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Turkey: Post-Return Experiences of Rejected Applicants for Protection from Switzerland

Türkei: Rückkehrerfahrungen abgewiesener Schutzsuchender aus der Schweiz

Turquie : expériences de retour des personnes en quête de protection déboutées en Suisse

About this Expert Report

This research was initiated by Demokratische Jurist*innen Schweiz (DJS/JDS) and the Swiss Refugee Council (SFH/OSAR) and supported by Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht (SBAA) (in the following referred to as 'the publishers').

The research and expert report was independently conducted and written by Lawyer Şerife Ceren Uysal, Turkey adviser to PEN Norway, Co-General Secretary of the European Association of Lawyers for Democracy and World Human Rights (ELDH), a lawyer registered with the Istanbul Bar Association since 2008 under registration number 35946, and independent consultant with a particular focus on freedom of speech, and human rights defenders and legal professionals subjected to persecution (in the following referred to as 'the author').

A limited-circulation version of this expert report including extensive case studies was shared with the Swiss State Secretariat for Migration (SEM) in advance of publication. This public version contains anonymised case summaries. The publishers further provide an executive summary in German and French that highlights the key findings and discusses the implications for the current asylum practice in Switzerland.

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Table of Contents

List of Abbreviations **3**

Zusammenfassung und Einordnung der Herausgeber*innen **4**

Résumé et commentaires des éditeur·ices **9**

Research and Expert Report by Şerife Ceren Uysal ***14***

I. Introduction **14**

II. Scope, Methodology and Limitations **15**
1 Cases Included in the Report 15
2 Data Sources and Interview Method 16
3 Consent, Confidentiality and Security 16
4 Limitations 16

III. Case Studies of Returned Persons **17**
1 Person A 17
2 Person B 19
3 Person C 20
4 Person D 21
5 Person E 22
6 Person F 23
7 Person G 25
8 Limited Document Review Concerning Two Persons Who Could Not Be Reached 25

IV. Common Findings and Risk Patterns Emerging from the Cases **27**
1 Risk Not Being Limited to the Moment of Return 27
2 The Practical Effect of Open Files 28
3 Kurdish Identity and the Risk of Criminalisation 29
4 Social Media and Low-Profile Political Activity, or Simple Acts of Expression Through Social Media Turning Into Proceedings 30
5 Lawful Activities in Europe Becoming the Subject of Questioning or Investigation in Turkey 31
6 The Continuing Effects of Detention, HAGB and Judicial Control 31
7 Defence Strategies, Fear and the Need to Remove Political Context 32
8 Forms of Harm Other Than Conviction: Family, Psychological Integrity, and Freedom of Movement 33
9 The Need for Cumulative Risk Assessment 34

V. Judicial and Criminal Context in Turkey **34**
1 Judicial Independence and Political Pressure 34
2 Non-Implementation of ECtHR Judgements and the Council of Europe Infringement Procedure 36
3 Detention on Remand and the Problem of Arbitrariness 37
4 The Practical Effect of Catalogue Offences 38
5 Offence Categories Connected to Freedom of Expression 40
6 Criminalisation of the Kurdish Identity and Lawful Political Activity 42
7 Why HAGB and Judicial Control Cannot be Interpreted as Risk-Mitigating Factors 44
8 Legal Uncertainty, Unpredictability and the Problem of Arbitrariness 44

VI. Conclusion **45**

Impressum **47**

List of Abbreviations

BAMF	Federal Office for Migration and Refugees in Germany (*Bundesamt für Migration und Flüchtlinge*)
BDP	Peace and Democracy Party (*Barış ve Demokrasi Partisi*)
CİMER	Presidency's Communication Centre (*Cumhurbaşkanlığı İletişim Merkezi*)
CMK	Code of Criminal Procedure (*Ceza Muhakemesi Kanunu*, Law no. 5271)
DJS	Democratic Lawyers of Switzerland (*Demokratische Jurist*innen Schweiz*)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FAC	Swiss Federal Administrative Court in Switzerland (*Bundesverwaltungsgericht*)
HAGB	Deferment of the Pronouncement of the Verdict (*Hükmün Açıklanmasının Geri Bırakılması*)
HDP	Peoples' Democratic Party (*Halkların Demokratik Partisi*)
HRW	Human Rights Watch
HSK	Council of Judges and Prosecutors (*Hâkimler ve Savcılar Kurulu*)
İHD	Human Rights Association (*İnsan Hakları Derneği*)
KCK	Kurdistan Communities Union (*Koma Civakên Kurdistanê*)
KHK	Decree-Law (*Kanun Hükmünde Kararname*)
PKK	Kurdistan Workers' Party (*Partiya Karkerên Kurdistanê*)
SBAA	Swiss Observatory for Asylum and Foreign Nationals Law (*Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht*)
SEGBİS	Audio and Video Information System (*Ses ve Görüntü Bilişim Sistemi*)
SEM	State Secretariat for Migration in Switzerland (*Staatssekretariat für Migration*)
SFH	Swiss Refugee Council (*Schweizerische Flüchtlingshilfe*)
TCK	Turkish Penal Code (*Türk Ceza Kanunu*, Law no. 5237)
TMK	Anti-Terror Law (*Terörle Mücadele Kanunu*, Law no. 3713)
UPR	Universal Periodic Review
YPG	People's Protection Units (*Yekîneyên Parastina Gel*)
YPJ	Women's Protection Units (*Yekîneyên Parastina Jin*)

*Zusammenfassung und Einordnung der Herausgeber*innen*

Gegenstand und Methodik

Der Bericht untersucht die rechtlichen und praktischen Folgen, denen in der Schweiz abgewiesene Schutzsuchende nach einer Rückkehr oder Rückführung in die Türkei ausgesetzt waren. Im Zentrum stehen Fälle, in denen bereits während des Schweizer Asylverfahrens Risiken im Zusammenhang mit strafrechtlichen Ermittlungen, politischer Betätigung, Social-Media-Aktivitäten oder weiteren politischen beziehungsweise identitätsbezogenen Faktoren geltend gemacht worden waren.

Die Recherche wurde von den Demokratischen Jurist*innen Schweiz (DJS) und der Schweizerischen Flüchtlingshilfe (SFH) gemeinsam initiiert und von der Schweizerischen Beobachtungsstelle für Asyl- und Ausländerrecht (SBAA) unterstützt. Die türkische Rechtsanwältin Şerife Ceren Uysal wurde als unabhängige Expertin beauftragt, die Recherche durchzuführen und zu verfassen. Grundlage sind Interviews mit zurückgekehrten Personen und ihren Rechtsvertretungen sowie verfügbare Verfahrensakten, darunter Anklageschriften, Einvernahme- und Verhörprotokolle, Haft- und Vorführbefehle, Entscheide über Untersuchungshaft und justizielle Kontrollmassnahmen sowie Gerichtsurteile.

Insgesamt wurden 14 Fälle geprüft. Davon wurden neun Fälle von Personen, die zwischen Dezember 2024 und April 2026 in die Türkei zurückgekehrt waren oder dorthin zurückgeführt wurden, in die Recherche aufgenommen. Sieben wurden als ausführlich dokumentierte Fallstudien untersucht, zwei weitere auf Grundlage einer begrenzten Aktenanalyse. Die übrigen Fälle konnten nicht berücksichtigt werden, primär aufgrund fehlender Einwilligung. Drei weitere Fälle wurden der Autorin kurz vor Abschluss des Berichts gemeldet, die aus zeitlichen Gründen ebenfalls nicht in die Recherche aufgenommen werden konnten.

Der Bericht untersucht anhand der dokumentierten Fälle insbesondere, welche polizeilichen und gerichtlichen Massnahmen nach der Rückkehr erfolgten, welche Rolle Social-Media-Beiträge sowie politische und identitätsbezogene Faktoren in den Strafverfahren spielten und welche rechtlichen, praktischen, psychischen und sozialen Folgen hängige Verfahren und gerichtliche Kontrollmassnahmen auch ohne rechtskräftige Verurteilung hatten.

Der Beitrag dieses Berichts besteht in der Dokumentation konkreter Erfahrungen anhand von Beispielfällen. Die Zahl der untersuchten Fälle ist begrenzt und die Stichprobe nicht statistisch repräsentativ. Zudem waren mehrere der dokumentierten Strafverfahren zum Zeitpunkt der Fertigstellung des Berichts noch nicht abgeschlossen.

Der Erkenntniswert der Recherche liegt darin, rechtliche und praktische Konsequenzen sichtbar zu machen, die nach einer Rückkehr auftreten können, und zu untersuchen, wie sich bereits vor der Rückkehr bekannte Risikofaktoren in den untersuchten Fällen nach der Rückkehr in die Türkei ausgewirkt und entwickelt haben.

Haupterkenntnisse des Berichts

1. Polizeiliche und gerichtliche Massnahmen können unmittelbar bei der Rückkehr, aber auch erst später erfolgen.

In fünf der untersuchten Fälle wurde die betroffene Person bei ihrer Einreise in die Türkei am Flughafen direkt angehalten, in Gewahrsam genommen, einvernommen oder den Justizbehörden zugeführt (Personen A, B, D, E und F). In drei dieser Fälle folgte darauf Untersuchungshaft von mehreren Wochen bis zu knapp drei Monaten (Personen A, B und F). Zwei Personen wurden bei der Einreise zunächst nicht

angehalten, deren Festnahmen oder andere strafprozessuale Massnahmen wurden jedoch zu einem späteren Zeitpunkt angeordnet (Personen C und G); inklusive Untersuchungshaft von zweieinhalb Monaten (Person C).

Damit zeigen die dokumentierten Fälle, dass das mit der Rückkehr in die Türkei verbundene Risiko nicht auf den unmittelbaren Zeitpunkt der Einreise beschränkt ist. Offene Ermittlungs- und Strafverfahren sowie Haft- oder Vorführbefehle können auch Wochen oder Monate nach der Rückkehr zu Einvernahmen, Festnahmen, Freiheitsentzug oder anderen Einschränkungen der persönlichen Freiheit führen. Aus einer unbehelligten Einreise lässt sich daher in den untersuchten Fällen nicht ableiten, dass keine späteren strafrechtlichen oder freiheitsbeschränkenden Massnahmen erfolgen.

2. Auch Personen mit einem sogenannt geringen politischen Profil können von strafrechtlichen und freiheitsentziehenden Massnahmen betroffen sein; die kurdische Identität kann das Risiko verstärken.

Ein besonders relevantes Ergebnis betrifft das politische Profil der Betroffenen. Die untersuchten Personen waren keine landesweit bekannten Politiker*innen, Journalist*innen oder prominente Menschenrechtsverteidiger*innen. Dennoch führten auch Aktivitäten mit begrenzter öffentlicher Sichtbarkeit in den dokumentierten Fällen zu strafrechtlichen Ermittlungen, Verfahren und freiheitsbeschränkenden Massnahmen.

Zu den in den untersuchten Verfahren relevanten Sachverhalten gehören insbesondere eigene Beiträge und die Weiterverbreitung von Posts in den sozialen Medien, scharfe Kritik an staatlichen Funktionsträger*innen, frühere lokale politische Aktivitäten, kurdische kulturelle oder politische Aktivitäten sowie die Teilnahme an rechtmässigen Veranstaltungen in der Schweiz. In mehreren Fällen standen Vorwürfe wie "Propaganda für eine terroristische Organisation" oder "Beleidigung des Präsidenten" im Zentrum.

Aus den dokumentierten Fällen ergibt sich, dass strafrechtliche Ermittlungen und freiheitsbeschränkende Massnahmen in der Türkei nicht auf Personen mit hoher öffentlicher oder politischer Sichtbarkeit beschränkt sind. So spielten auch niedrigschwellige und wenig sichtbare Formen politischer Meinungsäusserung in den untersuchten Strafverfahren eine zentrale Rolle.

Die kurdische Identität ist in den untersuchten Fällen nicht als eigenständiger Risikoindikator ausgewiesen. In Kombination mit Elementen wie frühere politische Tätigkeit, Äusserungen zur kurdischen Frage, kurdische kulturelle Aktivitäten, Beteiligung an Newroz-Veranstaltungen, die Verwendung der kurdischen Sprache oder politischer Symbole, Social-Media-Aktivitäten, dem familiären Hintergrund oder politische Verbindungen sowie Aktivitäten in Europa verstärkte die kurdische Identität hingegen das Risiko.

In einzelnen Fällen wurden zudem niederschwellige und rechtmässige Aktivitäten in der Schweiz wie die Teilnahme an einer Veranstaltung oder einer Demonstration anhand öffentlich zugänglicher Fotos, Videoaufnahmen, Medienberichte oder Social-Media-Inhalte von türkischen Behörden aufgegriffen und nach der Rückkehr zum Gegenstand von Befragungen oder strafrechtlichen Ermittlungen gemacht.

3. Hängige Verfahren und gerichtliche Kontrollmassnahmen können auch ohne rechtskräftige Verurteilung erhebliche Folgen haben.

In fünf der untersuchten Fällen führten die hängigen Ermittlungs- und Gerichtsverfahren unmittelbar bei der Einreise zum Kontakt mit den Strafverfolgungs- und Justizbehörden. Sogenannte Vorführbefehle (*zorla*

getirme kararı[1]) oder Festnahmebefehle (*yakalama emri*[2]) werden angeordnet, wenn eine Person — zum Beispiel weil sie sich im Ausland aufhält — im bisherigen Verlauf des Ermittlungs- oder Gerichtsverfahrens noch nicht befragt werden konnte oder als flüchtig gilt. Besteht ein solcher Befehl, muss damit gerechnet werden, dass dieser bei der Einreise an der Passkontrolle ersichtlich ist und umgehend vollzogen wird — in diesem Fall wird die betroffene Person umgehend in Gewahrsam genommen.

Die dokumentierten Fälle zeigen, dass eine rechtskräftige Verurteilung zu einer Freiheitsstrafe nicht der einzige relevante Einschnitt in die Rechte der betroffenen Personen nach einer Rückkehr ist. Bereits während laufender Ermittlungs- und Gerichtsverfahren kam es in den dokumentierten Fällen zu Polizeigewahrsam und Untersuchungshaft — unter potenziell Art. 3 EMRK verletzenden Bedingungen —, Vorführungen vor Gericht, Einvernahmen und sogenannten gerichtlichen Kontrollmassnahmen wie etwa Meldeauflagen oder Ausreiseverboten.

Darüber hinaus können sich Strafverfahren in der Türkei über längere Zeit und sogar Jahre hinziehen. Die untersuchten Fälle illustrieren, wie anhaltende Rechtsunsicherheit, wiederholte Kontakte mit Polizei und Justiz, Einschränkungen der Bewegungsfreiheit, Auswirkungen auf Erwerbstätigkeit und Familienleben sowie (selbst auferlegte) Beschränkung politischer Betätigung zu schwerwiegender psychischer Belastung der Betroffenen selbst aber auch ihrer Angehörigen führen können.

Auch sogenannte HAGB-Entscheide (*Hükmün Açıklanmasının Geri Bırakılması*[3]), das heisst, Urteile, deren Verkündigung unter Auflage einer fünfjährigen Probezeit aufgeschoben werden, beendeten die mit der Strafverfolgung verbundenen Belastungen in den untersuchten Fällen nicht zwingend. Durch den Aufschub kann HAGB ein Strafurteil während einer mehrjährigen Überwachungsperiode in der Schwebe halten. In diesem Zusammenhang kann die Möglichkeit neuer Ermittlungen oder Strafverfahren — sowohl aufgrund aktueller als auch weit zurückliegender Handlungen — wegen politischer Äusserungen oder Social-Media-Aktivitäten zudem den politischen und persönlichen Handlungsspielraum der Betroffenen einschränken und zu Selbstzensur beitragen.

