THE 2016 EU-TURKEY STATEMENT: LEGAL, POLITICAL, AND HUMAN RIGHTS IMPLICATIONS IN THE CONTEXT OF MIGRATION GOVERNANCE

Thesis Submitted to the Faculty of Humanities and Social Sciences, School of Law and Government, Dublin City University for the Award of Doctor of Philosophy

by

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Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy is entirely my own work, and that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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Contents

List of Abbreviations

Abbreviation	Full Form
AKP	Adalet ve Kalkınma Partisi (Justice and Development Party)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
DGMM	Directorate General of Migration Management (Turkey)
EASO	European Asylum Support Office
EC	European Commission / European Community (context-dependent)
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EEC	European Economic Community
EU	European Union
EURATOM	European Atomic Energy Community
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Border and Coast Guard Agency
LFIP	Law on Foreigners and International Protection
MoU	Memorandum of Understanding
NDICI	Neighbourhood, Development and International Cooperation Instrument
NGO	Non-Governmental Organization
OJ	Official Journal
TCC	Turkish Constitutional Court
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Abstract

The 2016 Eu-Turkey Statement: Legal, Political, And Human Rights Implications in The Context Of Migration Governance

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The EU-Turkey Statement of March 2016 represents a pivotal moment in the European Union's approach to migration governance, aimed at reducing irregular arrivals while facilitating returns to Turkey. However, its legal nature, implementation, and compatibility with EU law and international human rights standards remain subjects of debate. This thesis provides a comprehensive legal and institutional analysis of the EU-Turkey Statement, examining whether it constitutes a binding international agreement or a mere political declaration, and evaluating its implications for the rights of asylum seekers.

By assessing the Statement's legal basis, procedural safeguards, and enforcement mechanisms, this research critically examines its compatibility with the principle of non-refoulement, the prohibition of collective expulsions, and EU asylum law. Through an analysis of key jurisprudence from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), the thesis explores how recent rulings—such as A.R.E. v. Greece and C-406/22—challenge the presumption that Turkey qualifies as a safe third country. Additionally, the study situates the EU-Turkey Statement within the broader context of EU externalization policies, drawing comparisons with other migration agreements to assess its role in shaping contemporary asylum governance.

The findings indicate that while the Statement has contributed to a reduction in irregular migration, its implementation has raised significant legal concerns, particularly regarding the treatment of asylum seekers, the legality of pushbacks, and procedural deficiencies in Greece's fast-track asylum system. Moreover, the European Council's role in negotiating the Statement outside of formal treaty-making procedures raises questions about institutional accountability and democratic oversight in EU migration policy.

By critically engaging with case law, policy developments, and legal doctrine, this thesis argues that the EU-Turkey Statement sets a concerning precedent for migration governance by prioritizing border control over fundamental rights protections. The study

concludes by proposing legal and policy recommendations to enhance transparency, accountability, and human rights safeguards in future migration agreements

INTRODUCTION

The EU-Turkey Statement, agreed in March 2016, was a crucial milestone in the handling of the European migration issue. Initially intended to address the issue of irregular migration, this agreement has since become a highly contentious topic in modern European history, prompting significant concerns regarding its legitimacy and its alignment with both EU law and international human rights standards. This thesis aims to examine the EU-Turkey Statement by analysing it from the perspectives of EU law, international refugee law, and political science. It will use the "new intergovernmentalism" approach to assess the distribution of power, legal legitimacy, and human rights consequences of the agreement. The examination explores whether the agreement, despite its practical ambitions, adheres to the principles outlined in both EU and international law, particularly the obligation of non-refoulement, which forbids the repatriation of refugees to a region where they may encounter persecution or cruel treatment. This study will also analyse evolving legal precedents established by European and national courts, encompassing rulings from Turkey, the European Union, and the European Court of Human Rights (ECtHR). The main question driving this thesis is: Is the EU-Turkey Statement compatible with EU, human rights law and international refugee law?

In order to address this question, this thesis employs an interdisciplinary methodology that integrates legal and political analysis. This research seeks to conduct a thorough assessment of the EU-Turkey deal by combining insights from legal and political science disciplines. Therefore, the "new intergovernmentalism" approach is employed to evaluate both the legal dimensions of the Statement and the political processes that have influenced its negotiation and execution. It will primarily examine three key aspects: the validity of the European Council's power to finalise the agreement, the conformity of the Statement with fundamental rights, and the determination of whether Turkey meets the criteria of being a "safe third country" according to international law.

This thesis is structured as follows. The first chapter of the thesis establishes the context by presenting a thorough analysis of the historical and political circumstances that surround the relations between the EU and Turkey. Turkey's favourable geographical location at the crossroads of Europe and the Middle East has positioned it as a crucial

actor in the management of migrant movements, especially during the Syrian refugee crisis. Since the start of the Syrian civil war in 2011, Turkey has been the main destination for millions of migrants, and its influence in managing migration to Europe has significantly increased. This chapter explores the progression of EU-Turkey relations, starting from Turkey's earliest attempt to join the EU in the 20th century, through the ups and downs in diplomatic connections, and culminating in the significant event of the signing of the EU-Turkey Statement in 2016. This analysis covers the underlying reasons that drove both parties to engage in this deal, with specific emphasis on the impact of the migration crisis on the EU's strategic choices, as well as Turkey's utilisation of its role as a crucial transit nation to get political and financial backing from the EU. This historical context establishes the foundation for comprehending the intricate legal and political intricacies that will be addressed in the following chapters.

The second chapter, titled "The EU-Turkey Statement: Implementation and Implications," provides an in-depth analysis of the EU-Turkey Statement. It explores the specific goals, implementation, and wider political consequences of this agreement. The Statement was designed to tackle the migratory problem by implementing a "1:1" procedure, whereby for each Syrian refugee repatriated from Greece to Turkey, another Syrian refugee would be relocated from Turkey to an EU Member State. This chapter evaluates the efficacy of this system, examining whether the Statement has accomplished its intended objectives of diminishing illegal migration. In addition, the chapter addresses the political motivations underlying the agreement, including the EU's imperative to uphold border security and Turkey's aspiration for financial and political backing from the EU.

Chapter 3 examines the European Council's influence in conclusion of the agreement. The chapter analyses the decision-making process behind the Statement, utilising the theoretical framework of "new intergovernmentalism." It explores how national interests influenced the process, circumventing the official treaty-making procedures of the EU. Article 218 of the Treaty on the Functioning of the European Union (TFEU) outlines the process for negotiating international agreements. However, in the case of Turkey, the European Council chose to pursue an informal agreement, which involved direct negotiations between the heads of state and government. This chapter examines whether the informal approach is indicative of a wider pattern of intergovernmentalism in the

European Union's reaction to crises, namely in areas such as migration, where Member States are reluctant to offer up their sovereignty to EU institutions.

The fourth chapter offers a legal examination of the EU-Turkey Statement's characteristics. The chapter examines whether the Statement can be deemed a legally binding international agreement according to EU and international law, or if it is simply a political arrangement without formal legal standing. The chapter conducts a critical analysis of whether the procedural deficiencies in the Statement impair its legitimacy by comparing it with international treaty law, namely the Vienna Convention on the Law of Treaties. This chapter examines the crucial rulings of the General Court of the EU regarding the Statement, the NF, NG, and NM v. European Council decisions. In addition, the chapter examines how the absence of official EU institutional participation, such as the exclusion of the European Parliament, raises significant concerns regarding the accountability and transparency of these agreements. This analysis aims to determine the enforceability of the EU-Turkey Statement, examining whether it is a legally binding document or a politically convenient but legally uncertain agreement.

Chapter 5 of this research specifically examines the human rights implications of the Statement. It provides a thorough analysis of the Statement's conformity with both EU law and international human rights law. It specifically focusses on the principles of non-refoulement and collective expulsion, including cases brought in European and national courts that contended that the Statement could lead to deportations and violations of the rights of asylum seekers. The chapter examines whether the agreement breaches these fundamental legal principles, which are protected by the EU Charter of Fundamental Rights and the ECHR. This chapter examines various significant cases, such as J.R. and Others v. Greece, Hirsi Jamaa v. Italy, and N.D. and N.T. v. Spain, to demonstrate the inconsistencies in the rulings of the ECtHR and criticise the court's flexible approach. The chapter contends that the agreement permits the repatriation of asylum seekers to Turkey without sufficient scrutiny of their claims, so contravening the norm of non-refoulement. In addition, it argues that the recent rulings of the ECtHR have placed greater emphasis on the interests of the state rather than the preservation of refugee rights, thereby endorsing the practice of pushbacks and the delegation of migration management to third parties.

Chapter 6 provides a thorough analysis of Turkey's involvement in safeguarding Syrian refugees within the context of the EU-Turkey Statement. Despite Turkey granting temporary protection status to millions of Syrian refugees, the uncertain nature of this status raises worries regarding the sufficiency of Turkey's legal and humanitarian framework. This chapter assesses Turkey's compliance with its responsibilities under international refugee law, including the 1951 Refugee Convention, and examines whether it meets the criteria to be classified as a "safe third country" as stipulated in the EU-Turkey Statement. The chapter also examines the voluntary repatriation of Syrian refugees from Turkey to Syria, scrutinising whether these repatriations genuinely reflect the voluntary intentions of the refugees or are motivated by worsening living conditions in Turkey. This chapter aims to conduct a thorough assessment of Turkey's ability to protect the rights of Syrian refugees by examining the relationship between the EU-Turkey Statement and Turkey's domestic migration policies. The chapter further examines the legal and human rights difficulties encountered by Syrian refugees residing in Turkey. This chapter assesses the efficacy of Turkey's legal system in safeguarding the rights of Syrian refugees, with a specific focus on addressing the growing number of reported violations, such as limited healthcare, education, and work access. Particular attention is paid to the increasing number of voluntary repatriations from Turkey to Syria, questioning whether these returns genuinely reflect the free will of refugees or are driven by deteriorating living conditions. The analysis also draws on relevant case law from the European Court of Human Rights and the Turkish Constitutional Court to assess the extent to which legal protections are realised on the ground. Finally, the chapter considers the broader political and social dynamics shaping Turkey’s migration governance, including the influence of EU financial assistance and political pressures to maintain Turkey as a buffer zone preventing refugee movements toward Europe.

CHAPTER 1: THE CONTEXT AND DEVELOPMENT OF EU-TURKEY RELATIONS

1- INTRODUCTION

The complex interaction of political, economic, and social elements has defined the nuanced relationship between Turkey and the European Union (EU) over several decades. Turkey's journey towards EU membership has been characterised by numerous fluctuations since its initial application to join the EEC in 1959. These shifts reflect both the broader dynamics of European integration and domestic developments within Turkey.

Migration has emerged as a key dimension in this evolving relationship, particularly during the Syrian refugee crisis. With the outbreak of the Syrian civil war in 2011, millions of Syrians were forced to flee their homes, creating one of the most severe humanitarian catastrophes of the modern era. Owing to its strategic geographical location at the intersection of Europe and the Middle East, Turkey has been a crucial actor in controlling the movement of migrants and refugees.

The EU–Turkey partnership offers a unique lens through which to examine migration policies and regional stability. A vast number of refugees have migrated to Turkey and subsequently to Europe, placing pressure on local resources and infrastructure. This influx has also posed significant challenges to the EU's political and legal ideals — particularly the principles of solidarity among Member States, respect for human dignity and fundamental rights, and the commitment to a Common European Asylum System (CEAS) grounded in uniform standards of protection and fair burden-sharing.

The objective of this chapter is to explore the dynamics of the relationship between the EU and Turkey with a particular focus on the impact and changes brought by the refugee crisis. Insight into the complex interplay between national interests, humanitarian obligations, and foreign policy can be gained by examining Turkey's motivations for EU accession.

Accordingly, this chapter begins with a brief historical context of EU-Turkey ties. Following that, it explores the EU's position on migration management, specifically in light of the Syrian refugee influx, drawing attention to the difficulties of balancing humanitarian obligations with security concerns. The following section addresses the events leading up

to and including the Syrian refugee crisis, exploring the circumstances that led to a large number of people seeking refuge and the actions taken by neighbouring nations and the EU. Lastly, the chapter examines Turkey's migration policies, particularly its handling of the significant influx of Syrian refugees and the impact of EU legislation on its legal system.

2- A BRIEF SUMMARY OF THE EU–TURKEY RELATIONS

The EU-Turkey relations commenced in 1959 with Turkey's application to join the European Economic Community (EEC).[1] Turkey was granted membership in the Customs Union through the 1963 Association Agreement, commonly known as the Ankara Agreement.[2] This partnership continued until the 1980 military coup in Turkey, after which the EU suspended diplomatic ties for several years.[3] In 1987, Turkey reapplied for full EEC membership under Article 237 of the Treaty of Rome, Article 98 of the European Coal and Steel Community, and Article 205 of EURATOM.[4] Nevertheless, in 1989, the EU rejected Turkey's application citing Turkey's failure to meet membership requirements, particularly in the economic and political spheres.[5] Turkey was granted candidate status during the Helsinki Summit in 1999, marking a significant step toward full membership.[6] While the EU initially welcomed Turkey's alignment with Western norms and principles, enthusiasm waned after the Justice and Development Party (AKP), an Islamist-rooted party, came to power in 2002.

Upon obtaining power in 2002, the AKP prioritised the processing of candidature status and accession negotiations.[7] As a result of the government's actions, the process of

[1] European Commission, 'European Neighbourhood Policy and Enlargement Negotiations: Turkey' https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en accessed 20 June 2025.
[2] Agreement establishing an Association between the European Economic Community and Turkey [1963] OJ L361/29 https://eur-lex.europa.eu/resource.html?uri=cellar:f8e2f9f4-75c8-4f62-ae3f-b86ca5842eee.0008.02/DOC_2&format=PDF accessed 20 June 2025.
[3] Burak Hergüner, 'An Analysis of the EU's Soft Power and the EU–Turkey Relations Through Metaphors' (2020) İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi, Prof Dr Sabri Orman Özel Sayısı 501, 501–514.
[4] Directorate for EU Affairs (Turkey), 'Chronology of Turkey–European Union Relations (1959–2015)' https://www.ab.gov.tr/files/chronology.pdf accessed 20 June 2025.
[5] Ibid.
[6] Beken Saatcioğlu and others, *The Future of EU-Turkey Relations: A Dynamic Association Framework amidst Conflictual Cooperation* (Istituto Affari Internazionali 2019) 1–2.
[7] B Ökten Sipahioğlu, 'Shifting from Europeanization to De-Europeanization in Turkey: How AKP Instrumentalized EU Negotiations' (2017) 48 The Turkish Yearbook of International Relations 51, 51–67.

joining was effectively pursued through political and economic changes.[8] In 2005, Turkey and the EU resumed the accession negotiations that were promised after the EU Summit in Brussels in 2003.[9] Nevertheless, following the AKP's second electoral victory, Turkey progressively departed from the Copenhagen criteria.

Following the AKP and Erdogan's increased confidence, particularly among their electoral base, their reliance on the EU lessened. Goff-Taylor argues that "*The Turkish government shifted to more negative rhetoric against the EU and its treatment of Turkey to maintain public support. The appearance of standing up to the EU played well with Turks who were frustrated by the EU and felt a strong sense of nationalism*."[10] The shifting dynamics of Turkey's accession efforts raise critical questions about its foreign policy. After the failed coup attempt in 2016,[11] President Erdoğan's government implemented sweeping anti-democratic measures, including the declaration of a state of emergency.[12] This led to significant human rights violations and a backslide in democratic standards.[13] As a result, accession negotiations effectively came to a standstill. In response to the coup attempt, the EU, European institutions, and the UN intensified their criticism of Turkey's state of emergency policies, further exacerbating tensions in EU–Turkey relations.[14]

The relationship between the EU and Turkey has also continued to be influenced by external geopolitical factors.[15] These include the longstanding Armenian allegations over

[8] Republic of Turkey Ministry of Foreign Affairs Secretariat General for EU, *Political Reforms in Turkey* (Ankara 2007).
[9] Commission, '2004 Regular Report on Turkey's Progress Towards Accession' COM(2004) 656 final.
[10] Moira Goff-Taylor, 'The Shifting Drivers of the AKP's EU Policy' (2017) Middle East Program Occasional Paper Serieshttps://www.wilsoncenter.org/sites/default/files/media/documents/publication/shifting_drivers_of_akps_eu_policy.pdf accessed 23 June 2025.
[11] Ahmet Akın, 'Ak Parti, Ak Parti'nin AB Politikası ve Türkiye'nin Üyeliği Meselesi [The AK Party, the AK Party's EU Policy, and the Issue of Turkey's Membership]' https://www.ab.gov.tr/files/chronology.pdf accessed 20 June 2025.
[12] Official Gazette (Turkey), 21 July 2016 https://www.resmigazete.gov.tr/eskiler/2016/07/20160721.htm accessed 20 June 2025.
[13] European Parliamentary Research Service (EPRS), 'Future EU-Turkey Relations' (Briefing, 2018) https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628290/EPRS_BRI(2018)628290_EN.pdf accessed 25 June 2025.
[14] 'Western media criticized over coup coverage' *Anadolu Agency* (Ankara, 21 July 2016) http://aa.com.tr/en/asia-pacific/western-media-criticized-over-coup-coverage/612922 accessed 25 June 2025.
[15] Marc Pierini, 'Turkey and the West: What to Expect in 2019?' (*Strategic Europe*, Carnegie Europe, 10 January 2019) https://carnegieeurope.eu/strategiceurope/78205 accessed 25 June 2025.

the events of 1915[16], the conflict between Armenia and Azerbaijan[17], and the involvement of global actors such as the United States and Israel in the Middle East.[18]

The escalation of crises in the Middle East and North Africa triggered a significant influx of migrants to Europe. These developments strengthened the diplomatic ties between the EU and Turkey, given Turkey's strategic geographical position at the crossroads of Europe and the Middle East. Amid these dynamics, the surge in irregular migration prompted the EU to reassess its relationship with Turkey, focusing more closely on issues of security, humanitarian cooperation, and economic stability.[19]

According to Adar et al., Turkey failed to fulfil the Copenhagen criteria, yet the EU was compelled to depend on Turkey's changing alignment, particularly in the areas of migration, counterterrorism, and safeguarding.[20] As the European Commission has also stated, Turkey remains a strategic partner for the EU on key issues including migration, security, counterterrorism, and economic cooperation. Nevertheless, concerns persist over Turkey's declining adherence to democratic principles, the rule of law, and fundamental rights.[21]

3- THE EUROPEAN UNION MIGRATION POLICY AND RESPONSE TO SYRIAN REFUGEE CRISIS

Europe is currently facing the most significant migration challenge since the Second World War. Globally, over 80 million people have been forcibly displaced due to armed conflict, persecution, and extreme poverty, seeking refuge in other countries.[22] Millions have fled

[16] B Özdal, 'Türkiye-Avrupa Birliği İlişkileri Bağlamında Ermeni Sorunu [The Armenian Issue in the Context of Turkey–European Union Relations]' (2007) 2(8) Global Strategy Journal 114, 114–125.
[17] 'Armenia-Azerbaijan: Why Did Nagorno-Karabakh Spark a Conflict?' *BBC News* (29 September 2020) https://www.bbc.com/news/world-europe-54324772 accessed 28 June 2025.
[18] İhsan D Dağı, 'Avrupa Birliği ve Türkiye: Nedenler ve Türkiye'nin Üyeliği Üzerine [European Union and Turkey: On Causes and Turkey's Membership]' in *Avrupa Birliği ve Türkiye* (Ankara 2007).
[19] Fulya Memişoğlu, *Management of Irregular Migration in the Context of EU–Turkey Relations* (TESEV Policy Programme 2014).
[20] Sinem Adar and others, 'Customs Union: Old Instrument, New Instrument, New Function' (2020) SWP Comment 48 https://www.ssoar.info/ssoar/bitstream/handle/document/70867/ssoar-2020-adar_et_al-Customs_union_old_instrument_new_function.pdf accessed 28 June 2025.
[21] European Commission, 'European Neighbourhood Policy and Enlargement Negotiations' https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en accessed 28 June 2025.
[22] UNHCR, 'Figures at a Glance' https://www.unhcr.org/figures-at-a-glance.html accessed 29 June 2025.

as refugees primarily due to the Syrian civil war, ongoing violence in Afghanistan, conflicts across parts of Africa, and the seizure of large portions of Iraq by ISIS in 2014.

Europe has emerged as an attractive destination for those fleeing violence and instability in their home countries. One of the key appeals of the EU lies in its commitment to democratic values and the protection of human rights. However, the EU has long grappled with the challenge of balancing multiple—and at times competing—objectives within its migration policy. These include controlling irregular migration, safeguarding Member States' sovereignty, addressing security concerns, and sustaining economic stability. While the EU has increasingly prioritised deterrence and border control—particularly during times of heightened migration flows—it has also promoted refugee integration policies. However, integration has received comparatively less political attention and institutional support than the EU's externalisation and securitisation strategies.

People escaping the civil conflict in Syria sought sanctuary in neighbouring countries that were geographically proximate in order to save their lives. Among these countries, Turkey is the most favoured destination. The primary reason for this choice is that Turkey offered relatively better living conditions compared to neighbouring countries such as Lebanon, Jordan, and Iraq. Furthermore, Turkey also served as a crucial transit country for Syrians seeking to reach European destinations. This section provides an in-depth analysis of the EU's migration strategy, focusing on the European integration and the evaluation of the EU's stance following the Syrian refugee crisis. Furthermore, it elucidates the reasons behind the EU's reliance on Turkey to address the refugee situation.

The development of EU migration policies has progressed alongside broader processes of European integration. The immigration movements that arose, particularly in the 1990s, sparked extensive debates on states' desire to maintain their sovereignty in order to deal with the flood of refugees. The assessment of governments' migration policies cannot be conducted in isolation from global developments. The conclusion of the Cold War, the disintegration of the Soviet Union, and the repercussions of the terrorist attack in the United States on September 11, 2001, had an impact on the policies of the EU. The migration flows that have arisen as a consequence of the Arab Spring have revealed the absence of a coherent policy inside the Union.

The initial outcome of intergovernmental collaboration on migration was the signing of the Schengen Agreement in 1985 by five member states of the European Communities (Belgium, France, Germany, Luxembourg, and the Netherlands).[23] In 1990, the EU ratified the Schengen Convention to enforce the provisions of this Treaty.[24] Prior to the signing of this Treaty, the Community lacked a unified stance on migration laws, resulting in varying policies across different countries. Since 1999, the Treaty of Amsterdam has also adopted it as its legal foundation.[25] The pact eliminated the restrictions on the shared borders of the states that signed it, while enhancing the restrictions on their borders with other countries.

The Dublin Convention, signed in 1990 and enforced in 1997, represented the EU's first attempt to regulate the responsibility for asylum applications. It established a mechanism to determine which Member State is responsible for processing an asylum claim.[26] This system was later updated by the Dublin II Regulation in 2003, which aimed to streamline procedures and ensure that each asylum application received proper examination.[27] Dublin II also introduced EURODAC, a centralised fingerprint database for asylum seekers and irregular migrants, intended to prevent individuals from submitting asylum claims in multiple countries.[28]

The EU's objective to establish a unified asylum policy began in 1999 with the adoption of the 'Common European Asylum System' to ensure a complete implementation of the Geneva Convention.[29] During the 1999 Tampere European Council, EU Member States expressed their desire for a unified migration system. This was prompted by the recognition that the Amsterdam Treaty only established the basic requirements for certain aspects of refugee systems.[30] Several legislative measures have been

[23] Commission, 'Schengen Agreement & Convention' [2000] OJ L239/29 https://ec.europa.eu/home-affairs/e-library/glossary/schengen-agreement-convention_en accessed 28 June 2025.
[24] Ibid.
[25] Ibid.
[26] Jason Mitchell, 'The Dublin Regulation and Systemic Flaws' (2017) 18 San Diego International Law Journal 295.
[27] Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003] OJ L50/1.
[28] Jason Mitchell, 'The Dublin Regulation and Systemic Flaws' (2017) 18 San Diego International Law Journal 295.
[29] European Commission, 'Asylum in the EU' https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu_en accessed 24 February 2021.
[30] European Council, 'Tampere European Council 15 and 16 October 1999 Presidency Conclusions' https://www.europarl.europa.eu/summits/tam_en.htm accessed 30 June 2025.

implemented to promote cooperative policy, including the 2001 Temporary Protection Directive, the European Asylum Support Office, and Frontex.[31] The European Pact on Migration and Asylum, initially authorised by the Justice and Home Affairs Council, was endorsed by European leaders in 2008.[32] The objective of this agreement was to establish a robust and transparent alliance among Member States on migration issues.

Bertozzi emphasises the significance of cooperation, asserting that the European Union becomes more effective when acting collectively, particularly in addressing challenges such as irregular migration and border management.[33] According to him, collaborative efforts also enhance the influence of Member States on the global stage.[34] It developed ten principles to govern the structure of a unified migration policy. The member states are politically bound by these values, which encompass three key concepts: unity, security, and prosperity.

Following this, the Treaty of Lisbon was ratified and entered into force in 2009.[35] The Treaty enhanced the European Parliament's role in the legislation process. It also brought about an equal position between Parliament and the Council, particularly in decision-making related to EU measures. A core aim of the Treaty was to increase the EU's democratic legitimacy and its capacity to address global challenges, including migration.

Asylum and immigration matters, once firmly within the jurisdiction of individual Member States, became part of the EU's area of freedom, security, and justice. Kaunert categorises the objectives of the Treaty of Lisbon into three distinct groups.[36] First, it introduced new EU competencies regarding asylum systems that go beyond setting minimum standards. Second, it reformed institutional structures by strengthening the roles of the European

[31] European Commission, 'Towards a Comprehensive European Migration Policy' (European Commission, 4 March 2015) https://ec.europa.eu/commission/presscorner/detail/en/memo_15_4544 accessed 30 June 2025.
[32] Council of the European Union, *European Pact on Immigration and Asylum* (Brussels, 2008).
[33] Stefano Bertozzi, 'European Pact on Migration and Asylum: A Stepping Stone Towards Common European Migration Policies' (*CIDOB Opinion*, 1 November 2008) https://www.cidob.org/en/publications/publication_series/opinion/migraciones/european_pact_on_migration_and_asylum_a_stepping_stone_towards_common_european_migration_policies accessed 30 June 2025.
[34] Ibid.
[35] Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community [2007] OJ C306/1.
[36] Christian Kaunert and Sarah Léonard, 'The European Union Asylum Policy After the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?' (2012) 31 Refugee Survey Quarterly 1.

Parliament and the Court of Justice. Finally, the Charter of Fundamental Rights, which was ratified in 2000, was given full legal effect in all member states through the Lisbon Treaty.

Following the Lisbon Treaty's entry into force, the EU's migration policy increasingly focused on externalisation strategies. Baldwin-Edwards et al. note that the EU external migration policy became defined by conditionality: financial and humanitarian aid is offered to third countries in exchange for their cooperation in managing irregular migration, human trafficking, and organised crime.[37] The Dublin III Regulation is the main legal framework that determines the Member State that is accountable for processing an asylum application. The most recent amended edition of the rule came into effect in 2013.[38] The law establishes the standards for determining responsibility in a specific sequence: *"family considerations, recent possession of visa or residence permit in a Member State and whether the applicant has entered EU irregularly, or regularly*".[39]

The EU's stance toward the large-scale influx of migrants is in conflict with its core principles and the international legal framework underpinning its obligations. The surge of the migration crisis posed a significant challenge to the core values of the EU. The Union's enlargement process had historically evolved alongside efforts to regulate migration flow since the Second World War, supporting the gradual elimination of internal borders. However, the refugee crisis in 2015 reignited internal tensions, particularly around the temporary suspension of the Schengen Agreement by some Member States.

The growing pressure on Europe's external borders and the humanitarian situation along its coastlines threatened the cohesion and credibility of the European integration project. As Zanfrini notes, the 2015 crisis exposed the fragility of international protection in the context of the EU's state-centric governance system and revealed the limitations of its migration governance.[40] The situation highlighted the urgent need to harmonise external border policies while upholding universal human rights.

[37] Martin Baldwin-Edwards, Brad K Blitz and Heaven Crawley, 'The Politics of Evidence-Based Policy in Europe's "Migration Crisis"' (2019) 45(12) Journal of Ethnic and Migration Studies 2139.
[38] European Commission, 'Country Responsible for Asylum Application (Dublin Regulation)' https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/country-responsible-asylum-application-dublin-regulation_en accessed 30 June 2025.
[39] Ibid.
[40] Laura Zanfrini, 'Europe and the Refugee Crisis' (United Nations Academic Impact, 2016).

Althought the EU professes a commitment to securing a prosperous life for its citizens, based on the principles of a social welfare and valuing diversity, its policy response to the refugee crisis has brought its democratic ideals under scrutiny.[41] The crisis challenged the EU's founding values of dignity and solidarity, as enshrined in Article 2 of the Treaty of Lisbon, which states:

> '*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*'.[42]

The EU's policy during the migration crisis encompasses three key aspects: externalisation, resettlements, and the safe third country concept. Although the Syrian civil war began in 2011, the so-called "refugee crisis" only gained significant political traction in the spring of 2015. Since then, the EU has undertaken a range of measures aimed at revising its refugee policies. These steps are designed to address the underlying causes of the crisis and enhance assistance to individuals requiring humanitarian relief, both within and beyond the EU.

In April 2015, the EU declared a "Ten-point action plan on migration" in order to address the migration crisis. [43] This approach underscored the significance of distributing responsibilities in order to generate prompt action. The document overwhelmingly approved immediate measures to control the entry of refugees in the first stage. These actions include a cooperation plan involving EUROPOL, FRONTEX, EASO, and EUROJUST, as well as the detention and destruction of marine vehicles used by human smugglers in the Mediterranean Sea.[44] Saatçioğlu argues that the EU's response demonstrated a lack of genuine commitment to addressing the refugee crisis, relying instead on shifting responsibilities to external actors. [45] This concern was echoed by then-High

[41] European Union, 'Aims and Values' https://europa.eu/european-union/about-eu/eu-in-brief_en accessed 30 June 2025.
[42] Consolidated Version of the Treaty on European Union [2008] OJ C115/13, art 2.
[43] European Commission, 'Joint Foreign and Home Affairs Council: Ten Point Action Plan on Migration' (20 April 2015) https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4813 accessed 30 June 2025.
[44] Ibid.
[45] Beken Saatcioğlu, 'Avrupa Birliği'nin Mülteci Politikası ve Türkiye: Normatif Güç Açısından Bir Değerlendirme [The EU's Refugee Policy and Turkey: Reconsidering the EU through Normative and

Representative Federica Mogherini and Commissioner Dimitris Avramopoulos, who both highlighted the EU's obligation to act responsibly and in a spirit of solidarity.[46] The EU places importance on assuming responsibility and collaborating as a means of resolving the crisis. The EU's protective strategy was reassessed and enhanced in the European Agenda on Migration in May 2015.[47] The process of migration governance has been implemented through four key areas: 'diminishing the incentives for unauthorised migration, managing borders to ensure both safety and security, establishing a robust shared asylum policy as Europe's responsibility to protect, and developing a new framework for legal migration'.[48] Within this agenda, the focus was placed on relocation and resettlement in order to ensure the equitable distribution of duties among member states. Since 2015, about 70,000 individuals in need of international protection, primarily from Turkey, Jordan, and Lebanon, have been resettled in European member states as part of the European resettlement initiatives designed to assist frontline member nations.[49]

4- A BRIEF EXPLANATION OF SYRIAN REFUGEE CRISIS

After the spread of the Arab Spring, the Syrians started to organise protests against the government in 2011. However, Assad's government responded with a crackdown.[50] This bloody encounter between the government and protesters triggered other protests in different cities. Protesters condemned the corruption and dictatorship of Assad's Government. Due to the arrestment of protesters and violently pressure from the government, the conflict shifted to civil war and people forced to flee their homes. In mid-2011, refugee camps started to set in neighbouring countries such as Turkey, Lebanon, and Jordan.[51]

Strategic Dimensions]' (MEF University Institutional Repository, 2019) https://gcris.mef.edu.tr/handle/20.500.11779/458 accessed 30 June 2025.

[46] Ibid.

[47] Commission, 'European Agenda on Migration' COM (2015) 240 final.

[48] Ibid.

[49] European Council, 'How the EU Manages Migration Flows' https://www.consilium.europa.eu/en/policies/managing-migration-flows/ accessed 1 July 2025.

[50] UNHCR, 'Syria Refugee Crisis Explained' (USA for UNHCR, 2021) https://www.unrefugees.org/news/syria-refugee-crisis-explained/ accessed 1 July 2025.

[51] Refugepoint, 'The Syrian Refugee Crisis, Explained' (2024) https://refugepoint.org/blog/the-syrian-refugee-crisis-explained/ accessed 1 July 2025.

As a result of the Syrian civil war, more than five million people have fled Syria, over 13 million people are still in need of humanitarian assistance.[52] Migration from Syria to other countries took place in two waves. In the first wave, Syrian citizens who have forced to flee to neighbouring countries such as Lebanon and Turkey. The vast majority of Syrian refugees displaced by this wave of migration are currently being hosted as neighbours. With more than 3.6 million refugees, Turkey is hosting the highest number in comparison to its neighbouring countries. [53] Lebanon, Jordan and Iraq are following Turkey, respectively. The second wave of the refugee crisis occurred in the summer of 2015. Most of the Syrian refugees, who have been staying in neighbouring countries for a long time, but cannot access adequate education, employment, and health services, have turned their route to Europe. While the Mediterranean coasts witnessed the tragedies of refugees trying to migrate en masse, European states began to experience the effects of the Syrian civil war for the first time. According to Frontex data, the number of illegal border crossings detected while trying to enter the EU border between July-September 2015 has reached more than 600,000.[54] This number was approximately 170,000 in the second quarter of 2015.[55]

Since the EU has faced the migration flow from Libya, Egypt, Syria in 2015, the Union has been trying to establish a common policy on refugees. Nevertheless, immigration policies and acceptance of refugees fall under the sovereignty of the member states. Syrian refugee crisis raised questions on responsibility sharing and solidarity between the member states. For this reason, countries prefer to act by keeping their own interest in the foreground.

The solidarity as a binding dimension of the European Union has been under pressure with the refugee crisis. The high number of newly arrived refugees at the EU borders caused the EU member states to ignore the principle of the first country of entry, which stipulates in Dublin regulation. The first country of arrivals, such as Italy and Greece, allowed the

[52] UNHCR, 'Syria Emergency' https://www.unhcr.org/syria-emergency.html accessed 1 July 2025.
[53] UNHCR, 'Operational Portal Refugee Situations: Syrian Regional Refugee Response' (2021) https://data.unhcr.org/en/situations/syria accessed 1 July 2025.
[54] Frontex Risk Analysis Unit, *FRAN Quarterly: Quarter 3, July–September 2015* (Frontex 2015) https://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q3_2015.pdf accessed 1 July 2025.
[55] Frontex Risk Analysis Unit, *FRAN Quarterly: Quarter 3, July–September 2015* (Frontex 2015) https://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2015_final.pdf accessed 1 July 2025.

migrants to access their preferred destination. In the meantime, Germany announced to suspend Dublin rules to deal with Syrians' asylum requests.[56] The operation of the Dublin system was broken down by the announcement of Merkel's open-door policy. In addition to Germany, Sweden unveiled to receive around 190.000 migrants in 2015.[57] However, this welcoming approach could not maintain for an extended period by both Germany and Sweden. Due to the high number of applications, Germany reintroduced border controls in September 2015. Following Germany, Sweden, Austria, The Netherlands also suspend Schengen rules.[58] This situation was also defined as the most significant blow to the Schengen system over twenty years.[59]

On the other hand, the Balkan route for migrants has been viral since 2012. In 2015, Western Balkan countries faced a large influx.[60] As a result of the migration crisis, Hungary, as the first country to announce the closure of its borders, was also unveiled the construction of a '4-metre high, 175-kilometre long barbed-wire fence along its border with Serbia'.[61] Hungary also militarised their border to strengthen against illegal crossings. Following Hungary, Slovenia and Croatia used the same strategy for migration governance to build a razor-wire fence and militarise its border.[62]

The European solidarity on the governance of the migration crisis has remained limited to member states' interests. While some member states followed the welcoming approach for a short period, frontier countries preferred to strengthen their borders to keep migrants outside of the EU and prevent becoming the first country of arrivals under the Dublin system. The EU failed on migration policy. It triggered Member States' reluctance to assume responsibility under the Dublin system, significantly undermining the effectiveness and solidarity mechanisms central to the Common European Asylum System

[56] Andrea Dernbach and Der Tagesspiegel, 'Germany Suspends Dublin Agreement' (*Der Tagesspiegel*, 25 August 2015) https://www.euractiv.com/section/justice-home-affairs/news/germany-suspends-dublin-agreement-for-syrians/ accessed 1 July 2025.
[57] Melissa Eddy, 'In Sweden, the Land of the Open Door, Anti-Muslim Sentiment Finds a Foothold' *The New York Times* (New York, 2 January 2015).
[58] 'Europe Starts Putting Up Walls' *The Economist* (19 September 2015) https://www.economist.com/europe/2015/09/19/europe-starts-putting-up-walls accessed 1 July 2025.
[59] Ibid.
[60] Emilio Cocco, 'The Balkan Migration Crisis and Its Impact on Relations Between the EU and the Western Balkans' (2017) 16(2) European View 293.
[61] Daniel Gyollai, (2018). Hungary – Legal and Policy Framework of Migration Governance. 10.5281/zenodo.1418573.
[62] 'Slovenia builds fence to control migrant flow' *BBC News* (11 November 2015) https://www.bbc.com/news/av/world-europe-34790151 accessed 1 July 2025.

(CEAS). This led to increased fragmentation in asylum policies across Member States, weakening the uniform application of EU asylum standards and highlighting critical shortcomings in responsibility-sharing mechanisms.

5- OVERVİEW OF TURKEY MIGRATION POLICY TOWARDS SYRIAN REFUGEES

Since Turkey has been a country of immigration for years, it has developed legislation and practices concerning immigration policy. On the other hand, Turkey is one of the countries at the centre of the ongoing immigration debate in Europe. The prospect of EU integration brought some changes to Turkey's immigration policy.[63] In addition to the EU's pressure, the judgements of the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) also play an essential role.

Turkey is the member state of the Council of Europe since 1950, therefore is one of the contracting parties to the European Convention on Human Rights (ECHR) since its ratification in 1954.[64] Although Turkey ratified the ECHR in 1954, Turkey has recognised the Commission's authority to examine individual petitions on 28 January 1987. Besides, a separate recognition statement was required for the mandatory jurisdiction of the Court. It did not acknowledge the 'binding jurisdiction' of the European Court of Human Rights (ECtHR) until 1989.[65] However, it should be noted that, with the entry into force of Protocol No. 11, there is no need for particular recognition statements in terms of individual application and compulsory jurisdiction since its entry into force in 1998.[66] Some cases in the ECtHR found Turkey in violation of articles 3, 5, and 13 of the ECHR in the context of detention, deportation, and treatment of asylum seekers and refugees in

[63] Ahmet İçduygu, 'Demographic Mobility over Turkey: Migration Experiences and Government Responses' (2004) 15 Mediterranean Quarterly 88.
[64] European Court of Human Rights, 'Overview 1959–2019: European Court of Human Rights' (February 2020) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.gov.si/assets/ministrstva/MP/ESCP/Overview_19592019_ENG.pdf accessed 1 July 2025.
[65] Olgun Akın, 'Turkey's Response to Judgments of the European Court of Human Rights' (2015) 2(5) International Journal of Multidisciplinary Studies 75.
[66] Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby, ETS No 155 (entered into force 1 November 1998).

their lands.[67] The high amounts of compensation have affected fastening Turkey's implementation of further improvements, particularly in asylum and forced migration.

On the other hand, the European Court of Justice (ECJ) is the enforcement mechanism on the implementation of EU Law.[68] Also, the Association Agreement signed between the EEC and Turkey ensures 'formalised political and judicial enforcement' with a role for the ECJ.[69] According to the Association Council Decision 1/95 introducing the Customs Union, *'interpreted for the purposes of their implementation and application to products covered by the Customs Union, in conformity with the relevant decisions of the Court of Justice of the European Communities'*.[70] Despite the fact that ECJ oversees only the EU member states, there are some appearances that it affects Turkey's legal system, especially on immigration matters. According to the EU Law, compliance with the regulations is part of the ongoing EU-Turkey relations since candidate countries must comply with the EU acquis. In other words, Turkey as a candidate country should have the capability to adapt all legal documents, regulations which the ECJ oversees to their domestic legislation. As Gocmen expresses that "The EU-friendly method of interpretation shall refer to the EU rule (s) or act of which harmonisation has been made and the relevant ECJ jurisprudence in terms of EU law to which it will be interpreted accordingly, by accepting only as a source.", ECJ do not only affect Turkish national court decisions, but it also plays a vital role compliance process of Turkey to the EU.[71]

Besides, Turkey is the party to the 1951 Refugee Convention and the 1967 Protocol with geographical reservation. It means that Turkey only grants refugee status to asylum seekers from Europe.[72]

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[67] Jabari v Turkey App no 40035/98 (ECtHR, 11 November 2000), Abdolkhani and Karimnia v Turkey App no 30471/08 (ECtHR, 22 September 2009), ZNS v Turkey App no 21896/08 (ECtHR, 19 January 2010).
[68] Protocol (No 3) on the Statute of the Court of Justice of the European Union [2016] OJ C202/210.
[69] Sinan Ülgen, 'Avoiding a Divorce: A Virtual EU Membership for Turkey' (Carnegie Europe, 5 December 2012) https://carnegieeurope.eu/2012/12/05/avoiding-divorce-virtual-eu-membership-for-turkey-pub-50218 accessed 1 July 2025.
[70] Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union [1996] OJ L35/1.
[71] Ilke Göçmen, 'A Proposal for Turkish Courts' Approach to European Union Law in the Framework of European Union and Turkey Relations: The Method of EU-Friendly Interpretation' (2014) 63(1) Ankara Üniversitesi Hukuk Fakültesi Dergisi 131.
[72] UN Treaty Collection, 'Status of Treaties: Declarations and Reservations' https://treaties.un.org/pages/AdvanceSearch.aspx?tab=UNTC&clang=_en accessed 1 July 2025.

On the other hand, one of the significant steps to harmonise Turkish legislation with the EU framework in the field of justice, freedom, and security was the National Action Plan in March 2005.[73] Under this plan, Turkey drafted a new regulation called "Law on Foreigners and International Protection" (LFIP).[74] The Turkish Parliament ratified the first part of the law in 2013.

Although most of the asylum seekers in Turkey are from non-European countries, Turkey maintains the 1951 Refugee Convention's geographical reservation. The LFIP ensures three different models of international protection under the convention. The first one is the *refugee* status as it describes the European asylum seekers.[75] The second one is the *conditional refugee* status for non-European people.[76] The final one is the *subsidiary protection* for people who are not eligible for neither refugee nor conditionally refugee status but still in the case of the non-refoulement principle.[77]

In this context, along with the immigration flow from Syria, it was declared that asylum seekers are under "temporary protection" by the Prime Ministry's circular in April 2012.

6- CONCLUSION

This chapter has examined the complex relationship between Turkey and the EU, with a particular emphasis on how migratory policies and the refugee crisis intersect. It begins with a summary of Turkey's enduring aspiration to join the EU, highlighting the significant milestones and challenges that have shaped this complex relationship. Subsequently, the chapter delved into the impact of the Syrian refugee crisis on the relationship between the EU and Turkey, highlighting Turkey's crucial position as a central point for the influx of migrants into Europe and as a host country for millions of refugees. The discussion also discussed the evolution of Turkey's migration policy alongside the refugee crisis.

The development of EU-Turkey relations, specifically regarding migration and the Syrian refugee crisis, highlights the intricate interaction of geopolitical, economic, and

[73] National Action Plan of Turkey for the Adoption of EU Acquis in the Field of Asylum and Migration, adopted on 2010-2014
[74] Nuray Ekşi, *Yabancılar ve Uluslararası Koruma Kanunu (Tasarısı) [The Law on Foreigners and International Protection (Draft)]* (Beta 2012).
[75] Law on Foreigners and International Protection, Art 61 (Turkey, Law No 6458, 4 April 2013).
[76] Ibid.
[77] Ibid.

humanitarian variables that influence the policies between the two parties. Turkey's efforts to join the EU have been characterised by a mix of collaboration and conflict, affected by events within the country and the surrounding area. Since its application to the EEC in 1959, Turkey has faced numerous barriers in its longstanding aspiration to join the EU. These obstacles have arisen due to political, economic, and human rights issues. Turkey has encountered multiple obstacles in its journey towards EU accession since being granted candidate status in 1999. These factors encompass internal occurrences such as the rise of the AKP party to authority and the coup attempt in 2016, as well as foreign issues like as geopolitical tensions and the ongoing migration crisis.

Given its strategic location and ambitions to become an EU member, Turkey's migration policies have changed drastically, especially in light of the large number of Syrian refugees that have arrived in the country. Turkey has made progress in bringing its legal system in line with EU standards, but it still has some objections, like the fact that the 1951 Refugee Convention is only applicable within a particular geographical area. Turkey has taken steps to address the complicated issues caused by mass migration, such as establishing temporary protection for Syrian refugees and enforcing the Law on Foreigners and International Protection (LFIP). These initial developments are further examined in Chapter 6, where Turkey’s legal and policy framework is assessed in light of its designation as a ‘safe third country’ under the EU-Turkey Statement.

The Syrian refugee crisis, which began after the country's civil conflict in 2011, has further strained ties between the EU and Turkey. The present circumstances have revealed the arduousness of establishing a cohesive migration strategy within the EU, brought to light internal conflicts, and challenged the solidarity of Europe. The EU-Turkey Statement was created as a crucial, although contentious, method to handle the enormous flow of refugees and migrants entering Europe. Through this agreement, Turkey was officially acknowledged as a buffer state and a crucial partner in the battle against migration within the European Union. The upcoming chapter will thoroughly examine the EU-Turkey statement, delving into its consequences and practical implementation.

CHAPTER 2: THE EU-TURKEY STATEMENT: IMPLEMENTATION AND IMPLICATIONS

1- INTRODUCTION

The EU has faced substantial difficulties in effectively handling the refugee movement, especially in response to the escalating the Syrian refugee crisis that occurred in the early 2010s. The EU has being forced to review its policies and methods for asylum and border management due to this influx. The EU-Turkey Statement, which was signed in March 2016, marks a noteworthy shift in the EU's strategy for managing migration. It highlights the need of collaborating with third countries as a means to effectively regulate borders and decrease the number of unauthorised border crossings. This chapter explores the various aspects of the Statement, such as its goals, implementation, and the interaction of interests between the EU and Turkey. It highlights how the agreement sought to create a framework for safe and legal pathways for refugees, while simultaneously enhancing border security and addressing humanitarian needs within Turkey.

This chapter is organized into six sections. The first section provides a historical overview leading to the formulation of the EU-Turkey Statement, contextualizing the political and humanitarian landscape that necessitated such an agreement. The second section provides a thorough outline of the EU-Turkey Statement, including its goals and the strategic reasoning behind its creation. The next section analyses the objectives of the Statement and assesses the results of its implementation, emphasising both achievements and difficulties faced. Afterwards, the next section examines a notable occurrence in 2020—the collapse of the Statement—and evaluates its consequences for EU-Turkey relations and the management of migration. The subsequent section explores recent advancements within the EU that aim to tackle the continuous influx of migrants, reflecting on the changing nature of migration policy in response to emerging difficulties. The concluding chapter provides a summary of the primary challenges and issues, which will be discussed in the subsequent chapters.

2- BACKGROUND OF THE EU-TURKEY STATEMENT

The Syrian Refugee Crisis become a significant political and humanitarian challenge for Europe in 2015. The approach of EU countries to Syrian refugees has remained below the EU's capacity and expectations so far. For example, Germany, to which asylum seekers turn to the most and which applies more benign policies compared to other member countries, temporarily suspended Schengen and introduced the border controls due to the increasing demand.[78] In addition to these practices, EU member countries have entered into serious debates on migration. After the EU began to experience the refugee crisis in 2015, there were multiple necessary steps taken.

After 2015, the EU's policy focused on a dangerous Mediterranean route for people crossing from Turkey and North Africa to Italy and Greece. In terms of significant flows of refugees, the EU strengthened their relations with third countries where refugees and migrants come from. These member states faced the high burden of refugees in their lands. The hotspot approach proposed in the European Migration Agenda in 2015 was improved to support the member states at the external EU border.[79] The EU agencies (Frontex, Europol, Eurojust and European Asylum Support Office) started to work in cooperation to fulfil the obligations in accordance with the EU law, such as registration of asylum seekers and return operations.[80] At the same time, the EU launched action plans for returns of refugees and asylum seekers to appointed safe third countries such as Turkey. In exchange for financial assistance, they agreed on cooperation for preventing irregular migration.[81] Although the European Union seems to be seeking a solution to the refugee problem, it is evident that its primary purpose is to keep refugees away from its borders, such as safe third country concepts and readmission agreements. Externalisation is one of the critical approaches of the EU to challenge the migration crisis. As a result of

[78] 'Migrant Crisis: Germany Starts Temporary Border Controls' *BBC News* (13 September 2015) https://www.bbc.com/news/world-europe-34239674 accessed 1 July 2025.
[79] Arne Niemann and Natascha Zaun, 'EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives' (2018) 56(1) Journal of Common Market Studies 3.
[80] Commission, 'Communication from the Commission to the European Parliament and the Council: Progress Report on the Implementation of the Hotspot Approach in Greece' COM (2016) 141 final.
[81] European Commission, 'EU-Turkey Joint Action Plan' (Fact Sheet, 15 October 2015) http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm accessed 1 July 2025.

this policy, the EU-Turkey Statement was signed in 2016 to halt irregular migration from Turkey to the EU.[82]

Nevertheless, the measures taken by the EU to combat the refugee crisis were unsuccessful. Carrera et al. express that `The EU policy responses, both internally and in cooperation with third countries, have by and large lacked a multi-policy sector approach. Instead, they have given priority to security-driven (home affairs) and military concerns and interests of the EU and its member states. The focus on border controls, return, and readmission and fighting against smuggling have by and largely prevailed. They ignored the duty of ensuring full compliance with fundamental human rights standards and principles.[83]

Readmission agreements are always used as a tool to combat illegal immigration. Turkey has made readmission agreements with some countries. One of these readmission agreements signed between the European Union and Turkey was published in the Official Gazette in 2014.[84] According to article 24 of the Treaty, for third-country nationals and stateless persons, the Treaty will begin to apply three years after its ratification. In that case, the date on which the readmission agreement will enter into force for third-country citizens is 1 October 2017. Nevertheless, some steps have taken to bring the date of adoption of readmission of third-country nationals and stateless persons after the refugee influx to Europe from Turkey. The EU-Turkey joint plan was designed to address the EU and Turkey cooperation regarding refugees and asylum seekers.[85]

After 2015, the EU's efforts have focused on ending the influx of refugees. Therefore, the EU made some cooperation deals with some Mediterranean countries to prevent deaths in the Aegean Sea and break the human trafficking chain. For example, migration flow from Libya to the EU effectuated the cooperation between Italy and Libya. The EU and

[82] European Council, 'EU-Turkey Statement, 18 March 2016' (Press Release) https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ accessed 1 July 2025.
[83] Sergio Carrera and others, 'The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities' (2015) CEPS Essay.
[84] Türkiye Cumhuriyeti ile Avrupa Birliği Arasında İzinsiz İkamet Eden Kişilerin Geri Kabulüne İlişkin Antlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun [Law No 6547 on the Approval of the Agreement between the Republic of Turkey and the European Union on the Readmission of Persons Residing Without Authorisation], adopted 25 June 2014, published in *Resmî Gazete* (Official Gazette), 29 June 2014, No 29044.
[85] European Commission, 'EU-Turkey Joint Action Plan' (Fact Sheet, 15 October 2015) http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm accessed 1 July 2025.

Libya made the agreements on preventing irregular crossings and building the readmission systems during the 2000s. Nonetheless, this cooperation did not take long due to the civil war and ECtHR decision on the Hirsi case. The Hirsi case has an essential place in the EU migration system. The ECHR ruled that Italy breached the principle of non-refoulement and the prohibition of collective expulsions.[86] With the introduction of the European Agenda on Migration in 2015, the EU launched the hotspot approach under a strict immigration policy at the institutional level.[87] The most crucial step of the EU's "border securitisation" policy after 2016 is the EU-Turkey Statement signed on 18 March 2016.[88]

Accordingly, Libya's deadlier route to Italy raised the considerations on border securitisation to make difficult crossings after witnessing the EU-Turkey deal implementation. Following the EU-Turkey statement, the government of Italy and Libya agreed on 'Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic' with the UN involvement.[89]

Due to the EU member states' unwillingness to accept migrants and collapsing the common migration system, the EU has found itself in a solidarity crisis. Even though the European Commission published the European Agenda on Migration 2015, the divergence of the member states' interests caused the failure to find a common solution to fair burden share. Because of the EU's serious setback to achieving solidarity on the implementation relocation decision on migrants, the EU turned to third countries to strengthen their external borders. Toygur and Benvenuti define Turkey's position as a country 'the provider of the solution to the European deadlock' with the highest Syrian population around the world and the geographical importance to access Europe via sea

[86] *Hirsi Jamaa and Others v Italy* [GC], App no 27765/09 (ECtHR, 23 February 2012).
[87] Yasha Maccanico, 'EU/Italy Commission Requires Large-Scale Abuse of Migrants for Relocation to Proceed' (Statewatch, 2016) https://www.statewatch.org/media/documents/analyses/no-288-italy-report-dec-15.pdf accessed 1 July 2025.
[88] Levent Yigittepe, 'Avrupa Birliği'nde Güvenlik Politikaları ve Arayışları [Security Policies and Pursuits in the European Union]' (2017) 4(7) International Journal of Social and Educational Sciences 12, 12–27.
[89] *Memorandum of Understanding on Cooperation in the Fields of Development, the Fight Against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders Between the State of Libya and the Italian Republic* (2017) https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf accessed 1 July 2025.

or land route.[90] On 29th November 2015, Turkey and the EU leaders met in Brussels to boost the EU-Turkey relations, specifically on the migration crisis.[91] On the one hand, this meeting was positively interpreted to handle a global refugee crisis; on the other, some human rights organisations criticised the EU action as human rights violations. Despite the Council of EU's relocation decision for the benefit of frontline member states, just a small amount of member states was interested in accepting an insufficient number of refugees from Italy, Greece, or Bulgaria.[92]

German Chancellor Angela Merkel emerged as the first leader to call member states for solidarity and finding a common solution to the refugee crisis. Moreover, Merkel played a significant role in the preparation and shaping of the EU-Turkey deal's background. In light of Germany's policies and challenges through the crisis in 2015, Merkel turned to Turkey for the cooperation of the refugee crisis management. In September 2015, she emphasised Turkey's strategic importance signalling the EU-Turkey Statement in her speech at European Parliament with these words: *'We can protect our external borders successfully only if we do something to deal with the many crises in our neighbourhood - Turkey plays a key role, … EU-wide return programmes are also important and the Dublin process, in its current form, is obsolete*'. [93] Some scholars discussed the German Chancellor's role not only on the EU-Turkey relations but also on making progress at the EU level. Turhan determines Germany's leadership created a 'reward mechanism' with Turkey to strengthen the external borders of the EU. However, neither the European Council nor the other member states leaders had any intention to open a new chapter on a common solution to the refugee crisis.[94]

In the joint plan, the European Commission mentions the strengthening of cooperation to find a solution for the Syrian Refugee Crisis. On 29 October 2015, the joint plan was

[90] İlke Toygür and Bianca Benvenuti, 'One Year On: An Assessment of the EU-Turkey Statement on Refugees' (2017) IAI Working Papers http://www.iai.it/sites/default/files/iaiwp1714.pdf accessed 2 July 2025.
[91] European Council, 'Meeting of Heads of State or Government with Turkey - EU-Turkey Statement' (Press Release, 29 November 2015) https://www.consilium.europa.eu/en/press/press-releases/2015/11/29/eu-turkey-meeting-statement/ accessed 13 July2025.
[92] Ebru Turhan, 'The Implications of the Refugee Crisis for Turkish-German Relations: An Analysis of the Critical Ebbs and Flows in the Bilateral Dialogue' (2018) 13(49) Marmara Üniversitesi Öneri Dergisi 187.
[93] European Parliament, 'François Hollande and Angela Merkel Face MEPs' (Press Release, 7 October 2015) https://www.europarl.europa.eu/news/en/press-room/20150929IPR94921/francois-hollande-and-angela-merkel-face-meps accessed 13 July2025.
[94] Ebru Turhan, 'The Implications of the Refugee Crisis for Turkish-German Relations: An Analysis of the Critical Ebbs and Flows in the Bilateral Dialogue' (2018) 13(49) Marmara Üniversitesi Öneri Dergisi 187.

implemented, and it stated that the date of the readmission agreement would change from 1 October 2017 to 1 June 2016.[95] However, the legislation process of the backdating of the readmission agreement was continuing. On 18 March 2016, the European Union announced the deal with Turkey mutually agreed on stopping the irregular migration to Europe through Turkey.[96]

3- THE EU-TURKEY STATEMENT

On 15th October 2015, the Action Plan was drafted in the EU-Turkey Summit held in Brussels to support Syrian refugees in cooperation with Turkey. After that, summits became more frequent between the parties. Lastly, after the meeting on 17-18 March in Brussel, the Statement, which was concluded by the Heads of State and Government of the 28 EU member states in European Council, together with Turkey President Erdogan, reads as follows:

"1) All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these

[95] European Council, 'Meeting of Heads of State or Government with Turkey - EU-Turkey Statement' (Press Release, 29 November 2015) http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/ accessed 13 July2025.
[96] European Council, 'EU-Turkey Statement, 18 March 2016' (Press Release) https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ accessed 13 July2025.

arrangements. The costs of the return operations of irregular migrants will be covered by the EU.

