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Compatibility of the Safe Third Country Concept with International Refugee Law and its Application to Turkey

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Abstract

The safe third country concept emerged at the end of 1980s as an antidote for the protection challenges associated with the travel routes of refugees. However, practices involving safe third country transfers have ended up rendering refugees' access to asylum even more difficult. The purpose of this article is to demonstrate, based on the example of Turkey, the challenges in refugee protection that the safe third country transfers create. The article begins with an overview of Turkey's situation with respect to trans-border migratory dynamics and Turkey's areas of engagement with international law on migration and asylum. Then, the evolution of the safe third country concept is analyzed with special reference to contributions made by Turkey. Finally, the current state of affairs and future prospects are discussed in view of Turkey's position as a safe third country with respect to EU countries, particularly with the execution of the EU-Turkey Statement of March 2016 and the EU-Turkey Readmission Agreement. In conclusion, with the execution of these two instruments, Turkey seems to have compromised its position regarding the conditions of the safe third country concept. Considering the current state of affairs, wherein the EU seems determined to make full use of the safe third country concept with respect to Turkey, Turkey's interpretation and attitude will continue to be crucial for the evolution of the safe third country concept, on account of the scale of transit asylum and migration flows through Turkey.

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Introduction

This article seeks to address one of the notions that are currently most debated in international refugee law: the safe third country concept. This notion was presented as a solution to the “asylum shopping” or “refugees in orbit” phenomenon when it emerged in the late 1980s. Thus, the purpose was arguably to ensure that refugees do not change countries after they escape persecution and find international protection at the first instance possible. However, the practices involving safe third country transfers rely on the inadmissibility of asylum applications in cases where the refugees do not run directly away from persecution, and tend to render their access to asylum more difficult.

The purpose here is to display the protection challenges that the safe third country concept creates through the example of Turkey. The basis for this will be Turkey’s establishment as a safe third country for EU states through the execution of the EU-Turkey Statement of March 2016 and the agreement between the EU and the Republic of Turkey on the readmission of persons residing without authorization (the EU-Turkey Readmission Agreement). To establish the background, Turkey’s engagement with international refugee law in general, and the safe third country concept in particular will be explored. For this aim, the analysis commences by situating Turkey with respect to trans-border migratory dynamics and outlining its areas of engagement with international law on migration and asylum. Then, the evolution of the safe third country concept will be analyzed with special reference to the political position taken and contributions made by Turkey. Finally, the current state of affairs and future prospects will be discussed in view of Turkey’s position as a safe third country with respect to the EU countries.

Turkey’s Position with Respect to Trans-border Migratory Dynamics

In order to comprehend the ways in which Turkey engages with international law on asylum and migration, we should first build an understanding of its position within the realm of various trans-border movements throughout

its history. Mobility through Turkey's borders has always been an important reality as well as a policy area for the Republic of Turkey, starting with immigration from the Balkans and a population exchange with Greece during its nation-state building efforts

in the initial years of the Republic, and continuing with the recent mass influx of refugees from Syria. In fact, Turkey has witnessed a great variety of human mobility through its borders, the most significant waves of which are the emigration of Turkish workers to Germany in the 1960s, and transits and incoming flows at the end of the 1980s and the beginning of the 1990s triggered by the collapse of the Soviet Union and conflicts in Iran and Iraq. Also, relatively recent flows of labor migrants, students and retirees, as well as continual asylum flows are among the important components of Turkish migratory dynamics.

To be more specific, the categorization by İçduygu, Erder and Gençkaya paints a more detailed picture encompassing the main incoming and outgoing trans-border flows affecting Turkey.¹ Historically, incoming asylum and migratory movements to Turkey have consisted of flows of Turkish Muslims from former Ottoman territories in the Balkans, starting from the establishment of the Republic in 1923 through the 1950s; flows from Iran, Iraq and Afghanistan starting in the 1980s due to political and economic unrest; a mass influx of ethnic Turks from Bulgaria in 1989 due to the pressures they were facing for reasons related to religion and ethnicity; a mass influx from northern Iraq in 1991 due to the Gulf War; circular and irregular labor migration from former Soviet Union states after its collapse; mixed transit movements including asylum seekers, mixed flows containing different groups such as economic migrants and victims of human trafficking from underdeveloped countries such as Afghanistan, Bangladesh and Pakistan; retirement migration to the western and southern coasts of Turkey from Western European countries; and finally the mass influx from Syria that started in 2011 as a result of the ongoing internal conflict. In counterbalance, the main outgoing flows from Turkey have consisted of the displacement of Armenians in 1915; the 1960s Turkish guest worker emigrations to Europe; returns to Europe in the aftermath of World War II; and an asylum flow of citizens from Turkey in the aftermath of

