for deportation based on several immigration-related grounds, including inter alia, overstaying a visa, cancellation of a residence permit, violating provisions of entry or stay”, including people who were pushed back,<sup>439</sup> “and rejection of application for international protection”.<sup>440</sup>

One example of ‘exilees’ being subjected to arbitrary detention and deportation is mentioned in the Amnesty International Report 2021/22: “In October and November, immigration authorities arrested and detained, for the purpose of deportation, 45 Syrian refugees for taking part in a social media trend involving sharing videos of themselves eating bananas” which “was described by the authorities as being wilfully provocative”.<sup>441</sup> These posts on social media [‘banana videos’] had started to circulate as a reaction to a video gone viral showing locals verbally assaulting a Syrian woman and claiming that Syrians in Turkey were not able to afford bananas.<sup>442</sup>

If issued a deportation order, a person – alone or with their lawyer – has the right to appeal the removal decision to the administrative court within seven days of its notification.<sup>443</sup> The administrative appeal is the only remedy provided by the LFIP.<sup>444</sup> Given this extremely short deadline of seven days, this remedy’s accessibility in practice is highly questionable.<sup>445</sup> The accessibility is even more questionable given the several practical obstacles in effectively accessing legal aid, starting with migration detainees usually not being sufficiently informed about their rights.<sup>446</sup> →

432 PMM, Twitter-Account, post dated 17 June 2023.

433 Information provided by two lawyers in Istanbul and Ankara [remote], July 2022.

434 AIDA, ‘Country Report: Türkiye, Update 2021’, pp. 115, 165-166.

435 Article 68[2][c] of the LFIP; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 115.

436 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 115; Deportation Monitoring Aegean [2019], ‘Surrendered to Harmandalı Removal Prison – How EU policies lead to expulsion and maltreatment of migrants deported to Turkey’.

437 Article 57[2] of the LFIP.

438 Article 54 of the LFIP.

439 Information provided by two lawyers in Istanbul and Ankara [remote], July 2022.

440 Global Detention Project [2021], ‘Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe’, p. 11, see also pp. 14-15.

441 Amnesty International [2022], ‘Amnesty International Report 2021/22: The State Of The World’s Human Rights’, p. 375; Stockholm Centre for Freedom [2021], ‘Syrian journalist in Turkey forced to sign repatriation document for ‘banana’ video protesting discrimination’.

442 Information provided by two representatives of a Community Centre in Istanbul, September 2021; Amnesty International [2022], ‘Amnesty International Report 2021/22: The State Of The World’s Human Rights’, p. 375.

443 Article 53[3] of the LFIP; information provided by a lawyer from the Bar Association in İzmir, February 2023; Global Detention Project [2021], ‘Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe’, p. 27.

444 In relation to possible risks to the applicant’s life, physical and moral integrity upon deportation, an urgent interim measure can be requested from the Constitutional Court, and subsequently the ECtHR; information provided by a lawyer from the Bar Association in İzmir, February 2023.

445 ECtHR, *I.M. v. France*, §154; Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §27.

446 İHD İstanbul [2022], ‘Yaşamın Kıyısındakiler- Mültecilere Yönelik Hak İhlalleri Raporu – 2021’, p. 9-10.

Taken together, these shortcomings may amount to a violation of the right to an effective remedy as set out in Article 13 of the ECHR [see p. 45].

If the applicant is detained in order to enforce the deportation order, a separate application to a 'peace judge' has to be lodged to challenge the detention.<sup>447</sup> In contrast to the aforementioned short appeal deadline related to the deportation order, there is no time limitation for the submission of an application challenging the detention. Rather, such an application can be submitted at any time, and even multiple times. As there is no regular appellate body available to review the peace judge's decision, it immediately allows an individual application to the Constitutional Court in Turkey.<sup>448</sup> Detainees might be released from detention while the deportation procedure is still ongoing.<sup>449</sup> In this case, detainees usually are handed an order to leave Turkey within a specific time period, or they are subjected to a signature duty in the province from which they were released.<sup>450</sup>

Based on the experience of lawyers in the field, the duration of detention varies between a few days and several months.<sup>451</sup> According to the law, the maximum duration of removal detention is six months, yet it may be extended for another six months if the deportation proceedings cannot be completed due to the foreigner's non-cooperation or failure to provide correct information or documents concerning their country of origin.<sup>452</sup> In practice however, there have been cases reported wherein detainees were released after the maximum duration had been exceeded and then were re-arrested afterwards.<sup>453</sup> Meanwhile, the period of administrative detention during international protection proceedings shall not exceed 30 days.<sup>454</sup> Yet again, "lawyers report that they are aware of cases where [administrative detention] orders are not communicated to asylum seeker detainees, meaning that they are then", in violation of the law, "held for longer than 30 days".<sup>455</sup>

As held by the Constitutional Court, it further constitutes a violation of the 'right to liberty'<sup>456</sup> when non-Turkish citizens are detained for longer than 48 hours following the issuance of the deportation order without transfer to a formal removal centre.<sup>457</sup> Nonetheless, authorities reportedly still detain people in excess of this limit:<sup>458</sup> Several police stations in İstanbul, e.g. Beyoğlu, Beşiktaş and Kağıthane, reportedly held detainees for up to seven days, and people were detained for up to two months in the basement of the Yumuktepe police station in Mersin.<sup>459</sup> Similarly, Human Rights Watch reported on the case of a detainee held at Pendik Police Holding Centre in İstanbul for 11 days with no phone access and thus without access to a lawyer.<sup>460</sup> According to one lawyer, such periods of extended detention especially occur in connection with events of mass detention, such as in the summer of 2019 following a campaign of increased apprehensions [see p. 54], or more →

447 Article 57[6] of the LFIP; Information provided by an NGO in İzmir, February 2023.

448 Information provided by an NGO in İstanbul [remote], May 2023.

449 Article 57/A of the LFIP lists the alternatives to administrative detention; AIDA, 'Country Report: Türkiye, Update 2021', pp. 118-120.

450 Information provided by an NGO in İstanbul [remote], May 2023. If a detainee is released, they are usually issued either a T2 form [Invitation to Leave the Country Form] or a T6 form [Administrative Surveillance Decision Form ordering release from a Removal Centre and reporting obligation]. AIDA, 'Country Report: Türkiye, Update 2021', p. 8.

451 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

452 Article 57[3] of the LFIP.

453 Information provided by an NGO in İstanbul, September 2021.

454 Article 68[5] of the LFIP.

455 Global Detention Project [2021], 'Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe', p. 26.

456 In international human rights law the right to liberty is enshrined, e.g. in Articles of the 5 ECHR and 9 of the ICCPR.

457 Information provided by a lawyer in Van [remote], October 2021; AIDA, 'Country Report: Türkiye, Update 2021', p. 118.

458 AIDA, 'Country Report: Türkiye, Update 2021', p. 123.

459 Ibid., p. 126.

460 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 40.



recently the arrest of more than 100 members of the 'Ahmadi Religion of Peace and Light' who wanted to apply for asylum at the border to Bulgaria [see p. 55].<sup>461</sup> □

## 2. Detention conditions

Although improvements have been made compared to conditions around 2015,<sup>462</sup> inhuman and degrading conditions still persist today, particularly lack of privacy due to detention in mass cells; insufficient food supply with, at times, only two meals a day; insufficient access to clean drinking water; insufficient access to water, sanitation and hygiene facilities; insufficient medical care; and overcrowding.<sup>463</sup> While removal centres initially reduced the number of detainees because of the outbreak of the COVID-19 pandemic,<sup>464</sup> in interviews conducted by Human Rights Watch between January 2021 and April 2022 former detainees reported, however, that they were again held in severely overcrowded cells<sup>465</sup> or – due to the aforementioned overcrowding – even in containers outside Harmandalı Removal Centre in İzmir, without light or proper food.<sup>466</sup>

Furthermore, there are reports of short periods of daily access to the outdoors: One person who was detained after a pushback from Greece reported that access to outdoor yards was only granted in groups, leaving the individual detainee with, for example, 10 minutes of yard time in the morning and 10 minutes in the evening.<sup>467</sup> Human Rights Watch published concurring testimonies from Tuzla Removal Centre where detainees were held “in aluminium containers, which are locked all day except for 15 minutes in the morning and 15 minutes in the afternoon”.<sup>468</sup> Further, Human Rights Watch published several testimonies from former detainees stating that they developed rashes and other “skin problems” due to the bad hygienic conditions.<sup>469</sup> Detainees also stated not having access to face masks or tests for COVID-19.<sup>470</sup> In addition, İHD İstanbul reported that migration detainees are usually not sufficiently informed about their rights; have difficulties communicating with their families; and do not receive education or health services in their own language.<sup>471</sup> Overall, the European Commission, in its 2022 report, recommended that Turkey “needs to further align its practice in removal centres with European standards, in particular with regard to protection of human rights, including access to legal counselling and interpreters, and protection of vulnerable groups, in particular children staying with their families”.<sup>472</sup>

Illustrative of these general conditions is the case of a 21-year-old Syrian who was detained at Gaziantep Removal Centre for 34 days in 2022. During this period he was, together with 12 other people, held in a two-by-four metre room equipped with two bunk beds. Only four people at a →

461 Information provided by an NGO in İstanbul [remote], May 2023. Related to this, the UN Special Rapporteur on freedom of religion or belief, the UN Special Rapporteur on the human rights of migrants, the UN Working Group on arbitrary detention, and the UN Special Rapporteur on minority issues published a common call to Turkey “not to deport over 100 members of a persecuted religious minority who were detained at the Turkish-Bulgarian border last month”. UN Media Centre [2023], “Türkiye must not deport members of the Ahmadi Religion of Peace and Light seeking asylum: UN experts”, Press Release.

462 CPT [2017], ‘Report to the Turkish Government on the visit to Turkey carried out by the [CPT] from 16 to 23 June 2015’, CPT/Inf [2017] 32. This report was summarised by the Stockholm Centre for Freedom [2017], ‘CPT report highlights problems in Turkey’s immigration detention centers’. Furthermore, a series of judgments from the Constitutional Court against detention in İstanbul [Kumkapı], now closed, have highlighted the need to provide adequate detention conditions in Turkey. AIDA, ‘Country Report: Turkey, Update 2019’, p. 97.

463 Information provided by a lawyer in Kırklareli/Edirne in September 2021; by a lawyer in Ankara, October 2021; Global Detention Project [2021], ‘Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe’, pp. 47-55, summarising the treatment in some of Turkey’s ‘most important’ Removal Centres and those where serious problems have been identified.

464 Information provided by a lawyer in İzmir [remote], May 2023.

465 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 38-42.

466 Information provided by a researcher on asylum and migration in İzmir [remote], May 2023.

467 Information provided by a stakeholder in İstanbul, April 2022.

468 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 41.

469 Ibid., pp. 39-41.

470 Ibid., pp. 39-41.

471 İHD İstanbul [2022], ‘Yaşamın Kıyısındakiler- Mültecilere Yönelik Hak İhlalleri Raporu - 2021’, pp. 9-10.