2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the EU irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons. The Members of the European Council welcome the Commission's intention to propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken in the framework of this arrangement to be offset from non-allocated places under the decision. Should these arrangements not meet the objective of ending the irregular migration and the number of returns come close to the numbers provided for above, this mechanism will be reviewed. Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued.

3) Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect.

4) Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, a Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme.

5) The fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met. To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required assessment of compliance with the

benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision.

6) The EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March. A first list of concrete projects for refugees, notably in the field of health, education, infrastructure, food and other living costs, that can be swiftly financed from the Facility, will be jointly identified within a week. Once these resources are about to be used to the full, and provided the above commitments are met, the EU will mobilise additional funding for the Facility of an additional 3 billion euro up to the end of 2018.

7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.

8) The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint Statement of 29 November 2015. They welcomed the opening of Chapter 17 on 14 December 2015 and decided, as a next step, to open Chapter 33 during the Netherlands presidency. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States' positions in accordance with the existing rules.

9) The EU and its Member States will work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe."[97]

The EU-Turkey statement gives rights and obligations to Turkey, Greece, and European Union. Initially, Turkey is tied down to accept all irregular migrants who are deported from Greece based on the Statement. Besides, Turkish authorities are responsible for the prevention of irregular migrants' access to Greece shores. On the other side, the parties agreed on a one-to-one resettlement scheme, which means Syrians' resettlement from Turkey to the European Union to accept irregular migrants from Greece.

[97] Ibid.

In order to deliver humanitarian assistance for refugees in Turkey, the EU allocated 6 billion euros with the contribution of 28 member states.[98] The parties initially agreed on the two instalments that 3 billion EUR for 2016-2017 and 3 billion EUR for 2018-2019. Since the budget, which planned to be 6 billion € in total for four years, could not be completed on time, the rest amount was planning to be paid until mid-2021 for the implementation of humanitarian projects.[99] Nearly €5.3 billion has been dispersed so far to provide humanitarian assistance to Syrians living in Turkey via the FRIT program.[100]

3.1- 1:1 Swapping Mechanism

As stated in article 2, the Statement creates an exchange resettlement procedure. According to this setting, all irregular migrants, and refugees from Turkey to Greece will be sent back to Turkey. In return, the EU agreed to accept a Syrian refugee to be resettled in one of the member states. Scholar defines this procedure as the basis of the readmission agreement between Turkey and Greece.[101] The Statement creates a mechanism to fasten the application of the resettlement procedure under the UN vulnerability criteria with EU agencies and member states' support.[102] The resettlement scheme started on April 4, 2016. According to the European Commission's first progress report in April, 54,000 places were proposed to resettle Syrians from Turkey.[103] Therefore, the Greek Parliament adopted a new asylum regulation (Law No. 4375 of 2016), which sets the fast-track procedure to set up time limitations for asylum applications and appeals under the Statement.[104] This new law and procedure make the

[98] European Council, 'Refugee Facility for Turkey: Member States Agree on Details of Financing' (Press Release, 3 February 2016) https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/facility-for-refugees-in-turkey-member-states-agree-details-of-additional-funding/#:~:text=2018%2016%3A55-,Facility%20for%20refugees%20in%20Turkey%3A%20member%20states%20agree%20details%20of,Turkey%20to%20support%20Syrian%20refugees accessed 13 July 2025.

[99] Delegation of the European Union to Turkey, 'Official Website' https://www.eeas.europa.eu/delegations/t%C3%BCrkiye_en?s=230 accessed 13 July2025.

[100] European Commission, 'EU Support to Refugees in Türkiye' https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye/eu-support-refugees-turkiye_en accessed 13 July2025.

[101] Dr Katie Kuschminder and others, 'Decision Making on the Balkan Route and the EU-Turkey Statement' (2019) Maastricht Graduate School of Governance (MGSoG), United Nations University - Maastricht Economic and Social Research Institute on Innovation and Technology (UNU-MERIT).

[102] Commission, 'First Report on the Progress Made in the Implementation of the EU-Turkey Statement' COM (2016) 231 final.

[103] Ibid.

[104] Greece, *Law No 4375 of 2016 on the Organization and Operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, the Transposition into Greek Legislation of the Provisions of Directive 2013/32/EC* (3 April 2016) https://www.refworld.org/docid/573ad4cb4.html accessed 13 July2025.

determination of asylum seekers' application difficult. The parties confirmed this procedure on April 28, 2016.[105]

Another measure developed due to the deepening of the refugee crisis is the establishment of "Hotspot areas". Furthermore, the hotspots approach, which was drawn first in the European Agenda on Migration, was implemented under the Statement. The hotspot approach is defined as follows;

'where the European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex), Europol and Eurojust work on the ground with the authorities of frontline EU Member States which are facing disproportionate migratory pressures at the EU's external borders to help to fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants.'[106]

As Ansems et al. explain, hotspot areas, with the support of Frontex, the European Asylum Support Office and Europol, operate as a transit and resettlement area on the one hand and reject and return area on the other.[107] These centres started to use as detention centres for the implementation of the 1:1 scheme under the Statement. In other words, they are used for processing the returns of irregular migrants to Turkey.[108] Alongside the usage of hotspots for returns, another new regulation under Greek Asylum Service Law has introduced the '*restrictions of liberty*'.[109] This amendment gives authorities the right to keep all arrivals for three days to 25 days in the Reception and Identification Centres in

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[105] Commission, 'First Report on the Progress Made in the Implementation of the EU-Turkey Statement' COM (2016) 231 final.

[106] European Commission, 'Communication From The Commission To The European Parliament, The European Council And The Council, Managing The Refugee Crisis: State Of Play Of The Implementation Of The Priority Actions Under the European Agenda on Migration' (2015) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0510 accessed 13 July2025.

[107] Leonie Ansems de Vries, Sergio Carrera and Elspeth Guild, 'Documenting the Migration Crisis in the Mediterranean: Spaces of Transit, Migration Management and Migrant Agency' (2016) CEPS Paper.

[108] Apostolis Fotiadis, 'Greece Plans to Fast Track Asylum Claims to Save EU-Turkey Deal' (*The New Humanitarian*, 26 January 2017) https://deeply.thenewhumanitarian.org/refugees/articles/2017/01/26/fatimas-fate-an-escape-bid-that-ended-in-tragedy accessed 13 July2025.

[109] Greece, *Law No 4375 of 2016 on the Organization and Operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, the Transposition into Greek Legislation of the Provisions of Directive 2013/32/EC*, art 14 (3 April 2016) https://www.refworld.org/docid/573ad4cb4.html accessed 14 July2025.

light of liberty restrictions.[110] This rule aims to prohibit new arrivals' leave the premises after they complete the registration and identification processes under the swapping mechanism. Some scholars criticise this deprivation of liberty, adaptation in the way of a domestic situation rather than assessing the factual conditions of individuals under the international human rights law.[111]

The 1:1 exchange mechanism provides refugees with safe and legal ways to migrate to Europe. According to the Statement, all refugees and migrants who reached Greece illegally from Turkey should be sent back to Turkey. In exchange, the same number of Syrians will be resettled from Turkey to the EU member states. The 'safe and legal pathways' is the most crucial objective of this mechanism. The European Commission identifies it as `*The aim is to replace disorganised, chaotic, irregular and dangerous migratory flows by organised, safe and legal pathways to Europe for those entitled to international protection in line with EU and international law*`. [112] However, Riedl interprets that the agreement aims to completely block the road in the Aegean Sea rather than replace a 'dangerous' road with a 'safe' one and only leave the resettlement route open to a certain quota in a much narrower way.[113]

3.2- Visa Liberalisation

Article 5 of the Statement refers that the EU promises to speed up the visa liberalisation for Turkish citizens with the condition of completion of all required criteria.[114] Once the visa liberalisation background is analysed, it is evident that it started in December 2013 in line with the EU-Turkey Readmission Agreement.[115] According to the Visa Liberalisation

[110] Dr Katie Kuschminder and others, 'Decision Making on the Balkan Route and the EU-Turkey Statement' (2019) Maastricht Graduate School of Governance (MGSoG), United Nations University - Maastricht Economic and Social Research Institute on Innovation and Technology (UNU-MERIT).
[111] Izabella Majcher, 'The EU Hotspot Approach: Blurred Lines Between Restriction on and Deprivation of Liberty (Part II)' (Border Criminologies, 17 April 2018) https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/eu-hotspot-0 accessed 13 July 2025.
[112] European Commission, 'Implementing the EU-Turkey Statement – Questions and Answers' (Press Release, 2016) https://ec.europa.eu/commission/presscorner/detail/sk/MEMO_16_1664 accessed 13 July 2025.
[113] Hanya Riedl, 'The EU-Turkey Agreement: Erecting Barriers on Our Borders and in Our Minds' (Humanity in Action, 2017) https://www.humanityinaction.org/knowledge_detail/the-eu-turkey-agreement-erecting-barriers-on-our-borders-and-in-our-minds/ accessed 13 July 2025.
[114] European Council, 'EU-Turkey Statement, 18 March 2016' (Press Release), art 5 https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ accessed 13 July 2025.
[115] European Commission, 'Report from the Commission to the European Parliament and the Council - Second Report on Progress by Turkey in Fulfilling the Requirements of Its Visa Liberalization Roadmap'

Dialogue roadmap, Turkey's visa liberalisation strictly relies on Turkey meeting the 72 conditions imposed by the EU. These conditions are listed on five different groups as follows: "*document security, migration management, public order and security, fundamental rights and readmission of irregular migrants*." [116] After the EU-Turkey Statement was the announcement, European Commission proclaimed a visa liberalisation proposal for Turkish citizens in May 2016.[117]

Although the Statement gave June 2016 as the deadline for visa lifting for Turkey, visa requirements were not abolished by the EU since Turkey could not carry through seven conditions out of 72. Those seven requirements displayed in the European Commission report 2018 are "the fight against corruption, judicial cooperation in criminal matters, cooperation with Europol, data protection legislation, anti-terrorism legislation, EU-Turkey readmission agreement, and biometric passports".[118] Particularly, anti-terrorism legislation became one of the significant benchmarks for Turkey after the coup d'etat. However, Turkey's purpose of amending its legislation on counterterrorism in line with the European Standards made this situation less vulnerable.[119]

On the other hand, the beginning of the irregular migration flow with the Syrian civil war raised common concerns for Turkey and the EU. As a result of the crisis, the EU's approach to Turkey has turned to cooperation to cope with this influx. As always in history, states' interests remain the critical factor to shape the policy in immigration issues. As Elitok describes the EU's benefit on preventing irregular migration and Turkey's desire for EU membership pushed to the conclusion of the EU-Turkey Statement. [120] The Parties interests in the Statement is a controversial issue in the literature. Slominski and Trauner clarify this point as the strategy of issue linkage since the EU and Turkey united their

COM (2016) 140 final, 4 March 2016 https://www.refworld.org/docid/56e2cf104.html accessed 13 July 2025.

[116] Commission, 'Regulation of the European Parliament and of the Council' COM (2016) 279 final.

[117] Ibid.

[118] Commission, '2018 Turkey's Progress Report' SWD (2018) 153 final.

[119] Secil Pacacı Elitok, 'Three Years On: An Evaluation of the EU-Turkey Refugee Deal' (2019) MiReKoc Working Papers.

[120] Ibid.

interest and power to efficiently follow their policies, making them stronger than going alone[121]

3.3- Financial Support

One of the Statement's keys and most controversial components is obviously the 6 billion euros financial support to Turkey. According to the Statement, the EU was going to disburse 6 billion euros until the end of 2018. However, the EU did not complete the payment in the proposed time. The first tranche, 3 billion euros, was disbursed for the period of 2016-2017.[122] The EU organised 2 billion euros from the member states and 1 billion from the EU budget to provide humanitarian assistance for refugees in Turkey.[123] The 68 million of the second instalment was disbursed in 2018 and 202 million euros in the following year by member states.[124] The remaining amount was organised to pay until 2023.[125]

The EU established the Facility for Refugees before the announcement of the Statement in February 2016.[126] The facility works as a scheme to mobilise the EU sources to support refugees' needs.[127] The facility's objectives include the organisation of finance from the EU's budget and member states' transfers. The facility aims to boost support for 'refugees and host communities' in Turkey, but it also plays a complementary role in the EU's external finance with member states.[128]

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[121] Peter Slominski and Florian Trauner, 'How Do Member States Return Unwanted Migrants? The Strategic (Non-)Use of "Europe" During the Migration Crisis' (2018) 56(1) Journal of Common Market Studies 144.

[122] European Council, 'Refugee Facility for Turkey: Member States Agree on Details of Financing' (Press Release, 3 February 2016) https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/facility-for-refugees-in-turkey-member-states-agree-details-of-additional-funding/#:~:text=2018%2016%3A55-,Facility%20for%20refugees%20in%20Turkey%3A%20member%20states%20agree%20details%20of,Turkey%20to%20support%20Syrian%20refugees accessed 13 July 2025.

[123] European Council, 'Refugee Facility for Turkey' https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/facility-for-refugees-in-turkey-member-states-agree-details-of-additional-funding/#:~:text=2018%2016%3A55-,Facility%20for%20refugees%20in%20Turkey%3A%20member%20states%20agree%20details%20of,Turkey%20to%20support%20Syrian%20refugees accessed 13 July 2025.

[124] Commission, 'Fourth Annual Report on the Facility for Refugees in Turkey' COM (2020) 162 final.

[125] Ibid.

[126] European Commission, *Evaluation of the European Union's Humanitarian Response to the Refugee Crisis in Turkey* (Final Report, 2019).

[127] Ibid.

[128] Commission, 'Commission Decision of 24.11.2015 on the Coordination of the Actions of the Union and of the Member States Through a Coordination Mechanism – the Refugee Facility for Turkey' C(2015) 9500 final.

Almost half of the first tranche was used for humanitarian assistance, and the rest were allocated for development.[129] As the European Commission expresses, the facility concentrates on six sectors; humanitarian aid, education, health, socio-economic, migration management and municipal infrastructure.[130] The European Commission's Civil Protection and Humanitarian Aid Operations Department (ECHO) is responsible for getting through the application of the facility for humanitarian aids. On the other hand, non-humanitarian assistance is under the responsibility of the Instrument for Pre-Accession (IPA), the EU Regional Trust Fund for Syrian Refugees (EUTF) and Instrument contributing to Stability and Peace (IcSP).[131]

The humanitarian assistance mainly focuses on vulnerable groups: women, children, the elder and the disabled under the Facility. The ECHO carries out help with the Humanitarian Implementation Plans (HIPs) in Turkey.[132] In the context of non-humanitarian assistance, the EU admitted an exceptional measure in the areas of education, health, socio-economic and municipal infrastructure in 2016.[133] As it is mentioned in article 4 of the decision, the aim of the support for non-humanitarian assistance is "*the efforts of Turkey in providing access to compulsory education and health care to Syrian refugees including through the construction of adequate infrastructure, to promote socio-economic development and improve municipalities infrastructure following the influx of substantial numbers of refugees*".[134] Furthermore, more than 500 million euros were allocated for the progress of projects under the Facility until 2022 by the EU.[135] The Facility is planned for the application of humanitarian and development assistance. The initial allocation of 6

[129] Ibid.
[130] European Commission, 'European Civil Protection and Humanitarian Aid Operations: Turkey' https://civil-protection-humanitarian-aid.ec.europa.eu/where/europe/turkiye_en#:~:text=In%20close%20coordination%20with%20the,psychosocial%20support accessed 14 July 2025.
[131] European Commission, 'Technical Assistance to the EU Facility for Refugees in Turkey' (2017/393359/1) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://enlargement.ec.europa.eu/system/files/2018-12/updated_needs_assessment.pdf accessed 14 July 2025.
[132] European Commission, *Evaluation of the European Union's Humanitarian Response to the Refugee Crisis in Turkey* (Final Report, 2019).
[133] Commission, 'Commission Implementing Decision of 28.7.2016 Adopting a Special Measure on Education, Health, Municipal Infrastructure and Socio-Economic Support to Refugees in Turkey, to Be Financed from the General Budget of the European Union for the Years 2016 and 2017' C(2016) 4999 final.
[134] Ibid.
[135] European Commission, 'European Civil Protection and Humanitarian Aid Operations Factsheet: Turkey' https://ec.europa.eu/echo/where/europe/turkey_en accessed 14 July 2025.

billion euros was contracted by the end of 2017 via projects.[136] In 2018, the second instalment was also contracted for funding the projects, which are conducted until 2025.[137]

4- AIMS AND RESULTS OF THE EU-TURKEY STATEMENT

The deal is designed to manage the refugee crisis in light of three objectives. The first one is the "return of all irregular migrants crossing from Turkey to the Greek Islands".[138] With this element, the Statement proposes to prevent migrants' smuggling from the Aegean part of Turkey to the Greek islands. The second one is improving the living conditions for refugees in Turkey in the context of humanitarian assistance (accommodation, healthcare, education etc.). The Statement's financial ground plays a crucial role in the responsibility and burden sharing for this aim. The last keystone of the Statement is presenting "safe and legal pathways" for Syrian refugees from Turkey to the EU.[139]

Alongside the three objectives, the Statement also focuses on the fulfilment of Turkey's visa liberalisation dialogue and re-energising the accession process. The issue of visa liberalisation dialogue and the return of irregular migrants between Turkey and the EU are common. These dimensions can be defined as another appearance of the parties' interests on shaping the deal.

In order to specify to what extend the Statement has met its goals, we need to examine its implementations. Although the Statement does not explicitly determine which element is the most important, the European Commission's reports mention the progress about all objectives: the arrivals and returns between Greece and Turkey; resettlement under 1:1 mechanism; financial support to Turkey; improving the situation of migrants in Turkey etc.

The first expectation on the implementation of the Statement was declining the irregular arrivals from Turkey to Greece. Since the Statement has acted, arrivals from Turkey to Greece via the Aegean Sea remarkably declined. According to the European Commission report in March 2020, daily access to Greek islands has dropped from 10.000 to 105

[136] European Commission, *Evaluation of the European Union's Humanitarian Response to the Refugee Crisis in Turkey* (Final Report, 2019).
[137] Ibid.
[138] Ibid.
[139] Ibid.

people per day from 2015 to 2020. (see table 1) Furthermore, the number of migrant deaths in the Aegean Sea have lessened from 1.175 to 439 people by the Statement.[140]

Figure 1: Arrivals from Turkey to Greece After the EU-Turkey Statement

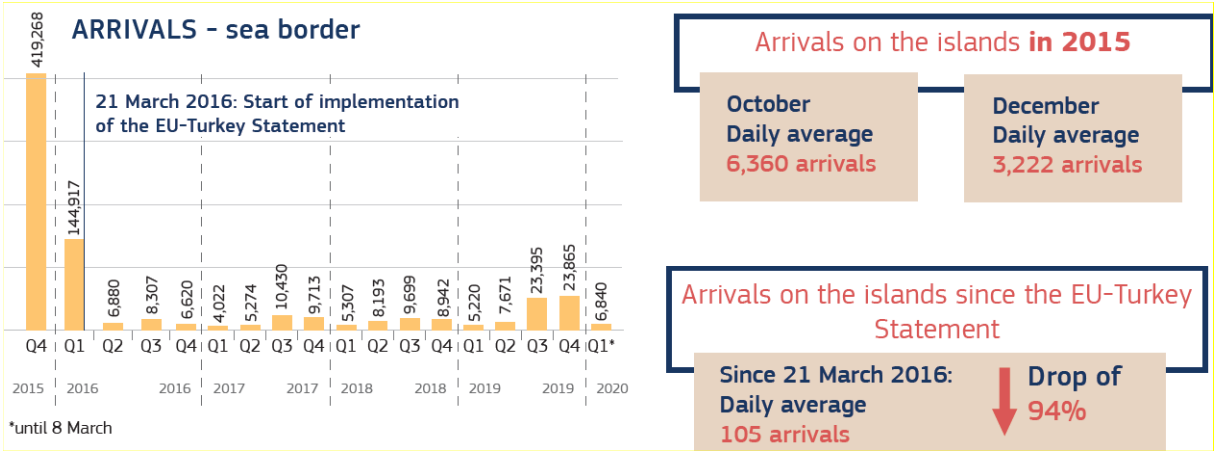


Table 1: Source European Commission[141]

The outcome of the Statement has been commented positively by the EU. As the commission emphasises that not only have it provided preventing irregular migration to Europe from Turkey, but it has also created a safe and legal way to access Europe.[142] Nonetheless, the evaluation of the Statement in the context of irregular migration will remain inadequate. Turkey's desire to benefit from visa liberalisation is connected with the EU's attempts to secure its borders by developing a security-oriented approach against mass migration. However, compared to Turkey's interest in visa liberalisation and the EU's border security, the EU is the party that most benefits from the Statement.

Projects are underway in Turkey to enhance security measures for the country's 2,949 km of land borders and 8,484 km of maritime borders. These projects focus on the development of physical barriers, technology security systems, and human resources to efficiently assure border security. A comprehensive security wall and road have been constructed along the whole 837 km stretch of Turkey's 911 km border with Syria that is deemed appropriate for wall construction. Additionally, a 250 km part of the 560 km

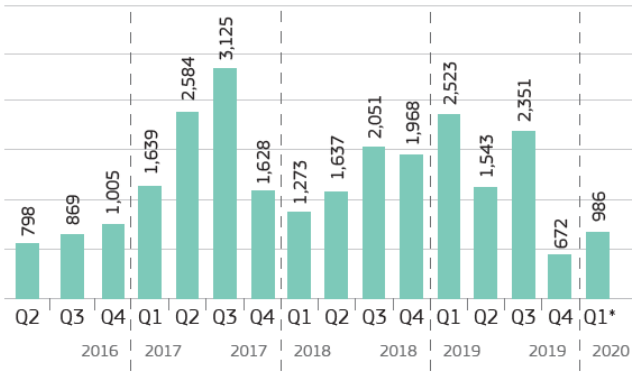
[140] European Commission, 'EU-Turkey Statement: Four Years On' (2020) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://home-affairs.ec.europa.eu/system/files/2020-03/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf accessed 14 July 2025.
[141] Ibid.
[142] European Commission, 'EU-Turkey Statement: The Commission's Contribution to the Leaders' Agenda' (2018) https://op.europa.eu/en/publication-detail/-/publication/b62aa3f0-04a6-11e8-b8f5-01aa75ed71a1/language-en/format-PDF/source-68182074 accessed 14 July 2025.

border with Iran, encompassing the provinces of Ağrı, Hakkari, Iğdır, and Van, has also been fortified with a security wall and road.[143]

On the other hand, this reduction was not only the result of the Statement. Different factors affected the reducing numbers, as many scholars discussed. According to Spijkerboer, "*One might object that it was not so much, or not only, the EU-Turkey agreement that led to the declining numbers, but the closing of the land borders on the Western Balkans*."[144] The closure of the Balkan route in 2015 began with some Balkan countries' putting the national-based restrictions at the border for asylum seekers and refugees. Croatia, Macedonia, and Slovenia closed their borders for asylum seekers and refugees if they intend to arrive in Germany or Austria.[145]

Another highly criticised feature of the Statement is the resettlement under the one-to-one scheme. According to the last report of the European Commission in 2020 on the Statement, nearly 27.000 refugees were resettled with the collaboration of the EU member states, the EU institutions and the UN agencies.[146] (see table 2). It is a smaller number of places than agreed under article 2 of the Statement.

Figure 2: Resettlement Under the EU-Turkey Statement



[143] Turkey Ministry of Interior, '2023 Budget Presentation' https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/strateji/Butce/2023_Butce_GenelKurul_K.pdf accessed 25 August 2024.

[144] Thomas Spijkerboer, 'Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?' (Border Criminologies Blog, 2016) https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/fact-check-did-eu accessed 14 July 2025.

[145] Human Rights Watch, 'Greece/Macedonia: Asylum Seekers Trapped at Border' (February 2016) https://www.hrw.org/news/2016/02/11/greece/macedonia-asylum-seekers-trapped-border accessed 14 July 2025.

[146] Commission, 'Commission Staff Working Document Turkey 2020 Report' SWD (2020) 355 final.

Table 2: Source European Commission[147]

However, because of the COVID-19 pandemic, the resettlement scheme was temporarily put aside.[148] As Ovacik et al. noted that a total of 40,254 Syrians had been resettled through the 1:1 plan by January 2024.[149] However, the number of Syrians relocated from Turkey to the EU greatly exceeds the number of Syrians returning from Greece to Turkey as per the agreement.

Since the migration crisis started in 2015, Greece became the first accessible country for refugees to reach Europe. With the implementation of the fast-track procedure under the Statement, these centres have turned into de facto detention centres.[150] This so-called procedure creates a mechanism that anticipates 15 days to decide whether Turkey is a safe third country or on the admissibility for international protection. The 15 days period also covers the appeal length.[151] The hotspots' early purpose was to help Greece and Italy face a high refugee burden, with the far going operational assistance by the EU agencies.[152] These agencies are Frontex, Europol, Eurojust, and EASO.[153] The hotspots that are now identified as "Reception and Identification Centres" were introduced on Greek islands (Lesvos, Chios, Samos, Leros, and Cos).

After the implementation of the Statement, refugees' access to the mainland was restricted by the new asylum regulation in Greece. [154] As a result of this, high numbers of

[147] European Commission, 'EU-Turkey Statement: Four Years On' (2020) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://home-affairs.ec.europa.eu/system/files/2020-03/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf accessed 14 July 2025.
[148] Ibid.
[149] G Ovacık, M İnelı-Çıger and O Ulusoy, 'Taking Stock of the EU-Turkey Statement in 2024' (2024) 26(2) *European Journal of Migration and Law* 154 https://doi.org/10.1163/15718166-12340175 accessed 29 August 2024.
[150] Apostolis Fotiadis, 'Greece Plans to Fast Track Asylum Claims to Save EU-Turkey Deal' (*The New Humanitarian*, 26 January 2017) https://deeply.thenewhumanitarian.org/refugees/articles/2017/01/26/fatimas-fate-an-escape-bid-that-ended-in-tragedy accessed 14 July 2025.
[151] Ilse van Liempt and others, 'Evidence-Based Assessment of Migration Deals: The Case of the EU-Turkey Statement' (Utrecht University, 2017) https://www.kpsrl.org/sites/default/files/2018-08/Van%20Liempt%20Final%20Report.pdf accessed 14 July 2025.
[152] Asylum Information Database, 'The European Union Policy Framework: "Hotspots"' (2020) https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/ accessed 14 July 2025.
[153] Ibid.
[154] Greece, *Law No 4375 of 2016 on the Organization and Operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, the Transposition into Greek Legislation of the Provisions of Directive 2013/32/EC* (3 April 2016) https://www.refworld.org/docid/573ad4cb4.html accessed 14 July 2025.

asylum seekers were stuck on the islands to be sent back to Turkey if their applications were rejected. The situation is explained by the European Parliament as follows; '*Return procedures from Greece to Turkey have been slow, mainly as a result of the lengthy administrative procedures in place, and the number of returns continues to be much lower than the number of arrivals.'*[155] Namely, The Greens from European Free Alliance in the European Parliament describes the hotspots as "*the place where screening, registration and vulnerability / 'safe third country' / refugee status determination procedures are conducted and return operations are initiated – all carried out with a complete lack of a clear legal framework to regulate the procedures and the competencies of the persons and actors involved*".[156]

Even though this objective of the Statement is designated as a success by the European Council and the European Commission, emphasising the reducing arrival rate to Greek islands, this approach is widely criticised by many scholars and human rights organisations.[157] The Danish Refugee Council condemns the hotspots not only due to lack of reception conditions but also inefficient procedural safeguards.[158] On the one hand, the overcrowded hotspots caused the deceleration of the Statement's application and became a prison for asylum seekers. Therefore, people begin to venture risky ways to cross the border and turn into smugglers' hands.[159] On the other hand, the success of the Statement in case of declining arrivals to Greek islands is defined by Heck & Hess as a result of the composition of closing Balkan Route and the hotspot approach.[160]

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[155] European Parliament, 'Hotspots at EU External Borders: State of Play 2018' (2018) https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf accessed 14 July 2025.

[156] Study by the Greens/EFA Group in the European Parliament published (2018) https://harekact.bordermonitoring.eu/2018/06/17/study-by-the-greens-efa-group-in-the-european-parliament-published-the-eu-turkey-statement-and-the-greek-hotspots/ accessed 14 July 2025.

[157] European Parliament, 'Hotspots at EU External Borders: State of Play 2018' (Briefing, June 2018) https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf accessed 14 July 2025.

[158] Danish Refugee Council, 'Fundamental Rights and the EU Hotspot Approach' (2017) https://www.statewatch.org/media/documents/news/2017/nov/danish-refugee-council-fundamental-rights.pdf accessed 14 July 2025.

[159] Ilse van Liempt and others, 'Evidence-Based Assessment of Migration Deals: The Case of the EU-Turkey Statement' (Utrecht University, 2017) https://www.kpsrl.org/sites/default/files/2018-08/Van%20Liempt%20Final%20Report.pdf accessed 14 July 2025.

[160] Gerda Heck and Sabine Hess, 'Tracing the Effects of the EU-Turkey Deal: The Momentum of the Multi-layered Turkish Border Regime' (2017) 3(2) Movements Journal https://movements-journal.org/issues/05.turkey/04.heck,hess--tracing-the-effects-of-the-eu-turkey-deal.pdf accessed 14 July 2025.

5- THE BREAKDOWN OF THE STATEMENT IN 2020: RETHINKING THE POLICIES

The EU's support was widely criticised by President of Turkiye, Erdogan. He accused the EU because of delayed disbursements under the Statement. He also often requested more support for refugees. In one of his speeches in 2019, he threatened the EU as "We will open the gates and send 3.6 million refugees your way".[161] In the 4th year, the Statement had been broken out. Just a few months later of Erdogan's speech, in February 2020, Erdogan opened the borders to Greece for Syrians, and he emphasised that the borders would remain open until the EU meets the demands.[162] According to Heukelingen, Erdogan's attempt was the result of an unfair burden share rather than criticising the purpose of the FRIT.[163]

On the night of 27th February 2020, Turkey announced that there would be no attempt to prevent refugees and asylum seekers who want to leave Turkey to access Europe.[164] This declaration by the Turkish Governments caused new concerns about migrants and refugees' human rights. More than 60.000 refugees stuck in the area between the Greek and Turkish borders.[165] Tear gas and rubber bullets were used by the Greek authorities to force migrants back to Turkey.[166] Greece violated the human rights of migrants by taking illegal measures.[167] The International Organization for Migration (IOM) monitored upwards of 13,000 migrants in the area.[168] Greek authorities, who have reportedly

[161] Daren Butler, 'Turkey's Erdogan Threatens to Send Syrian Refugees to Europe' *Reuters* (10 October 2019) https://www.reuters.com/article/us-syria-security-turkey-europe-idUSKBN1WP1ED accessed 17 July 2025.
[162] Kati Piri, 'Blame Europe, Not Just Turkey, for Migration Deal Collapse' *Politico* (3 March 2020) https://www.politico.eu/article/blame-europe-not-just-turkey-for-migration-deal-collapse/ accessed 17 July 2025.
[163] Nienke van Heukelingen, 'A New Momentum for EU-Turkey Cooperation on Migration' (2021) Clingendael Policy Brief https://www.clingendael.org/sites/default/files/2021-02/Policy_brief_EUTurkey_cooperation_migration_February_2021.pdf accessed 17 July 2025.
[164] Human Rights Watch, 'Greece/EU: Respect Rights, Ease Suffering at Borders' (4 March 2020) https://www.hrw.org/news/2020/03/04/greece/eu-respect-rights-ease-suffering-borders accessed 17 July 2025.
[165] Ibid.
[166] Berkay Mandıracı, 'Sharing the Burden: Revisiting the EU-Turkey Migration Deal' (International Crisis Group, 13 March 2020) https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/sharing-burden-revisiting-eu-turkey-migration-deal accessed 17 July 2025.
[167] Amnesty International, 'Explained: The Situation at Greece's Borders' (March 2020) https://www.amnesty.org/en/latest/news/2020/03/greece-turkey-refugees-explainer/ accessed 17 July 2025.
[168] International Organization for Migration (IOM), 'More than 13,000 Migrants Reported Along the Turkish-Greek Border' (1 March 2020) https://www.iom.int/news/more-13000-migrants-reported-along-turkish-greek-border accessed 17 July 2025.

stopped over 24,000 attempted crossings and arrested 183 people since late February 2020, had used water cannons, tear gas, and stun grenades against the migrants.[169] These events are defined as the result of unfair burden-sharing and insufficient resettlement (27 thousand) from Turkey for four years due to the reluctant approach of the EU member states.[170] The EU and Turkey finally acted to update the suspended agreement on Syrian refugees.[171] Despite the human rights violations caused by the Statement, the EU member states preferred to sustain the deal with Turkey. After the long discussions, on 9th March 2020, the Presidents of Turkey and the European Commission, Recep Tayyip Erdogan, Charles Michel, and Ursula von der Leyen, agreed to work mutually apply the Statement.[172]

Turkey's unstable actions on migration are defined as an 'unreliable partner', by Tsakonas, explaining as *'when it comes to migration there is an important caveat to keep in mind, namely that Turkey does not want to be used as a roadblock to migratory flows. Turkey would instead like to see more financial support given to refugees in Turkey, which could be used for the benefit of Syrian and non-Syrian refugees alike'*.[173]

On the other hand, after Turkey opened the borders to Greece for refugees, the Turkish President met with the European Commission and European Council in March 2020. Although Turkey called the EU for a new refugee agreement, the parties agreed to process the EU-Turkey Statement. The EU determined additional 585 million euros for the ongoing funded projects under the period of 2016 and 2019 for basic needs and continuation of

[169] Costas Kantouris and Elena Becatoros, 'Child Dies as Migrants Rush to Cross Greek-Turkish Border' *AP News* (2 March 2020).
[170] Berkay Mandıracı, 'Sharing the Burden: Revisiting the EU-Turkey Migration Deal' (International Crisis Group, 13 March 2020) https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/sharing-burden-revisiting-eu-turkey-migration-deal accessed 17 July 2025.
[171] Ursula von der Leyen, 'Statement at the Joint Press Conference with President Michel, Following Their Meeting with the President of Turkey, Recep Tayyip Erdoğan' (European Commission, 9 March 2020).
[172] European Commission, 'EU-Turkey Leaders' Meeting' (9 March 2020) https://www.consilium.europa.eu/en/meetings/international-summit/2020/03/09/ accessed 17 July 2025.
[173] Panayotis Tsakonas, 'EU-Turkey Relations and the Migration Challenge: What Is the Way Forward?' (Friedrich Ebert Stiftung Peace and Security, 2020) http://library.fes.de/pdf-files/bueros/athen/16969-20201203.pdf accessed 17 July 2025.

the projects until 2022.[174] This additional funding was announced in July 2020 by the Head of the EU Delegation to Turkey.[175]

6- NEW STEPS TAKEN BY EU AND TURKEY

6.1- EU Migration Pact

The migration policies of the EU have been the focus of significant debate and screening, especially during the Syrian refugee crisis. After a lengthy period of negotiations spanning four years, the EU institutions have ultimately granted their approval to the Migration and Asylum Pact. The new migration regulations were officially enacted by the Council of the EU on 14 May 2024, following a favourable vote by the European Parliament on 10 April 2024.[176] The pact mainly aims to expedite the processing of refugee claims and strengthen screening and security checks along with the acceleration the repatriation of rejected asylum claimants. Despite its name, the 'migration and asylum pact' concentrates on the issue of irregular migration.

The agreement encompasses a total of 2,000 pages. Solidarity and equitable responsibility sharing are cornerstones of the Pact. In the depths of the crisis since 2016, responsibility collapsed under the impact of lowered standards and solidarity proved to be extremely vulnerable.[177] Member nations experiencing an unforeseen increase in migration will receive assistance. Impacted countries have the option to seek aid from the European Union and its member states. This assistance can be in the form of financial contributions, the dispatch of support staff, the transfer of migrants, or a combination of these actions.

After extensive trilogue negotiations, a political agreement on all five legislative proposals of the New Pact on Migration and Asylum was reached in December 2023. The European

[174] Commission, 'Joint Communication to the European Council: State of Play of EU-Turkey Political, Economic and Trade Relations' JOIN (2021) 8 final/2.
[175] Delegation of the European Union to Turkey, 'EU Completes Contracting under the EUR 6 Billion Package in Support of Refugees and Host Communities in Turkey' (2020) https://www.avrupa.info.tr/en/pr/eu-completes-contracting-under-eur-6-billion-package-support-refugees-and-host-communities accessed 17 July 2025.
[176] European Commission, 'Pact on Migration and Asylum: A Common EU System to Manage Migration' (21 May 2024) https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en accessed 17 July 2025.
[177] Francesco Maiani, 'Responsibility-Determination under the New Asylum and Migration Management Regulation: Plus ça change…' (Odysseus Blog, 2020) https://eumigrationlawblog.eu/responsibility-determination-under-the-new-asylum-and-migration-management-regulation-plus-ca-change/#more-8990 accessed 17 July 2025.

Parliament subsequently adopted the package on 10 April 2024, and the Council of the EU formally adopted it on 14 May 2024. Among the first measures provisionally agreed were the Screening Regulation and the revised EURODAC Regulation, aimed at harmonising border procedures and strengthening biometric data collection. These were followed by the adoption of the Asylum and Migration Management Regulation, the Asylum Procedures Regulation, and the Regulation addressing situations of crisis and force majeure. The legislative package entered into force on 11 June 2024 and will become applicable in June 2026, following a two-year transition period.[178]

The pact has encountered substantial critiques from NGOs and academic experts on multiple fronts. One significant issue is centred around the Pact's strong focus on border security, while its approach to legal migration remains limited to proposals such as procedures for certain third-country nationals. Although the Pact acknowledges the importance of developing legal pathways, its concrete provisions in this area remain underdeveloped compared to its emphasis on enforcement and return mechanisms. Enriquez criticises the deal for its failure to adequately address crucial concerns related to managing irregular migration and asylum seekers.[179] The task of repatriating unsuccessful applicants is still difficult due to insufficient agreements with third nations, leading to a low repatriation rate. The pact recognises the significance of external migration policy but heavily depends on bilateral agreements between the EU and third countries, particularly those related to readmission and human trafficking. The advancement in these domains relies on individual agreements with each country, rendering the pact's foreign policy more aspirational than practical.

Furthermore, International Rescue Committee published a statement that contains several NGOs concerns on the pact.[180] The pact's strategy to dealing with asylum seekers, including expedited border processes and increased reliance on the safe third country principle, has faced criticism for potentially breaching international standards for

[178] European Commission, 'Legislative Files in a Nutshell: Pact on Migration and Asylum' (2024) https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum/legislative-files-nutshell_en accessed 28 July 2025.
[179] Carmen González Enríquez, 'The EU Pact on Migration and Asylum: Context, Challenges and Limitations' (2024) ARI 67/2024, Elcano Royal Institute.
[180] International Rescue Committee, '81 Civil Society Organisations Call on MEPs to Vote Down Harmful EU Migration Pact' (2024) https://www.rescue.org/eu/press-release/81-civil-society-organisations-call-meps-vote-down-harmful-eu-migration-pact accessed 29 July 2024.

protecting refugees. These methods increase the likelihood of human rights violations, including as detentions and pushbacks, which can disproportionately affect vulnerable people.

The pact reintroduces the EU-Turkey Statement into the discussion. There is a growing concern that if the safe third country principle is expanded, it could increase the number of asylum seekers who are deported to non-EU countries due to their broadly defined links, putting them at risk of refoulement. The EU-Turkey deal led to violations of human rights, as it shifted the responsibility of processing refugee claims to Turkey under the safe third country concept. This will be further elucidated in the next chapters. The Pact outlines the principle that EU Member States have the ability to offer financial assistance to non-EU nations, such as Libya, Egypt, and Tunisia. Additionally, as a result of their scepticism over the EU migration and asylum pact, the EU and its member states have chosen to establish agreements with third nations in an effort to decrease irregular migration. Consequently, the upcoming chapter will provide a concise overview of some instances of these agreements that were made to safeguard Fortress Europe.

6.2- EU Agreements with Third Countries

Due to the substantial influx of refugees since 2015, the EU and its member states have begun seeking collaboration and partnerships beyond their borders. As previously defined, the new regulations entail that the European Union would conduct border control operations beyond its own boundaries by means of agreements with third nations. Consequently, Europe will avoid assuming its obligation to safeguard refugees. Prior to the implementation of the EU migration and asylum pact, the EU and its member states established agreements with third countries to address the influx of refugees. The Italy-Libya agreement serves as an illustrative example. In February 2017, Italy signed an agreement with Libya.[181] The agreement, sponsored by the EU, aims to strengthen development cooperation, secure national borders, and eradicate irregular migration and human trafficking.

In addition, the EU implemented its previous approach, which was initiated by the EU-Turkey statement, by formally agreeing to a memorandum of understanding with Tunisia

[181] Victoria Ceretti, 'Italy-Libya Memorandum of Understanding: An Affront to the Fundamental Human Rights of Migrants, Refugees, and Asylum Seekers' (Euro-Med Human Rights Monitor, 2023).

in July 2023.[182] The objective of the agreement is to curb unauthorised migration, while also fostering collaboration in areas such as economy and trade. As part of the agreement, the EU has committed to providing financial assistance to Tunisia in the form of a payment of EUR 150 million.

On the other hand, the European Union initiated a new collaboration with Mauritania focused on migration in March 2024.[183] The Spanish government, alarmed by a sudden increase in unlawful migration to the Canary Islands, pushed for the agreement, and the European Union undertook the responsibility of negotiating it. As part of this collaboration, Mauritania will receive funding to enhance its border control and monitoring infrastructure in order to decrease the influx of individuals entering the country unlawfully. Following this partnership, another new deal was signed between the EU and Egypt on 17 March to help stabilise North Africa, boost Egypt's faltering economy, and decrease irregular migration to Europe.[184] Considering the possibility of Palestinians seeking refuge from the Gaza war, this agreement is regarded as a crucial collaboration to deter unauthorised entries.[185]

Finally, EU has planning to conclude another deal with Morocco on migration by end of 2024. New green transition, migration, and reform cooperation programs with a total value of €624 million have been launched by the EU with Morocco in 2023.[186] Morocco obtains the benefits of the EU Trust Fund for Africa. Between 2014 and 2020, the EU allocated around €1.5 billion to support bilateral cooperation with Morocco. The EU is persisting in its strategy of providing financial incentives to peripheral nations in order to

[182] European Commission, 'The European Union and Tunisia Come to an Agreement on a EUR 150 Million Programme' (Press Release, 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6784 accessed 1 August 2024.
[183] European Commission, 'EU-Mauritania Joint Declaration' (March 2024) https://home-affairs.ec.europa.eu/eu-mauritania-joint-declaration_en accessed 1 August 2024.
[184] Ayla Bonfiglio, 'A Conscious Coupling: The EU-Egypt "Strategic and Comprehensive Partnership"' (Mixed Migration Centre, 2024) https://mixedmigration.org/eu-egypt-partnership/ accessed 30 April 2024.
[185] Ibid.
[186] European Commission, 'EU Launches New Cooperation Programmes with Morocco Worth €624 Million: Green Transition, Migration and Reforms' (2023) https://neighbourhood-enlargement.ec.europa.eu/news/eu-launches-new-cooperation-programmes-morocco-worth-eu624-million-green-transition-migration-and-2023-03-02_en accessed 1 August 2024.

assume responsibility for migration, as seen by the potential EU-Morocco migration pact.[187]

7- THE STATEMENT: LEGAL AND POLITICAL CHALLENGES

Since the agreement concluded on 18 March 2016, it has been the subject of many criticisms. A comprehensive evaluation of the legal and political challenges posed by the EU-Turkey Statement must first consider its legal nature, a subject explored in greater detail in Chapter 4. At this stage, it is essential to highlight that significant controversy surrounds the question of whether the Statement constitutes a binding international agreement or merely a political declaration. This ambiguity affects both the enforceability of the Statement and the scope of legal accountability, influencing many of the political disputes and implementation issues discussed in this section.

According to article 218 of TFEU, when an international agreement is concluded, it requires the involvement of the European Parliament.[188] There is a vast amount of literature on the Statement's legal nature.[189] The Statement lacks legality under the procedure of TFEU, but it also has a problematic form on the announcement of it as a "statement" without the parties' signature. The Statement was challenged by the asylum seekers in the European Court of Justice in 2016 about its legality. The General Court's orders (NF (T-192/16), NG (T-193/16), NM (T-257/16)) have an important place to evaluate the Statement since the Court defined it as a non-EU agreement.[190] According to Goldner Lang, "*As regards the Luxembourg court, its avoidance to adjudicate on the legality of the legally strange EU-Turkey deal in 2017 and 2018 enabled the deal to endure and Turkey to use the migrants it hosts to blackmail the EU*."[191] The ECJ decisions on the

[187] European Union, 'EU Migration Support in Morocco' (2023) https://neighbourhood-enlargment.ec.europa.eu/system/files/2023-03/EU_support_migration_morocco.pdf accessed 1 August 2024.
[188] Consolidated Version of the Treaty on the Functioning of the European Union, art 218 [2012] OJ C 326/47.
[189] Sergio Carrera, Leonhard den Hertog and Marco Stefan, 'It Wasn't Me! The Luxembourg Court Orders on EU-Turkey Refugee Deal' (CEPS, 2017) https://www.ceps.eu/system/files/EU-Turkey%20Deal.pdf accessed 19 February 2021.
[190] NF v European Council, NG v European Council, and NM v European Council (Orders of the General Court, Cases T-192/16, T-193/16 and T-257/16, 28 February 2017).
[191] Iris Goldner Lang, 'Which Connection Between the Greek-Turkish Border, the Western Balkans Route and the ECtHR's Judgment in ND and NT?' (EU Immigration and Asylum Law and Policy, 2020) http://eumigrationlawblog.eu/2750-2/ accessed 17 July 2025.

EU-Turkey Statement also shaped Turkey's approach to the Syrian Refugee Crisis. However, the legal nature of the Statement is analysed in depth in chapter 4.

On the other hand, it is also analysed that the deal is at the centre of the criticism that it will allow the collective return of asylum seekers, which is explicitly prohibited in international refugee law. It was especially emphasised in the text that it was announced to the public that each asylum application would be evaluated separately by officials and that no collective expulsion would be applied under any circumstances.[192] However, the criticism that the Statement might violate the established international norm for individual evaluation of asylum applications was also widely voiced.[193]

Besides, accepting Turkey as a safe third country under Statement is hugely found fault with human rights by academics, human rights organisations.[194] Turkey still maintains the geographical condition of the UN Refugee Convention. As the country that hosts the most Syrian refugees in the world, Turkey has introduced a temporary protection regime to address the massive influx of Syrians now in the country. Instead of receiving conditional refugee status, Syrians in Turkey have been granted temporary protection, which is a precarious status making them increasingly vulnerable to insecurity, poverty, and exploitation.[195] In-depth research on how Turkey plays an essential role in protecting Syrian refugees according to the UN Refugee Convention and European Fundamental Rights is done in chapter 6.

8- CONCLUSION

Overall, the EU-Turkey Statement is a substantial and sophisticated reaction to the challenges raised by irregular migration, specifically in relation to the Syrian refugee crisis. This agreement has not only influenced the patterns of migration between Turkey and the EU but has also emphasised the complex interaction between humanitarian

[192] Beyza Çağatay Tekin, 'The Impact of EU–Turkey Deal on Irregular Migration on the EU's International Identity' (2017) 39(11) *Marmara Üniversitesi İktisadi ve İdari Bilimler Dergisi* https://dergipark.org.tr/tr/download/article-file/403085 accessed 17 July 2025.
[193] Steve Peers, 'The Final EU-Turkey Refugee Deal: A Legal Assessment' (EU Law Analysis Blog, 20 March 2016) http://eulawanalysis.blogspot.com/2016/03/the-final-euturkey-refugee-deal-legal.html accessed 17 July 2025.
[194] Amnesty International, 'EU-Turkey Deal: A Shameful Stain on the Collective Conscience of Europe' (2017) https://www.amnesty.org/en/latest/news/2017/03/eu-turkey-deal-a-shameful-stain-on-the-collective-conscience-of-europe/ accessed 17 July 2025.
[195] Republic of Turkey, *Temporary Protection Regulation* (2014), art 7.

considerations and interests. In this chapter, I have analysed the historical circumstances that led to the creation of the Statement, its goals, and the results of its implementation. This examination has shown both the achievements in decreasing unauthorised border crossings and the ongoing difficulties that still exist.

The breakdown of the Statement in 2020 underlined the vulnerability of such agreements and the necessity for flexible and robust migration policy. Recent developments suggest that the EU is adopting a consistent approach to managing migration, as it continues to deal with the continued arrival of migrants. This encompasses a revitalised emphasis on collaborating with third countries, strengthening legal pathways for migration, and addressing the underlying factors that lead to displacement.

Ultimately, the EU-Turkey Statement serves as a critical case study in the evolving landscape of international migration governance. It illustrates the necessity for collaborative frameworks that balance security, humanitarian needs, and the rights of migrants. As the EU navigates future challenges in migration policy, the lessons learned from the EU-Turkey Statement will be essential in shaping effective and humane responses to migration in an increasingly interconnected world. The following chapters will discover the main challenges and problematic dimensions of the EU-Turkey Statement.

CHAPTER 3: EUROPEAN COUNCIL ROLE IN THE EU-TURKEY STATEMENT: DRIVEN BY INTERESTS

1- INTRODUCTION

The uprisings of the Arab Spring in 2010 and the conflict in Syria caused millions of people to seek sanctuary in Europe, often using illegal means to achieve this. Once the refugee crisis turned into a significant crisis for the EU in 2015, the EU common migration policy problems and the differences in the migration policies of member states began to come to the fore. European countries responded to migration flows at national, regional, and sometimes international levels. This approach has played a role in constructing a common migration policy and in debate on the integration of Europe. Moreover, when the EU built the common migration policy at the EU level, there was a discussion regarding which institution holds more power in Brussels among the quadrangle of the European Commission, the European Parliament, and the European Council and the Council.[196]

The basic assumption of intergovernmentalism has been that EU member states' decisions and actions shape European integration. The normative decision-making process of the EU focuses on supranational procedures. This creates a tension between new intergovernmentalism and supranationalism. Creating consistent solutions to crises has always been a difficult task for the European Union. However, the 2015 refugee crisis showed that domestic interests weighed heavily on EU integration. Therefore, this chapter investigates whether the European Council had the authority to conclude the EU-Turkey Statement (2016), which is relevant to the ongoing debate about what role the European Council played in the context of the emerging intergovernmentalism in the EU. In order to build a strong background of the rising power of European Council, this research focuses the historical development of European Council since the Maastricht Treaty (1992) and the literature on the new intergovernmentalism in political science.

This thesis adopts 'new intergovernmentalism' rather than classic intergovernmentalism due to the nature and institutional dynamics underlying the EU-Turkey Statement. While classic intergovernmentalism emphasizes state-centric negotiation processes and

[196] Daniel Thym and Kay Hailbronner, 'Legal Framework for EU Asylum Policy' in Kay Hailbronner and Daniel Thym (eds), *EU Immigration and Asylum Law: Commentary* (2nd edn, C.H. Beck/Hart/Nomos 2016) 1023 https://ssrn.com/abstract=2809075 accessed 17 July 2025.

Member States' preferences articulated clearly through traditional treaty-based mechanisms, new intergovernmentalism better captures the informal, consensus-driven decision-making evident in the Statement's negotiation. Classic intergovernmentalism falls short in explaining the European Council's reliance on informal political agreements instead of formal treaties, as well as the significant role played by EU-level institutional entrepreneurship without clear delegation of new powers. Conversely, new intergovernmentalism highlights precisely these informal decision-making mechanisms, the increased influence of intergovernmental institutions such as the European Council, and the reluctance of Member States to formally delegate competencies to supranational institutions in politically sensitive areas like migration policy. Empirical evidence from the negotiation, adoption, and implementation of the EU-Turkey Statement—particularly the centrality of informal European Council summits, limited parliamentary oversight, and ambiguous legal status—demonstrates the accuracy and applicability of new intergovernmentalism for this analysis.