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the 1980 military coup. In addition, Turkish-Greek population exchange in accordance with the Lausanne Treaty in 1923, as well as highly-skilled labor and student migration through the increased global mobility of capital and people, appear as flows with both an immigration and emigration component. Today, by being country hosting the world's largest refugee population of around 3.6 million, consisting of 3.58 million Syrians and 56,000 people of other nationalities under temporary protection, Turkey's regional and global significance with respect to the management of international human mobility is ever-increasing.²

As seen from the variety of its components, human mobility around Turkey largely consists of mixed migration flows. This creates challenges in terms of international protection because it is difficult to differentiate refugees from others, including different types of migrants. It has been observed frequently in the aftermath of the Syrian conflict that migrant smugglers and human traffickers travel together with those being smuggled or trafficked, and that persons migrating in search of better economic conditions choose the same travel means as those fleeing conflicts. Difficulties arise especially at the stage of first contact with officials and with respect to identification. Thus, it should be kept in mind that the mixed nature of these flows poses challenges in ensuring that those in need of protection get the kind of protection they need.

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one of the most recurrent themes in the context of international politics concerning Turkey. International migration is one of the areas that reminds us why this characteristic is mentioned so frequently. Indeed, for the region to its south-east, Turkey serves as a safe haven for those fleeing conflicts, persecution and poverty; for the countries to its west, it serves as a buffer zone

relieving the pressures of the influx of migrants and asylum seekers. Analyses of the contemporary dynamics of trans-border human mobility show us that, in addition to being a sending country and transit country for migratory

flows, Turkey is also a country of destination, especially with respect to asylum as well as regular and irregular labor migration, significantly contributing to its economic growth.

Due to its longstanding and substantial experience with respect to international migration and asylum flows, Turkey has always been a key regional and global actor in terms of the creation of international and regional law and policies related to asylum and migration. It has also extensively engaged with the shaping of the Convention relating to the Status of Refugees (1951 Convention), the cornerstone of international law on asylum, through discussions at the United Nations High Commissioner for Refugees (UNHCR) Executive Committee and United Nations (UN) General Assembly Meetings.³ Thus, Turkey is a key player in relation to the progress of international law on asylum and migration.

Turkey's Areas of Engagement with International Law on Asylum and Migration

Considering the diversity of human mobility surrounding Turkey, its engagement with international law concerning asylum and migration is also multi-dimensional. For instance, several efforts have taken place at the international level for establishing a framework for temporary protection in cases of mass influx. These efforts include the publication of the Guidelines on Temporary Protection or Stay by the UNHCR⁴ and the adoption of the Temporary Protection Directive⁵ by the EU, which to date remains to be implemented. Thus, the temporary protection regime implemented by Turkey is one of the few examples where a mass influx situation is being addressed by the implementation of a national, normative framework regulating the conditions and scope of temporary protection in detail. This situation will surely contribute to the evolution of the international understanding of the concept of temporary protection in international refugee law.

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Moreover, Turkey is among the few immigration countries party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁶ which enhances the significance of the convention. Turkey has assumed a leading role in inter-governmental

cooperation platforms on migration, such as the Budapest Process⁷ and the Forum on Migration and Development,⁸ which increases the soft power attached to such fora.