472 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 20.

time could sleep in a bed, leaving the remaining nine detainees forced to lay on the ground.<sup>473</sup> Food was provided three times a day, while only one glass of water per person was distributed. Any additional water supply would have to be bought from the Removal Centre's shop for several times the usual price.<sup>474</sup> According to this young man's testimony, he did not receive medical care when he got sick.<sup>475</sup> Referring to Harmandalı Removal Centre in İzmir, one lawyer explained that there is usually only one medically trained person on duty and that they also only have limited infrastructure. In parallel, detainees are seldomly referred to a hospital as such a transport needs to be accompanied by security personnel which, if accompanying a detainee to the hospital, have to leave their post at the removal centre.<sup>476</sup> Based on this, it can be assumed that insufficient medical care is owed, at least in parts, to understaffing. Further evidence of insufficient care in detention are suicides occurring while detained: Upon an investigation of a suicide case in Gaziantep Oğuzeli Removal Centre in 2019, Gaziantep Governorate's Commission for Investigation and Evaluation of Human Rights Violations stated that there have been several suicide attempts in the Removal Centre.<sup>477</sup> Furthermore, on 23 June 2021, a Syrian national burned himself alive at Harmandalı Removal Centre in İzmir, according to a statement of the responsible Governor.<sup>478</sup>

Reportedly in connection with overcrowding, detainees are often moved between different Removal Centres across Turkey.<sup>479</sup> One of many examples is the case reported by BVMN of the minor who was registered as an adult despite having presented a valid identity document showing that he was under 18 at the time [see p. 28]: Initially, he was placed in a Children Support Centre in İstanbul, and then transferred to Ankara in September 2022 where the age assessment was conducted. After being re-aged as an adult, he was placed in a removal centre for adults in Akyurt (Yeşiltepe, Ankara). He had only been able to send one message to his brother, and then was out of touch with his support network until his next transfer. In October 2022, he was transferred to a removal centre in Iğdır located close to the Iranian border, and in December 2022, he was transferred again to a newly built 'high security removal centre' in Kütahya in Western Turkey.<sup>480</sup> Such frequent transfers involve different layers of difficulties: Firstly, they have a psychological effect and might "exacerbate anxiety", and secondly, they "make it exceedingly difficult for detainees to make and maintain contact with lawyers or others on the outside seeking to provide legal, material, or moral support".<sup>481</sup> Lawyers and members of support networks have confirmed that transfers regularly lead to losing contact with the person in detention, or at least render it impossible to visit a person – or in some cases to even access their case file [see p. 45] – in a removal centre located somewhere across the country.<sup>482</sup>

Moreover, there have been reports of ill-treatment of detainees by removal centre personnel. The aforementioned 21-year-old Syrian detained at Gaziantep Removal Centre stated that there were three attempts to pressure him into signing 'voluntary return' documents [see p. 51]<sup>483</sup> through verbal threats and shouting at him. He further reported having seen how other detainees were beat- →

473 Concurring testimonies, e.g. from Izmir Removal Centre, Kırklareli Removal Centre, and Pendik Police Holding Centre: Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', pp. 38-40.

474 Barriers to access water were also reported from Gaziantep Removal Centre. AIDA, 'Country Report: Türkiye, Update 2021', p. 130.

475 Information provided by a Syrian journalist [remote], May 2023.

476 Information provided by a lawyer in İzmir [remote], May 2023.

477 TİHEK [2019], 'Gaziantep Geri Gönderme Merkezi Ziyareti Raporu', p. 5; Sendika.Org [2019], 'HDP'li Toğrul, Antep Geri Gönderme Merkezi'ndeki intihar iddialarını Meclis'e taşıdı'.

478 TİHV [2021], '24 June 2021, Daily Report on Human Rights Violations'; critical about the detailed statement of the Governor, see statement of the İzmir Bar Association [2021], 'Harmandalı Geri Gönderme Merkezi'nde Yaşamını Yitiren Suriyeli Mülteci Ahmed Maslem Anıldı'.

479 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 33.

480 This summary is based on confidential BVMN documents made available for this research. These documents, however, are not publicly available.

481 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 33.

482 Information provided by an NGO in İstanbul, a lawyer in İzmir, and a BVMN member [remote], May 2023.

483 AIDA, 'Country Report: Türkiye, Update 2021', p. 130, reporting on incidents of violence, handcuffing and pressure in order to get 'consent' for 'voluntary return' in Hatay Removal Centre, as well as Gaziantep.

en.<sup>484</sup> In Antalya, for example, a Syrian national reportedly “was tortured by officers in the Removal Centre in June 2018 and later transferred to the Gaziantep Removal Centre, all the while suffering physical violence during the transfer”.<sup>485</sup> In 2020, the Constitutional Court ruled on the appeal of a detainee at Erzurum Removal Centre who had been held in solitary confinement for 10 days, which the Court found amounts to torture.<sup>486</sup> In an extensive report published in November 2022, Human Rights Watch documented ill-treatment in both informal detention sites along the border with Iran and the official removal centres.<sup>487</sup> This ill-treatment included harassing detainees by randomly turning on the light at night<sup>488</sup> or beating them if the detainees stood outside of the line while queuing for food.<sup>489</sup> It was further reported that detainees were subjected to discriminatory treatment, as Afghans were usually treated worse than Syrians.<sup>490</sup>

Commenting on such conditions, one stakeholder mentioned in the Asylum Information Database (AIDA)’s 2021 Update on Turkey said that “that the conditions in detention centres are bad enough to force people to return voluntarily”.<sup>491</sup> Taken into consideration that access to the removal centres “by international partners such as UNHCR or IOM, as well as by NGOs is very limited”.<sup>492</sup> At the same time, external monitoring is also highly restricted, effectively leaving immigration detainees at the mercy of the security personnel at the removal centre.

Immigration detention is neither per se unlawful nor arbitrary.<sup>493</sup> Nonetheless, even though the legislation in Turkey does provide a legal basis for administrative detention in connection to deportation [see p. 39], this legal basis does not per se preclude deportation detention from being arbitrary. In the words of the UN Human Rights Committee, an “arrest or detention may be authorized by domestic law and nonetheless be arbitrary”.<sup>494</sup> Relevant to determining whether an arrest or detention is arbitrary are elements such as “inappropriateness, injustice, lack of predictability and due process of law ... elements of reasonableness, necessity and proportionality”.<sup>495</sup> Specifically, “detention may be arbitrary if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained”.<sup>496</sup> Considering this, detention conditions as detailed above may violate an individual’s right to liberty – if not the prohibition of torture or inhuman and degrading treatment<sup>497</sup> – and, therefore, ultimately threaten an individual’s liberty on account of race, religion, nationality, membership of a particular social group or political opinion contrary to Article 38(1)(a) of the EU’s APD. □

484 Information provided by a Syrian journalist [remote], May 2023; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 128, reporting on testimonies from 2021 stating that detainees at Harmandalı Removal Centre were insulted, humiliated, and taken to a “punishment floor” where they are left with their hands cuffed behind their backs for hours.

485 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 130.

486 Ibid., p. 127.

487 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 30-43.

488 Ibid., p. 39.

489 Ibid., p. 40.

490 Ibid., pp. 37, 39.

491 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 129.

492 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021’, Doc. No. SG/Inf[2021]35, §88.

493 From this, it also follows that arbitrariness must be interpreted more broadly than ‘against the law’. CCPR, *Samba Jalloh v. The Netherlands*. §8.2.

494 Human Rights Committee, ‘General comment No. 35: Article 9’, CCPR/C/GC/35, §12.

495 Ibid.

496 Ibid., §14.

497 Conditions of detention are primarily addressed by Articles 7 and 10 of the ICCPR. Human Rights Committee, ‘General comment No. 35: Article 9’, CCPR/C/GC/35, §14.

### 3. Lack of access to legal aid

Accessing legal counsel or representation for people in detention is particularly difficult. In the past, a legal aid system provided through the Bar Associations and funded by UNHCR was implemented city-by-city across Turkey.<sup>498</sup> Now, after UNHCR funding for such programs ceased, Bar Associations in several cities are no longer able to offer legal aid for people seeking protection in Turkey or have at least had to limit the scope of their programs.<sup>499</sup> In any case, seeking legal counsel or representation while in detention is restricted in several ways: Firstly, the PPMs are not obliged to inform any legal actor about people in deportation detention. Secondly, detainees are often not aware of their legal rights and are not provided with sufficient information thereof. In the eyes of the European Commission, the “lack of effective provision of information in removal centres, in languages that migrants understand, continues to serve as a key barrier to accessing rights in detention”.<sup>500</sup> In addition, detainees usually cannot contact a lawyer, a legal NGO or the regional Bar Association from inside the detention centre because of insufficient access to phones or because phones are not working.<sup>501</sup> Therefore, they have to rely on family, friends or UNHCR to initiate the contact.<sup>502</sup>

Thirdly, the contact between the detainees and their legal representation is complicated for practical reasons: As stated above, the appeal against a deportation order needs to be submitted within seven days.<sup>503</sup> If a legal NGO or a lawyer is contacted on behalf of a person in detention, this NGO or lawyer first has to locate the person in a specific removal centre. This alone can be difficult as the prison authorities will only grant access to a detainee if they are able to identify the person based on the information provided. Even small mistakes in the transliteration of, for example, Arabic or Farsi names might lead to the prison authorities denying the search request to locate the person in custody.<sup>504</sup>

If a detainee is located, a lawyer next needs to get a notarised Power of Attorney (POA) in order to access the file and to represent the person on appeal. Generally, in Turkey, in order to mandate a lawyer, a client needs to sign a notarised POA.<sup>505</sup> More often than not, however, immigration detainees do not have original or valid ID documents to verify their identity in the notarisation process. Taking this into account, the practice has emerged to accept any kind of official paper, e.g. the deportation order, to confirm the person’s identity and notarise the POA.<sup>506</sup> Still, a notary must accompany the lawyer to the detention centre to get the POA certified, for which the notary may charge three or four times the usual rate because of the time and travel required.<sup>507</sup> While some courts in Turkey have previously accepted more informal POAs,<sup>508</sup> this practice is reported to be currently changing by, for example, lawyers being fined for taking legal action without formal authorisation.<sup>509</sup>

Furthermore, translation inside detention centres is only allowed through registered interpreters. Because of this restriction, a lawyer cannot be accompanied by friends or family members to facilitate communication with an existing or prospective client. Phone translation by friends or →

498 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022; Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §29.

499 Information provided by an NGO in İzmir, February 2023.

500 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 54.

501 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, pp. 38, 41.

502 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 138.

503 Article 53[3] of the LFIP.

504 Information provided by an NGO in İzmir, February 2023.

505 Information provided by a lawyer in Kırklareli/Edirne, September 2021.

506 Information provided by a lawyer in İzmir [remote], May 2023.

507 Information provided by a lawyer in Kırklareli/Edirne, September 2021; by a lawyer in İstanbul, September 2021; by a lawyer in İzmir [remote], May 2023.

508 Information provided by a lawyer in Kırklareli/Edirne, September 2021.

509 Information provided by a lawyer in İzmir [remote], May 2023.

relatives is also not possible. Moreover, the registered interpreters charge fees for their services, which the detainees or their support networks outside the detention centre must pay.<sup>510</sup>

Further, the lawyer has to consult the file. In some places the file can be accessed at the detention centre, but in other cities, e. g. in İstanbul, the file has to be consulted at the PPMM while the client is held in a remote detention centre where a lawyer has to go for in-person consultations. This forces the lawyer to undertake time-consuming travel in order to have a full understanding of the case. Adding to these obstacles, it has been reported that lawyers occasionally are not granted access to the full file.<sup>511</sup>

In summary, detainees and their lawyers face several difficulties in attempting to go through all the steps necessary for lodging an appeal in only seven days: After the initial contact with the client, proper authorisation and consultation of the file, the appeal still needs to be drafted and submitted, and the removal centre has to be informed.<sup>512</sup> Taken together, the extremely short appeal deadline, in combination with limited legal aid resources and an unwieldy bureaucratic system displaying little flexibility to the detainees' benefit, leaves most detainees without legal representation when facing deportation.

As summarised by the European Commission, despite “the increase in the number of lawyers handling cases in removal centres (from 4,187 in 2019 to 7,168 in 2020), access to legal counselling remained low, considering hundreds of thousands of migrants apprehended and placed in removal centres” during that year.<sup>513</sup> Therefore, the Commission concluded that Turkey needs to “further align its practice in removal centres with European standards, in particular with regard to protection of human rights, including access to legal counselling and interpreters”.<sup>514</sup>

Applying for status from detention has proven to be extremely difficult: While there is the theoretical possibility to submit a short, written application for protection when at a removal centre, it is close to impossible to successfully initiate an asylum procedure from detention without support of a lawyer.<sup>515</sup> Considering the “very few asylum applications” which are submitted in removal centres, the Special Representative on Migration and Refugees of the Secretary General of the Council of Europe in their November 2019 report raised “the question of whether it is possible to effectively apply for protection from detention”.<sup>516</sup> Illustrative of this, in February 2023, the German newspaper TAZ reported on the case of a 24-year-old Afghan who was detained in Turkey after attempting to cross the land border to Greece in November 2022, and was arbitrarily denied both the submission of an asylum application and access to a lawyer.<sup>517</sup>

In their 2021 report on ‘Legal Aid For Returnees Deprived Of Liberty’, the EU Agency for Fundamental Rights acknowledged that “[e]ffective access to competent legal assistance is a key safeguard to enable people in return proceedings to exercise their right to an effective judicial remedy under Article 47 of the Charter<sup>518</sup> and to access justice in general”.<sup>519</sup> The Fundamental Rights' Agency identified, inter alia, the insufficient information for detainees about their rights to receive legal aid, insufficient interpretation, insufficient availability of qualified lawyers, restricted access to detention facilities and difficult working conditions for lawyers, time limitations and short time frames as practical obstacles for detainees to exercise their rights related to access to →

510 Information provided by a lawyer in Kırklareli/Edirne, September 2021.

511 Information provided by a lawyer in İzmir [remote], May 2023.

512 Information provided by an NGO in İzmir, February 2023.

513 European Commission [2021], ‘Turkey 2021 Report’, Doc. No. SWD[2021] 290 final/2, p. 49.

514 European Commission [2022], ‘Türkiye 2022 Report’, Doc. No. SWD[2022] 333 final, p. 20.

515 Information provided by a lawyer in İzmir [remote], May 2023.

516 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §83.