This chapter is organized as follows. In section 1, I map the historical development of EU decision-making powers focusing on the European Council in the period from the Maastricht Treaty to the Lisbon Treaty (2009) and beyond. In section 2, I review the political science literature on the new intergovernmentalism in order to sketch the context within which the EU member states responded to the Syrian refugee crisis. After outlining the concept of new intergovernmentalism, in the subsection 2a I explain the role of the European Council both as a driving force behind the EU's decision-making process, and in changing the governance of the EU. Having a general framework in the new intergovernmentalism and the role of European Council, in section 3, I explain how new intergovernmentalism played out during the refugee crisis. I also discuss the position of the European Council in engaging with the refugee crisis (C.1) and its role finalising the EU-Turkey statement. Section 4 analyses how the European Council reached a deal with Turkey in light of discussions in the literature and cases from ECJ. And finally, in section 4, the main findings of this chapter will be summarised. Drawing on the explanation that the rising power of the European Council serves individual member states' interest, and in light of the literature and cases, this article concludes that member states used the European Council to conclude the statement while simultaneously seeking to achieve their national demands.

2- THE THEORETICAL FRAMEWORK: THE EU DECISION MAKING POWERS AND PROCESS

2.1- The Developments from Maastricht to Lisbon

In 1992, the heads of states and governments of the Union ratified the Maastricht Treaty. With the signing of the Maastricht Treaty, the European Union made significant progress towards European integration and the unification of its member states. The Maastricht Treaty promotes a more integrated union. However, it extended the EU integration to more intergovernmental forms. The EU member states decided to widen their cooperation to new fields such as security and migration, which are the cornerstone of national sovereignty. Thenceforth, European integration raised concerns and became more controversial due to the increasing resistance of member states.[197] With the establishment of a common security strategy (an intergovernmental pillar for foreign and security policy in the Maastricht Treaty), the Treaty heralded the beginning of a new phase of European integration based on intergovernmentalism and the pursuit of greater efficiency. The two intergovernmental pillars introduced by the Maastricht treaty were centred on national sovereignty and governments' interests. This Treaty played a significant role in the evolution of the EU's approach to integration, whereby representatives of the highest political level (heads of states and governments in the European Council) were involved in decision-making, particularly in the context of crises.[198] The Treaty was based on the 3 pillars structure consisting of European Communities, the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHI), thereby signalling the increasing role of the European Council.[199] The first pillar, the European Community mainly focused on economic and technical matters, such as a single market. The second and third pillars were structured under the intergovernmental method regarding the common foreign and security policy (CFSP) and justice and home affairs (JHA). These intergovernmental pillars under the

[197] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).
[198] Derek Beach and Sandrino Smeets, 'New Institutionalist Leadership – How the New European Council-Dominated Crisis Governance Paradoxically Strengthened the Role of EU Institutions' (2020) 42(6) *Journal of European Integration* 837 https://doi.org/10.1080/07036337.2019.1703966.
[199] Treaty on European Union (Maastricht Treaty) [1992] OJ C191/1.

Treaty referred to the empowerment of cooperation outside the supranational institutions' governance.[200]

The issue of preparing a common constitution for the EU has been at the top of the EU's agenda since the beginning of the 2000s. The Constitutional Treaty was deliberated and constructed by a huge assembly of representatives not just from member States, but also from the European Parliament and national parliaments. All of the European Union's (then) twenty-five member countries signed the Constitutional Treaty in Rome on October 29, 2004, and 18 of those countries have approved it. Two national referendums in France and the Netherlands, however, ruled against this proposal.[201] The process was blocked since the constitution required the approval of all member states before it could come into effect. Despite the fact that the EU Constitution failed, European leaders were determined to portray this as a minor setback in the overall development of the EU integration. With the reasons for the Constitution's rejection still fresh in the minds of Europeans, the EU has developed the Lisbon Treaty, which is designed to accomplish most of the same goals but which avoids the sections that sparked the most controversy. This treaty which sought to make EU decision-making processes more efficient, effective, and democratic, was an important milestone. Steps taken by the member states show a three-stage development, consisting of reform initiatives, a constitutional project, and an amendment agreement. Many previous founding treaties (Rome, Maastricht, Amsterdam) covered different economic, social and cultural policy fields. After all, it was necessary for the EU to make a political treaty within a more concrete constitutional framework covering all these treaties. However, with the Lisbon Treaty, some reservations about the absolute sovereignty of the member states (symbols such as the flag, national anthem, constitution, which evoke a single state) were eliminated. The resulting uncertainty and crisis were resolved in 2007 when the European integration and constitutionalisation process resumed with the preparation of a new text by German Chancellor Angela Merkel.[202] The Lisbon Treaty, also known as the Reform Treaty, was ratified at the summit held in Lisbon (Portugal) on 18-19 October 2007. It entered into force in 2009 and envisaged significant changes in the structure and decision-making

[200] Ibid.
[201] Sara Binzer Hobolt and Sylvain Brouard, 'Contesting the European Union? Why the Dutch and the French Rejected the European Constitution' (2011) 64(2) *Political Research Quarterly* 309 https://doi.org/10.1177/1065912909355713.
[202] Ibid.

mechanisms of the EU. The Treaty consolidates the European Community with the Union.[203] Observers define the Treaty's innovations as a dual decision-making system. Sergio Fabbrini, for example, analyses its supranational constitutionalisation on the single market and its intergovernmental constitutionalisation in the context of common foreign and security policy.[204]

The Lisbon Treaty's innovations may be grouped under two main headings, namely, institutional innovations and policy changes. It envisages significant changes in inter-and intra-EU institutional relations. Its main purpose is to strengthen the EU both institutionally and internationally and to make the Union more effective in important policy areas without disrupting the balance between member states and institutions.[205] Reforms which are made by the Lisbon Treaty, including the vote of approval of the President of the Commission by members of the European Parliament on the basis of Article 17 para 7 of TEU, increases the weight of the European Parliament in the legislative area (particularly in relation to the budget and the ratification of international treaties), limits the number of members to 750, and increases the role and influence of national parliaments. Alongside innovations to the European Parliament, the Treaty introduced qualified majority voting within the Council. The Treaty (Article 16 TEU/Article 238 TFEU) confirmed the new voting system established in the EU Constitutional Treaty, but it was slightly amended. It is claimed that the former majority rules protected small and medium member states effectively; however, the new approach is based on the population weight of members states. It stipulates that a blocking coalition must have at least four Member states that represent at least 35 percent of the EU's total population in order to prevent larger states from banding together to obstruct proposals.[206] Furthermore, the Lisbon Treaty formally established the European Council as an institution.[207] Article 15 TEU and Article 235 TFEU define the European Council's tasks, anatomy, decision-making, and

[203] European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community* [2007] OJ C306/01, 13 December 2007 https://www.refworld.org/docid/476258d32.html accessed 11 September 2021.
[204] Sergio Fabbrini, *Europe's Future: Decoupling and Reforming* (Oxford University Press 2019).
[205] Finn Laursen, 'The Lisbon Treaty: A First Assessment' (2011) (362) *L'Europe en Formation* 45 https://www.cairn.info/revue-l-europe-en-formation-2011-4-page-45.htm DOI: 10.3917/eufor.362.0045.
[206] Conall Devaney and Eva-Maria Poptcheva, 'Changed Rules for Qualified Majority Voting in the Council of the EU' (European Parliamentary Research Service, 2014).
[207] European Parliament, 'Fact Sheets on the European Union – 2021' https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf accessed 12 September 2021.

significant aspects of its internal organization.[208] The TEU determines the core function in article 15 (1): '*The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.*' [209] Compared to definitions of other EU institutions such as European Parliament in Article 14 TEU, the functions granted to the European Council are more general. The language suggests a function that is superior to, or at the very least independent of, the other EU institutions. [210] Furthermore, its formulation, which specifies that its functions are not legislative, prevents it from undertaking ordinary legislative procedures in association with the European Parliament, the Commission, and the Council of European Union. The Lisbon Treaty impacts on the organisational structure of the Community method which has been entrusted by Treaty to the Commission, the Council (of Ministers), and the Parliament. Because it lacks direct authority to make decisions on behalf of the European people as a whole, it has raised concerns about Union democracy in this manner.[211]

From 1974 to November 2009, when the Lisbon Treaty took effect, the European Council was chaired by the rotating presidency's heads of state and/or government, who was also the head of delegation for all bilateral summits between the EU and third countries. However, the TEU's most significant reform was the establishment of a stable president of the European Council, which was elected for a two-and-a-half-year term that was renewable once (article 15/5 TEU).[212] So that, the Lisbon Treaty created permanent presidency in the European Council for the two and a half years term instead of a 6-month duration.[213] Accordingly, the President of the European Council is elected based on qualified majority voting. In this way, the EU has become a key actor in foreign affairs because a short-term presidency poses a challenge for both small and large member states. Smaller countries lack the experience of dealing with all the issues in the EU's

[208] Consolidated Version of the Treaty on European Union, art 15 [2012] OJ C 326/13; Consolidated Version of the Treaty on the Functioning of the European Union, art 235 [2012] OJ C 326/143.
[209] Consolidated Version of the Treaty on European Union, art 15 [2012] OJ C 326/13.
[210] Gerard Conway, 'Recovering a Separation of Powers in the European Union' (2011) 17(3) *European Law Journal* 304.
[211] Pascale Joannin, 'The European Council: A Self-Proclaimed "Sovereign" off the Rails' (Robert Schuman Foundation, *European Issues*, 2020) https://www.robert-schuman.eu/en/european-issues/0574-the-european-council-a-self-proclaimed-sovereign-off-the-rails accessed 15 March 2022.
[212] François Roux, 'The External Representation of the EU: A Simple Matter of Protocol?' (Egmont Institute, *European Policy Brief* No 69, 2021).
[213] European Council, 'The Presidents' Role' https://www.consilium.europa.eu/en/european-council/president/role/ accessed 21 November 2021.

complex agenda. On the other hand, large countries may confuse their national interests with the interests of the Union. In this case, with a President to be elected for two and a half years, it aims to keep EU interests above all else and bring stability to the functioning of the system.[214] Beyond these broad principles, the Lisbon Treaty entrusts the European Council with a range of more particular responsibilities. The Treaty permits the European Council to participate in deepening and, to a lesser extent, expanding procedures. The 'ordinary' and 'simplified' revision procedures under Article 48 of TEU assign fundamental powers to the European Council for treaty making.[215] The European Council is also at the top of the institutional architecture in terms of 'external action,' according to the Lisbon TEU.[216]

Some scholars associate this empowerment with the rising power of the European Council, which is an executive actor within the EU structure.[217] It not only handles the decision-making processes but also deals with intergovernmental policy interventions.[218] The European Council shall, inter alia, set 'the Union's strategic interests and goals' for all of its external activities according to Article 22(1) TEU. Thus, it brings the Common Foreign and Security Policy (CFSP) and external relations closer.[219] Since the formalisation of the European Council as one of the EU institutions, this has resulted in different consequences. The first one is that the European Council uses working methods that is different from other institutions. Using the instrument of its own – non-binding – conclusions, the European Council established new informal coordination procedures and working techniques that were not binding. Secondly, the European Council operates as 'the prime agenda setter', including providing political guidance and debate on the

[214] Finn Laursen, 'The Lisbon Treaty: A First Assessment' (2011) (362) *L'Europe en Formation* 45.
Ebru Ogurlu, 'Lizbon Anlaşmasından Sonra Avrupa Birliği [The European Union After the Lisbon Treaty]' (2008) 34 *Avrasya Etütleri* 7.
[215] Steffen Bartsch and Wolfgang Wessels, 'The European Council: Tasks and Decision Making' (TRACK Dossier, 2021) https://track.uni-koeln.de/sites/eucopas/user_upload/TRACK_-_TEDO_Dossier_FINAL.pdf accessed 2 January 2022.
[216] Aline Burni, Benedikt Erforth and Niels Keijzer, 'Global Europe? The New EU External Action Instrument and the European Parliament' (2021) 7(4) *Global Affairs* 471 https://doi.org/10.1080/23340460.2021.1993081.
[217] Uwe Puetter, 'The European Council – The New Centre of EU Politics' (Swedish Institute for European Policy Studies, *European Policy Analysis* 2013/16).
[218] Uwe Puetter, 'The Centrality of Consensus and Deliberation in Contemporary EU Politics and the New Intergovernmentalism' (2016) 38(5) *Journal of European Integration* 601 https://doi.org/10.1080/07036337.2016.1179293.
[219] Finn Laursen, 'The Lisbon Treaty: A First Assessment' (2011) (362) *L'Europe en Formation* 45.

integration process. [220] Puetter describes the influence of the European Council in the decision-making system as a supervisor of the Council. As the decisions that have a significant impact on the international perception of the EU are handled at the level of EU governance, the heads of states and/or governments of member states reserve the authority to collaboratively conclude decision-making processes.[221]

Drawing on the historical development of EU treaties and the establishment of the European Council, I will now conduct extensive research to demonstrate the background of new intergovernmentalism developed by scholars in both political and legal science in the following section.

3- KEY CONCEPT: NEW INTERGOVERNMENTALISM IN LITERATURE

The EU member states' priorities regarding the Syrian refugee crisis and their effects on the EU's decision-making system entail a further analysis of the new intergovernmentalism and political science debates within the Union. In this section, I will analyse various scholars' approach to new intergovernmentalism theory.

The theory of new intergovernmentalism regards as paramount the decisions and actions of European member states in European integration. This theory is based on the concept of interest inherent in the states. Also, it aims to balance between the intergovernmental and supranational actors within the European Union. Compared to traditional intergovernmentalism, this entails a significant increase in joint authority and control at the EU level, which was previously believed impossible. It emphasizes the importance of gathering member states under a single roof. Intergovernmentalism draws attention to the importance of interstate bargaining in the integration process. The theory focuses on the nation-state, aiming to improve its own conditions and then protect its national interests.[222] In other words, states maintain their own priorities, and this requires joint arrangements in the modern world in order to protect their domestic interest. In this respect, common arrangements exist as long as they serve the state's interest as a

[220] Uwe Puetter, 'Europe's Deliberative Intergovernmentalism: The Role of the Council and European Council in EU Economic Governance' (2012) 19(2) *Journal of European Public Policy* 161 https://doi.org/10.1080/13501763.2011.609743.
[221] Ibid.
[222] Andrew Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' (1993) 31(4) *Journal of Common Market Studies* 473.

dependent variable. While the member states interests and priorities were shaped in accordance with the national sovereignty, the extent of the influence of European integration remains insufficiently evaluated. Despite the fact that the proponents of the intergovernmentalist method do not make the problem of legitimacy the central focus of discussions on integration, they discuss the legitimacy of the Union as it coincides with the interests of the member states. Namely, the control of the Union's policy is still carried out in line with the member states and their preferences.

There have been different approaches to the EU's governance model in the European integration studies that have started from the 1980s. In the 1980s, when European integration focused on the internal market, supranationalism and intergovernmentalism were the dominant theories of European integration. Interstate negotiations that cannot be isolated from external factors are accepted as a critique of the intergovernmental theory. Therefore, the theory of liberal intergovernmentalism developed by Andrew Moravcsik appears as a more comprehensive study to explain the period of the 1990s. Moravcsik expressed his views of liberal intergovernmentalism in his research 'Negotiating the Single European Act' in 1991.[223] Liberal intergovernmentalism claims that the enlargement process results from negotiations and unanimous decisions between governments acting with rational choices. Moravcsik used the liberal approach to explain domestic preferences regarding economic interests.[224] Liberal intergovernmentalism is composed of the national preferences, intergovernmental bargaining, and role of the EU institutions. In his article titled "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach", published two years after his article mentioned above, he included his criticisms of neo-functionalism.[225] His rational theory explains that member states and/or governments focus on cooperation at the EU level to protect their interests.

Some scholars have criticised liberal intergovernmentalism. According to Daniel Wincott, liberal intergovernmentalism was not capable of considering European integration in day-to-day policy, particularly within informal politics. Also, it was unable to explain the

[223] Andrew Moravcsik, 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community' (1991) 45(1) *International Organization* 19.
[224] Ibid.
[225] Andrew Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' (1993) 31(4) *Journal of Common Market Studies* 473.

contribution of supranational institutions regarding the member states' interests since he does not observe any conflict among supranational institutions and intergovernmentalism.[226]

Moravcsik's theory successfully explained critical steps in integration regarding certain significant points namely `*economic interest, relative power, credible commitments*`.[227] He mostly defends European integration as a series of rational responses by national leaders to limits and opportunities caused by the rise of an interdependent world economy (economic interest). By 'relative power' he means the changes in the power of states within the Union. Lastly, he explains with 'credible commitments', as the ability of international institutions to strengthen the credibility of interstate commitments. However, the theory has proved unable to account for crises management since the 2010s. Some authors argued that the theory inadequately addresses the issue of how domestic preferences form at the EU level. Forster argues that Liberal intergovernmentalism neither separates the states nor clarifies governments' motivations in intergovernmental bargaining.[228] Schimmelfennig, on the other hand, considers liberal intergovernmentalism as a version of the "rationalist institutionalism" approach explicitly used to explain European integration. According to him, the theoretical roots of rationalist institutionalism are compatible with the core principles of liberal intergovernmentalism. Accordingly, European integration or the European Union primarily resembles international politics and international organisations in general. Therefore, the theory can be analysed from the perspective of international relations in the same way as Moravcsik's studies emphasised the European Community's international dimension.[229]

On the other hand, a new form of intergovernmentalism has gradually emerged since the Maastricht era. In the 2010s, Uwe Puetter, Christopher Bickerton, and Dermot Hodson introduced a new intergovernmental approach to explaining European integration in

[226] Daniel Wincott, 'Institutional Interaction and European Integration: Towards an Everyday Critique of Liberal Intergovernmentalism' (1995) 33(4) *Journal of Common Market Studies* 597.
[227] Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Cornell University Press 1998).
[228] Anthony Forster, 'Britain and the Negotiation of the Maastricht Treaty: A Critique of Liberal Intergovernmentalism' (2002) 36(3) *Journal of Common Market Studies* 347.
[229] Frank Schimmelfennig, 'Liberal Intergovernmentalism' in Antje Wiener and Thomas Diez (eds), *European Integration Theory* (Oxford University Press 2004) 75.

times of crises.[230] The 'new intergovernmentalism' refers to the domination of the European Council in the decision-making process in the EU. It is differentiated from the supranational method. In other words, the new engagement of member states has diminished 'traditional' supranationalism which envisages an increase in the power of supranational actors such as the European Commission and the European Court of Justice in hierarchical actions.[231] Some scholars argue that the European Council has been leading decision-making in the EU's activities in new areas. They define the new intergovernmentalism as the rise of the European Council's decision-making role. The claims regarding the new intergovernmentalism show that the member states have taken the lead in governing the EU.[232] The new intergovernmentalists criticise the traditional intergovernmentalists' approach as always focusing primarily on power in the decision-making process. In other words, traditional intergovernmentalists followed the path, assuming the process was concerned with the desire for power, whether through profit bargaining in the Council or budget maximization for the bureaucracy as Schmidt emphasized in her research.[233]

Rather than focusing on the pursuit of power, new intergovernmentalism concentrates on the decision-making process in the European Council between member states willing to come to 'consensual' agreements.[234] There are still divisions on, for example, whether or not it managed to build consensus in critical areas like migration.[235] Consequently, new intergovernmentalism reflects on the rise and role of member states through EU intergovernmental institutions, such as the European Council, rather than focusing solely or primarily on national interests, as has been the case in more traditional approaches to intergovernmentalism.

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[230] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).

[231] Alec Stone Sweet and Wayne Sandholtz, 'European Integration and Supranational Governance' (1997) 4(3) *Journal of European Public Policy* 297 https://doi.org/10.1080/13501769780000011.

[232] Sergio Fabbrini, *Which European Union?* (Cambridge University Press 2015).
Christopher J Bickerton, Dermot Hodson and Uwe Puetter (eds), *The New Intergovernmentalism* (Oxford University Press 2015).

[233] Vivien A Schmidt, 'The "New" EU Governance: "New" Intergovernmentalism versus "New" Supranationalism plus "New" Parliamentarism' (2016) 5 *Les Cahiers du Cevipol* 5.

[234] Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford University Press 2014) https://doi.org/10.1093/acprof:oso/9780198716242.003.0003.

[235] Sergio Fabbrini, 'From Consensus to Domination: The Intergovernmental Union in a Crisis Situation' (2016) 38(5) *Journal of European Integration* 587 https://doi.org/10.1080/07036337.2016.1178256.

Puetter grounded his approach to new intergovernmentalism in 'deliberation and consensus'.[236] New intergovernmentalism advocates the guidance of deliberation and consensus in EU decision-making. He explains the deliberative intergovernmentalism in the institutional change of the European Council as mainly driven by consensus actions. In the new form of the European Council under new intergovernmentalism, European Council became an executive actor dealing with mid-and long-term decision making and intergovernmental based executive decisions. Puetter's analyses of the new intergovernmentalism provides a comprehensive argument to explain the leading role of institutional reforms during the euro crisis[237] which led to a political crisis within the EU. The countries that easily survived the crisis did not want to help the debt-ridden member states. Hence, the countries affected by the crisis felt alone in and excluded from the Union.[238] The European Council predominantly focused on reaching consensus in policy deliberation during the main discussion on the Euro crisis. It effectively managed the euro crisis in cooperation with the Euro group. The crisis shows how the preferences of member states and/or governments were shaped in accordance with their financial interests and Europe's legitimacy concerns. Accordingly, during the euro crisis, the European Council took the role of ultimate decision-maker. As a result of this, Puetter sees the new intergovernmentalism as a helpful concept with deliberative and consensus tools for dealing with the crisis under the current institutional framework.[239]

In the meantime, Hodson has made significant contributions to the concept regarding the euro crisis and to Puetter's claims on new intergovernmentalism.[240] He clarified three aspects of the new intergovernmentalism in the euro crisis. First, governments responded to the challenge of managing the crisis in line with their commercial benefits. Second, the institutional preferences of member states proved the significance of deliberation and consensus via the European Council and de novo bodies for example the European Central Bank (ECB), the permanent European Stability Mechanism (ESM), were empowered. Lastly, the crisis also proved the European Commission's scepticism about the Union's

[236] Uwe Puetter, 'The Centrality of Consensus and Deliberation in Contemporary EU Politics and the New Intergovernmentalism' (2016) 38(5) *Journal of European Integration* 601 https://doi.org/10.1080/07036337.2016.1179293.
[237] Ibid.
[238] Benjamin Friedman, 'The Pathology of Europe's Debt' (2014) 61 *The New York Review of Books* 50.
[239] Ibid.
[240] Dermot Hodson, 'The New Intergovernmentalism and the Euro Crisis: A Painful Case?' (LEQS Paper No 145, 2019) https://ssrn.com/abstract=3412326 or http://dx.doi.org/10.2139/ssrn.3412326.

integration. The Commission became a supranational institution that is reluctant to take charge in dealing with the crisis rather than the role of maximising competence.[241] Therefore, the new intergovernmentalism argue that European integration has consolidated the delegation of new powers to the European Council without traditional supranationalism.

As noted above, new intergovernmentalism defines the member states as a driving force of European governance in line with the domestic interests. Thus, the European Council has become more active in decision-making at the EU level. It characterizes the conflict between integration and public interest as a destructive formation that jeopardizes the EU's sustainability.[242] Bickerton elaborated the changing dynamics in the process of European integration in his study with Hodson and Puetter as follows: 'deliberation and consensus' are fundamental to the concept of EU governance, particularly the new areas of the EU activity through the European Council in legislative decision making.[243] While supranationalism is primarily understood to signify independence from national interests, member states support the creation of de novo bodies such as the European External Action Service (EEAS) to ensure the coordination of member states' interests and activities.[244] The issues relating to domestic interests have caused a disequilibrium within the Union.[245] Bickerton, Hodson, and Puetter articulate six empirically verifiable hypotheses to account for the implications of new intergovernmentalism in the EU integration. These six hypotheses include: '*deliberation and consensus as part of day-to-day decision-making; whether supranational institutions always promote deeper integration; whether, when delegation occurs, new bodies are created instead of empowering existing supranational institutions; domestic politics as independent input into European integration; the blurring of high and low politics; that the EU is currently not in equilibrium*'.[246] In this way, they aim to give voice to mechanisms within European

[241] Ibid.
[242] Dermot Hodson and Uwe Puetter, 'The European Union in Disequilibrium: New Intergovernmentalism, Postfunctionalism and Integration Theory in the Post-Maastricht Period' (2019) 26(8) *Journal of European Public Policy* 1153 https://doi.org/10.1080/13501763.2019.1569712.
[243] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).
[244] Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford University Press 2014) https://doi.org/10.1093/acprof:oso/9780198716242.003.0003.
[245] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).
[246] Ibid.

integration other than the community method. Their comprehensive description also signals the deeper integration under new intergovernmentalism without supranationalism. Their objective was to reflect on integration methods and to criticize the classical community method, which placed supranational players in the driver's seat. A deformation in the process of integration was also noted, with the argument that the EU's current method of governance differed from that of the 1950s. Furthermore, their assessment showed the breaking point of how integration evolved to the emergence of a powerful European Council in the post-Maastricht era.

On the other hand, Schimmelfennig criticised the observations of Bickerton et al.[247] He considered the new intergovernmentalism a 'misnomer', since he argues that latest stage of integration has been strongly intergovernmental, which is not new for the post-Maastricht integration. Whereas he agreed that new intergovernmentalism clarifies policies in new areas of EU activity more comprehensively than liberal intergovernmentalism, he found it insufficient for '*theorising European integration*'.[248] In his critique, he mentioned that the new intergovernmentalism should have focused on the root and dynamics behind the intergovernmental policies rather than concentrating on the 'core state powers'. In response to his critique, Bickerton et al. claim that the new intergovernmentalism offers an innovative perspective on the EU's legitimacy in the post-Maastricht.[249] Also, they respond to his claims that there are parallels between the patterns of intergovernmentalism in the pre- and post-Maastricht era, by arguing that the direction of European integration in the post-Maastricht era is different.

3.1- European Council: Driving Force of the New Intergovernmentalism

The European Council is the most intergovernmental EU organ, comprising top political leaders of member states. It is responsible for defining the 'EU's overall political direction and priorities'.[250] Since it is not a legislative institution of the EU, it calibrates the EU's

[247] Frank Schimmelfennig, 'What's the News in "New Intergovernmentalism"? A Critique of Bickerton, Hodson, and Puetter' (2015) 53(4) *Journal of Common Market Studies* 723.
[248] Ibid.
[249] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, 'Something New: A Rejoinder to Frank Schimmelfennig on the New Intergovernmentalism' (2015) 53 *JCMS: Journal of Common Market Studies* 731 https://doi.org/10.1111/jcms.12244.
[250] European Council, 'European Council' https://www.consilium.europa.eu/en/european-council/ accessed 1 October 2021.

policy agenda in accordance with the identified matters and required actions.[251] After the Maastricht Treaty, the European Council supported the EU's enlargement policy. Hence, it extended the decision-making areas under the Community method and new intergovernmentalism.[252] Jean Claude Piris, who was Director General of the Council Legal Service, explained the empowerment of the European Council and its rising efficacy as an outcome of not only the legal measures but also political reality.[253] The European Council officially became an institution of the European Union only with the adoption of the Treaty of Lisbon in 2009.[254] Nevertheless, before that, the European Council was already a de facto institution of the EU. It was founded during the Paris Summit in December 1974 on the proposal of French President Giscard d'Estaing. [255] As European integration progressed, the European Council, which met for the first time on March 11, 1975, in Dublin, steadily increased the frequency of its sessions. Then, the importance of the European Council began to be more widely recognized. Even though the European Council lacked official powers or even existence under the EU Treaties, a body comprising all heads of State and/or Government clearly has enormous authority and influence. Since the historic milestone of the stage entry into process of the Maastricht Treaty came into force in 1993, the political and economic circumstances in which European Council work have altered profoundly.[256] When it comes to its composition, it includes the heads of governments and states.

The European Council has been led by a permanent president since the Lisbon Treaty as it is mentioned in section 1. With the European Council (the body comprising of the heads of state or/and government from each EU member state) establishing the EU's political orientation, one of the president's primary responsibilities is representing the EU

[251] The European Council and the Council of the European Union, 'The European Council' https://www.consilium.europa.eu/en/european-council/# accessed 18 October 2021.
[252] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).
[253] Jean-Claude Piris, *The Lisbon Treaty: A Legal and Political Analysis* (Cambridge University Press 2010).
[254] Consolidated Version of the Treaty on European Union, art 15 [2012] OJ C 326/13.
[255] Luuk van Middelaar, *Passage to Europe: How a Continent Became a Union* (Yale University Press 2013).
[256] Armin Cuyvers, 'The Institutional Framework of the EU' in Armin Cuyvers and others (eds), *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (Brill 2017) 79 http://www.jstor.org/stable/10.1163/j.ctt1w76vj2.8.

abroad.[257] As he chairs meetings and oversees the agenda in line with the Article 15 TEU, the President primarily serves to coordinate and generate consensus.[258]

3.2- Power and Authority of the European Council

The European Council's primary role is to map out the EU's overall direction and give political leadership in order to achieve it. It is not anticipated that The European Council would play a direct role in legislative decision-making. It is expressly stated in Article 15(1) TEU that it '*shall not exercise legislative functions*'.[259] Though not directly participating in legislation, it has a significant impact on legislative and policy development. The European Commission generally has a strong motivation to collaborate with the European Council when it comes to dealing with crises. As these crises are politically sensitive issues, they must be handled at the highest political level possible - that is, by the heads of state and government as part of the intergovernmental European Council. Consequently, the EU's activities are expanding, and so is its informal authority to carry out these extra duties.

On the other hand, European Council has an influence on determining the content of legislation under the Article 31/2 TEU. Even though the European Council is not involved in the day-to-day functioning of the Council, but it is frequently consulted on contentious issues. The Council can enquire the European Council to make a decision by unanimously approving it.[260] A decade after the Lisbon Treaty came into effect, the European Council has solidified its place as the EU's most important institutional body. When we look at the euro crisis, Europe has faced the most serious threat to its economic stability since the foundation of EEC. It prompted several of the political, legal, and institutional reactions within the Union. The financial upheaval surrounded the United States and Europe in 2007 showed that the European Union lacked the 'firepower' to deal with a huge sovereign debt crisis.[261] When Greece's debts were due to default in 2009, the crisis had officially begun. After Greece, the threat of sovereign debt defaults from Portugal, Italy, Ireland, and Spain grew to the point that they could no longer be ignored. Germany and France, the EU's two

[257] European Council, 'The President's Role' https://www.consilium.europa.eu/en/european-council/president/role/ accessed 20 February 2022.
[258] Consolidated Version of the Treaty on European Union, art 15 [2012] OJ C 326/13.
[259] Ibid.
[260] Consolidated Version of the Treaty on European Union, art 31 [2012] OJ C 326/13.
[261] Paul Craig, 'The Financial Crisis, the European Union Institutional Order, and Constitutional Responsibility' (2015) 22(2) *Indiana Journal of Global Legal Studies* 243.

most (economically) powerful members, worked tremendously to provide assistance to these member states.[262]

The heads of member states and/or governments recognized that further reforms would eventually be required to resolve the euro crisis, and that they would be unable of managing this process themselves. Therefore, the European Council has taken on the leadership position of crisis management in addition to its many other responsibilities. When the first Greek bailout package was agreed upon at a March 2010 meeting, a statement of heads of states and/or governments gave the new European Council President the authority to establish up a taskforce to study long-term adjustments of the European Monetary Union.[263] The EU's heads of government developed a strong sense of commitment in the crisis by working together through the European Council. Euro Summits, where the Euro area heads met frequently in order to respond to the financial crisis, provided a critical forum for its members to formulate responses to the extraordinary volatility and major issues confronting the continent.[264] Van Rompuy organized and chaired a working group on Economic Governance in 2010 at the request of European Council members, and he released a document titled 'Towards a Genuine Economic and Monetary Union' in 2012.[265] The European Council President accepted overall responsibility for this task. When considering the European Council's complex and nuanced performance in the Eurozone crisis, there is no doubt that the heads of state or government have played a major role in shaping the resolution to the crisis. The heads of state undertook the crisis management responsibilities on their own, even though this was not their official function under the Treaty.

Since the beginning of the Euro crisis and the subsequent responses to it, scholars have adopted various perspectives on European Council domination. Most of these observers reflected on the intergovernmental orientation of the European Council. One starting

[262] Mark Dawson and Floris de Witte, 'Constitutional Balance in the EU After the Euro-Crisis' (2013) 50(5) *Common Market Law Review* 817.
[263] Statements by the Heads of State and Government of the Euro Area (Brussels, 25 March 2010).
[264] General Secretariat of the Council, *Rules for the Organisation of the Proceedings of the Euro Summits* (Publications Office of the European Union 2013) https://doi.org/10.2860/10648.
[265] President of the European Council, 'Towards a Genuine Economic and Monetary Union' (2012, Strasbourg) https://www.europarl.europa.eu/doceo/document/TA-7-2012-0430_EN.pdf accessed 17 March 2022.

point for an analysis of rising power of European Council involves reviewing the literature on the subject.

According to Puetter, the European Council has acquired the leading role in the policy-making processes, and the meetings with the heads of member states are at the heart of this process.[266] He also discusses the extent to which the European Council has been relying on the legislative structure of the EU during the exercise of its leadership role. He considers the rising power of the European Council as linked with the EU's activity in new areas such as the Common Foreign and Security Policy (CFSP). The European Council has not only transformed into an institution from a forum for the purpose of creating consensus on the integration process, but it has also evolved into a focal point for decision-making with direct intervention to the EU governance.[267] Puetter criticised that the ongoing proliferation of de novo bodies, which he viewed as another result of the European Council's rising power. There is no doubt that the European Council objectifies its idiosyncratic way of decision making due to continuing works and actions to build the common policy.[268]

Some scholars have analysed the European Council's evolution post-Lisbon. One of the significant reforms brought about by the Lisbon Treaty is the permanent presidency of the European Council. The creation of new leadership provides the European Council with the firm leadership necessary to develop decision-making roles and the persistence to act in line with the preferences of member states.[269] Sidjanski argues that the permanent position of President necessary for the involvement of member states in case significant issues relating to sovereignty or external policy arise.[270] He perceives the actions of the president of the European Council as a driving force to enable the consensus within the European Council and to reinforce the intergovernmental works within the Union. The

[266] Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford University Press 2014).
[267] Uwe Puetter, 'The European Council: The Centre of New Intergovernmentalism' in Christopher J Bickerton, Dermot Hodson and Uwe Puetter (eds), *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).
[268] Ibid.
[269]Ingeborg Tömmel, 'The Standing President of the European Council: Intergovernmental or Supranational Leadership?' (2017) 39(2) *Journal of European Integration* 175 https://doi.org/10.1080/07036337.2016.1277717.
[270]Dusan Sidjanski, 'The Treaty of Lisbon or Intergovernmental Temptation?' (Bureau of European Policy Advisers, European Commission 2010) 2–18.

establishment of the permanent presidency stabilised the member states involvement on the Union's work, including issues of high politics.

On the other hand, Federico Fabbrini analyses the European Council role under the domination of big powers among the member states. He sees the rise of the European Council as problematic since the big players are taking the commanding role in the decision-making process, particularly the EU's economic governance.[271] Indeed, the European Council has been transformed into a role with a powerful presidency, dominated by major countries such as Germany. Thus, the presidency may obtain a freestanding position in order to perform in line with the member states' preferences.[272] In this way, as Fabbrini observed, permanent leadership under the member states' political direction significantly increases the European Council's influences in the policy-making process and legitimacy roles within the EU structure.

In addition, a political powerhouse, the European Council is fuelled by the power of the participating leaders at home and by the dynamic nature of their informal meetings. The Lisbon innovation of a stable president plays a crucial part in this power transmission. With no executive powers, and 'no fiscal responsibilities; the role of the President of the European Council is to facilitate collaborative decision making.[273] Kelemen explains this point 'member countries were eager to establish a permanent President of the European Council, in part because they wished to prevent the President of European Commission from becoming the EU's de facto leader on the international arena'.[274] For this reason, the President of the Council, who was to be directly connected to the member states, would take an intergovernmental rather than supranational perspective, as an alternative source of EU leadership.

[271] Federico Fabbrini, 'Austerity, the European Council, and the Institutional Future of the European Union: A Proposal to Strengthen the Presidency of the European Council' (2015) 22(2) *Indiana Journal of Global Legal Studies* art 3.
[272] Ibid.
[273] European Council, 'The President's Role' https://www.consilium.europa.eu/en/european-council/president/role/ accessed 20 February 2022.
[274] R Daniel Kelemen, 'The Impact of the Lisbon Treaty: From Misdiagnosis to Ineffective Treatment' (SIEPS, 2019).

Another insightful reading in the 'European Council dominated Union' which took place in dealing with the crises such as Beach and Smeets.[275] In order to clarify the European Council's political leadership responsibilities, Beach and Smeets designed a New Institutionalist Leadership (NIL) model[276] which stressed that the European Council is seen as a control room, shaping the broad boundaries of agreements. They also list the duties of European Council's political leadership including agenda setting, providing political momentum, and brokering to ensure agreement on the final settlement. Even so, while the European Council cannot discuss major EU reforms in accordance with the Article 15 TEU, scholars describe the current EU law-making process as a machine room that includes the Council (ministerial – ambassador and specialists), the Council Secretariat, and EU Commission (and sometimes the European Parliament).[277] Formal reform procedures had never been substantially addressed when the euro crisis arose. Instead, the significant reforms had been implemented via informal procedures. Because of the sensitive nature of the issues and the way in which the solutions were implemented, the heads of the states and governments in the control room closely monitored the negotiations. A new institutional framework was therefore avoided by using existing EU law-making procedures, albeit in a European Council-dominated format that relied heavily on informal collaboration amongst EU institutions to provide instrumental leadership in the machine room.[278]

With respect to the literature on the rising power of the European Council, the informal crisis management procedures created to cope with the euro crisis and dominated by the European Council were used to manage the refugee crisis. I shall now endeavour to advance the European Union's analysis of the refugee problem in the context of new intergovernmentalism.

4- THE REFUGEE CRISIS AND THE NEW INTERGOVERNMENTALISM

The European Union has been facing a number of crises, starting with the Eurozone debt crisis of 2009, and then followed by the humanitarian crisis caused by the displacement

[275] Derek Beach and Sandrino Smeets, 'New Institutionalist Leadership – How the New European Council-Dominated Crisis Governance Paradoxically Strengthened the Role of EU Institutions' (2020) 42(6) *Journal of European Integration* 837 https://doi.org/10.1080/07036337.2019.1703966.
[276] Ibid.
[277] Ibid.
[278] Ibid.

of refugees in 2015. Regarding the management of asylum seekers and the enormous influx of refugees, as explained in the prior chapter in section 4, member states have experienced disagreement on whether to apply existing asylum laws and pursue the policies of the Schengen Agreement and Convention, which abolished border controls and created a common visa policy among signatories. As a result of this disagreement between member states and/or governments on how to handle the refugee crisis, the EU institutions started to experience a disequilibrium in power relations. Member states took controversial reforms and decisions as a union during the euro crisis, but in the case of the Common European Asylum System, progress has been slow despite the need for reform being obvious and pressing. In the midst of the Schengen crisis, there is no such consensus among European governments on how to avoid a shared problem. The terrorist attacks in Paris in November 2015 caused the situation in Europe to deteriorate significantly. France immediately announced a state of emergency and strengthened all of its internal land and air borders, and these measures were prolonged into 2017.[279] Early in September 2015, Germany, the most popular final destination for refugees, also adopted temporary border controls.[280] Furthermore, politicians appear to be too terrified of anti-immigrant attitudes in the general public to bridge the gap between differing national views on shared border and migration control. The migration crisis has exposed serious political divisions in attitudes toward minorities and diversity in all of the EU countries.[281] The topic of immigration is used by political parties to energize the electorate, resulting in a greater polarization of society.[282] Schmeer supports this approach by emphasizing the collapse of Schengen cost as the free movement is one of the key concepts in European integration.[283]

This section therefore discusses the new intergovernmentalism, focusing on how the EU member states responded to the migration crisis and how these responses paved the way

[279] Law No 2016-1767 of 19 December 2016 Extending the Application of Law No 55-385 of 3 April 1955 Regarding the State of Emergency, LEGIFRANCE.
[280] Council of the European Union, Council Document 11986/15.
[281] Richard Wike, Bruce Stokes and Katie Simmons, 'Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs' (Pew Research Center, 11 July 2016) https://www.pewresearch.org/global/2016/07/11/europeans-fear-wave-of-refugees-will-mean-more-terrorism-fewer-jobs/ accessed 1 April 2022.
[282]Magdalena Lesińska, 'Poland: Locals Fear Reception of Refugees Will Bring Social Tensions, Poll Finds' (Polskie Forum Migracyjne, 2016).
[283] Laura Schmeer, 'Schengen in Permanent Crisis: Will the EU's "Coma Patient" Ever Awake Again?' (Eyes on Europe, 2018) https://www.eyes-on-europe.eu/schengen-crisis/ accessed 1 February 2022.

for the EU-Turkey Statement. The EU's response to the refugee crisis, in which security concerns prevailed over the EU's values and principles, is consistent with the findings of the theory of new intergovernmental. New intergovernmentalism anticipates the more centralised governance role of the European Council.[284] In this research, the engagement of the European Council in the migratory crisis, verifies the managing method of new intergovernmentalism as a system of governance.

The Maastricht Treaty and Lisbon Treaty play a crucial role in bringing immigration and asylum policies to the intergovernmental level within the European integration. The primary expectation from these policies should be prioritising human rights and EU values. However, when the immigration crisis was on the borders of the EU, intergovernmental policies were brought to the fore by member states with concerns of domestic border security. The European governance process in the field of immigration and asylum policy was welcomed as an essential step in the right direction through the lens of supranationalism. The expectation was that it would eliminate discriminatory policies followed by EU member states and exclusionary approaches such as foreign, immigrant or anti-Islam.[285] In this context, some scholars argue that readmission agreements were perceived as mechanisms that could play a role in transferring the EU's norms, standards, and regulatory structures to the neighbouring and surrounding countries.[286] However, it should be noted that these supranational policies (such as readmission agreements) carried out by the European Commission contained the pursuit of security and restrictive elements as much as intergovernmental policies. In my opinion, this approach also facilitated the legitimation of the exclusionary steps taken to excuse the obligation to comply with the Schengen rules.

The heads of member states have exercised leadership roles, inevitably enhancing the EU policy-making area and constraining sovereignty.[287] When we look at the literature,

[284] Sandrino Smeets and Natascha Zaun, 'What Is Intergovernmental about the EU's "(New) Intergovernmentalist" Turn? Evidence from the Eurozone and Asylum Crises' (2021) 44(4) *West European Politics* 852 https://doi.org/10.1080/01402382.2020.1792203.

[285] Stephen Zunes, 'Europe's Refugee Crisis, Terrorism, and Islamophobia' (2017) 29(1) *Peace Review* 1 https://doi.org/10.1080/10402659.2017.1272275.

[286] Beyza Çağatay Tekin, 'Düzensiz Göçün Yönetimi Konusunda Varılan Türkiye–AB Mutabakatının Avrupa Birliği'nin Uluslararası Kimliği Üzerindeki Etkileri [The Impact of the EU–Turkey Deal on Irregular Migration on the European Union's International Identity]' (2017) 39(1) *Marmara Üniversitesi İktisadi ve İdari Bilimler Dergisi* 659 https://doi.org/10.14780/muiibd.377796.

[287] Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford University Press 2014) https://doi.org/10.1093/acprof:oso/9780198716242.003.0003.

Smeets and Zaun ascribe this predisposition to member states rather than the Commission in the refugee crisis.[288] They discuss the diversities of intergovernmentalism in the balance between EU institutions and member states. While they accept that there were differences in reform processes during the crises, they focus on two important differences between new and old intergovernmentalism: 'the different role of the European Council' and 'the different role of supranational expertise'.[289] In relation to the first point, the heads of member states and/or governments have replaced the community method of decision-making with the intergovernmental scheme. Regarding the asylum crisis, they determine the involvement of the European Council as an obstacle to make progress in decision-making. In the meantime, the heads of states and/or governments, acting as a sort of barrier, were less concerned with the procedures of the process and more focused on the content. In contrast, the member states have hindered to make progress in Justice and Home Affairs due to the reluctance of political leaders to solve the issues like relocation schemes, and asylum procedures.[290] Furthermore, Fabbrini argues that disagreements among the member States within the Council undermined any efforts to reform the CEAS, and despite the positive support of the European Council, the Commission's proposals to improve the system, including the introduction of a permanent relocation mechanism to increase the solidarity, was not achieved.[291]

Regarding the institutional changes during the migration crisis, Bonjour et al. provide a framework on how new perceptions in migration governance shaped in line with three crucial scopes: *'the dynamics of preference formation of member states and EU institutions, the relative power and influence of member states and EU institutions, and their impact on the domestic politics and policies of member states'*.[292] They analyse the intergovernmental findings on the migration crisis in light of the 'venue shopping theory'. This theory refers to national governments seeking new policies in line with their

[288] Sandrino Smeets and Natascha Zaun, 'What Is Intergovernmental about the EU's "(New) Intergovernmentalist" Turn? Evidence from the Eurozone and Asylum Crises' (2021) 44(4) *West European Politics* 852 https://doi.org/10.1080/01402382.2020.1792203.
[289] Ibid.
[290] Ibid.
[291] Federico Fabbrini, 'The Future of the EU27' (2019) *European Journal of Legal Studies*, Special Issue, 305 http://hdl.handle.net/1814/64678.
[292] Saskia Bonjour, Ariadna Ripoll Servent and Eiko Thielemann, 'Beyond Venue Shopping and Liberal Constraint: A New Research Agenda for EU Migration Policies and Politics' (2018) 25(3) *Journal of European Public Policy* 409 https://doi.org/10.1080/13501763.2016.1268640.

preferences and aims.[293] This view of intergovernmentalism finds expression in the control that member states exercise over migration policies and in their reluctance to accept new migrants. In this way, member states' restriction of thereby shapes the integration process. Then, once they accomplish their demands, European integration results in inadequate solutions to deal with the crisis of asylum and migration. Consequently, the figure of 'Fortress Europe' draws the intergovernmental actions in European cooperation based on the limitation mind-sets of member states, particularly to securitise their borders in the face of refugee flow.[294] Regarding the evolution of the member states' preferences, Bonjour et al. found their actions based on domestic reasons were problematic, since the decisions taken at the EU level in line with member states' interests might not reflect the required actions. For instance, member states responded to the refugee crisis by securing their borders. This approach created more limitations in the decision-making at the EU level and caused ignoring the human rights of migrants.[295]

On the other hand, Baird has refined to a new intergovernmentalism scholarship by modifying the six hypotheses of Bickerton et al.[296] During the refugee crisis, 'private actors' played a significant role in reshaping the new intergovernmental decision-making. He found that actors such as defence, civil security and technology firms build the new intergovernmental structure, especially border securitisation. In the process of modifying the Bickerton et al's of hypotheses, Baird analyses how member states are channelled by private actors to reach a deal, since the new intergovernmental actions of member states rely on information provided by private firms on the ground. In addition, Baird admits that the motivation of member states to respond to the refugee crisis is to protect their national sovereignty via controlling their territories and populations rather than pursuing solidarity in EU decision-making. As a result, this approach leads to a shift from national interests to 'social control' in intergovernmental institutions. Also, this reduces the common interests in supranational institutions.[297]

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[293] Virginie Guiraudon, 'European Integration and Migration Policy: Vertical Policy-Making as Venue Shopping' (2000) 38(2) *Journal of Common Market Studies* 251.

[294] Saskia Bonjour, Ariadna Ripoll Servent and Eiko Thielemann, 'Beyond Venue Shopping and Liberal Constraint: A New Research Agenda for EU Migration Policies and Politics' (2018) 25(3) *Journal of European Public Policy* 409 https://doi.org/10.1080/13501763.2016.1268640.

[295] Ibid.

[296] Theodore Baird, 'Non-State Actors and the New Intergovernmentalism' (2017) 55 *JCMS: Journal of Common Market Studies* 1192 https://doi.org/10.1111/jcms.12570.

[297] Ibid.

Furthermore, Hodson and Puetter analyse the challenger governments like Hungary during the crisis from the perspective of new intergovernmentalism.[298] They propose the term "challenger governments" to describe what happens when parties led by leaders who are strongly critical of the current integration track create governments in their own right or serve as senior coalition partners. According to their findings, these governments have found a way to avoid dealing with the current migration problem, which has led to an increase in disequilibrium across the European Union. These challenger governments like Orban's government maintain their opposition to the EU. They see themselves as defenders of national interests against the Union. According to Hodson and Puetter, an increase of challenger governments caused the EU to tolerate the violations of the EU values and 'normative consensus', which were undermined by their actions as long as they do not risk the EU's day-to-day decision-making system.[299] They claim that this opposition is signalling more disequilibrium within the Union rather than reaching a limited consensus. The new intergovernmentalism in dealing with the crisis provides a disequilibrium concept to grand theories. They refer to disequilibrium as a way to describe the rising turmoil within an institutionalized political system that is led by pro-integration consensus but sheltered from public dissatisfaction with policy outcomes. Their research moves beyond neo-functionalism by improving the concept of disequilibrium. Their analyses show that EU elites are creating short term solutions to deal with the crisis, such as border closure. Since this response to the crisis caused a rise of disequilibrium, the EU is in danger from both these challenger states and their determination to pursue their domestic policies. [300]

Some scholars identified the response to the migration crisis as 'deliberate, legitimate and functional'.[301] Member states are eager to deal with the consequences of the breakdown of Schengen and the Dublin Regulation since they keep their main interest on stopping and reducing influx of migrants and/or refugees to their lands.[302] To have a better

[298] Dermot Hodson and Uwe Puetter, 'The European Union in Disequilibrium: New Intergovernmentalism, Postfunctionalism and Integration Theory in the Post-Maastricht Period' (2019) 26(8) *Journal of European Public Policy* 1153 https://doi.org/10.1080/13501763.2019.1569712.
[299] Ibid.
[300] Ibid.
[301] Andrew Moravcsik, 'Preferences, Power and Institutions in 21st-Century Europe' (2018) 56 *JCMS: Journal of Common Market Studies* 1648 https://doi.org/10.1111/jcms.12804.
[302] Andrew Moravcsik and Frank Schimmelfennig, 'Liberal Intergovernmentalism' in Antje Wiener, Tanja A Börzel and Thomas Risse (eds), *European Integration Theory* (3rd edn, Oxford University Press 2018) https://doi.org/10.1093/hepl/9780198737315.003.0004.

understanding of the concept of new intergovernmentalism, this research entails further analysis of the role of the European Council in the migration crisis. Therefore, the sub-section focuses on the European Council.

4.1- The European Council and Member States: Engaging with the Refugee Crisis

As it is described above, the European Council is at the heart of the new intergovernmentalism. Member states should work in cooperation to establish a common approach to address the refugee crisis as they are aware of the excessively politicized European policy. Power and individual characteristics of member states can be decisive in the European Council. Therefore, this section analyses the European Council involvement in the refugee crisis in light of the literature on the new intergovernmentalism.

The EU decision-making is commonly conducted within the triumvirate of the European Commission, European Parliament, and the Council. However, when the Union is dealing with crises, which are sensitive for individual member states, it has turned its face to the top political level to manage the divisions among the member states within the intergovernmental form of the European Council. Although immigration rather pertains to domestic matters for all individual member states, the EU has shared regulations for asylum seekers under the Schengen rules and Dublin system. It is evident that the Dublin system failed to apply in case of the massive influx. It also caused pushback from frontier countries like Italy and Greece On the other hand, Germany's decision to open to the refugee influx started a crisis for other member states. The German government initially followed a more welcoming approach and suspended the Dublin regulation in order to let the Syrian refugees immediately into its territory. The solution was short-lived. After a few weeks, Germany suspended the Schengen agreement and applied border controls to stem the refugee influx. This action triggered other member states' reactions: many in turn refused asylum applications and opposed the implementation of the EU immigration rules.[303]

[303] Liesbet Hooghe and Gary Marks, 'Grand Theories of European Integration in the Twenty-First Century' (2019) 26(8) *Journal of European Public Policy* 1113 https://doi.org/10.1080/13501763.2019.1569711.

The part played by the European Council in the refugee crisis differed from the one played in previous crises.[304] The heads of governments and states sought to block entry rather than implement principles that might manage the refugee crisis such as fair burden sharing. The reluctant member states and insufficient cooperation on burden-sharing caused the suspension of Schengen by some member states such as Denmark and Austria. This led to a shadow being cast on the European integration project, in particular on free movement within the EU.[305] The refugee crisis raised an 'internal emergency' which signalled the failure of the Schengen Agreement while it is one of the EU's biggest achievement for closer union.[306] The failure of Schengen resulted by another important dimension on the ground: terrorism. With anti-immigrant and anti-Muslim turmoil fuelled by terrorist attacks committed in European towns by Islamic State terrorists, the management of displaced people has devolved into a "political minefield", which has made it harder to take steps to save the Schengen system.[307] I may therefore claim that the failure of Schengen is not simply the result of a lack of trust and cooperation between member states, but also of the struggle against terrorist attacks.