Folgerungen für die Schweizer Asylpraxis

Gestützt auf den Bericht bekräftigen die Herausgeber*innen ihre bestehende Forderung[4] nach einer Änderung der aktuellen Asylpraxis zur Türkei.[5] Diese stellt derzeit einseitig auf abstrakte Prognosen zum möglichen Ausgang hängiger Strafverfahren ab, legt einen übersteigerten Fokus auf das Vorliegen eines sogenannt ausgeprägten politischen Profils, klammert die Willkür der türkischen Strafjustiz aus und unterstellt regelmässig die Legitimität der Strafverfahren, obwohl der politisierte Einsatz strafrechtlicher Vorwürfe zur Einschüchterung von Dissens und Opposition bekannt ist.[6] Konkret ergeben sich aus den dokumentierten Fällen für die Beurteilung individueller Fluchtgründe und Rückkehrrisiken insbesondere folgende Folgerungen:

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1 Siehe Fussnote 54.

2 Siehe Fussnote 53.

3 Siehe Fussnote 19.

4 Siehe z.B. Berichterstattung von Maj-Britt Horlacher und Fiona Endres: "Kurdische Asylsuchende, Von der Schweiz abgewiesen — in der Türkei inhaftiert", 4. Dezember 2025, SRF, aufrufbar hier.

5 Die zunehmend restriktive SEM-Praxis wurde mit dem Koordinationsurteil E-4103/2024 vom 8. November 2024 vom BVGer bestätigt. Dieses Urteil wurde schon damals kritisiert; siehe z.B. Stellungnahme der SFH: "SFH kritisiert verschärfte Praxis zu Asylgesuchen aus der Türkei", 15. November 2024, abrufbar hier.

6 Kritisch mit dem Koordinationsurteil E-4103/2024 des BVGer vom 8. November 2024 auseinandergesetzt haben sich Annina Mullis und Mejreme Omuri: "Asylgesuche aus der Türkei: Zunehmend restriktive Anerkennungspraxis", in: ASYL 3/2025, S. 33-35.

⇒ **Statt auf das Vorliegen eines sogenannt ausgeprägten politischen Profils zu fokussieren, ist verstärkt das Zusammenwirken der individuellen Risikofaktoren zu berücksichtigen.** Die dokumentierten Fälle zeigen insbesondere, dass auch Personen mit einem sogenannten "geringen politischen Profil" oder "unauffälligen politischen Aktivitäten" — und ohne bekannte Vorstrafen — dem Risiko freiheitsbeschränkender Massnahmen konkret ausgesetzt sein können. Risikofaktoren wie kurdische Identität, Social-Media-Aktivitäten, frühere politische Betätigung, hängige Ermittlungen, Haftbefehle, Vorstrafen, Aktivitäten in Europa sowie familiärer Hintergrund oder soziale Verbindungen sind in ihrem Zusammenwirken zu beurteilen. Einzelne Faktoren, die isoliert betrachtet wenig gewichtig erscheinen, können in Verbindung mit weiteren Elementen eine individuelle Gefährdung bedeuten. Die Gefährdung einer Person auf ihre Bekanntheit oder Reichweite in der Türkei zu reduzieren, greift also deutlich zu kurz.

⇒ **Es sollte stärker berücksichtigt werden, dass zunächst begrenzte prozessuale Massnahmen weitreichende Freiheitsbeschränkungen unter menschenrechtswidrigen Haftbedingungen nach sich ziehen können.** Die Beurteilung der drohenden Nachteile sollte sich nicht schwerpunktmässig auf die Wahrscheinlichkeit einer rechtskräftigen Verurteilung zu einer unbedingten Freiheitsstrafe konzentrieren. So kann etwa beim Vorliegen eines "blossen" Vorführbefehls — also einer behördlichen oder gerichtlichen Anordnung, eine Person einer Befragung zuzuführen — nicht pauschal davon ausgegangen werden, dass die betroffene Person nach der Befragung automatisch wieder freigelassen wird. Wie der vorliegende Bericht zeigt, kann vielmehr im Anschluss Untersuchungshaft angeordnet und die betroffene Person in ein Gefängnis überführt werden. Zudem haben die Betroffenen in den dokumentierten Fällen wiederholt unzureichende Haftbedingungen, Herabwürdigungen, Schikanierungen oder Misshandlungen beschrieben, die möglicherweise Art. 3 EMRK verletzen. Die nicht zuletzt aufgrund der massiven Überbelegung desolaten Bedingungen in türkischen Gefängnissen sind bei nicht auszuschliessender (Untersuchungs-)Haft in der Beurteilung einer Gefährdung als eigenständiger Risikofaktor angemessen zu berücksichtigen.

⇒ **Der Dauer, Intensität und kumulativen Wirkung von Freiheitsentzug, gerichtlichen Kontrollmassnahmen, anhaltender Rechtsunsicherheit sowie psychischen und sozialen Belastungen kommt besondere Bedeutung zu.** Polizeigewahrsam, Haft- und Vorführbefehle, Meldepflichten, Ausreiseverbote und andere gerichtliche Kontrollmassnahmen sowie die Angst vor (erneuter) Untersuchungshaft oder auch sogenannte HAGB-Urteile können erhebliche rechtliche und persönliche Folgen haben. Jahrelange Rechtsunsicherheit, wiederholte Kontakte mit Strafverfolgungsbehörden, Einschränkungen der Bewegungsfreiheit, Auswirkungen auf Erwerbstätigkeit und Familienleben sowie ein daraus entstehender Druck zur Selbstzensur und Aufgabe politischer Aktivitäten oder Meinungsäusserung können sich kumulativ erheblich auf die betroffene Person auswirken. Solche Folgen können für die Prüfung ernsthafter Nachteile in der Form von unerträglichem psychischen Druck gemäss Art. 3 AsylG relevant sein. All dies verdeutlicht, dass die Folgen des Strafverfahrens nicht allein anhand des endgültigen Ausgangs beurteilt werden können.

⇒ **Der tatsächlichen Anwendung strafrechtlicher Bestimmungen in der Türkei und dem Einfluss willkürlicher, selektiver oder politisierter Elemente der Strafverfolgung sollte stärker Rechnung getragen werden.**[7] Die Beurteilung drohender Nachteile darf sich nicht auf den Wortlaut der türkischen Strafbestimmungen beschränken. Vielmehr ist bei der Frage, ob ein individueller

[7] Zum Ganzen siehe Pro Asyl: "Gutachten zur Lage der Justiz in der Türkei, Rechtsunsicherheit in Strafverfahren mit politischem Bezug", September 2024, abrufbar hier.

Politmalus vorliegt, die tatsächliche Strafverfolgungs- und Gerichtspraxis in der Türkei zu berücksichtigen. Einzubeziehen sind insbesondere das Risiko willkürlicher, selektiver und politisch oder ethnisch motivierter Strafverfolgung, Beeinträchtigungen der richterlichen Unabhängigkeit sowie die effektive Wirksamkeit respektive Einhaltung menschenrechtlicher und strafprozessualer Garantien.

⇒ **Es sollte stärker berücksichtigt werden, dass sich Verfolgungsmassnahmen auch erst eine gewisse Zeit nach der Rückkehr konkretisieren können.** Bei der Risikobeurteilung sollte nicht massgeblich auf die Gefahr einer möglicherweise umgehenden Festnahme bei der Einreise abgestellt werden. Vielmehr ist zu berücksichtigen, dass sich das im Zeitpunkt der Rückkehr bestehende Risiko auch zeitlich verzögert materialisieren kann. Die untersuchten Fälle zeigen, dass sich offene Ermittlungen und Strafverfahren auch erst Wochen oder Monate nach der Rückkehr in konkreten (freiheitsbeschränkenden) Massnahmen niederschlagen können.

Die untersuchten Fälle belegen nicht, dass alle Personen mit vergleichbaren Profilen bei einer Rückkehr generell den gleichen Folgen ausgesetzt wären. Der Bericht dokumentiert jedoch konkrete Fälle, in denen bereits vor der Rückkehr bekannte strafrechtliche oder politische Risikofaktoren nach der Rückkehr zu Gewahrsam, Untersuchungshaft, gerichtlichen Kontrollmassnahmen, offenen Strafverfahren und Verurteilungen — teilweise mit Aufschub — sowie psychischen und sozialen Belastungen geführt haben. Der vorliegende Bericht betont deshalb die Notwendigkeit einer Risikoprüfung, die erstens alle Faktoren berücksichtigt, zweitens deren kumulatives Zusammenwirken betrachtet und drittens mögliche Folgen über den unmittelbaren Zeitpunkt der Einreise sowie über die Frage einer rechtskräftigen Verurteilung hinaus — das heisst, auch die Auswirkungen anderer Massnahmen, die im Zusammenhang mit den Ermittlungs- und Strafverfahren verhängt werden können — einbezieht. Zudem empfiehlt die Autorin in ihrem Bericht eine systematische zivilgesellschaftliche Nachbeobachtung von Rückkehr- und Rückführungsfällen. Eine solche Dokumentation kann dazu beitragen, zu überprüfen, ob die den Rückkehrentscheiden zugrunde gelegten Risikoeinschätzungen mit den später tatsächlich eingetretenen Entwicklungen übereinstimmen.

Die Notwendigkeit der Praxisänderung wird durch das Bekanntwerden weiterer, ähnlich gelagerter Fälle, die auf das unveränderte Fortbestehen der dokumentierten Risiken hinweisen, weiter unterstrichen. Der Wegweisungsvollzug in die Türkei und das Ausfällen negativer Asylentscheide in hängigen Gesuchsverfahren müssen bis zur Anpassung der Praxis ausgesetzt werden. In jenen Fällen, in denen sich die Risikoeinschätzung der Schweizer Behörden als unzutreffend erweisen — oder bereits erwiesen haben —, muss den betroffenen Personen und ihren Kernfamilien konsularische Unterstützung gewährt und für die legale Wiedereinreise in die Schweiz ohne Verzögerung ein humanitäres Einreisevisums erteilt werden.

Résumé et commentaires des éditeur·ices

Objet et méthode

Le rapport présente les conséquences juridiques et pratiques auxquelles se sont heurtées les personnes en quête de protection déboutées en Suisse lorsqu'elles sont retournées ou ont été renvoyées en Turquie. Ce rapport expose essentiellement les cas pour lesquels des risques liés à des enquêtes pénales, à des activités politiques, à des activités sur les réseaux sociaux ou à d'autres facteurs politiques ou identitaires ont été invoqués dès la procédure d'asile en Suisse.

Cette étude, soutenue par l'Observatoire suisse du droit d'asile et des étrangers, a été menée conjointement par les Juristes Démocrates de Suisse (JDS) et l'Organisation suisse d'aide aux réfugiés (OSAR). Şerife Ceren Uysal, avocate turque, a été mandatée en qualité d'experte indépendante pour réaliser l'étude et rédiger le rapport y afférent. Des entretiens menés avec des personnes rapatriées et leurs représentations juridiques ainsi que les dossiers de procédure disponibles, notamment les actes d'accusation, les procès-verbaux d'audition et d'interrogatoire, les mandats d'arrêt et les mandats d'amener, les décisions relatives à la détention préventive et aux mesures judiciaires de contrôle et les jugements rendus par les tribunaux sous-tendent cette étude.

Au total, 14 cas ont été examinés, parmi lesquels neuf concernent des personnes qui sont retournées en Turquie ou y ont été renvoyées entre décembre 2024 et avril 2026. Sept cas ont fait l'objet d'enquêtes détaillées et documentées, tandis que deux autres ont été examinés sur la base d'une analyse limitée des dossiers. En l'absence de consentement, les autres cas n'ont pas pu être pris en compte. Trois cas supplémentaires ont été signalés à l'autrice peu avant la conclusion du rapport et n'ont pas pu être intégrés à l'étude pour des raisons de délai.

Sur la base des cas documentés, le rapport présente en particulier les mesures policières et judiciaires prises après le retour, le rôle des contributions sur les réseaux sociaux et des facteurs politiques et identitaires dans les procédures pénales, ainsi que les conséquences juridiques, pratiques, psychologiques et sociales des procédures en cours et des mesures de contrôle judiciaire, même en l'absence de condamnation exécutoire.

Ce rapport permet de documenter des expériences vécues à partir d'exemples de cas. Le nombre de cas étudiés est limité et l'échantillon n'est pas statistiquement représentatif. En outre, plusieurs procédures pénales documentées n'étaient pas encore closes au moment de la finalisation du rapport.

L'intérêt de cette étude réside dans la mise en évidence des conséquences juridiques et pratiques potentielles après un retour et dans l'analyse du rôle des facteurs de risque connus avant le retour et de leurs incidences après le retour en Turquie pour les cas sous revue.

Principales conclusions du rapport

1. Les mesures policières et judiciaires peuvent être prises immédiatement après le retour, et aussi ultérieurement.

Dans cinq des cas examinés, les personnes A, B, D, E et F ont été interpellées directement à l'aéroport lors de leur entrée en Turquie, placées en garde à vue, interrogées ou déférées devant les autorités judiciaires. Les personnes A, B et F se sont vues placées en détention provisoire pour des durées de plusieurs semaines à quelque trois mois. Les personnes C et G n'ont pas été interpellées lors de leur entrée sur le territoire

turc, mais l'arrestation ou d'autres mesures de procédure pénale ont été ordonnées ultérieurement. La personne C a notamment été maintenue en détention provisoire pendant deux mois et demi.

Les cas documentés montrent ainsi que le risque lié au retour en Turquie ne se limite pas au moment de l'entrée sur le territoire. Des enquêtes et des procédures pénales en cours ainsi que des mandats d'arrêt ou des mandats d'amener peuvent également conduire, des semaines ou des mois après le retour, à des auditions, des arrestations, des privations de liberté ou d'autres limitations de la liberté individuelle. Les cas examinés ne permettent donc pas de conclure qu'une entrée sur le territoire sans incident puisse augurer qu'aucune mesure pénale ou restrictive de liberté ne sera prise par la suite.

2. Même les personnes ayant un soit disant profil politique faible peuvent être concernées par des mesures pénales et privatives de liberté, et l'identité kurde peut aggraver ce risque.

Le profil politique des personnes concernées apparaît comme particulièrement pertinent. Les personnes sous revue n'étaient ni des personnalités politiques, ni des journalistes, ni des défenseuses des droits humains connues dans tout le pays. Néanmoins, même des activités de portée restreinte ont conduit, dans les cas documentés, à des enquêtes pénales, des procédures judiciaires et des mesures privatives de liberté.

La publication de contributions personnelles et le partage de publications sur les réseaux sociaux, des critiques virulentes à l'encontre de fonctionnaires étatiques, d'anciennes activités politiques locales, des activités culturelles ou politiques kurdes, ainsi que la participation à des manifestations légales en Suisse figurent parmi les faits pertinents dans les procédures examinées. Dans plusieurs cas, les allégations étaient axées autour de formulations telles que " propagande en faveur d'une organisation terroriste " ou " outrage au président ".

Il ressort des cas documentés que les enquêtes pénales et les mesures privatives de liberté en Turquie ne concernent pas uniquement les personnes fortement exposées sur les plans public ou politique. Ainsi, des formes d'expression d'opinion politique de faible intensité et peu visibles ont également joué un rôle central dans les procédures pénales examinées.

L'identité kurde n'apparaît pas, dans les cas examinés, comme un facteur de risque à part entière, mais elle augmente le risque si elle s'ajoute à des activités politiques antérieures, à des déclarations sur la question kurde, à des activités culturelles kurdes, à la participation à des manifestations de Newroz, à la pratique de la langue kurde ou l'utilisation de symboles politiques, à des activités sur les réseaux sociaux, au contexte familial ou à des connexions politiques, ainsi qu'à des activités en Europe.