517 Christian Jakob, Valeria Hänsel [2023], ‘Flucht aus Afghanistan: Die Mauern werden höher’, TAZ.

518 Article 47 of the Charter Of Fundamental Rights Of The European Union enshrined the right to an effective remedy and to a fair trial, similar to, e.g. Articles 13 of the ECHR and 2[3] of the ICCPR.

519 European Union Agency for Fundamental Rights [2021], ‘Legal Aid For Returnees Deprived Of Liberty’, p. 43.

justice.<sup>520</sup> As stated above, the systematic shortcomings detailed herein – which preclude most deportation detainees in Turkey from effectively accessing legal aid – may amount to a breach of the right to an effective remedy pursuant to Article 13 of the ECHR. In connection with detention, the exclusion from access to legal aid may also contribute to concluding that detention is, in fact, arbitrary as “individuals must be assisted in obtaining access to effective remedies for the vindication of their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention incompatible with the [ICCPR]”.<sup>521</sup> Therefore, the many systematic obstacles detainees face when trying to secure legal representation from detention in the present context leads to the identification of the potential threat to an individual’s liberty and, at the same time, to the conclusion that Turkey does not comport with Article 38(1)(a) of the EU’s APD. □

<sup>520</sup> European Union Agency for Fundamental Rights [2021], ‘Legal Aid For Returnees Deprived Of Liberty’, pp. 28–31, 33–36, 39–40.

<sup>521</sup> Human Rights Committee, ‘General comment No. 35: Article 9’, CCPR/C/GC/35, §19.



## VI. Violation of the principle of non-refoulement

In order to consider a third country as 'safe', the principle of non-refoulement in accordance with the Refugee Convention must be respected [see p. 7].<sup>522</sup> Turkish legislation has formally incorporated the prohibition of refoulement in both the TPR<sup>523</sup> and the LFIP.<sup>524</sup> According to this legislation, no one shall be sent to a place where they would be subjected to torture, inhuman or degrading punishment or treatment or where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. In addition, the ECtHR, for example, held in *Saadi v. Italy* that if a non-citizen is to be returned to a [third] country, the circumstances that individual would face in the receiving country need to be assessed prior to the execution of the expulsion.<sup>525</sup> In other words, the obligations arising from the non-refoulement principle require individual assessment of an asylum seeker's situation.<sup>526</sup> In *Ilias and Ahemd v. Hungary*, the ECtHR stated that "it is the duty of the removing State to examine thoroughly" whether "there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting" them "against refoulement".<sup>527</sup> The Court further established that if protection in the receiving country is insufficient, "Article 3 implies a duty that the asylum seekers should not be removed to the third country concerned".<sup>528</sup>

As previously stated, the PMM shares weekly updates of migration related statistics on Twitter [see p. 39 & p. 58]. These numbers published also include the number of "denied entries" at the border. Between 9 to 15 June 2023, 5,710 "irregular migrants" were denied entry to Turkey, adding to a total of 112,418 "denied entries" between 1 January and 15 June 2023.<sup>529</sup> What the PMM counts as "denied entries" is, however, not further defined alongside the publication of the numbers. In any case, as detailed herein, Turkey routinely forcibly removes citizens of non-European countries seeking protection in Turkey "through pushbacks at its borders" [see hereafter], through coercive 'voluntary returns' [see p. 51] and "through deportations" [see p. 54] in complete disregard for their personal circumstances, including individual risks or the duration of their stay in Turkey – and therefore, "without adequate protection in place against refoulement".<sup>530</sup>

### 1. Violence at the borders and pushbacks

As of May 2015, Turkey turned away from its "open door policy towards Syria"<sup>531</sup> – by then, around four million Syrians had fled the war in their country of origin and crossed the land borders into neighbouring countries, including Turkey.<sup>532</sup> The Turkish government tried to close their border with Syria "partly due to pressure from the EU",<sup>533</sup> presumably not least because the transit through Turkey had become a route to Europe.<sup>534</sup> "Syrians then had to pay smugglers and bribe soldiers →

<sup>522</sup> Article 38[1][c] of the EU's APD, read in conjunction with Article 33 of the Refugee Convention.

<sup>523</sup> Article 6 of the TPR.

<sup>524</sup> Article 4 of the LFIP.

<sup>525</sup> ECtHR, *Saadi v. Italy*, §126.

<sup>526</sup> Illustrative, ECtHR, *Hirsi Jamaa and Others v. Italy*.

<sup>527</sup> ECtHR, *Ilias and Ahemd v. Hungary*, §134.

<sup>528</sup> Ibid.

<sup>529</sup> PMM, Twitter-Account, post dated 17 June 2023.

<sup>530</sup> Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 20.

<sup>531</sup> Ilker Ataç, Gerda Heck, Sabine Hess, Zeynep Kaşlı, Philipp Ratfisch, Cavidan Soykan, Bediz Yılmaz [2017], 'Contested B/Orders. Turkey's Changing Migration Regime An Introduction', p. 13.

<sup>532</sup> UNHCR [2015], 'UNHCR: Total number of Syrian refugees exceeds four million for first time', 9 July 2015, Press Release.

<sup>533</sup> Maximilian Popp [2018], 'EU Money Helped Fortify Turkey's Border', Der Spiegel International.

<sup>534</sup> According to IOM, more than 1 million people crossed through Turkey to Greece in 2015. Ilker Ataç, Gerda Heck, Sabine Hess, Zeynep Kaşlı, Philipp Ratfisch, Cavidan Soykan, Bediz Yılmaz [2017], 'Contested B/Orders. Turkey's Changing Migration Regime An Introduction', p. 13.

to cross the border into Turkey”.<sup>535</sup> As early as November 2015, reports started to emerge that Turkey is violently pushing Syrians seeking safety back to Syria, their war-torn country of origin. According to Human Rights Watch, “Syrians described Turkish border guards intercepting them at or near the border, in some cases beating them, and pushing them and dozens of others back into Syria or detaining and then summarily expelling them along with hundreds of others”.<sup>536</sup> During such operations, Turkish border guards were reported to be using serious violence, routinely putting peoples’ lives at risk and even killing people who were trying to flee from war.<sup>537</sup> While heavy fighting intensified in Idlib in late 2017 and early 2018, Turkish security forces “routinely intercepted hundreds, and at times thousands, of asylum seekers at the Turkey-Syria border”, summarily expelling them back to Syria.<sup>538</sup>

In April 2016, one third of the 911-kilometre-long Turkish-Syrian border was already closed off by a wall.<sup>539</sup> By June 2018, the construction of the 764-kilometre-long border wall, which is partially funded by the EU,<sup>540</sup> was completed.<sup>541</sup> Thereafter, Human Rights Watch reported the Turkish-Syrian border was “effectively closed to new asylum seekers” and that border guards had “intercepted and deported thousands of newly arrived Syrians” in 2018, sometimes shooting at those trying to cross.<sup>542</sup> The wall, although a “physical barrier”, has “not completely stopped arrivals” from Syria to Turkey.<sup>543</sup> The violence with which ‘exilees’ are met has also not stopped. In April 2023, Human Rights Watch reported on a case that happened the month before, on 11 March 2023: “Turkish border guards viciously beat and tortured a group of eight Syrians who were attempting to cross irregularly into Turkey. A man and a boy died in Turkish custody, while the others were seriously injured”.<sup>544</sup>

In the course of fortifying its borders, Turkey further constructed walls along parts of the border with Iran and Iraq.<sup>545</sup> In September 2021, the İstanbul Policy Centre-Sabancı University-Stiftung Mercator Initiative published a report stating that “[t]ime-comparative interviews with Afghans crossing the Iran-Turkey border suggest that push-backs have occurred on a larger scale since 2016, which marks the peak of EU-Turkey cooperation on migration (i. e., the EU-Turkey Deal)”.<sup>546</sup> In addition to this, after the Taliban’s takeover in Kabul on 15 August 2021, the Turkish government further stepped up its security measures at the Turkish-Iranian border related to an expected increase in attempts to cross into Turkey,<sup>547</sup> including increasing pushbacks from Turkey to →

535 Ilker Ataç, Gerda Heck, Sabine Hess, Zeynep Kaşlı, Philipp Ratfisch, Cavidan Soykan, Bediz Yılmaz [2017], ‘Contested B/Orders. Turkey’s Changing Migration Regime An Introduction’, p. 13

536 Human Rights Watch [2015], ‘Turkey: Syrians Pushed Back at the Border Closures Force Dangerous Crossings with Smugglers’.

537 The violence used by Turkish border guards against people fleeing from Syria led to the killing of five people, and seriously injuring 14 others during March and April 2016, see Human Rights Watch [2016], ‘Turkey: Border Guards Kill and Injure Asylum Seekers’; Human Rights Watch [2016], ‘Turkey: Open Borders to Syrians Fleeing ISIS: At least 30,000 Trapped Amid Northern Syria Fighting’.

538 Human Rights Watch [2018], ‘Turkey: Mass Deportations of Syrians: EU Should Raise Issue, Pledge Aid at Conference’; Human Rights Watch [2018], ‘Turkey/Syria: Border Guards Shoot, Block Fleeing Syrians: Exposes Asylum Seekers to Further Risk, Abuse’.

539 Sibel Uğurlu [2016], ‘Nearly one-third of Turkey’s wall along Syria complete’, AA news.

540 Maximilian Popp [2018], ‘EU Money Helped Fortify Turkey’s Border’, Der Spiegel International; Karolína Augustová [2021], ‘The Border Landscape in Eastern Turkey after The Taliban’s Takeover of Afghanistan’, İstanbul Policy Center-Sabancı University-Stiftung Mercator Initiative, p. 4.

541 Anadolu Agency [2018], ‘Turkey finishes construction of 764-km security wall on Syria border’, Daily Sabah.

542 Human Rights Watch [2019], ‘World Report 2019, Turkey, Events of 2018’. In 2021 the human rights organisation Syrians for Truth and Justice published a report detailing who Turkish Border Guards shot two children and a young man in two separate incidents in January and February 2021 respectively, see Syrians for Truth and Justice [2021], ‘Idlib: Two Children, One Young Man Shot Dead by Turkish Border Guards in Early 2021’.

543 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 161.

544 Human Rights Watch [2023], ‘Turkish Border Guards Torture, Kill Syrians: Turkey Should End Impunity’.

545 Karolína Augustová [2021], ‘The Border Landscape in Eastern Turkey after The Taliban’s Takeover of Afghanistan’, İstanbul Policy Center-Sabancı University-Stiftung Mercator Initiative, p. 4; İsmail Hakki Demir, Hüseyin Yıldız, Abdullah Soylemez [2021], ‘Firewall in eastern Turkey prevents irregular crossings’, AA news; Mesut Varol [2021], ‘Turkey continues to strengthen its borderlines to prevent illegal crossings’, AA news.

546 Karolína Augustová [2021], ‘The Border Landscape in Eastern Turkey after The Taliban’s Takeover of Afghanistan’, İstanbul Policy Center-Sabancı University-Stiftung Mercator Initiative, p. 4.

547 Information provided by a lawyer in Van [remote], October 2021; Mesut Varol [2021], ‘Security measures stepped up at Turkey-Iran border’, AA news.