Finally, another area of engagement for Turkey concerns the overlap between international law on asylum and migration and international human rights law. This area constitutes the vertical dimension of this field, namely the relationship between the state and the individual. In this respect, cases brought against Turkey by asylum seekers before the European Court of Human Rights (ECtHR), such as *Jabari v Turkey*,⁹ *Mamatkulov and Askarov v Turkey*,¹⁰ *Abdolkhani and Karimnia v Turkey*¹¹ and *Ghorbanov and Others v Turkey*,¹² have yielded to landmark judgments by the ECtHR.¹² This is not a proud contribution on behalf of Turkey, yet at the same time, it is a major one that cannot be disregarded when considering Turkey's engagement with international law on asylum and migration. These cases are especially important because the European Convention on Human Rights (ECHR) does not expressly provide for a right to asylum. Thus, human rights protection for asylum seekers is made available within the ECHR, mainly through the interpretation of other rights enshrined in the Convention. These consist of the right to life and the right to be free from torture and inhumane and degrading treatment and punishment, in the context of the return of foreigners; the right to freedom and security, in the context of the administrative detention of foreigners; and the right to effective remedies in connection with these rights. It should be emphasized that Turkey's engagement with the ECHR framework concerning asylum seekers and migrants is reciprocal. Whereas cases brought against Turkey before the ECtHR have contributed to international jurisprudence for the implementation of human rights principles in the context of asylum and migration, they have also contributed to the improvement of the international protection and return system in Turkey. These judgments eventually played an important role in initiating comprehensive legal and administrative reform in Turkey. As a result, the Law on Foreigners and International Protection,¹³ which is Turkey's first law on asylum and migration, was adopted in 2013 and the Directorate General for Migration Management¹⁴ was established as a specialized administrative authority to carry out all procedures related to migration and international protection.

Having outlined Turkey's position with respect to trans-border human mobility and the international framework that governs it, the rest of this paper will focus on what I believe is one of the most critical and controversial concepts within

the contemporary dynamics of international refugee law; namely the “safe third country” concept. Turkey’s engagement with international refugee law at the horizontal level of inter-state relationships is to some extent materialized in the evolution and implementation of the “safe third country” concept in international law on asylum.

Evolution of the Safe Third Country Concept

Definition and Legal Basis

The “Safe third country” concept does not originate directly from the 1951 Convention, the main legal instrument establishing the international legal regime for refugee protection. The concept emerged in the late 1980s, four decades after the adoption of the Convention, through the unilateral practice of

Western states seeking to restrict the arrival of asylum seekers to their territories and asylum systems. The claimed purpose of the safe third country concept is to address the “refugees in orbit” phenomenon, whereby refugees are “shuttled from one country to another in a constant

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quest for protection”¹⁵ without being refouled or expelled, but also without access to international protection. It was argued that this situation is a result of irregular, secondary movements of asylum seekers from countries where they could have sought protection after fleeing persecution. Thus, coming from a safe third country serves as a ground for the inadmissibility of an asylum claim; developed states have increasingly implemented schemes to send asylum seekers back to safe third countries through which they had passed after leaving their countries of origin.¹⁶ In implementing this concept, states mainly rely on Articles 33 and 31 of the 1951 Convention as a legal basis.

As per Article 33 of the 1951 Convention, it is forbidden for state parties to send a refugee to “the frontiers of territories where his life or freedom would

be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” In seeking to implement safe third country returns, states argue that the prohibition on the transfer of asylum seekers is legally limited to situations involving the above-mentioned threats to life or freedom by virtue of the principle of non-refoulement enshrined in Article 33 of the 1951 Convention. Thus, in their view, if the prohibition of transfer is limited to the listed instances, other transfers that do not trigger the outlined threats are permissible. Therefore, based on interpretation *a contrario*, the transfer of asylum seekers to safe third countries where no such threats exist should be possible.¹⁷

Another provision on which defenders of the safe third country concept rely is Article 31 of the 1951 Convention, which prohibits states from imposing penalties on refugees “coming directly” from a territory where their life or freedom was threatened on account of their illegal entry to or presence in that territory. The proponents of the “safe third country” concept argue that, since the provision provides the non-penalization of refugees who came directly from countries where they face risk of persecution, such obligation does not apply to refugees who came indirectly, by passing through other countries where they do not face any risk of persecution, before lodging an asylum claim in the host state. Thus, by isolating this reference of “coming directly” from its specific context of the non-penalization of refugees for irregular modes of travel, it is interpreted as a general obligation on the part of asylum seekers to seek refuge at the earliest instance possible.¹⁸