Dans certains cas, des activités légales et sans gravité menées en Suisse, telles que la participation à un événement ou à une manifestation, ont en outre été repérées par les autorités turques à partir de photos, d'enregistrements vidéo, de reportages médiatiques ou de contenus sur les réseaux sociaux accessibles au public, et ont fait l'objet d'interrogatoires ou d'enquêtes pénales après le retour des personnes concernées.

3. Les procédures en cours et les mesures judiciaires de contrôle peuvent avoir des conséquences considérables, même en l'absence de condamnation exécutoire.

Dans cinq des cas examinés, les enquêtes et procédures judiciaires en cours ont conduit, dès l'entrée sur le territoire, à une intervention des forces de l'ordre et des autorités judiciaires. Des mandats d'amener (*zorla getirme karari*[8]) ou des mandats d'arrêt (*yakalama emri*[9]) sont délivrés à l'encontre d'une personne

[8] Voir la note de bas de page 54.

[9] Voir la note de bas de page 53.

qui n'a pas encore pu faire l'objet d'un interrogatoire au cours de l'enquête ou de la procédure judiciaire parce qu'elle séjourne à l'étranger, par exemple, ou parce qu'elle est considérée en exil. Lorsque un tel mandat existe, il peut être constaté dès le contrôle douanier à l'entrée sur le territoire et ainsi immédiatement exécuté. Dans ce cas, la personne visée est immédiatement placée en détention.

Les cas documentés montrent qu'une condamnation exécutoire privative de liberté n'est pas la seule atteinte significative aux droits des personnes concernées lors d'un retour. Dans les cas sous revue, les enquêtes et procédures judiciaires en cours ont donné lieu à des gardes à vue, à des détentions préventives dans des conditions susceptibles de constituer une violation de l'article 3 de la Convention européenne des droits de l'homme (CEDH), à des comparutions devant les tribunaux, à des auditions et à des mesures judiciaires de contrôle, telles que l'obligation de se présenter régulièrement aux autorités ou l'interdiction de sortie du territoire.

De plus, les procédures pénales en Turquie peuvent durer longtemps, voire plusieurs années. Les cas examinés illustrent comment l'insécurité juridique permanente, les interventions répétées de la police et la justice, les limitations de la liberté de circulation, les répercussions sur l'activité professionnelle et la vie familiale, ainsi l'autolimitation de l'activité politique peuvent entraîner une lourde charge psychologique non seulement pour les personnes concernées, mais aussi pour leurs proches.

Même les décisions dites HAGB (*Hükmün Açıklanmasının Geri Bırakılması*[10]), c'est-à-dire les jugements dont le prononcé est reporté à condition d'une période probatoire de cinq ans, n'ont pas nécessairement levé les charges liées aux poursuites pénales dans les cas sous revue. Le report du prononcé peut maintenir un jugement pénal en suspens pendant une période de surveillance de plusieurs années. Dans ce contexte, la possibilité de nouvelles enquêtes ou de nouvelles procédures pénales, fondées sur des actions récentes ou très anciennes, en raison de déclarations politiques ou d'activités sur les réseaux sociaux peut en outre restreindre la marge de manœuvre politique et personnelle des personnes concernées et mener à l'autocensure.

Conséquences pour la pratique suisse en matière d'asile

S'appuyant sur ce rapport, les éditeur·ices réitèrent leur avis[11] relatif à une modification de la pratique actuelle en matière d'asile concernant la Turquie[12]. Celle-ci se fonde actuellement de manière unilatérale sur des prévisions abstraites quant à l'issue possible des procédures pénales en cours, accorde une importance démesurée à l'existence d'un soit disant profil politique marqué, fait abstraction du caractère arbitraire de la justice pénale turque et présume régulièrement de la légitimité des procédures pénales alors même que l'instrumentalisation des accusations pénales à des fins d'intimidation des personnes dissidentes ou opposantes est bien connue[13]. Concrètement, les cas documentés permettent de tirer les conclusions suivantes pour l'évaluation des motifs individuels d'exil et des risques liés au retour :

⇒ **Prendre davantage en compte la conjonction des facteurs de risque individuels, au lieu de se concentrer sur l'existence d'un soit disant profil politique marqué.** Les cas documentés montrent notamment que même des personnes présentant un soit disant politique faible ou exerçant des

[10] Voir la note de bas de page 19.

[11] Voir entre autres le reportage " *Kurdische Asylsuchende. Von der Schweiz abgewiesen – in der Türkei inhaftiert* " de Maj-Britt Horlacher et Fiona Endres, SRF, 4 décembre 2025 disponible ici.

[12] La pratique de plus en plus restrictive du SEM a été soutenue par le TAF dans son arrêt de coordination E-4103/2024 du 8 novembre 2024 et déjà critiquée par l'OSAR le 15 novembre 2024, voir ici.

[13] Annina Mullis et Mejreme Omuri ont analysé de manière critique l'arrêt de coordination E-4103/2024 du TAF du 8 novembre 2024. Voir article " Asylgesuche aus der Türkei: Zunehmend restriktive Anerkennungspraxis ", revue ASYL n° 3/2025, p. 33-35.

activités politiques discrètes, et sans antécédents judiciaires connus, peuvent être exposées au risque de mesures privatives de liberté. La conjonction des facteurs de risque tels que l'identité kurde, les activités sur les réseaux sociaux, les engagements politiques antérieurs, les enquêtes en cours, les mandats d'arrêt, les antécédents judiciaires, les activités en Europe ainsi que le contexte familial ou les liens sociaux doit être évaluée. Des facteurs individuels qui, considérés isolément, semblent revêtir peu d'importance, peuvent, en lien avec d'autres éléments, constituer une menace individuelle. Circonscrire la menace pesant sur une personne à sa notoriété ou à son rayonnement en Turquie est donc largement insuffisant.

⇒ **Prendre davantage en compte le fait que des mesures procédurales, a priori limitées, peuvent entraîner des larges limitations de liberté dans des conditions de détention contraires aux droits humains.** L'évaluation des préjudices potentiels ne devrait pas porter principalement sur la probabilité d'une condamnation exécutoire à une peine privative de liberté ferme. En effet, un " simple " mandat d'amener, c'est-à-dire un ordre des autorités judiciaires aux fins de comparution, ne permet pas de considérer de manière générale que la personne concernée sera automatiquement remise en liberté après l'interrogatoire. Comme le montre le présent rapport, une détention provisoire peut au contraire être ordonnée à la suite de cet interrogatoire et la personne concernée peut être placée en détention. De plus, dans les cas documentés, les personnes concernées ont décrit à plusieurs reprises des conditions de détention inadéquates, des humiliations, des brimades ou des mauvais traitements susceptibles de constituer une violation de l'article 3 de la CEDH. Les conditions de détention désastreuses dans les prisons turques, en raison notamment de la surpopulation carcérale massive, doivent être dûment prises en compte comme facteur de risque à part entière lors de l'évaluation d'une menace, dans la mesure où une détention même préventive ne peut être exclue.

⇒ **Accorder une importance particulière à la durée, à l'intensité et à l'effet cumulatif des mesures privatives de liberté, des mesures judiciaires de contrôle, de l'insécurité juridique persistante et des contraintes psychosociales.** Les gardes à vue, les mandats d'arrêt et les mandats d'amener, les obligations d'annonce, les interdictions de sortie du territoire et autres mesures judiciaires de contrôle, ainsi que la crainte d'une (nouvelle) détention provisoire ou de jugements HAGB peuvent avoir des conséquences juridiques et personnelles considérables. Vivre dans l'insécurité juridique pendant plusieurs années, la pression des autorités juridiques, les restrictions de la liberté de mouvement, les répercussions sur le travail et la vie familiale, cumulés à la pression de l'autocensure et au renoncement à toute activité politique ou à l'expression de ses opinions qui en résultent, peuvent avoir des répercussions considérables sur la personne concernée. Il peut s'avérer pertinent d'invoquer ces conséquences dans le cadre d'un examen des sérieux préjudices, ici sous forme de pression psychologique insupportable, au sens de l'article 3 de la loi sur l'asile (LAsi). La présente étude montre donc que les conséquences d'une procédure pénale ne peuvent pas être évaluées uniquement au regard de son issue définitive.

⇒ **Prendre davantage en compte l'application effective des dispositions pénales en Turquie et de l'incidence d'éléments arbitraires, sélectifs ou politisés dans les poursuites pénales**[14]**.** L'évaluation des préjudices potentiels ne doit pas se limiter au libellé des dispositions pénales turques. Au contraire, pour déterminer s'il existe un risque politique individuel, il convient de prendre en compte la pratique des tribunaux et des poursuites pénales en Turquie, en tenant compte notamment du risque de poursuites arbitraires, sélectives et motivées par des considérations politiques ou ethniques,

[14] Pour plus d'informations, voir Pro Asyl: " Gutachten zur Lage der Justiz in der Türkei, Rechtsunsicherheit in Strafverfahren mit politischem Bezug ", septembre 2024, disponible ici.

des restrictions de l'indépendance des tribunaux ainsi que de l'efficacité et du respect des garanties en matière de droits humains et de procédure pénale.

⇒ **Prendre davantage en compte le fait que les mesures de poursuite peuvent être déclenchées un certain temps après le retour.** L'évaluation des risques ne doit pas se fonder principalement sur le danger d'une éventuelle arrestation au moment de l'entrée sur le territoire. Il convient de tenir compte du fait que le risque existant au moment du retour peut se matérialiser avec un certain décalage dans le temps. Les cas examinés montrent que des enquêtes et des procédures pénales en cours peuvent déboucher sur des mesures concrètes, notamment restrictives de liberté, plusieurs semaines, voire plusieurs mois après le retour.

Les cas examinés ne prouvent pas que des personnes aux profils comparables seraient en principe exposée aux mêmes conséquences lors d'un retour. Le rapport documente toutefois des cas concrets pour lesquels des facteurs de risque pénaux ou politiques connus avant le retour ont conduit après l'entrée sur le territoire turc à une garde à vue, à une détention préventive, à des mesures judiciaires de contrôle, à des procédures pénales en cours et à des condamnations, parfois avec sursis, ainsi qu'à des contraintes psychosociales. Le présent rapport souligne donc la nécessité d'une évaluation des risques qui, premièrement, tient compte de tous les facteurs, deuxièmement, examine leur effet cumulatif et, troisièmement, considère les conséquences possibles après l'entrée sur le territoire ainsi qu'une possible condamnation exécutoire, c'est-à-dire qui inclue les répercussions d'autres mesures pouvant être prononcées dans le cadre des enquêtes et procédures pénales. L'autrice recommande en outre un suivi systématique par la société civile des cas de retour et de renvoi. En effet, une telle documentation peut permettre de vérifier si les évaluations des risques qui ont sous-tendu les décisions de retour correspondent au déroulement de la situation par la suite.

La publication d'autres cas similaires indiquant la persistance des risques documentés soulignera encore la nécessité de modifier la pratique. L'exécution des renvois vers la Turquie et les décisions négatives pour les demandes d'asile en cours doivent donc être suspendues jusqu'à l'adaptation de la pratique. Dans les cas où l'évaluation des risques par les autorités suisses s'avère ou s'est avérée erronée, un soutien consulaire doit être accordé aux personnes concernées et à leur famille nucléaire, et un visa d'entrée humanitaire doit leur être délivré sans délai afin de permettre un retour en Suisse en toute légalité.

I. Introduction

In recent years, concerns have increased regarding the legal and practical consequences faced after return by persons whose asylum applications in Switzerland have been rejected and who have been returned to Turkey, particularly when these persons expressed fear of criminal prosecution in Turkey for political reasons during their asylum procedure in Switzerland.

This report draws on documented post-return experiences gathered through interviews with persons returned from Switzerland to Turkey, interviews with their lawyers, and the examination of available legal documents. The composition of the cases examined, the level of documentation available, and the cases that could not be included are detailed in Section II. The report does not seek to provide a representative assessment of the situation of all persons returned to Turkey from Switzerland. Rather, it examines selected post-return experiences to identify legal and practical issues that may be relevant for individual return assessments.

In the Swiss decisions and case-related materials reviewed for this report, one recurring issue was the extent to which the Swiss authorities considered pending criminal investigations, social media activity, or so-called low-profile political visibility when concluding — or rather rejecting — the presence of a real and current risk upon return to Turkey. In these assessments, the risk was often considered by reference to the stage of the criminal proceedings in Turkey, whether an investigation was likely to result in prosecution, the likelihood of conviction, and the severity of any possible sentence.

In this context, this report seeks to answer the following questions in regards to the documented cases:

⇒ What measures did the returned persons face when they arrived in Turkey or after their return?

⇒ Did pending investigation or prosecution files lead to restrictions on liberty and security, even in the absence of a conviction?

⇒ Did mechanisms such as deferment of the pronouncement of the verdict (HAGB), judicial control, or a ban on leaving the country function as safeguards for the persons concerned, or did they contribute to prolonged pressure and legal uncertainty?

⇒ What role did social media posts, Kurdish identity, regional origin, criticism of the government, or association with opposition circles appear to play in criminal files in Turkey?

This report's contribution lies in its documentation of concrete post-return experiences in a number of illustrative cases. The findings suggest that generalised assessments focused primarily on the likelihood of a final conviction, and abstract risk categories such as 'low-profile political activity,' may not fully capture the legal and practical consequences that rejected applicants can face upon return. Instead, the findings highlight the need for careful consideration of each individual case.

The aim is not to establish the frequency of such risks, but to make visible the types of legal and practical consequences that may arise in individual post-return situations and that may need to be taken into account when assessing returns to Turkey.

II. Scope, Methodology and Limitations

The present expert report explores nine cases. The status of the cases described herein reflects the information available as of 13 August 2026, with one subsequent update added in the case of Person B. A total of 14 potential cases were assessed within the research sample. Two additional cases, which came to the attention of the author while the advanced version of this report was being finalised for SEM, as well as one additional case from September 2026, are mentioned in the Conclusion but not included in the case count.

The sampled cases fall into the following categories:

⇒ Nine cases are included in the present report. Seven are presented as detailed case studies, while two are included only through limited documentary review (see Subsection II.1 below).

⇒ One additional case remains under preliminary follow-up. Contact has been established with the person's lawyer, but the person's participation, consent, available documentation and suitability for inclusion have not yet been determined.

⇒ Two cases could not be included because sufficient direct contact, documentation and consent could not be secured. They may be reconsidered if further information becomes available.

⇒ Two cases were excluded from the study. One was excluded because the necessary consent was not obtained. The other was excluded because the circumstances of the case did not fall within the substantive scope of the research.

1 Cases Included in the Report

This expert report presents a total of nine cases (see Section III for case summaries). In seven of these cases, detailed interviews were conducted with the people who had returned from Switzerland to Turkey, and the legal and practical consequences they faced after return were documented. One of these persons subsequently returned to Switzerland after obtaining admission through family reunification. The case nevertheless remains within the scope of the report because the person's legal situation and deprivation of liberty in Turkey following return were documented.

The level of information and documentation available differed between the seven detailed case studies:

⇒ In four cases, interviews were conducted both with the returned person and with their lawyer in Turkey, and the relevant legal documents were examined (see Persons A, B, D and E).

⇒ In one further case, information was obtained from the returned person and her family, her lawyer in Switzerland, and her current lawyer in Turkey, together with relevant Swiss and Turkish case materials (see Person F).

⇒ In one case, the returned person was interviewed and legal documents were examined, but no separate interview was conducted with their lawyer in Turkey (see Person C).