Iran.<sup>548</sup> Between 25 September 2021 and 11 October 2021, Human Rights Watch remotely interviewed six Afghan 'exilees' who all had fled their country of origin around the time the Taliban took back control. According to their testimonies, "the Turkish army beat them and their fellow travellers – some to the point of breaking their bones – and collectively expelled them in groups of 50 to 300 people as they tried to cross the border to seek safety in Turkey".<sup>549</sup> In August 2022 and November 2022, Amnesty International<sup>550</sup> and Human Rights Watch<sup>551</sup> respectively released extensive reports detailing numerous pushbacks of Afghan citizens during which Turkish authorities inflicted severe violence on the people trying to seek safety in Turkey, with "dozens of Afghans" being "shot and killed, and many others" suffering gunshot wounds.<sup>552</sup> In this sphere of 'systematic rightlessness', people trying to enter Turkey without authorisation regularly fall prey to violent kidnappers who then extort money from their families.<sup>553</sup>

If an asylum seeker enters a state unlawfully, they "may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt".<sup>554</sup> The modus operandi of pushbacks, however, is characterised by neither registering personal information nor evaluating individual claims or risks prior to an expulsion,<sup>555</sup> therefore violating the prohibition of collective expulsions as set out in Article 4 of the Protocol 4 to the ECHR,<sup>556</sup> which Turkey has signed, but not ratified.<sup>557</sup> Although Turkey therefore cannot formally be found in violation of Protocol 4, as it is not a state party to this amendment of the ECHR, this Protocol needs to be considered when assessing the general 'safety' of the third country pursuant to Article 38(1) of the EU's APD. In addition, pushbacks may also breach other fundamental rights – e.g. the right to be free from torture, and inhuman or degrading treatment,<sup>558</sup> the right to liberty<sup>559</sup> or rights guaranteed to specific groups of people.<sup>560</sup> Furthermore, collective expulsions deny the affected individuals access to their procedural right to apply for protection in Turkey, as pushbacks purposely preclude people from registering their asylum claims.

Furthermore, 'exilees' who are returned to Turkey by, for example, pushbacks by Greek or Bulgarian border guards reportedly face the risk of "chain refoulement".<sup>561</sup> A report which was published in May 2019 summarised an academic study of 33 cases of non-Syrian citizens who were readmitted to Turkey after the EU-Turkey statement (see p. 7). In all 33 cases the concerned people were →

548 Information provided by a lawyer in Istanbul, September 2021; by a lawyer in Van [remote], October 2021.

549 Human Rights Watch [2021], 'Turkey: Soldiers Beat, Push Afghan Asylum Seekers Back to Iran, Authorities Deny Afghans Right to Seek Asylum'; Peter Yeung [2021], 'Afghan refugees accuse Turkey of violent illegal pushbacks', The Guardian.

550 Amnesty International [2022], 'Afghanistan: "They don't treat us like humans": Unlawful returns of Afghans from Turkey and Iran'.

551 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey'.

552 Amnesty International [2022], 'Afghanistan: "They don't treat us like humans": Unlawful returns of Afghans from Turkey and Iran', p. 20.

553 Ali M. Latifi [2023], 'Gangs torture Afghan refugees on Iran-Turkey border for ransom', Middle East Eye.

554 Human Rights Committee, 'General comment No. 35: Article 9', CCPR/C/GC/35, §18.

555 In his 2021 report, the Special Rapporteur on the human rights of migrants, "in the absence of an internationally agreed definition of 'pushbacks' in the context of migration", described pushbacks "as various measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border". Special Rapporteur on the human rights of migrants [2021], 'Report on means to address the human rights impact of pushbacks of migrants on land and at sea', Doc. No. A/HRC/47/30, §34.

556 Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, as amended by Protocol No. 11, Strasbourg.

557 Chart of signatures and ratifications of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

558 E.g. Articles 3 of the ECHR, 7 of the ICCPR, or 3 of the CAT.

559 E.g. in Articles 5 of the ECHR and 9 of the ICCPR.

560 E.g. the CEDAW, CRC, CERD, or CRPD, although protection afforded through these conventions varies. Stephanie A. Motz [2022], 'Widening the Scope of Non-refoulement? The CRPD and the Protection of Persons with Disabilities in Displacement', p. 2.

561 Mobile Info Team [2019], 'Illegal Pushbacks In Evros: Evidence Of Human Rights Abuses At The Greece/Turkey Border', pp. 2, 4, 21-23.

arrested upon arrival in Turkey. Twenty-five people stated that they were coerced into signing 'voluntary return' documents [see hereafter]. Sixteen people testified that they were denied the possibility to lodge an asylum request. Finally, at the time of the study, 15 were back in their countries of origin, 11 were still residing in Turkey, and seven people had again travelled unauthorised to the EU.<sup>562</sup> Furthermore, in May 2021, the Special Rapporteur on the human rights of migrants expressed his concern about "Syrian refugees returned by the Turkish Cypriot administration to Turkey" being "particularly at risk of chain refoulement to the Syrian Arab Republic".<sup>563</sup>

Following the above, Turkey does not comply with the 'safe third country' criteria pursuant to Article 38 (1) (c), (d) and (e) of the EU's APD. □

## 2. Coercive 'voluntary returns'

In practice, non-European 'exilees' are routinely forcibly removed from Turkey or pressured to sign the consent form for a 'voluntary return'.<sup>564</sup> As early as December 2015, Amnesty International published a report including several accounts of "varying degrees of coercion" used by the Turkish authorities to pressure people seeking protection "to agree to 'voluntary' returns".<sup>565</sup> For example, a 23-year-old Syrian woman from Hama stated that "while being detained in Düziçi, the authorities told her: 'Go back to Syria or stay in jail; these are your options'".<sup>566</sup> In the report, Amnesty International also published statements of two detainees in Erzurum Removal Centre, a 26-year-old Syrian woman and a 23-year-old Syrian man, explaining that people were forced to provide their fingerprints "as evidence of [their] consent to return to Syria".<sup>567</sup> Similarly, in 2018, The Guardian reported on how "undocumented Syrian refugees" were "coerced into signing statements saying they were returning of their own free will".<sup>568</sup> Furthermore, according to The Guardian, "those with proper documents can [also] be caught up in the system",<sup>569</sup> like a 42-year-old lawyer from Homs: He had "worked legally at a Syrian NGO in Gaziantep until June 2017, when he was caught in a police raid and taken to Oğuzeli" Removal Centre where he was subsequently served with deportation order after refusing to sign the 'voluntary return' papers.<sup>570</sup> In recent years, and particularly as of July and August 2019, after the regional elections in Turkey and prior to a third "military incursion into northeast Syria ... attempting to create a so-called 'safe zone' on the Syrian side of the border" [see p. 55],<sup>571</sup> the scale of illegal expulsions from Turkey to Syria have increased dramatically.<sup>572</sup> In this regard, it can be observed that Syrian nationals are increasingly forced to sign declarations for 'voluntary return'.<sup>573</sup>

Although such removals are "overwhelmingly involuntary, Turkey insists on maintaining the fiction they are voluntary returns".<sup>574</sup> In 2019, multiple Turkish ministries announced the extent of their →

562 Valeria Hänsel [2019], 'Gefangene des Deals - Die Erosion des europäischen Asylsystems auf der griechischen Hotspot-Insel Lesbos', bordermonitoring.eu, p. 125. Original study, see Maybritt Jill Alpes, Sevda Tunaboğlu, Orcun Ulusoy, Saima Hassan [2017], 'Post-deportation risks under the EU-Turkey Statement: What happens after readmission to Turkey?', Migration Policy Centre.

563 Special Rapporteur on the human rights of migrants [2021], 'Report on means to address the human rights impact of pushbacks of migrants on land and at sea', Doc. No. A/HRC/47/30, §59.

564 Information provided by two lawyers in Istanbul and Ankara [remote], July 2022.

565 Amnesty International [2015], 'Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey', p. 11.

566 Ibid.

567 Ibid.; Global Detention Project [2021], 'Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe', p. 50.

568 Shawn Carrié, Asmaa Al Omar [2018], 'It's against the law': Syrian refugees deported from Turkey back to war', The Guardian.

569 Ibid.

570 Ibid.

571 Amnesty International [2019], 'Turkey: Syrians illegally deported into war ahead of anticipated 'safe zone''.

572 Information provided by a migration scholar [remote], September 2021; Amnesty International [2019], Izza Leghtas [2019], 'Insecure future: Deportations and Lack of Legal Work for Refugees in Turkey', Refugees International, pp. 10-11.

573 Information provided by a migration scholar [remote], September 2021; Syrians for Truth and Justice [2022], 'Turkey Continues to Forcibly Return Refugees, Ignoring International Warnings that Syria is Still Unsafe', pp. 2, 7.

574 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 49.

'voluntary return' program: Firstly, the Ministry of Justice stated that 373,592 Syrian nationals had returned to Syria.<sup>575</sup> Secondly, the Ministry of Foreign affairs published the return of 371,000 to Syria,<sup>576</sup> and, finally, the Ministry of Defence said that 580,000 Syrians had been "safely and voluntarily" repatriated back to their country of origin.<sup>577</sup> While these numbers of course do not only contain cases of forced 'voluntary return', this unlawful practice in violation of non-refoulement has been reported to be widespread:<sup>578</sup> For example, the İzmir Bar Association reported that people detained in removal centres have been systematically forced to sign 'voluntary repatriation' papers, and those individuals affected were not informed about their legal rights and not allowed to access legal aid.<sup>579</sup> In Hatay, there have been allegations of violence, handcuffing and pressure applied by guards in order to push detainees to give their consent for 'voluntary return'.<sup>580</sup> Additionally, in July 2019, Human Rights Watch documented, among other cases, the forceful return of a man from around Damascus who was detained in İstanbul after living in the city for three years without registration. This man "said police coerced him and other Syrian detainees into signing a form, transferred them to another detention center, and then put them on one of about 20 buses headed to Syria".<sup>581</sup> In October 2019, Human Rights Watch reported that Turkish authorities in İstanbul and Antakya had arbitrarily detained Syrians, forced "them to sign forms they were not allowed to read" and then deported them to northern Syria, despite active hostilities in the region.<sup>582</sup> Further, multiple published testimonies from the Aydın Removal Centre explain how violence and deceit are used to coerce Syrian nationals to 'agree' to their 'voluntary return'.<sup>583</sup> Amnesty International has further reported that detainees mentioned the use of "deceptive tactics", like being told that they would be signing a power of attorney or something as simple as a confirmation of receipt of a blanket in order to obtain the detainees' signatures on the 'voluntary return' forms.<sup>584</sup> Lawyers have also suggested that poor detention conditions in removal centres are likely used as a tool to pressure 'exilees' into 'voluntary return'.<sup>585</sup>

Notably, the ECtHR has acknowledged Turkey's use of coercive methods to force people to 'voluntarily' return to Syria in 2022.<sup>586</sup> In *Akkad v. Turkey*, the ECtHR ruled on the case of a young Syrian national, who was initially granted Temporary Protection Status in Turkey. Turkish authorities apprehended the applicant near the Turkish-Greek land border when travelling with a group of people allegedly trying to enter into Greek territory in June 2018. Subsequently, Turkish authorities detained the applicant, transferred him to the Turkish-Syrian border and – after coercing him to sign a preprinted 'voluntary return' form – deported him to Syria. There, the ECtHR held that Turkey, by its actions, knowingly had exposed the applicant to a 'real risk' of being subjected to treatment in violation of Article 3 of the ECHR.<sup>587</sup> In this regard, it should be noted that there are reports of Syrian deportees and returnees – from Turkey and from other neighbouring countries – who →

575 Haber 3 [2020], '2019'da gönüllü olarak Suriye'ye dönen Suriyeli sayısı açıklandı'.

576 Bayram Altuğ, Tevfik Durul [2019], 'Dışişleri Bakanı Çavuşoğlu: 371 bin Suriyeli güvenli şekilde geri döndü', AA news.

577 Video published on Ministry of Defence's website [2019], 'Bakanlığın Faaliyetleri ve Gündemdeki Konulara İlişkin Basın Bilgilendirme Toplantısı Düzenlendi'.

578 Information provided by two lawyers in İstanbul and Ankara [remote], July 2022.

579 İzmir Bar Association [2019], 'Avukatların Gözünden Geri Gönderme Merkezleri Ve İdari Gözetim Alanları Çalışmayı Sonuç Raporu', p. 7.