When the refugee crisis was at its peak in 2015, the member states failed to distribute the refugees throughout the Union, and the asylum system under the Dublin regulation collapsed.[308] The European Commission proposed a 'relocation proposal for 120,000 refugees from Greece, Hungary and Italy' as an urgent response.[309] Although the European Council supported this proposal, it failed to achieve some objectives, including the permanent quota system and Dublin Regulation revision.[310] The decision was adopted with a qualified majority vote by the Justice and Home Affairs Council rather than

[304] Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (OUP 2014).
[305] Ian Traynor, 'Is the Schengen Dream of Europe Without Borders Becoming a Thing of the Past?' *The Guardian* (London, 5 January 2016) https://www.theguardian.com/world/2016/jan/05/is-the-schengen-dream-of-europe-without-borders-becoming-a-thing-of-the-past accessed 28 October 2021.
[306] Michela Ceccorulli, 'Back to Schengen: The Collective Securitisation of the EU Free-Border Area' (2019) 42(2) *West European Politics* 302 https://doi.org/10.1080/01402382.2018.1510196.
[307] Bridget Carr, 'Refugees without Borders: Legal Implications of the Refugee Crisis in the Schengen Zone' (2016) 38 *Michigan Journal of International Law* 137.
[308] Daniel Thym, 'The "Refugee Crisis" as a Challenge of Legal Design and Institutional Legitimacy' (2016) 53(6) *Common Market Law Review* 1545.
[309] European Commission, 'Refugee Crisis: European Commission Takes Decisive Action' (2015).
[310] Eiko Thielemann, 'Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU' (2018) 56(1) *Journal of Common Market Studies* 63.

unanimous vote.[311] Puetter's assessment supports the contribution of this research that this action of the European Union and reactions towards the relocation decisions undermined European deliberation and consensus-based decision-making. [312] After adopting this decision, European Council former president Donald Tusk expressed the decision as 'political coercion'.[313] He also signalled the consideration of cooperation with third countries like Turkey to securitise their external borders: "*All member states will be ready to show more solidarity if they feel that Europe as a whole is ready to protect external borders more effectively. I mean that they are able to reduce this number of refugees, because that is the biggest fear today in Europe*".[314] Puetter raised questions on the guiding role of consensus and deliberation in the new activity areas of the EU from the perspective of new intergovernmentalism. He argues that this kind of non-consensual adoption quickly undermines the quality of the consensus decision-making system within the European Council. Therefore, member states and governments may pay no attention to solidarity to protect European integration. At the same time, progress in reforming the existing asylum system may be impossible at the EU level by consensus.[315]

Regarding the presidency of the European Council, Sara Hagemann made an important contribution to legal scholar in the context of crisis management. Examining the experience gained during Donald Tusk's term as President of the European Council between 2014 to 2019 which is the period of refugee crisis, she claims that Tusk made a significant political contribution to the EU by laying the groundwork for a liberal, policy movement.[316] The role of president of the European Council is more prominent during the crisis in order to accomplish governments' agreements. Sara Hagemann pointed out that the European Council and its President have mostly been tasked with crisis management

[311] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece [2015] OJ L239/146.
[312] Uwe Puetter, 'The Centrality of Consensus and Deliberation in Contemporary EU Politics and the New Intergovernmentalism' (2016) 38(5) *Journal of European Integration* 601 https://doi.org/10.1080/07036337.2016.1179293.
[313] Ian Traynor, 'Detain Refugees Arriving in Europe for 18 Months, Says Tusk' *The Guardian* (London, 2 December 2015) https://www.theguardian.com/world/2015/dec/02/detain-refugees-arriving--europe-18-months-donald-tusk.
[314] Ibid.
[315] Uwe Puetter, 'The Centrality of Consensus and Deliberation in Contemporary EU Politics and the New Intergovernmentalism' (2016) 38(5) *Journal of European Integration* 601 https://doi.org/10.1080/07036337.2016.1179293.
[316] Sara Hagemann, 'Politics and Diplomacy: Lessons from Donald Tusk's Time as President of the European Council' (2020) 31(3) *European Journal of International Law* 1105 https://doi.org/10.1093/ejil/chaa079.

due to the pressing need to respond to a series of interconnected multiple crises like euro crisis and refugee crisis since 2008.[317] She listed three elements to show the President's power to manage the action plan and find consensus in the European Council in light of the observations from Donald Tusk's and Herman Van Rompuy's term: a) divisions of member states over policy issues, b) what extent these issues are essential for the member states, c) norms and actions conducted in the European Council regarding these issues. As her research supports this research finding from the perspective of presidency role, a broader perspective in this research has been adopted to show the increasing role of the European Council during the crisis. Although she contends that Donald Tusk is best described as a vital and powerful 'activist' voice for democracy at a critical period in European and international politics, I argue the president's role in the refugee crisis differs from previous crises. During the refugee crisis, the president of the European Council took the leadership role of member states rather than the EU. Rather than seeking an EU-wide solution to the crisis, the president was employed by member states to achieve a solution outside the EU with third countries.

On the other side, regarding the relocation decision, Article 78(3) TFEU was applied for the first time during the 2015 migration crisis, when Italy and Greece, which are located on the EU's external borders, were confronted with enormous arrivals of asylum-seekers escaping persecution or substantial damage.[318] In the meeting of the European Council in April 2015, while some member states, like Italy and Germany, agreed on the binding quota system, others were strongly opposed to the burden-sharing proposal. Furthermore, Germany's chancellor, Angela Merkel, supported this proposal which aimed at the compulsory distribution of refugees in line with the dimensions covering the unemployment situation, size of the country, and wealth of nations.[319] After a meeting on 23rd September 2015, the European Council agreed on the priorities and objectives and invited the EU institutions to create strong cooperation to deal with the refugee crisis and border securitisation.[320]

[317] Ibid.
[318] Consolidated Version of the Treaty on the Functioning of the European Union, art 78 [2012] OJ C326/47.
[319] Arkadiusz Nyzio, 'The Second Revival?: The Visegrád Group and the European Migrant Crisis in 2015–2017' (2017) (50/5) *Politeja* 47 https://www.jstor.org/stable/26564285.
[320] European Council, 'Special Meeting of the European Council, 23 April 2015 – Statement' (2015).

Afterwards, the Council introduced two temporary measures for the benefit of Greece and Italy.[321] Until to the approval of the relocation decisions in support of Greece and Italy in 2015, the Dublin system lacked any constructive solidarity mechanism for responsibility sharing. The first measure was adopted on 14 September 2015 and the second on 22 September 2015. The Council adopted Decision 2015/1523 with a qualified majority vote, with the opposition of Czech Republic, the Slovak Republic, Hungary, and Romania, and abstention of Finland.

These decisions determined that the Syrians who entered the EU and were registered would be resettled in the EU member states under the settled quotas. In accordance with the determined quotas, the burden on the shoulders of Italy and Greece would be shared by other member states. These two decisions were based on Article 78 of TFEU, which gives authority to the EU to take the measures for the benefit of overwhelmed states. The decisions also laid down the principle of solidarity and fair burden sharing (article 80 of TFEU). Article 78(3) TFEU allows the Council to take temporary measures in the interest of the Member State(s) in question if one or more Member States face an emergency situation involving a sudden influx of nationals from third countries. The Slovak Republic and Hungary put on trial the decision on its invalidity. Poland backed them up in court, and the Commission was joined by Belgium, Germany, Greece, France, Italy, Luxembourg, and Sweden to defend the Council.

While these adoptions were welcomed by the member states, which are the entrance gates of the EU, such as Italy and Greece, Hungary, Poland, Czechia, and Slovakia, opposed the decisions by stating that they would not accept even a single refugee. Even though the majority of Member States were willing to accept asylum seekers under the two emergency relocation schemes, Slovakia and Hungary refused and challenged Council Decision 2015/1601, which had been adopted by qualified majority. When the issue was brought before the European Union Court of Justice by Hungary and Slovakia, the ECJ stated that the member states must accept the refugees falling to their share; otherwise, they could be prosecuted for violating EU law. In a September 2017 judgment (C-643/15

[321] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L248/80. Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece [2015] OJ L239/146.

and C-647/15), the ECJ rejected the case, focusing on the legal basis for the decision's adoption while also procedural and substantive problems.[322] The Slovak Republic offered six legal arguments in favour of their case, while Hungary offered ten. ECJ decided that the cases should be joined and that the arguments should be divided into three groups based on their legal basis. The first was that the contested decision did not have an appropriate legal basis in accordance with Article 78(3) TFEU. The second was that the decision was adopted with procedural issues that resulted in a violation of essential procedural rules and third was the substantive arguments.[323] Regarding the allegation of contested decision under Article 78(3), provisional measures taken under Article 78(3) TFEU must be regarded as 'non-legislative acts' according to the ECJ, because they are not adopted at the conclusion of a legislative procedure (special or ordinary). 'Provisional measures' mentioned in article 78(3) must be appropriately wide - ranging to allow EU institutions to quickly and efficiently respond to an emergency situation fuelled by a sudden inflow of nationals from third countries. Although provisional measures implemented under Article 78(3) TFEU may, in principle, diverge from legislative acts, both the substantive and temporal nature of such changes must be limited.

The Court also pointed out the relocation mechanism as part of the Dublin system with confirming its applicability as follows: '*That mechanism is an integral part of that acquis and the latter therefore remains, in general terms, applicable*.'.[324] Furthermore, the Court emphasized the requirement of a fruitful remedy system under national law in light of Article 47 of the EU Charter of Fundamental Rights in opposition to every decision made by the national government during the relocation process . Ultimately and significantly, the ECJ construed the 'right to remain' based on the 1951 Refugee Convention as a particular manifestation of the principle of non-refoulement, therefore not prohibiting an applicant's migration from one Member State to another. The Court stated strongly again that the relocation mechanism exemplifies the principle of solidarity under Article 80 TFEU among the member states. As a result, the EU's responsibility of solidarity in this area of law can be operable if the actions are adopted in accordance with a Treaty-based

[322] Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the European Union* EU:C:2017:631, Judgment of 6 September 2017.
[323] Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the European Union* EU:C:2017:631, paras 206–345.
[324] Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the European Union* EU:C:2017:631, para 323.

legislative procedure. However, it is obvious that political and legal dimensions were defined together in the ruling. The principle of solidarity is clearly referenced on the list of EU values in Article 2 of TEU. Also, in the preamble of the Charter of Fundamental Rights of the EU, this principle expresses as 'indivisible, universal values'.[325] In other words, the ECJ avoided the view that the solidarity was voluntary based by emphasizing the compulsory nature of solidarity among member states. The ECJ's approach to solidarity reveals important distinctions across different policy areas. For instance, in the Pringle case[326], the Court clarified that Article 122(1) TFEU does not establish a binding obligation for Member States to share financial liabilities related to the European Monetary Union (EMU); rather, financial solidarity in this context is conditional, discretionary, and dependent on political consensus. By contrast, solidarity obligations in asylum and migration matters—as articulated under Article 80 TFEU—carry stronger normative weight and imply more stringent legal obligations, reflecting the explicit treaty-based commitment to fair responsibility-sharing among Member States in managing asylum and migration flows. Hence, the Court's different treatment of solidarity principles across these policy domains demonstrates both the conditional nature of financial solidarity and the comparatively stronger, legally grounded expectations of solidarity in migration policy. Consequently, the self-contradiction of the court in the context of description of solidarity prove that the enforcement of solidarity relies on the subject matter. Some legal scholars support this finding with the analyses the Court's innovative approach as politically sensitive and with this respect, they claim that the Court aimed at combating a position taken by some Member States in favor of the free adoption of solidarity that is based on voluntary pledges.[327]

On the other hand, the Court did not go beyond the solidarity issues and did not put any useful contribution to the EU asylum law and refugees' human rights. It was clear from the ruling that the subjects of the contested decision who are the refugees were ignored by the Court. Except referring to the non-refoulement, the Court paid no attention to the normative considerations and the refugees' fundamental rights. Henry Labayle held similar views expressing this approach as 'a regrettable input into the field of refugee law'.

[325] Charter of Fundamental Rights of the European Union [2012] OJ C326/391.
[326] Case C-370/12 *Thomas Pringle v Government of Ireland and Others* EU:C:2012:756; ILEC 053 (CJEU 2012).
[327] Andrea Circolo, Ondrej Hamulák and Peter Lysina, 'The Principle of Solidarity Between Voluntary Commitment and Legal Constraint: Comments on the Judgment of the Court of Justice of the European Union in Joined Cases C-643/15 and C-647/15' (2018) 9 *Czech Yearbook of International Law (CYIL)* 155.

He also states that the ECJ's judgement on the Council's decision to utilize a binding mechanism based on Article 78(3) TFEU supports the binding nature of solidarity in EU migration policy.[328] In terms of failed solidarity within the Union, Nathan de Arriba-Sellier supports these research findings by defining the Court decision and member states approach as 'national egoism'.[329] He clarifies that the failure to apply the relocation mechanism and incapability to readjust the Dublin regulation is evidence that the member states and the Court forgot the main principle of EU migration governance, solidarity.[330] The unwillingness of member states and the low numbers of relocations on the ground in spite of the ECJ decision on enforcing the solidarity confirmed this study on that the European Union is unable to find a common solution at the Union level in such highly politicised matters.

The European Commission began infringement procedures in an attempt to resolve the disagreement without resorting to the Court after a long series of relocation assessments and patiently encouraging these member states to comply with their relocation responsibilities. After Hungary, Poland and Czechia did not implement the decision, the issue was brought before the ECJ by the Commission on the grounds that they had violated EU law.[331] More specifically, these three states failed to fulfil their obligations by pledging that a specified number of refugees from Greece and Italy could be transferred, and then failing to finish the relocation process by transferring refugees who had applied for international protection. The respondent States contested the infringement procedures' admissibility as well as their substance before the Court. The Polish government intervened in this case, claiming that the enforcement of obligatory relocation quotas under Council Decision 2015/1601 (Relocation Decision) would breach Article 72 TFEU. It was claimed that the relocation mechanism would jeopardize "the responsibilities

[328] Henry Labayle, 'Solidarity Is Not a Value: Provisional Relocation of Asylum-Seekers Confirmed by the Court of Justice (6 September 2017, Joined Cases C-643/15 and C-647/15 Slovakia and Hungary v Council)' (EU Immigration and Asylum Law and Policy, 2017) https://eumigrationlawblog.eu/solidarity-is-not-a-value-provisional-relocation-of-asylum-seekers-confirmed-by-the-court-of-justice-6-september-2017-joined-cases-c-64315-and-c-64715-slovakia-and-hungary-v-council/ accessed 25 January 2022.
Daniela Obradovic, 'Cases C-643 and C-647/15: Enforcing Solidarity in EU Migration Policy' (European Law Blog, 2 October 2017) https://europeanlawblog.eu/2017/10/02/cases-c-643-and-c-64715-enforcing-solidarity-in-eu-migration-policy/ accessed 25 January 2022.
[329] Nathan de Arriba-Sellier, 'Welcome Refugees, Adieu Solidarité' (Leiden Law Blog, 2017) https://www.leidenlawblog.nl/articles/welcome-refugees-adieu-solidarite accessed 28 January 2022.
[330] Ibid.
[331] Joined Cases C-715/17, C-718/17 and C-719/17 *European Commission v Poland, Hungary and Czech Republic* EU:C:2020:257.

incumbent upon Member States with regard to the administration of law and order and the safeguarding of internal security, as stated in Article 72 of TFEU. In accordance with the interpretation of Article 72 TFEU, Member States could opt out of EU law (in this case, the 2015 relocation decisions) whenever the existence of a prospective and serious threat to law, order, and security is proven. However, the Court refused to accept Article 72 TFEU as a provision that allows Member States complete discretion in applying or disapplying EU legislation, depending on their assessments of potential threats and risks to national order and security in 2020. Therefore, the Treaty does not carry '*an inherent general exception excluding all measures taken for reasons of law and order or public security*' in the EU law.[332] However, while it is undeniable that the aforementioned provision affirms the right of states and need to preserve their own internal security, this does not imply that the states have unrestricted authority to do so. Court noted that 'the scope of the requirements relating to the maintenance of law and order or national security cannot therefore be determined unilaterally by each Member State, without any control by the institutions of the European Union'. [333] In terms of the judgement on relocation mechanism, the Court recognised that Member States retain broad discretion in determining whether an asylum claimant poses a threat to national security or public order. In addition, the Court emphasized the principle of individual assessment, which states that measures relating to the protection of internal order and security cannot be used in a generalized and arbitrary manner without being adequately anchored in the unique situation. As a result, three Visegrad countries have not consistently documented how many asylum seekers should be moved and have assumed that all of them pose a national security threat. Finally, the Court rejected a generalized and inherent presumption that an application for international protection poses a threat to national security or public order. As a counterbalance, the Court emphasizes the importance of investigating every individual case, which must be supported by 'consistent, objective and specific evidence'.[334] Jonas Borneman connects the Court's opposed approach against

[332] Joined Cases C-715/17, C-718/17 and C-719/17 *Commission v Poland, Hungary and Czech Republic* EU:C:2020:257, para 143.
[333] Joined Cases C-715/17, C-718/17 and C-719/17 *Commission v Poland, Hungary and Czech Republic* EU:C:2020:257, para 146.
[334] Joined Cases C-715/17, C-718/17 and C-719/17 *Commission v Poland, Hungary and Czech Republic* EU:C:2020:257, para 159.

defendant member states to the 'administrative nature of the relocation mechanism'.[335] However, from my point of view, it is clear that the ECJ once again avoided confronting the content of the highly politicized debate by shifting its attention to the administrative tasks that come along with relocation.

While the immigration crisis caused the questioning of the EU's basic principles of solidarity, the rule of law, and the protection of human rights, it also brought problems such as unemployment and xenophobia to the surface. On the other hand, it also revealed the structural weakness of the Schengen system. As a matter of fact, there is still no common asylum policy that works well in the face of the extraordinary refugee influx.

The front-line states, especially Balkan countries, combatted the influx by building fences, suspending Schengen, and implementing more border controls. These measures, which challenged EU values, seriously destabilised the established asylum system. Nonetheless, these different approaches showed that the EU asylum system is not capable of governing the influx of refugees. The following steps taken by the European Council was supporting the member states' preferences.[336]

According to article 80 of TFEU, '*The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States*.'[337] In this framework, achieving a working common asylum system is the top goal of the Union and solidarity and fair burden sharing is the way to achieve this goal. Solidarity is a mandatory rule under EU law and it has been explicitly confirmed by the Court in the aforementioned cases about the relocation mechanism. Solidarity and fair burden sharing, as provided under Article 80 of the TFEU, should be fulfilled to the greatest extent that is practically and legally conceivable, not depending on the member states' interests.

The ongoing migrant crisis has pushed the European Union and member states to implement a series of measures, some of which were unplanned while others were

[335] Jonas Borneman, 'Coming to Terms with Relocation: The Infringement Case Against Poland, Hungary and the Czech Republic' (EU Migration Law Blog, 2020) https://eumigrationlawblog.eu/coming-to-terms-with-relocation-the-infringement-case-against-poland-hungary-and-the-czech-republic/ accessed 1 February 2020.

[336] Claudia Morsut and Bjørn Ivar Kruke, 'Crisis Governance of the Refugee and Migrant Influx into Europe in 2015: A Tale of Disintegration' (2018) 40(2) *Journal of European Integration* 145 https://doi.org/10.1080/07036337.2017.1404055.

[337] Consolidated Version of the Treaty on the Functioning of the European Union, art 80 [2012] OJ C326/47.

ineffective.[338] During the previous decade, the EU has witnessed an unprecedented escalation in migrant population, which has shown itself through a variety of routes that terminate in Mediterranean Sea countries such as Turkey and Libya as Europe gates. Having presented the new intergovernmentalism framework and conceptualised how the member states responded the refugee crisis and to what extent solidarity was considered by member states, it is now possible to analyse why the EU pursues cooperation with Turkey especially regarding the role Turkey has played in the securitisation of the EU border in recent years.

Alongside the member states approach to keep the castle closed, the European Council also started to work with Turkey on the migration flow from Turkey to the EU.[339] In light of the situations of frontier countries and reluctant member states to implement the mandatory relocation scheme, the EU opted to implement more extreme measures building on the existing EU-Turkey cooperation framework. Afterwards, in mid-October 2015, the European Council cooperated with Turkey under a 'Joint Action Plan' derived from the responsibility sharing mechanism.[340] In the following month, the EU leaders and Turkey's prime minister Ahmet Davutoglu met in Brussels to discuss the details of cooperation and to boost the political and financial engagement with the refugee crisis.[341] In other words, the solidarity crisis within the EU proved that finding a common solution at the EU level seems impossible in the immediate future. This led to a search for a solution outside the EU borders. Externalisation of migration governance is the direct consequence of internal disagreement. In this case, the EU concluded that the best way to deal with the migration crisis by outsourcing to a third country Turkey satisfaction problem of the member states and asking it to keep refugees in Turkey alongside the control of migration routes to and from Europe's Eastern Mediterranean region. The practical and legal consequences of this cooperation for refugees are explored in Chapter 5, with a detailed analysis of human rights concerns raised by the implementation of the Statement.

[338] Bridget Carr, 'Refugees without Borders: Legal Implications of the Refugee Crisis in the Schengen Zone' (2016) 38 *Michigan Journal of International Law* 137.
[339] Claudia Morsut and Bjørn Ivar Kruke, 'Crisis Governance of the Refugee and Migrant Influx into Europe in 2015: A Tale of Disintegration' (2018) 40(2) *Journal of European Integration* 145 https://doi.org/10.1080/07036337.2017.1404055.
[340] European Council, 'European Council Conclusions, 15 October 2015'.
[341] European Council, 'Meeting of the EU Heads of State or Government with Turkey, 29 November 2015'.

Ultimately, the EU-Turkey Statement was agreed on 18th March 2016 by the European Council and Turkey in order to prevent the irregular migration flow from Turkey to Greece. As explained in chapter 1 section 6, in exchange, the EU agreed to pay 6 billion euros and to remove the necessity for a visa for entry to the EU from Turkish citizens.[342] Questions have been raised about the compatibility of the EU-Turkey Statement with human rights. Other important issues relate to how the European Council concluded this deal with Turkey and where it derived its power to do so. While moving on to the specific topic of EU-Turkey Statement, the following section establishes the framework by discussing the role of European Council to conclude the statement, and interactions between the EU and member states in regard to asylum, migration, and border issues.

5- DISCUSSION ON THE EUROPEAN COUNCIL ROLE THROUGH THE EU-TURKEY STATEMENT

The EU's international standing is threatened by several methodological weaknesses with reaching and implementing the EU-Turkey Statement. According to the analysis of the European Council's central role in new intergovernmentalism, it is clear that a new stage of European integration has now been reached in the securitisation of migration in the EU by positioning the migration and asylum seeker movements as a prior security issue. It is possible to see the discourse and representation policies surrounding this new phase in the securitisation of migration within the EU and the methods used to implement this agreement.[343] The fact that the EU-Turkey Statement was concluded by using informal way via European Council points to the problem of disabling and stopping an important solidarity mechanism of the EU. The conclusion of the Statement through informal consultations is the most controversial dimension that damages the EU legitimacy. The EU's foreign policy practices away from the parliamentary decision-making processes undermine the EU's normativity. Then, member states take the lead without any national and supranational democratic control mechanism. As noted above by the literature review, member states failed to create a common asylum policy at the EU level. Instead, member states followed their policy to keep the refugees outside their borders. On the other side, informal meetings were initiated by European Council and Turkey through the

[342] European Council, 'EU–Turkey Statement, 18 March 2016'.
[343] N Bačić Selanec, 'A Critique of EU Refugee Crisis Management: On Law, Policy and Decentralisation' (2015) 11 *Croatian Yearbook of European Law and Policy*.

member states' preferences. Here, the choice of unofficial and informal ways reminds us of the EU's reactions to the Euro crisis. Through the EU-Turkey Statement, the EU used the intergovernmental way to benefit from the non-binding law over democratic legitimacy and the gradual solution that takes refuge behind claims of urgency and emergency. One of Bickerton's hypotheses in new intergovernmentalism, 'problems in domestic preference formation have become standalone inputs into the European integration process', obviously explains the prioritisation of national interests within the EU policy.[344] I noted that Member States' actions eroded established institutional control mechanisms during the euro crisis. Intergovernmental agreements, including bailout packages and emergency measures aimed at swiftly containing the economic crisis within the Eurozone, were implemented without adequate parliamentary oversight and transparency. Such actions effectively circumvented established EU procedural norms and democratic accountability principles.

Seminal contributions have been made by some authors to explore the statement place in the EU. For example, Schimmelfennig explains the different integration consequences of crises as 'variation in the structure of intergovernmental bargaining'.[345] The fiasco of decentralised institutions during a crisis is paralleled with the requirement to protect the EU's integrational outcomes.[346] The interests and preferences resulting from internal conflict have determined the response to the crises. The EU-Turkey statement results from lack of consensus among member states during the refugee crisis, which made externalizing the crisis easier than resolving it internally. Critical commentaries have diverged widely on the EU's approach to negotiating the deal in recent years. Some scholars focused on the authority relations between the EU institutions. In particular, the new intergovernmentalist perspective is at the heart of the explanation of the role of the European Council in determining the increasing power and authority of member states. Specifically, the new intergovernmentalism explains the conclusion of the EU-Turkey statement through the European Council. This has damaged supranational institutions since the member states' role in resolving the Union's issues has been enhanced by the

[344] Christopher J Bickerton, Dermot Hodson and Uwe Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).
[345] Frank Schimmelfennig, 'European Integration (Theory) in Times of Crisis: Why the Euro Crisis Led to More Integration but the Migrant Crisis Did Not' (2018) 25(7) *Journal of European Public Policy* 969 https://doi.org/10.1080/13501763.2017.1421252.
[346] Ibid.

power of intergovernmentalism.[347] Member states' authority in determining the agenda relating to policymaking has increased in line with their interests through their endeavours within the European Council. This has also caused a risky conflict between the European Commission, the European Parliament, and the European Council's priorities on the creation of a common policy at the EU level.

Gurkan and Roman support this research finding with the analyse of the EU institutions in accordance with the divisions of policy. As opposed to the European Council, the European Parliament took a different approach to EU collaboration with external partners on refugee crisis management. Notwithstanding these divisions in the EU, the key political groups in the European Parliament called for a norms-based approach to migrants that put human rights and the right to asylum at its core. The EU–Turkey agreement is more an expression of civilian power resting on diplomatic and economic cooperation to achieve security interests rather than a normative one. The EU's principles and treaty-based legal framework gives it a normative character. In contrast, civilian power prioritised economic power and securitisation in dealing with the crises. While the European Commission followed the normative power to respond to the refugee crisis, the European Council relied on civilian power. In dealing with Turkey, the Commission initially held on to the EU's normative structure. Then, the securitisation of the EU borders and achieving the interests of member states weighed heavier than the "normative identity" of the EU.[348] Consequently, the Statement resulted from economic and diplomatic cooperation to bring the member states' interests and securitisation to the same pool.

As noted above in section 3a, the domination of the European Council aimed to resolve the dilemmas by proposing relocation quotas in September 2015. In this attempt, the participation of the European Parliament was limited to exercise the consultation procedure role based on Article 289 of TFEU. Some scholars, like Lehner argued that the Statement is only European Council's work, that the European Commission did not adopt

[347] Sergio Fabbrini and Uwe Puetter, 'Integration without Supranationalisation: Studying the Lead Roles of the European Council and the Council in Post-Lisbon EU Politics' (2016) 38(5) *Journal of European Integration* 481 https://doi.org/10.1080/07036337.2016.1178254.

[348] Seda Gürkan and Ramona Roman, 'The EU–Turkey Deal in the 2015 "Refugee Crisis": When Intergovernmentalism Cast a Shadow on the EU's Normative Power' (2021) 56 *Acta Politica* 276 https://doi.org/10.1057/s41269-020-00184-2 accessed 20 October 2021.

a negotiating role, and that the consent of the European Parliament was not sought before a deal was reached.[349]

On the other hand, Smeets and Beach outline the informal way leading to the EU-Turkey deal by EU member states. They identify five crucial elements of this governance method of EU institutions to reach a secured deal: "linking, bridging, shielding, laying out the tracks, and finding creative fixes".[350] They also seek answers as to who has done more to conclude a 'half-baked solution' even where member states managed this deal in accordance with their political interests.[351] The European Commission initially offered itself as 'Champions of the Community method' in the early stage of the crisis. Hence, they saw a rise of the European Council as a threat.[352] When the authors explain the playing actors behind the EU-Turkey Statement, they analyse it in three stages. In the first stage, they explore which institution was in the driver's seat to conclude a deal between September 2015 and March 2016. Donald Tusk, a former president of the European Council, travelled to Turkey to discuss the refugee problem. The member states played no role on the working group stage, which prevented member states' involvement in the discussion of the text.[353] Instead, key officials from Germany, Jan Hecker and from the Netherlands, Jan Willem Beaujean, handled the drafting process for the member states. So, these 'inter-institutional networks' emphasised the 'linkages and bridges', which covers the relationship between different levels of debate and supranational and intergovernmental pillars.[354]

In the second stage, their research focuses on the activities during the period of six months prior to reaching the deal. As emphasised in their study, the process was run by the Commission's lead. When we look at the nature of the time between summits on 23rd September and 15th October, the roadmap of the process to deal with the refugee crisis

[349] Roman Lehner, 'The EU–Turkey "Deal": Legal Challenges and Pitfalls' (2019) 57(2) *International Migration*.
[350] Sandrino Smeets and Derek Beach, 'When Success Is an Orphan: Informal Institutional Governance and the EU–Turkey Deal' (2020) 43(1) *West European Politics* 129 https://doi.org/10.1080/01402382.2019.1608495.
[351] Ibid.
[352] Ibid.
[353] Sara Stefanini, 'Donald Tusk on EU–Turkey Migration Deal: "We're Not There Yet"' *Politico* (Brussels, 2016) https://www.politico.eu/article/donald-tusk-nicosia-cyprus-anastasiades-refugees-mustafa-akinci-migration-turkey-accession/ accessed 1 December 2021.
[354] Sandrino Smeets and Derek Beach, 'When Success Is an Orphan: Informal Institutional Governance and the EU–Turkey Deal' (2020) 43(1) *West European Politics* 129 https://doi.org/10.1080/01402382.2019.1608495.

was already determined behind the stages. The plan was definitely turning their face to border securitisation and focusing on external relations. President Tusk managed to pacify the member states by emphasising the non-binding dimension of the EU-Turkey deal in terms of relocation and resettlement. The third and last point of Smeets' and Beach's research investigates informal governance at the EU level. They analysed the main objectives agreed under the Statement: funding, visa liberalisation, re-energising the accession process, and resettlement mechanism. They found the EU-Turkey Statement unique since it results from informal governance. Therefore, they raised the criticisms that informal governance at the institutional level that could evolve from temporary to permanent in dealing with crises and EU reforms. As a result, they define the Statement as 'an orphan', with a non-binding, informal background. This is the main factor in the Statement's achievement, since the EU institutions were reluctant to negotiate and conclude a deal with Turkey.[355]

In dealing with the refugee crisis, the European Union failed to follow the values of its supranational structure. The EU-Turkey statement is the crisis-based reform led by the European Council. This research demonstrates the role of the European Council in dealing with the crisis under new intergovernmentalism. One may clearly see that the deal indicates the security concerns of member states and the rebirth of their prominence within the Union. The Statement provides us with new evidence that the expectation from European integration that broadens the supranational policy space in the EU, including immigration and asylum policies, have not come true. The functioning of the EU to bring the member states together on a common ground to formulate supranational policies requires a consensus between member states. Therefore, domestic interests and preferences should not take precedence when making decisions at the EU level. Due to the compromises made in pursuit of reconciliation, the EU's common policy approach can sometimes lead the negative approaches or practices on the ground.

Turhan and Wessels define the European Council as a 'key driver of EU-Turkey relations'. [356] They analyse the European Council from the perspective of Turkey's accession process. There were two main reasons why EU leaders lost their interest in

[355] Ibid.

[356] Ebru Turhan and Wolfgang Wessels, 'The European Council as a Key Driver of EU–Turkey Relations: Central Functions, Internal Dynamics, and Evolving Preferences' in Aydın-Düzgit S, Tekin F and Wessels W (eds), *EU–Turkey Relations* (Palgrave Macmillan 2021) 185.

promoting Turkey's EU accession until they were threatened by a huge refugee influx in 2015 as they listed in their research. The first one was the decline in the attraction of EU principles in Turkey which means 'de-Europeanization'.[357] The second was an increase in fear about migration and public peace in the European community, which was reflected by far-right Eurosceptic parties. Starting from this point of view, Turhan and Wessels state that the European Council had to turn back to Turkey in the face of an extraordinary flow of Syrian refugees to Europe in late 2015 and a failure to identify an EU-wide solution. Once the EU-Turkey statement was issued in March 2016, the European Council's support for Turkey's accession process immediately diminished. They define the EU's policy towards Turkey as having been shaped by the European Council.[358] Also, their findings support this research claim from perspective of Turkey's accession process as the EU-Turkey statement is a significant example how the EU legitimized its action for specific purpose by the hand of European Council.

Although studies have been conducted by many authors, the role of the European is still insufficiently explored in law scholar. Given the legal and political literature on the European Council role and new intergovernmentalism, I argue that the member states employed the European Council to reach a deal with Turkey and to protect their national interests. The rising power of the European Council can be seen in the EU-Turkey Statement through the manner in which it deployed informal governance. In particular, member states directed these informal procedures in accordance with their interests. Regarding the aforementioned cases and member states response to refugee crisis, so far the EU has been unable to create any workable solution to manage the crisis so far. Instead, the European Council has taken the leading role in seeking a solution outside the Union. Finally, the European Council sat on the table with Turkey for a disappointing and unethical deal. The statement which is the result of member states' separation highlighted the power of the European Council within the EU institutions. However, the refugee crisis in the EU cannot be resolved by bargaining with a third country's government alone, nor should it be. The statement is no more than a stopgap solution to combat the crisis. Efforts to improve Turkey's ability to cope with the refugees are important, but they should not

[357] Başak Alpan, 'Europeanization and EU–Turkey Relations: Three Domains, Four Periods' in Senem Aydın-Düzgit, Funda Tekin and Wolfgang Wessels (eds), *EU–Turkey Relations* (Palgrave Macmillan 2021) 107.
[358] Ebru Turhan and Wolfgang Wessels, 'The European Council as a Key Driver of EU–Turkey Relations: Central Functions, Internal Dynamics, and Evolving Preferences' in Aydın-Düzgit S, Tekin F and Wessels W (eds), *EU–Turkey Relations* (Palgrave Macmillan 2021) 185.

be viewed as a cheap alternative for EU governments' obligations. Redirecting the problem to Turkish government does not mean the sharing of responsibilities and burden. The European Council's power to deliver informal deals with Turkey explicitly undermines not only the EU values and EU constitutional law but also member states' duties.

With the perspective of EU institutional law, another important scholar was developed by Servent on the rise of the European Council and the decrease of the European Parliament in managing the refugee crisis. As it is explained by the literature on new intergovernmentalism, there has been a rise in the level of fragmentation over European integration, which has led to new intergovernmentalism that bypass supranational frameworks.[359] Therefore, the heads of governments and/or states became key players which affected the European Parliament cooperation in dealing with the refugee crisis.[360] They evaluate the success of European Parliament based on the level of recasting the problem as one of 'market integration' rather than a conflict in member states' sovereignty.[361] The European Council was viewed as the only way to get a best deal on the Dublin regulations. As a consequence, the authority of the European Parliament was transferred to the will of the member states. The Parliament was unable to urge member states to take action due to high level of reluctance. Although the European Parliament was granted with the veto or approval power in legislative procedure under EU law, The European Parliament (EP) was unable to exert any impact on policy outcomes in refugee crisis.[362]

It was clear that the EU's main institutions had different views on the issue. While, securing Schengen's unrestricted regime and maintaining burden sharing for refugees were top priorities for the European Commission [363], the European Parliament had

[359] See Section 2.
[360] Ariadna Ripoll Servent, 'Failing under the "Shadow of Hierarchy": Explaining the Role of the European Parliament in the EU's "Asylum Crisis"' (2019) 41(3) *Journal of European Integration* 293 https://doi.org/10.1080/07036337.2019.1599368.
[361] Edoardo Bressanelli and Nicola Chelotti, 'The European Parliament and Economic Governance: Explaining a Case of Limited Influence' (2018) 24(1) *The Journal of Legislative Studies* 72 https://doi.org/10.1080/13572334.2018.1444627.
[362] KA Armstrong, '(BR)Exit from the European Union—Control, Autonomy, and the Evolution of EU Law' in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (3rd edn, Oxford University Press 2021) 399.
[363] European Commission, 'Delivering on Migration and Border Management: Commission Reports on Progress Made under the European Agenda on Migration' (Press Release IP/16/3183, 28 September 2016) http://europa.eu/rapid/press-release_IP-16-3183_en.htm accessed 3 April 2022.

stressed the need of treating refugees in accordance with human rights.[364] Asylum and migration policy disagreements can be overlooked as part of the EU's usual plurality, but these viewpoints are also taken by EU institutions. Despite the European Parliament's emphasis on common European solutions and the strong internal support, they created to give themselves human rights credibility, this was not enough to successfully manage the European refugee crisis. Inability of the EU institutions to bring solutions, European Council took the leading role. Therefore, I claim that the EU-Turkey Statement proves how the supranational institutions of the EU left the room when the European Council and Turkey were conducting informal meetings. The EU-Turkey statement was made after the European Council came out in support of it to show how important member states and their preferences are in making decisions. The refugee crisis caused not only a group of member states who are in Germany's direction to strike a deal with Turkey on refugees, but also the Visegrad groups, which opposed the relocation scheme within the EU.

This chapter has outlined how a review of the EU-Turkey Statement demonstrates that an informal, non-binding agreement to stop the refugee influx resulted from minimising political discussions at the EU level, removing the political responsibility of heads of member states or governments, and allowing the negotiations to be carried out within the framework of informal consultations. The decisions taken in Brussels, away from the established parliamentary control mechanisms are controversial in terms of international law and EU law, due to the lack of real cosmopolitan solidarity among the European member states.

Finally, in concluding the EU-Turkey Statement, one can see the rise of member states' authority in determining policy-making according to their interests, via the European Council. As a result, the EU–Turkey agreement was more an expression of the power of member states in the European Council to achieve security interests rather than EU values. The Statement is the work solely of the European Council, and the European Commission was unable to adapt the negotiator role under EU law. The consent of the European Parliament was ignored to reach a deal with a third country. I contend that the EU-Turkey Statement is a work of power hierarchy. EU policymaking in these areas is now

[364] European Parliament, 'European Parliament Resolution of 10 September 2015 on Migration and Refugees in Europe' (2015/2833(RSP)) http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2015-0837+0+DOC+XML+V0//EN accessed 3 April 2022.

dominated by the member states, rather than the EU, which means that national interests are the driving force. It is also an aspect of the disintegration of member states in the refugee crisis. In addition, using the informal way to reach an agreement on this kind of sensitive subject raises the question about the rule of law in the EU alongside the future of Europe. The EU, which could not reach a consensus when it came to creating a common migration policy, easily confirmed the Statement to keep refugees away from their lands.

6- CONCLUSION: NEW INTERGOVERNMENTAL PROCESS FROM THE INTEGRATION TO DISINTEGRATION

Before presenting the demonstrations built in this chapter, I would like to start with the words of Puetter as follows: `*wherever the EU exercises political authority in new areas of activity, it prefers to do so by coordinating national policies and the use of national resources within collective bodies for joint member state decision making: the European Council and the Council*`.[365] The EU-Turkey Statement's main premises and departure points have been addressed in this chapter in light of European Council's activity. This chapter has analysed the role of European Council in conclusion of the EU-Turkey statement through the perspective of new intergovernmentalism. Its purpose has been to analyse the development of the European Council within the European Union and its evolution to a powerful organ. Since its foundation, the EU has developed common policies and holistic approaches in several areas, from agriculture to trade. However, policies for immigration and asylum have been heavily dependent on the individual member states due to concerns about the transfer of core sovereign powers. It is widely expressed nowadays (as indicated by the literature referenced in section 2 and 3) that the migration and asylum policies pursued by the EU limit cosmopolitan solidarity with those seeking asylum from civil war, natural disasters, or economic hardships. This tendency leads to a race to the bottom among member states. The reason behind the cooperation of intergovernmental and supranational institutions in the statement has been the advancement of their position within the domestic policy.

As I explained in section 1, there is a gradual rise in the European Council's power in the decision-making system from Maastricht to the Lisbon Treaty. Section 2 offers a summary

[365] Uwe Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford University Press 2014) https://doi.org/10.1093/acprof:oso/9780198716242.001.0001.

review of the new intergovernmentalism and European Council. In section 3, I analysed the member states' and European Council's cooperation in their approach to dealing with the refugee crisis, and the manner in which the new intergovernmentalism was applied to migration governance by the member states. In light of the member states' approach to the influx of refugees, as I have argued, the member states preferred an informal way to coping with the refugee crisis, and concluded a deal with Turkey. Through the lenses of new intergovernmentalism, I designed a comprehensive framework to examine the European Council power to govern the refugee crisis in the EU decision-making system. After presenting the new intergovernmentalism framework and conceptualizing how member states responded to the refugee crisis and the extent to which member states considered solidarity in section 3a, I sketched the background to the EU's interest in working with Turkey in the first place to secure its borders.

And finally, in section 4, I have figured that the EU-Turkey Statement highlights the European Council's growing power by implementing informal governance. I believe that existing literature focuses on the most obvious components of EU crisis management rather than the more important ones. My analysis has moved beyond the purely political approach to the Statement and concentrated on the application of new intergovernmentalism to the refugee crisis, together with the evaluation of the rulings from the ECJ on Hungary, Poland, and the Czech Republic. The EU has been unable to come up with a practical solution to the refugee crisis and how the burden might be shared fairly among member states. Instead, an alternative solution has been found outside the union through the European Council, in line with the national demands of member states. As I explored in the entire chapter, in order to establish an agreement with Turkey and preserve their national interests, the member states entrusted the European Council with the task of negotiation.

In summary, this chapter examined whether the European Council had the power to conclude a deal with Turkey in light of new intergovernmentalism. As I have already underlined, here again the EU, which was unable to establish agreement on a common migration policy, readily confirmed the Statement to prohibit refugees' entrance to their lands, circumventing the rule of law and some of the values of the EU via an informal route. To this end, the legality of the statement under EU law entails further analysis in order to provide a detailed assessment of the European Council and other EU institutions.

Therefore, the next chapter analyses the legality of the statement since it was concluded in a problematic way not only politically but also legally.

CHAPTER 4: LEGAL NATURE OF THE EU-TURKEY STATEMENT: INTERNATIONAL AGREEMENT OR PRESS RELEASE?

INTRODUCTION

The EU-Turkey Statement emerged in response to the escalating refugee crisis. Nevertheless, the legal standing and consequences of the EU-Turkey Statement generated substantial discourse among academics, decision-makers, and legal professionals. Critics contend that the Statement lacks a distinct legal structure, which gives rise to concerns regarding its adherence to both EU legislation and international human rights norms. The chapter argues that the authority behind the EU-Turkey Statement regarding the rule of law must have been clarified by the ECJ, as this is crucial to maintaining legal protection within EU law. Despite not being ratified as a treaty and not following EU internal procedures in its drafting, the EU-Turkey Statement should be considered a legally binding agreement and I argue that the decision-making role of the European Parliament was weakened in the conclusion of international agreements.

As such, the current section is organized as follows: The first section provides a summary of the GC orders. This is followed by an examination of these rulings in relation to relevant regulations and literature in the section 2. Subsequently, the third section presents a comparative analysis of the Italy-Libya cooperation and the EU-Turkey statement. The comparison highlights their similarities in pursuing the shared objective of halting irregular migration. Finally, in the section 4, an assessment of the EU-Turkey statement is conducted in light of international law, specifically utilizing the ICJ decisions to demonstrate the statement's position as a binding agreement in customary law.

1- THE GENERAL COURT ORDERS ON THE EU-TURKEY STATEMENT: WHO ARE THE PARTIES?

Since the EU-Turkey deal takes the shape of a ‘statement’, the issue of its legal nature and whether the deal can be considered as an international treaty remains ambiguous. The statement's narrative, legal character and its validity under EU legislation have been the subject of vigorous contention in literature and an important court case. In particular, this

chapter examines the rulings of the GC, as they represent the first and most contentious judgement on the statement's legal nature to date.

Regarding the procedure, EU norms for negotiating and concluding agreement with third parties are laid down in Article 218 of the Treaty on the Functioning of the European Union. This provision refers to collaboration between the EU and a non-EU country. As Bruno explains, the structure of Article 218 TFEU is intricate since it touches on many areas of international agreement preparation and completion, including the subject of the EU's external representation, the effective legal design foundation of an agreement.[366] While some academics have claimed that, the EU-Turkey statement was a legally obligatory international agreement, which should have been finalized in the direction determined in Art. 218 TFEU, others have maintained that it was not an agreement but rather a political arrangement that did not necessitate any particular form for its conclusion.[367] In this section, I summarize the GC orders of 2017 that are the first rulings on the EU-Turkey Statement. After that, I evaluate the decisions in light of legal regulations and literature in law. I argue that the EU-Turkey Statement is a legally binding agreement, despite the fact that it lacks a treaty commencement and that EU internal procedures were not followed in its drafting.

The legality of the EU-Turkey Statement has been a matter of contention. Specifically, a legal challenge arose on whether it is a binding international agreement or just a press release of the European Council. After the Statement was put into effect, two Pakistani and one Afghan refugee challenged the Statement's legality in court in April 2016. Those three refugees travelled to Greece from Turkey and applied for asylum. Their application stated that they were at the risk of persecution if they were sent back to their countries of origin. Because their application might have been rejected, they might potentially have been subjected to the Statement and sent back to Turkey. Therefore, they brought a direct action for annulment against the European Council to the General Court of the European Union, *NF, NG, and NM v European Council*. They alleged that the Statement is a binding international agreement "*attributable to the European Council establishing an*

[366] Paolo Bruno, 'Navigating Art 218 TFEU: Third States' Accession to International Conventions and the Position of the EU in This Respect' (2022) 7 *European Papers – European Forum, Insight* 333 https://doi.org/10.15166/2499-8249/563.

[367] Enzo Cannizzaro, 'Denialism as the Supreme Expression of Realism: A Quick Comment on *NF v European Council*' (European Forum, 15 March 2017) (2017) 2(1) *European Papers* 251 https://doi.org/10.15166/2499-8249/120.

international agreement concluded on 18th March 2016 between the European Union and the Republic of Turkey". They also claimed that this Statement breached the TFEU regarding the rules on the conclusion of international agreements under Art 218 TFEU.[368]

The EU GC ruled in February 2017 on the case of T-192/16, T-193/16 and T-257/16 *NF, NG, and NM v European Council*. Whereas the Council and the European Council sought the GC to rule the cases inadmissible, the Commission requested leave to intervene.[369] The Court requested information from the Institutions, including whether a written deal was reached at the meeting on 18 March 2016, and information on who agreed to the action commitments included in the EU-Turkey statement. In response to this, the European Council stated that *"…no agreement or treaty in the sense of Article 218 TFEU or Article 2(1)(a) of the Vienna Convention on the law of treaties of 23 May 1969 had been concluded between the European Union and the Republic of Turkey. The EU-Turkey statement, as published by means of Press Release No 144/16, was, it submitted, merely 'the fruit of an international dialogue between the Member States and [the Republic of] Turkey and — in the light of its content and of the intention of its authors — [was] not intended to produce legally binding effects nor constitute an agreement or a treaty'*."[370] Evidence submitted by the European Council on summits held in 2015 and 2016 between the heads of state or government of the Member States and the Turkish government shows that it was not the EU but its Members States.

In its (short) ruling, the EU GC declared that the Statement was entirely a political statement. It claimed that the Statement was not an act of the European Union that could be ascribed to the European Council since the composers of the Statement were only heads of states and governments of the EU member states and Turkish leaders. As a result, the Court dismissed the case holding that the Statement could not be assessed since it was not the piece of any EU institutions.[371] Interestingly, the court also determined that "*For the sake of completeness, with regard to the reference in the EU-Turkey statement to the fact that 'the EU and [the Republic of] Turkey agreed on … additional action points', the Court considers that, even supposing that an international agreement*

[368] Orders of the General Court in Cases T-192/16, T-193/16 and T-257/16 *NF, NG and NM v European Council* ECLI:EU:T:2017:128 (GC) http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019en.pdf.
[369] Ibid. para. 23
[370] Ibid. para. 26
[371] Ibid.

could have been informally concluded during the meeting of 18 March 2016, which has been denied by the European Council, the Council and the Commission in the present case, that agreement would have been an agreement concluded by the Heads of State or Government of the Member States of the European Union and the Turkish Prime Minister."[372] The Court orders were later appealed in September 2018. However, ECJ rejected the appeal because the appeal was 'manifestly inadmissible' regarding article 181 of the Rules of Procedure.[373]

2- UNSOLVED RULING: EXAMINATION OF GENERAL COURT ORDERS

Although the issue of authorship is definitely crucial, the case also raises broader concerns concerning the separation of powers between the EU and its Member States, as well as the prospect of the ECJ contradicting a previous judgement on the EU's international power. This chapter argues against that finding by examining EU Law and the case law of the ECJ.

Based on the principles established in Opinion 1/75, the Court has declared that the term "agreements" appearing in article 218 TFEU should be regarded as follows:

"*The formal designation of the agreement envisaged under international law is not of decisive importance in connexion with the admissibility of the request. In its reference to an 'agreement', the second subparagraph of article 228 (1) of the treaty uses the expression in a general sense to indicate any undertaking entered into by entities subject to international law which has binding force, whatever its formal designation*."[374]

The European Union has emerged as a major player in international law and treaty making. Rosas explains the international agreements in the EU law into three categories.[375] The first is those completed by only the EU. The second is the agreements concluded jointly by the EU and one or more of its Member States. And finally, third type is reached solely by any or all of the EU's Member States. The first type of international

[372] Ibid. para. 72
[373] Order of the Court in Joined Cases C-208/17 P to C-210/17 P, ECLI:EU:C:2018:705 http://curia.europa.eu/juris/document/document.jsf?text=&docid=205744&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=406469.
[374] Opinion 1/75, Opinion of the Court of 11 November 1975, ECLI:EU:C:1975:145.
[375] Allan Rosas, 'The Status in EU Law of International Agreements Concluded by EU Member States' (2011) 34(5) *Fordham International Law Journal*.

agreements is based on article 3 of TFEU. Article 3 attributes to 'exclusive competence' of the Union as follows: "*The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.*" When it comes to second group, article 4 of TFEU refers the sharing competency of the Union with the member states if a treaty assigns the Union authority over matters outside of its exclusive competence which is mentioned in Article 3 and 6.[376] In other words, an agreement between the European Union and a third state is considered a mixed agreement if it involves both EU powers and those reserved for individual EU member states.[377] Lastly, agreements reached by EU Member States but not the Union are not part of Union law. In general, they are incorporated into the domestic legislation of the signatory states.[378] Considering the various types of international agreements recognized within EU law, categorizing the EU-Turkey Statement proves challenging due to its informal adoption and procedural irregularities. Although not formally ratified through traditional processes, the Statement involves areas of both EU and Member State competences particularly asylum, migration management, and border control which are typically regulated through 'mixed agreements' requiring consent from both the EU institutions and individual Member States. While the Statement does not strictly satisfy the procedural conditions typically associated with formal mixed agreements, it displays characteristics of mixed competence, with Member States directly involved alongside EU institutions. Thus, it can be argued that the Statement functions similarly to a mixed agreement in practical terms, even though it remains procedurally anomalous. This highlights a broader tension within EU external relations, where informally negotiated arrangements blur the boundaries of established treaty categories. As it was detailed in Chapter 2, European Council concluded the EU-Turkey statement with member states and Turkey. The ECJ investigation on EU-Turkey Statement ignored the background of negotiations. One can clearly see the power of the European Council in conclusion of the deal with Turkey. Accordingly, the crisis-led

[376] Consolidated Version of the Treaty on the Functioning of the European Union, art 4 [2012] OJ C326/47.
[377] Cleo Davies and Hussein Kassim, 'Unfinished Business? The Trade and Cooperation Agreement' (UK in a Changing Europe, Working Paper, 2022) https://ukandeu.ac.uk/wp-content/uploads/2022/05/Unfinished-Business-1.pdf accessed 20 September 2022.
[378] Allan Rosas, 'The Status in EU Law of International Agreements Concluded by EU Member States' (2011) 34(5) *Fordham International Law Journal*.

solution profoundly undermines the balance of power set in the treaties, as evidenced by the Statement's informal, political, or non-legally enforceable nature by these rulings. To avoid promoting accountability, the ECJ instead embraced a position that legitimises the EU institutions' actions.

In addition, the GC is contradicting with its prior decisions and opinions. When the European Parliament lodged a request for an opinion to the Court on the European Union regarding the conclusion of the Istanbul Convention on 9 July 2019, employing Article 218(11) TFEU, the Court provided the following response:.[379] "*As regards the practice of waiting for the 'common accord' of the Member States to be bound by a mixed agreement, the Court observes, first of all, that the Treaties prohibit the Council from making the initiation of the procedure for concluding a convention contingent upon the prior establishment of such a 'common accord'. If that practice were to have such a scope, the European Union's ability to conclude a mixed agreement would depend entirely on each Member State's willingness to be bound by that agreement in the fields falling within their competences. Such a hybrid decision making process is incompatible with Article 218(2), (6) and (8) TFEU, which envisages the conclusion of an international agreement as an act which is adopted by the Council acting by a qualified majority*." [380] The EU-Turkey Statement should be assessed in light of the Member States' eagerness to reach this agreement, as the Court has stressed the necessity of 'common accord' for international agreements according to Article 218 TFEU. The EU-Turkey Statement, in which all member states and the European Council agreed to keep refugees outside the Union's borders, must have been classified as a mixed international agreement, according to the Court's precedents. Therefore, the European Council violated Article 218 TFEU by excluding the EP in conclusion of the Statement with member states. The European Parliament's participation in both the negotiating and conclusion stages is essential for democratic principles, as stated in article 218 of the TFEU. Eckes interpret the European Parliament role in international affairs as a key dimension "in the ECJ's narrative that the EU possesses original sovereign power".[381]

[379] Court of Justice of the European Union, Press Release No 176/21, 'Opinion 1/19 – Istanbul Convention' (Luxembourg, 6 October 2021).
[380] Ibid.
[381] Christina Eckes, 'How the European Parliament's Participation in International Relations Affects the Deep Tissue of the EU's Power Structures' (2014) 12(4) *International Journal of Constitutional Law* 904 https://doi.org/10.1093/icon/mou067.

The statement can also be analysed under the principle of institutional balance. This is fully applicable to CSFP agreements, where it serves as a restorative principle to guarantee (although narrowly) democratic control over CSFP issues.[382] The Parliament's role extends beyond the mere negotiation of accords. The European Parliament's participation in the conclusion of international agreements is being profoundly affected by case law from the Court of Justice.[383] The ECJ stressed that Article 218 TFEU's information right of the European Parliament is an expression of the democratic concept.[384] Furthermore, when it came to *Hybrid Decisions*, the Commission claimed that Article 218/2 and Article 218/5 TFEU in conjunction with Article 13(2) TEU was violated because EU institutions cannot deviate from the procedures established by the Treaties.[385] The Court's precedents on the EU's institutional autonomy was ultimately applied to the realm of international relations. The case involved choosing a procedure that appears to be consistent with the concept of mixed agreements, which is well established and widely recognised within the EU's model of external action. When it comes to the creation of treaties, the approach taken by the Court to maintaining institutional balance is predicated on the notion that the procedures outlined in fundamental legislation are significant, and the Court is willing to enforce them in a stringent sense. *Hybrid decisions* are one that is made using a single technique: in accordance with Article 218(8) TFEU, decisions regarding the conclusion and preliminary application of deals on behalf of the EU are made by qualified majority voting in the Council.[386] Despite Luxembourg's tough stance on conflict resolution in the *Hybrid Decisions* case, which prioritised the protection of EU institutions, the EU-Turkey Statement reflects, perhaps more than anything else, how institutional balance is ultimately sacrificed in favour of effectiveness in the field of external action.[387] In applying its judicial power to this document of questionable legality, the GC has shown itself to be exceedingly kind. Adopting agreements in the concise way, such as the statement, shifts

[382] Andrea Ott, 'The European Parliament's Role in EU Treaty-Making' (2016) 23 *Maastricht Journal of European and Comparative Law* 1009.
[383] Juan Santos Vara and Soledad Rodríguez Sánchez-Tabernero (eds), *The Democratisation of EU International Relations Through EU Law* (1st edn, Routledge 2018) https://doi.org/10.4324/9781315178721.
[384] Case C-263/14 *European Parliament v Council* (PTA Tanzania) EU:C:2016:435, paras 70–71.
[385] Case C-28/12 *Commission v Council* (Hybrid Decisions) ECLI:EU:C:2015:43.
[386] Panos Koutrakos, 'Institutional Balance and Sincere Cooperation in Treaty-Making under EU Law' (2018) 68 *International and Comparative Law Quarterly*.
[387] LN González Alonso, 'Lost in Principles? Institutional Balance and Democracy in the ECJ Case Law on EU External Action' in J Santos Vara and SR Sánchez-Tabernero (eds), *The Democratisation of EU International Relations Through EU Law* (Routledge 2018) 20.

the equilibrium away from the Parliament, while a balance between the Council and Parliament is established in Article 218(6).