⇒ In one case, a detailed interview was conducted with the returned person, who was not represented by a lawyer in Turkey and did not have official case documents in their possession. This account is therefore presented with an explicit indication of its documentary limitations and was cross-checked only to the extent possible against other available information (see Person G).

In two of the nine cases presented, the report is based solely on a limited examination of legal documents. Neither the persons concerned nor their representatives in Turkey could be reached. These cases are

therefore not presented as documented post-return testimonies, but as limited documentary examples. The source, scope and evidentiary limitations of the available documents are stated in the relevant Subsection III.8.

2 Data Sources and Interview Method

The main sources of data for the research are interviews conducted with returnees and documents concerning the criminal proceedings or legal measures they faced after return. The documents examined include indictments, statement and interrogation records, arrest and compulsory appearance orders, judicial control and release decisions, reasoned court judgements, and other legal materials made available to the author.

The available documents are not of the same nature or scope in every case. The report therefore identifies, for each case, whether the findings are based on interviews, interviews with legal representatives, official legal documents, or a more limited combination of sources.

The interviews were conducted in a semi-structured manner. They addressed the persons' return processes to Turkey, their contact with law enforcement and judicial authorities after return, the criminal files against them, restrictions on their liberty, and the legal uncertainty created by these processes.

The report does not examine the persons' asylum files in Switzerland. It refers to the Swiss asylum proceedings only to the extent necessary to understand the risk factors raised before return, the assessment of those factors by the Swiss authorities, and the legal and practical consequences that emerged after return to Turkey.

In some cases, lawful demonstrations or events in which persons participated while still in Switzerland subsequently became the subject of questioning or criminal investigation upon return to Turkey. The report does not treat these activities as part of the persons' initial reasons for leaving Turkey. Rather, they are considered as limited, case-specific examples showing that an existing criminalisation risk may continue or expand through activities undertaken in Switzerland.

3 Consent, Confidentiality and Security

Ethical principles and security considerations were observed throughout the research, and informed consent was obtained from the persons whose detailed accounts are included in the report. In the public version, names and other personal details are anonymised. Details capable of endangering their security or ongoing legal proceedings have been removed where necessary.

4 Limitations

This report has relevant limitations. The same level of information and documentation could not be obtained in every case. Some individuals could not be reached. Others refrained from giving interviews, obtaining documents or sharing available materials because of security concerns, fear or trauma. In two cases, only limited legal documents were available, and neither the persons concerned nor their legal representation in Turkey could be interviewed.

The number of cases examined is limited, and the findings are not statistically generalisable to all individuals returned to Turkey from Switzerland. The report also does not seek to determine how frequently rejected asylum applicants returned to Turkey experience the consequences identified in the cases detailed below. Its purpose is to document the types of legal and practical consequences that may arise and to examine how risks raised before return may materialise in practice.

For these reasons, the report does not present definitive or statistically representative conclusions. It contributes to the monitoring of post-return risks through concrete and documented cases, while clearly distinguishing between detailed case studies, limited documentary examples and cases that could not be included.

Nevertheless, the cases examined are significant in showing that post-return risk cannot be assessed solely by reference to whether a person has already been convicted or received a final sentence. They make visible restrictions on liberty arising at the moment of return or at a later stage, as well as the prolonged legal uncertainty created by pending criminal investigations, prosecutions and judicial control measures.

Several of the criminal investigations and prosecutions examined remain ongoing. The legal situations of the persons concerned may therefore change after the date of finalisation. The findings reflect the information available at a particular stage of continuing legal and documentation processes.

This study forms part of ongoing documentation. It provides a basis both for continued monitoring of the existing cases and for broader research on post-return risks to Turkey. It also demonstrates the need for further studies drawing on the experience of lawyers actively practising criminal law in Turkey, particularly in order to examine the gap between written legal safeguards and the practical functioning of criminal proceedings.

The publication of the report may additionally contribute to the safe documentation of similar cases in the future, including the experiences of persons who currently refrain from sharing information because of security concerns, fear, or trauma.

III. Case Studies of Returned Persons

Based on seven detailed case studies and two limited documentary reviews, this section examines the legal and practical consequences faced after return by persons who were returned to Turkey or who were compelled to return after their asylum application had been rejected in Switzerland. The aim is to show how the risk indicators that existed prior to return materialised in Turkey. A full version of the expert report was presented to SEM on 4 September 2026. For data protection and security reasons, this public version only contains anonymised summaries, drafted by the publishers based on the author's extensive case studies.

1 Person A

Within the scope of this case, interviews were conducted with both A and his lawyer in Turkey, and legal documents from Turkey were examined. The author was able to obtain the following information:

A left Turkey in October 2023 and later travelled to Switzerland, where he applied for international protection. During the interview with the author, A stated that he had been subjected to pressure in Turkey because of his Kurdish identity and political activities. He explained that, before leaving Turkey, there was an ongoing criminal investigation against him; that because of this, searches had been conducted at addresses connected to him; and that a car registered in his name was occasionally stopped and checked. Additionally, he mentioned that he had been previously prosecuted and convicted in Turkey, in connection with political activities concerning the Kurdish question, and as a result had to serve a sentence.

A's application for international protection in Switzerland was rejected. According to A, after this rejection, he felt compelled to return to Turkey because of uncertainty, camp conditions, the possibility of remaining without status for a long period, and health problems related to his advanced age. He reminded the author

that, although his return may appear to have been voluntary, it in fact resulted from the aforementioned circumstances, and because he was told that, if he appealed the rejection decision, the likelihood of a positive outcome would be low. Therefore, A returned to Turkey in August 2025.

However, as soon as he arrived in Turkey, he was first taken into custody at the airport, and later detained on remand. A also stated that he was not allowed to contact his family at the airport; that he could not access some of his belongings; that some of his personal belongings were not returned to him; and that, despite health problems, he experienced difficulties in accessing basic needs. After his return, he was indicted in an investigation that had started in 2023 based on social media posts on a Facebook account with a name similar to A's own name that were published on dates before A had left Turkey. He was charged with disseminating propaganda for a terrorist organisation under Article 7(2) of the Anti-Terror Law,[15] including the second sentence of this Article because the posts had been made through a publicly accessible electronic mass communication tool. The prosecutor further requested the application of the successive offence provisions under Article 43(1) of the Turkish Penal Code[16] on the ground that multiple posts had been made on different dates. The end of the indictment further mentions that the criminal investigation against A was continuing in relation to the offences of insulting the President under Article 299 of the Turkish Penal Code[17] and insulting the Turkish Nation, the State of the Republic of Turkey, and the institutions and organs of the State under Article 301 of the Turkish Penal Code.[18] The outcome of the ongoing criminal investigations concerning the two separate accusations mentioned in the indictment is currently unknown.

In his defence, A stated that the people with whom he was in contact to leave the country asked for the passwords of his social media accounts, and that these people were responsible for the posts in question. Nonetheless, A was convicted in September 2025 under Article 7(2) of the Anti-Terror Law, as well as the successive offence provisions under Article 43(1) of the Turkish Penal Code, and sentenced to one year, six months, and 22 days' imprisonment. The pronouncement of the verdict was, however, deferred in a so-called HAGB decision under Article 231 of the Code of Criminal Procedure.[19] In deciding to defer the pronouncement of the verdict, the court took into account that approximately seven years had passed

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15 Article 7(2) of the Anti-Terror Law provides: "Any person who disseminates propaganda in favour of a terrorist organisation by justifying, praising or encouraging the use of methods constituting coercion, violence or threats shall be liable to a term of imprisonment of one to five years. If this offence is committed through the press or media, the penalty shall be increased by one half."

16 Article 43(1) of the Turkish Penal Code provides: "Where a person commits the same offence more than once against the same person, at different times in the course of carrying out a decision to commit an offence, a single penalty shall be imposed. However, the penalty to be imposed shall be increased by one quarter to three quarters. The basic form of an offence and its qualified forms requiring a heavier or lesser penalty shall be deemed to constitute the same offence. The provisions of this paragraph shall also apply to offences where the victim is not a specifically identifiable person."

17 Article 299 of the Turkish Penal Code provides: "(1) Any person who insults the President of the Republic shall be sentenced to a penalty of imprisonment for a term of one to four years. (2) Where the offence is committed in public, the sentence to be imposed shall be increased by one-sixth. (3) The initiation of a prosecution for such offence shall be subject to the permission of the Minister of Justice."

18 Article 301 of the Turkish Penal Code provides: "(1) A person who publicly degrades the Turkish nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years. (2) A person who publicly degrades the military or security organisations of the State shall be sentenced to a penalty in accordance with paragraph 1 above. (3) The expression of an opinion for the purpose of criticism does not constitute an offence. (4) The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice."

19 Under Article 231 of the Code of Criminal Procedure, in the case of HAGB (*Hükmün Açıklanmasının Geri Bırakılması*), the pronouncement of the judgement is suspended and is left pending with a five-year supervision period for adults. The court may pronounce the deferred judgement if the person concerned commits a new offence during that supervision period. For the purpose of determining whether the deferred judgement may subsequently be pronounced on this ground, the relevant date is the date on which the new offence was committed, rather than the date of conviction.

since the execution of A's previous sentence, that the conditions for deletion of the criminal record had been met, that no concrete and identifiable damage had arisen from the incident, and A's conduct during the hearing. A was subsequently released from pre-trial detention. He spent a total of 25 days in prison before being released.

2 Person B

Within the scope of this case, interviews were conducted with both B and her lawyer in Turkey, and legal documents from Turkey and psychological assessment reports concerning B's children were examined. The author was able to obtain the following information:

B is a former public servant who was dismissed by a decree issued during the post-July 2016 state of emergency. She had been involved in Kurdish cultural and artistic activities since the 1990s. According to B's statement, she was subjected to repeated police harassment in connection with these activities from a young age. B further explained that pressure was placed on her family before she left Turkey; her brother was held in custody; and her passport had previously been confiscated. Additionally, she stated that her home was raided by the police in March 2022, while her husband and children were present; she was taken from the house while in her pyjamas; she was blindfolded and taken to an unknown location; she was asked to provide information about other people; she was threatened through her children; a gun was pointed at her head; and she was subjected to physical and psychological pressure.

After this raid, B left Turkey with a green passport, applied for asylum in Switzerland the day after her arrival, and remained in Switzerland for approximately three and a half years. While in Switzerland, six separate criminal investigations were registered against B in Turkey between late 2022 and early 2025: Three investigations concerning terrorist propaganda were joined under one investigation file. This investigation remains ongoing, and, at the time of drafting this expert report, no indictment had yet been issued. Another investigation file was closed with a decision of non-prosecution. Two of the six investigation files, however, resulted in criminal proceedings before a Criminal Court of First Instance in South-East Turkey. Both of these court proceedings concern the offence of insulting the President, and were later also joined.

One of the most relevant accusations against B is connected to a publication from late 2020. The Presidency's Communication Centre (CİMER) had made an application to the competent authorities alleging that this publication contained statements amounting to insult against the President and propaganda for PKK/KCK. A criminal investigation followed, and in 2024, seizure and prohibition-of-sale-and-distribution measures were imposed in relation to the publication. In January 2025, a court issued a further order for copies of the publication to be withdrawn from circulation. According to public sources, B is the author of the publication in question. She also confirmed this when interviewed during the present research. However, in her defence presented to the authorities in Turkey, B stated that the publication had been published by others using her name and that she had not written it. When asked during this research why she had given such a statement, she explained that, because the accusations against her were based primarily on the publication, she hoped that denying authorship might help her avoid criminal measures and detention.

After the rejection of her asylum application, B was returned to Turkey together with her children in August 2025. When they arrived at Istanbul Airport, the children passed through passport control. B, however, was told to wait. She was first taken to the police station at the airport and was later brought before a

Criminal Judgeship of Peace in South-East Turkey via SEGBİS,[20] as the competent prosecutor had requested her detention on the charge of insulting the President. The court granted the remand request and issued a detention order. B was subsequently sent to a Closed Prison for Women in Istanbul and remained detained for 43 days.

Regarding the detention conditions, B gave a detailed account including overcrowding, hygiene problems, lack of beds, the presence of mice in the ward, insufficient cleaning facilities, a small courtyard, and generally poor conditions in prison. She further said that she had not experienced physical violence, but that she was subjected to verbal harassment and degrading treatment by some prison officers because of her Kurdish identity. She stated that, despite having migraine and needing regular medication, she was not given food or water for a long period before being transferred to prison; that her glasses and medication were confiscated; and that, despite her written requests, her glasses and medication were not returned until her release.

B was released after 43 days of detention, with the condition of a ban on leaving the country. On 24 September 2026, B was convicted of insulting the President and sentenced to an unconditional prison term of two years, five months, and five days. Given the length of the sentence, the court ruled out deferral of the pronouncement of the verdict (HAGB[21]), conversion of the prison sentence into a fine, and suspension of the execution of the sentence. Furthermore, the court ordered the deprivation of certain rights, including B's parental custody and guardianship rights over her children until the date of conditional release, alongside restrictions on other civil and professional rights until the completion of the sentence. These restrictions will take effect only if the conviction becomes final and the sentence is executed. The judgment is not yet final and remains subject to appeal.

3 Person C

Within the scope of this case, an interview was conducted with both C and his asylum lawyer in Switzerland; legal documents from Turkey were examined; and correspondence with Swiss authorities concerning both C's asylum procedure in Switzerland, as well as his post-return situation, was assessed. The author was able to obtain the following information:

C is a Turkish citizen of Kurdish origin. He comes from a family that had been involved in the struggle for the recognition of the cultural and political rights of the Kurdish people in different ways. C himself has been part of related lawful political activities, became an active member in a non-prohibited political party in 2010, and participated in the organising committee of the 2014 Newroz celebrations. Related to these activities, he was sentenced to 10 months' imprisonment in early 2016 for propaganda for a terrorist organisation.

C left Turkey in spring 2023. He stated that, while he was in Switzerland, a new investigation was being conducted against him in Turkey, again under the allegation of disseminating propaganda for a terrorist organisation, but now in relation to social media posts. SEM rejected C's asylum application. This decision was confirmed by the Swiss Federal Administrative Court (FAC) upon appeal. According to C's legal representative in Switzerland, FAC concluded that C's political activities were limited; either his previous conviction had been executed, or the supervision period had ended; and his social media activities were 'low-profile activities' unlikely to attract the attention of the Turkish authorities. FAC also argued that similar investigations are frequently opened in Turkey and often closed, concluding that the mere existence

[20] Audio and Video Information System used to facilitate remote judicial hearings (*Ses ve Görüntü Bilişim Sistemi*).

[21] See footnote 19.

of an investigation neither meant that an indictment would be issued nor that the criminal case would result in a conviction.

After the rejection of his appeal, C returned to Turkey in early December 2024, despite his efforts to obtain a residence through family reunification with his wife who lives in Switzerland. Although the return was officially recorded as voluntary, C stated that he felt pressured to leave Switzerland because of the legal information he had received indicating that family reunification would only be possible if he returned to Turkey. He therefore felt compelled to make this decision.

C was not immediately taken into custody upon entering Turkey. A couple of months later, however, in summer 2025, he was detained on the suspicion of making propaganda for a terrorist organisation based on social media posts allegedly made in 2023 through a Facebook account with a name similar to C's full name. During his interrogation, C stated that the social media posts had nothing to do with him and that the account in question might be an old account. By the indictment issued a few days after C was taken into custody, the competent Chief Public Prosecutor's Office formally charged C with terror propaganda. In court in early September 2025, the prosecution argued that the posts in question had been made through a publicly accessible social media account; they constituted long-term and numerous instances of organisational propaganda; they could have a guiding effect particularly on young people; and they legitimised the armed actions of the PKK/KCK/YPG. Concurring with the prosecution's opinion, the court found C guilty. He was sentenced to one year and six months' imprisonment, while the pronouncement of the verdict was deferred for a period of five years (HAGB decision[22]). In parallel, C was released from pre-trial detention. At that point, he had spent approximately two and a half months in prison.