580 AIDA, 'Country Report: Türkiye, Update 2021', p. 130.

581 Human Rights Watch [2019], 'Turkey Forcibly Returning Syrians to Danger: Authorities Detain, Coerce Syrians to Sign "Voluntary Return" Forms'. Furthermore, Amnesty International documented similar cases. Amnesty International [2019], 'Sent to a War Zone: Turkey's illegal deportations of Syrian Refugees'.

582 Human Rights Watch [2019], 'Turkey: Syrians Being Deported to Danger'.

583 Melvyn Ingleby [2019], 'Europe's Complicity in Turkey's Syrian-Refugee Crackdown', The Atlantic.

584 Amnesty International [2019], 'Sent to a War Zone: Turkey's illegal deportations of Syrian Refugees', pp. 12-13.

585 AIDA, 'Country Report: Türkiye, Update 2021', p. 130.

586 ECtHR, *Akkad v. Turkey*. Over all the ECtHR found that Turkey had violated: Article 3 of the ECHR in connection with a breach of the non-refoulement principle; Article 13 of the ECHR in conjunction with Article 3 of the ECHR in relation to insufficient remedies; Article 5[2][4] and [5] of the ECHR; Article 3 of the ECHR regarding the treatment the applicant was subjected to during the transfer from Edirne to Hatay.

587 ECtHR, *Akkad v. Turkey*, §75.

were arrested or forcibly disappeared in Syria after their return.<sup>588</sup> Relatedly, the Head of Middle East and North Africa Division at the Heinrich-Böll-Stiftung in Berlin, stated on 5 June 2023 on a national radio news broadcast in Switzerland that a 'safe return' to Syria under Assad's continued rule does not seem possible as people who had previously fled the country are now regarded as traitors and political opponents, regardless of whether they were dissidents prior to their flight or politically involved at all.<sup>589</sup>

In connection with insufficient information during detention, the ECtHR further found that Turkey had breached the applicant's rights under Article 5(2) of the ECHR.<sup>590</sup> Additionally, in depriving the applicant of means to challenge his forced removal to Syria before his actual return to that country, the Court found Turkey in violation of Article 13 in conjunction with Article 3 of the ECHR.<sup>591</sup> However, lawyers have reported that even after this ECtHR ruling, Turkey continues to implement its practice of forced 'voluntary return'.<sup>592</sup>

As stated before, external monitoring of the general conditions in Removal Centres is extremely limited.<sup>593</sup> The same, unfortunately, applies for the observation of the 'voluntary return procedure' as there is no systematic third-party monitoring of 'voluntary returns' from removal centres or other detention sites as "UNCHR [sic] only monitors official voluntary returns which are managed by the PDMM".<sup>594</sup> Therefore, there is no system provided by the Turkish authorities to ensure that these procedures are free from coercion.

Moreover, the practice of coercive 'voluntary return' is also directed towards non-Syrian nationals, e.g. Afghans. In April 2022, both the İzmir Bar Association and the İzmir branch of the Human Rights Association (Turkish: İHD İzmir Şubesi) announced that Afghan refugees in Harmandalı (İzmir) Removal Centre had been pressured into signing 'voluntary return' papers.<sup>595</sup> In addition, Human Rights Watch published testimonies according to which Afghan detainees were forced to sign or put their fingerprints on 'voluntary return' forms.<sup>596</sup> In fact, the consent of "Afghans facing imminent deportation" is "usually forced, obtained through deception, or forged".<sup>597</sup> Consistent with these testimonies, the Afghan minor attributed the age of majority in the aforementioned case reported by BVMN stated that he was pressured by the Turkish authorities into signing a voluntary return form on multiple occasions, as well as pressured to withdraw the appeal against his deportation order. He was further kept in detention as he refused both, and – at the time of this research – he has not yet been released [see p. 28].<sup>598</sup>

As found by the ECtHR in *Akkad v. Turkey*, coercive 'voluntary returns' violate an individual's human rights in multiple ways. In any case of 'voluntary return', an individual assessment of personal risks faced upon return is not performed. Based on the information available, all returnees are potentially subjected to treatment contrary to their fundamental rights – either due to persecution,<sup>599</sup> →

588 ECtHR, *Akkad v. Turkey*, §11. In 2019 Amnesty International stated that all deportations to Syria are illegal, because of the nature and severity of the human rights risks there, and people who have been returned have indeed been directly exposed to such dangers. Amnesty International [2019], 'Sent to a War Zone: Turkey's illegal deportations of Syrian Refugees', p. 6; Syrian Network for Human Rights [2019], 'The Syrian Regime Continues to Pose a Violent Barbaric Threat and Syrian Refugees Should Never Return to Syria'.

589 SRF, Echo der Zeit [2023], interview with Bente Scheller, minutes 01:55-02:41.

590 ECtHR, *Akkad v. Turkey*, §105.

591 Ibid., §92.

592 Information provided by an NGO in İstanbul, November 2022.

593 Council of Europe [2021], 'Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021', Doc. No. SG/Inf[2021]35, §88.

594 AIDA, 'Country Report: Türkiye, Update 2021', p. 126.

595 Announcement of the İzmir Branch of the Human Rights Association, İHD İzmir reported on by bianet.org [2022], 'Afghans in İzmir forced to sign "voluntary return papers"'. Statement of the İzmir Bar Association reported on by bianet.org [2022], 'Refugees from Afghanistan handed over to Taliban by force'.

596 Human Rights Watch [2022], 'Pushbacks and Deportations of Afghans from Turkey', p. 38.

597 Ibid, p. 49.

598 This summary is based on confidential BVMN documents made available for this research. These documents, however, are not publicly available.

599 SRF, Echo der Zeit [2023], Interview with Bente Scheller.



ongoing risk of harm in context of general insecurity or complete destitution related to the dire socio-economic situation in Syria.<sup>600</sup>

Taken together, the practice of coercive ‘voluntary returns’ does not respect the principle of non-refoulement as set out in the Refugee Convention; is contrary to the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment; and undermines the possibility to receive protection in accordance with the Refugee Convention. Therefore, in the context discussed herein, Turkey does not meet the ‘safe third country’ criteria as laid down in Article 38(1)(c), (d) and (e) of the EU’s APD. □

### 3. Forced returns and mass expulsions

In April 2016, Amnesty International reported that in mid-January 2016, Turkish authorities had started “rounding up and expelling groups of around 100 Syrian men, women and children to Syria on a near-daily basis since mid-January”.<sup>601</sup> Thereafter, several UN committees expressed their concern regarding Turkey’s practice of “expulsion, return or deportation, in violation of the non-refoulement principle”.<sup>602</sup> In the following years, NGOs and media have been documenting and reporting on an ever-tightening migration policy in Turkey, including a significant increase in deportations.

According to numbers announced by the DGMM, Turkish authorities apprehended a total of 46,495 unregistered ‘exilees’ from Afghanistan alone between January 2018 and early June 2018. “Although this count does not specify how many of these are new arrivals, it is slightly more than the 45,259 migrants for the entire year of 2017”.<sup>603</sup> In April 2018, the Turkish government and Afghan officials agreed on Afghanistan providing travel documents to facilitate deportations to Afghanistan. Thereafter, 2,334 people were reportedly returned from Erzurum to Afghanistan on charter flights.<sup>604</sup> The Global Detention Project therefore identified the Erzurum Removal Centre as being “predominantly used to facilitate ‘mass deportations’ of Afghan asylum seekers and migrants”.<sup>605</sup> In October 2018, The Guardian reported that Turkish authorities, in parallel, actively extended their measures to identify “Syrians without documents or permits to travel outside the cities where they registered”.<sup>606</sup> In mid-2019 – following the ever-decreasing public support for Syrian ‘exilees’ [see p. 36] and the ruling AKP losing the mayoral elections to the biggest opposition party, the CHP, in Ankara, İstanbul and İzmir<sup>607</sup> – a further shift in “the Turkish authorities’ approach to refugees” could be observed, “particularly in İstanbul”.<sup>608</sup> The Governor’s Office of İstanbul, “which is under the authority of the Ministry of Interior”, on 22 July 2019, “issued a statement ordering all Syrians not registered in the province to depart by 20 August”.<sup>609</sup> On the same day, the Minister of Foreign affairs also declared that readmissions from Greece would be suspended.<sup>610</sup> In parallel, the →

<sup>600</sup> Information provided by a researcher on asylum and migration in Ankara [remote], June 2023.

<sup>601</sup> Amnesty International [2016], ‘Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal’.

<sup>602</sup> CAT [2016], ‘Concluding observations on the fourth periodic reports of Turkey’, Doc. No. CAT/C/TUR/CO/4, §23; CMW [2016], ‘Concluding observations on the initial report of Turkey’, Doc. No. CMW/C/TUR/CO/1, §53; Human Rights Council [2016], ‘Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey’, Doc. No. A/HRC/33/51/Add.1, §57.

<sup>603</sup> Amy Pitonak [2018], ‘Mass Deportations of Afghans from Turkey: Thousands of migrants sent back in a deportation drive’, Afghanistan Analyst Network.

<sup>604</sup> Information provided by a lawyer in İstanbul, September 2021; Amy Pitonak [2018], ‘Mass Deportations of Afghans from Turkey: Thousands of migrants sent back in a deportation drive’, Afghanistan Analyst Network.

<sup>605</sup> Global Detention Project [2021], ‘Country Report Immigration Detention In Turkey: Trapped At The Crossroad Between Asia And Europe’, p. 49.

<sup>606</sup> Shawn Carrië, Asmaa Al Omar [2018], ‘It’s against the law’: Syrian refugees deported from Turkey back to war’, The Guardian; Melvyn Ingleby [2019], ‘Europe’s Complicity in Turkey’s Syrian-Refugee Crackdown’, The Atlantic.

<sup>607</sup> Isil Sariyuçe, Ivana Kottasová [2019], ‘İstanbul election rerun won by opposition, in blow to Erdogan’, CNN World.

<sup>608</sup> Amnesty International [2019], ‘Sent to a War Zone: Turkey’s illegal deportations of Syrian Refugees’, p. 9.

<sup>609</sup> Ibid.

<sup>610</sup> Valeria Hänsel [2019], ‘Warum hält die EU still? Zur Aufkündigung des EU-Türkei Deals und den Massenabschiebungen aus der Türkei’, Rosa Luxemburg Stiftung.

authorities intensified their efforts to identify undocumented 'exilees' in İstanbul by increasing random police stops and raids.<sup>611</sup> "Although the initial reasons why Syrian refugees are apprehended vary, it appears that any interaction with Turkish officials – whether police or migration officials – puts people at risk of deportation".<sup>612</sup> Illustrative thereof is the case of a Syrian family with three children who was initially registered in Şanlıurfa but was forced to relocate to İstanbul for economic reasons. In summer 2019, the father of the family was riding home from work on his bike when he was stopped by the police – he was immediately arrested after the police realised that he had left his province of registration [see p. 13]. Together with "hundreds of other Syrians", he was held for two weeks in the Tuzla Removal Centre in İstanbul before being forced to sign 'voluntary return' documents and subsequently deported to Syria [see p. 51].<sup>613</sup>

In May 2020, Amnesty International documented the case of six Syrian men who were apprehended in Konya and subsequently deported to Syria, "on the grounds of wanting to ask them questions about their applications for Turkish citizenship".<sup>614</sup> One lawyer also mentioned deportations of Uyghurs to China.<sup>615</sup> In July 2023, the UN Working Group on Arbitrary Detention together with several UN Special Rapporteurs published a press release asking Turkey to refrain from deporting more than 100 members of the 'Ahmadi Religion of Peace and Light'.<sup>616</sup> These members of the Ahmadi Religion were collectively apprehended and then detained on 24 May 2023 as they "presented themselves at the Turkish side of the Kapikule border seeking access to asylum in Bulgaria".<sup>617</sup> In their press release, the UN experts "also called on the Government to conduct a proper risk assessment" of the situation of the detainees in order "to prevent any refoulement that may result in serious violations of their rights".<sup>618</sup>

Turkey has even "used the return of refugees as political coverage for military operations in Syria".<sup>619</sup> After the 2016 'Operation Euphrates Shield' (Turkish: Fırat Kalkanı Harekatı)<sup>620</sup> and the 2018 'Operation Olive Branch' (Turkish: Zeytin Dalı Harekatı),<sup>621</sup> Turkey further expanded its reach inside Syria in autumn 2019: With 'Operation Peace Spring' (Turkish: Barış Pınarı Harekatı),<sup>622</sup> Turkish Armed Forces invaded additional parts of the neighbouring Syrian territory intending to establish a →

611 HarekAct [2019], 'Harekact's Weekly Digest 22/07/2019'.

612 Amnesty International [2019], 'Sent to a War Zone: Turkey's illegal deportations of Syrian Refugees', p. 12.

613 Information provided by a Syrian journalist [remote], June 2023. The family was also portrayed by France 24 [2019], 'La Turquie expulse des réfugiés syriens'.