This interpretation deserves criticism, because it does not reflect the true spirit of international cooperation affirmed in the preamble of the 1951 Convention. This is best explained with reference to the vision of the international refugee protection system in a world where we absolutely accept that refugees must seek protection in the countries they can access directly upon escaping from risk against their lives or freedom in their country of origin or residence. In such a world, given the deterrence measures such as carrier sanctions or visa policies, it is almost impossible for a refugee fleeing persecution to reach the countries in the Global North directly. This means that in the ultimate global order where the refugees behave in accordance with the conditions of “coming directly” from persecution and staying in the first country that they reach upon fleeing, in practice, means that refugees are to be hosted exclusively by the countries neighboring their country of origin or residence. This would be the equivalent of saying that all of the world’s refugees should stay in the

countries immediately neighboring the refugee producing countries. What constitutes responsibility sharing in international refugee law has been a heated debate without a conclusive answer. As much as it is difficult to reach a definite answer as to what exactly international cooperation in international refugee law should look like, it is safe to say that it does not look like a world where refugees are only hosted by the countries that happen to share a border with the refugee producing countries.

Beyond these legal bases within the framework of the 1951 Convention, in order for the implementation of the safe third country concept, the conditions for its functioning in practice are important. In order for the safe third country concept to be operational in reality, the sending states are dependent on the consent of the receiving “safe third countries” to accept the return of such asylum seekers. Unlike the duty to admit their own citizens, there is not a general principle in international law obliging states to readmit third country nationals to their territory. Moreover, for the sending states to continue to be bound by the principle of non-refoulement, which is accepted to be a part of customary international law,¹⁹ such transfers must be in conformity with this principle. Thus, the formalization of the safe third country concept has occurred through international legal instruments ranging from UNHCR Executive Committee Conclusion No. 15²⁰ and Conclusion No. 58²¹ justifying the implementation of the concept, to the relevant provisions of the Asylum Procedures Directive of the EU,²² to readmission agreements creating international legal obligations for their parties to admit alien returnees. Readmission agreements regulate the modalities of safe third country transfers and their execution is generally coupled with financial or diplomatic incentives such as visa facilitation or development aid to ensure cooperation by the receiving countries. On the other hand, they traditionally lack safeguards for the protection of asylum seekers in the safe third country and for ensuring the implementation of safe third country returns in a manner compatible with international refugee and human rights law.²³ They include no more than mere references to the standards of treatment in the 1951 Convention without providing any mechanism for the supervision of returns or any remedy in case of failure of satisfaction of such conditions.

As a result, it is generally accepted that in order for safe third country transfers to be acceptable under international law, there should be no risk of refoulement, persecution or other serious harm for the asylum seeker in the receiving state

and there should be a possibility to claim and receive international protection in accordance with the 1951 Convention. Also, it is accepted that the applicability of safe third country transfers must be assessed on a case-by-case basis whereby the possibility exists for the returnee to challenge the application of the concept in his/her case. Lastly, safe third country transfers should not be implemented based on mere transit from a country, and the asylum seeker should have a connection or close links with the third state.²⁴

At first glance, the dependence of applicability of safe third country returns on these conditions would seem to render such returns unproblematic. At the end of the day, when these conditions are fulfilled, it is ensured that asylum seekers find protection in line with international refugee law. However, while we are busy with the discussions related to the standards that should be present in the receiving country for the return to be considered safe, we tend to overlook the real problem. As the practice stands, it is always the country seeking to enforce the return that undertakes an assessment of the safety of the third country. The question of whether a country satisfies the conditions for the safe third country concept is always asked and answered unilaterally by the state that is trying to conduct returns. Therefore, no matter how high the threshold is with respect to safety in theory, in practice the assessment can never be an objective one and the tendency to favor returns always prevails. Therefore, setting aside the discussions as to whether it is even possible or feasible to establish supervisory mechanisms that actually warrant that the foreseen standards in safe third countries of return are satisfied, the real problem arises from the fact that the outcome of the evaluation of conditions for the applicability of such returns is almost predetermined.