In the interview the author conducted with C, he stated that the conditions during his time in prison were harsh: the wards were overcrowded; he was subjected to racist and nationalist insults by prison guards; and the communication rights of political prisoners were applied more restrictively than those of ordinary prisoners.

After his release, C was able to return to Switzerland by obtaining a visa following the acceptance of his family reunification application.

4 Person D

Within the scope of this case, an interview was conducted with both D and his lawyer in Turkey, and legal documents from Turkey were examined. The author was able to obtain the following information:

D is a Turkish citizen of Kurdish origin who states that he is a member of a non-prohibited political party. D states that he left Turkey in November 2022, but does not remember the exact date of his departure. While in Switzerland, multiple criminal investigations and subsequent prosecutions for insult-related offences (related to insults against the President, and other public officials) were initiated against D based on social media posts from November 2022 and the years 2023 and 2024. This raises serious freedom-of-expression concerns, particularly because the files are largely based on social media posts involving harsh political criticism, reposts and political expression.

Because the precise date of his departure is unknown to the author, it is not possible to establish whether the two posts from November 2022 preceded or followed D's departure that month, though the source of other allegations clearly post-dated it. In D's case, it is of particular importance that his participation in a lawful demonstration in Switzerland also became the subject of a criminal investigation in Turkey for

[22] See footnote 19.

'organisational propaganda' through open-source images. This shows that even low-profile political visibility in Europe can be transformed into criminal proceedings in Turkey.

In Switzerland, D applied for asylum, but his application was rejected. According to his account, D was held for 35 or 36 days in a detention centre in Zurich before the deportation was enforced in February 2026.

Upon entry into Turkey, he was taken into custody at the airport. He was later taken to a Courthouse in Istanbul and then referred to the Counter-Terrorism Branch of the Security Directorate because of the 'organisational propaganda' files. He was released following the completion of the relevant procedures; however, judicial control measures were imposed, and criminal investigations and prosecutions are still ongoing. According to D, he is required to provide his signature at the police station twice a week.

After his return to Turkey, D was tried before the competent Criminal Court of First Instance in Istanbul on the charge of insulting the President on a Twitter account, which was attributed to D. In his defence, D stated that the posts forming the subject of the indictment were not made by him, but rather some other people, who had told him that he could obtain residence by using his social media account and to whom he then gave the username and password of his Twitter account. In its judgement, the court, however, rejected this defence as "aimed at avoiding punishment."[23] Subsequently, D was convicted under Article 299 of the Turkish Penal Code[24] and sentenced to one year's imprisonment, increased by nine months on the grounds that the act had been committed publicly and that the successive offence provisions applied (a total sentence of one year and nine months). However, the court also decided to defer the pronouncement of the verdict with a five-year supervision period (HAGB decision[25]). Nonetheless, D has already been indicted in a second criminal case — this time for allegedly insulting Süleyman Soylu, the then Minister of Interior, in a social media post in mid-November 2022. According to the information provided by D, the hearing in this criminal file will be held in autumn 2026. Furthermore, D has another indictment pending against him for the alleged insult of Ali Erbaş, the President of the Directorate of Religious Affairs, again in a post published mid-November 2022. Based on the available documents, the propaganda investigation related to the demonstration in Switzerland has not led to an indictment yet. However, according to D's lawyer in Turkey, they were given oral information at the police station that an additional investigation under the Anti-Terror Law has been opened against D. He therefore fears further convictions and prison sentences. At the same time, the aforementioned HAGB decision may have a chilling effect on D's expressions and political activity, since an offence committed during the five-year supervision period may bring the deferred judgement back to court.

5 Person E

Within the scope of this case, an interview was conducted with both E and his lawyer in Turkey, and legal documents from Turkey were examined. The author was able to obtain the following information:

E left Turkey in spring 2022. He stated that he was subjected to pressure in Turkey because of his Kurdish identity and that numerous criminal files were opened not only against him but also against members of his family. He stated that he and members of his family have actively engaged in lawful activities for the recognition of the cultural and political rights of the Kurdish people. The legal documents examined during this research revealed multiple criminal proceedings against E, primarily based on social media posts and political expressions connected to Kurdish identity leading to allegations of insulting the President, a public

[23] Non-public judgment on file with the author.

[24] See footnote 17.

[25] See footnote 19.

official, or a private person, as well as disseminating propaganda for a terrorist organisation. In addition to the criminal proceedings pending against him, E states that he has serious psychological and physical health issues and that he submitted medical reports concerning these conditions to the authorities in Switzerland.

After leaving Turkey, E applied for asylum in Switzerland, but his application was rejected on two occasions. According to the Swiss authorities, E's Kurdish identity, the previous pressure on his family, his social media posts, and the possibility of criminal investigation were considered insufficient to establish an individualised and current risk. Following this, E was returned to Turkey in a moment when he, in fact, believed that his application process in Switzerland was still ongoing. Based on his account, he was brutally taken into custody by Swiss police in spring 2026, and detained for around one week without possibility to communicate with anyone and under inadequate conditions especially given his medical conditions.

Upon entry into Turkey, E was taken into custody, questioned, referred to the competent court, and subsequently released. However, the number and nature of the criminal proceedings against him expose him to a serious and continuing legal risk, including renewed custody, detention on remand, criminal punishment, and judicial control measures such as a signature duty or a travel ban. The list of criminal files against E contains twelve case entries: Six proceedings remain open, while the other six entries were closed following their joinder with ongoing proceedings. These 'closed cases' therefore do not represent six acquittals or convictions, but are still subject to judicial decision-making. The open proceedings are pending before different courts in four cities/regions across Turkey. This geographical dispersion is relevant insofar as the defence is required to follow parallel proceedings in several jurisdictions. While this does not automatically entail harsher sentences, the separation of the cases holds a cumulative procedural burden through the difficulty of coordinating parallel cases, and the possibility of separate legal consequences arising from multiple proceedings. The repeated use of social media activity as a basis for accusations and the interpretation of political expressions connected to Kurdish identity within the framework of terrorist propaganda create continuing legal uncertainty and pressure.

6 Person F

Within the scope of this case, information provided by F and F's Swiss lawyer were examined. This information is based on F's and her family's testimonies, information obtained from F's current lawyer in Turkey, and the Swiss lawyer's review of the relevant Swiss and Turkish case materials. The author was able to obtain the following information:

F is an Alevi Kurd from Turkey. At the time of her asylum proceedings in Switzerland, criminal investigations were already pending against her in Turkey concerning statements she had made on social media before leaving Turkey. These statements led to allegations of insulting the President and of making propaganda for a terrorist organisation. The evidence submitted during the asylum proceedings also indicated that the Turkish authorities were seeking F for the purpose of questioning. According to the information provided during the asylum proceedings, police officers had visited her parents' home in Turkey on three occasions while F was outside the country and had asked about her whereabouts.

F applied for asylum in Switzerland in spring 2024. Despite the criminal investigations against her and the fact that a warrant had been issued for her questioning, SEM rejected her asylum application after only two and a half months in summer 2024. Regarding the criminal proceedings in Turkey, SEM considered that some of the submitted documents were standardised and had limited probative value. It also considered that the criminal proceedings remained at an early stage. While SEM's assessment acknowledged that F would be questioned after her return, it also held that it was unclear whether she would subsequently be released or detained. In conclusion, SEM held that there were no indications to

assume a real risk of detention in the foreseeable future. It also characterised F's political profile as "very low." FAC upheld SEM's rejection in autumn 2024. Following this judgement, F returned to Turkey in July 2025.

Upon return she was immediately taken into custody at Istanbul Airport. The following day she was transferred to an interrogation centre in Istanbul. According to F's account, police officers there insulted her, behaved in a degrading manner, and refused to provide clear information concerning the procedures being carried out against her. F was subsequently questioned remotely through SEGBİS in relation to five separate criminal accusations. In addition to the criminal files concerning terrorist propaganda and insulting the President that had already been known during her asylum proceedings, she was confronted with additional accusations of which she had not previously been aware. Following her interrogation, F was detained on remand and transferred to the closed women's section of a prison campus. She remained detained for a period of nearly three months.

F described the conditions during her detention and stated that she received access to her medication with an approximate 10-day delay; the prison was severely overcrowded forcing her to take turns sleeping on the floor; she and her fellow inmates were not provided sufficient food; she was subjected to prolonged periods without food or water during hospital and court transfers; and she suffered from sleep deprivation as the lights were never turned off. According to F, she is to date mentally suffering from the psychological effects of the detention. This is also confirmed by a short medical statement.

In mid-October 2025, F was released from prison. According to the information provided, F's detention order had been issued in connection to a criminal proceeding that was later discontinued because the identical allegations were already being examined within another criminal proceeding and, therefore, could not form the subject of a second criminal court case. The remaining cases against F, however, continued.

In one of these remaining cases, two court hearings were conducted in late 2025. In her defence, F disputed responsibility for the Facebook activity forming the basis of the accusation. In December 2025, the competent court dismissed this statement, convicted F of making propaganda for a terrorist organisation, sentenced her to one year, six months, and 22 days' imprisonment and, at the same time, decided to defer the pronouncement of the judgement for a period of five years (HAGB decision[26]). In a second ongoing case, F is confronted with several allegations of insulting the President under Article 299 of the Turkish Penal Code.[27] The application of the successive offence provisions under Article 43 of the Turkish Penal Code[28] is also being considered, which would increase the sentence. According to her criminal defense lawyer in Turkey, there is a high risk of conviction, and she expects F to receive a substantial sentence in this proceeding. Furthermore, F stated that police visits to her parent's apartment, where she is currently staying, have continued after her release from prison. F also reported that her lawyer in Turkey has advised her to avoid critical political expression online. The combination of ongoing criminal proceedings, repeated police visits, and warnings concerning her online expression has significantly narrowed her sense of security and her willingness to express political views.

[26] See footnote 19.

[27] See footnote 17.

[28] See footnote 16.

7 Person G

Within the scope of this case, a detailed interview was conducted with G concerning the events she experienced after her return to Turkey. At the time of the interview, G did not have any official legal documents in her possession. She was not represented by a lawyer in Turkey and stated that she believed obtaining legal representation might work to her disadvantage. Limited cross-checking was possible through information intersecting with the second case study (Person B). This overlap provides limited contextual support, but does not independently verify all aspects of G's account. The author was able to obtain the following information:

G stated that she is a Kurdish woman, that she had been subjected to domestic violence, and that neither she nor her child felt safe in Turkey. She sought protection in Switzerland primarily on humanitarian grounds. While in Switzerland, G attended an event held at a Kurdish cultural centre, which she described as concerning women's rights and solidarity. This is relevant because G was later questioned in relation to this event by law enforcement authorities in Turkey.

According to G, shortly after her return to Turkey, police officers forced open the door to the house where she and her child were staying during an early-morning operation. She further stated that all persons inside were made to lie face down, and she was taken into custody and subjected to degrading language and insults. G stated that she was subsequently interrogated for approximately three to four hours. She was asked why she had travelled to Switzerland, and then was shown video footage and photographs from the aforementioned event she had attended in Switzerland. She stated that she was questioned about B and other women present at the event, and that the Turkish authorities seemed to categorise the event as political or even criminal. According to G, one officer told her that, if she were seen at a similar event again, he would "ruin her life." She also stated that she was warned to remain silent and avoid similar activities for a period of time, otherwise she could face further legal consequences.

No official record of this operation or questioning was available for examination. Therefore, the available information does not establish whether a formal criminal investigation is pending against G. Nevertheless, her account illustrates how contact with law enforcement and questioning upon return can have a significant chilling effect, even if there is no detention or pending conviction. Relatedly, G appeared to experience significant difficulty recounting the incident and stated that, because of continuing fear and anxiety, she rarely leaves her home unless necessary. G stated that, following this incident, she has especially avoided demonstrations, cultural events, public gatherings, or activities that could be perceived as political.

8 Limited Document Review Concerning Two Persons Who Could Not Be Reached

No direct interview could be conducted with either of the two persons addressed in this subsection, and no contact could be established with lawyers representing them in Turkey.

The documents were transmitted to the author by a lawyer in Switzerland, who had received them from a contact person in Switzerland. The Swiss lawyer stated that the documents concerned two persons who had reportedly been detained in Turkey after being removed from Switzerland, but also made clear that no further information about the cases was available to them. The reported connection between the documents, the persons' removal from Switzerland, and their subsequent detention could therefore not be independently verified through interviews or additional case materials.

For this reason, the two files are not presented as fully documented post-return case studies. They are included only as limited documentary examples. The analysis is confined to what can be established from the face of the documents.

Person H: The documents concerning H consist of a judgement of the Gaziosmanpaşa 16th Criminal Court of First Instance issued in spring 2025 and a subsequent sentence-aggregation decision issued in summer 2025. According to the judgement, H was prosecuted for insulting Süleyman Soylu and Ali Erbaş on Facebook in 2022. The court found that the posts in question were made from a Facebook account that could be attributed to him. Therefore, contrary to H's defence, he was identified as the writer of these statements. The court imposed a separate sentence of one year and eight months' imprisonment for each of the complainants. In the sentence-aggregation decision issued in summer 2025, the two sentences of one year and eight months were expressed as a total of "two years and sixteen months imprisonment," equivalent to three years and four months.

The limited conclusion that can be drawn from the documents is that social media posts attributed to a person may result in a mandatory prison sentence without deferral under the HAGB[29] framework.

Person I: The only document available concerning I is a two-page judicial control notification form issued by the Sivas Probation Directorate in May 2025. The form records the imposition of a judicial control measure under Article 109(3)(j) of the Code of Criminal Procedure[30] requiring the person in question not to leave their residence. It states that the person must remain at the residence throughout the duration of the measure and comply with the rules set out in the form. It further warns that, in the event of non-compliance, the matter may be reported to the competent court or public prosecutor and that a detention order may be issued under Article 112(1) of the Code of Criminal Procedure.[31]

The document contains neither the alleged offence, the court's reasoning, the duration of the measure, nor whether the measure was imposed immediately after the person's return to Turkey. The document also does not permit independent verification of the information transmitted through the contact person of the Swiss lawyer concerning I's removal from Switzerland and subsequent detention. The document nevertheless illustrates that restrictions on liberty imposed during criminal proceedings in Turkey are not limited to detention in a carceral institution. A prohibition of leaving the residence constitutes a severe form of judicial control amounting in practice to house arrest. The express warning that breaching the measure may result in a detention order also demonstrates the continuing coercive consequences of the measure.

[29] See footnote 19.

[30] Article 109 of the Code of Criminal Procedure on judicial control provides: "(1) In an investigation conducted in relation to an offence, where the grounds for detention specified in Article 100 exist, it may be decided to place the suspect under judicial control instead of ordering detention. (2) The provisions concerning judicial control may also be applied in cases where detention is prohibited by law. (3) Judicial control consists of subjecting the suspect to one or more of the following obligations: ... (j) Not to leave their residence."

[31] Article 112(1) of the Code of Criminal Procedure provides: "The competent judicial authority may immediately order the detention of a suspect or accused who deliberately fails to comply with the requirements of judicial control, irrespective of the length of the custodial sentence that may be imposed. Where a judgment of conviction has been delivered against the person and an appeal or appeal on points of law has been lodged against that judgment, the first-instance court which delivered the judgment may also order detention after examining the UYAP records."