614 Amnesty International [2020], 'Turkey: Halt Illegal Deportation Of People To Syria And Ensure Their Safety'.

615 Information provided by a lawyer in Ankara, October 2021; for context information about the "harsh repression" towards Uyghurs in China, e.g. Maya Wang [2023], 'How Governments and Civil Society Can Help China's Uyghurs', Human Rights Watch.

616 UN Media Centre [2023], "Türkiye must not deport members of the Ahmadi Religion of Peace and Light seeking asylum: UN experts", Press Release.

617 Ibid.

618 Ibid.

619 Jesse Marks [2018], 'Pushing Syrian Refugees to Return', Carnegie Endowment for International Peace.

620 The military campaign lasting from August 2016 to March 2017, officially targeted the so called Islamic State [Daesh], but was also meant to weaken predominantly Kurdish People's Protection Units [YPG] which are a component of the Syrian Democratic Forces of the Democratic Union Party [PYD], e.g. Metin Gurcan [2019], 'Assessing the Post-July 15 Turkish Military: Operations Euphrates Shield and Olive Branch', The Washington Institute for Near East Policy; Max Hoffman, Alan Makovsky [2021], 'Northern Syria Security Dynamics and the Refugee Crisis', Center for American Progress, pp. 26-31.

621 The military campaign lasted from January to March 2018, and was directed at the Syrian Kurdish canton of Afrin. Metin Gurcan [2019], 'Assessing the Post-July 15 Turkish Military: Operations Euphrates Shield and Olive Branch', The Washington Institute for Near East Policy. Further see, Max Hoffman, Alan Makovsky [2021], 'Northern Syria Security Dynamics and the Refugee Crisis', Center for American Progress, pp. 20-25; Chase Winter [2018], 'Afrin: What you need to know', DW.

622 The military campaign lasted from October to November 2019, and aimed at erecting a 'buffer zone' between Turkey and the self-proclaimed Autonomous Administration of North and East Syria, e.g. European Parliamentary Research Service, Branislav Stanicek [2019], 'Turkey's military operation in Syria and its impact on relations with the EU', Doc. No. PE 642.284; Max Hoffman, Alan Makovsky [2021], 'Northern Syria Security Dynamics and the Refugee Crisis', Center for American Progress, pp. 32-44.

'buffer zone'<sup>623</sup> of roughly 500 kilometres along the Turkish-Syrian border and running little over 30 kilometres deep into Syria.<sup>624</sup> In the end, the Turkish Army and "their proxies took control of a 62-mile [100 km] strip of land between the border towns of Tel Abyad and Ras al-Ain",<sup>625</sup> while displacing more than 200,000 people.<sup>626</sup> Now, Turkey effectively occupies three "pockets of territory" inside Syria controlled by Turkish military and aligned militias.<sup>627</sup>

One of the stated objectives of these "refugee resettlement zones" is to relocate big numbers of Syrian 'exilees' currently residing in Turkey to these small territories.<sup>628</sup> As early as 22 November 2019, while the 'Operation Peace Spring' was essentially still ongoing, "70 Syrian refugees entered Ras al-Ayn from Turkey, and 600 families entered Tel Abyad two days later".<sup>629</sup> It has been publicly discussed in Turkey that 250,000 housing units are planned to be constructed – initially these shelters were meant to support internally displaced persons, but now they are aimed at accommodating returnees. It is, however, unknown how long the construction will take. Moreover, these areas are neither safe nor economically sustainable, and therefore not eligible as a method of 'safe return' to Syria.<sup>630</sup>

In May 2022, the Turkish President, Recep Tayyip Erdoğan, reaffirmed this pledge to "repatriate" one million Syrians in an attempt to counter political attacks from opposition parties building on the rise of anti-immigrant sentiment [see p. 36].<sup>631</sup> Related to this, Human Rights Watch reported that Turkish authorities "arbitrarily arrested, detained, and deported hundreds of Syrian[s]" between February and July 2022.<sup>632</sup> According to the testimonies of deportees, Turkish officials had arrested the majority of the people deported from Istanbul either at home, at work or randomly in the street. The deportees were then detained "in poor conditions, beat[en] and abused" to force them to sign 'voluntary return' documents [see p. 51].<sup>633</sup> Ultimately, Turkish officials "drove them to border crossing points with northern Syria, and forced them across at gunpoint".<sup>634</sup> In March 2022, Middle East Eye reported on four young Afghan men who had been picked up by Turkish authorities in Ankara, and subsequently forced to cross the Turkish-Syrian border to Idlib despite the 'exilees' telling the authorities that they were Afghan.<sup>635</sup> Furthermore, numbers of Syrians deported from Turkey are also provided by Syrian sources. For example, the administrators in the rebel-held area close to Idlib which operate the Bab al-Hawa Border Crossing publish their monthly number of deportees registered as arriving in Syria. According to these numbers, in 2022, a total of 18,844 people and from January to May 2023, 5,315 people were registered as deported from →

623 Also referred to as 'safe zone', e.g. Lama Fakhri [2019], 'Turkey's 'Safe Zone' Would Be Anything But, Plan Increases Risks for Returned Refugees', Human Rights Watch. The intent to create such a 'safe zone' in Syria to which Syrians could ostensibly flee and Turkey could return Syrian refugees was already announced in 2015/16. Human Rights Watch [2016], 'Turkey: Open Borders to Syrians Fleeing ISIS: At least 30,000 Trapped Amid Northern Syria Fighting'.

624 Hardin Lang [2019], 'Displacement and Despair: The Turkish Invasion of Northeast Syria', Refugees International.

625 Francesco Siccaldi [2021], 'How Syria Changed Turkey's Foreign Policy', Carnegie Europe, p. 16.

626 Hardin Lang [2019], 'Displacement and Despair: The Turkish Invasion of Northeast Syria', Refugees International.

627 Francesco Siccaldi [2021], 'How Syria Changed Turkey's Foreign Policy', Carnegie Europe, p. 6, including map on p. 7.

628 Max Hoffman, Alan Makovsky [2021], 'Northern Syria Security Dynamics and the Refugee Crisis', Center for American Progress, p. 3; Human Rights Watch [2019], 'Turkey/Syria: Civilians at Risk in Syria Operation, Key Concerns Include Unlawful Attacks, Treatment of Displaced People, Arbitrary Arrests'; EASO [2020], 'Country Guidance: Syria', p. 44.

629 Max Hoffman, Alan Makovsky [2021], 'Northern Syria Security Dynamics and the Refugee Crisis', Center for American Progress, p. 34.

630 Information provided by a researcher on asylum and migration in Ankara [remote], June 2023.

631 Joshua Levkowitz [2023], 'Turkey's Xenophobic Turn Targets Stateless Syrians', FP; Nazlan Ertan [2022], 'Erdogan unveils plans to send 1 million Syrians back as anti-refugee sentiment escalates', Al-Monitor.

632 Human Rights Watch [2022], 'Turkey: Hundreds of Refugees Deported to Syria: EU Should Recognize Turkey Is Unsafe for Asylum Seekers'.

633 Ibid.

634 Human Rights Watch [2022], 'Turkey: Hundreds of Refugees Deported to Syria: EU Should Recognize Turkey Is Unsafe for Asylum Seekers'.

635 Harun al-Aswad [2022], 'Afghanistan Refugees in Turkey, Deported to Syria, Now Trapped', Middle East Eye.

Turkey to Syria passing through the Bab al-Hawa Border Crossing.<sup>636</sup> Based on numbers provided by the operators of border crossings, the human rights organisation Syrians for Truth and Justice calculated that between 2019 and 2021, a total number of 157,526 Syrians had been deported “under the veil of ‘voluntary return’” through three border crossings – Bab al-Hawa, Bab al-Salameh and Tal Abyad.<sup>637</sup>

In parallel, the numbers of undocumented ‘exilees’ apprehended in Turkey has constantly increased over the last years: PMM announced to have apprehended a total of 122,302 people in 2020 “of whom 17,562 were Syrians and 50,161 Afghans”.<sup>638</sup> In 2021, the total rose to 162,996 people apprehended, and in 2022, to 285,027 – Afghans always constituting the largest group.<sup>639</sup> In the light of such numbers, the Special Representative on Migration and Refugees of the Secretary General of the Council of Europe found in November 2021 that “deportation seemed to be the only possible outcome for young Afghan males”.<sup>640</sup>

In October 2021 – and thus after the Taliban retook power over Afghanistan – one lawyer mentioned a recent visit of an Afghan delegation to Ankara, presumably to negotiate an agreement on deportations from Turkey to Afghanistan.<sup>641</sup> Since then, the numbers of apprehensions and deportations have been increasing: According to Human Rights Watch, Turkey deported 44,768 Afghans in the first eight months of 2022 alone, representing “a 150 percent increase over the number of Afghan nationals deported in the first eight months of 2021”.<sup>642</sup> According to medico international (Germany), as of December 2022, Turkey had deported 61,617 people to Afghanistan in 2022.<sup>643</sup> Relatedly, medico international reported on the case of a deportation detainee – a member of the Hazara ethnic group, which is persecuted by the Taliban – who was presented by the removal centre to members of the Taliban leadership in Afghanistan by video call in order to get the approval for his deportation.<sup>644</sup> Correspondingly, the Afghan minor in the case reported by BVMN stated that he was visited by a representative of the Afghan consulate while in detention.<sup>645</sup>

The continuance of this practice is reflecting in the current numbers as published by the PMM: In the first four months of 2023, a total of 46,802 undocumented ‘exilees’ were apprehended in Turkey, of whom 7,964 were Syrian, and 16,112 were Afghan.<sup>646</sup> Since 2022, the number of deportations have been “proudly”<sup>647</sup> published on the PMM’s Twitter account.<sup>648</sup> Specifically, the PMM published weekly updates containing information about, inter alia, the number of apprehensions, people in detention and deportations. On 17 June 2023, for example, the PMM posted the weekly statistics for 9 to 15 June 2023: In that week, 3,125 “irregular migrants” were apprehended – among them, →

636 Information provided by a researcher on asylum and migration in Ankara [remote], June 2023; information provided by a Syrian journalist [remote], June 2023. According to the Bab al-Hawa Border Crossing’s Facebook page in January 2022 1,139 deportees arrived in Syria, 1,396 in February, 1,321 in March, 1,323 in April, 1,222 in May, 1,729 in June, 1,942 in July, 2,712 in August, 2,086 in September, 1,303 in October, 1,167 in November, 1,504 in December. In 2023, 1,325 deportees arrived in January, 1,486 in February, 1,093 in March, 722 in April and 689 in May. Bab al-Hawa Border Crossing’s Facebook page [last accessed 18 August 2023].

637 Syrians for Truth and Justice [2022], ‘Turkey Continues to Forcibly Return Refugees, Ignoring International Warnings that Syria is Still Unsafe’, pp. 2, 7.

638 AIDA, ‘Country Report: Türkiye, Update 2021’, p. 161.

639 Statistics as published by the PMM, most recent numbers, see PMM’s website [last accessed 18 August 2023], statistics on ‘irregular migrants’, the number indicated herein are based on an update published on 4 May 2023; AIDA, ‘Country Report: Türkiye, Update 2021’, p. 161.

640 Council of Europe [2021], ‘Report of the fact-finding mission to Turkey, Special Representative of the Secretary General on Migration and Refugees 15–26 March 2021’, Doc. No. SG/Inf[2021]35, §24.

641 Information provided by a lawyer in Ankara, October 2021. Further, news in Turkey reported on another visit of a delegation of Afghanistan’s Ministry of Refugees and Repatriation in August 2022. Hürriyet [2022], ‘Taliban, Afgan mülteciler için heyet gönderiyor’.