Because of its unique character, the EU has the additional burden of ensuring that its international obligations are met not only by EU institutions, but also by Member States that are not signatories to EU commitments and have not integrated them into their legal systems.[388] Article 218 has a convoluted framework because it affects so many elements of international deal making including, but not limited to, the question of how the EU should be represented abroad, the selection of a suitable legal basis for an agreement, the degree of involvement of individual Member States.[389] Despite the fact that the European Council is the most powerful institution, the European Parliament, as the directly elected representative of EU citizens, has emerged as a player that cannot be disregarded. It approves the initiation of negotiations, sets negotiating instructions, approves the signing of, and closes international accords.[390] Although it is not a party to the negotiations itself, the European Parliament has a right to be kept appraised of developments at every level of the process, and as we shall see, has successfully exercised this right in previous international agreements. The European Parliament's participation in both the negotiating and conclusion stages is necessary to ensure democratic governance. According to article 218, the European Parliament must play a significant role in the negotiation process. Therefore, it was required to be involved in the last stage of the process by either consultation or consent in conclusion of the statement.

Also, the EU financial consequences of the so-called "refugee crisis" is another significant but least-analysed factor. The statement demonstrates how the EU border security policy has resulted in an unhealthy level of reliance on outside parties, raising the prospect of endless demands for financial support from the EU. Significant additional work, largely driven by national authorities, EU agencies, and the Commission, is needed to implement the statement. With President Erdogan's government cracking down on human rights and

[388] Francesca Martines, 'Direct Effect of International Agreements of the European Union' (2014) 25(1) *European Journal of International Law* 129 https://doi.org/10.1093/ejil/chu007.
[389] Paolo Bruno, 'Navigating Art 218 TFEU: Third States' Accession to International Conventions and the Position of the EU in This Respect' (European Forum, 22 June 2022) (2022) 7(1) *European Papers* 333 https://doi.org/10.15166/2499-8249/563.
[390] Christina Eckes, 'How the European Parliament's Participation in International Relations Affects the Deep Tissue of the EU's Power Structures' (2014) 12(4) *International Journal of Constitutional Law* 904 https://doi.org/10.1093/icon/mou067.

the rule of law in 2020, the EU is not only walking a fine line in keeping the statement alive, but it is also raising questions about why the EU is acting as if it is bound by the agreement, which is only a press release, by channelling funding to Turkey. Since trust fund and Refugee Facility for Turkey governing mechanisms are ultimately decided by the Commission[391], the Parliament's input into the design of the Refugee Facilities in Turkey has been minimal, especially in comparison to the institutional negotiations on the funding regulations for EU domestic matters under the 2014-2020 Multiannual Financial Framework.[392] Allocating EU financing for its implementation is also problematic, given the statement faces problems under EU and IHRL frameworks.

Furthermore, scholars have analysed the Court's order from the perspective of EU law and human rights law. Masouridou et al. find the adoption of the Statement lack of democracy since it was concluded without European Parliament. They define the GC orders rulings on the legality of the Statement as a 'vacuum of accountability and undermining the rule of law' which resulted from an informal agreement under the cooperation issues between member states.[393] As noted above, the Statement should therefore be regarded as violating Article 218 TFEU. In addition to the questionable binding nature of the Statement, the GC judgement was also ambiguous. When the Court asked the main EU institution about the nature of the meeting of 18th March 2016, the European Council denied that the EU reached an agreement in light of art 218 TFEU. Instead, it regarded the Statement as a '*fruit of an international dialogue*'.[394] On the other side, the Commission assumed the Statement as a political commitment for the future provisions. Nevertheless, the Commission accepted that commitment required the existence of the EU as long as the President of the Commission and the President of the European Council participated in these discussions to end the refugee crisis. Danisi analyses the Court's approach to identifying the composer of the agreement. His findings support that the Court followed

[391] European Commission, 'Decision on the Coordination of the Actions of the Union and of the Member States through a Coordination Mechanism – the Refugee Facility for Turkey' C(2015) 9500 final, 24 November 2015.
[392] Eulalia Rubio, 'The Next Multiannual Financial Framework (MFF) and Its Flexibility' (Policy Department for Budgetary Affairs, Directorate General for Internal Policies of the Union, PE 603.799, November 2017).
[393] Yiota Masouridou and Evi Kyprioti, *The EU-Turkey Statement and the Greek Hotspots: A Failed European Pilot Project in Refugee Policy* (The Greens/European Free Alliance in the European Parliament, 2018) http://extranet.greens-efa-service.eu/public/media/file/1/5625 accessed 27 October 2021.
[394] Carmelo Danisi, 'Taking the 'Union' out of 'EU': The EU-Turkey Statement on the Syrian Refugee Crisis as an Agreement Between States under International Law' (2017) *EJIL:Talk!* https://www.ejiltalk.org/taking-the-union-out-of-eu-the-eu-turkey-statement-on-the-syrian-refugee-crisis-as-an-agreement-between-states-under-international-law/ accessed 1 December 2021.

the way to conclude that the Statement is not a legally binding international agreement. Accordingly, instead of looking at the substance of the agreement, they focused on the EU's institutional procedures.[395] He also alleges that the Court ignored the customary international law based on Article 31 of the Vienna Convention (interpretation of treaties), so that failure of the Statement's understanding was inevitable. Consequently, the Court left a gap on the nature of the Statement whether legally binding since it only determined that the agreement was concluded by the member states, not on behalf of the EU with Turkey. Instead, the Court may have scrutinized the meetings and negotiations in order to pinpoint the signatories of the statement. If this were the case, the Court would promptly ascertain the authority of the European Council, as described in Chapter 3.

Concerning the other procedural issues on the rulings, one may consider article 263 TFEU. Article 263 clearly states in its first paragraph, "*The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties*."[396] Because the European Council sat at the table with Turkey throughout the negotiations that led to the conclusion of this agreement (see the Chapter 2), the Court's rulings added another blocking point to the examination in accordance with the article 263.

On the other hand, Carrera et al. examine the notable verdicts of the Court decisions from the perspective of the rule of law.[397] Their claims support the heads of state or governments acted maliciously to refrain from the legal obligations under the Statement. Since the EU institutions, the European Council, the Council, and the Commission, failed to fulfil their duties set by Lisbon Treaty, intergovernmentalism took the role to find its way to respond to the refugee crisis as it was pointed in Chapter 2. As a result of this, the researchers define the Statement as a 'strange legal creature' which diminishes the EU's legitimacy and values. EU law regulates the procedures and instruments to produce the

[395] Ibid.

[396] Consolidated Version of the Treaty on the Functioning of the European Union, art 263 [2012] OJ C326/47.

[397] Sergio Carrera, Leonhard den Hertog and Marco Stefan, 'It Wasn't Me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal' (2017) *CEPS Policy Insights* https://www.ceps.eu/wp-content/uploads/2017/04/EU-Turkey%20Deal.pdf accessed 1 December 2021.

policies regarding immigration. So that, when the Court determined the authorship of the Statement, they should have analysed the content to clarify the Statement's nature. Carrera et al. emphasised that the Court avoided questioning the compatibility of the Statement to human rights law since the Court denied that the Statement is not a product of an EU institution. They also confirm the above-mentioned research findings that the European Council's intention to generate binding effects should be sufficient to examine the legal nature of the Statement by the Court regarding Article 263 of TFEU.[398] In the framework of EU treaty standards, the EU-Turkey deal remains outside EU law. The researchers found the Statement an intergovernmental attempt to undermine the rules based on Lisbon Treaty. Following intergovernmentalism, the EU protects itself from the obligations and responsibilities laid down in the Treaty framework and institutional settings. By ruling the Statement as a press release, the Court excluded itself from examining its compliance with EU refugee law and the EU Charter of Fundamental Rights.[399]

Ozturk and Soykan define the Court rejections as a 'legal uncertainty' leading the human rights violations without taking responsibility.[400] They argue the approach of the EU to migratory flows. They noted that EU leaders called the year 2015 as a "crisis" and the bloc's primary reaction was to reach a readmission agreement with Turkey. However, when it came to taking legal accountability for this subject, EU leaders merely added to the confusion.[401]

Idriz also analysed the GC rulings under four points.[402] In the first, the background of the Statement is the most remarkable element that required further analysis by the Court. The Statement was built on the EU-Turkey Readmission Agreement. This agreement should be the starting point to determine the statements' authors for the Court. Second, she focused on the reactions of the EU institutions, the European Council, the Council, and the Commission when the Court asked them to provide evidence of the Statement's

[398] Ibid.
[399] Ibid.
[400] Neva Ovunc Ozturk and Cavidan Soykan, 'Third Anniversary of EU-Turkey Statement: A Legal Analysis' (2019) *Heinrich Böll Stiftung* https://tr.boell.org/en/2019/10/03/third-anniversary-eu-turkey-statement-legal-analysis accessed 2 December 2021.
[401] Ibid.
[402] Narin Idriz, 'Taking the EU-Turkey Deal to Court?' (2017) *VerfBlog* https://verfassungsblog.de/taking-the-eu-turkey-deal-to-court/ DOI: 10.17176/20171220-100943.

parties. Although there was a large number of evidence which was an admission of the binding Statement by the EU in the media, the Court ruled that the Statement was a 'political arrangement'.[403] Thirdly, she pointed out that the Court ignored the 'substance comes over form' doctrine in its judicial assessment. She criticised the Court since its analysis remained limited to the Statement's substance. Although the negotiations were conducted with the President of the European Council and the President of the Commission, the Court ruled the Statement is the piece of heads of state and governments notwithstanding of any EU institution. Finally, she raised the questions on the competency of the member states in conclusion an agreement for an issue that the EU has already contained in a deal (readmission agreement).[404] The Court additionally attached '*…the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States…*'

If the Statement is assumed an agreement between Turkey and member states, the Court should have assessed who has the authority to make a deal in this particular issue regarding the rule of law, Article 2 of TEU. Yet, if this were an international agreement authorised by member states, some of the parliaments might also be empowered to review and possibly veto the deal. Answering this question is essential because the member states initially forget the rule of law when dealing with crises. The ECJ as a judicial authority of the EU, which ensures the application of EU laws in member states, has to clarify the competency. According to GC ruling, besides the Statement already having several violations of human rights law, the ECJ damaged their values and institutions. Therefore, this created a doubt on the legal protection within the EU law. After establishing in this section that the EU-Turkey Statement is a treaty-based international agreement with legal force and also taking into account that the EU-Turkey Statement is an EU act, it follows that the procedure outlined in article 218 TFEU should have been implemented to conclude the Statement as it is justified in the following paragraphs. However, it is sufficient to examine the factors that led to the completion of the EU-Turkey Statement to determine that the Statement was not reached using the procedure specified in article 218 TFEU.

[403] NF v European Council ECLI:EU:C:2017:631, para 29.
[404] Narin Idriz, 'Taking the EU-Turkey Deal to Court?' (2017) *VerfBlog* https://verfassungsblog.de/taking-the-eu-turkey-deal-to-court/ DOI: 10.17176/20171220-100943.

According to the case NF v. European Council, in order for the EU's own court to be competent to review the legitimacy of the agreement in consideration, it must reflect an EU measure and be designed to have legal implications vis-à-vis third parties (in line with Art. 263 TFEU). Despite what is stated in the EU-Turkey Statement, the EU should be included in the legal agreements as a signatory because of its direct role. This makes the stance of the ECJ in formal investigations fundamental. However, the agreement's legal nature, which must clear any doubt, remained unambiguous. Without a doubt, the court's involvement legitimised the European Union's ad hoc measures to protect EU member states' domestic interests at the expense of EU values.

On the other hand, the Court's judgement on *NF, NG, and NM v European Council* can be explained under the concept of judicial passivism. This occurs when a court either explicitly refuses or avoids reaching a decision in a matter that has been brought before it, or when it fails to provide an opinion on a subject that has been properly brought before a court.[405] The ECJ has held that such situations occur when the Court routinely delays a judgement while hoping that the plaintiff will abandon their case, when it takes too long to issue a ruling, or when it refuses to rule on a concern posed by a national court during the preliminary ruling procedure.[406] In addition to preventing the EU's external action from being checked for obedience with the rule of law and institutional authority on the character of the statement, these rulings also block the EU from checking whether the statement complies with EU asylum and human rights law. According to Goldner's definition, this line of reasoning contends that every instance of judicial passivism in question is the result of a conscious judicial judgement and, as such, sends a strategic message to the EU institutions, Member States, and other political actors.[407] Judicial passivity has far-reaching consequences, not only for the future of EU migration and refugee law but also for the interactions of EU institutions and Member States. The EU-

[405] Iris Goldner Lang, 'Towards "Judicial Passivism" in EU Migration and Asylum Law?' in T Ćapeta, I Goldner Lang and T Perišin (eds), *The Changing European Union: A Critical View on the Role of Law and Courts* (Hart Publishing 2020).
[406] Ernő Várnay, 'Judicial Passivism at the European Court of Justice?' (2019) 60(2) *Hungarian Journal of Legal Studies* 127 https://doi.org/10.1556/2052.2019.00009.
[407] Iris Goldner Lang, 'Towards "Judicial Passivism" in EU Migration and Asylum Law?' in T Ćapeta, I Goldner Lang and T Perišin (eds), *The Changing European Union: A Critical View on the Role of Law and Courts* (Hart Publishing 2020).

Turkey deal violates EU law, thus if the ECJ had opted to investigate the case substantially, it would have annulled it.

In 2023, Dutch human rights organisations, including Amnesty International Netherlands, commenced legal action against the Dutch government, contending that the EU-Turkey Statement enabled human rights crimes against asylum seekers.[408] The plaintiffs argued that the Netherlands, as an EU Member State, bore responsibility for the ramifications of the agreement, especially concerning the treatment of refugees repatriated to Turkey under the agreement. This case differs with the EU General Court's finding in NF, NG, and NM v. European Council, which concluded that the Statement constituted a political arrangement rather than a legally enforceable agreement. In contrast to the General Court's emphasis on the institutional character of the Statement, the Dutch case interrogates the accountability of individual Member States within the larger context of externalised migration control.[409] The case underscores the capacity of domestic courts to examine national governments' participation in EU migration policies, contesting the presumption that externalisation agreements exclude Member States from legal accountability. This decision may affect future litigation strategies inside EU states, especially as civil society groups increasingly contest the legal underpinnings of migratory control procedures.

3- STATEMENT UNDER INTERNATIONAL LAW: CONCEPT OF TREATY

Treaties, together with general principles and conventions, are included as sources of law in Article 38(1) of the statute of the International Court of Justice. In the field of international law, treaties hold a prominent place: "*1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law...*"[410] Conventions among parties that are expressly

[408] Kris van der Pas, 'Litigating the EU-Turkey Deal' (VerfBlog, 16 May 2024) https://verfassungsblog.de/litigating-the-eu-turkey-deal/ DOI: 10.59704/a26cc02695e826f6 accessed 16 January 2025.
[409] Amnesty International, 'Netherlands: NGOs Sue Dutch State Over EU-Turkey Refugee Deal' (Amnesty International, 16 May 2024) https://www.amnesty.eu/news/netherlands-ngos-sue-dutch-state-over-eu-turkey-refugee-deal/ accessed 16 January 2025.
[410] Statute of the International Court of Justice, art 38.

recognised as sources of international law are designated as such in Article 38(1)(a) of the ICJ-Statute.

Regarding the definition of international agreements, the 1969 Vienna Convention on the Law of Treaties describes the international agreement as a treat which is "*concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments*…"[411] It should be noted that the European Union is not a signatory to the VCLT. The issue of whether or not these Conventions apply naturally emerges. Nonetheless, the CJEU has made several judicial references to the law of treaties, including direct references to the VCLT. For instance, in Opel Austria case, Court explicitly stated the place of Vienna Convention as follows: "*The principle of good faith, codified by Article 18 of the First Vienna Convention, is a rule of customary international law whose existence is recognized by the International Court of Justice and is therefore binding on the Community."*[412]

Article 2(1) of the VCLT restricts the term's applicability to the Convention itself, but the ICJ has stated that the definition constitutes customary international law, therefore it has been broadly accepted. Looking at the Statement's contents can tell us whether or not the EU-Turkey Statement meets the criteria of an international agreement. According to the Statement, European Council members met with Turkish officials to come up with the deal. Consequently, this has led to a cooperation between European Council members and Turkey which consists of a series of concrete pledges and assign tasks such as "stop the irregular migration from Turkey to the EU…" agreed upon by the parties. Following this line of cooperation, this research embraces that the parties intended for their obligations to be carried out by each other. Because of this mutuality between the EU and Turkey, the EU-Turkey Statement establishes mutually acceptable norms of actions and so satisfies the criteria for an international agreement.

In the 1994 case of Qatar v. Bahrain, it was argued that the Foreign Minister of Bahrain had not meant to sign an international agreement, and that the "Minutes" of a meeting between the Foreign Ministers of Qatar and Bahrain may constitute an international

[411] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 2.
[412] Case T-115/94 *Opel Austria GmbH v Council of the European Union* ECLI:EU:T:1997:3.

agreement.[413] The ICJ conducted an inquiry into the nature of minutes. In its opening argument, the ICJ cited article 2(1)(a) of the VCLT and the Aegean Sea Continental Shelf ruling, noting that "*The Court would observe, in the first place, that international agreements may take a number of forms and be given a diversity of names. Article 2, paragraph (1) (LI), of the Vienna Convention on the Law of Treaties of 23 May 1969 provides that for the purposes of that Convention*".[414] To determine if such an agreement has been reached, the Court also referenced that "*the Court must have regard above all to its actual terms and to the particular circumstances in which it was drawn up*".[415] Notwithstanding, rather than looking to what the parties claim they intended, the court should look to the provisions of the instrument and the circumstances under which it was formed. Despite the fact that the European Union and its member states do not recognise the EU-Turkey Statement as a legally binding international agreement, the GC should have examined the character of the statement based on its content.

In the EU-Turkey Statement, the terms of 'agreed and decided' are used several times. Since the parties used phrases like 'agreed' and 'decided', it implies that they meant for the Statement's contexts to produce legal effects. Undeniably, comparing the EU-Turkey Statement to the Minutes at question in the ICJ Qatar v. Bahrain case exposes noteworthy similarities between the EU-Turkey Statement and the Minutes. The GC acknowledged the notion that substance overcomes form, but it circumvented numerous difficult questions in its reasoning by focusing solely on the Statement's form rather than its substance. As a result, I consider the EU-Turkey Statement to be a legally binding agreement, despite the fact that it lacks a treaty commencement and that EU internal procedures were not followed in its drafting.

In summary, reviewing the Statement's substance and purpose can help in determining the correct steps that should have been taken to finalise the supposed deal. As it has been detailed in the first chapter, the main goal of the statement is stopping irregular migration. According to article 4 (j) TFEU, the core of the statement is focused on a subject that is under the authority of both the EU and Member States: the sphere of freedom, security,

[413] Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain) (Judgment) [1994] ICJ Rep 112.
[414] Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain) (Judgment) [1994] ICJ Rep 112, para 23.
[415] Ibid.

and justice. Article 218(6) TFEU states that agreements covering subjects to which the ordinary legislative procedure applies must be completed by the Council with the approval of the European Parliament. The European Parliament should have been included in the formulation of the EU-Turkey deal if it is acknowledged as a legally binding treaty.

The EU-Turkey Statement calls for the European Parliament to play a role in a number of activities, such as the commitment to speed up the processes of Turkey's membership to the EU and to offer Turkish nationals visa-free access to Europe. The European Parliament must cooperate with the Council in approving Turkey's membership in the European Union before it can be confirmed by the individual member states. As with visa liberalisation, the EP has a distinct official authority to vote on the membership of a third country into the Union.[416] The EU would have faced the consequences of human rights breaches outlined below had the declarations been a treaty.

Moreover, aspects of the agreement fall under the sovereignty of each participating state, including Greece. The burden of implementing the Statement, including the necessary legal and practical tasks, belongs on Greece and Turkey. Therefore, consideration of the agreement in isolation as an intergovernmental agreement may lead to the misguided notion that the member states bear the sole responsibility for fulfilling the agreement's provisions and excluding the EU. The statement was reached in contravention of the Parliament's rights and powers. As a result, Parliament's ability is irreparably damaged due to a failure to comply with the fundamental procedural criteria set forth in Article 218(6) TFEU.

4- ITALY-LIBYA AGREEMENT: ANOTHER EXAMPLE OF PUSHBACK IN MEDITERRANEAN SEA

On February 2, 2017, Italian Prime Minister Paolo Gentiloni and Fayez al-Serraj, Head of the UN-backed Libyan Government of National Accord, concluded a Memorandum of Understanding (MOU) on international development, uncontrolled immigration,

[416] Philippe Perchoc, 'Mapping EU-Turkey Relations: State of Play and Options for the Future' (2017) *EPRS European Parliamentary Research Service* https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599388/EPRS_BRI(2017)599388_EN.pdf accessed 15 January 2023.

smuggling, and reinforcement of border protection.[417] As with the Gaddafi dictatorship, various agreements were reached in the 2000s with the primary goals of reducing migration flows and improving readmission, Italy's willingness to work with Libya to manage migration and border security is not novel. However, in 2012, due to the collapse of the Libyan government owing to the onset of the civil war, the relationship was put on hold.

The MoU, as contrast to the Statement, is recognised as a bilateral agreement between just one Member State and a third country by ECHR in Hirsi Jamaa and Others case. As an agreement to externalise migrant management to a country that serves a doorway to Europe, the memorandum resembles the EU-Turkey deal in several respects. Mistreatment of migrants who are captured at sea by the Libyan Coast Guard occurs in Libya and has constituted violations of the ICCPR, ECHR and CAT. These tools may apply extraterritorially, making Italy responsible for mistreatments in Libya, to the extent that Italy's backing for the Libyan authorities is crucial to such violations as it was acknowledged by the ECtHR in Hirsi Jamaa case which is analysed in detail below. As the Memorandum of Understanding between Italy and Libya shows, there is a certain reason to be concerned that the EU-Turkey Statement and the GC order could set a catastrophic paradigm. The EU-Turkey Statement launches off a series of collaborations designed towards enhancing engagement with third countries to handle the European migration dilemma. In the framework of cross-border immigration control, which relies heavily on active partnership with a third state like Libya and Turkey with serious rule of law and human rights shortcomings, it is doubtful whether consistency by these agreements with the EU values will be sustained.

However, some academics, such as Anja Palm, find substantial distinctions between the EU-Turkey Statement and the Italy-Libya MoU.[418] Firstly, as the memorandum does not anticipate the resettlement, it has been the first original and different component of the

[417] Memorandum of Understanding on Cooperation in the Fields of Development, the Fight Against Illegal Immigration, Human Trafficking and Fuel Smuggling, and on Reinforcing the Security of Borders Between the State of Libya and the Italian Republic (2017), unofficial translation by the Odysseus Network http://eumigrationlawblog.eu/wpcontent/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf accessed 17 October 2022.

[418] Anja Palm, 'The Italy-Libya Memorandum of Understanding: The Baseline of a Policy Approach Aimed at Closing All Doors to Europe?' (2017) *EU Immigration and Asylum Law and Policy* https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/ accessed 15 January 2023.

EU-Turkey statement from MoU. The second difference is the budget of the deal. The path that money takes from its source to its final destination is far less obvious in the memoranda. Despite the allegations that money is being sent to smugglers to keep boats from leaving the coast of Libya, the memorandum is unable to provide funding documentation on budgets, programmes, and implementing partners, in contrast to the EU Facility for Refugees in Turkey. Thirdly and finally, she compares the human rights records and political situation of both countries. While the situation in Turkey was relatively calm, reports from credible sources confirm that human rights of migrants have been routinely violated in Libya. The UNHCR is functioning in Turkey, but refugees in Libya have nowhere to turn for help because neither the government nor the UN agencies could access a country in the midst of a civil war. Libya is likely to commit chain-refoulement as a result of absence of a legislative framework assuring refugee protection.[419] Although this insufficient legal background of the memorandum, ECHR ruled about its consequences as in the Hirsi Jamaa and Others case. It is undeniable that the statement's content includes more legally enforceable features, such as funding, resettlement commitments, and the establishment of a refugee facility in Turkey.

CONCLUSION

The purpose of this chapter was to consider the legality of the EU-Turkey Statement from a perspective of EU law and IHRL perspective. To this end, it first examined whether the statement was formally approved in accordance with EU law procedural requirement for the conclusion of international treaties. Then, an evaluation of the EU-Turkey Statement's legality was undertaken here in light of the GC rulings in NF, NG, and NM v. European Council. The GC ruled in these decisions that the EU-Turkey Statement cannot be challenged under article 263 TFEU because it is neither an act of the European Council nor any other EU entity. This research aimed to dig deeper into the GC's interpretation of the EU-Turkey Statement by looking at its implications and the main objections raised by those who disagree with it. Regarding the findings of this study under ECJ position and agreements of the EU with third countries, the EU-Turkey Statement should be regarded as a legally binding agreement despite the fact that it was not ratified as a treaty and that

[419] Elisa Vari, 'Italy-Libya Memorandum of Understanding: Italy's International Obligations' (2020) 43 *Hastings International and Comparative Law Review* 105.

EU internal procedures were not followed in its drafting. It also demonstrates how the position of the European Parliament was undermined its decision-making role to conclude the international agreements.

To clarify, the conclusion reached in this chapter—that the EU-Turkey Statement should be regarded as legally binding—is explicitly linked to the necessity of ensuring judicial protection, fair trial, and adherence to the rule of law within the EU legal order. Although the Statement was not formally ratified as an international treaty and internal EU procedural requirements were bypassed, it nevertheless produces significant legal effects, particularly on individuals' fundamental rights. Therefore, the EU courts must have jurisdiction to adjudicate disputes arising from the Statement, preventing potential violations from escaping judicial scrutiny due to procedural irregularities or informal negotiation methods. This conclusion, however, does not imply that the Statement fully satisfies all formal criteria required by international treaty law, as established by the Vienna Convention. Rather, it underscores the imperative of judicial accountability within the EU legal framework, ensuring that measures impacting fundamental rights remain subject to effective judicial oversight.

CHAPTER 5: THE COMPATIBILITY OF THE EU-TURKEY STATEMENT WITH EU LAW AND INTERNATIONAL HUMAN RIGHTS LAW

INTRODUCTION

The EU-Turkey Statement is one of the most controversial actions of the EU in immigration. The agreement establishes an obligatory framework that has been established under conditions of significant duress. It is crucial to acknowledge that unfavourable conditions should not be used as a rationale for disregarding either European Union (EU) legislation or human rights law. Nevertheless, the statement exhibits certain shortcomings within the framework of both European Union (EU) and international law. This chapter focuses on the legal violations of the deal. In pursuit of this objective, the study investigates the judgements rendered by the European Court of Human Rights (ECtHR) pertaining to the statement. Moreover, it extends its analysis to evaluate the fundamental issues that have not been adequately addressed by the European Court of Human Rights (ECHR) on the legality of the statement.

This research is structured as follows. The first section examines whether the agreement is compatible with EU and international refugee law. Here, I consider whether the EU-Turkey statement violates the principles of non-refoulement, collective expulsion, and safe third-country requirements. In the initial subsections of this part, I analyse the first ruling by the ECtHR on the statement (*J.R and Others v. Greece*) and other rulings on collective expulsion and non-refoulement. After that in section 2 and 3, I analyse the ECtHR judgments in collective expulsion and non-refoulement. Finally in section 4, I question the statement by applying existing case law and argue that the Statement violates fundamental principles of non-refoulement and collective expulsion, as it requires the deportation of asylum seekers without examining their claims and commits to taking back one Syrian for every Syrian accepted by Turkey from Greek islands. While some of the ECtHR's reasons accord with my viewpoint, I criticise the court for contradicting its earlier judgements at the expense of securing the EU's borders and preventing a further influx of refugees into the country. In this section of evaluation, my position not only considers prior judgments in relation to the statement but also exposes the legal loopholes employed by the court to avoid addressing certain aspects.

This chapter aims to illustrate the contradictions of the ECtHR's approach to the statement and its prior decisions. In particular, it assesses landmark decisions on collective expulsion and non-refoulement like *Conka v. Belgium, Hirsi Jamaa v. Italy* on the collective expulsion, and *Ilias and Ahmed v. Hungary*. In light of this, the chapter claims that the returns of refugees under the EU-Turkey statement is not compatible with EU legal framework on safe-third countries and the principle of non-refoulement. I contend that the ECtHR has adopted a flexible stance towards legitimizing pushbacks and collaborations with third countries at the cost of EU values and human rights law. This stance has emerged since the ECtHR began to dilute refugee protection through its rulings in *Khlaifia and Others v. Italy* and *N.D. and N.T. v. Spain*. As agreed under the statement, individuals seeking asylum were sent back to Turkey without an opportunity to have their status as refugees examined or without considering the capacity of Turkey to protect refugees' human rights.

1- EU-TURKEY STATEMENT IN LIGHT OF EU LAW AND INTERNATIONAL LAW

How could possibly an international human rights law perspective perceive and respond to the statement's various components? In this section, I will explicate the grounds for which the present legal structure of the agreement is insufficient, leading to the emergence of further predicaments in human rights of migrants instead of offering solutions. We might classify these issues under three interrelated categories: the principle of non-refoulement, the ban on collective expulsion and safe country mechanism. The first one is the principle of non-refoulement. Non-refoulement is a norm of customary international law and therefore whether or not a state is a signatory to the Geneva Convention, the concept of non-refoulement is nonetheless legally enforceable on all states (and int'l organizations). Moreover, the principle of non-refoulement in EU law is enshrined in Article 19(2) of the EU Charter of Fundamental Rights. The GC ruling on the statement did not move to assess its compliance with the non-refoulement principle, because, as explained above, the GC ultimately ruled the case inadmissible. While the GC avoids expressing a position on the legitimacy of the statement's substance, this section evaluates the statement's content using ECtHR case law and literature. As I argue below, in my view, the EU-Turkey Statement violates the principle of non-refoulement by the deal, as the EU has committed to taking back one Syrian from Turkey for every Syrian that

Turkey accepts from the Greek islands. Another violation committed by the statement is collective expulsion. The EU-Turkey deal violates the ban on collective expulsion under Article 19(1) of the EU Charter of Fundamental Rights, Article 13 of the ECHR, and Article 4 of Protocol no. 4 to the ECHR since it can result in the deportation of asylum seekers without examination of their asylum claims. Lastly, the question of whether or not Turkey is a safe third country for refugees is a third legal issue. Nonetheless, the following sections evaluate non-refoulement and collective expulsion by ECtHR cases, while the next chapter analyses in depth the adoption of Turkey as a safe third country.

Using the Asylum Procedures Directive as a framework, this chapter examines the non-refoulement principle in light of Turkey's position as either a first country of asylum or a safe third country. Before looking deeper into these notions, ECtHR judgements on these concepts necessitate additional analyses in order to define the EU's position on refugees' human rights. The first ECtHR judgement on the statement, *J.R. and others v. Greece* is examined in the next section to demonstrate how the Strasbourg court also neglected to address the statement's fundamental and critical issues. Afterwards, the inconsistencies of the ECtHR's position with its earlier decisions and lack of accountability of the statement are then revealed by discussing other ECtHR decisions on collective expulsion and non-refoulement, such as Hirsi Jamaa v. Italy, M.S.S v. Belgium and Greece.

1.1- First Ruling on the EU-Turkey Statement in the ECtHR

The Ruling in the case *J.R. and others v. Greece* was delivered by the ECtHR on 25 January 2018, and represents the first time the court addressed the EU-Turkey Statement's application on the ground.[420] Regarding the J.R and others case, two main attempts, hotspot approach and the EU-Turkey Statement, forced the ECtHR to address the question of human rights compliance. Unfortunately, the Court's function was limited to determining whether an individual case constituted a violation of the Convention, rather than rendering a broader determination about the legality of the EU-Turkey Statement. Thereby, the ECtHR, like the GC, sidestepped the core issue.

The case concerned three Afghan applicants who reached the area of Chios on March 21st, 2016, after the statement entry into force where they were promptly detained and transferred to the Vial "hotspot" centre. According to the applicants, the overcrowding

[420] J.R. and Others v Greece, App no 22696/16 (ECtHR, 25 January 2018).

and poor living conditions at the hotspot violated Article 3 of the Convention owing to inadequate food, lack of water supply, poor hygiene, and absence of adequate medical support, as affirmed by many reports of variety organisations, including the UNHCR and the UN High Commissioner for Human Rights. The applicants argued violations of their rights under Article 5(1) because of the duration and circumstances of their detention at the Vial Centre, Article 5(2) due to a lack of information concerning the causes for their imprisonment, and Article 3 due to the terrible living conditions in which they were held. It was determined by the Court that the one-month detainment duration, the purpose of which was to ensure the potential of expelling the applicants in accordance with the EU-Turkey Declaration, was not arbitrary, cannot be displayed as illegal, and was not extreme in light of the specific aim of detention. Accordingly, the ECtHR concluded that Article 5(1) ECHR had not been breached. The ECtHR ruled that Article 5(2) of the Convention had been breached because the petitioners had not been given adequate information regarding the grounds for their detention and their rights under the law. The Greek government said that information was disseminated via flyers; however, applicants from Afghanistan complained that the brochures were too vague and lacked necessary clarity. However, the ECtHR determined that the situation in the VIAL hotspot centre did neither rise to the level of cruel or inhumane treatment under Article 3 ECHR, despite citing various NGO reports, including Human Rights Watch and the findings of the Council of Europe's Committee for the Prevention of Torture.[421]

In addition, two male Syrian asylum-seekers appealed the Asylum Appeals Committee of Greece's negative decisions that Turkey is a "safe third country" for the applicants on 22 September 2017.[422] Without further investigation into the actual situation in Turkey, the Council of State (the Plenary of Greece's Highest Administrative Court) disgracefully confirmed that the overall diplomatic commitments generated by the Turkish authorities under the EU-Turkey Statement meet the requirements for the Greek authorities to

[421] Human Rights Watch, 'Greece: Asylum Seekers Locked Up Wretched Conditions for People in Need' (16 April 2016) https://www.hrw.org/news/2016/04/14/greece-asylum-seekers-locked accessed 20 November 2022; Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), 'Greece: Anti-Torture Committee Criticises Treatment of Irregular Migrants – and Continued Detention of Migrant Children' (26 September 2017) https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/greece-anti-torture-committee-criticises-treatment-of-irregular-migrants-and-continued-detention-of-migrant-children?_101_INSTANCE_StEVosr24HJ2_languageId=en_GB accessed 20 November 2022.

[422] Council of State (Greece), Joint Decisions 2347/2017 and 2348/2017, 22 September 2017 https://www.refworld.org/cases,GRC_CS,5b1935024.html accessed 20 November 2022.

decide whether to apply the principle of non-refoulement.[423] Temporary protection status in the event of serious influx of Syrian refugees into Turkey was deemed equivalent to refugee status although it can be cancelled at any time without guaranteeing an appeal against refoulement. It is obvious that the Greek Asylum Service unable to conduct appropriate procedures and detailed, individualised reviews of each Syrian seeking asylum as it is required under the EU law and case law from ECtHR.

Regarding the first ruling on the statement, the J.R and Others case, many asylum seekers have been detained for considerably longer than by the time of writing particularly during the pandemic in light of the Court's approach to the duration of imprisonment as short. This may have a destructive impact on the Court's thinking in future decisions on hotspots or may cause the Court to be more insensitive to refugees' human rights. There is no discussion of whether or not Turkey is considered a safe third country under Article 38 of the APD, although the Court does continue to apply the principles established in its own case law such as Khalifia case, Hirsi Jamaa case, when determining whether there has been violation of Articles 3 and 5.[424] Contrary to its previous rulings, the Court ruled that denying the applicants of their liberty to complete the identification and registration process as part of the implementation of the EU-Turkey Statement was compliant with the Convention. In addition, the court in Strasbourg repeatedly refers to an accord (agreement), but does not provide any information regarding the agreement's legal status. This is in contrast to the ruling of the court in Luxembourg, which does not clarify whether or not the agreement is a political statement. As a result, the Court refrains from taking a firm stance on the contentious dimension of the statement.

2- THE ECTHR CASE LAW ON THE PROHIBITION OF COLLECTIVE EXPULSION

To contextualize the significance of the aforementioned case, it is important to note that the ECtHR had already established a case law on collective expulsion prior to this case. In 2002, the ECtHR case *Conka v. Belgium* dealt with a group of minority group members, specifically people of Romani ethnicity, who had been forced to leave Slovakia.[425] This is the first time the Court has ever determined a violation of Article 4 of Protocol 4 to the

[423] Ibid.
[424] J.R. and Others v Greece, App no 22696/16 (ECtHR, 25 January 2018) paras 110, 121 and 136–137.
[425] Čonka v Belgium, App no 51564/99 (ECtHR, 5 February 2002).

European Convention, which forbids the collective expulsion of aliens. It is also the Court's first judgement in a case concerning the collective expulsion of Roma. About 150 Slovak Roma were detained in two towns in Belgium, but on October 5, 1999, the country deported 74 Slovak Romani asylum applicants. The Conka family and other Slovak Romany families were among those notified by the Ghent police in September 1999 that they must appear at the police station on October 1. The notification informed them that their presence was necessary to finalise the asylum application processes. The applicants were given a new notice to leave the area and a decision for their transportation to Slovakia and custody at the police station. The Court noted that between the time the notice was served on the immigrants instructing them to go to the police station and the time they were expelled, the procedure did not provide adequate assurances that each individual's circumstances had been fairly considered. The European Court of Human Rights has always had a uniform definition of what constitutes a mass expulsion as "*any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.*"[426] In addition, there is no definitive rule dictating how many aliens should be included in the group for consideration of collective expulsion. The ECtHR determined that the number of people in the Conka family was large enough to apply the rule of collective expulsion.

On the one hand, the ECtHR Grand Chamber ruled unanimously in *Hirsi Jamaa v. Italy* that Italy's "push back" operations interdicting migrants and refugees at sea and returning them to Libya violated Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms which forbids torture and other inhuman or degrading treatment, Article 4 of Protocol 4 to the Convention (collective expulsion).[427] The applications included 11 Somalis and 13 Eritreans who, along with roughly 200 other people, boarded three ships in Libya and set sail for Italy. The applicants and their fellow passengers were forcibly returned to Libya when their boat was captured by Italian authorities on May 6, 2009. Italy and Libya have bilateral agreements to limit illegal immigration, which is why they were able to intercept and deport the applications. In the ruling, The Court acknowledged the challenges in dealing with growing numbers of

[426] Ibid.

[427] Hirsi Jamaa and Others v Italy, App no 27765/09 (ECtHR, 23 February 2012).

migrants, but it highlighted that this cannot relieve a State party of its non-refoulement responsibilities under Article 3. According to the Court, there was a reasonable possibility that the applicants may be exposed to mistreatment in Libya that violated Article 3. Italy's argument that it had no duties under Article 3 because the petitioners had not applied for asylum from Italian authorities was likewise rejected by the Court. The Government argued that the Applicants' opposition to their disembarkation in Libya did not constitute a request for protection that would obligate Italy under Article 3 of the Convention. Many have hailed the 2012 Hirsi Jamaa and Others v. Italy Grand Chamber ruling as a major milestone for the protection of migrants' rights in push-back scenarios at sea.[428] It was decided that Italy had broken various guarantees established by the Convention and its supplemental protocols, notably the ban on collective expulsion.

With its landmark decision in Hirsi Jamaa v. Italy, the Court established a new line of precedent emphasising the importance of procedural safeguards. Observers have noted that the procedural safeguards established in Hirsi Jamaa impose an obligation on nations to provide access to the asylum procedure for asylum seekers within their authority, including those rescued at sea.[429] The Hirsi Jamaa case offers useful guidance that is applicable at a time when multiple states have attempted to circumvent the applicability of their human rights commitments vis-a'-vis asylum seekers by using power of border controls. As Papanicolopulu mentions that the Court appeared to be warning states that they risk violating Article 4 whenever state agencies prevent members of a group from entering the country, whether that occurs at the border, at sea, or on the land of another state.[430] It is irrelevant whether the individuals are also deported to their original country of origin or are merely prevented from entering the country. Accordingly, the Court's rulings could be used in conjunction with blockade operations to stop ships from entering the border of the country of destination. Additionally, the case revealed important the range of the protection offered by the ban on collective expulsion, as set forth in Article 4 Protocol 4. Shortly, the ban is meant to prevent countries from being able to deport a number of aliens without examination of their individual situation and, accordingly,

[428] Mariagiulia Giuffré, 'Watered-Down Rights on the High Seas: *Hirsi Jamaa and Others v Italy* (2012)' (2012) 61(3) *International and Comparative Law Quarterly* 728 http://www.jstor.org/stable/23279933.
[429] Irini Papanicolopulu, '*Hirsi Jamaa v Italy*' (2013) 107(2) *American Journal of International Law* 417.
[430] Ibid.

without permitting them to bring out their objections against the measure decided by the relevant body.

Further, the Grand Chamber of ECtHR issued a seminal judgement in *Khlaifia and Others v. Italy* that has far-reaching repercussions for the duty of states to protect the basic freedoms of migrants.[431] The ruling found that Italy had failed to provide migrants with adequate procedural guarantees to allow them to appeal their detention and expulsion in light of the Arab Spring on December 15th, 2016. Moreover, the Court decided that the extraordinary circumstances meant that Italy's treatment of migrants in detention centres did not breach the ECHR's prohibition on cruel and inhuman treatment. Italy's expulsion of migrants to Tunisia was also ruled by the Court to not be in violation of the ECHR's ban on collective expulsion. On September 17 and 18, 2011, Italian officials caught up hundreds of Tunisians trying to reach Italy by small boat. They were brought to the island of Lampedusa. On Lampedusa, Italian authorities took fingerprints to try to verify the applicants' identities. Unfortunately, authorities did not interrogate as to why the migrants were trying to enter Italy or if they would be in danger whether they were to return to Tunisia, an action taken in accordance with a policy designed to prevent claims of political asylum. The applicants were relocated to Palermo when violence broke out in Lampedusa's downtown and migrants staged a protest in the streets. After receiving the applicants' petition, the ECtHR was able to rule on some of the more contentious issues surrounding the protection of migrants' rights.

As far as migrants' rights were concerned, the court's decision was a mixed bag. First of all, it weakened the procedural protections against collective expulsions that the seven-judge lower chamber had strengthened in its September 2015 judgement based on established case law. The lower chamber argued that protecting migrants required conducting an in-person interview with every applicant for removal. Firstly, all seven judges in the ECHR chamber agreed that the applicants' right to liberty (Article 5 of the European Convention on Human Rights) had been infringed by the Italian government due to the inhumane conditions of their imprisonment and the absence of any legal repercussions. The Chamber was sharply split (5-2) on all other concerns. Italy was determined to have broken the prohibition on collective expulsion and the right to an

[431] Khlaifia and Others v Italy, App no 16483/12 (ECtHR, 15 December 2016).

effective remedy (Article 13) because of its failure to give individually tailored examination of the merits of each person's expulsion in accordance with Protocol 4, Article 4. After that, Italy has asked the Grand Chamber to reconsider its ruling. The Grand Chamber agreed with the Chamber's ruling that there had been a violation of the Article 5 which includes the right to liberty and security, the right to be informed promptly of the reasons for deprivation of liberty, and the right to a speedy decision on the lawfulness of detention, as well as Article 13 ECHR (the right to an effective remedy). However, the Grand Chamber overruled the lower Chamber's findings that Article 3 ECHR and Article 4 Protocol No. 4 to the Convention on collective expulsion were violated.

The Court concluded that Article 4 of Protocol 4 did not specifically require personalised processing of asylum requests after examining Hirsi Jamaa and Others v. Italy and other judgments in which the ECtHR had required individualised processing of asylum claims.[432] Regrettably, the Court's decision on this point still leaves many concerns unanswered. If the right to an individual interview is not guaranteed by Article 4 Protocol 4, then it seems that the ECHR protections applicable to expulsion are weakened. The decision expands the arbitrary power of states to deal with large migration flows. Massive migration flows can overwhelm states, making it difficult for them to provide adequate housing or to arrange for housing in a reasonable timeframe. As a result, the EU continued to utilize migrant hotspots in Italy and Greece. By this ruling of the ECtHR, the EU encouraged Italy and Greece to set up their own hotspots, which are designated locations where new immigrants may be identified and fingerprinted and where some asylum procedures can be carried out. Each application must be thoroughly reviewed in accordance with the procedural safeguard connected to Article 4 Protocol 4 to prevent arbitrary removal, and this is applicable whether the petitioners are lawful residents or unlawful aliens. As Peers and Zirulia emphasized, there are good reasons to believe that Article 4 of Protocol No. 4 and Article 13 in relation to it are violated in every instance in which the applicants are not afforded the opportunity to sound their arguments in support of their condition.[433]

[432] Jill I Goldenziel, '*Khlaifia and Others v Italy*' (2018) 112(2) *American Journal of International Law* 274, doi:10.1017/ajil.2018.28.
[433] Stefano Zirulia and Steve Peers, 'A Template for Protecting Human Rights During the "Refugee Crisis"? Immigration Detention and the Expulsion of Migrants in a Recent ECtHR Grand Chamber Ruling' (EU Law Analysis, 26 January 2017) http://eulawanalysis.blogspot.com/2017/01/a-template-for-protecting-human-rights.html accessed 6 November 2022.

These comments are discussed in detail in Judge Serghides's opposition judgement, the only one addressing this specific issue.[434]

Moreover, the first case to confront the Spanish policy of prompt expulsions at the Ceuta and Melilla territories, *N.D. and N.T. v. Spain*, was published by the Court on 13 February 2020 as a Grand Chamber judgement.[435] The case concerned Melilla, a Spanish enclave on the North African coast, where migrants were promptly and collectively expelled after being apprehended while attempting to cross into Spain from Morocco. The applicants, originally from Mali and Côte d'Ivoire, fled their respective countries and ended up in Morocco without knowing one other. About 600 people made an attempt to break the border fence on August 13, 2014. According to their allegations, they were subjected to a collective expulsion without a serious examination of their individual cases or access to legal representation, in violation of Article 4 of Protocol 4. In connection with article 4, they further claim that no effective remedy with unilateral action was available to them in order to challenge their quick return, which is a violation of Article 13. The Court found infringement in both allegations in an earlier Chamber judgement. Initially, the lower Chamber rejected the Spanish government's contention that the applicants had never crossed Spanish territory and were therefore not expelled, and instead determined that the general word of "expulsion" included also that of "non-admission" in light of the United Nations International Law Commission requirements.[436] The Grand Chamber ruled that all aliens present on State territory, regardless of whether they are classified as "migrants" or "refugees," are subject to the International Law Commission Draft Articles on the Expulsion of Aliens.[437] The Grand Chamber started with the issue of who had control over the fence separating the Spanish zone and ruled that a state's territorial jurisdiction, which begins at the boundary line, cannot be excluded, altered, or limited unilaterally by the mere presence of a fence positioned some distance from the border. It noted that the Spanish government had operated alone in expelling the petitioners and that the scope of Convention rights could not be arbitrarily narrowed. Subsequently, the Grand Chamber discussed whether the applicants' departure constituted an expulsion or

[434] Khlaifia and Others v Italy, App no 16483/12 (ECtHR, 15 December 2016) Partly Dissenting Opinion of Judge Serghides, paras 27–42.
[435] N.D. and N.T. v Spain, Apps nos 8675/15 and 8697/15 (ECtHR, Grand Chamber, 13 February 2020).
[436] N.D. and N.T. v Spain, Apps nos 8675/15 and 8697/15 (ECtHR, 13 February 2020).
[437] N.D. and N.T. v Spain, Apps nos 8675/15 and 8697/15 (ECtHR, Grand Chamber, 13 February 2020) paras 185–186.

a non-admission of entry. In line with previous rulings, it defined expulsion in the broad meaning to include any form of forcible removal from the country, regardless of the applicant's right to remain legally. The Court determined that anyone seeking entry into Spain could do so through a variety of channels, including the Beni Enzar border crossing, Spanish embassies and consulates in their countries of origin or transit, such as the Spanish embassy in Morocco. Article 13 of the Convention read in conjunction with Article 4 of Protocol No 4 was not violated, as determined by the Grand Chamber. Since the applicants caused their own deportation by seeking illegal entrance in Melilla, the Court concluded that the respondent State could not be held accountable for failing to provide a legal remedy there against their removal.

The N.D and N.T decision upholds the Court's unyielding stance on jurisdiction and confirms the Hirsi Jamaa principles. In addition, it states explicitly that the Convention's objective is to protect not only theoretical rights, but also practical and efficient rights. Nevertheless, the Grand Chamber creates a backdoor and gives flexibility to states on the collective expulsion by stating that there is no violation if the deportees have triggered the collective deportation by their own "culpable" behaviour, such as by bypassing standard border procedures.

As Goldner Lang described, EU Member States may take the ECtHR's decision in N.D. and N.T. as an indication that their efforts to prevent migrants from accessing Greece under the statement would be upheld by a court of law in the event of a referral to the Strasbourg Court.[438] Also, the Grand Chamber unanimously embraces and publicly advocates what it describes as a sovereign right to govern migrants and the importance of managing and safeguarding borders by states. Nevertheless, the Court mandates that states parties provide individuals who have arrived at a border with genuine and effective access to legal entry processes, including those at the border where an asylum application can be submitted. Carrera defines the Grand Chamber ruling on the legal routes criterion as an ultra-statist approach to the implementation of the ECHR in migration issues.[439] The extent to which the Court will be able to assess this criterion in a fast and precise way, and

[438] Iris Goldner Lang, 'Towards "Judicial Passivism" in EU Migration and Asylum Law?' in Tamara Ćapeta, Iris Goldner Lang and Tamara Perišin (eds), *The Changing European Union: A Critical View on the Role of Law and Courts* (Hart Publishing 2020).

[439] Sergio Carrera, 'The Strasbourg Court Judgment *N.D. and N.T. v Spain*: A Carte Blanche to Push Backs at EU External Borders?' (EUI Working Paper RSCAS 2020/21) https://cadmus.eui.eu/handle/1814/66755 accessed 6 November 2022.

the means by which governments will going forward properly assure 'genuine and effective access' to legal immigration methods, are also matters of some legal uncertainty. The ECtHR fails to grasp the significance of the fact that state border management policies extend further than simple border control inspections at strictly defined locations along a state's borders. Once again, this may legitimise group expulsions under the EU-Turkey statement, as well as other human rights breaches. Furthermore, the Returns Directive specifies that the only instrument that can be used as a legal basis for returning people is a return decision.[440] As a result, by relying on the EU-Turkey Statement rather than an individual return decision as the legal foundation for the returns, the Greek authorities would fail to analyse the returns individually as required by Protocol 4 and strongly emphasized in Conka and Hirsi Jamaa cases.

In the A.R.E. case[441], the alleged violation of the prohibition of collective expulsion stemmed specifically from the authorities' failure to provide individualized assessments of asylum claims before returning asylum seekers from Greece to Turkey. According to established ECtHR jurisprudence, collective expulsions occur when migrants or asylum seekers are deported as a group without proper examination of each individual's personal circumstances. In A.R.E., the applicant argued that Greek authorities, implementing the EU-Turkey Statement, carried out returns without adequately assessing their individual protection needs, effectively constituting collective expulsion. Although the court's final judgment was nuanced, this case illustrates critical procedural deficiencies and potential breaches of the prohibition against collective expulsion as protected by Article 4 of Protocol No. 4 to the European Convention on Human Rights. The ECtHR found Greece responsible for engaging in systematic pushback practices along its land and sea borders, reinforcing concerns that the EU-Turkey Statement facilitates such violations.[442] This ruling aligns with previous ECtHR cases, such as Hirsi Jamaa v. Italy in holding Member States accountable for collective expulsions without individual assessments. The case strengthens the argument that the EU-Turkey Statement, by enabling the summary return

[440] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L348/98.
[441] *A.R.E. v Greece, App no 15783/21 (ECtHR, 7 January 2025).*
[442] Isabel Kienzle and Melina Riemer, 'Feeble Recognition of a Systematic Pushback Practice: The Latest ECtHR Rulings on Greek Pushback Cases' (VerfBlog, 30 January 2025) https://verfassungsblog.de/pushbacks-echr-greece-turkiye/ DOI: 10.59704/b9710904afb91ed5 accessed 20 January 2025.

of asylum seekers to Turkey, is incompatible with fundamental rights under EU and international law. Given that the ECtHR has now ruled against Greece in a case related to pushbacks to Turkey, this decision may pave the way for further legal challenges questioning the legitimacy of the EU-Turkey deal and its impact on asylum seekers' rights

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3- THE ECTHR RULINGS ON THE PRINCIPLE OF NON REFOULEMENT

The EU Member States have adopted the Dublin III Regulation, which creates a framework for international collaboration rooted in trust and a unified legal framework. It assumes that all EU Member States are secure under the 'safe third country' and 'first country of asylum' frameworks. To the contrary, tribunals both at domestic and international has made it quite obvious that non-rebuttable trust is not permitted anywhere, not even in the European Union, if it threatens to undermine the protection of an individual's fundamental rights.[443] The Statement's first call for engagement runs as follows: "*All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement*."[444] As acknowledged in the first action object, these returns must be in line with the concept of non-refoulement in both international and EU human rights law. The principles of first country of asylum and safe third country provide the legal basis for returns under the Statement. In order to determine to what extent returning refugees from Greece to Turkey can constitute a violation of the prohibition of refoulement, this section will analyse these principles in light of EU legal framework for refugees and ECtHR rulings.

The European Convention on Human Rights and the case law of the ECtHR set an advanced criterion for the protection of the rights of asylum seekers. The significance of the non-refoulement principle has been repeatedly emphasised by the Court. In one of landmark judgement in *Soering v. United Kingdom*, the ECtHR rules that the United Kingdom still has

[443] M.S.S. v Belgium and Greece [GC], App no 30696/09 (ECtHR, 21 January 2011).
[444] European Council, 'EU-Turkey Statement' (18 March 2016)
https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

the duty to ensure that the applicant is not subjected to treatment in violation of Article 3 of the Convention as a result of its decision to expel, even though the removal in this case was indirect and took place in another country.[445] The case of *Soering v. United Kingdom* (1989) deals with the potential deportation to the USA by the UK of a West German person to face prosecution in Virginia, USA on an accusation of murder. It was asserted by Soering that he would be prohibited his Convention rights due to the "death sentences" if he were accused of murder and sentenced to execution. Non-refoulement is an issue brought up by the Soering case, and it involves state accountability when an individual is forcibly removed to a country where they face a significant danger of human rights violations. The Soering ruling upholds the universality of the ECHR's protections for human rights and the unconditional guaranteeing of Article 3. It has to be noted here, the Court came to the conclusion that non-refoulement rule applies whether the ill-treatment in question would occur in a Convention party or not.