IV. Common Findings and Risk Patterns Emerging from the Cases

This section assesses the common findings and risk patterns emerging from the cases examined in Section III. The aim is not to recount the individual cases, but to make visible the legal and practical consequences that arise after return to Turkey when these cases are read together.

The cases examined show that the risk arising after return to Turkey cannot be explained by a single legal measure, a single criminal file, or a single identity-related element. The picture that emerges is more complex, particularly because these elements are combined with the persons' Kurdish identity and political affiliations. When Kurdish identity, previous political or cultural activities, social media posts, investigations and prosecutions opened against the persons, participation in lawful activities in Europe, and the practice of criminal proceedings in Turkey come together, serious consequences may arise for the right to liberty and security after return.

These consequences do not arise only in the form of a final conviction or a long prison sentence. In cases such as those of B, D, and E, several criminal proceedings remain pending, and their eventual outcome may not become clear for years. The relevant risk is not limited to the possibility of new proceedings unrelated to the asylum claim; it arises from the same files and allegations that existed before return. Even before final judgements, these proceedings have already produced custody, referral to court, judicial control and prolonged legal uncertainty. If they result in convictions, further deprivation of liberty may follow. In this sense, the common picture in the cases consists of multi-layered consequences: compulsory contact with law enforcement upon or after return, including being stopped at the airport, statement-taking, and custody; referral to court; detention; judicial control; bans on leaving the country; ongoing legal uncertainty caused by open files; the prolongation of uncertainty for many years as a result of convictions or HAGB decisions; effects on family members; and the need for the person to narrow their own sphere of expression to avoid further prosecution.

The cases also strikingly show that these consequences do not arise only in relation to high-profile politicians, journalists, or well-known human rights defenders. The persons examined are mostly 'low-profile' individuals with local or limited visibility. Nevertheless, their social media posts, local political backgrounds, Kurdish cultural activities, lawful events they attended in Europe, or harsh criticism of state officials resulted in their facing serious criminal proceedings in Turkey.

The most prominent themes in the common patterns emerging from the cases are assessed below.

1 Risk Not Being Limited to the Moment of Return



The cases examined show that the risk after return to Turkey is not limited to the question of whether the person will be arrested upon entry into the country. Some persons were stopped at the airport as soon as they arrived in Turkey, taken into custody, transferred to courthouses or law enforcement units, and detained. The cases of A, B and F are particularly striking in this respect. All three came into contact with law enforcement and judicial authorities immediately after their return to Turkey. A was detained on the charge of terrorist propaganda, B on the charge of insulting the President, while F was stopped at the airport, detained on remand the following day, and remained in prison for nearly three months. By contrast, C was not subjected to any measure upon entry into Turkey. Several months later, however, he was taken into custody on the charge of terrorist propaganda, detained for approximately two and a half months, and convicted, with the pronouncement of the judgement deferred. Other investigations against him also remain pending. His

experience demonstrates that the absence of an immediate measure at the border does not exclude the later materialisation of the risks raised during an asylum procedure.

The cases of D and E also show that, particularly where there are multiple open files and arrest warrants, contact with law enforcement and judicial authorities upon return can quickly turn into practical consequences. These persons were not detained immediately upon their first entry into Turkey. However, the existence of multiple ongoing proceedings, arrest warrants, and continuing judicial measures means that the possibility of renewed custody, detention or other restrictions on liberty cannot be excluded.

For this reason, the picture shown by the cases taken together is that post-return risk cannot be measured at a single point in time. The fact that no measure is taken at the exact moment of return does not establish that pending files will not later result in custody, detention or other restrictions of liberty.

2 The Practical Effect of Open Files



In the cases examined, pending investigation and prosecution files lead to immediate contact with law enforcement and judicial authorities upon return, at the very least connected to the fact that the respective person's statement could not be taken because they were abroad, triggering the issuance of arrest warrants (*yakalama emri*[32]) or compulsory appearance orders.

The file against A concerning the charge of terrorist propaganda resulted in custody at the airport upon return to Turkey and subsequent detention. In B's case, the files that progressed while she was in Switzerland, especially the accusations connected to her 2020 publication, materialised in her being taken into custody in front of her children upon entry into Turkey, brought before a judgeship via SEGBİS, and detained. F's case provides a further example. During the Swiss asylum proceedings, it was already known that criminal investigations were pending and that F was being sought for questioning. Following her return, however, this did not result merely in the taking of a statement: She was stopped at the airport, detained on remand the following day and remained in prison for nearly three months. In the cases of D and E, the fact that their statements could not be taken in files based on social media posts became the basis for arrest warrants, and both now face numerous court proceedings.

The existence of an open criminal file against a person does not automatically amount to a serious risk in every case. Based on the author's experience, as well as the cases examined, individual characteristics, such as Kurdish identity, may cause further investigations, including social media review by a specialised police unit. If such a review subsequently exposes posts identified as critical of state officials or policies, this can increase the risk for restrictions of liberty after return.

For this reason, in this report, open files are addressed not as an abstract risk indicator on their own, but in terms of how they produce consequences within the practice of criminal justice in Turkey.

[32] See footnote 53.

3 Kurdish Identity and the Risk of Criminalisation



Kurdish identity is a central and recurring feature across the detailed case studies. It is not treated here as a mere demographic commonality, but as part of the context in which political and cultural activities, social media posts, and perceived affiliations were interpreted by the authorities. It constitutes a determining context in terms of how the files are constructed, how social media posts are interpreted, with which offence categories political and cultural activities are associated, and what questions persons face after return. This report does not argue that Kurdish identity alone automatically creates a risk. However, the case summaries show that Kurdish identity may give rise to criminalisation when it is combined with previous political activity, regional origin, expression in Kurdish, Newroz, Kurdish cultural institutions, symbols associated with the Kurdish political movement, family background, social media posts, or participation in events organised by Kurdish institutions in Europe.

In C's case, his role in a non-prohibited political party, his previous conviction for terrorist propaganda because of Newroz celebrations, and the later detention process based on social media posts show how lawful Kurdish politics and cultural-political visibility may be interpreted within criminal law in Turkey. In E's case, the expression "Kurdistan," Kurdish symbols, flag colours, victory signs, and political expressions concerning the Kurdish issue were included among the elements of the terrorist propaganda accusations. In B's case, activities connected to the Kurdish cultural sphere, which also led to her dismissal by decree-law; her publication; her links with Kurdish cultural circles; and her family's political background form part of the background to the criminal files. In A's case, too, Kurdish identity and perceived political affiliation were assessed together with the terrorist propaganda file based on social media posts.

These cases show that there is a particular risk for Kurds in relation to freedom of expression and lawful political activity. Expressions concerning the Kurdish issue, contact with Kurdish political actors, Kurdish cultural activities, public events such as Newroz, or meetings held in Kurdish institutions are often assessed in Turkey within the framework of anti-terror legislation or organisation-related accusations.[33]

The current political context is also important on this point. In 2025, statements concerning the PKK's laying down of arms or dissolution, and the establishment of a commission in the Grand National Assembly of Turkey concerning the peace process, brought the possibility of a new political process regarding the Kurdish issue onto the agenda. However, this process does not mean that the practice of criminal proceedings has changed automatically. Renewed political initiatives concerning the Kurdish question began in 2025, followed by the establishment of a parliamentary commission in August 2025. While these developments are relevant to the broader political context, there are currently no indications that the criminal provisions or judicial practices examined in this report have since ceased operating. Notably, the principal post-return law enforcement and judicial measures documented in the detailed case studies occurred after the renewed political process had begun. The cases therefore do not support treating the existence of political dialogue, in itself, as evidence that an individual risk arising from pending files, arrest warrants, or previous political activity has disappeared.

While in previous years statistics were broken down by offence type, this practice has also been abandoned. As a result, there is no concrete data showing how many of the more than 400,000 persons currently detained or convicted in Turkey are Kurdish, or how many are imprisoned because of proceedings

[33] See HRW: "Advancing Human Rights, Justice and Democracy for Kurds and All Other Communities in Türkiye", 6 November 2025, available here; also HRW: "Türkiye, Kurdish Songs and Dances Are Not Terrorist Propaganda", 15 August 2024, available here.

connected to freedom of expression. However, while the prison population in Turkey was 392,456 according to official records in 2025,[34] it reached 420,798 in May 2026.[35] Although these figures do not disclose the ethnic identity of prisoners or the offence categories connected to freedom of expression, the continuing increase in the overall prison population provides no empirical basis for assuming that the renewed political process has already produced a broader reduction in the politicised use of imprisonment.

For these reasons, current discussions concerning the peace process cannot be read as meaning that the judicial practices seen in the files examined in this report have disappeared. In relation to the persons examined, lawful political and cultural activities connected to Kurdish identity still appear as an influential context in the construction and interpretation of criminal files.

4 Social Media and Low-Profile Political Activity, or Simple Acts of Expression Through Social Media Turning Into Criminal Proceedings



In the great majority of the cases examined, social media posts or social media activity attributed to the individual in question is at the centre of the criminal files. In the files of A, C, D, E, F, and H, posts made through social media accounts or attributed to the respective person were linked to charges such as terrorist propaganda, insulting the President, insulting a public official, insulting the President of the Directorate of Religious Affairs, or insulting the Turkish nation or state institutions. A common feature in these files is that social media content is often taken out of context or incorporated wholesale into a criminal narrative. Rather than carrying out a separate analysis for each post — in terms of freedom of expression, incitement to violence, legitimising methods of force or threat, concrete danger, or intent — courts or prosecutors may construct a criminal narrative from the totality of the posts.

In the cases of A, C and F, social media posts formed the basis of the terrorist propaganda accusations. In the cases of D and E, social media posts from different dates turned into multiple insult and propaganda files. Although no direct interview could be conducted with H, that file is important in showing that social media posts may directly turn into unconditional prison sentences and a threat of enforcement.

These cases show that social media activity may turn into criminal investigations particularly in the context of the Kurdish issue, harsh criticism of state officials, photographs with opposition political figures, sharing news, resharing critical expressions from other accounts, or symbolic expressions. The determining factor is not only the visibility of the post or the public profile of the person. Low-profile persons may also become the subject of criminal investigations because of open-source review, notifications, social media monitoring, or their previous political context.

For this reason, social media activity is not considered an automatic risk factor in this report, but rather an area that may lead to consequences in conjunction with the exercise of freedom of expression, the Kurdish issue, and open criminal files in Turkey.

[34] See Aktif Haber: "Turkey, açık cezaevine dönüştü," 7 February 2025, available here.

[35] See Ministry of Justice of the Republic of Turkey: "Ceza İnfaz Kurumunda Bulunan Tutuklu/Hükümlü Mevcutları," PDF file, 4 May 2026, last accessed on 12 May 2026, available here.

5 Lawful Activities in Europe Becoming the Subject of Questioning or Investigation in Turkey



The cases also show that the risk is not limited to activities carried out before leaving Turkey. For some persons, lawful and low-profile events they attended in Switzerland became the subject of questioning or even investigation/prosecution in Turkey, as in the cases of G and B, and D respectively.

In D's case, a protest he attended in Switzerland was identified by the Turkish authorities through open-source news and video footage and became an element of a propaganda investigation. The inclusion of an image in the file in which the person in question is marked within a crowd shows that participation in a lawful demonstration in Europe may become the subject of criminal suspicion in Turkey. According to G's account, her participation in a women's rights event held at a Kurdish cultural centre in Switzerland later became the subject of police questioning after her return to Turkey. G states that she was shown photographs and footage from the event and was questioned about her relationship with B and other women present there.

Taken together, these examples indicate that the Turkish authorities' scrutiny was not confined to activities undertaken in Turkey before departure. Lawful and low-profile activities in Europe, including demonstrations, solidarity events and women's rights gatherings, were followed through open-source images, news footage, photographs or social media content and were subsequently incorporated into criminal investigations or interrogation in Turkey.

6 The Continuing Effects of Detention, HAGB and Judicial Control



The cases show that pre-trial detention, HAGB,[36] and judicial control practices operate not merely as technical criminal procedure measures, but as mechanisms that affect the person's life and sphere of expression for a long period of time. Detention occurred in the cases of A, B, C and F. A was detained for 25 days, B for 43 days, C for approximately two and a half months, and F for nearly three months. These periods cannot be seen as mere temporary procedural measures; for the individuals concerned, they entailed the deprivation of liberty in harsh prison conditions, potentially violating Article 3 of the European Convention on Human Rights (ECHR);[37] and led to the rupture of family ties, health problems, as well as psychological pressure.

In the documented expression-related cases, the duration of detention must be assessed together with the nature and potential severity of the alleged offences, the comparatively limited sentences imposed where judgements had been delivered, the predominantly documentary nature of the evidence, the absence of individualised findings concerning tampering with evidence, and the formulaic treatment of detention as necessary. These factors raise serious questions as to whether detention remained a genuinely exceptional and proportionate measure or operated as punishment in advance of final judgement.

HAGB decisions should also not be treated as showing that the risk of criminalisation and subsequent imprisonment has disappeared. In the cases of A, C, D, and F, the decisions have left the judgements pending during a five-year supervision period. A new investigation alone does not trigger the pronouncement of the deferred judgement. The relevant risk arises where a new intentional offence is

[36] See footnote 19.

[37] The prohibition of torture pursuant to Article 3 of the ECHR provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

committed during the supervision period and the statutory conditions for announcing the judgement are subsequently established. Nevertheless, in a context where accusations related to freedom of expression are applied broadly, and political and social media expression may, therefore, generate new criminal proceedings, the existence of a pending judgement may create a chilling effect on future expression and public activity.

Judicial control measures similarly create practical pressure. In D's case, the obligation to report to the police twice a week and, in B's case, the ban on leaving the country directly restrict freedom of movement and affect work and family life. In E's case, multiple ongoing proceedings and previously issued arrest warrants create a distinct but similarly continuing form of legal pressure and uncertainty. The measure of a prohibition on leaving the residence, assessed within the scope of the limited document review, also shows that judicial control measures applied outside detention may have severe consequences amounting, in practice, to house arrest.

Release, HAGB, and judicial control therefore altered the form of the restrictions documented in these cases, but did not necessarily bring them to an end. In several cases, they prolonged legal uncertainty and extended its effects into the persons' freedom of movement, family life, and sphere of expression.

7 Defence Strategies, Fear and the Need to Remove Political Context



One of the common patterns observed in the examined cases is that returned persons avoid openly acknowledging their political context or expressive activities in criminal proceedings in Turkey. This should not automatically be treated as proof of fabrication or as determinative of credibility, but as a defence strategy developed under the threat of criminal prosecution. It should also be taken into account that this may create serious psychological consequences for the persons concerned as a result of identity erosion. Some of the persons interviewed stated, when explaining this situation, that they felt a sense of shame.

In the criminal proceedings against him, A avoided explaining his departure from Turkey openly on political grounds and instead emphasised family-related, psychological, and personal reasons. B stated in the interview with the author that she had in fact written the publication that was subject to several legal interventions, but in her defence in Turkey she said that the book had been published by others using her name and that she had not written its content. D also argued in his defence that his social media account had been used by others. All three clearly stated during the interviews with the author that they were afraid of what would happen to them, as well as of being detained for an unforeseeable period of time.

In these cases, there may be differences between the persons' defences in the criminal proceedings in Turkey and the statements made during the asylum procedure or research interviews. The case files do not provide sufficient evidence to treat such differences as proof that the account given during the asylum procedure or research interview is untrue without further examination.

On the contrary, the fear that openly acknowledging political motives, expressions connected to Kurdish identity, or social media activity in Turkey may lead to more serious criminal consequences can cause individuals to remove the political context or avoid taking ownership of their actions.