642 Human Rights Watch [2022], ‘Pushbacks and Deportations of Afghans from Turkey’, p. 2.

643 Valeria Hänsel [2023], ‘Europas Türsteher und die Taliban’, medico international.

644 Valeria Hänsel [2023], ‘Ausgeliefert’, medico international.

645 Information provided by BVMN [remote], Mai 2023.

646 PMM’s website [last accessed 18 August 2023], statistics on ‘irregular migrants’.

647 Information provided by an NGO in İzmir, February 2023.

648 Information provided by a lawyer in İzmir, February 2023; by a researcher on asylum and migration in İzmir [remote], May 2023; by a researcher on asylum and migration in Ankara [remote], June 2023.

864 Afghans and 80 Pakistanis.<sup>649</sup> In the same time period, 2,253 people were deported – among them, 582 Afghans and 55 Pakistanis. The same post also contained numbers for 2023: As of 15 June 2023, 44,802 “irregular migrants” had been deported – among them 14,170 Afghans and 1,925 Pakistanis – and the deportation procedures for 17,626 others were underway.<sup>650</sup> Lawyers working in the field interpret these announcements as an effect of border control and migration being a central topic on Turkey’s political agenda.<sup>651</sup>

In accordance with the conclusions drawn in the previous subsections, the conditions of forced returns and mass expulsions, described herein, confirm that Turkey does not offer effective protection to ‘exilees’. Rather, Turkey systematically violates the non-refoulement principle, as set out by both the Refugee Convention and international human rights law, on a mass scale. Turkey, therefore, does not comply with the ‘safe third country’ criteria set out in Article 38(1)(c), (d) and (e) of the EU’s APD. □

<sup>649</sup> The statistics only differentiate between Afghanistan [864 people], Pakistan [80 people] and other countries [2,181]. PMM, Twitter-Account, post dated 17 June 2023.

<sup>650</sup> PMM, Twitter-Account, post dated 17 June 2023.

<sup>651</sup> Information provided by an NGO in İzmir, February 2023.

## VII. Post-earthquake situation

On 6 February 2023, two devastating 7.8 and 7.5 magnitude earthquakes, followed by strong aftershocks, hit Southeast Turkey<sup>652</sup> and Northwest Syria.<sup>653</sup> In Turkey, the earthquakes heavily affected the provinces of Adıyaman, Hatay, Kahramanmaraş, Kilis, Osmaniye, Gaziantep, Malatya, Şanlıurfa, Diyarbakır, Elazığ and Adana, where in total almost 14 million people reside,<sup>654</sup> including 1,738,035 Syrians with Temporary Protection Status, representing 49.64 % of all Syrians under the temporary protection regime in Turkey.<sup>655</sup> Although Syrians form the largest group of foreigners in the region, there were also citizens from other countries which fall under the international protection regime living in the affected area.<sup>656</sup> IOM indicated that 7.1 million people were living in the hard-hit areas including eight hundred thousand 'exilees'.<sup>657</sup> On 20 February 2023, only two weeks after the initial earthquakes, an additional powerful earthquake struck Hatay, again causing deaths, injuries and destruction.<sup>658</sup> Overall, more than 50,000 people were killed, and an estimated 2.7 million – including 'exilees' – were displaced in Turkey alone.<sup>659</sup> While UNHCR reported in April 2023 that at least 6,800 foreign nationals had lost their lives, most of them Syrians,<sup>660</sup> it remains unknown exactly how many non-Turkish citizens are among the victims.<sup>661</sup>

Following the initial earthquakes, on 7 February 2023, the Turkish government declared a state of emergency in the 10 affected cities.<sup>662</sup> The state of emergency declaration also entailed an attempt at centralisation of humanitarian relief, which significantly hindered the ability of civilian actors who were present in or travelled to the disaster area to provide emergency assistance to the affected population<sup>663</sup> and had a particularly negative impact on actors working in solidarity with refugees.<sup>664</sup>

Generally, in connection to the earthquakes, "living conditions for migrants have deteriorated" and newly-increasing "racism has led to violent attacks".<sup>665</sup> In the earthquake zone, Syrians continued to be labelled 'migrants' – or even 'looters'<sup>666</sup> – but were not seen as 'victims' of the disaster.<sup>667</sup> As reported by several people personally affected, Syrians were – at least initially – excluded from aid distributions, and had difficulties receiving access to emergency shelters, such as tents.<sup>668</sup> Moreover, Syrians under the temporary protection regime were removed from the Temporary Accom- →

652 Hayata Destek Derneği [April 2023], 'Turkey-Earthquake: Emergency Situation Report', p. 1.

653 IOM [2023], '2023 Earthquakes Displacement Overview - Türkiye'.

654 Hayata Destek Derneği [April 2023], 'Turkey-Earthquake: Emergency Situation Report', p. 1.

655 Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 2.

656 Information by a journalist and researcher in İstanbul [remote], April 2023.

657 IOM [2023], '2023 Earthquakes Displacement Overview - Türkiye'.

658 Hayata Destek Derneği [February 2023], 'Turkey-Earthquake: Emergency Situation Report', p. 1.

659 IOM [2023], '2023 Earthquakes Displacement Overview - Türkiye'.

660 UNHCR Türkiye [2023]: 'Earthquake Emergency Response' p. 2.

661 Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 12.

662 Ibid, p. 5.

663 Information provided by four stakeholders in İzmir, February 2023.

664 Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 5.

665 ELDH, ÖHD, ÇHD et al. [2023], '7th anniversary of the 2016 EU-Turkey Statement'; Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 13; TIHV [2023], 'Antep, Maraş, Hatay ve Malatya Merkezli, Depremler Sonrasında, 6 - 27 Şubat 2023 Tarihleri Arasında Yaşanan İnsan Hakları İhlalleri Raporu'.

666 Information provided by an NGO in İzmir, February 2023; ELDH, ÖHD, ÇHD et al. [2023], '7th anniversary of the 2016 EU-Turkey Statement'; TIHV [2023], 'Antep, Maraş, Hatay ve Malatya Merkezli, Depremler Sonrasında, 6 - 27 Şubat 2023 Tarihleri Arasında Yaşanan İnsan Hakları İhlalleri Raporu'.

667 Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 13.

668 Information provided by stakeholder in Şanlıurfa [remote], February 2023; Deniz Sert, Didem Daniş, Eda Sevinin [2023], 'Durum Tespit Raporu: Göç ve Deprem', Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 17.



modation Centres in the area which were then used as temporary housing structures for displaced Turkish citizens.<sup>669</sup> The “difficulties accessing even basic necessities such as drinking water or shelter” were caused by both a policy of excluding “migrants from the relief system”<sup>670</sup> and also their perceived need to ‘hide’ in rural areas due to increasing acts of violence against ‘exilees’ in the cities.<sup>671</sup> There was one incident reported to the author where an international NGO providing medical assistance in the affected region turned away non-Turkish citizens as their ‘mandate’ explicitly excludes treating non-citizens.<sup>672</sup>

The devastating situation, in combination with the lack of emergency relief provided, forced Syrians to temporarily return to Syria: “According to an official announcement on 14 April, 70,000 Syrian refugees have temporarily crossed into Syria”.<sup>673</sup> Importantly, these temporary returns cannot be considered ‘voluntary’, but rather were ‘forced’ through the dire circumstances people faced.<sup>674</sup> Furthermore, it is unclear how reliable these numbers of returnees are, as it continues to be difficult for civil society actors to operate in the area, and even more so to reach migrant communities with those operations.<sup>675</sup> In any case, the current policy allows Syrians who did leave Turkish territory under such a “temporary permission... to return and be readmitted” prior to 15 September 2023.<sup>676</sup>

As one measure aimed at people seeking protection in Turkey, the Turkish authorities lifted the travel restrictions imposed on either holders of or applicants for temporary or international protection in the aftermath of the earthquake. For initially 90 days, later reduced to 60 days,<sup>677</sup> foreigners under the temporary or international protection regime were allowed to leave their assigned province and move to another city<sup>678</sup> – initially excluding İstanbul as a permissible destination.<sup>679</sup> However, not all individual officers were aware of this lift on travel restrictions, resulting in non-citizens being arbitrarily apprehended outside of their assigned province during this 90-/60-day period.<sup>680</sup> At the same time, however, it was announced that foreigners would not be allowed to benefit from the accommodations – in cities outside the affected area – provided by public institutions to earthquake victims and that NGOs will be prohibited from providing accommodations in cities not affected by the earthquake to ‘exilees’.<sup>681</sup> In other words, people under the temporary or international protection regime were forced to stay in their assigned provinces in the affected areas and wait to potentially be provided with shelter, if they were not able to find accommodations outside the disaster area through relatives or other personal means.<sup>682</sup> Civil society organisations reported struggling with attending to the great need for non-food items.<sup>683</sup>

The general time window allowing residence outside the assigned province was extended for another 60 days, requiring beneficiaries or applicants under the temporary or international pro- →

669 Deniz Sert, Didem Daniş, Eda Sevinin [2023], ‘Durum Tespit Raporu: Göç ve Deprem’, Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 16.

670 ELDH, ÖHD, ÇHD et al. [2023], ‘7th anniversary of the 2016 EU-Turkey Statement’.

671 Deniz Sert, Didem Daniş, Eda Sevinin [2023], ‘Durum Tespit Raporu: Göç ve Deprem’, Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 8.

672 Information provided by a journalist and researcher in İstanbul [remote], April 2023.

673 Hayata Destek Derneği [April 2023], ‘Turkey-Earthquake: Emergency Situation Report’, p. 2; Deniz Sert, Didem Daniş, Eda Sevinin [2023], ‘Durum Tespit Raporu: Göç ve Deprem’, Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 16; OCHA [2023], ‘Türkiye: 2023 Earthquakes Situation Report No. 16’, p. 2.

674 Information provided by a lawyer of the Bar Association in İzmir, February 2023.

675 Information provided by an NGO in İzmir, February 2023; by a journalist and researcher in İstanbul [remote], April 2023.

676 Joshua Levkowitz [2023], ‘Turkey’s Xenophobic Turn Targets Stateless Syrians’, FP.

677 Information provided by a researcher in London [remote], May 2023.

678 Information provided by a lawyer in İstanbul [remote] and by an NGO in İzmir, February 2023; Deniz Sert, Didem Daniş, Eda Sevinin [2023], ‘Durum Tespit Raporu: Göç ve Deprem’, Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 13.

679 Information provided by two representatives of a Community Centre in İstanbul, February 2023; by an NGO in İstanbul [remote], April 2023.

680 Information provided by a lawyer in İstanbul [remote], February 2023.

681 Deniz Sert, Didem Daniş, Eda Sevinin [2023], ‘Durum Tespit Raporu: Göç ve Deprem’, Göç Araştırmaları Derneği [GAR], Friedrich Ebert Stiftung, p. 14.

682 Information provided by a lawyer in İstanbul [remote], February 2023.

683 Information provided by two representatives of a Community Centre in İstanbul, February 2023.

tection regimes to individually apply for such an extension.<sup>684</sup> In this regard, a legal NGO reported being approached by clients whose application for extension was arbitrarily rejected.<sup>685</sup>

In accordance with what was stated above [see p. 31], the discriminatory exclusion of a certain group of people from access to emergency relief may amount to discrimination contrary to international law.<sup>686</sup> □

<sup>684</sup> Information provided by a researcher in London [remote], May 2023.

<sup>685</sup> Information provided by an NGO in Istanbul [remote], April 2023.

<sup>686</sup> E.g. obligations as set out in the ECHR, the ICCPR, the CAT, the CEDAW, the CRC, the CRPD and the CERD to all of which Turkey is a party to. Furthermore, discrimination may even amount to a violation of Article 3 of the ECHR, see fn. 320.

## VIII. Conclusion

In April 2016 – thus shortly after the EU-Turkey statement – Amnesty International reported on how Turkey had initiated mass expulsions to Syria “on a near-daily basis” starting in January 2016.<sup>687</sup> In this context, the Amnesty International’s Director at this time for Europe and Central Asia commented on this political agreement between the EU and Turkey as follows: “In their desperation to seal their borders, EU leaders have wilfully ignored the simplest of facts: Turkey is not a safe country for Syrian refugees and is getting less safe by the day”.<sup>688</sup> Both still apply today. First, the will to ignore the ‘on-the-ground facts’ is demonstrated by the EU’s approach in the ‘New Pact on Migration and Asylum’ towards an extended application of the ‘safe third country’ concept. According to the current reform suggestions, affording protection in accordance with the Refugee Convention shall no longer be a requirement to classify a third country as ‘safe’. Rather, it should suffice if ‘exilees’ receive “effective protection”.<sup>689</sup> Second, as detailed in the present expert opinion, the conditions for ‘exilees’ in Turkey are continuously deteriorating – an observation which is not limited to Syrian citizens.