The permission to remain in the country may not be granted through the appeals process if the petitioner is determined to have a first country of asylum. Although non-refoulement is not expressly mentioned in the ECHR, Turkey has been found in violation of its ECHR provisions on multiple occasions. For example in Jabari case, the ECtHR ruled against Turkey in 2000 for trying to deport an Iranian refugee on the basis that she had not registered with the police within five days of her arrival, without first assessing the facts of her asylum claim.[446] Considering the protection of fundamental nature of the non-refoulement right, the Court and other international human rights tribunals and agencies have frequently emphasised that the level of examination to be given to a claim for non-refoulement must be "rigorous." Further, it has mandated that any accusation of a risk of torture or other ill-treatment must be subject to a "meaningful examination" by the state. As it can be seen from Jabari case, overwhelmingly, the Court's Article 3 decisions on refoulement cases involved non-Convention States as the ultimate destination. It should be emphasized the extended protection of ECHR that a person is protected from refoulement under Article 3 of both the ECHR and the CAT regardless of whether or not the state of arrival and his/her home country is whether or not a party to the Convention.

[445] Soering v United Kingdom, App no 14038/88 (ECtHR, 7 July 1989).
[446] Jabari v Turkey, App no 40035/98 (ECtHR, 11 July 2000).

Another important case made a great contribution to understanding the non-refoulement scope. The Grand Chamber of the ECtHR handed a landmark judgement in *M.S.S. v. Belgium and Greece* on 21 January 2011, highlighting the shortcomings of European Union asylum regulations, particularly the Dublin Regulation.[447] The Applicant, M.S.S., paid a smuggler $12,000 to help him leave Afghanistan after he narrowly escaped an assassination attempt while working as a translator for multinational air force headquartered in Kabul. His fingerprints were collected when he arrived in Greece on December 7, 2008, after he had travelled through Iran and Turkey. M.S.S. was jailed for a week before he was given an expulsion order; he did not seek asylum in Greece. After passing through France, M.S.S. finally made it to Belgium on February 10th, 2009. Due to the Dublin regulation, the Belgian government rejected the asylum seeker's initial claim for protection when he showed up at the Aliens Office without proper identification and sent him back to Greece. At the Athens airport, M.S.S. was quickly detained. He was incarcerated in a facility that was so full of people that the guards had to decide when and if he may use the bathroom. He was denied access to fresh air, fed inadequately, and forced to sleep on a filthy mattress or the floor. M.S.S. has challenged both Belgium and Greece to the European Court of Human Rights for alleged violations of his rights. His treatment in custody and as well as the possibility of being deported to Afghanistan after his release without his asylum application being reviewed, were the subjects of the complaint lodged against Greece. The case against Belgium claimed that he had been subjected to cruel and degrading treatment at the hands of Belgian authorities due to his transfer to Greece. He felt unprotected in light of the treatment he received in Greece, and accused the procedure Belgium had adopted. The Grand Chamber of the ECHR ruled that a state always has the obligation to authenticate the conditions, treatment, and legal protections that an asylum seeker will be exposed if he is removed, even if the transfer takes place within the EU. Unfortunately, it is no longer safe to anticipate that human rights would be protected in every EU member state simply since they are part of the EU. The Court found that the applicant was not adequately protected from arbitrary removal to Afghanistan, where he faced a high risk of ill treatment, because Greece did not apply the asylum statute and there were serious structural limitations for access to the asylum procedure and remedies. In the context of Belgium, where an individual's deportation to

[447] M.S.S. v Belgium and Greece, App no 30696/09 (ECtHR, 21 January 2011).

Greece could put them at risk of treatment forbidden by Article 3, the mechanism for appealing the transfer did not fulfil the ECtHR case law standards of rigorous investigation of the complaint. It is clear that when the member states concluded the EU-Turkey statement, ECtHR case law criteria were easily ignored its application. Due to the exceptional nature of the Article 3, the ECtHR continues to insist on conducting a comprehensive assessment of an Article 3 allegation before deportation to the country posing the risk as illustrated in Jabari and M.S.S cases.

When a non-EU Member State, in this context Turkey, is deemed to be a "safe third country" for the applicant, the EU Member States may determine the individuals request for international protection to be rejected, according to Article 33 of the Asylum Procedures Directive. Before evaluating the EU-Turkey Statement in light of the EU law, it is important to understand how safe third country practise forms the primary legal underpinning of such readmission agreements. According to safe third country norm, refugees fleeing persecution, violent conflict, or human rights violence should be able to apply for asylum in a territory that is geographically close to their country of origin rather than having to make long, risky travels to new routes.[448] Refugees must be sent to a safe country that meets the protection provisions of the 1951 Refugee Convention and the ECHR. The EU Asylum Procedures Directive, which establishes unified frameworks for granting and revoking international protection across EU Member States, codifies this principle into EU law.

When compared to more preconceived ideas of refugee law, the safe third country notion stands out as a unique method. The UN High Commissioner for Refugees (UNHCR) states that the state with authority over a refugee is ultimately responsible for ensuring that the refugee is protected and has exercise to their human rights.[449] UNHCR identifies this type of policy as one that "…may be returned or transferred to a state where they had found, could have found or, pursuant to a formal agreement, can find international protection."[450] Concerning the EU law, the EU began formally drafting laws governing

[448] Jeff Crisp, 'Refugee Protection in Regions of Origin: Potential and Challenges' (Migration Policy Institute, 2003) https://www.migrationpolicy.org/article/refugee-protection-regions-origin-potential-and-challenges accessed 14 November 2022.
[449] UN High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Access to Protection and a Connection Between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries* (April 2018) https://www.refworld.org/docid/5acb33ad4.html accessed 17 November 2022.
[450] Ibid.

asylum proceedings, safe country practises spread rapidly. As was earlier mentioned, the Dublin Regulation allowed for nationwide safe third country policies to be applied toward an EU level and established criteria for deciding which Member State is responsible for evaluating an application for asylum.[451] Through their commitments under the Dublin Regulation, non-EU Member States in Europe like Norway are likewise obligated by international standards regarding the safe third country concept. The Dublin Regulation requires that a safe country referral adhere to the requirements set forth in the Procedures Directive.[452] In order for a request for international protection to be deemed inadmissible by a Member State, Article 33 of the APD specifies the following conditions: "*Member States may consider an application for international protection as inadmissible only if: a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38*…"[453]Article 38 subsequently lays forth the fundamental requirements that must be met in order to put the STC principle into effect. The authorities must be convinced that the applicant will be processed in accordance with the following principles specified in Article 38 before the safe third country concept can be implemented:

"(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;

(c) the principle of non-refoulement in accordance with the Geneva 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

[451] Cathryn Costello, 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection' (2005) 7 *European Journal of Migration and Law* 41.
[452] Council of the European Union and European Parliament, Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L180/31.
[453] 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) [2013] OJ L180/60, art 33.

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention."[454]

It has been argued that Turkey does not qualify as a "safe third country" because the concept does not obviously need the country to ensure access to a fair and effective asylum procedure; rather, it considers the basic existence of the ability to claim refugee status to be appropriate. Furthermore, the Member State, in this case Greece, has discretion over the specifics of how the notion is implemented because its application is substantially left to domestic sovereignty. As a result, Greece cannot simply presume responsibility for the abovementioned procedural safeguards without first conducting a comprehensive and customised case-by-case investigation of whether Turkey meets the criteria to be declared a "safe third country". Even if the Turkey's human rights records and asylum system will be deeply analysed in the following chapter, there are main issues which should be analysed under the EU law in this chapter.

While the safe third country procedures are governed by proper norms for determining whether or not a country poses a significant threat to international security, it is doubtful that these procedures will be free of political pressure. Since Turkey is not a unique case, EU has already prompted to begin employing third countries to manage the stream of refugees. Additionally, neighbouring countries who lack the resources to deal with a significant number of asylum seekers are put under a tremendous hardship by the safe third country policy. To demonstrate the challenges experienced by both refugees and host governments, this research requires to consider Hungary's safe third countries list from 2015 such as Serbia. As a result of Serbia's inclusion on the list as a safe third nation, Hungary is now authorised to reject asylum claims based on the presumption that applicants who have passed through such a state have had a fair ability to apply for and receive shelter somewhere else.[455] Hungarian asylum legislation passed in 2015 allows the rejection of asylum requests as unacceptable in all circumstances where the asylum seeker was trying to reach Hungary from Serbia, prompting the question of whether

[454] 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) [2013] OJ L180/60, art 38.
[455] Ashley Binetti Armstrong, 'Chutes and Ladders: Nonrefoulement and the Sisyphean Challenge of Seeking Asylum in Hungary' (2019) *Columbia Human Rights Law Review*.

Serbia might be considered a safe third country.[456] It has been contested within a number of jurisdictions and in both European and national courts that the Hungarian government claim on the assumption of Serbia as a safe third country. As a first step, the ECJ issued a preliminary judgement on the Dublin Regulation that produced results of whether or not Serbia qualified as a safe third country. The European Court of Justice (ECJ) concluded on March 17, 2016, that despite having assumed responsibility for asylum seekers, a Member State may transfer them to a safe third country under Dublin III Regulation.[457] According to Article 107 of the Rules of Procedure of the Court of Justice, the ECJ was asked to issue a preliminary ruling on whether or not it would overturn Hungary's decision to extradite Mr. Mirza, a citizen of Pakistan, to Serbia. The ECJ found that the Dublin III Regulation does not contain a non-refoulement norm. As a result, even if a Member State had expressly proclaimed that it was in charge of processing an asylum application, the Dublin III Regulation cannot stop that state from transferring the individual to a non-EU nation due to its narrow scope of application.[458] As a candidacy state for EU membership, the decision has also sparked a debate about Serbia's status as a safe third country and the importance of additional EU-wide standardization of the asylum system like the assumption of Turkey as a safe third country.

Furthermore, the case of Bangladeshi nationals seeking refuge in Hungary after passing through Greece, North Macedonia, and Serbia is another important one, *Ilias and Ahmed v. Hungary*, in which Hungary's policy regarding returns of asylum seekers to Serbia was taken into consideration.[459] Two citizens of Bangladesh had travelled to the Röszke transit zone in Hungary via the countries of Greece, North Macedonia, and Serbia. They filed for asylum claim right away and spent the next 23 days in custody. Serbia's status as a safe country under Hungarian law was cited as the reason for the denial of their applications. They appealed to being sent back to Serbia and filed a case with the European Court of Human Rights, citing Article 3 of the ECHR as their legal basis. They were unable to leave the transit zone for Serbia for two reasons: (1) this would be illegal in Serbia and would

[456] National Legislative Bodies / National Authorities, *Hungary: Government Decree 191/2015 (VII.21) on National Designation of Safe Countries of Origin and Safe Third Countries* (1 August 2015) https://www.refworld.org/docid/55ca02c74.html accessed 18 November 2022.
[457] Case C-695/15 PPU Shiraz Baig Mirza v Bevándorlási és Állampolgársági Hivatal ECLI:EU:C:2016:188, Judgment of 17 March 2016 (CJEU).
[458] Ibid. para 37-53
[459] Ilias and Ahmed v Hungary [GC], App no 47287/15 (ECtHR, 21 November 2019).

subject them to sanctions, and (2) it could cause them to lose any possibility of receiving refugee claim and protection in Hungary. To determine whether the Hungarian government had carried out in compliance with its procedural obligation to conduct a proper assessment of the circumstances for asylum seekers in Serbia, the ECtHR conducted a detailed examination of the accessibility and reliability of that State's asylum system. As a result, the Grand Chamber of ECtHR found that Hungary had violated its article 3 procedural responsibility. As the Court noted in such a circumstance, the expelling state must ensure that the gateway state's asylum system provides enough protection against an asylum seeker being returned to his place of origin without a comprehensive assessment of the risks he faces in accordance with Article 3 of the Convention.[460] The applicants also claimed their imprisonment was illegal. The ECtHR's Grand Chamber reversed a lower court's ruling in *Ilias and Ahmed v. Hungary*, concluding that the applicants' 23 day-long detention in a transit zone on Hungary-Serbia border did not constitute imprisonment.

With the objections of the UNHCR and other international human rights organisations in consideration, the ECtHR noted that no persuasive explanation or explanations have been proffered by the Government for such a shift of attitude.[461] Hungarian Helsinki Committee members have always held the position that Serbia does not qualify as a safe third nation.[462] Since 2015, when Serbia became a major transit state on the Balkan route, the EU has increased its direct intervention on Serbian-Hungary arrangements same as it has been shifted with Turkey since 2016. Responsibility for violations of international and EU law are called into question by the joint operations such as Frontex and Serbian authorities, EU-Turkey Statement which are a relatively unusual type of close collaboration between the EU and a third country of transit. Comparing Turkey's assumption as a safe third country with Serbia, the ECtHR strongly emphasised the responsibility of the expelling state and the importance of the detailed examination after a refugee's refoulement, in spite of the safe third country acceptance. However, in the

[460] Johan Callewaert, 'Judgment of the ECHR in Ilias and Ahmed v. Hungary' (2019) European Court of Human Rights, Recent Case Law https://johan-callewaert.eu/judgment-of-the-echr-in-ilias-and-ahmed-v-hungary/ accessed 18 November 2022.
[461] UN High Commissioner for Refugees (UNHCR), *Hungary as a Country of Asylum: Observations on Restrictive Legal Measures and Subsequent Practice Implemented Between July 2015 and March 2016* (May 2016) https://www.refworld.org/docid/57319d514.html accessed 18 November 2022.
[462] Hungarian Helsinki Committee, *Hungary: Key Asylum Figures for 2017* https://www.helsinki.hu/en/hungary-key-asylum-figures-for-2017/ accessed 18 November 2022.

context of EU-Turkey statement, ECtHR avoided handling the non-refoulement issue and responsibility of Greece in assessment of the refugee application as it can be seen from J.R and others case.

In conclusion, in the midst of the 2015 refugee crisis, the EU began routinely breaking its promise not to refoule asylum seekers. As demonstrated by Ilias and Ahmed's case, even if a third country is a signatory to the European Convention may not guarantee that it is secure for a particular individual and that he poses no risk of refoulement there. The fundamental rights of migrants are seriously threatened by the statement. Despite Turkey's membership in the ECHR, the ECtHR has issued a number of rulings condemning its treatment of refugees, as it will be detailed in the following chapter. Furthermore, the ECtHR ruled in M.S.S. v. Belgium and Greece that expelling a person from a country where they are living in poverty is a violation of Article 3 of the European Convention on Human Rights. However, implementation of the statement caused many refugees' refoulement to Turkey without individual assessment or regarding the Turkey's treatment to refugees. ECJ rulings on the statement closed all the doors for refugees to appeal the refoulement decision. Therefore, the EU not only violates the principle of non-refoulement of refugees to Turkey, but it also breaches the right to have an effective and rapid remedy. For instance, Greek national authorities issued 12,020 detention orders in 2021, but only 2,803 appeals challenging such orders were filed with the appropriate Administrative Courts around the country. This exemplifies the difficulty of obtaining an effective reconsideration of detention orders. From a human rights standpoint, it can be observed that ECtHR governs the regulation of asylum access by using safe third country notion and creating a legal basis for refoulement, and its implementation generates the EU-Turkey Statement to create an inviolable environment in which refugees are unable to file a case against refoulement. Regrettably, it is evident that certain practices are employed to evade an already inadequate and ineffective system based on the CEAS and the Dublin Regulation.

4- APPLYING PRECEDENTS AND RELATED PROCEDURAL SAFEGUARD TO THE EU-TURKEY STATEMENT

Human rights breaches have been a point of discussion ever since the EU-Turkey agreement entered into force, particularly in relation to the Greek islands and Turkey. The

statement raises concerns in terms of non-refoulement given its nature. In regards to the non-refoulement and collective expulsion of asylum seekers and refugees, I argue that the EU-Turkey Deal is in direct violation of both international and European law. There is a breach of the non-refoulement and collective expulsion principles under ECHR and EU Charter. In particular, the Hirsi Jamaa case supports to this argument by highlighting the need of protecting refugees' right from non-refoulement even in the face of a large influx of arrivals. The EU principles ensuring the right to seek refuge have been violated by the removals carried out pursuant to the Statement. Since the Greek system appears to be overwhelmed, it is unclear how to ensure that each case is given a satisfactory and fair consideration under the EU-Turkey Statement. States that are signatories to the ECHR might be held liable for actions that occur or have consequences beyond their borders as was mentioned in Soering v UK case.[463]

Despite the fact that the ECtHR has made rulings opposing this research argument, I offer my critique of the Court's inconsistency. Although the ECtHR generally supports the principle of non-refoulement, its legal decisions do not consistently provide protection for individuals from third countries who are seeking refuge. The principle of non-refoulement is being violated by the EU-Turkey Statement, which serves as the legal basis for the removals. By preventing asylum seekers from having their particular claims for protection evaluated, the assumption of Turkey as a safe third country or first country of asylum distracts from the goal of non-refoulement. As a result, anyone seeking refuge may be subject to refoulement under the statement. It is possible that refoulement cases will arise if refugees are at risk of persecution in Turkey as a result of the repatriation of irregular migrants from Greece. Denial to offer an applicant seeking international protection with such a fair evaluation of his claim might also give rise to a finding of non-refoulement violations. Existence of domestic legislation and ratification of key international and regional treaties is required but not sufficient to give appropriate protection against the risk of ill-treatment, although providing the necessary legal framework for ensuring respect for fundamental rights in the EU law and international human rights law. Protection presence is ultimately determined by the actual policies of states. To determine whether or if the return of asylum-seekers from the Greek islands to Turkey

[463] Soering v The United Kingdom App no 14038/88 (ECtHR, 7 July 1989) paras 87–88.

under the Statement is in accordance with the principle of non-refoulement, we shall examine their actual circumstances through the case law in this section.

For many people seeking asylum in Greece, the system is inadequate because of the fast-track border procedure, which is the default framework for individuals arriving on the islands. The deficiencies of system such as lengthy imprisonment in deplorable living circumstances and/or arbitrary denial of liberty is well documented by many NGOs.[464] ECtHR has handed down rulings on detention on Chios and is currently considering multiple complaints involving the human rights compliance of receiving circumstances on the islands of Lesvos, Chios, Samos, and Kos.[465] However, the ECtHR remained limited in its judgement to the detention rather than touching the defects of the statement in *J.R. and Others* case. At all stages of the Greek asylum procedure, the use of the safe third country concept to reject the claims of Syrian nationals as inappropriate has been criticised severely.[466] Europe has the resources to welcome refugees in an organized, fair, and humanitarian way when it has sufficient motivation, as demonstrated by the extraordinary participation of the EU member states in responding to the entry of more than 3 million refugees from Ukraine. The EU Turkey Deal, on the other hand, was a solution to the discord among member states, as pointed out in chapter 1. The fundamental goal of the statement has been to discourage refugee immigration in the absence of a robust responsibility sharing mechanism. The EU institutions, such as the ECJ and the ECtHR, have legitimised the statement and avoided taking a position on this politicised refugee crisis, as evidenced by the inconsistencies in ECtHR judgements.

In the initial run of the EU-Turkey deal, as expected, asylum-seekers were returned without a chance to have their refugee status evaluated. As Ippolito and Velluti emphasize EU law prohibits collective expulsion on the basis of two key principles: "the prohibition of discrimination and the prohibition of arbitrariness".[467] Both the ECHR and the Charter

[464] Refugee Support Aegean (RSA), 'The Conduct of (Remote) Asylum Interviews on Lesvos' (8 December 2020) https://bit.ly/371yfAE accessed 20 November 2022.
[465] A.R. and Others v Greece App no 59841/19 (ECtHR); Kaak and Others v Greece App no 34215/16 (ECtHR).
[466] Mariana Gkliati, 'The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees' (2017) 3(2) *Movements: Journal for Critical Migration and Border Regime Studies*; Vladislava Stoyanova and Eleni Karageorgiou, *The New Asylum and Transit Countries in Europe during and in the Aftermath of the 2015/2016 Crisis* (International Refugee Law Series, vol 13, Brill 2019).
[467] Francesca Ippolito and Samantha Velluti, 'The Relationship between the CJEU and the ECtHR: The Case of Asylum' in Tobias Lock, Kanstantin Dzehtsiarou, Theodore Konstadinides and Noreen O'Meara (eds),

of Rights protect individual rights but do not define collective expulsions apart from these two factors. The concept should instead be construed in line with the ECtHR jurisprudence in order to find its extent and have better analysis of the EU-Turkey statement.

Hirsi Jamaa case offers significant legal grounds to analyse the EU-Turkey Statement. There is contradiction between the Court's reasoning and the repatriation mechanism envisioned in the EU-Turkey accord due to the vast number of people who could face the same destiny, the bilateral agreement between Italy and Libya, and the comparable terminology utilised in the deportation orders. As stated in the case of *Hirsi Jamaa and Others v. Italy*, those seeking asylum have the right to file an asylum claim regardless of whether they were detained at a border, on a ship, or in international waters. However, this obligation is not fully respected in the application of the EU-Turkey Statement. The statement covers the irregular migration "crossing from Turkey into the Greek islands". Due to the ECtHR ruling in the Hirsi case, the scope of European accountability has been greatly expanded. As an example of how states' accountability is triggered when they undertake in cross - border action outside their borders, the ECtHR's landmark decision in *Hirsi Jamaa and Others v. Italy* is noteworthy. It is emphasised by the Court that member nations cannot circumvent their obligation: "…*Italy cannot evade its own responsibility by relying on its obligations arising out of bilateral agreements with Libya. Even if it were to be assumed that those agreements made express provision for the return to Libya of migrants intercepted on the high seas, the Contracting States' responsibility continues even after their having entered into treaty commitments subsequent to the entry into force of the Convention or its Protocols in respect of these States*…"[468] Indeed, the judgement is a crucial guidepost for the EU-Turkey deal problems concerning EU law and international human rights law. The Court clearly refers to the importance of refugees' rights even if there is a bilateral agreement. Regarding the Hirsi Jamaa case, the implementation of the EU-Turkey statement must be open to review by international and EU bodies even if it is not technically considered an international deal. The fact that the Court chose to highlight the lack of registration demonstrates the value of procedural requirement on refugee crisis.

Human Rights Law in Europe: The Influence, Overlaps and Contradictions of the EU and the ECHR (Routledge 2014).

[468] Hirsi Jamaa and Others v Italy App no 27765/09 (ECtHR, 23 February 2012) para 129.

Regarding the Conka case alongside the Hirsi Jamaa cases, it is possible to classify an expulsion as "collective," even if it is not specifically targeted at a particular group. As was the case in the aforementioned cases, individual differences among the refugees were irrelevant to the determination of whether or not they qualified as a collective. The EU-Turkey statement violates European and international law since it results in collective expulsions and fails to provide adequate procedures for anyone seeking refuge in the EU to achieve this goal.

The number of court decisions on the collective expulsion of aliens and non-refoulement is expanding; it now includes more and more states and effectively encompasses the entire periphery of Europe's external boundaries. One of the main issues is the most contentious of the whole EU-Turkey statement, and it has sparked a lengthy debate among both the general public and academics. The next should be said about the first part of the agreement, excluding the discussion of whether or not Turkey is a safe country for refugees (which is examined in further depth in the following chapter). The first argument is based on the obvious inconsistency in the agreement's opening sentences, which deal with collective expulsion. All migrants will be sent back to Turkey as per the terms of the agreement, which also specifies that this must be done in conformity with EU and international law. However still, according to the terms of the agreement, they should consider each asylum request as an individual case. Every migrant who does not seek for asylum or whose asylum claim is denied on the merits or grounds of inadmissibility will be sent back to Turkey in accordance with the provisions of the agreement. Under these circumstances, it is hard to see how Greek authorities can fulfil their commitment to deport all irregular migrants in line with the ban of collective expulsions protected at the EU and international levels. The ECtHR goes farther than the Geneva Convention by prohibiting collective expulsion of immigrants that, even if objective and reasonable, is not carried out analysing the specific characteristics of the returnees. As the Court categorises an expulsion as "collective" if it determines that a large group of people with the same identity will be subjected to the same treatment, if authorities announce streamlined expulsion measures due to a bilateral agreement, the pushback of the EU-Turkey statement falls in this category.

Despite the fact that the case law may have evolved differently in light of the current conditions of a clearly security based approach under the EU-Turkey deal, the

jurisprudence of the ECtHR specifically on *N.D. and N.T. v. Spain* and *Khlaifia and Others v. Italy* cases appears to go beyond an individualised examination to declare the expulsion permissible. In the process of examining the Hirsi Jamaa case and its applicability to a given statement, I offer a critical analysis of the legal reasoning employed in the judgement of *N.D. and N.T. v. Spain* and *Khlaifia cases*, pointing out inconsistencies and contradictions therein. This means that the situation at the boundaries between Greece and Turkey is legitimized by the legal principles set by the Court. Not only does the court's ruling contradict its previous decisions, but it also establishes a legal foundation for the violation of human rights as stipulated by the ECHR. A comprehensive interpretation of those cases' novel methodology would suggest that the Court began to take a flexible position authorising expulsion. With its decisions in *N.D. and N.T. v. Spain*, the ECtHR Grand Chamber established new guidelines for assessing asylum applications. Assuming states have functional border procedures to process asylum claims, this criterion mandates that all individuals, including those with potential international protection needs, must enter the country lawfully through an official border or checkpoint and submit themselves to the border checks. Clearly, this criterion can absolve the hosting state from its affirmative duty to grant access to procedures on the grounds that the denial of such access may be ascribed to the persons' own actions. Regarding these controversial rulings of ECtHR, the principle of non-refoulement, what is at stake in the EU-Turkey Statement, is glossed over by the Court and the EU. I argue that this new framework of pushbacks devised by the ECtHR shut the door on refugees who are returned to Turkey for alleged actions of their own. The Court's contradictions and deconstruction of Hirsi Jamaa ruling is reassuring for member states because it shows that Strasbourg is eager to legitimise the cooperation with third countries under mounting political pressure in the contentious issue of international protection.

There are several concerns about the EU-Turkey Statement's implementation of non-refoulement in practical terms. First, the Statement designates Turkey as the first country of asylum for Syrian refugees. According to Procedures Directive, this means that if a Syrian national is recognised as a refugee or otherwise enjoys adequate protection in Turkey, the Member State wherein they seek asylum is exempt from conducting a

substantive review of their asylum application.[469] Despite having ratified the 1951 Convention and the 1967 Protocol on Refugees, Turkey is not fully bound by them because of a geographical limitation prohibiting asylum applicants from outside of Europe. Therefore, refugees from outside Europe in Turkey, including the Syrians who are returnable under the terms of the agreement, are not eligible for international protection under the Geneva Refugee Convention, but rather fall under a special temporary protection regime that does not reflect any international obligation (will be developed in the following chapter). For the "first country of asylum" principle to be put into effect, it is necessary to determine whether or not the refugee will be readmitted to the country with the legal right to remain there and treated in accordance with the 1951 Refugee Convention, the 1967 Additional Protocol, and international human rights standards (including the principle of non-refoulement).[470] Assessing whether the individual will be returned to a situation where they are at risk of persecution or serious harm in violation of the principle of non-refoulement is one component of the statement's evaluation, among others. Even though Syrian nationals are not legally allowed to seek refugee status in Turkey, the first country asylum concept can still be used if the person has access to adequate protections. Even if the Asylum Procedures Directive does not specify what constitutes sufficient protection, the UNHCR suggests that all internationally recognised minimums for protection have to be met.[471]

Moreover, the ruling of the ECJ in C-406/22 establishes a crucial legal precedent concerning the classification of safe third countries within EU asylum legislation.[472] The ECJ determined that Member States are required to perform thorough, current examinations when designating a country as "safe" and cannot depend on generic diplomatic assurances or obsolete assessments. The court highlighted that asylum applicants must be afforded the chance to contest the safety designation through an effective judicial review, especially where certain places within a country present

[469] 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) [2013] OJ L180/60, art 33(2).
[470]UN High Commissioner for Refugees (UNHCR), *Lisbon Expert Roundtable, 9 and 10 December: Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers* (2003) https://www.unhcr.org/protection/globalconsult/3e5f323d7/lisbon-expert-roundtable-128 accessed 10 November 2022.
[471] Ibid.
[472] *Ministerstvo vnitra České republiky, odbor azylové a migrační politiky (Case C-406/22) ECLI:EU:C:2024:841.*

considerable protection issue. This ruling directly affects the EU-Turkey Statement, which assumes Turkey is a "safe third country" for asylum seekers deported from Greece. International human rights organisations have frequently reported systematic pushbacks, detentions, and refoulement of asylum seekers in Turkey, casting significant doubt on its safety as a transit state.[473] The ECJ's decision in C-406/22 strengthens the assertion that general safety designations cannot warrant the automatic dismissal of asylum applications, as evidenced by Greece's execution of the EU-Turkey Statement. According to EU rules, Greece must perform individualised evaluations of every asylum application to guarantee that the applicant is not exposed to inhumane or degrading treatment in Turkey. Greek authorities often utilise the EU-Turkey agreement to expedite inadmissibility determinations, thereby circumventing the procedural protections specified in C-406/22. This legal inconsistency bolsters the likelihood of litigation against the EU-Turkey Statement, especially regarding its discordance with EU asylum legislation and procedural fairness requirements under the Asylum Procedures Directive (2013/32/EU). The ECJ's focus on substantial judicial scrutiny and revised safety evaluations indicates that the EU-Turkey Statement's methodology for asylum processing may contravene fundamental EU legal tenets and could face prospective legal disputes before the ECJ or the ECtHR.

CONCLUSION

The purpose of this chapter was to consider the legality of the EU-Turkey Statement from a perspective of EU law and IHRL perspective. To this end, the chapter examines whether the statement aligned with the principle of non-refoulement, collective expulsion and safe third country under the EU and international law. The research evaluated the substantive legality of the statement, discussing its compatibility with the principles of non-refoulment and prohibition of collective expulsion, starting from the ECtHR rulings mainly J.R and others, Hirsi Jamaa, N.D and N.T, Khalifia, Ilias and Ahmed. It includes a thorough examination of the ECtHR's inconsistencies and position on dealing with refugee influx, as well as an application of precedents to the EU-Turkey Statement. The EU-Turkey deal is a

[473] Human Rights Watch, 'Turkey: Hundreds of Refugees Deported to Syria' (Human Rights Watch, 24 October 2022) https://www.hrw.org/news/2022/10/24/turkey-hundreds-refugees-deported-syria accessed 10 February 2025.

short - term solution agreed upon in exceptional circumstances, but it does not mean that migrants and refugees rights should be disregarded in the meanwhile.

There are a number of legal defects in the EU-Turkey deal that raise questions about its consistency with EU law and IHRL; specifically, the deal is in jeopardy due to the ECtHR's legal difficulties on non-refoulement and collective expulsion, and the ambiguous nature of Turkey's status as a "safe" country. The EU's commitment to not refoule asylum applicants and the prohibition of collective expulsion were consistently disregarded. The case of Ilias and Ahmed demonstrates that just because a third nation is a signatory to the European Convention does not mean it is safe for a specific individual and that he does not face a risk of refoulement there. Although Turkey was accepted as a safe third country by the statement, the Court emphasised the responsibility of the expelling state and the significance of a thorough examination following the refoulement of a refugee, citing the case of Serbia as an example. Nonetheless, as is evident from the J.R. and others case, the ECtHR avoided dealing with the non-refoulement issue and the role of Greece in assessing the refugee application in the frame of the EU-Turkey statement. Since the safe third country raises issues not only in the EU law but also in Turkish asylum law and policy, the next chapter will seek to answer that how can Turkey protect the refugees in light of Turkish law and human rights records of Turkey.

CHAPTER 6: EVALUATING TURKEY AS A 'SAFE THIRD COUNTRY': LEGAL STANDARDS AND EMPIRICAL REALITIES

INTRODUCTION

A surge of asylum seekers from many other countries have entered Europe through the Western Balkan and Eastern Mediterranean routes since the summer of 2015, causing the European Union (EU) to be confronted with a refugee crisis. This migratory influx has affected hundreds of thousands of people, which is a major humanitarian disaster. It has also threatened the region's delicate geopolitical balance. Therefore, the EU embraced the concept of a safe third nation as a strategy for responding to the refugee crisis. Turkey was officially designated as a "safe third country" on June 7 of 2021 by Greece. Prior to that time, Greece had not created the list of safe third countries, but it did pass a new law (Law No 4375/2016) that incorporated the requirements of the 2013/32/EU Directive into Greek law.[474] Greece implemented a fast-track procedure at the border crossings to identify Turkey as a safe third country under the statement.[475] The enactment of the EU - Turkey Statement had detrimental repercussions on the rights of refugees both in the EU and Turkey. The EU maintains the view that asylum seekers coming from Turkey are exempt from European safeguards since their rights are not under threat in Turkey. By claiming that Turkey is a safe haven, the Greek government have a right to reject asylum requests and send them back to Turkey. As to Article 38 of the Asylum Procedures Directive, an EU member state can only deem a country as safe if its authorities satisfactorily meet the essential conditions. Therefore, if Turkey is officially designated as a safe third country, it should align with the basic criteria outlined in EU legislation, specifically the principle of non-refoulement.

The previous chapter assessed the statement's substantive legality, looking at how it aligns with the non-refoulment, and prohibition of collective expulsion principles as laid out in ECtHR rulings, including those of *J.R and Others v. Greece*, *Hirsi Jamaa v. Italy*, *N.D. and N.T. v. Spain*, *Khlaifia and Others v. Italy*, *Ilias and Ahmed v. Hungary*. It delved into

[474] Greece: Law No 4375 of 2016 on the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, and the establishment of the General Secretariat for Reception (partially abolished), 3 April 2016.
[475] Art 60(4), Greece: Law No 4375 of 2016 on the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, and the establishment of the General Secretariat for Reception (partially abolished), 3 April 2016.

the ECtHR's contradictory positions and inconsistent rulings regarding the handling of refugee influx, while also analysing the EU-Turkey Statement through the lens of preceding instances. Hence, this chapter aims to explore how Turkey can ensure the protection of refugees under the EU-Turkey Statement within the framework of Turkish law and considering Turkey's human rights record of accomplishment, as the concept of a safe third country presents challenges not only within the EU and international law but also within Turkish asylum law and policy.

This chapter is structured as follows. In section 1, it is outlined Turkey's progress towards becoming a safe third country according to the EU's criteria. This section overviews the heightened collaboration between the EU and Turkey during the migration crisis. Section 2 thereafter analyses the Turkey's reaction to Syrian refugee influx since 2011, including its open-door policy towards refugees and its refusal to utilize security measures to stem the flow of people seeking asylum. Then, section 3 explores Turkey's legal obligations to safeguard the rights of refugees in accordance with international law. Additionally, it outlines the extent of the temporary protection status imposed upon Syrian refugees, including their rights and responsibilities as specified by Turkish laws. Subsequently, section 4 presents the issues faced by refugees in Turkey due to temporary protection and their forced return to Syria from Turkey. In section 5 and 6, this research analyses the relevant legal precedents from both the ECtHR and the Turkish Constitutional Court (TCC) regarding refugees. Within this section, it is explored that judgements of the ECtHR that highlight the shortcomings of the Turkish Asylum System and the illegal acts of deportations. Following the legal analysis of the case law, section 7 criticises the declaration of Turkey as a safe third country. Then the section 8 explores the report of human rights organisations on Turkey's human rights records and its actions in response to the refugee crisis.

The chapter presents legal precedents from the European Court of Human Rights (ECtHR) and the Turkish Constitutional Court (TCC) to demonstrate the shortcomings of the Turkish asylum system. Hence, the courts' verdicts demonstrate that Turkey's human rights record disqualifies it from being considered a safe third country, thereby supporting the central point of this chapter. In the course of removal procedures, the ECtHR established important procedural protections in line with Article 3 of the ECHR. The

Akkad v Turkiye[476] case, in which forcible deportation of Syrian Akkad was determined to be in violation of Articles 3 and 13 of the ECHR, is a crucial element in this research. The Akkad case was followed by the analysis of the *Amerkhanov v. Turkey*[477] *and Batyrkhairov v. Turkey*[478] cases. These cases were examined to demonstrate the unlawful deportations in terms of their legality and the conditions of detention. The ECtHR reiterated its conclusion that the Turkish legal system fails to offer individuals a means to address unlawful administrative detention practices. The ECtHR also referred to its previous rulings on this matter. The *G.B. and others v Turkey*[479] case was examined, although it did not particularly pertain to the deportation of Syrians. It exposes the inadequacy of repatriation centres and the Turkish legal system. After exploring the ECtHR rulings, I focus on the rulings of TCC. Compensation requests over illegal administrative detention procedures in Turkey have mostly been publicised through individual applications to the TCC. The court produced a several rulings on compensation demands for unconstitutional administrative detention practices. This work focuses on the K.A[480], Y.T[481], Hammud[482] and B.T[483] cases from TCC to display the Turkish context of illegal deportations.

1- TURKEY'S RECOGNITION AS A SAFE-THIRD COUNTRY BY THE EUROPEAN UNION

Since the beginning of the Arab Spring and then the Syrian civil war, the outcome has been a series of paradoxes in Turkish foreign policy actions. While trying to arbitrate between the Bashar al-Assad dictatorship, opposition movements, and other regional entities, Turkey took a cautious approach after pro-democracy protests broke out in Syria. Turkey has maintained an open-door policy toward Syrian refugees since the conflict's earliest

[476] ECtHR, *Akkad v Turkey* (Application No 1557/19) 21 June 2022.
[477] ECtHR, *Amerkhanov v Turkey* (Application No 16026/12) 5 June 2018.
[478] ECtHR, *Batyrkhairov v Turkey* (Application No 69929/12) 5 June 2018.
[479] ECtHR, *G.B. and Others v Turkey* (Application No 4633/15) Judgment of 17 October 2019.
[480] TCC, *K.A.* (Application No 2014/13044) (11 November 2015).
[481] TCC, *Y.T.* (Application No 2016/22418) (12 June 2018).
[482] TCC, *Hammud* (Application No 2019/24388) (25 May 2023).
[483] TCC, *B.T.* (Application No 2014/15769) (30 November 2017).

stages, refusing to utilise security measures to stem the flow of people seeking asylum and making no requests for assistance in bearing the costs of hosting them.[484]

As part of its Europeanization and overall compliance with international norms and standards, Turkey has evolved from a transit route to a destination spot for immigrants over the past several years. Turkey has been the world's leading refugee host for the past decade, sheltering almost 4 million people.[485] Although the early number of Syrian arrivals were relatively low, around a thousand refugees were officially resident in Turkey as of the 2011 conclusion.[486] As the violence escalated in 2012, an influx of refugees followed, and by year's end, over 170,000 people had been formally accepted in Turkey. As the influx started, Syrians were accepted more like guests than refugees. By 2013, Turkey has begun to reach out to international groups including the UN High Commissioner for Refugees (UNHCR) for assistance.[487] Following mounting criticism of the "guest" status, the previous Migration and Asylum Bureau under the Ministry of Interior devised a "temporary protection regime" in 2011 modelled after the 2001 EU Directive on Temporary Protection.[488] There was a lack of clarity over the precise nature of this status, which contributed to widespread uncertainty in the months that followed, but in fact, it provided mass, comprehensive, and rapid protection in Turkey for those fleeing Syria. Because of this, they were also unable to use the standard procedure for individuals seeking refuge. Asylum policy developed for Syrian refugees until 2014 is mainly based on the concept of open border policy.

The civil conflict in Syria and the subsequent mass migration of millions of migrants to Western Europe were the primary factors that triggered the humanitarian crisis. The massive influx of Syrian migrants became an enormous concern in Europe as a whole since European governments were unwilling to accept refugees and insufficiently

[484] Birgül Demirtaş, 'The Evolution of Turkey's Refugee Policy: Bundle of Contradictions on the Long Thin' *UIK Panorama* (10 November 2022) https://www.uikpanorama.com/blog/2022/11/10/cu-2/ accessed 6 January 2024.
[485] UN High Commissioner for Refugees (UNHCR), 'Türkiye: Refugees and Asylum Seekers in Turkey' https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey accessed 16 February 2024.
[486] UN High Commissioner for Refugees (UNHCR), *Global Appeal 2015 Update: Turkey* https://www.unhcr.org/5461e60c52.pdf accessed 30 January 2023.
[487] Kevin Sullivan, 'Turkey Looks for International Aid, and Countries to Host Refugees, in Syrian Crisis' *The Washington Post* (15 May 2013) https://www.washingtonpost.com/world/middle_east/turkey-looks-for-international-aid-and-countries-to-host-refugees-in-syrian-crisis/2013/05/15/02c92392-bcb5-11e2-97d4-a479289a31f9_story.html accessed 10 February 2023.
[488] Presidency of Migration Management, 'Temporary Protection in Turkey' https://en.goc.gov.tr/temporary-protection-in-turkey accessed 16 February 2024.

prepared to deal with the influx. Turkey and Greece were perfect transit nations because of their location.[489] The EU developed readmission agreements with the objective of holding Member States and third States accountable for the deficiencies in their border control systems and reducing the number of arrivals.[490] The possibility of restricting access to core social needs in the transit state to an illegal migrant, as stated in Strik's article, arises from returns based on a readmission agreement.[491] The partners of the EU may agree to the readmission of individuals, but this does not imply their willingness to assume any substantial accountability for them. Subsequently, the issues of Syrian refugees in Turkey will be examined in the subsequent sections.

After the conclusion of the EU-Turkey statement on 20th March 2016, if an undocumented immigrant arrives in Greece from Turkey, their asylum claim may be rejected under this Declaration because Turkey is deemed a safe third country. European states have devised a number of procedures to transfer the burden of caring for asylum seekers to other countries outside of Europe. The "Safe Country of Origin" and "Safe Third Country" notions facilitate external transfers to third nations that are not part of the EU. A standardised EU list of safe countries of origin and safe third country is not possible under the current legal framework. Governments have extensive autonomy in determining the safe country for refugees due to the absence of an explicit agreement under EU law.

In an effort to streamline the processes associated with the implementation of the safe country of origin concept across all Member States, the European Commission proposed a Regulation creating a standard list of safe countries of origin for the purposes of Directive 2013/32/EU in 2015.[492] In the proposal, the European Commission supports their categorization by referencing the quantity of human rights violations based on ECtHR judgements and the proportion of approved refugee applications in the EU. Alongside

[489] Esra Demirbaş and Christina Miliou, 'Looking at the EU-Turkey Deal: The Implications for Migrants in Greece and Turkey' in Ricard Zapata-Barrero and Ibrahim Awad (eds), *Migrations in the Mediterranean* (IMISCOE Research Series, Springer 2024) https://doi.org/10.1007/978-3-031-42264-5_2 accessed 16 February 2024.

[490] Tineke Strik, 'Migration Deals and Responsibility Sharing: Can the Two Go Together?' in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered* (Edward Elgar Publishing 2019).

[491] Ibid. p.6

[492] Commission, 'Proposal for a Regulation of the European Parliament and of the Council Establishing an EU Common List of Safe Countries of Origin for the Purposes of Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection, and Amending Directive 2013/32/EU' COM(2015) 452 final.

citing the asylum success rate (23.1%) of Turkey, it was also mentioned "Discrimination and human rights violations of persons belonging to vulnerable groups such as minorities, including ethnic Kurds, journalists and LGBTI still occur. Turkey's membership of the European Convention on Human Rights entails that the possibility of recourse to the European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights violations. In 2014, the European Court of Human Rights found violations in 94 out of 2899 applications."[493] A safe third country concept can only be designated according to Article 38 of the APD if the competent authorities are satisfied with the following points "*life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; there is no risk of serious harm as defined in Directive 2011/95/EU; the principle of non-refoulement in accordance with the Geneva Convention is respected; 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 the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention."*[494]

As a follow-up to refugee influx, on April 3rd, 2016, the Greek Parliament passed a new law that incorporates the requirements of Directive 2013/32/EU into Greek law.[495] Meanwhile, on the basis that Turkey is a "safe third country," the Asylum Service had investigated whether Syrian refugees who arrive on Aegean islands can legitimately claim asylum at that location. Because of this reform, the Greek asylum system has undergone several significant shifts. First, the approval of the fast-track mechanism[496] at the borders and second, the creation of a preliminary admissibility assessment for asylum claims[497] at the crossings were among the most significant for the objectives of implementing the Statement. The term "safe third country" is exclusively used in the context of Article 60(4)

[493] Ibid.
[494] 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 (Asylum Procedures Directive) [2013] OJ L180/60, art 38.
[495] Greece, Law No. 4375 of 2016 on the Organisation and Operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, and the Transposition into Greek Legislation of the Provisions of Directive 2013/32/EC (3 April 2016) https://www.refworld.org/docid/573ad4cb4.html accessed 9 March 2023.
[496] Greece, Law No. 4375/2016 on the Organisation and Operation of the Asylum Service and Other Provisions, art 60(4) https://www.refworld.org/docid/573ad4cb4.html accessed 9 March 2023.
[497] Greece, Law No. 4375/2016 on the Organisation and Operation of the Asylum Service and Other Provisions, art 54-56 https://www.refworld.org/docid/573ad4cb4.html accessed 9 March 2023.

of Law No. 4375/2016 for those who meet the Statement's requirements, and Greece has not published a list of safe third countries. Furthermore, asylum seekers in Greece are entitled to seek a remedy through the Appeal Committees if their first case decision is to reject their application for international protection or to grant subsidiary protection. At the outset, the Appeals Committees established by Law 4375/2016 consisted of a single official from the Ministry of the Interior, a single official chosen by the government itself from a list created by the National Commission on Human Rights, and another official from the UNHCR. A number of decisions regarding the admissibility of asylum applications were given by this committee, with several of them concluding that Turkey did not meet the criteria for a safe third country for Syrian citizens. Until June 2016, the Appeals Committees blocked the implementation of the deal by the rulings stating that Turkey was not considered a safe third country.[498] As a result, a new law (Law 4399/2016)[499] was quickly revised to create new Appeals Committees with a different composition. Over time, these recently established Committees consistently determined that Turkey was a safe third country for the individuals being considered.[500] Despite credible reports from the Council of Europe and national and international human rights organisations (which will be analysed in section 8) detailing the realities in Turkey, the Greek Asylum Authorities and the EU have consistently disregarded these claims.

2- FROM GUEST STATUS TO REFOULEMENT: TURKEY'S REACTION TO SYRIAN REFUGEES

Around four million refugees, mostly from Syria, Iraq, and Afghanistan, have been hosted in Turkey since 2012.[501] Turkey has maintained an open-door policy towards Syrian refugees fleeing the country's turmoil till 2015, and the country has swiftly established refugee camps in its border regions. Initially, Syrian refugees were referred to as guests in Turkey, a term that conferred neither any legal rights nor suggested that their presence would be temporary. The number of Syrian refugees in Turkey tripled between December

[498] Mariana Gkliati, 'The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees' (2017) 3(2) *Movements: Journal for Critical Migration and Border Regime Studies* 213.
[499] Greece, Law No. 4399/2016, Gazette 117/A/22-6-2016 http://bit.ly/2lKABdD
[500] AIDA, *Country Report: Greece* (2016) https://asylumineurope.org/wp-content/uploads/2017/03/report-download_aida_gr_2016update.pdf accessed 8 December 2023.
[501] Presidency of Migration Management, Türkiye, 'Irregular Migration' https://en.goc.gov.tr/irregular-migration accessed 15 February 2024.

2013 and mid-March 2015, reaching over 1.7 million.[502] The flow of refugees from Syria into Turkey has continued to increase.[503] In response, the Turkish government passed the Law on Foreigners and International Protection (LFIP) in 2014. [504] Procedures for foreigners, refugees, and those in need of international protection are spelt out in detail in this law. This encompasses the terms for temporary protection, which are strictly limited to cases where a foreigner has been forcefully evicted from their home country, is unable to return, and requires urgent and temporary protection. The alignment of migration and asylum legislation with EU laws, as a prerequisite for full membership to the EU, had a substantial influence on the development of the LFIP. The LFIP is heavily influenced by the EU's secondary legal sources on immigration and asylum. The law holds great significance as it is Turkey's initial regulation that encompasses a more extensive scope in the realm of migration and asylum. Additionally, it grants authority to a civilian organisation, namely the General Directorate of Migration Management (DGMM). The legal reaction to the influx of forced migration, particularly from Syria, demonstrates the resurgence of long-standing instincts since the LFIP has entered into force.

As Mencutek and others explained[505], there have been four distinct periods of time in Turkey's reactions to the huge migration from Syria. The first phase is an open-door policy which was enabled by insistent foreign policy. The second is internationalization which is accompanied by an augmentation in security measures. The third one is the EU orientation is accompanied by a de facto policy of restricted access. The final phase of the response is focusing heavily on the encouragement of voluntary returns of Syrians from Turkey to Syria's safe zones.

When the civil war in Syria broke out, all Syrians seeking refuge from the crisis were welcomed into Turkey under the open-door policy that was enforced without conditions. The government's primary strategy for dealing with Syrian refugees predicated on its expectation that the country's involvement in the conflict would be short-term. Instead

[502] UNHCR, 'Situation Syria Regional Refugee Response' https://data.unhcr.org/en/situations/syria accessed 30 March 2023.
[503] Ibid.
[504] Temporary Protection Regulation, Official Gazette No 29153, 22 October 2014 (Turkey).
[505] Zeynep Şahin Mencütek, N Ela Gökalp Aras and Bezen Balamir Coşkun, 'Turkey's Response to Syrian Mass Migration: A Neoclassical Realist Analysis' (2020) 17(68) *Uluslararası İlişkiler* 93 https://doi.org/10.33458/uidergisi.856928.

of being recognised as refugees, Syrians were called guests throughout this period.[506] The expense of housing Syrian refugees in Turkey has been widely publicised, serving as a constant reminder to the international community that Turkey is a powerful and developing regional force and beneficent Muslim country in the Middle East. [507] Unfortunately, the security situation in Syria and the failure of Turkish foreign policy goals in the Middle East, began to undermine this rhetoric. By the start of the second period, Turkey's asylum policy was shifted to building refugee camps. 23 AFAD (Disaster and Emergency Management Authority)-built camps housed 230,000 Syrian refugees by the end of 2014, with facilities that won widespread acclaim abroad.[508] Also during the second period of refugee influx, Turkey took advantage from the LFIP, an expanded immigration law that was passed in April 2013 and went into effect a year later. It formalises the concept of temporary protection as a distinct category of international protection (for Syrians), on par with conventional protection, conditional protection, and subsidiary protection.[509]

The highest number of refugees entering Europe from Turkey occurred in the summer of 2015. Since then, Turkey has strategically acted to outsource the burden in response to the increasing exodus of irregular migrants to Europe via the Greek islands. This is the beginning of the third period of Turkey's migration response. In regard to a rising influx of refugees in the summer of 2015, the EU coordinated with Turkey to stem the tide. On November 29, 2015, the EU and Turkey reached a partnership on a Joint Action Plan[510] to reduce irregular migration which was ended with the problematic deal: EU-Turkey Statement. After the conclusion of the EU-Turkey statement, Syrians have become an instrument of negotiation in Turkey's foreign and domestic politics, as well as in EU-Turkey relationships.[511]

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[506] Souad Ahmadoun, *Turkey's Policy toward Syrian Refugees: Domestic Repercussions and the Need for International Support* (2014) German Institute for International and Security Affairs.
[507] Ibid.
[508]Disaster and Emergency Management Authority (AFAD), 'Turkey Response to Syria Crisis' https://en.afad.gov.tr/turkey-response-to-syria-crisis accessed 21 April 2023.
[509] Directorate General of Migration Management, 'Geçici koruma [Temporary protection]' https://www.goc.gov.tr/gecici-koruma5638 accessed 23 April 2023.
[510] European Commission, 'Managing the Refugee Crisis: EU-Turkey Joint Action Plan: Implementation Report' (29 November 2015) https://home-affairs.ec.europa.eu/system/files/2016-12/managing_the_refugee_crisis_-_eu-turkey_join_action_plan_implementation_report_20160210_en.pdf accessed 24 December 2023.
[511] Cigdem Nas, 'The EU's Approach to the Syrian Crisis: Turkey as a Partner?' (2019) 16 *Uluslararası İlişkiler* 45, 45–64, DOI: 10.33458/uidergisi.588912.

Since the onset of the Syrian civil war, the Turkish government has prioritised the resolution of the Syrian refugee problem in Turkey. Ankara's policy towards Syria and the EU have been shaped by this objective. Erdogan has often used this objective to justify Turkey's military involvement in Syria and to apply pressure on the EU to obtain funding and renegotiate maritime boundaries in the Eastern Mediterranean.[512] Despite the objective of the agreement pertaining to EU funding for enhancing the living conditions of Syrian refugees in Turkey, the assertion made by the EU-Turkey Statement regarding Turkey's classification as a safe third country for refugee repatriation has generated apprehension for many human rights organisations.[513]

When examining Turkey's response to the flood of Syrian refugees and the formation of Turkish migration rules, it is crucial to underline Turkey's position in the global environment. Hence, the subsequent section delves into Turkey's legal responsibilities in the global context by analysing the temporary protection regulation.

3- TURKEY'S LEGAL RESPONSIBILITIES UNDER INTERNATIONAL LAW AND ITS CONSISTENCY ON THE GROUND TOWARDS SYRIAN REFUGEES: TEMPORARY PROTECTION REGULATION

Turkey signed the 1951 Refugee Convention promptly, but it was not put into effect until 1961.[514] Turkey adopted the 1951 Convention with a geographical limitation, specifying that refugee status would not be granted to individuals who came from outside Europe.[515] This restriction, in the form of a standing reservation, exempts Turkey from the obligation to confer refugee status upon individuals seeking asylum from regions outside of Europe. Although the right to make reservations was eliminated with the subsequent protocol, the rights of the countries that signed the agreement with this reservation were safeguarded. This reservation does not allow for the denial of refugees' other fundamental rights

[512] Francesco Siccardi, 'How Syria Changed Turkey's Foreign Policy' (September 2021) *Carnegie Europe* https://carnegieeurope.eu/2021/09/14/how-syria-changed-turkey-s-foreign-policy-pub-85301 accessed 16 February 2024.
[513] OHCHR, 'UN Rights Chief Expresses Serious Concerns Over EU-Turkey Agreement' (2016) *Press Releases* https://www.ohchr.org/en/press-releases/2016/03/un-rights-chief-expresses-serious-concerns-over-eu-turkey-agreement accessed 1 March 2024.
[514] UNHCR, 'Refugees and Asylum Seekers in Turkey' https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey#:~:text=The%20Republic%20of%20T%C3%BCrkiye%20is,events%20occurred%20outside%20of%20Europe accessed 20 February 2024.
[515] Article 61, Law on Foreigners and International Protection (LFIP).

outlined in the convention, including freedom from discrimination, freedom of religion, access to courts, and protection from deportation to countries where they may face persecution. The inclusion of individuals who originate from non-European nations, who are not covered by the Convention, requires the implementation of additional legal provisions.[516] This results in a more complex legislative framework, characterised by the presence of various categories and secondary laws. Furthermore, it should be noted that Turkey is a signatory to several international human rights treaties, including the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture (CAT).[517]

Turkey has had previous encounters with refugees and those seeking asylum; nevertheless, the presence of Syrian refugees has presented an unforeseen circumstance for the country. The rationale behind this phenomenon lies in the distinctive nature of the current influx of refugees in Turkey, which sets it apart from previous instances in the country's history. Notably, Turkey has adopted an open-door policy towards accommodating a substantial volume of refugees originating from regions beyond Europe. The Regulation on temporary protection, enacted in October 2014, has significantly improved the provision of essential services for those who have been granted temporary refugee status in Turkey. This legislation has enhanced access to healthcare, education, employment possibilities, social services, interpretation services, and other crucial resources. Additionally, it has bolstered the effectiveness of humanitarian relief efforts in the country.