For these reasons, in practice, the safe third country concept exacerbates the “refugees in orbit” situation that it allegedly seeks to tackle and reinforces the “deterrence paradigm” dominating the field of asylum.²⁵ Similar measures include procedural obstacles before access to asylum, such as time limits, application of the concepts of the first country of asylum and safe country of origin, carrier sanctions, visa policies and cooperation schemes between countries of origin and transit to suppress asylum and other migratory flows.²⁶ Such deterrent policy tools conflict with the spirit of the 1951 Convention and create a climate in transit countries within which rights breaches may occur.²⁷ Moreover, in order to alleviate the burden posed by these deflection tools, transit countries tend to adopt similar policies whereby they try to shift the responsibility further away from themselves.²⁸

Turkey's Contributions to the Evolution of the Safe Third Country Concept

Turkey's position regarding the issues related to the safe third country concept are substantially reflected in its statements at the 36th, 38th, 39th, 40th and 41st sessions of the Executive Committee of the UNHCR held at the time of the emergence of the concept in state practice and international law in the late 1980s.²⁹ The conclusions of the Executive Committee of the UNHCR are not legally binding per se; however, they are important soft law instruments for the purpose of ensuring consistency among states in the implementation of the 1951 Convention and providing guidelines for questions of interpretation. Accordingly, Turkey's statements as an important transit country for asylum flows reflect the protection challenges and uneven burden among states that is caused by the implementation of the safe third country concept.

Key points raised by the Turkish government's representatives related to the safe third country concept are as follows:

*i. Respect for the refugees' right to choose a country of asylum*³⁰

Being allowed to seek asylum in their country of choice is a privilege of the asylum seekers; accordingly, respect for their expressed wish in this regard constitutes a basic guiding principle.³¹ The choice between local integration and resettlement should be made in light of the desire expressed by the asylum seekers themselves in addition to the conditions in the host country.³² Therefore, more weight should be given to resettlement as a form of responsibility-sharing to alleviate the burden placed on the shoulders of transit countries and to serve the best interests of refugees.³³

ii. Mere transit should not constitute a basis for safe third country transfer

Movements of refugees and asylum seekers who were only in transit through another country should not be considered irregular movements.³⁴

iii. Causes for irregular movements and abuse of the right to seek asylum

The problems of irregular movements and abuse of the right of asylum must be treated as a whole by addressing the root causes.³⁵ However, while the elimination of the root causes of refugee movements awaits resolution, new refugee-generating situations are emerging.³⁶

Lengthy and restrictive resettlement processes drive refugees to desperation and cause irregular movements of refugees into developed third countries.³⁷ Undue visa restrictions to control migratory flows and the demand for a

low-cost and therefore illegal labor force in some sectors of the economies of highly-industrialized countries provoke abuses of the asylum system.³⁸

iv. Impacts on transit countries and refugee protection

The influx of asylum seekers into countries of first asylum or transit creates a risk of erosion of the principle of non-refoulement due to difficulties of repatriation and the progressively more restrictive practices of other destination countries. Restrictive measures taken by developed countries cause developing countries to adopt similar restrictive measures in order to be able to cope with refugee influx. Instances of refoulement due to the inability to continue bearing the burden would not be the fault only of the latter countries, since the responsibility for ensuring the conditions necessary for the observance of the non-refoulement principle rests with the international community as a whole.³⁹

v. Need for international responsibility sharing

The international community has a collective duty to find solutions based on the principles of equitable responsibility sharing for the problems that increasing refugee influx causes in destination as well as transit countries. Considering that the majority of the world's refugee population is hosted in developing and often least developed countries of first asylum and transit, these countries have already done more than their fair share to meet the humanitarian challenges and should not be expected to bear any additional burdens.⁴⁰ It would be wrong to perceive these countries as permanent havens wherein the movement farther west or north could be contained.⁴¹ Resettlement quotas remaining limited in the face of the increasing number of asylum seekers arriving in transit countries leads to the accumulation of asylum seekers in transit countries, contrary to the principles of international responsibility sharing and solidarity. Financial and material aid alone do not address the social and political problems associated with refugee influx in these countries. The heavy burden on developing countries could only be alleviated if developed countries adopted more flexible resettlement policies, especially for regions where local integration is not feasible. Modest resettlement quotas by further destination countries are not well-balanced and the situation of asylum seekers awaiting resettlement requires more effective action.⁴²

Current State of Affairs Regarding the Implementation of the “Safe Third Country” Concept in Turkey

In light of the above analyses regarding the conditions and legality of the safe third country concept, the current state of affairs concerning the

implementation of safe third country practices with respect to Turkey will be evaluated here.