Regardless of the lived experience of ‘exilees’ in Turkey, the 2016 EU-Turkey statement, for political reasons, postulated that Turkey can be qualified as ‘safe’. However, such an agreement between the EU, its member states, and a third country does not relieve the parties involved from their obligations under international law.

If there are substantial grounds to believe that the removal or return to a third country would expose an asylum seeker to treatment contrary to Article 3 of the ECHR – directly in that third country or indirectly, for example, through chain-refoulement – the ECtHR has confirmed the obligation not to expose an individual to such a risk, and therefore, not to deport the individual.<sup>690</sup> This also includes the duty to consider the overall reception conditions for ‘exilees’ in the receiving state, and the duty to consider the respective person’s individual situation.<sup>691</sup> While the ECtHR thus far has never questioned the ‘safe third country’ concept as such, nor has it commented on whether a given third country was in fact ‘safe’, the Court has nevertheless stated in its case law that the deporting state “has a general procedural obligation to carry out a fair and thorough examination of the conditions in that third country”,<sup>692</sup> including “the accessibility and reliability of its asylum system”.<sup>693</sup> While it rests with the asylum seekers to substantiate their individual circumstances, authorities are obliged to conduct an assessment “of the accessibility and functioning of the receiving country’s asylum system and the safeguards it affords in practice”<sup>694</sup> on their own motion. This obligation applies all the more if a continuous risk of a breach – for example, of Article 3 of the ECHR – in the receiving state is generally known.<sup>695</sup> →

<sup>687</sup> Amnesty International [2016], ‘Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal’.

<sup>688</sup> Ibid.

<sup>689</sup> Schweizerische Flüchtlingshilfe [2023], ‘Asylverfahren an der EU-Aussengrenze: Der Schutz von Geflüchteten muss im Zentrum stehen’, Positionspapier, p. 6.

<sup>690</sup> ECtHR, *M.S.S. v. Belgium and Greece*, §§342, 343, 362–368; ECtHR, *Ilias and Ahemd v. Hungary*, §134.

<sup>691</sup> ECtHR, *Tarakhel v. Switzerland*, §105.

<sup>692</sup> Council of Europe, ECtHR Research Division, ‘The concept of a “safe third country” in the case-law of the Court’, §4.

<sup>693</sup> ECtHR, *Ilias and Ahemd v. Hungary*, §139.

<sup>694</sup> ECtHR, *Ilias and Ahemd v. Hungary*, §141.

<sup>695</sup> ECtHR, *F.G. v. Sweden*, §126.

In the case of Turkey, the present expert opinion concludes that the deficiencies are so grave and systematic in nature that, if international human rights law is taken seriously, the country does not meet the requirements of a 'safe third country', neither under the current Article 38 of the EU's APD nor under the intended reform. Turkey does not offer "effective protection"<sup>696</sup> to non-European foreigners:

- First, the protection statuses and permits available are not equivalent to the protection provided by the Refugee Convention as required by Article 38(1)(e) of the EU's APD for the application of the 'safe third country' concept.
- Second, the main obstacle in obtaining actual protection in Turkey is the non-accessibility of registration as it has become increasingly challenging for 'exilees' to register for a 'kimlik' in Turkey. In other words, again in contrary to Article 38(1)(e) of the ', there is no real "possibility ... to request refugee status"<sup>697</sup> in Turkey.
- Third, specific protection or reception needs, e.g. for survivors of torture, survivors of SGBV, or members of the LGBTQIA+ community, are only insufficiently considered. Article 38(1)(a) of the EU's APD, however, states that, in a 'safe third country', the "life and liberty" of a person "are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion".<sup>698</sup> The systematic shortcomings towards specific groups of 'exilees' described in this expert opinion may, for one, amount to violations of the prohibition of discrimination as set out in international law,<sup>699</sup> and for two, even create potentially life threatening circumstances, such as insufficient protection from SGBV or hate crimes. The information set forth herein – at the very least – raises "serious doubts"<sup>700</sup> about the respective reception conditions complying with international human rights law as well as Article 38(1)(a) of the EU's APD, thus conflicting with the general assumption of Turkey being 'safe'.
- Fourth, the general reception conditions also fail to meet the necessary standards because 'exilees' in Turkey are often forced to live in dire conditions, if not in complete destitution. If the reception conditions in Turkey do not, in parallel to *M. S. S. v. Belgium and Greece*,<sup>701</sup> in themselves "act as a bar to all removals of asylum seekers to that country", they – at the very least, as stated before – give reason for "serious doubts" as to compatibility with Article 3 of the ECHR and related provisions in other human rights treaties.<sup>702</sup> Furthermore, the discriminatory exclusion of a certain group of people from access to social services, as well as the failure to →

<sup>696</sup> Schweizerische Flüchtlingshilfe [2023], 'Asylverfahren an der EU-Aussengrenze: Der Schutz von Geflüchteten muss im Zentrum stehen', Positionspapier, p. 6.

<sup>697</sup> Article 38(1)(e) of the EU's APD.

<sup>698</sup> Article 38(1)(a) of the EU's APD.

<sup>699</sup> A general prohibition of discrimination is, e.g. set out in the ECHR, or the International Covenant on Civil and Political Rights [ICCPR]. In addition, several specialised human rights treaties enshrine more specific non-discrimination obligations – such as non-discriminatory access to rights and services – towards the group of people protected under the respective treaty. Turkey is party to the following of such conventions: the CAT, the CEDAW, CRC, CRPD, or the CERD.

<sup>700</sup> ECtHR, *Tarakhel v. Switzerland*, §115.

<sup>701</sup> ECtHR, *M. S. S. v. Belgium and Greece*, especially §263.

<sup>702</sup> ECtHR, *Tarakhel v. Switzerland*, §115.

provide adequate material conditions for them although obligated,<sup>703</sup> may amount to discrimination contrary to international law.<sup>704</sup> In any case, a country where 'exilees' face systematic and serious violations of their fundamental rights cannot be considered 'safe'.

- Fifth, racist rhetoric in Turkey's political debate, including scapegoating 'exilees' for the dire economic situation in the country, has led to an increasingly hostile environment for 'exilees' in Turkey. This leads to a widespread risk of being subjected to hate speech and racist violence – causing, again, a potential conflict with Article 38(1)(a) of the EU's APD, as well as also violating an individual's fundamental rights.
- Sixth, 'exiles' face a real and genuine risk of refoulement through arbitrary cancellations of their 'kimliks', deportations and mass expulsions without consideration of the individual case, coercive 'voluntary returns', or pushbacks. All of the named practices are contrary to the 'safe third country' criteria provided by Article 38(1)(c), (d) and (e) of the EU's APD, and individually may amount to a violation of Article 3 of the ECHR as well as the parallel provisions in other human rights treaties.
- Seventh, in connection to the aforementioned practices of systematic violations of the non-refoulement principle, the anti-immigrant policy in Turkey heavily relies on mass apprehension and detention. Detainees are routinely deprived of their fundamental rights through both inadequate detention conditions and restricted access to legal aid. Ultimately, genuine risk of arbitrary detention may even amount to a threat to an individual's liberty contrary to Article 38(1)(a) of the EU's APD, again, also violating an individual's fundamental rights.
- Eighth, in early February 2023, the devastating earthquakes further exposed anti-immigrant sentiments and discriminatory exclusion of 'exilees'.

Based on the in-depth empirical research detailed herein, the present expert opinion has examined how the recognition of Turkey as a 'safe third country' is completely at odds with both EU and international human rights law. Relatedly, the only remaining conclusion is that the label 'safe third country' is a political, rather than a legal one. Drawing from Turkey as an example, the extended application of the 'safe third country' concept with its aim to reduce the number of successful asylum applications in the EU, ultimately bears the risk of nothing less than the complete erasure of the right to asylum. □

<sup>703</sup> In its case law, the ECtHR has held that appropriate care and protection needs to be provided to people who come within the class of highly vulnerable members of society, see ECtHR, *Rahimi v. Greece*, §87; ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, §55]. Asylum seekers are per se considered to be a particularly vulnerable group. ECtHR, *M. S. S. v. Belgium and Greece*, §232].

<sup>704</sup> E.g. obligations as set out in the ECHR, the ICCPR, the CAT, the CEDAW, the CRC, the CRPD and the CERD to all of which Turkey is a party to. Furthermore, discrimination may even amount to a violation of Article 3 of the ECHR, see fn. 320.

## List of abbreviations

|          |  |
|----------|--|
| AIDA     | Asylum Information Database  |
| AKP      | Justice and Development Party (Turkish: Adalet ve Kalkınma Partisi)  |
| APD      | Asylum Procedures Directive  |
| BVMN     | Border Violence Monitoring Network   |
| CAT      | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment   |
| CCPR     | Human Rights Committee   |
| CEAS     | Common European Asylum System  |
| CEDAW    | Convention on the Elimination of All Forms of Discrimination Against Women   |
| CERD     | International Convention on the Elimination of All Forms of Racial Discrimination  |
| CHP      | Republican People's Party (Turkish: Cumhuriyet Halk Partisi)   |
| CJEU     | Court of Justice of the European Union   |
| CMW      | Committee on the Protection of the Rights of All Migrant Workers and Members of their Families   |
| CPT      | Council of Europe's Committee for the Prevention of Torture  |
| CRC      | Committee on the Rights of the Child   |
| CRC      | Convention on the Rights of the Child  |
| CRPD     | Convention on the Rights of Persons with Disabilities  |
| DGMM     | Directorate-General for Migration Management (Turkish: Göç İdaresi Genel Müdürlüğü)  |
| EASO     | European Asylum Support Office   |
| ECHR     | European Convention on Human Rights  |
| ecre     | European Council of Refugees and Exiles  |
| ECtHR    | European Court of Human Rights   |
| EU       | European Union   |
| EUAA     | European Union Agency for Asylum   |
| GAR      | The Association for Migration Research (Turkish: Göç Araştırmaları Derneği)  |
| GCR      | Greek Council for Refugees   |
| GNCHR    | Greek National Commission for Human Rights   |
| GSS      | General Health Insurance   |
| ICCPR    | International Covenant on Civil and Political Rights   |
| İHD      | Human Rights Association (Turkish: İnsan Hakları Derneği)  |
| ILGA     | International Lesbian, Gay, Bisexual, Trans and Intersex Association   |
| IOM      | International Organization for Migration   |
| IPA      | International Protection Act   |
| JMD      | Joint Ministerial Decision   |
| LFIP     | Law on Foreigners and International Protection (Turkish: Yabancılar ve Uluslararası Koruma Kanunu)   |
| LGBTQIA+ | Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Agender/Asexual/Aromantic and everyone who feels part of the queer community |
| MHP      | Nationalist Movement Party (Turkish: Milliyetçi Hareket Partisi)   |
| NGO      | Non-Governmental Organisation  |
| OCHA     | United Nations Office for the Coordination of Humanitarian Affairs   |
| PDMM     | Provincial Directorate of Migration Management (Turkish: İl Göç İdaresi Müdürlüğü)   |
| PMM      | Presidency of Migration Management (Turkish: Göç İdaresi Başkanlığı)   |
| POA      | Power of Attorney  |
| PPMM     | Provincial Presidency of Migration Management (Turkish: İl Göç İdaresi Müdürlüğü)  |
| RSA      | Refugee Support Aegean   |
| SGBV     | Sexual and gender-based violence   |
| TİHEK    | Human Rights and Equality Institution of Türkiye (Turkish: Türkiye İnsan Hakları ve Eşitlik Kurumu)  |
| TİHV     | Human Rights Foundation of Turkey (Turkish: Türkiye İnsan Hakları Vakfı)   |
| TPR      | Temporary Protection Regulation (Turkish: Geçici Koruma Yönetmeliği)   |
| UN       | United Nations   |
| UNHCR    | United Nations High Commissioner for Refugees  |



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