This pattern is important for the assessment of the potential risk upon return. The defences made by returned persons in Turkey should not always be read as free statements made independently of pressure. The threat of criminal prosecution and the risk of detention shape defence strategies and can force persons to conceal their own political past.

8 Forms of Harm Other Than Conviction: Family, Psychological Integrity, and Freedom of Movement



The cases show that the consequences arising after return are not limited to the possibility of conviction or long-term imprisonment. Persons may face serious legal and practical consequences even before a conviction is issued or a judgement is announced.

In B's case, the children witnessed their mother being taken into custody at the airport. The documented effects on B's children demonstrate that post-return criminal proceedings may seriously affect children and family integrity, alongside the returned person. In the cases of A and C, detention and prison conditions, health problems, and difficulties in communicating with family created serious psychological effects on the persons concerned. In E's case, the accounts of the conditions of his custody during the implementation of the return procedure in Switzerland show that the return process itself may create serious psychological and physical effects. F's case similarly demonstrates the physical and psychological effects that may arise during and after detention. She reported a delay of approximately ten days in obtaining her medication, severe overcrowding, inadequate food, prolonged periods without food or water during hospital and court transfers, and serious sleep deprivation. A psychiatric-psychological report obtained after her release recorded several related symptoms.

Judicial control, signature obligations, bans on leaving the country, and measures of a prohibition on leaving the residence are also forms of harm other than conviction. These measures restrict the person's daily life, work and family relations, freedom of movement, and future plans. Even if a person is not in prison, they may still be subject to constant supervision and the threat of renewed punishment due to open files and judicial control measures.

For this reason, the harm arising in these cases cannot be measured only by the final outcome of the criminal proceedings. Custody, detention conditions, effects on family members, psychological harm, restrictions on freedom of movement, and prolonged legal uncertainty must be assessed together.

Read cumulatively, these consequences may also be relevant to the concept of "serious disadvantages" under Article 3(2) of the Swiss Asylum Act,[38] which includes measures that exert intolerable psychological pressure. Where the cumulative measures are directed at the person because of their actual or imputed political opinion, Kurdish identity, or political associations or activities, the measures' combined intensity, duration, and continuing effects may be relevant not only as restrictions arising from criminal procedure, but as serious disadvantages connected to a ground protected under Article 3(1) and (2) of the Asylum Act. This report does not seek to determine whether that threshold is met in the individual cases examined. It shows, however, that repeated contact with law enforcement, pending criminal proceedings, judicial supervision, restrictions on movement, effects on family members, and compelled self-censorship cannot be assessed only as isolated procedural events. Their cumulative intensity, duration, and impact on the individual must also be taken into account.

[38] Swiss Asylum Act of 26 June 1998 (AsylA), SR 142.31.

9 The Need for Cumulative Risk Assessment



The cases examined show that the consequences arising after return often result not from a single element, but from the combined operation of multiple elements. Kurdish identity, social media posts, previous political activity, pending investigations, arrest warrants, previous convictions, participation in lawful activities in Europe, family or social connections, HAGB,[39] judicial control, and ongoing trials create a clearer picture when assessed together.

The cases do not challenge the view that a pending investigation alone does not automatically constitute an asylum-relevant risk. They show, however, that an assessment centred principally on whether an indictment, final conviction, or unconditional prison sentence is likely may fail to capture serious disadvantages arising before that endpoint, such as police custody, detention on remand, judicial control, other restrictions on movement, the ongoing impact of HAGB judgements, repeated compulsory contact with law-enforcement authorities, its effect on family members, and compelled self-censorship.

This cumulative structure is particularly important for people with a so-called low political profile. When viewed in isolation, a low-visibility social media post, local-level political activity, participation in a women's rights event, or a previous HAGB decision may seem insignificant. However, when these elements intersect, *inter alia*, with Kurdish identity, open and successive criminal files, anti-terror legislation, the broader political context, or the repeated social media and communication scrutiny, as reflected in the documented cases, the consequences may be serious.

Therefore, the significance of the documented risks does not lie in a mechanical list of separate indicators, but in the interaction between them. The combined weight of the individual factors becomes visible through the restrictions, uncertainty, and pressure they produced within the practice of criminal justice in Turkey after return.

V. Judicial and Criminal Context in Turkey

The assessment of the legal risks that returned persons may face in Turkey cannot be made solely by looking at the wording of the relevant criminal provisions. Particularly in files of a political nature, files connected to freedom of expression, or files related to Kurdish identity and the Kurdish issue, what is often decisive is not the written legal rules themselves, but how these rules are interpreted, in which contexts they are applied, and the political conditions of the period.

For this reason, when assessing risk in relation to persons returned to Turkey, judicial independence, the practice of politicised criminal investigations, detention and judicial control, offence categories connected to freedom of expression, the non-implementation of judgements of the European Court of Human Rights, and the erosion of the rule of law in Turkey must be considered together.

1 Judicial Independence and Political Pressure

Problems concerning judicial independence in Turkey have long been raised by both international human rights organisations and Council of Europe mechanisms. Human Rights Watch (HRW) states that the executive's strong control over the media, courts, and state institutions in Turkey enables the punishment or neutralisation of persons and groups perceived as oppositional, and that tensions between high judicial

[39] See footnote 19.

bodies and allegations of corruption within the judiciary further deepen rule of law problems.[40] Amnesty International, in its 2024 assessment, also emphasises that executive interference in the judiciary has deepened, and that baseless investigations, prosecutions, and convictions against human rights defenders, journalists, opposition politicians, and other critical actors continue.[41]

One of the main structural problems concerning judicial independence is the composition and functioning of the Council of Judges and Prosecutors (HSK). The HSK has decisive powers in relation to the appointment, authorisation, promotion, discipline, and dismissal of judges and prosecutors. For this reason, the composition of the Council and its independence from the executive are at the centre of debates on judicial independence in Turkey.

Following the 2017 constitutional amendments, the structure of the HSK changed significantly. The number of Council members was reduced; the President and the Grand National Assembly of Turkey became decisive in the selection of members; and the influence of judges and prosecutors on the formation of the Council through their own professional bodies was eliminated. When the ex officio membership of the Minister of Justice and the Deputy Minister is also taken into account, the weight of the executive and the parliamentary majority in the formation of the HSK becomes clear.

Under Article 159 of the Constitution,[42] the HSK consists of thirteen members. The Minister of Justice and the Deputy Minister serve as *ex officio* members; four members are appointed by the President; and seven are elected by the Grand National Assembly. Judges and prosecutors no longer elect members of the Council through their own professional bodies. Given the HSK's extensive powers over appointments, transfers, promotion, discipline, and dismissal, this structure creates a direct institutional concern regarding the protection of judicial independence.[43]

The Venice Commission reiterated these concerns in its December 2024 opinion. It recalled that, under European standards, at least half of the members of a judicial council should be judges elected by their peers and emphasised that this is a central safeguard against political interference. In view of the HSK's broad powers and the role of the executive and parliamentary majority in the selection of its members, the Commission identified the Council's composition and election procedure as structurally relevant to judicial independence.[44]

These structural problems become more visible in criminal files of a political nature. Within the scope of PEN Norway's Turkey Indictment Project, which was supervised by the author, European jurists analysed indictments which constituted the opening documents of criminal cases. The reports published within this project draw attention to the fact that legitimate professional activities, oppositional or critical statements expressed on social media, academic work, fact-based critical news reporting, and political statements may

40 See HRW: "World Report 2025: Türkiye, Events of 2024," last accessed on 7 October 2026, available here.

41 See Amnesty International: "Türkiye: Deep Erosion of Human Rights," submission to the 49th session of the UPR working group, April-May 2025, last accessed on 12 October 2026, available here.

42 Pursuant to Article 159 of the Constitution the Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges. English translation if the Constitution available here, last accessed on 7 October 2026.

43 See Şerife Ceren Uysal: "Constitutional Amendment in Turkey: The Problem of Legitimacy and the Constitutional Dictatorship," in: juridikum 3/2017, pp. 393-403.

44 See Venice Commission: "Türkiye — Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members," CDL-AD(2024)041, 9 December 2024, available here.

be presented as criminal evidence, and that accusations may be constructed through abstract comments or interpretations detached from context.[45]

These reports show that, particularly in files where the person's expression, words, or political position lie at the centre of the alleged offence, indictments are not merely technical criminal procedure documents. In some files, indictments may also function as texts that produce political and punitive narratives; PEN Norway evaluates this function within the discussion of "censorship through law."[46]

For this reason, in relation to the risk of return to Turkey, the problem of judicial independence is not merely general background information. The way prosecutors construct criminal accusations, the way criminal judgeships of peace reason detention or judicial control decisions, and the extent to which courts conduct an independent and foreseeable assessment in files connected to freedom of expression are directly relevant to the right to liberty and security of the person.

2 Non-Implementation of ECtHR Judgements and the Council of Europe Infringement Procedure

One of the most visible indicators of the rule of law crisis in Turkey is the non-implementation of binding judgements of the European Court of Human Rights (ECtHR). The Osman Kavala and Selahattin Demirtaş judgements have symbolic importance in this respect. The Committee of Ministers of the Council of Europe has repeatedly called on the Turkish authorities to ensure the immediate release of Kavala and Demirtaş in line with the ECtHR judgements. Because of the non-implementation of the Kavala judgement,[47] the infringement procedure was initiated within the Council of Europe system; this created an extraordinary crisis in terms of Turkey's relationship with the ECHR system.

Amnesty International assesses the Kavala and Demirtaş files not only as individual human rights violations, but also as part of a broader practice of political prosecution in Turkey, in which politicians, journalists, writers, and human rights defenders are targeted for exercising their rights to freedom of expression, association, and peaceful assembly. The non-implementation of ECtHR judgements points to a broader structural problem concerning the effectiveness of domestic remedies and the functioning of judicial safeguards in such files.[48]

The data cited by Ayşe Bingöl Demir in her article dated March 2024 are striking in this regard:

> "Data from the Committee of Ministers of the Council of Europe, responsible for overseeing the implementation of Court judgments, reveals that, as of 2023, the requirements of 126 groundbreaking judgments pronounced by the Court against Turkey, each addressing structural and complex problems, remain either partially or fully unimplemented. This is again the highest number among the 46 member states of the Council. Some 332 judgments are categorised as repetitive cases because they involve violations similar to those found in these groundbreaking judgments and they are yet to

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45 See PEN Norway: "Turkey Indictment Project," Final Report 2020 (contains the study of 12 indictments), available here; Final Report 2021, (contains the study of 10 indictments), available here; Final Report 2025 (contains the study of 11 indictments), available here; Legal Report on Indictment: Nurcan Yalçın, 17 December 2025, available here; Legal Report on Indictment: Fırat Bulut, 10 December 2025, available here; Legal Report on Indictment: Ümit Büyükdağ, 18 December 2025, available here; Legal Report on Indictment: Şehriban Aslan, 11 December 2025, available here.

46 See PEN Norway: "Guidelines on Indictment Writing for Prosecutors in Turkey," December 2023, available here.

47 See Council of Europe, Department for the Execution of Judgments of the European Court of Human Rights: "Türkiye: The Committee of Ministers Reiterates Calls for the Immediate Release of Osman Kavala and Selahattin Demirtaş," 10 March 2023, available here.

48 See Amnesty International: "The Case of Kavala v. Turkey: Infringement Proceedings under Article 46(4) of the ECHR", TIGO IOR 30/2021.1490, 23 February 2021, available here.

be implemented. Among the violation judgments that remain unimplemented, meaning Turkey has not satisfied judgment requirements, are a significant number of ECtHR judgments against Turkey that concern freedom of expression. Indeed, according to the Committee's country fact sheet, Turkey has persistently failed to implement nearly 250 judgements (both groundbreaking and repetitive) regarding 'the violations of the right to freedom of expression'."[49]

The non-implementation of ECtHR judgements is important for the assessment of return risk for two reasons: Firstly, it raises serious questions as to whether domestic legal safeguards function effectively in Turkey with regards to criminal proceedings of a political nature or connected to freedom of expression. Secondly, where there is a pending investigation or prosecution against the person, the prospect that national courts will adopt an interpretation compatible with ECtHR case law and protect the freedoms guaranteed within is compromised.

This is particularly important in relation to files concerning terrorist propaganda, membership of an armed organisation, insulting the President, insulting a public official, publicly disseminating misleading information, or offences connected to assemblies and demonstrations. These offence categories often directly intersect with freedom of expression, freedom of association, and the right to peaceful assembly. Therefore, whether ECtHR case law is effectively applied by national authorities in these areas is of central importance in assessing the risks that returned persons may face in relation to their liberty and security.

3 Detention on Remand and the Problem of Arbitrariness

Although detention on remand is regulated in Turkey as an exceptional measure, in cases of a political nature it may, in practice, serve a punitive or repressive function. Human rights organisations and legal monitoring studies show that, particularly in relation to journalists, lawyers, human rights defenders, Kurdish politicians, students, and oppositional persons — whether or not they have public visibility — detention and judicial control measures may be applied on broad and abstract grounds.[50] The length of time spent in detention during the investigation and trial stages may exceed the amount of time or conditions that are compatible with the right to liberty and security.

In Turkey, conviction and detention on remand are two separate legal statuses. A convicted prisoner is a person whose conviction by a court has become final. Detention on remand, by contrast, is a procedural measure that may be applied to a person under investigation or prosecution where there is strong suspicion of guilt together with a risk of absconding or tampering with evidence and which, by its nature, should remain exceptional. For this reason, detention on remand is a form of deprivation of liberty applied before judgement and must be subject to particularly strict safeguards in terms of personal liberty.

According to official figures announced by the Ministry of Justice in 2026, as of 4 May 2026, 357,283 persons were in prison in Turkey as convicted prisoners. On the same date, 63,515 persons were in detention on remand. Accordingly, approximately 15% of the prison population in Turkey is deprived of liberty without a final conviction.[51]

Recent country information also points to serious problems arising from prison overcrowding and access to basic services. BAMF Country Report 79 on Turkey reports that, in October 2025, the Turkish prison

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49 Ayşe Bingöl Demir: "Freedom of Expression Is under threat in Turkey and around the world," PEN Norway, 22 March 2024, available here.

50 See Amnesty International: "Türkiye: Deep Erosion of Human Rights," footnote 41.

51 See Ministry of Justice of the Republic of Turkey, "Ceza İnfaz Kurumlarında Bulunan Tutuklu ve Hükümlülerin Yaş Gruplarına Göre Dağılımları 04.05.2026 Tarihi İtibarıyla," PDF file, 4 May 2026, last accessed 7 October 2025, available here.

system had a stated capacity of 304,964 places while 420,904 persons were incarcerated.[52] The report also refers to overcrowding, inadequate nutrition, and restrictions on access to health care in different Turkish prisons and detention centres. These findings are consistent with the detention conditions described in the present study, including F's account of severe overcrowding, inadequate food, and delayed access to necessary medication.

In addition to the risk of detention on remand, custody and statement-taking processes are also important for returned persons. Upon return to Turkey, if there is an arrest warrant (*yakalama emri*[53]), a compulsory appearance order (*zorla getirme kararı*[54]), or a record or instruction requiring a personal statement to be taken at the airport or border gate, the individual concerned may be forced into immediate direct contact with law enforcement units. Even when this contact does not result in detention, it may lead to consequences such as the examination of the person's digital materials, questioning about previous social media posts, questions concerning their political circles or activities in Europe, and the emergence of new investigation risks. Depending on the circumstances, such contact may also expose the person to alleged ill or degrading treatment, obstacles to access to medication, or restrictions on communication with family members or legal counsel, as documented in the case summaries presented in Section III.