With the adoption of the EU-Turkey Statement⁴³ on March 18, 2016, Turkey agreed to take back all of the irregular migrants passing from Turkey to Greece after this date. Also, the provisions of the EU-Turkey Readmission Agreement⁴⁴ relating to third country nationals and stateless persons became applicable as of October 2017.⁴⁵ With the execution of these two instruments, Turkey seems to have compromised its position regarding the conditions for the applicability of the safe third country concept outlined above. It is especially remarkable that the scope of the readmission obligation arising from the EU-Turkey Readmission Agreement is much wider than that of the EU-Turkey Statement of March 2016. It extends retroactively to irregular migrants who had entered EU countries through Turkey within the preceding five years, regardless of whether their initial entry into EU territory was through irregular channels or whether their status

became irregular later on. Also, transit through, in addition to stay in Turkey, is outlined as a basis triggering readmission obligations for Turkey and a wide range of documents are accepted as proof, including hotel bills, doctor appointment cards or credit card receipts. Thus, both the EU-Turkey Statement of March 2016 and the EU-Turkey Readmission Agreement appear as bold instruments of EU policies for the externalization of migration control.

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Within the broader context of EU-Turkey relations, it should be noted that the EU-Turkey Readmission Agreement was coupled with a Roadmap on Visa Liberalization that offered the prospect of visa-free travel through EU borders for Turkish citizens. This can be perceived as an example of how the EU accepted the fact that it may need to grant certain concessions in return for obtaining Turkey's acceptance of a safe third country position and cooperation in its struggle with irregular migration in the aftermath of the Syrian crisis.

The vision of Turkey being a safe third country for Europe has been heavily criticized by human rights organizations.⁴⁶ They mainly base their position on the challenges related to refugee protection in Turkey. They especially claim that the general human rights situation in Turkey is problematic,

that the access to and content of international protection are insufficient, and that respect for the non-refoulement principle is lacking. By choosing to focus only on these criticisms, human rights organizations miss out on the real problem with the safe third country concept. Use of the safe third country concept is inherently problematic because it is a tool for deflection of responsibility for asylum seekers who should have actually found protection in the sending countries. Thus, even if the criticisms raised about Turkey are unfounded, third country transfers to Turkey are still bound to be criticized.

Implementation of these externalization instruments, namely the EU-Turkey Statement of March 2016 and the EU-Turkey Readmission Agreement, vis-à-vis Turkey showcases a typical example of how the implementation of the safe third country concept endangers refugee protection. The impact of these policies on Turkey is twofold: First, there is increasing pressure on Turkey to manage migration flows better, and second, we observe practices of norm diffusion from the EU to Turkey to ensure the legality of policies for externalization such as safe third country returns to Turkey. This dynamic is visible in the overlap in the processes of adoption of the EU-Turkey Readmission Agreement and Turkey's Law on Foreigners and International Protection. The Readmission Agreement, an instrument of externalization, was signed on December 16, 2013⁴⁷ right after the enactment of Turkey's first law on migration and asylum, the Law on Foreigners and International Protection on April 11, 2013.⁴⁸ The one-year gap for entry into force of the Law on Foreigners and International Protection was intended as a period of preparation; the EU-Turkey Readmission Agreement would enter into force around two and a half years after that. Before the adoption of this law, a legal framework on migration and asylum was almost non-existent in Turkey; there were no comprehensive regulations on procedures and legal remedies, which led to many violation decisions from the European Court of Human Rights. The field was managed through secondary legislation at lower levels that were largely closed to the public. Thus, it is possible to read the whole process of the adoption of instruments for externalization and domestic legislation as an effort to make Turkey into a safe third country.