The concurrent implementation of the LFIP aligned with an increase in global migration patterns. Since the framework of the 1951 Convention's geographical limitation is observed to in this setting, Syrians has been qualified solely for "temporary protection." Consequently, this organisational framework weakens individuals' ambitions towards integration and hinders their acquisition of long-term residency in Turkey. Ozturk has praised Turkey's stance of welcoming Syrians as a demonstration of Turkey's international

[516] UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees (UNHCR) For the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: The Republic of Turkey* (June 2014) https://www.refworld.org/policy/upr/unhcr/2014/en/104817 accessed 3 March 2024.

[517] Republic of Turkey, Ministry of Foreign Affairs, 'Human Rights, Human Rights: National Objectives and Developments' https://www.mfa.gov.tr/%C4%B0nsan-haklar%C4%B1.en.mfa accessed 20 March 2024.

commitments.[518] This approach is considered favourable for implementing the right to seek asylum as outlined in Article 14 of the UDHR, as well as the legal obligation to prevent refoulement. In addition, she stressed the significance of distributing the responsibility globally, acknowledging that the intensity of migration may hinder the provision of such protection. It is crucial not only to refrain from repatriating individuals, but also to ensure that the protection offered to them is effective and receptive to a lasting resolution.

Asylum seekers from non-European countries are only entitled to the rights that can be deduced from international and regional human rights agreements to which Turkey is a party, in conformity with international law. The LFIP of 2013 and the Regulation on Temporary Protection of 2014 establish the legal foundation for the status of asylum seekers in Turkey. There are three types of international protection covered by the LFIP: "Convention refugee" (mülteci),[519] "conditional refugee" (sartli mülteci),[520] and "person under temporary protection" (gecici korunan)[521]. Nonetheless, temporary protection is an act carried out in the context of huge population movements across national borders, whereby the application of individual status determination procedures becomes impractical. A "temporary protection" status is unique to the circumstances of mass migration and is granted to those who cannot qualify for Convention refugee status but who need immediate and temporary shelter in Turkey according to Article 91 of LFIP. In Turkey, temporary protection measures are implemented based on the 'Temporary Protection Regulation (TPR)'[522], which is derived from Article 91 of the LFIP[523]. Although those granted temporary protection are nonetheless protected by the nonrefoulement principle, their rights to work and travel within the country are severely restricted with respect to those of Convention refugees. It serves as a provisional remedy to address the immediate needs of the affected individuals. According to Article 22 of the regulation, foreigners who are granted temporary protection will receive temporary protection identity cards, which they must carry in order to handle their legal and social matters in

[518] Neva Ovunc Ozturk, 'Türkiye'de Bulunan Suriyelilere İlişkin Tespit ve Öneriler, Hukuki Boyut' (2019) Goc Arastirmalari Dernegi [Determinations and Recommendations Regarding Syrians in Turkey, Legal Dimension].
[519] Article 61, Law on Foreigners and International Protection (LFIP).
[520] Article 62, Law on Foreigners and International Protection (LFIP).
[521] Article 91, Law on Foreigners and International Protection (LFIP).
[522] Temporary Protection Regulation (Council of Ministers Decision No: 2014/6883) dated 13 October 2014.
[523] Article 91, Law on Foreigners and International Protection (LFIP).

Turkey. The legislation stipulates that those who possess an identity certificate will be entitled to receive health care, education, access to the labour market, social assistance, and services.[524] While this article establishes a legal structure to safeguard the requirements and safety of Syrians, it does not put forth any lasting resolutions about the entitlements of refugees and their sustenance in humane circumstances. As part of their international responsibility to safeguard refugees, host countries place considerable value on the length, implementation, and termination of temporary protection regimes.

Mencutek classifies this rule into three categories to explain it.[525] The initial category pertains to unrestricted entry in accordance with the open-door policy, whereas the subsequent category covers the observance of the non-refoulement principle without any exemptions. Ultimately, the final category is focused on fulfilling fundamental needs and ensuring equitable access to rights. This regulation holds significant importance in the context of delineating and establishing rights of Syrians in Turkey. Furthermore, it encompasses not only the protection of fundamental rights but also provides comprehensive guidelines for the provision of education, access to the labour market, social support, and services, as well as translation and related services. However, in order to facilitate the provision of these services, it is necessary for foreigners who are seeking temporary protection to undergo registration with the General Directorate of Migration Management, as stipulated by Article 19. Upon the conclusion of the registration procedure, individuals will be granted a "temporary protection identification document" as stipulated by Article 22. As per the provisions outlined in Article 25, it is important to note that the aforementioned identity document, while affording temporary protection to foreign individuals in Turkey, does not hold the same status as a residence permit or any documents that serve as substitutes for a residence permit as issued under the LFIP. It is crucial to understand that this document does not confer the privilege of transitioning to a long-term residence permit, nor does its duration contribute to the calculation of the overall duration of a residence permit. Furthermore, holding this identity document does not grant the holder the right to apply for Turkish citizenship. According to Article 29(2), individuals possessing a temporary protection identity card have the opportunity to

[524] A İcduygu, 'Syrian Refugees in Turkey: The Long Road Ahead' (Migration Policy Institute, April 2015) https://www.migrationpolicy.org/sites/default/files/publications/TCM-Protection-Syria.pdf accessed 20 March 2024.

[525] Zeynep Mencutek, *Refugee Governance, State and Politics in the Middle East* (2018) https://doi.org/10.4324/9781351170369.

submit an application to the Ministry of Labour and Social Security in order to acquire a work permit. The specific sectors, business lines, and local and agricultural job markets in which this permit may be granted will be determined by the Council of Ministers. Again, the article 29(5) establishes that the work permit granted to those under temporary protection does not serve as a substitute for the residency permit outlined in the LFIP.

The educational and training rights of individuals under Temporary Protection regimes in Turkey are acknowledged by article 28 of Temporary protection regulation. Provision of temporary housing and educational services is facilitated by schools and educational institutions located in refugee camps and cities. Also, it is important to mention that Temporary protection status offers protection to those who enter independently during a large-scale influx or through a mass influx. Consequently, those who are granted temporary protection under the Temporary Protection Regulation are not eligible for individual protection which allows international protection status.

Eren asserts that the Temporary protection status should be terminated whenever the necessary conditions have been fulfilled, within a reasonable timeframe.[526] If this fails to occur, the inclination of countries to provide temporary protection will naturally diminish. In relation to this issue, it is imperative to create globally applicable criteria for the termination of temporary protected status. This will have two objectives: firstly, to demonstrate the limitations of governments' hospitality; and secondly, to avert any human rights infringements that may result from the repatriation of individuals who have grown frustrated with the protection process.[527] However, there is no anticipated time limit in the Temporary Protection Regulation. As per Article 10 of the Temporary protection regulation, the Council of Ministers holds the responsibility of determining the termination of temporary protection. Simultaneously, it has the option to cease the TP regime entirely and repatriate individuals who have received temporary protection. Alternatively, it can opt to confer a collective status, assess individual applications, or ultimately grant authorization to everyone, contingent upon legally established requirements.

[526] Esra Yilmaz Eren, 'Is Temporary Protection Eternal? The Future of Temporary Protection Status of Syrians in Turkey' (2019) 9 Border Crossings 2.
[527] Ibid. p.5

To summarise, a large number of Syrian individuals sought refuge in Turkey as a result of the escalating civil conflict that commenced in the spring of 2011. Currently, Turkey is home to over three million Syrian individuals. Turkey does not grant refugee, conditional refugee, or subsidiary protection status to Syrian residents who seek safety within its borders. Instead, Turkey offers temporary protection status to these individuals, in accordance with its legislative regulations. Syrian residents in Turkey who have Temporary Protection Status are not given the right to get integrated into the local community or finally obtain citizenship. This is one of the permanent solutions available to those with international protection, which enables them to put an end to their displacement and live a regular life. While Syrian individuals maintain their temporary protection status, they are ineligible to apply for any of the international protection statuses. Due to Turkey's migration regulation, LFIP, not aligning with the refugee convention provisions, there are numerous breaches and unsuccessful applications for temporary protection of Syrians in Turkey. Therefore, the next section will explore the reality of the temporary protection holders' situation and challenges of the implementation of temporary protection regulation in Turkey.

4- CHALLENGES AND ISSUES OF REFUGEES IN TURKEY

Rather than granting genuine refugee status, Turkey's temporary protection mechanism falls to meet the criteria of the migration and human rights policy framework under international law. This section searches for the various obstacles faced by Syrians residing in Turkey. The objective is to assess the extent to which Turkey fulfils its role as a safe third country in terms of safeguarding the well-being and rights of Syrians.

The word "temporary" suggests the ultimate destination of Syria. Since 2014, the government has enacted a range of enduring integration efforts pertaining to employment, education, and healthcare. From a legal standpoint, these regulations were responsible for governing the status and rights of Syrians. However, in the public sphere, they sparked debates on the long-term sustainability of Syrians and contributed to a rise in general hostility against them. Ensuring the facilitation of refugees' access to the labour market is a responsibility that stems from the international agreements in which Turkey is part. For a considerable period of time, Turkey has not implemented any distinctive measures pertaining to the provision of support or accommodations for individuals

seeking protection or asylum inside this region. In practical terms, the utilisation of existing legal mechanisms regarding labour market entrance by asylum seekers and refugees in Turkey has been exceedingly rare, mostly attributable to the temporary nature of their status.

Syrian refugees were housed in 26 modern camps that offered humanitarian relief, education, health care, and shelter. In contrast to other refugee camps throughout the world, Turkey has superb facilities.[528] The significant number of Syrians residing outside of temporary accommodation centres is observed primarily in Istanbul, as well as in provinces including Gaziantep, Hatay, Şanlıurfa, Adana, and Kilis, respectively. The Syrian refugees, initially clustering in urban centres such as Gaziantep, Şanlıurfa, Mersin, and Kilis, which are located in close proximity to the border, subsequently relocated to major metropolitan areas including Ankara, Izmir, and Bursa, with Istanbul being particularly favoured.[529] This migration was driven by the desire to secure improved employment opportunities in light of escalating rental costs, inadequate wages, and high levels of unemployment. Syrian refugees have adopted a cautious strategy by actively seeking employment, even in occupations that may be considered of lower quality, as a means to establish a foothold inside the host society. Consequently, refugees who arrived as part of a large-scale migration swiftly transformed into a readily available pool of low-cost labour for firms in Turkey. The refugees, who had a strong inclination and motivation to engage in various employment opportunities, swiftly garnered attention from local companies due to their willingness to accept much lower salary and undergo longer working hours compared to the local labour force.[530]

A big drawback of the temporary protection plan is that there is no legal structure for Syrians to integrate into the labour market. Despite this, Syrians in Turkey can access health, education, and social services to some extent. Approximately 500,000 Syrian refugees with temporary protection entered the workforce, necessitating the

[528] Republic of Turkey Prime Ministry Disaster and Emergency Management Authority, *Syrian Guests* (2016) <www.afad.gov.tr> accessed 5 November 2023.
[529] Mülteciler Derneği, 'Türkiye'deki Suriyeli Sayısı Kasım 2023 [Number of Syrians in Turkey, November 2023]' (November 2023) https://multeciler.org.tr/turkiyedeki-suriyeli-sayisi/#:~:text=%C4%B0stanbul'u%20424%20bin%20518,oran%20ile%20Gaziantep%20takip%20ediyor accessed 4 January 2024.
[530] Tolga Toren, 'Documentation Report: Syrian Refugees in the Turkish Labour Market' (ICDD Working Papers, Paper No 22, 2018) https://d-nb.info/1166349551/34 accessed 1 March 2024.

implementation of regulations by the government in this sector. Initially perceived as controllable, this situation ultimately proved uncontrollable as a result of the Syrian refugee crisis. The government's noteworthy initiatives in this realm were the implementation of the Temporary Protection Regulation in October 2014 and the enactment of the "Regulation on Issuing Work Permits to Foreigners Under Temporary Protection" in January 2016.[531] Permitting refugees to engage in employment will prevent the private sector from exploiting them through poor remuneration. Additionally, it will afford them the opportunity to fulfil their own requirements, thereby offering a more dignified alternative to perpetual dependence on social benefits. According to the legislation, individuals who are given temporary protection are only allowed to work within the boundaries of the province listed on their temporary protection identity certificate as their registered province of residence. Still, language remains a major obstacle for refugees when it comes to both educational attainment and the job market.

The escalation of interactions within public domains has significant implications for the exclusion of individuals from Syria, leading to the emergence of unfavourable perceptions and attitudes causing them to potentially culminate in acts of violence. Due to the outrageous living expenses and the absence of a stable source of income, refugee families face significant challenges in meeting their basic needs. Consequently, the EU has continued to provide financial assistance to refugees in Turkey as part of the Statement. Nearly €10 billion has been channelled by the EU to help host communities and migrants in Turkey since 2011. Since 2016, more than €5 billion has been distributed through the Facility for Refugees in Turkey. Out of the further €3 billion that was allocated until 2023, €2.2 billion has already been guaranteed.[532]

Young Syrians residing in Turkey frequently engage in discussions regarding the West and its numerous advantages, as they have been living the unfavourable conditions.[533] Many Syrian youngsters view Turkey as a viable temporary refuge, primarily because they

[531] Regulation issued under Law No 6458, 'Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine Dair Yönetmelik [Regulation on Issuing Work Permits to Foreigners Under Temporary Protection]', Resmî Gazete, 15 January 2016, No 29594.
[532] European Commission, 'The EU Continues to Provide Much Needed Assistance to Refugees and Host Communities in Türkiye' (Press Release, Brussels, 27 September 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4521 accessed 2 March 2024.
[533] Saferworld, *Syrian Refugees in Turkey: Challenges to and Opportunities for Longer-Term Integration – Workshop Summary* (Briefing, 29 February 2016).

perceive it as a transit zone that may eventually facilitate their journey to Europe. These individuals risk their lives and endure a dangerous journey by boat to Europe in pursuit of improved living conditions and opportunities due to their uncertainty regarding their status and future in Turkey.[534] In summary, refugees residing outside the camps are deprived of the entitlement to housing. Refugees, who must secure their own accommodation using their own resources, are compelled to reside in substandard and insufficient conditions as a result of limited financial capabilities. As per the September 2014 circular from the Ministry of National Education regarding foreigners' access to education, those under temporary protection are eligible to attend education in public schools and temporary education centres.[535] To be eligible for enrolment in schools or temporary education centres, individuals must possess either a residence permit, temporary protection identification document, or foreign identification document. Undocumented immigrants are unable to obtain educational services due to this circumstance. In order to pursue higher education in Turkey, refugees are required to successfully complete the Foreign Student Examination (YÖS) administered by universities.

Since 2016, three successful counter-terrorism campaigns—Euphrates Shield (2016), Olive Branch (2018), and Peace Spring (2019)—have been initiated by Turkey in northern Syria, spanning over the border. The objective was to hinder the formation of a terror corridor and facilitate the peaceful resettlement of individuals. In May 2022, Turkey's President Erdogan has stated his intention to repatriate about one million Syrian refugees to Turkey.[536] A month later, Suleyman Soylu, the interior minister, declared that 60,000 completed buildings out of a total of 77,000 in Idlib Province, situated in the northwestern region of Syria. During a ceremony commemorating Turkey's efforts in constructing homes in Idlib, Suleyman Soylu said that 503,350 Syrians has returned to their country

[534] Ibid.
[535] Sputnik Türkiye, 'TBMM, Türkiye'deki Suriyelilerin röntgenini çekti' [Turkish Grand National Assembly took x-rays of Syrians in Turkey] (18 January 2018) https://sputniknews.com.tr/20180118/tbmm-turkiye-suriyeliler-rontgenini-cekti-1031873614.html accessed 9 December 2023.
[536] Ben Hubbard (Beirut) and Elif Ince (Istanbul), 'Turkey Plans to Send a Million Syrian Refugees Back Home' *The New York Times* (4 May 2022) https://www.nytimes.com/2022/05/04/world/middleeast/turkey-syria-million-homes.html accessed 9 December 2023.

since the implementation of Operation Euphrates Shield.[537] On December 31, 2022, Erdogan announced via Twitter that a cumulative total of 538,654 Syrians were officially granted to return to their home country in 2022, ensuring their safety and dignity.[538] Turkish authorities assert that 59,679 residential properties have been built in the regions covered by the Idlib, Euphrates Shield, and Olive Branch Operations. Schools, hospitals, and mosques are also being built in the vicinity by Turkey.[539] According to UN sources, almost 200,000 Syrian refugees returned from Turkey to Syria since 2016.[540]

The primary governing body responsible for managing migration in Turkey is the Directorate General of Migration Management (DGMM). This agency formulates its policies and processes for returns based on two specific laws: the 2013 Law on Foreigners and International Protection and the 2014 Temporary Protection Directive. Regarding the procedure of voluntary returns, the provincial authority of residence issues a "Voluntary Return Request Form" for foreigners under temporary protection who wish to request voluntary return.[541] Despite the DGMM's claim that the repatriation of Syrians in Turkey, who are under temporary protection, is supervised by international organisations and non-governmental organisations, it has not entered into any readmission or tripartite agreements, whether bilateral or international, to facilitate the return of Syrians. Such agreements would require the involvement of the UNHCR and the current government of Syria.[542] However, it is mentioned that when UNHCR and Red Crescent personnel are not available, the document is signed by the Representative of the Non-Governmental Organisation that has been authorised by the governorships or the officer of the Governorship Human Rights and Equality Board.[543] Syrians who seek voluntary repatriation are notified that if they return to Turkey, their requests for temporary

[537] Anadolu Agency, 'Over 500,000 Syrians Return to Their Country: Türkiye' (22 July 2022) https://www.aa.com.tr/en/turkey/over-500-000-syrians-return-to-their-country-turkiye/2603137# accessed 9 December 2023.
[538] Recep Tayyip Erdoğan, Twitter (31 December 2022) https://bit.ly/3Ocdt7d accessed 9 December 2023.
[539] Middle East Monitor, 'Turkey: Half-Million Syrians Return Voluntarily to Their Country' (2 June 2022) https://www.middleeastmonitor.com/20220602-turkey-half-million-syrians-return-voluntarily-to-their-country/ accessed 10 December 2023.
[540] UNHCR, 'Syria Regional Refugee Response: Durable Solutions' https://data.unhcr.org/en/situations/syria_durable_solutions accessed 25 March 2024.
[541] Directorate General of Migration Management (DGMM), 'Gönüllü Geri Dönüş [Voluntary Returns]' https://www.goc.gov.tr/gonullu-geri-donus accessed 25 March 2024.
[542] Zeynep Şahin Mencütek, 'Encouraging Syrian Return: Turkey's Fragmented Approach' (2022) *Forced Migration Review* https://www.fmreview.org/return/sahinmencutek#_edn1 accessed 15 April 2024.
[543] Directorate General of Migration Management (DGMM), 'Gönüllü Geri Dönüş [Voluntary Returns]' https://www.goc.gov.tr/gonullu-geri-donus accessed 25 March 2024.

protection may be assessed negatively based on the evaluation conducted on them. Once the appropriate investigations have been completed on Syrians sent to the country's borders by their respective provinces, the officers will grant them permission to depart and destroy their Temporary Protection Identity Documents.

Turkey's return action was widely criticised by many scholars and human rights organisations. According to Human Rights Watch, between February and July of 2022, Turkish authorities unlawfully incarcerated and expelled several Syrian male refugees, including minors returning them to Syria.[544] Deported Syrians were interviewed by Human Rights Watch, revealing that Turkish officials apprehended them in various locations such as their residences, workplaces, or even in public areas. These individuals were subjected to inadequate living conditions, physical assault, and mistreatment by the majority of officials. Furthermore, they were coerced into signing voluntary return documents before being forcibly taken to border crossings in northern Syria under the threat of firearms.

In her analysis of Turkey's return policy, Mencutek focuses on three main points: 1) the use of "voluntary return forms" to collect signatures, 2) the growing use of imprisonment in what are formally called "removal centres," and 3) the creation of a nationwide system to aid with voluntary return and reintegration.[545] Her research showed that the national migration bureaucracy and law enforcement authorities have played a crucial role in ensuring the actual implementation of "voluntariness". While there is a possibility that the signatures gathered on the voluntary return forms were acquired through pressure, state agents employed by governorates, police stations, and removal centres perceived and comprehended these signatures as being given voluntarily. According to her study, she stated that the DGMM necessitates the presence of the voluntariness element in all instances of return. Multiple pieces of evidence indicate that Turkey's objective is to compel displaced refugees to relocate voluntarily.[546]

The notion of volunteering holds great significance in this context. The primary determinant for repatriating an individual who sought asylum in another country due to

[544] Human Rights Watch, 'Turkey: Hundreds of Refugees Deported to Syria – EU Should Recognize Turkey Is Unsafe for Asylum Seekers' (24 October 2022) https://www.hrw.org/news/2022/10/24/turkey-hundreds-refugees-deported-syria accessed 25 March 2023.
[545] Zeynep Şahin Mencütek, 'The Institutionalization of "Voluntary" Returns in Turkey' (2022) 5(1) *Migration and Society* 43 https://doi.org/10.3167/arms.2022.050105 accessed 13 December 2023.
[546] Ibid.

armed conflict is to guarantee the preservation of their life and well-being. When there is a threat to life safety, it is unreasonable to expect someone to go willingly back. Furthermore, another contributing aspect is the favourable financial conditions in the region to which one plans to return. The return is influenced by factors such as housing, infrastructure conditions, and work prospects in the hosting location. However, the ongoing economic crisis in Turkey is already a significant catalyst for dissatisfaction. If a consensus can be achieved with the EU and a repatriation campaign can be initiated alongside an economic stimulus package, refugees will have the genuine option to voluntarily return to their home country, without being compelled to do so. It is important to acknowledge that Syrians have been residing in Turkey for over a decade, resulting in the emergence of a new generation that was born and reared in Turkey, attended school, and has no personal experience of Syria.

EU leaders regarded the deal as successful in diminishing migration to Europe, but it is dependent on Turkey offering a secure shelter for Syrian refugees. The principle of non-refoulement strongly prohibits the deportation of refugees to their home countries when they are at risk of harm or loss of liberty. The deportations clearly breach this principle. The classification of Turkey as a safe third country not only violates EU legislation, but Turkey's treatment of refugees also violates both international and EU human rights law. To facilitate the lawful relocation of Syrian refugees from the EU to Turkey, the EU must ensure that Turkey is upholding its obligations regarding human rights. Evidently, the task of managing migration cannot be undertaken solely, as exemplified by Turkey's acts of repatriating migrants to Syria in contravention of the agreement. Therefore, in the following section, the objective of the research is to present the legal precedents from both the ECtHR and the Turkish Constitutional Court on Turkey's actions of refoulement and the conditions of repatriation centres.

5- RELATED CASE LAW BY THE ECTHR

As the EU-Turkey deal enters the 8th year of its existence, it is important to highlight some case law from both the ECtHR dealing with the principle of non-refoulement and the shortcomings of Turkish asylum system. This section specifically addresses the conditions of imprisonment and the breaches of the non-refoulement principle violated by Turkey through the rulings of ECtHR.

The ECtHR issued its ruling in the case of *Akkad v. Türkiye* on 21 June 2022.[547] The case pertained to the deportation of a Syrian individual without the opportunity to exercise their right to appeal. The Court accused Turkey of unlawfully repatriating a Syrian refugee, despite the presence of his signature showing his voluntary repatriation. The person at the centre of this legal case is a Syrian citizen who has been residing in Turkey since 2014 under temporary protection status. Following his detention by Turkish authorities in 2018 while trying to enter Greece, he was promptly deported to Syria without the opportunity to contest this repatriation decision. According to the application, he and twelve other Syrians were purportedly restrained in pairs with handcuffs for the approximately twenty-hour bus journey to Hatay, which is close to the border. He was presented with a voluntary repatriation form for his home country, which he was compelled to sign despite his lack of understanding. Due to his inability to use the phone, he was unable to contact an interpreter, a lawyer, or the appeals board. Conversely, the government asserts that the applicant was informed of the expulsion and voluntarily expressed a wish to go back to Syria. Turkey was obligated to compensate Akkad a sum of roughly €12,250 (inclusive of fees and costs) according to the ruling of the Strasbourg court which concluded that the deportation of Akkad to Syria in 2018 contravened the ECHR.

The Court identified two violations of Article 3 of the Convention and concluded that the petitioner was forcefully returned. The first one was that Akkad returned to Syria, despite the widespread awareness that the region to which they were sent was engulfed in armed conflict. The second one was that the violation of Turkish law occurred as it stipulates that a foreigner under temporary protection can only be expelled under exceptional circumstances, which were not evident in this case. Article 13 of the Convention were also examined and decided upon. As per the ECtHR, the applicant was not deported to Syria in compliance with the expulsion process and requirements outlined by Turkish domestic legislation. Moreover, a number of breaches of Article 5 were determined by the Court. It determined that the applicant's liberty was unfairly taken away and that the legal protections had been disregarded. From his arrest until his transportation to Syria, the applicant had no access to a lawyer or any outside party. He was not told why he was detained or that he may challenge the detention order's legality. The court found that due to this circumstance, it was not possible to seek judicial review of the validity of his

[547] *Akkad v Turkey* App no 1557/19 (ECtHR, 21 June 2022).

imprisonment. Applicants have also been unsuccessful in seeking compensation from domestic authorities in light of these infringements.

Furthermore, the cases of *Batyrkhairov v. Turkey*[548] and *Amerkhanov v. Turkey*[549] were decided upon by the ECtHR on 5 June 2018. These cases centred around two Kazakh nationals who had been held at Turkey's Kumkapı Foreigners' Removal Centre before their deportation to Kazakhstan. Both of their requests for international protection were denied by Turkey. One of the applicants, Arman Batyrkhairov, is a detainee from Atyrau as well; he is a Kazakh national and was born in 1980. In June 2011, he arrived in Turkey. In January 2012, he was detained while trying to flee the country. Subsequently, the Kazakh authorities requested his extradition on charges relating to terrorism. One month later, the domestic courts rejected the extradition request and subsequently released him from prison. He was promptly transferred to the Foreigners' Removal Centre in Kumkapı upon his deportation in March 2012. Subsequently, he sought refuge, but both his application and his challenge to the court's judgement were denied.

The second case is Samat Amerkhanov, a Kazakh native born in 1989, who is being detained in Atyrau, Kazakhstan. In May 2011, he arrived in Turkey. He was promptly apprehended and detained for deporting him, as he had been recognised as a potential risk to national security. In June 2011, he was transferred to the Foreigners' Removal Centre in Kumkapı. During his stay, he applied for asylum. In September 2011, he was released from custody and allowed to wait for an outcome of his case. However, in March 2012, his application for international protection was rejected, and he was repatriated to Kazakhstan. After being deported, he attempted to seek legal remedy through administrative courts to challenge the rejection of his asylum application and the deportation order but was unsuccessful.

Both applicants consistently informed local authorities that if they were to go back to Kazakhstan, they would be subjected to torture or maybe face death. Due to their deportation to Kazakhstan and imprisonment in the Kumkapı Foreigners' Removal Centre, the applicants filed numerous complaints invoking Article 3 and Article 5 of ECHR. They specifically asserted that notwithstanding the peril of torture and other types of

[548] *Batyrkhairov v Turkey* App no 69929/12 (ECtHR, 5 June 2018).
[549] *Amerkhanov v Turkey* App no 16026/12 (ECtHR, 5 June 2018).

mistreatments, they were forced to depart the country without having their asylum applications reviewed. The individuals asserted that their confinement was unlawful, as they were not informed of the reasons for their detention and were unable to pursue a legal examination or receive reparation according to national legislation. Ultimately, they asserted their inability to file impactful grievances against most of the accusations, as stipulated by Article 13. ECtHR first acknowledged that Turkey had a responsibility to examine the complainants' allegations of mistreatment in their home country and address their objections to expulsion. Both cases were decided by the ECtHR, which concluded that the individuals in question were expelled without a thorough assessment of their asylum application and without a lawful process that would safeguard them from illegal deportation. The Turkish authorities breached the procedural obligations outlined in Article 3 of the ECHR by making their decision based just on the grounds of the applicants' terrorism-related allegations.[550] The ECtHR determined that the applicant's expulsion to Kazakhstan was an unlawful attempt to circumvent the national process of extradition in the *Batyrkhairov v. Turkey* case.[551]

Another important ruling, *G.B. and Others v Turkey*, was issued by the ECtHR on 17 October 2019. The case displays again the inadequacy of the Turkish asylum system. While this case does not specifically pertain to the expulsion of Syrians, its facts shed light on the condition of repatriation centres and deficiencies within Turkey's immigration system. A mother and her three children, all of Russian nationality, were subject to arbitrary detention for deportation in this case.[552] The applicants arrived in Turkey on 17 October 2014 via Istanbul Atatürk Airport in possession of a valid visa. Their attempt to enter the Syrian border illegally led to their detention the following day. This prompted the governor's office in Kilis to order the mother's imprisonment and eventual deportation. The Kumkapı Removal Centre was the destination for the family's transfer. Meanwhile, the mother appealed the deportation and detention order issued by the Istanbul governor's office before the Istanbul Administrative Court. Following this, the family sought the Turkish government for international protection. This appeal, as with all others that followed, was also denied. Additionally, the applicants' numerous applications filed with the Istanbul Magistrates Court were all rejected. Their next stop was in the Gaziantep

[550] *Batyrkhairov v Turkey* App no 69929/12 (ECtHR, 5 June 2018). para. 82
[551] *Batyrkhairov v Turkey* App no 69929/12 (ECtHR, 5 June 2018). para. 79
[552] *G.B. and Others v Turkey* App no 4633/15 (ECtHR, 17 October 2019).

Magistrates' Court, where they contested the legality of their transfer to the removal centre. The applicants' imprisonment was ultimately found to be unconstitutional by the Court, which led to the family's eventual release. The petitioners' complaints under Articles 3, 8, and 13 of the ECHR state that the conditions at the Kumkapı and Gaziantep Centres had a detrimental effect on the emotional and physical well-being of the detainees, particularly the youngsters. Additionally, they stated that there was not an effective remedy to address these concerns. Moreover, a formal complaint was lodged contesting the legitimacy of their detention in compliance with Article 5 (1) (2) and (4).

The Court determined that detaining kids, even for short durations, in such substandard conditions is a violation of Article 3 of the ECHR.[553] It also found a violation of Article 13 ECHR since the applicants had insufficient access to complaint procedures. Detaining all applicants at the Kumkapı and Gaziantep deportation facilities was deemed a violation of Article 3 ECHR by the Court.[554] Moreover, concerning the circumstances of imprisonment at removal centres for foreign nationals, the new Law on Foreigners and International Protection of Turkey does not specify any particular remedies.[555] Furthermore, the court emphasised that the family had been unlawfully detained for a period of five days, despite the existence of a release order. Additionally, it was noted that the detention order specifically targeted the mother. Therefore, the Court determined that the petitioners' detention violated Article 5(1). Moreover, the existing procedures for challenging the family's imprisonment were inadequate given the exceptional circumstances, highlighting the need for additional measures to ensure a prompt assessment of legality. The absence of adequate care resulted in a violation of Article 5(4).

Understanding the connection between the Court's rulings and the safeguarding of refugees' rights requires situating Turkish foreign law within the framework of Turkish Constitutional law. An individual can file a complaint with the Constitutional Court using a process modelled after one available at the ECtHR. Claims of a violation of "any of the fundamental rights and liberties provided by the Turkish Constitution and safeguarded by the ECHR and its Protocols" can be brought to the Constitutional Court by individuals within 30 days after all administrative and judicial remedies have been exhausted.[556]

[553] Ibid. para. 95
[554] Ibid. para. 117
[555] Ibid. para. 128
[556] Arts 45–51, Code on the Establishment and Rules of Procedure of the Constitutional Court (Turkey).

Requests for urgent interim measures under Article 73 of the Rules of Court can be made by applicants when there is a substantial threat to their life, physical and moral integrity, even though individual complaints to the Constitutional Court do not have suspensive effect.

6- RELATED CASE LAW BY THE TURKISH CONSTITUTIONAL COURT

Access to practical legal remedies has been strengthened by the right to make individual applications to TCC. Since 2012, the Constitutional Court has begun accepting applications from anybody who believes that a public authority has violated their fundamental rights and freedoms, as outlined in the ECHR and as provided by the Constitution.[557] The provisions for individual application put forward by article 148 and 149 of the Constitution.[558] Since the implementation of the individual application procedure before the TCC on 23 September 2012, the number and variety of applications have been steadily increasing. This includes an increase in the number of applications for the expulsion of foreigners. Article 57 of the LFIP contains the fundamental rules pertaining to individuals who are subject to administrative detention for the purpose of deportation. As the deportation and detention decisions made by administrative or criminal courts cannot be reviewed by a higher court, the involved parties must individually submit applications to the Constitutional Court within the specified timeframe. Hence, the Constitutional Court is responsible for overseeing the legitimacy of judgements pertaining to foreigners detained in repatriation centres, which are among the facilities where individuals are deprived of their liberty.[559] The Constitutional Court, which has a significant role in implementing international law into domestic law, has embraced a similar stance to the ECtHR. In several rulings, the Constitutional Court relies on international law and the provisions of international treaties that Turkey has ratified. Below, I shall present a selection of such cases.

[557] UNHCR, 'Turkey: Strengthening Legal Protection and Access to Justice – Current Legal Framework' (Fact Sheet, May 2018) https://www.unhcr.org/tr/wp-content/uploads/sites/14/2018/06/04.-UNHCR-Turkey-Strengthening-Legal-Protection-and-Access-to-Justice-Fact-sheet-May-2018.pdf accessed 26 May 2024.
[558] Arts 148–149, Constitution of the Republic of Turkey.
[559] Dondu Kuşcu, 'Yabancılar ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Sınır Dışı Edilmelerine Karar Verilen Yabancıların İdari Gözetim Altına Alınmaları [Administrative Detention of Foreigners Who Are Decided to be Deported in Pursuance of the Provisions of the Law on Foreigners and International Protection]' (2017) 22(37) *Dicle Üniversitesi Hukuk Fakültesi Dergisi (DÜHFD)* 241.

The 2015 ruling of the Constitutional Court about K.A holds significant importance on the justification and operation of the deportation and administrative detention procedures.[560] The complaint alleges that the expulsion of the applicant, a Syrian national who received a deportation order on the grounds of posing a threat to public order, safety, or health, violated his right to life and the prohibition of torture. This violation was due to the risk of him being subjected to torture or ill-treatment. Additionally, the conditions at the Kumkapı Return Centre were deemed to be incompatible with the prohibition of cruel punishment or treatment. It is also claim that the applicant's right to freedom and security was violated due to the prolonged administrative surveillance decision. The TCC underscored the significance of the ECtHR in its judgment. The court stated that if there are sufficient reasons to believe that a person would be subjected to treatment that goes against Article 3 of the Convention when they are expelled, then the party state may have a duty under the Covenant to expel the person to that country, as outlined in Article 3.[561] Nevertheless, the applicant's claims that the deportation violated their right to life and the prohibition of torture were considered inadmissible due to their lack of personal victim status. Specifically, if individuals who have received a deportation verdict no longer have the ability to carry out the aforementioned alternative, it is no longer appropriate to claim that these individuals continue to exist as victims.[562]

As per the complainant, who was held in administrative detention for deportation at the Kumkapi GGM, the conditions at the facility were inhumane, violating upon his physical and mental well-being. Additionally, there was no viable possibilities to request a change in his circumstances, which contravened articles 17 and 40 of the Constitution. Citing the report from the Human Rights Board of the Grand National Assembly of Turkey, the Court ruled that the conditions of detention at the Kumkapı Repatriation Centre were "inconsistent with the principles of human dignity" and that this constituted a violation of the third paragraph of Article 17 of the Constitution. In the K.A. ruling, the Court of Turkey acknowledged that, for the first time, there was a lack of any administrative or judicial appeal system in the country to establish criteria for the detention circumstances of foreigners and the monitoring and oversight of these conditions.

[560] *TCC, K.A.* App no 2014/13044 (11 November 2015).
[561] Ibid. para. 50
[562] Ibid. para. 61

As a significant development, the Constitutional Court employed the pilot decision procedure for the first time since 2012, when the individual application method was introduced. The Constitutional Court issued a pilot judgement on 12 June 2018 in the case of Y.T., which dealt with the ban on refoulement in relation to the changes made to the Law on Foreigners and International Protection by an emergency decree in 2016.[563] As a general rule, individuals seeking international protection can stay in Turkey while their case is being processed.[564] In October 2016, an emergency decree was issued, which provided exceptions to the principle of non-refoulement: (i) involvement in leading, being a member of, or supporting a terrorist organisation or a criminal group driven by profit; (ii) posing a threat to public order or public health; or (iii) having connections to terrorist organisations as defined by international institutions and organisations.[565] Since the implementation of the ruling, the sole method to halt deportation is to initiate legal proceedings with the Constitutional Court and request interim respite. To avoid the applicant, Y.T's deportation to Russia, the Court had already approved interim remedies on 1 November 2016. Based on the pilot judgement, 866 individual applications have been received by the Constitutional Court since the decree went into force, requesting interim remedies against deportation. Deportation has been halted in more than 90% of these instances since the Court has approved interim measures in 784 of them.

The Constitutional Court recently declared that the repatriated Syrian refugee's right to life and the ban of ill-treatment were violated by forcing him to sign the voluntary return form. Due to the fight involving the applicant, Hammud, a Syrian citizen residing in Turkey under temporary protection status, it has been determined that they will either be deported to a secure third country or, if they choose to do so voluntarily, permitted to return to their place of origin.[566] Nevertheless, a determination was made to sentence him to administrative detention for a duration of six months due to his perceived threat to public order, resulting in a subsequent decision to deport him. The lawyer representing the applicant formally requested the annulment of the administrative detention order and simultaneously initiated legal proceedings in the administrative court seeking the invalidation of the deportation decision. Nevertheless, Hammud was promptly

[563] *TCC, Y.T.* App no 2016/22418 (12 June 2018).
[564] Art 80, Law on Foreigners and International Protection (Law No 6458, Turkey).
[565] Art 54, Law on Foreigners and International Protection (Law No 6458, Turkey).
[566] *TCC, Hammud* App no 2019/24388 (25 May 2023).

transferred to Syria via the border gate, bypassing the need to await the resolution of the case, in keeping with the voluntary repatriation request form. The Constitutional Court highlighted the potential dangers associated with the deportation ruling: 'The decision on the applicant's deportation acknowledged the existence of a genuine risk in sending him back to his place of origin, as opposed to a mere prospect of risk. It is important to highlight if the applicant was sufficiently informed prior to their voluntary return, namely whether they were aware and made a conscious decision to return.'[567] Furthermore, the Court mentioned that the voluntary return form, which was superficially structured, failed to provide any specific information about the applicant's individual circumstances in Syria, nor did it clarify why the initial decision to grant him temporary protection and deportation, despite the acknowledged risks, was no longer applicable.

On the other hand, the Court differed from its earlier case law, well-established legal ruling in the case of B.T. [568] The applicant, who is a national of Uzbekistan, was apprehended at Sabiha Gökçen Airport while attempting to depart his home country due to religious and political persecution. The individual was found in possession of a counterfeit Greek passport on 23 June 2014. The complaint pertains to allegations that the administrative surveillance conducted at the Sabiha Gökçen airport detention center and the Kumkapı Return Project is unlawful. It is claimed that the conditions of detention are both inhumane and degrading. Furthermore, it is alleged that there is no effective remedy available to challenge the detention, the reasons for detention have not been adequately explained, and the right to freedom and security of the person, as well as the prohibition of treatment that is incompatible with human dignity, have been violated due to the failure to recognise the possibility of compensation for the detention.

The Court declared that the lack of a compensation decision hindered its ability to ascertain this statement. It is crucial to acknowledge that the availability of a remedy in theory does not automatically imply that compensation was refused by the administrative or judicial court. One can seek compensation by suing the detention decision in administrative court, since it is an official decision. The Court also noted that administrative courts would be ideally suited to reviewing the centres' circumstances than the Court itself, since the latter often just reviews the application files. Ultimately,

[567] Ibid.
[568] *TCC, B.T.* App no 2014/15769 (30 November 2017).

considering these reasons and the concept of subsidiarity, the Court mandates that all possible remedies, in this case seeking compensation through the administrative court, must be exhausted and therefore it rejected the application.[569]

7- EVALUATION OF CASE LAW: TO WHAT EXTENT DOES THE TURKISH JUDICIAL SYSTEM HAVE THE CAPACITY TO PROTECT SYRIANS?

Based on the aforementioned judgements by the ECtHR and the TCC, it is evident that Turkey is not appropriate for the designation as a safe third country. These illegal deportations demonstrate the endangerment of Syrians under temporary protection being returned to Syria. Consequently, the execution of the EU-Turkey statement is breaching the principle of non-refoulement. Furthermore, it is important to note that the ECtHR's decisions on Turkey's deportation requests highlight yet another instance of inconsistency. During the court proceedings, the issue of the Turkish asylum system and deportation applications had been carefully considered. Nevertheless, as it was argued in the Chapter 3, it was evidenced that the court was more cautious when it came to legitimising the expulsion operations of the EU member states, particularly in the instances of *ND. NT v. Spain*[570] and *Khalifia and Others v. Italy*[571] cases.

ECtHR criticised and recognised the deficiencies of the Turkish refugee system in the Akkad case. This ruling unequivocally demonstrates that Turkey, which was designated as a safe country under the EU Turkey Agreement, has flagrantly violated the principle of non-refoulement. This case underlines the systemic failings and legal deficiencies of Turkey, questioning its ability to offer effective protection to individuals escaping persecution, as required by the principle of non-refoulement established in international human rights law. Therefore, this research not only questions the legitimacy of categorising countries as 'safe third countries' without conducting comprehensive risk assessments, but also emphasises the wider consequences for European asylum policy that follow from these designations to control the movement of migrants. The ECtHR effectively support the main argument on how the EU-Turkey Statement, used to justify

[569] Sibel Yılmaz, 'Protection of Refugees' Rights Arising Out of the International Protection Procedure from the View of Turkish Constitutional Court's Individual Application Decisions' (2019) 68(3) *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 707.
[570] *Case of N.D. and N.T. v Spain* App nos 8675/15 and 8697/15 (ECtHR, 13 February 2020).
[571] *Case of Khlaifia and Others v Italy* App no 16483/12 (ECtHR, 15 December 2016).

returning asylum seekers from Europe to Turkey without proper safeguards, undermines the fundamental human rights protections against refoulement.

Furthermore, the rulings in the Batyrkhairov and Amerkhanov cases highlight a concerning trend of Turkish authorities neglecting the important principle of non-refoulement and the right to a fair evaluation of asylum requests. These cases effectively demonstrate how Turkey's actions might result in the arbitrary repatriation of persons to countries where they are at significant risk of torture or death, without conducting an intensive assessment of their allegations of mistreatment in their home countries. These actions deliberately violate the fundamental principles that constitute a "safe third country," as defined by international human rights law and EU law (see section 4). These judgements promote the necessity of implementing rigorous processes to evaluate the safety of third countries for refugees, raising doubts about Turkey's designation as a secure haven for refugees.

There exist significant rulings by the Constitutional Court in Turkey that bear resemblance to the judgements made by the ECtHR. The cases mentioned in section 7 highlight the significance of the Constitutional Court's stance on the matter and the justifications. These factors play a crucial role in safeguarding the human rights of refugees. The Constitutional Court has implemented a parallel and rights-oriented strategy in line with the ECtHR. This approach considers components such as the overall conditions in the applicant's home country, the past experiences of the applicants, and the specific and current risks they may face. These considerations are taken into account when assessing allegations of ill-treatment that foreign applicants may encounter if they are deported from Turkey. The Constitutional Court serves as the ultimate judicial authority in domestic law. It has the power to address any actions or behaviours by the state that amount to violations or negligence. If a violation of rights has occurred, the Constitutional Court resolves the matter within national institutions, without the need for a trial before the ECtHR. It is crucial for the state to rectify human rights violations that take place within its jurisdiction in the legal system, without requiring intervention from another authority.

It is crucial to carefully examine the ECtHR's inconsistent rulings on Turkey and its previous judgements concerning the member states of the EU. Although the ECtHR did not evaluate the EU-Turkey statement in the J.R and others case, it reached a decision against Turkey particularly for illegal deportations. The Court approvingly supports the member

states' response in pushback operations and the outsourcing of refugee management, despite Turkey's unlawful deportation of refugees.

The rulings of the ECtHR in cases brought by refugees against the Turkish government have played a crucial role in advancing the field of refugee law in Turkey. Additionally, it compels the Turkish government to adopt a position that adheres to the principles of international human rights law and humanitarian law, while exercising its authority derived from sovereignty. Nevertheless, it is important to examine the extent to which the decisions of the ECtHR have been put into effect in Turkey with regards to the protection of basic rights in the recent period. It is evident that a country with a deficient track record in safeguarding the basic rights of its own citizens is incapable of guaranteeing the protection of the rights of refugees to whom it gives temporary protection status within its borders. For example, Osman Kavala, a human rights defender, was sentenced to life imprisonment by an Istanbul court on April 25, 2023. He was charged with attempting to overthrow the government. The case revolved around the unfounded accusation that Kavala had been accountable for organizing the legal and remarkably nonviolent Gezi Park protests that occurred in Turkey in 2013. Kavala had been unlawfully detained since November 2017. During the trial, President Erdogan has publicly spoken out against Kavala multiple times, and the case highlights the strong political influence on Turkey's judicial system. It was completely ignored that Kavala and the others had been found guilty in February 2022 of violating a 2019 ECtHR[572] ruling that ordered Kavala's immediate release due to a lack of evidence, since the Council of Europe had already decided to initiate infringement procedures against Turkey. Turkey was found to have violated the ECHR due to its failure to comply with rulings in July, as a result of the infringement process. Turkey is third among Council of Europe member states in terms of pending executions of rulings by the ECtHR, following the Russian Federation and Ukraine.[573] Turkey, as a signatory of the ECHR and a founding member of the Council of Europe, has committed to implementing all rulings made by the ECtHR. Nevertheless, the outcomes of this dedication have yet to be achieved. The implementation of decisions made by the ECtHR serves as a significant measure in Europe to assess a country's dedication to upholding human rights and the principles of the rule of law. Failure to enact

[572] *Case of Kavala v Turkey* App no 28749/18 (ECtHR, 10 December 2019).
[573]European Parliament, *Report on the 2022 Commission Report on Türkiye* (2022/2205(INI)) https://www.europarl.europa.eu/doceo/document/A-9-2023-0247_EN.html accessed 14 January 2024.

the required actions outlined in the decisions, by neglecting to modify policies, practices, and laws that result in the violation, results in a recurrence of the state's breach of obligations under the ECHR. This issue has persisted in Turkey for an extended period and has resulted in unsolved and persistent systemic human rights issues. Hence, it is evident that Turkey's recognition as a safe country does not satisfy the EU legal standards pertaining to the ECHR.

On the other hand, as thoroughly examined in section 6, the Turkish Constitutional Court presents a favourable stance on safeguarding refugees from refoulement within Turkey. However, relying exclusively on the rulings from TCC is insufficient for arriving at a valid answer on the question of Turkey's safeguarding position, as these rulings' application in Turkey is uncertain. A conflict has emerged recently between Turkey's highest court of general jurisdiction, the Court of Appeals, and the TCC on the case of opposition politician Can Atalay, who has been incarcerated. This judicial crisis was very destructive and had severe consequences, making it one of the most harmful in the country's history. Can Atalay, an MP for the southern region of Hatay and a member of Turkey's Workers Party (TIP), has been in prison since April 2023 on charges related to the 2013 Gezi Park protests, the biggest demonstrations against Erdogan's government. In July, Atalay's appeal to the Court of Appeals, the highest court with ordinary jurisdiction, was rejected. Upon submitting an individual application with the TCC, the highest court of constitutional review[574], it was determined that his continued imprisonment constituted a breach of his rights to personal liberty, parliamentary immunity, and fair trial. The court rendered its verdict on this matter. On November 8, 2023, the public was granted access to the long-awaited decision of the Court of Appeals.[575] The unanimous verdict of the 3rd Penal Chamber was that the TCC overstepped its authority and violated the constitution. Therefore, they choose to disregard the ruling made by the TCC. In addition, they made the uncommon choice to commence criminal proceedings against the nine judges of the Constitutional Court who had supported Atalay, marking a precedent in Turkey's constitutional history. While members of the opposition party, experts in the area, and attorneys all asserted that the Court of Appeals was attempting to carry out an illegal coup d'état, President Erdogan and his nationalist allies have explicitly called for the dissolution

[574] *TCC, Şerafettin Can Atalay* App no 2023/53898 (TCC, 2023).
[575] Republic of Turkey, Court of Cassation (Yargıtay Başkanlığı), 'Basın Açıklaması [Press Release]' https://www.yargitay.gov.tr/item/1755/basin-aciklamasi accessed 13 January 2024.

of the Constitutional Court and have shown their support for the Court of Appeals.[576] The existing political instability and authoritarianism of Erdogan are clearly influencing public opinion, leading to a consensus in favour of abolishing the TCC through the Court of Appeals' ruling and subsequent discussions, which are generating the necessary political conflict. Therefore, it is important to highlight that the validity of TCC judgements is dubious because of the political instability in Turkey, despite the fact that their decisions present a favourable perception regarding the safeguarding of refugees in the country.

It is crucial to examine and criticise the reporting and implementation of the Constitutional Courts' rulings and ECtHR decisions in Turkey to assess their effectiveness in safeguarding refugees from refoulement. Given the numerous reports by NGOs regarding Turkey's purportedly voluntary returns, it is imperative to evaluate the country's human rights record based not just on legal decisions, but also on the actual implementation of these policies. Hence, the following section will go into the relevant reports issued by various groups including the EU.

8- THE REPORTS AND POLITICAL ENVIRONMENT: EXAMINING TURKEY'S SAFEGUARD POSITION

Turkey began reforming its asylum laws, institutions, and policies mostly in response to demands made during the country's accession processes. Hence, it is crucial to commence the analysis of Turkey's condition with reviewing the EU reports. As part of the enlargement package issued by the European Commission in 2015, the report on Turkey was included just before the signing of the EU-Turkey deal.[577] The publication of the report is timed to coincide with the fact that the EU has begun depending on Turkey for help in handling the refugee crisis. Sensitive discussions on the refugee situation were underway with top Turkish authorities which caused a several-week delay in the release of the report. The report highlighted the significance of EU-Turkey collaboration in managing the refugee crisis, while also acknowledging Turkey's deficiencies in the realms of human

[576] Hamdi Firat Büyük, 'Turkish Court Again Defies Constitutional Court Ruling on MP's Release' *Balkan Insight* (3 January 2024) https://balkaninsight.com/2024/01/03/turkish-court-again-defies-constitutional-court-ruling-on-mps-release/ accessed 13 January 2024.
[577] European Commission, *Commission Staff Working Document: Turkey 2015 Report* SWD(2015) 216 final, Brussels, 10 November 2015.

rights and democracy. The research also states that the new legislation fails to be in line with EU norms, and it also highlights the declining independence of the judiciary.

The report explicitly highlights the deficiencies of the Turkish asylum system, specifically noting the absence of fundamental living conditions for Syrians within this framework.[578] The report explicitly recognised instances of refoulement, where Turkey failed to adhere to the concept of "non-refoulement," as recorded and condemned by civil society. Prior to designating Turkey as a safe third country, the report acknowledged the inherent constraints on the protection of human rights for Syrians in Turkey. Considering these factors, it is evident that Turkey's recognition as a safe third country has advanced without taking into account the actual circumstances on the ground.

The post-statement annual reports provide critiques and warnings regarding Turkey's human rights records. However, the EU applauded the progress made by the Turkish asylum system, particularly regarding the regulations governing work permits for foreigners, as stated in the 2016 report.[579] Despite intermittent setbacks, European leaders have consistently lauded the positive outcomes of the statement and the continuous pattern of progress in the subsequent years of implementing the agreement.[580] The annual reports emphasised the notable decline in arrivals, achieved through collaboration with the Turkish authorities.[581] Most recently, following the European Council meeting on June 29-30, 2023, the European Commission and the High Representative have approved a Joint Communication that provides an update on the political, economic, and trade relations between the EU and Turkey.[582] The report provides an in-depth analysis of the areas of partnership, while also presenting critical assessments of the economic, political, and legal aspects. Additionally, the EU anticipates that Turkey would adhere to the verdicts of the ECtHR and demonstrate significant efforts to address and enhance the situation in Cyprus and the Eastern Mediterranean. These

[578] Ibid. p. 70
[579] European Commission, *Commission Staff Working Document: Turkey 2016 Report* SWD(2016) 366 final, Brussels, 9 November 2016.
[580] European Commission, *Commission Reports on Progress Made under the European Agenda on Migration* (Brussels, 8 December 2016).
[581] European Commission, *EU–Turkey Statement: Four Years On* (March 2020); European Commission, *EU–Turkey Statement: Two Years On* (April 2018).
[582] European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Council: State of Play of EU–Türkiye Political, Economic and Trade Relations* JOIN(2023) 33 final, Brussels, 29 November 2023.

expectations are clearly and implicitly stated in the report. Ironically, it also persists to have a significant emphasis on cooperation with Turkey on migration. The report emphasises the importance of the EU-Turkey declaration, which officially recognises Türkiye as a safe country.[583] However, it also highlights that Turkey has deliberately moved away from the membership process and has neglected to enforce judgements issued by the ECtHR. This implies that the report was biassed and designed to promote the interests of the Union rather than the values of the EU. It can be noted that the report's authors faced difficulties in pinpointing specific areas for improvement in the EU-Turkey relationship.