It is known that during the drafting process of the Law on Foreigners and International Protection, there was extensive technical and financial support from the EU and member states. As a result, the new normative framework is largely aligned with the EU framework. Also, a specialized administrative

agency, the Directorate General of Migration Management was founded. However, despite the demonstrated pressure from the EU for Turkey to become a safe third country, the current Turkish migration and asylum system put in place with the legislative reform in 2013 is very young and naturally is still in need of capacity enhancement, especially considering the diversity of the national actors involved such as administrative personnel, law enforcement, judges and lawyers. Thus, any assessment as to whether Turkey is a safe third country for asylum seekers in EU countries should be made against this background.

As a final addition to the account of the current state of affairs, the relevant decisions by the Greek courts and asylum committees as well as the Court of Justice of the European Union should be mentioned. In the course of enforcing the EU-Turkey Statement of March 2016, upon appeals against decisions ordering return to Turkey, Greek asylum committees initially resisted such returns on the basis that Turkey is not a safe third country. However, upon second appeal, the courts overturned these decisions, effectively declaring Turkey a safe third country. Moreover, the Greek government then enacted legislation changing the composition of the asylum committees making them more government-oriented. After this change, the committees started to reject the appeals in line with Turkey's safe third country position in relation to Greece.⁴⁹ On the other hand, in the relevant cases before the Court of Justice of the EU,⁵⁰ again the legality of returns under the EU-Turkey Statement of March 2016 was challenged. The Court, arguably due to political reasons, remained silent on the merits of the question on the basis that the Statement is not an act of the EU but rather of individual member states.⁵¹

Conclusion

Within the context of current political dynamics, the question of whether Turkey qualifies as a safe third country is not asked with a genuine interest in the protection of refugees, but rather unilaterally by EU states seeking to externalize migration control. The EU has presumed Turkey a "safe third country" regardless of whether Turkey fits all five of the criteria mentioned above. For instance, although Turkey does not grant

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“refugee status” to people coming from a non-European country due to the geographical limitation,⁵² and does not recognize for them the rights of refugees mentioned in the Convention in full, the presumption of Turkey as a “safe-third country” is mainly based on ensuring non-refoulement protection and access to fundamental rights.⁵³

Considering the recent decisions by Greek courts and asylum committees declaring Turkey a safe third country, and the Court of Justice of the European Union refraining from commenting on the issues raised by the implementation of the EU-Turkey Statement of March 2016, the EU seems determined to make full use of the safe third country concept with respect to Turkey. However, the Turkish government suspended the implementation of the bilateral Readmission Agreement with Greece in June 2018 and readmission arrangements with the EU in July 2019 for political reasons.⁵⁴ This creates uncertainties as to the application of the safe third country status to Turkey. Since the agreements are not terminated but merely suspended, according to the political climate, it is possible that the parties will decide to implement them again at any time, which would reanimate Turkey’s position as a safe third country.

Consequently, the protection challenges exacerbated by safe third country practices are best visible in the migration management dynamics between the EU, where resort to this concept is most advanced, and Turkey with the largest refugee population in the world and a young legal and institutional framework on migration and asylum. Considering the scale of the transit asylum and migration flows through Turkey, Turkey’s interpretation and attitude will continue to be crucial for the evolution of this concept of international law and its practices.

Endnotes

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- 2 Statistics are available on the website of the Directorate General for Migration Management at <https://www.goc.gov.tr/> updated as of 31 October 2019.
- 3 “Convention Relating to the Status of Refugees,” *Refworld*, 28 July 1951, <https://www.refworld.org/docid/3be01b964.html> (Accessed 18 May 2020). Turkey became party to the 1951 Convention in 1962, and to the 1967 Protocol Relating to the Status of Refugees in 1968, removing the temporal but maintaining the geographical limitation. See *Refworld*, 31 January 1967, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b3ae4> (Accessed 22 May 2020).
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- 6 “International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,” *OHCHR*, 18 December 1990, <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx> (Accessed 18 May 2020).
- 7 The Budapest Process is a consultative forum with over 50 governments and 10 international organizations aimed at developing comprehensive and sustainable systems for orderly migration. More information is available at <https://www.budapestprocess.org/>.
- 8 The Global Forum on Migration and Development is a voluntary, informal, non-binding and government-led process open to all States Members and Observers of the United Nations to advance understanding and cooperation on the mutually reinforcing relationship between migration and development and to foster practical and action-oriented outcomes. More information is available at <https://gfmnd.org/>.
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