There is a somewhat darker reality underlying the substantial decrease in the number of people entering European borders following the implementation of the EU-Turkey agreement. Individuals seeking safety must decide between staying in their present country of residence, Turkey, or exposing themselves to potential harm by attempting to enter Europe. Europe's claim of credit for a reduction in casualties in the Aegean Sea, while failing to provide viable safe options for individuals seeking refuge, demonstrates their apathy and opportunism. Hence, it is crucial to review the NGO and academic project reports to ascertain the actual circumstances of Syrians residing in Turkey. According to non-governmental organisation reports, the EU-Turkey deal, based on the assumption that Turkey is a safe place for people escaping persecution and violent conflict, raises serious doubts about its legitimacy in light of the terrible conditions endured by returning refugees.[584] Human Rights Watch conducted interviews in April 2016, with eight people who experienced a violent deportation to Syria in February and March 2016.[585] These individuals, along with many others, provided documentation of their experiences. According to two testimonies, Turkish border guards subjected asylum seekers to severe beatings, resulting in their faces being unidentifiable. Human Rights Watch's 2015 report reveals that Turkey is systematically blocking Syrian individuals from pursuing asylum and is forcefully repatriating those captured while attempting to cross the border. Reports

[583] Ibid. p.7

[584] Danish Refugee Council and European Council on Refugees and Exiles, *Desk Research on Application of a Safe Third Country and a First Country of Asylum Concepts to Turkey* (20 May 2016) https://www.asylumlawdatabase.eu/en/content/dcrecre-desk-research-application-safe-third-country-and-first-country-asylum-concepts accessed 25 December 2023.

[585] Human Rights Watch, 'Turkey: Open Borders to Syrians Fleeing ISIS' (14 April 2016) https://www.hrw.org/news/2016/04/14/turkey-open-borders-syrians-fleeing-isis accessed 26 December 2023.

regarding Syrians indicate that Turkish border guards apprehended them near the border, subjected them to physical aggression, and subsequently either compelled them and numerous others to return to Syria or held and eventually expelled them without undergoing a legal trial.[586] These reports were produced during the EU's preparations to designate Turkey as a safe third country within the framework of the EU-Turkey joint action plan. The EU evidently failed to take into account Turkey's migratory policies and reports from human rights organisations when classifying Turkey as a safe place for Syrians.

Furthermore, Amnesty International has identified significant deficiencies in the EU-Turkey statement. The problems have become evident through the forced return of a large number of refugees to war-torn Syria. According to their investigation in the southern border towns of Turkey, the organisation has discovered that Turkish officials have been regularly expelling groups of more than 100 Syrian individuals, including men, women, and children, back to Syria since mid-January 2016.[587] Amnesty International researchers have verified a widely documented practice in the region, where they gathered many testimonies of extensive repatriations from Hatay province. Three children returned to Syria without their parents in one instance, and an eight-month pregnant woman was also returned against her will, according to Amnesty International. Amnesty International has also reported cases where registered Syrians have been sent back to Syria after being apprehended without their identification. However, it seems that a significant number of individuals who are deported are unregistered refugees. Additional information from Amnesty International confirms that Turkey has reduced the number of Syrian refugees registered in the regions around the country's southern border. In 2019, Amnesty International reported again that Turkey has been breaching the non-refoulement principle of international law by unlawfully repatriating Syrian refugees to a different country. Between 25 May and 13 September 2019, the majority of the 20 occurrences of illegal forced returns that happened in July 2019 took place. The particular instances given here aim to emphasise a much more widespread issue. The research states that Syrians lacking valid identification are at a higher risk of being deported and

[586] Human Rights Watch, 'Turkey: Syrians Pushed Back at the Border' (23 November 2015) https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border accessed 26 December 2023.
[587] Amnesty International, 'Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU–Turkey Deal' (1 April 2016) https://www.amnesty.org/en/latest/press-release/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/ accessed 26 December 2023.

are unable to access essential services. Syrian refugees sometimes lack legal safeguards to prevent their repatriation back to Syria when confronted with the possibility of being sent back. Amnesty International has urged Turkey to promptly halt the practice of forcefully expelling Syrian refugees from its territory. Additionally, they call for ensuring that all deportees are granted the chance to safely return to Turkey and regain access to essential services.[588]

As per the AIDA research, individuals requiring international protection in airport transit areas are frequently repatriated to their place of origin without offering the opportunity to go through Turkey's international protection procedure and seeking legal assistance.[589] There have been 9,000 deportations of foreign terrorist fighters of various nationalities since 2011, according to their country reports. As a general rule, individuals seeking international protection have the right to remain on Turkish territory during the process. As previously indicated, however, a deportation judgement can trigger an exception to this provision, which was established in October 2016 through an emergency decree. Concerns regarding the evaluation of the risk of refoulement (forced return to a place where one may face persecution) are raised by the fact that deportation orders do not specify the country to which an individual is to be deported.[590] The complexity of risk assessment intensifies when courts adopt a presumption that the country of removal is the same as the nation of origin. A new practice has been observed in Izmir, including a paper that identifies safe nations for deporting Syrians, although its actual execution remains uncertain. People who were convinced to fill out a voluntary return form at removal centers returned to Türkiye in 2022, according to AIDA's stakeholders. The temporary protection regulation allows for the possibility of re-arrivals due to the reactivation of IDs by re-application, as stated in the legislation. However, in reality of the ground, individuals must appeal because they are unable to access the registration process or because their applications have been refused.

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[588] Amnesty International, *Sent to a War Zone: Turkey's Illegal Deportations of Syrian Refugees* (Index: EUR 44/1102/2019, October 2019) https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf accessed 13 November 2023.

[589] Asylum Information Database (AIDA), *Country Report: Turkey* (July 2023) https://asylumineurope.org/reports/country/turkey/ accessed 13 November 2023.

[590] *Daily Sabah*, 'Turkey Deports Thousands of Foreigners Who Disrupt Public Order' (21 July 2022) https://www.dailysabah.com/politics/turkey-deports-thousands-of-foreigners-who-disrupt-public-order/news accessed 26 December 2023.

Moreover, the research by Statewatch, which details various concurrent asylum processes between the UNHCR and Turkey, casts doubt on the decision-making process, stating that negative evaluations are preferred even when the UNHCR reaches a different conclusion.[591] According to the Statewatch report, sheltering migrants has never been an easy task for Turkey. First of all, full legal status cannot be provided to refugees from non-European countries, especially those in the temporary protection regime. Vulnerability and an oppressive atmosphere towards human rights might be worsened by this haziness in the law. Secondly, Syrian refugees in Turkey have challenges when trying to get basic services like healthcare, education, social assistance, and jobs. Turkey has granted Syrians the right to work, but they are still facing challenges in actually getting work permits. As a result, most of the job prospects are in the informal sector. There have been social tensions and violent incidents because of xenophobia towards Syrian refugees. Lastly, Turkey's past record of cruelly detaining refugees and asylum seekers is a major concern. There are a number of reasons why asylum seekers can be held in custody, and the conditions in which they are held frequently amount to cruel or humiliating treatment. It is common practice to hold migrants, including those seeking asylum, for unlawful entrance or exit and to deny them access to asylum processes.

Disregarding the appalling living conditions and absence of legal recognition, the EU-Turkey agreement has rendered many refugees and asylum seekers in Turkey without protections or in unsafe conditions. According to the aforementioned investigations and case law from the ECtHR, Turkey's designation as a safe country is inconsistent with the refugee convention and Article 38 of APD. Additionally, to the argument presented here, the literature presents diverse justifications and supports my contention. By designating Turkey as a "safe third country" to keep refugees out of Europe, the EU-Turkey deal promotes "the precarious living conditions" that refugees experience, according to Demirbas and Miliou's research on the topic.[592] In addition, they noted that Turkey provides an extent of refuge, especially for individuals fleeing from civil conflict. It is acknowledged that Turkey is notably more hospitable to Syrian refugees compared with some European states that have implemented strict measures to reduce migration,

[591] 'Statewatch Analysis: Why Turkey is Not a "Safe Country"' (2016) 25(1) *Statewatch Journal* 11.
[592] E Demirbaş and C Miliou, 'Looking at the EU–Turkey Deal: The Implications for Migrants in Greece and Turkey' in R Zapata-Barrero and I Awad (eds), *Migrations in the Mediterranean* (Springer 2024) https://doi.org/10.1007/978-3-031-42264-5_2 accessed 25 March 2025.

leading to violations of human rights.[593] Nevertheless, they ascribe this predicament to Turkey's economic hardships and political challenges. They offer context by acknowledging that Turkey is an emerging state with a vulnerable economy and an increasingly autocratic political environment. Given their vulnerable circumstances, the migrants are employed as an inexpensive workforce to enhance the competitiveness of Turkish enterprises. Refugees face not just these challenges, but also increasing instances of anti-immigrant discrimination in the host nation and human rights abuses perpetrated by Turkey's authoritarian governmental bodies.[594]

On the other hand, Celik and White research into the policy level implementation of Turkey's international refugee protection obligations, with a particular emphasis on empirical research about the domestic responses to Syrian refugees.[595] Their article primarily focuses on Turkey's internal reactions to Syrian refugees and its main conclusions are as follows. Instances of terrorism, allegations of refoulement including pushbacks, arbitrary detention, physical aggression, and the humiliation of Syrians at the border, and the Geographical Limitation of the 1951 Convention and 1967 Protocol are all grounds for criticism of Turkey as a safe third country. In addition, they observed the concerns of Turkish communities regarding refugees, who are perceived as a financial burden, a strain on the labour market, and a potential threat to security because of the ongoing conflicts in northern Syria involving the ISIS and YPG.[596] As demonstrated by their research, the safeguarding of refugees could be threatened if Turkey's economic and political challenges overwhelming the efforts to address the refugee problem. The country's economic downturn and political conflicts are intricately linked to the responses towards refugees and safeguarding systems.

Furthermore, Kaya examined an alternative viewpoint on the roots of racism among the general population and Syrian community resulting from temporary protection.[597] While the Turkish state made some progress in implementing the Temporary Protection

[593] Ibid. p.17
[594] Ibid.
[595] Ç Çelik and H White, 'Forced Migration and Protection: Turkey's Domestic Responses to the Syrian Refugees' (2022) 30(3) *European Review* 353 https://doi.org/10.1017/S1062798721000028 accessed 25 November 2023.
[596] Ibid. p.359
[597] A Kaya and N E Gokalp Aras, *Koruma, Kabul ve Entegrasyon: Türkiye'de Mültecilik [Protection, Reception and Integration: Refugees in Turkey]* (Istanbul Bilgi Universitesi Yayinlari 2021).

Regulation following EU standards, the AKP government and other state actors' approach towards Syrians living in Turkey failed to align migration and asylum processes with European norms. The presentation of the refugee crisis' response as a humanitarian and tolerant effort by government officials has led to the emergence of racist and xenophobic opinions towards refugees in public opinion. Following the unsuccessful coup attempt on July 15, 2016, Turkey's deteriorating economic and financial conditions led to the emergence of 'Arabophobia', as numerous local political groups began to blame Syrian refugees for the country's challenges.[598] The Turkish government's political discourse emphasizes the evolving nature of Syrians, hence fuelling the predominance of stereotypes, biases, societal tensions, and various forms of mistreatment towards Syrians.

Additionally, Ovacik analysed the process of LFIP under the cooperation with the EU.[599] She explicates that the recent regulatory structure in Turkey bears an undeniable parallel to the framework established by the EU. This correlation is unsurprising, considering the significant financial and technical assistance provided by Member States and the EU during the drafting phase of the Law on Foreigners and International Protection. The EU-Turkey Statement has had an impact on Turkey's classification as a secure third country, which is evident in its compliance with the EU framework. As Ovacik supports this research argument, the EU prepared firstly Turkey before assigning as a safe third country. The EU-Turkey agreement and the Roadmap on Visa Liberalisation were components of a broader framework governing EU-Turkey cooperation. These documents suggested the potential for Turkish citizens to travel across EU borders without requiring a visa. Considering Turkey's commitment to preserving its position as a secure third country and collaborating with the EU to address irregular migration in the aftermath of the Syrian crisis, this can be interpreted as an example of the EU's readiness to make concessions at the expense of human rights.

It is important to state that an EU member state has the authority to deny an asylum claim when the applicant has the opportunity to find protection in a safe third country, as specified in Article 33(2) (c) of the European APD. In order to be considered a "safe" third country, the conditions specified in Article 38 of the APD must be met:

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[598] Ibid.

[599] G Ovacik, 'Compatibility of the Safe Third Country Concept with International Refugee Law and Its Application to Turkey' (2019) 10(1) *Perceptions: Journal of International Affairs* 70.

> "*(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; (c) the principle of non-refoulement in accordance with the Geneva 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 Geneva Convention*."

However, Turkey fails to fulfil the safety measures required by Article 38. In addition to the judgements of the ECtHR regarding Turkey, Turkey's geographical reservation to the 1951 Refugee Convention demonstrates that Turkey does not offer equal protection to asylum applicants on the basis of their nationality. As evident from the aforementioned reports and case law, Turkey poses a significant risk for asylum seekers, as they may be returned to Syria without due consideration of the non-refoulement norm. "The possibility exists to request refugee status and, if found to be a refugee, to receive protection" is another criterion of the APD. The right to asylum is regularly disregarded in Turkey since the registration of international and temporary protection applications is often based on arbitrary discretion, as highlighted by NGO reports mentioned. A lack of housing and healthcare, as well as arbitrary incarceration and illegal deportations, have also been documented.

Lastly, Turkey has a population of 85 million, with refugees accounting for more than 6% of the total.[600] However, hostility towards refugees had no significant impact on the outcome of national elections until the municipal elections of 2019. The rationale behind this perception was because migrants were regarded as temporary "guests" and Erdoğan often employed the Islamic concept of brotherhood.[601] Rising rates of violence and hate crimes directed towards refugees in 2021 and 2022 were sociological reflections of the change in political rhetoric. By the presidential election in 2023, Candidates exploited public apprehensions around immigration and employed anti-immigrant

[600] UNHCR, *Türkiye Fact Sheet* (February 2023) https://www.unhcr.org/media/bi-annual-fact-sheet-2023-02-tuerkiye accessed 14 January 2024.
[601] E Lazarev and K Sharma, 'Brother or Burden: An Experiment on Reducing Prejudice Toward Syrian Refugees in Turkey' (2017) 5(2) *Political Science Research and Methods* 201 https://doi.org/10.1017/psrm.2015.57 accessed 25 March 2024.

discourse as a means of gaining support from voters. Subsequent to the presidential election, the government initiated significant measures to address illegal immigration, nonetheless, there is a visible absence of compassion and awareness towards Syrians. An initiative was started in the state of Mersin with the objective of eliminating billboards in the Arabic language[602]; similar initiatives were also undertaken in other cities. On September 16, a group of individuals opposed to racism forcefully entered an Istanbul protest in solidarity with Syrian migrants.[603] As Turkmen emphasized that by making anti-refugee rhetoric prominent among both sides in the 2023 elections, the deal has shown that its de-democratizing effects have spread beyond the ruling party.[604] The AKP, led by Erdogan, has moved Turkey away from its secular foundation. An executive presidency, centred around Erdogan determines economic, security, political, and foreign policies for Turkey. When it comes to stabilizing Turkey's democracy, the EU is still an indispensable base. However, the decision to put aside Erdogan's authoritarian rule and disregard Turkey's lack of democracy and human rights in order to secure its cooperation on the refugee issue has been prompted. The EU continues to uphold the EU-Turkey statement, in spite of the refugees being increasingly used as negotiation tools and becoming targets of hostility within Turkish society.

CONCLUSION

This chapter firstly examined the protection of Syrian refugees and Turkey's stance in relation to the EU-Turkey Statement. The analysis reveals several significant findings. The designation of Turkey as a "safe third country" according to the EU-Turkey Statement has resulted in notable legal and humanitarian difficulties. Despite Turkey's significant efforts to accept millions of migrants, especially Syrians, the implementation of temporary protective measures is insufficient in ensuring long-term solutions and durable rights for

[602] Oda TV, 'Mersin'de Arapça Tabelalar Kaldırılmaya Başladı' [Arabic Signs Started to Be Removed in Mersin] (July 2023) https://www.odatv4.com/guncel/mersinde-arapca-tabelalar-kaldirilmaya-basladi-76154514#:~:text=Mersin'in%20Mezitli%20il%C3%A7esinde%20T%C3%BCrk%C3%A7e,kald%C4%B1r%C4%B1lmas%C4%B1%20i%C3%A7in%20belediye%20ekipleri%20g%C3%B6revlendirildi accessed 15 January 2024.

[603] ILKHA, 'Rally in Istanbul Addresses Pressing Issue of Racism in Türkiye' (2023) https://ilkha.com/english/latest/rally-in-istanbul-addresses-pressing-issue-of-racism-in-turkiye-350978 accessed 15 January 2024.

[604] G Türkmen, 'How the European Union Contributes to Turkey's Anti-Refugee Rhetoric' (Middle East Program, Foreign Policy Research Institute, 2023) https://www.fpri.org/article/2023/06/how-the-european-union-contributes-to-turkeys-anti-refugee-rhetoric/ accessed 15 January 2024.

refugees. Turkey's legislative framework, although mostly in line with EU regulations and international law, is limited by its geographical constraints as per the 1951 Refugee Convention. This limitation precludes non-European asylum seekers from obtaining full refugee status.

Moreover, this chapter has presented an in-depth review of the obstacles and prospects that Turkey encounters in safeguarding Syrian refugees rights in accordance with the EU-Turkey Statement. This chapter analysed Turkey's advancement in becoming a secure third country, its response to the influx of Syrian refugees, and the complexities surrounding the EU-Turkey agreement. It has specifically addressed the protection problems that arise from the safe third country concept. Alongside displaying the shortcomings of temporary protection status of Syrian refugees, the assessment of the national and EU courts in managing the refugee crisis has emphasised the significance of safeguarding the rights and welfare of refugees in Turkey. It is crucial to take into account the human rights violations of the EU-Turkey Statement and to address the issues and challenges made by NGOs and legal institutions.

This study commenced by examining Turkey's status as a secure nation for refugees and its responsibilities in accordance with international law, particularly the Geneva Convention. Subsequently, the following outlined the provisions of temporary protection for refugees in Turkey, encompassing their entitlements and obligations. The legal framework of Turkey for the protection of Syrians was examined, together with relevant case law and reports, focusing specifically on Turkey's illegal deportations of refugees to hazardous conditions. Upon careful examination of the case law and reports, it becomes evident that Turkey's designation as a safe third country contravenes both EU law and international law. This is due to Turkey's consistent violation of the principle of non-refoulement, as well as the worsening political and legal instability in the country.

An examination of Turkey's designation as a safe third country within the EU framework exposes inconsistencies between legal norms and practical circumstances. The continuous infringement of human rights and the rise of authoritarianism in Turkey give greater concerns over the effectiveness of refugee protection measures and the EU's collaboration with Turkey in handling the refugee issue. Essentially, the work offers a detailed examination of the challenges faced by Turkey in meeting its responsibilities towards Syrian refugees as outlined in the EU-Turkey Statement. This highlights the

importance of continued scrutiny and collaboration to guarantee the effective safeguarding of refugees and the advancement of human rights inside the EU-Turkey agreement.

CONCLUSION OF THE THESIS: FROM CRISIS RESPONSE TO POLICY BLUEPRINT: THE LEGAL AND POLITICAL LEGACY OF THE EU-TURKEY STATEMENT

INTRODUCTION

The EU-Turkey Statement, approved in March 2016, became a crucial mechanism in the European Union's reaction to the Syrian refugee crisis and wider migration issues.[605] It illustrates the EU's dependence on foreign partners to regulate migratory flows, a strategy characterised by considerable legal, political, and ethical intricacies. This thesis has analysed the Statement from a interdisciplinary perspective, studying its legal nature and its conformity with EU and international human rights norms, within the broader political dynamics influencing its negotiation and implementation.

In December 2024, the Syrian civil war reached a pivotal conclusion when opposition forces captured Damascus, leading to the collapse of President Bashar al-Assad's regime.[606] This significant development has profound implications for the EU's migration strategy, particularly concerning the EU-Turkey Statement. The end of the conflict may alter refugee movements, necessitating a reassessment of existing agreements and policies to ensure they remain effective and aligned with current realities. This underscores the importance of adaptable and forward-looking approaches in managing migration in response to evolving geopolitical landscapes.

This research aimed to answer a central question: Is the EU-Turkey Statement compatible with EU law and international refugee law? To address this issue, it employed a framework constructed from legal and political research, incorporating the "new intergovernmentalism" approach, which provides insights into the power dynamics and institutional transformations within the EU during crises. This thesis integrated the analysis of the legal frameworks and political science to evaluate the Statement's immediate effects and to elucidate its wider implications for migratory policy throughout the EU and beyond.

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[605] European Council, *EU–Turkey Statement* (Press Release, 18 March 2016) https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ accessed 5 December 2024.

[606] Direct Relief, 'A Stunning End to Civil War in Syria Brings Urgent Need, New Possibilities' (12 December 2024) https://www.directrelief.org/2024/12/a-stunning-end-to-civil-war-in-syria-brings-urgent-need-new-possibilities/ accessed 5 January 2025.

This concluding chapter synthesises the key outcomes of this research, emphasising the Statement's legal uncertainties, human rights issues, and political ramifications. This chapter, moreover, looks beyond the EU-Turkey statement highlighting how this fits within the EU's developing externalisation agenda, and examining the impact of the Statement on new EU partnerships with third countries such as Tunisia and Morocco, as well as the recently concluded migration deal with Albania. This chapter ultimately examines the overarching lessons derived from the EU-Turkey Statement about migratory governance and proposes solutions for the formulation of more equitable and rights-based policies.

1. THE EU-TURKEY STATEMENT AS A MODEL FOR EU MIGRATION AGREEMENTS

While the EU-Turkey Statement may no longer dominate migration policy discussions as it did during the height of the 2015 refugee crisis, its significance endures as a foundational model for externalizing migration management. This thesis examines the Statement through the perspectives of legal and political science research while offering a comprehensive framework for understanding the dynamics of migration agreements and its inherent human rights consequences. It rigorously analyses how migration management mechanisms operate as political and legal instruments, reconciling the interests of the states, legal responsibilities, and humanitarian considerations.

The EU-Turkey Statement served as the first large-scale test of the EU's ability to transfer migration management responsibilities to a third country. It produced a precedent for employing financial incentives, border control obligations, and readmission agreements as bargaining tools in international debates. Originally designed as a crisis solution, its fundamental rationale has become crucial to the EU's long-lasting migration strategy, offering a framework for such deals globally.

The replication of the EU-Turkey Statement's framework is most noticeable in the EU's agreements with North African nations. *The EU-Tunisia Memorandum of Understanding*, agreed in July 2023, substantially resembles the structure of the Statement.[607] It entails significant financial assistance contingent upon Tunisia's obligations to improve border

[607] European Commission, 'EU and Tunisia Finalise Memorandum of Understanding on Strategic and Comprehensive Partnership' (Press Release, 16 July 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887 accessed 4 December 2024.

surveillance, bolster marine control, and avert irregular departures. Similar to Turkey, Tunisia has also been assured economic development initiatives; nevertheless, their implementation remains inconsistent. This dependence on financial assistance and security collaboration illustrates the adaptation of the EU-Turkey Statement to evolving geopolitical circumstances, however with constrained efficacy owing to persistent regional instability.

The Italy-Libya Agreement[608], financed by the EU, formalised via informal cooperation channels and bolstered by the 2017 Malta Declaration [609], exemplifies the same externalisation strategy. The EU has allocated cash and operational assistance to the Libyan Coast Guard to intercept migrant vessels and return migrants to detention facilities in Libya. This adoption of the EU-Turkey model has encountered considerable opposition due to extensively recorded human rights violations in Libyan detention facilities, encompassing torture, forced labour, and sexual violence. In contrast to Turkey, Libya is not equipped with an operational asylum system or legal protections, rendering the delegation of migration management duties more challenging from both legal and humanitarian viewpoints.

The EU-Morocco Cooperation Framework further exemplifies the Statement's impact.[610] Despite being less formalised, EU-Morocco partnership have encompassed financing for border administration, repatriations, and anti-smuggling operations. Morocco has served as a pivotal transit state on the Western Mediterranean route, playing a central part in the EU's comprehensive migrant management plan. The EU's financial aid has focused on enhancing Moroccan border infrastructure, notwithstanding ongoing apprehensions regarding Morocco's treatment of migrants and refugees.

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[608] *Memorandum of Understanding on Cooperation in the Fields of Development, the Fight against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders between the State of Libya and the Italian Republic (2 February 2017)* https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf *accessed 4 December 2024.*

[609] Council of the European Union, 'Malta Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route' (Press Release, 3 February 2017) https://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/ accessed 4 December 2024.

[610] European Commission, 'EU Launches New Cooperation Programmes with Morocco Worth €624 Million for Green Transition, Migration and Social Inclusion' (Press Release, 2 March 2023) https://neighbourhood-enlargement.ec.europa.eu/news/eu-launches-new-cooperation-programmes-morocco-worth-eu624-million-green-transition-migration-and-2023-03-02_en accessed 4 December 2024.

The Statement's legacy exceeds the EU's boundaries, as exemplified also by the UK-Rwanda Migration Partnership[611], which entails the transfer of asylum seekers who arrived irregularly in the UK to Rwanda for processing and potential resettlement. Although functioning within a distinct legal framework, the UK-Rwanda agreement has identical fundamental principles: transferring asylum obligations to a third nation in return for monetary and logistical assistance. This thesis emphasises how these agreements are based on the framework initially evaluated through the EU-Turkey Statement, notwithstanding the considerable legal and human rights issues they present.

The Italy-Albania Agreement demonstrates the EU's ongoing dependence on external migration agreements.[612] The agreement permits Italy to manage asylum applicants in Albania, circumventing EU asylum legislation while preventing migrants from reaching European coasts. Like the EU-Turkey Statement, the Italy-Albania agreement encompasses commitments of financial assistance, developmental initiatives, and political collaboration. These characteristics emphasise that migration agreements pertain not only to the regulation of migrant flows but also to the utilisation of political and economic influence in international relations.

This thesis showed how external migration partnerships serve as tools for migration regulation and international diplomacy through the analysis of these situations. They illustrate an inherent dynamic in which governments delegate legal obligations while maintaining authority over their borders. Nevertheless, such agreements raise substantial human rights issues, especially when third countries lack sufficient legal safeguards, as evidenced by the detention centres in Libya or Turkey's inadequate asylum infrastructure.

This research offers a helpful prism for evaluating migration agreements by uncovering the legal challenges, human rights infringements, and political considerations that influence them. It illustrates that whereas migration accords might decrease irregular crossings and ease immediate political constraints, they frequently generate unforeseen legal and humanitarian issues. The EU-Turkey Statement, along with following

[611] UK Government, 'UK–Rwanda Treaty: Provision of an Asylum Partnership' (14 April 2022) https://www.gov.uk/government/publications/uk-rwanda-treaty-provision-of-an-asylum-partnership accessed 4 December 2024.

[612] *Protocol between the Government of the Italian Republic and the Council of Ministers of the Albanian Republic (Published November 2023) https://odysseus-network.eu/wp-content/uploads/2023/11/Protocol-between-the-Government-of-the-Italian-Republic-and-the-Council-of-Minister-of-the-Albanian-Republic-1-1.pdf accessed 4 December 2024.*

agreements involving Tunisia, Morocco, Libya, Rwanda, and Albania, illustrates the entanglement of migration control with foreign policy and international law, complicating the distinction between legal responsibilities and political expediency.

Ultimately, this thesis argues that understanding migration agreements requires more than evaluating their legal validity or immediate policy outcomes. It entails examining the intricate power dynamics, state interests, and human rights compromises that underlie these agreements. This comprehensive analytical framework of the statement enhances the ongoing discourse on the future of migration governance, where the equilibrium between state sovereignty, legal duties, and human rights protections constitutes a significant worldwide problem.

2. KEY FINDINGS

The EU-Turkey Statement represents a critical juncture in the European Union's response to the 2015 migration crisis, encapsulating a multifaceted merging of legal, political, and humanitarian factors. This thesis has thoroughly examined the agreement's complex nature, assessing its legal content, consequences for human rights, and the political dynamics that shaped its creation and implementation.

2.1- Institutional Dynamics and Political Motivations

The conclusion of the EU-Turkey Statement highlights the growing significance of intergovernmentalism in EU policies, especially concerning migration and refugee issues. [613] The European Council became the primary actor, circumventing the conventional treaty-making procedure and marginalising the functions of the European Commission and the European Parliament. This methodology embodies the core principles of "new intergovernmentalism," wherein Member States emphasise their national interests and oppose the delegation of authority to supranational bodies, particularly in times of crisis.[614]

[613] D Beach and S Smeets, 'New Institutionalist Leadership – How the New European Council-Dominated Crisis Governance Paradoxically Strengthened the Role of EU Institutions' (2020) 42(6) *Journal of European Integration* 837 https://doi.org/10.1080/07036337.2019.1703966 accessed 25 March 2025.
[614] CJ Bickerton, D Hodson and U Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).

The European Council's choice to directly engage with Turkey was motivated by the political necessities of individual Member States, which encountered increasing internal pressure to resolve the 2015 migratory crisis.[615] Leaders such as former German Chancellor Angela Merkel were instrumental in formulating the deal, driven by the necessity to curtail irregular migration and prevent the political repercussions of perceived inaction. This direct negotiation with Turkey, as opposed to utilising the EU's institutional framework, enabled Member States to have enhanced control over the process; yet, it prompted substantial concerns regarding transparency, accountability, and the enduring effects on EU cohesion.

The Statement provided Turkey with an opportunity to capitalise on its geographical and strategic significance in migration management. The assurance of financial aid, visa facilitation, and the resumption of EU admission negotiations offered inducements for Turkey's collaboration. Nonetheless, this research illustrates that these commitments were only partially realised, exacerbating tensions between the parties and undermining the long-term viability of the deal.

2.2- Legal Validity

The legal standing of the EU-Turkey Statement has been one of its most controversial elements of the deal. It emerged as one of the fundamental subjects in this research. This research has determined that the Statement does not conform to the framework of international agreements as specified in Article 218 of the Treaty on the Functioning of the European Union (TFEU). By categorising the agreement as a "Statement" instead of a treaty[616], the European Council circumvented the procedural obligations that would have required the participation of the European Parliament and review by the European Court of Justice (ECJ).

This procedural choice has considerable ramifications for the legitimacy and enforcement of the Statement. The examination of international legal standards, particularly the Vienna Convention on the Law of Treaties, indicates that the absence of formal ratification

[615] A Niemann and N Zaun, 'EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives' (2018) 56(1) *Journal of Common Market Studies* 3.
[616] *NF, NG and NM v European Council* (Orders of the General Court, Cases T-192/16, T-193/16 and T-257/16, 28 February 2017) http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019en.pdf

and institutional supervision undermines the legal robustness of the agreement.[617] The exclusion of the European Parliament from the decision-making process underscores the democratic deficiency in the EU's management of the migration challenge.

Furthermore, the General Court of the European Union's judgements in the NF, NG, and NM v. European Council cases have only heightened the uncertainty regarding the legal position of the Statement.[618] By concluding that the Statement was not an EU action but rather an agreement among Member States and Turkey, the Court circumvented substantive questions regarding its legality under EU and international law. This ambiguity complicates efforts to hold the parties accountable for their commitments and limits the avenues for judicial scrutiny.

2.3- Human Rights Implications

The EU-Turkey Statement and especially its core provisions on the automatic return of migrants who arrive irregularly on Greek islands to Turkey has had enormous repercussions for the rights and protection of refugees and migrants, raising fundamental concerns about its compatibility with international human rights standards. Central to these concerns is the principle of non-refoulement, which prevents the return of individuals to countries where they may risk persecution, torture, or cruel or degrading treatment.[619] This concept, incorporated in both international refugee law and EU law, has been challenged by the operational processes of the Statement, particularly in the context of expedited returns and the classification of Turkey as a "safe third country."[620]

2.3.1- Non-Refoulement and Collective Expulsions

The implementation of the EU-Turkey Statement has often prioritized operational expediency over the protection of fundamental rights. Migrants and asylum seekers repatriated from Greece to Turkey under the deal have typically encountered hurried procedures that hinder their capacity to claim asylum properly. This method risks

[617] Art 38, Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993.
[618] *NF, NG and NM v European Council* (Orders of the General Court, Cases T-192/16, T-193/16 and T-257/16, 28 February 2017) http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019en.pdf
[619] *Art 3, European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5.*
[620] Greece, Law No 4375/2016 of 3 April 2016.

infringing the principle of non-refoulement by failing to establish proper individual assessments and procedural protections. Reports of forced repatriation to risky places, both within and beyond Turkey, further intensify these worries.

The categorisation of Turkey as a "safe third country" has been particularly contentious. While Turkey has offered temporary shelter to millions of Syrian refugees,[621] the reality on the ground shows that this categorization is not universally applicable. Refugees in Turkey sometimes experience considerable difficulties to accessing essential services such as education, healthcare, and employment. Additionally, reports of forced returns to Syria and other risky places have created major doubts about Turkey's compliance with international human rights standards.[622]

2.3.2- The Role of the ECtHR and Legal Inconsistencies

The European Court of Human Rights (ECtHR) has played a crucial role in shaping the legal discourse surrounding the EU-Turkey Statement and broader migration policies. However, its jurisprudence reveals inconsistencies that complicate the legal evaluation of these policies.

In Hirsi Jamaa and Others v. Italy[623], the ECtHR held in clear terms that Italy's interception and repatriation of migrants to Libya violated the prohibition of collective expulsions as stipulated in Article 4 of Protocol No. 4 of the European Convention on Human Rights (ECHR) and the principle of non-refoulement under Article 3 ECHR. The Court underscored that the absence of individual evaluations and the circumstances in Libya rendered these repatriations illegal. This pivotal ruling set a stringent standard for adherence to human rights commitments in the management of migration.

In contrast, in the cases of N.D. and N.T. v. Spain[624], the Court employed a more adaptable stance, allowing the prompt repatriation of migrants attempting to breach the border fence in Melilla, Spain. The Court distinguished these returns from the collective expulsions prohibited under Article 4 of Protocol No. 4, reasoning that the individuals had

[621] Presidency of Migration Management, 'Temporary Protection in Turkey' https://en.goc.gov.tr/temporary-protection-in-turkey accessed 16 November 2024.
[622] UNHCR, *Türkiye Fact Sheet* (February 2023) https://www.unhcr.org/media/bi-annual-fact-sheet-2023-02-tuerkiye accessed 14 November 2024.
[623] *Hirsi Jamaa and Others v Italy* App no 27765/09 (ECtHR, 23 February 2012).
[624] *N.D. and N.T. v Spain App nos 8675/15 and 8697/15 (ECtHR, 13 February 2020).*

bypassed formal border crossings and acted in violation of Spanish law. This verdict was a deviation from the more stringent criteria established in Hirsi Jamaa, prompting apprehensions regarding the diminishment of protections for migrants and asylum seekers.

The ECtHR's inconsistent attitude is further apparent in cases explicitly concerning the EU-Turkey Statement. In J.R. and Others v. Greece[625], the ECtHR scrutinised the treatment of asylum seekers stranded in Greece under the hotspot system, instituted as part of the implementation of the Statement. While the ECtHR recognised the challenging conditions in Greek detention centres, it refrained from finding a direct violation of Article 3 ECHR, despite evidence of overcrowding, inadequate sanitation, and restricted access to legal aid. This reluctance to impose stricter accountability contrasts with the Court's earlier decisions and highlights a troubling trend of deference to state interests in the context of migration governance.

The thesis also examined the ECtHR's rulings in M.A. and Z.R. v. Cyprus[626], which concerned the pushback practices of Cypriot authorities. The Court's determination of a breach of the ban on collective expulsions underscored the necessity for migration management to comply with substantial procedural protections. However, the decision stopped short of addressing broader systemic issues, such as the role of EU externalization policies in facilitating these practices. This selective approach to the structural aspects of migratory regulation constrains the Court's efficacy in confronting the human rights issues arising from the EU-Turkey Statement.

3. CRITICISM OF THE ECTHR APPROACH

The ECtHR's inconsistent stance on migration management issues profoundly impacts the EU's externalisation strategies and its broader human rights framework. These discrepancies degrade the Court's ability to offer cohesive legal guidance and jeopardise its authority as a guardian of fundamental rights. By allowing flexibility in some cases, such as N.D. and N.T. v. Spain, while adopting a stricter approach in others like Hirsi Jamaa v. Italy, the ECtHR has inadvertently contributed to legal uncertainty. The absence of

[625] *J.R. and Others v Greece* App no 22696/16 (ECtHR, 25 January 2018).
[626] *M.A. and Z.R. v Cyprus App no 23251/18 (ECtHR, 22 June 2023) paras 85–112.*

predictability allows states to exploit ambiguity, particularly in the context of agreements like the EU-Turkey Statement.

The EU's externalisation strategy has continued to expand, driven by political decisions, regardless of its legal challenges and potential contradictions with human rights obligations. The EU-Turkey Statement has served as a framework for agreements with other third nations, like Tunisia[627] and Morocco[628], aimed at transferring migration management duties to external collaborators. Nonetheless, these bilateral agreements frequently lack sufficient monitoring measures, depending instead on the presumption that third countries will adhere to international human rights standards. The ECtHR's unwillingness to thoroughly address the structural consequences of these policies enables the EU and its Member States to sustain practices that prioritise border control over human rights. This dynamic not only undermines the protective framework of the ECHR but also risks normalizing practices that may be incompatible with international law.

The inconsistencies in the ECtHR's jurisprudence have also resulted in a deterioration of legal clarity for asylum seekers and refugees. The fragmented legal framework makes it difficult for individuals to predict how their rights will be upheld in different jurisdictions. This uncertainty becomes particularly acute for those impacted by externalisation policies, who frequently exist in legal limbo, trapped in hazardous conditions without viable options for remedy. The contradictions indicate the Court's readiness to adapt to political realities, promoting restrictive policies that challenge legal limits. This lenient climate jeopardises the establishment of a dual-tier rights system, wherein fundamental principles are implemented selectively based on political circumstances.

The implications of this legal ambiguity extend further individual cases, impacting the EU's legal and institutional integrity. Through informal agreements such as the EU-Turkey Statement, the EU has established a parallel system that evades formal accountability mechanisms. This dual system jeopardises the cohesion of the EU's legislative framework, as the principles guiding internal decisions become increasingly detached from those

[627] European Commission, 'EU and Tunisia Finalise Memorandum of Understanding on Strategic and Comprehensive Partnership' (Press Release, 16 July 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887 accessed 1 December 2024.
[628] European Commission, 'EU Launches New Cooperation Programmes with Morocco Worth €624 Million for Green Transition, Migration and Social Inclusion' (Press Release, 2 March 2023) https://neighbourhood-enlargement.ec.europa.eu/news/eu-launches-new-cooperation-programmes-morocco-worth-eu624-million-green-transition-migration-and-2023-03-02_en accessed 1 December 2024.

governing external relations. The lack of judicial oversight of these agreements perpetuates this disparity, undermining the EU's credibility as a normative authority dedicated to human rights.

Moreover, the selective approach of the ECtHR has diluted the precedential value of landmark judgments. Cases such as Hirsi Jamaa v. Italy were essential in establishing rigorous standards for migrant protection, highlighting the necessity of procedural safeguards and the prohibition of group expulsions. However, subsequent rulings have incorporated exceptions and disclaimers that obscure the clarity of these concepts. This dilution of precedent undermines the Court's authority and encourages states to challenge compliance restrictions, considering that enforcement may be inconsistent.

The inconsistencies of the ECtHR hinder the establishment of a cohesive framework for migration governance that reconciles state sovereignty with the safeguarding of fundamental human rights. The EU's increasing dependence on externalisation measures, coupled with the lack of a coherent legal standard, establishes a perilous precedent. It indicates to other areas and jurisdictions that justifications for compromising human rights may be acceptable under the umbrella of crisis management, so further undermining the universality of these guarantees.

In this context, the ECtHR confronts a significant challenge: to reassert its position as a guardian of human rights by tackling the structural aspects of externalisation policies. A uniform and principled approach is crucial for reinstating legal clarity and ensuring that migration management procedures conform to the fundamental norms of the ECHR. In the absence of such a recalibration, the Court undermines its legitimacy and facilitates a wider regression from the principles that have historically characterised the European human rights framework.

3.1- Effectiveness

The EU-Turkey Statement is frequently regarded as a success in operational terms, especially with its effectiveness in decreasing irregular migration over the Aegean Sea. Following its implementation in March 2016, the incidence of irregular entries on Greek islands significantly declined, dropping from over 10,000 daily crossings in late 2015 to

fewer than 100[629]. The EU and its Member States lauded this significant drop as confirmation of the Statement's efficacy in fulfilling one of its principal aims: dismantling smuggling networks and preventing risky crossings. However, the full picture of its effectiveness is far more complex, revealing a series of unintended consequences and structural weaknesses that have undermined the agreement's long-term viability and ethical grounding.

The 1:1 resettlement scheme aimed to establish a secure and lawful route for refugees, although its execution has not met expectations. As of early 2024, fewer than 40,000 Syrians had been resettled under the deal, much below the initially projected figures[630]. This gap indicates a deficiency of political resolve among Member States, many of which have opposed assuming further resettlement responsibilities. The difference between the size of the migration crisis and the limited commitments under the 1:1 mechanism highlights the inadequacy of the Statement in addressing the broader challenges of refugee protection and responsibility-sharing within the EU.

The EU-Turkey Statement has garnered substantial criticism not just for its limited success in resettlement but also for the conditions established in Greek hotspots, which are the primary venues for processing asylum seekers and conducting returns. These locations, which were originally intended as centres for rapid registration and evaluation, have transformed into overcrowded detention centres, suffering from poor living conditions, limited access to legal assistance, and extended delays in asylum processes. The chaos at these hotspots signifies both the logistical difficulties of executing the Statement and the inability to foresee the practical challenges of managing such a large-scale operation. The humanitarian crisis in these facilities has led to extensive condemnation from human rights organisations and has negatively impacted the EU's standing as a defender of human rights.

A further aspect of the Statement's efficacy is related to its financial element. The EU committed €6 billion in financial assistance to Turkey via the Facility for Refugees in Turkey

[629] European Commission, *EU–Turkey Statement: Four Years On* (March 2020) https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf accessed 2 December 2024.

[630] European Commission, 'Türkiye Report 2024' (Directorate-General for Neighbourhood and Enlargement Negotiations, 30 October 2024) https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2024_en accessed 3 December 2024.

(FRIT), intended to bolster initiatives in education, healthcare, and infrastructure for the refugee demographic. The transfer of these money has enabled certain concrete advancements, such the establishment of schools and the implementation of financial assistance programs; nonetheless, the postponed allocation of the pledged funds has contributed to tensions between the EU and Turkey. President Erdogan's persistent allegations of inadequate and delayed financial assistance have underscored the fragile condition of the agreement, with Turkey employing these complaints as leverage to renegotiate terms or threaten to cease cooperation entirely. The dependence on financial rewards to maintain the deal has highlighted the transactional aspect of the EU-Turkey relationship, raising concerns about the sustainability of such agreements without mutual trust and fair burden-sharing.

The Statement's influence on migration trends necessitates greater attention. While it successfully curtailed crossings along the Aegean route, it did little to address the root causes of migration or provide comprehensive solutions for displaced populations. The decline in Aegean crossings overlapped with the rise of alternate, frequently perilous routes, including crossings via the Central Mediterranean and land pathways through the Balkans.[631] The alterations in migration patterns signify a wider trend in migration governance: restrictive policies in one region frequently redirect flows to alternative places, intensifying dangers for migrants and presenting new issues for border control.

Moreover, the focus on externalization and border security has come at the expense of a more holistic approach to migration governance. By delegating migration management to Turkey, the EU has successfully transferred its duties without sufficiently addressing the fundamental issues of displacement, including violence and poverty. This dependence on external partners prompts enquiries over the viability of these schemes, especially considering Turkey's geopolitical and domestic instability. The intermittent disruptions in collaboration, exemplified by Turkey's 2020 decision to open its borders with Greece[632],

[631] United Nations High Commissioner for Refugees (UNHCR), 'Operational Data Portal: Refugee Situations – Europe Sea Arrivals' https://data.unhcr.org/en/situations/europe-sea-arrivals accessed 25 December 2024.

[632] D Butler, 'Turkey's Erdogan Threatens to Send Syrian Refugees to Europe' *Reuters* (October 2019) https://www.reuters.com/article/us-syria-security-turkey-europe-idUSKBN1WP1ED accessed 5 December 2024.

highlight the susceptible nature of the EU's externalisation approach to changes in political dynamics and bilateral ties.

The efficacy of the EU-Turkey Statement must be assessed about its wider ramifications for EU solidarity and the idea of shared responsibility. The agreement, presented as a unified response to the migrant issue, has exposed significant disagreements among Member States, many of which have opposed initiatives to fairly allocate the responsibilities of migration. The dependence on externalisation has enabled wealthier member states to shield themselves from the direct effects of migration, while putting excessive burdens on frontline countries like Greece and third countries such as Turkey. This disparity has not only challenged the fundamental principles of the Common European Asylum System but also revealed the difficulties of EU solidarity in confronting problems across borders.

In summary, although the EU-Turkey Statement met several immediate objectives, including reducing irregular arrivals and blocking smuggling operations, its overall efficacy has been hampered by substantial deficiencies in execution, humanitarian results, and long-term viability. The agreement's procedural character, coupled with its avoidance of fundamental problems in the EU's asylum and migration policies, underscores the necessity for a more holistic and rights-oriented strategy for migrant governance. As the EU continues to replicate elements of the Statement in agreements with other third countries, these lessons must inform future policymaking to ensure that effectiveness is not achieved at the cost of fundamental rights and ethical principles.

4. THE LEGACY OF THE STATEMENT

The EU-Turkey Statement has emerged as a fundamental element of the EU's migration governance, functioning as both a model and cautionary tale for future agreements with third countries.[633] Its influence goes beyond the immediate framework of the 2015 migration crisis, informing the EU's overarching strategy for externalising migration management and provoking significant legal, political, and ethical enquiries. This section examines the impact of the Statement on EU migration policy, its ramifications for

[633] Council of the European Union, 'EU Migration Policy' https://www.consilium.europa.eu/en/policies/eu-migration-policy/ accessed 7 December 2024.

international law, and the problems it poses for the future of human rights and solidarity inside the EU.

The Statement illustrates the EU's dependence on externalisation as a fundamental component of its migration strategy. By delegating migration management to Turkey, the EU essentially transferred the responsibility of refugee protection to a third nation while shielding itself from the immediate consequences of illegal migration. This method has subsequently been duplicated in agreements with states including Tunisia[634], Libya[635], and Morocco[636], aimed at curtailing migratory flows at their origin or along transit pathways. These agreements, modelled on the EU-Turkey Statement, rely on financial incentives, capacity-building measures, and promises of political cooperation to secure the compliance of third countries. Nevertheless, akin to the EU-Turkey Statement, they frequently lack effective measures to guarantee accountability and compliance with international human rights standards, so exposing vulnerable populations to considerable dangers.

The externalisation of migration governance prompts significant concerns over the EU's adherence to its legal and ethical responsibilities. According to international refugee law, states are obligated to guarantee that their policies, especially those enacted via third countries, do not infringe upon fundamental rights such as non-refoulement. By assigning these tasks to states with inferior human rights standards, the EU jeopardises its commitments under the Refugee Convention, the ECHR, and the EU Charter of Fundamental Rights. The case of the EU-Turkey Statement underscores this dilemma: while Turkey has provided temporary protection to millions of Syrian refugees, evidence of forced returns, limited access to rights, and inadequate living conditions highlights the

[634] European Commission, 'EU and Tunisia Finalise Memorandum of Understanding on Strategic and Comprehensive Partnership' (Press Release, 16 July 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887 accessed 1 December 2024.
[635] European Commission, 'Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe)' (14 June 2021) https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/neighbourhood-development-and-international-cooperation-instrument-global-europe-ndici-global-europe_en accessed 1 December 2024.
[636] European Commission, 'EU Launches New Cooperation Programmes with Morocco Worth €624 Million for Green Transition, Migration and Social Inclusion' (Press Release, 2 March 2023) https://neighbourhood-enlargement.ec.europa.eu/news/eu-launches-new-cooperation-programmes-morocco-worth-eu624-million-green-transition-migration-and-2023-03-02_en accessed 1 December 2024.

gaps in its capacity to uphold international standards. These shortcomings are not unique to Turkey but are indicative of the broader challenges associated with externalization.

The Statement's consequences surpass basic legal compliance, reflecting the EU's character as a normative power dedicated to advancing human rights and the rule of law. The EU's engagement in migration agreements with third countries has become a fundamental aspect of its externalisation strategy, now actively promoted not only by the European Council but also by the European Commission. This institutional support has solidified external cooperation as a key policy approach, reflected in both legal frameworks and bilateral agreements. However, the emphasis on transactional partnerships—prioritizing mutual benefit over shared responsibility—has sparked ongoing debate about the broader implications for the EU's credibility and normative standing in global migration governance. This shift is especially apparent in the reactions of human rights organisations and international institutions which have condemned the EU's externalisation policy as a regression from its core principles.[637] The EU has been accused of compromising its foundational principles, both domestically and in its foreign relations, by prioritising border security and migratory control over humanitarian concerns. At the same time, many political leaders defend this approach as the only viable strategy for managing a complex and persistent challenge.

The political ramifications of the EU-Turkey Statement are notably substantial, especially for EU integration and the distribution of responsibilities among Member States. The dependence on externalisation has enabled richer Member States to evade accountability for migration management, imposing excessive burdens on frontline nations like Greece and third countries such as Turkey. This approach has exacerbated tensions within the EU, as Member States struggle to reconcile national interests with the principles of solidarity and burden-sharing enshrined in the Treaties. The inability to establish a fair and equitable framework for the allocation of asylum seekers has exposed the shortcomings of the Common European Asylum System and the fragility of EU solidarity amid transnational issues.

[637] Amnesty International, 'Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU–Turkey Deal' (1 April 2016) https://www.amnesty.org/en/latest/press-release/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/ accessed 26 November 2024.

The Statement's broader implications also highlight the limitations of transactional diplomacy in addressing complex humanitarian crises. The EU-Turkey Statement offered a temporary resolution to the urgent challenges of the 2015 migratory crisis; nevertheless, its dependence on financial incentives and political compromises has demonstrated long-term unsustainability. Intermittent disruptions in collaboration, exemplified by Turkey's decision to open its borders with Greece in 2020[638], highlight the vulnerable nature of these agreements to changes in political dynamics and bilateral ties. This reliance on third countries for migration control also runs counter to the EU's ambition for strategic autonomy and its recent efforts to reduce external dependencies in key policy areas. These instances not only hinder the execution of migration agreements but also bring the EU to criticism for its reliance on external partners whose goals may diverge from its own.

Finally, the Statement has significant consequences for the future of migration governance at both the EU and global levels. As migration pressures escalate due to conflict, climate change, and economic inequalities, the EU's dependence on externalisation is expected to increase. Nonetheless, the ethical and practical challenges inherent in this approach pose significant questions over its long-term sustainability. The replication of the EU-Turkey model in agreements with other third countries has shown the dangers of depending on external partners without sufficient protections. Moving forward, the EU must confront the need to balance its security and humanitarian priorities with its legal and moral responsibilities, ensuring that its policies reflect both pragmatism and principle.

In conclusion, the EU-Turkey Statement signifies a pivotal juncture in the development of EU migration policy, highlighting both the potential benefits and drawbacks of externalisation. Although it has established a framework for regulating migrant flows, its deficiencies underscore the necessity for a more holistic and rights-oriented approach to migration governance. The overarching implications of the Statement highlight the necessity of tackling the fundamental causes of displacement, promoting unity within the EU, and maintaining the principles of human rights and the rule of law in all facets of migratory governance.

[638] D Butler, 'Turkey's Erdogan Threatens to Send Syrian Refugees to Europe' *Reuters* (October 2019) https://www.reuters.com/article/us-syria-security-turkey-europe-idUSKBN1WP1ED accessed 5 December 2024.

5. RECOMMENDATIONS FOR FUTURE POLICY

The EU-Turkey Statement, however successful in meeting certain immediate goals, reveals substantial deficiencies in the EU's migrant policy structure. Its shortcomings underscore the urgent need for policies that are not only operationally effective but also grounded in principles of human rights, accountability, and solidarity. This section provides recommendations to guide future migration policies, drawing on the lessons learned from the EU-Turkey Statement and the broader challenges of externalization.

First, it is essential to address the democratic deficit inherent in agreements like the EU-Turkey Statement. The missing participation of the European Parliament and other essential institutions from the negotiation and oversight processes contradicts the ideals of transparency and accountability that are fundamental to the EU's legal framework. Future agreements must comply with the formal treaty-making protocols specified in Article 218 TFEU, guaranteeing substantial institutional participation and oversight. This method would bolster the credibility of externalisation policies and establish a more transparent framework for judicial supervision.

Second, the EU must prioritize compliance with international human rights law in all aspects of its migration policies. This includes ensuring that agreements with third states have judicially enforceable protections to avert infringements of fundamental rights, including non-refoulement. The creation of independent monitoring mechanisms, responsible for evaluating the execution of these agreements and reporting on human rights circumstances, will assist in eliminating current accountability deficiencies. These procedures must be empowered to investigate mistreatment complaints and offer recommendations for corrective measures, ensuring that externalisation does not compromise human dignity.

Third, the EU is required to implement a more equitable strategy for burden-sharing, both internally inside the Union and in its interactions with external states. The reliance on externalization has disproportionately shifted the responsibility for migration management onto frontline states and third-country partners, exacerbating inequalities and creating tensions. A reformed Common European Asylum System ought to have obligatory quotas for the relocation of asylum seekers, guaranteeing an equitable allocation of obligations among Member States. At the same time, the EU should provide

greater financial and technical support to third countries hosting large refugee populations, recognizing their contributions and alleviating the pressures they face.

Fourth, the EU needs to move beyond a solely transactional approach to migration governance, cultivating authentic partnerships with third countries grounded in mutual respect and common objectives. This entails tackling the underlying causes of displacement, including violence, poverty, and climate change, with focused development assistance and conflict mitigation strategies. By prioritising long-term solutions above short-term containment strategies, the EU can foster conditions that diminish the necessity for migration while enhancing the resilience and welfare of impacted communities.

Fifth, the EU should enhance its systems for safeguarding the rights of asylum seekers and migrants within its territory. The humanitarian situation in Greek hotspots underscores the pressing necessity for boosted reception facilities, expedited processing times, and increased access to legal assistance. Investments in infrastructure and human resources, along with revisions to asylum processes, would ensure that the EU's migration policies adhere to its obligations under international and EU law. The EU should implement explicit rules for detention circumstances, guaranteeing compliance with human rights principles and upholding the dignity of everyone involved.

Finally, future migration policy should be guided by a comprehensive knowledge of migration as a complicated, multidimensional phenomenon. This entails acknowledging the interrelation of migration with global concerns including trade, security, and environmental sustainability. By embracing a holistic and progressive strategy, the EU may establish itself as the leader in global migration regulation, illustrating that security and humanism are not in conflict.

The EU-Turkey Statement provides significant insights for the formulation of more effective and ethical migration policy. By addressing its deficiencies and enhancing its achievements, the EU can establish a framework that effectively regulates migratory flows while simultaneously upholding the principles of human rights, solidarity, and the rule of law that are fundamental to its identity. These suggestions outline a strategy for realising this vision, guaranteeing that the EU's migration policies remain both practical and ethical amid changing obstacles.

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