In this context, judicial control measures must also be assessed separately. Measures such as a signature obligation, a ban on leaving the country, a prohibition on going to certain places, regular reporting to the police station, a prohibition of leaving the residence, or supervision throughout the court process may produce serious practical consequences even in the absence of a conviction. These measures may restrict the person's ability to leave the country again, reach a safe place, continue working or studying, maintain family life, and exercise their sphere of political expression.

For this reason, detention on remand, custody, and judicial control practices should not be seen merely as procedural measures in the assessment of return risk. Especially in files of a political nature or connected to freedom of expression, these measures may create direct and serious consequences for the right to liberty and security of the person.

4 The Practical Effect of Catalogue Offences

In Turkey, detention on remand is regulated under Article 100 of the Code of Criminal Procedure.[55] According to Article 100(1) of the Code of Criminal Procedure, two basic conditions must exist together for a detention order to be issued: concrete evidence showing the existence of strong suspicion of guilt and an additional ground for detention. The same provision states that a detention order may not be issued if it would be disproportionate in view of the importance of the matter, the expected sentence, or the

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52 See Federal Office for Migration and Refugees (BAMF): "Länderreport 79 — Türkei: Haftbedingungen," Stand 11/2025, December 2025, pp. 2, 4 and 13 *et seq.*, available here.

53 Under Article 98 of the Turkish Code of Criminal Procedure, a *yakalama emri* (arrest warrant) is an order authorising the apprehension of a suspect or accused person so that they can be brought before the competent judicial authority. It may, *inter alia*, be issued during an investigation where a suspect fails to appear following a summons or cannot be summoned, and during trial proceedings in respect of an accused person considered to be a fugitive. An arrest warrant does not in itself constitute an order for detention on remand.

54 Pursuant to Articles 145 and 146 Code of Criminal Procedure, *zorla getirme kararı* (compulsory appearance order) is an order to bring an individual before a prosecutor or judge by force, usually because they could not be reached or failed to appear for questioning. There is no single statutory measure corresponding precisely to the English expression “statement-taking order.” The expression used in the text refers descriptively to a record or instruction requiring the person's statement to be taken.

55 Article 100(1)–(2)(a) of the Code of Criminal Procedure provides that a detention order may be issued where there is concrete evidence indicating strong suspicion that an offence has been committed and a ground for detention exists. A ground for detention may be deemed to exist where there are concrete facts indicating that the suspect or accused has fled or gone into hiding, or giving rise to a suspicion that they will flee.

security measure. In this respect, detention is not the rule in criminal procedure, but an exceptional protective measure that must be applied in a proportionate manner.

Article 100(2) of the Code of Criminal Procedure separately regulates the circumstances that may be considered grounds for detention. Accordingly, a ground for detention may be deemed to exist where the suspect or accused has fled or hidden, or where there are concrete facts giving rise to the suspicion that they will flee, or where the conduct of the suspect or accused creates strong suspicion that they will destroy, conceal, or alter evidence, or attempt to put pressure on witnesses, victims, or others. Thus, within the structure of the law, detention depends not only on the seriousness of the accusation, but also on concrete evidence, the risk of absconding or tampering with evidence, and an assessment of proportionality.

Article 100(3) of the Code of Criminal Procedure regulates the list of offences referred to in practice as "catalogue offences." According to this paragraph, where there are concrete evidence-based strong grounds for suspicion that an offence listed in the provision has been committed, a ground for detention may be presumed to exist. Catalogue offences include certain serious offences under the Turkish Penal Code, including specified offences against State security and the constitutional order, as well as the offences specifically referred to in Article 7(3) of Anti-Terror Law.[56] The offence of terrorist organisation propaganda under Article 7(2) of the Anti-Terror Law[57] is not, merely by virtue of that provision, a catalogue offence under Article 100(3) of the Code of Criminal Procedure.[58] Files concerning offences expressly listed as catalogue offences, including armed organisation membership under Article 314 of the Turkish Penal Code,[59] are therefore assessed within a framework in which a ground for detention may be presumed.

However, the catalogue offence provision does not make detention automatic or mandatory. Article 100(3) of the Code of Criminal Procedure provides that, in relation to catalogue offences, "a ground for detention may be presumed to exist." For this reason, the judge is obliged in every case to assess the concrete evidence showing strong suspicion of guilt, the principle of proportionality, the sufficiency of less severe protective measures, and the concrete circumstances of the file. A catalogue offence accusation should not, on its own, constitute the justification for detention; detention — in theory — must remain an exceptional measure that may be applied only on the basis of concrete and individualised reasons.

In practice, however, there is a serious divergence between this normative framework and its actual application in criminal proceedings. Particularly in files concerning offences classified as catalogue offences, the classification may carry decisive weight in detention decisions. Grounds such as risk of absconding, the possibility of tampering with evidence, or the insufficiency of judicial control may be used

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56 Article 7(3) of the Anti-Terror Law provides that those who, fully or partially, veil their faces with the purpose to hide personal identity in a convention or demonstration which is turned into a terrorist organization propaganda shall be punished by imprisonment from three to five years. In case those who commit mentioned offences apply to force and violence, or keep or use any kind of arms, Molotov and similar explosives, inflammable or wounding materials, the lower limit of the penalty to be given cannot be less than four years.

57 See footnote 15.

58 Article 100(3)(h) of the Code of Criminal Procedure refers specifically to the offences identified in Article 7(3) of the Anti-Terror Law and does not make terrorist organisation propaganda under Article 7(2), by itself, a catalogue offence. Article 7(3) specifically criminalises concealing one's face to hide one's identity during assemblies or demonstrations that have turned into terrorist organisation propaganda, and provides for imprisonment of three to five years; see footnote 56.

59 Article 314 of the Turkish Penal Code criminalises the establishment or leadership of an armed organisation formed for the purpose of committing certain offences against State security or the constitutional order, as well as membership in such an organisation: "(1) Any person who establishes or commands an armed organisation for the purpose of committing the offences set out in parts four and five of this chapter shall be sentenced to imprisonment for a term of ten to fifteen years. (2) Any person who becomes a member of the organisation defined in paragraph 1 shall be sentenced to imprisonment for a term of five to ten years. (3) [Annulled.] (4) The other provisions relating to the offence of establishing an organisation for the purpose of committing offences shall also apply to this offence."

in general and formulaic terms, without being detailed by reference to concrete facts. As the documented cases also indicate, catalogue-offence language may sometimes be used formulaically even where the offence relied upon does not fall within Article 100(3). This may contribute to detention being treated in practice as an ordinary consequence of an investigation rather than an exceptional measure based on concrete and individualised reasons.

This divergence has particular importance for returned persons. Where an investigation concerns armed organisation membership or another offence expressly listed as a catalogue offence, it may move beyond the taking of a statement and result in liberty-restricting measures, such as stops at the airport or border gate, custody, detention, judicial control, or a ban on leaving the country. Investigations concerning terrorist organisation propaganda under Article 7(2),[60] although not automatically catalogue-offence cases, may also result in such measures in practice. This risk may arise regardless of whether the person is a high-profile political actor.

Furthermore, the use of detention and liberty-restricting measures in Turkey is not limited to catalogue offences. It is also seen that persons are taken into custody, detained, or subjected to judicial control measures in relation to accusations that are not catalogue offences, such as insulting the President, or accusations that fall directly within the sphere of freedom of expression. For this reason, the assessment of risk for returned persons cannot be reduced solely to whether the accusation is a catalogue offence. The political context of the accusation, how the file is interpreted by the prosecutor's office and the criminal judgeship of peace, the nature of the evidence, and the protective measures applied during the investigation process must be assessed together.

5 Offence Categories Connected to Freedom of Expression

In Turkey, criminal investigations connected to freedom of expression may be conducted under a wide range of offence categories. Among these, the most prominent are insulting the President under Article 299 of the Turkish Penal Code;[61] inciting the public to hatred and hostility or degrading the public under Article 216;[62] publicly disseminating misleading information under Article 217/A;[63] insulting the Turkish nation, the State, or state institutions under Article 301;[64] membership of an armed organisation under

60 See footnote 15 and 58.

61 See footnote 17.

62 Article 216 of the Turkish Penal Code provides that: "(1) Any person who publicly incites one section of the population, distinguished by social class, race, religion, sect or regional origin, to hatred or hostility against another section shall be sentenced to imprisonment for a term of one to three years, provided that such incitement gives rise to a clear and imminent danger to public safety. (2) Any person who publicly denigrates a section of the population on the grounds of differences in social class, race, religion, sect, sex or regional origin shall be sentenced to imprisonment for a term of six months to one year. (3) Any person who publicly denigrates the religious values held by a section of the population shall be sentenced to imprisonment for a term of six months to one year, provided that the act is capable of disturbing public peace."

63 Article 217/A of the Turkish Penal Code provides that: "(1) Any person who publicly disseminates false information concerning the internal or external security of the country, public order or public health, solely with the intention of creating anxiety, fear or panic among the public, in a manner capable of disturbing public peace, shall be sentenced to imprisonment for a term of one to three years. (2) Where the offender commits the offence by concealing their true identity or within the framework of the activities of an organisation, the sentence imposed under paragraph 1 shall be increased by one half."

64 See footnote 18.

Article 314;[65] organisation-related offences under Article 220;[66] and terrorist organisation propaganda under Article 7(2) of the Anti-Terror Law.[67]

The common feature of these offence categories is that they may be interpreted broadly, especially in political contexts, and may be used as tools of interference with freedom of expression. In the ECtHR's case law concerning Turkey on freedom of expression, it has also been emphasised that the broad application of anti-terror legislation to expressions that do not actually contain incitement to violence creates a chilling effect on freedom of expression. Implementation monitoring work conducted within the Council of Europe framework also notes that trials in Turkey based on anti-terror or criminal code provisions constitute disproportionate interference with freedom of expression where statements do not contain calls for violence or hatred.[68]

A similar problem exists in relation to the offence of insulting the President. Human rights organisations and freedom of expression advocates state that Article 299 of the Turkish Penal Code[69] is widely used against journalists, politicians, students, and ordinary social media users because of critical or satirical expressions.[70] In Amnesty International's 2026 assessment concerning pressure on journalists, attention was drawn to the fact that, according to Ministry of Justice statistics, tens of thousands of people were under investigation within the scope of 'insulting the President' and offences concerning the symbols of state sovereignty.

Article 299 of the Penal Code, which foresees between one to four years' imprisonment for insulting the President, and Article 301,[71] which criminalizes publicly degrading the Turkish nation or the organs of the state, are also used to silence free expression, including of journalists. Prosecutions under these articles are subject to the Minister of Justice's permission to proceed. According to Ministry of Justice statistics published in 2024, in which figures for Articles 299 and 301 are amalgamated under the rubric of 'offences against the symbols of state sovereignty and reputation of its organs,' over 55,000 people were facing investigation for 'insulting the President' and 'insulting the Turkish state.' Of these, investigations were opened against 17,895 people in 2024 alone.[72]

This data shows that accusations of insulting the President or denigrating state institutions do not create an isolated, exceptional, or merely symbolic criminal threat. These offence categories are part of a broad practice of investigation and prosecution. Moreover, the fact that these offences are not catalogue offences does not mean that there is no risk in terms of personal liberty. HRW also states that criminal insult charges are widely used to take persons into custody, prosecute, and convict them because of critical expressions.

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65 See footnote 59.

66 Article 220 of the Turkish Penal Code criminalises establishing, managing, or joining an organisation formed to commit offences (5–10 years for founders/managers, 2–5 years for members, with at least three members required), with enhanced penalties where the organisation is armed (+50%) or uses children (+50–100%, plus managers liable as perpetrators of all offences committed). Separate penalties apply for offences committed within the organisation's activities. Knowing assistance to the organisation by non-members is punished as membership (with up to a one-third reduction depending on the nature of the assistance), and propaganda legitimising or praising the organisation's violent methods is punishable by 1–3 years, increased by half if disseminated via press or media.

67 See footnote 15.

68 See European Implementation Network: "Restriction to freedom of expression: the Öner and Türk group of cases," 24 February 2020, available here.

69 See footnote 17.

70 See HRW: "Turkey: End Prosecutions for 'Insulting President'," 17 October 2018, available here; also ECtHR, *Vedat Şorli v. Turkey*, no. 42048/19, judgment of 19 October 2021.

71 See footnote 18.

72 Amnesty International: "Türkiye: End the Crackdown on Journalists," EUR 44/0957/2026, 3 May 2026, available here.

Aggregate investigation, prosecution, or conviction rates cannot substitute for an individual and cumulative assessment of return risk. Such figures combine cases at different procedural stages and involving materially different personal and legal profiles. The cases documented in this report include individual indicators such as previous convictions, multiple concurrent files, indictments, arrest warrants, actual custody or detention following return, and continuing judicial control measures. These indicators distinguish the persons concerned from a statistical average and must be assessed in their specific combination.

Moreover, the relevant harm cannot be reduced to the probability of a final conviction or an unconditional prison sentence. Custody, detention on remand, judicial control, other restrictions on freedom of movement, HAGB decisions,[73] its effects on family members, and cumulative psychological pressure may also be relevant to the assessment of "serious disadvantages" under Article 3(2) of the Swiss Asylum Act. The central question is, therefore, not whether every investigation of this kind ends in conviction, but whether the concrete combination of risk factors may expose the individual concerned to serious legal and practical consequences upon return.

Article 7(2) of the Anti-Terror Law is one of the offence categories frequently used particularly in the context of the Kurdish issue, anti-war statements, commemorative messages, news sharing, social media posts, and funeral or protest images. The application of this provision is not limited to journalists, politicians, or high-profile activists.

Social media posts have become one of the areas of application of these offence categories. News sharing, resharing, short comments, the use of symbols, harsh criticism of state officials, protest images, or political visuals may be linked in different files to accusations of insulting the President, insulting a public official, terrorist propaganda, disseminating misleading information, or denigrating state institutions. This applies not only to journalists, politicians, and high-profile activists, but also to ordinary social media users and persons with low public visibility.

The analyses conducted within the scope of PEN Norway's aforementioned Turkey Indictment Project show that legitimate expression and news-gathering activities may be taken out of context and presented as criminal evidence. This approach creates risks not only for professional journalistic activity, but also for so-called low-profile expressive practices such as ordinary social media use, political commentary, resharing, and participation in lawful meetings or events.[74]

For this reason, the existence of offence categories connected to freedom of expression does not amount to a mere theoretical criminal threat for returned persons. The person's past participation in political discourse may become the subject of an investigation after return or may be linked to existing files.

6 Criminalisation of the Kurdish Identity and Lawful Political Activity

Kurdish identity cannot be treated as an abstract element that automatically produces consequences in the assessment of return risk. However, within the current criminal justice practice in Turkey, when Kurdish identity comes together with elements such as lawful political activity, expression in Kurdish, Newroz, Kurdish cultural institutions, contact with the Kurdish political movement, family background, social media posts concerning the Kurdish issue, or participation in events organised in Kurdish circles in Europe, it may create a serious risk for an individual's personal liberty.

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[73] See footnote 19.

[74] See PEN Norway: "Turkey Indictment Project," Final Report 2025, see footnote 45.

One of the areas in which risk becomes apparent in the context of the Kurdish issue is the possibility that lawful political activities and cultural expressions may be interpreted within the framework of anti-terror legislation. Kurdish media, symbols associated with the Kurdish political movement, news sources, commemorations, funeral news, cultural or political events, and criticism of Turkey's military operations may be treated by prosecutors as evidence connected to terrorism. In PEN Norway's indictment analysis concerning Kurdish journalists, it was emphasised that the use of materials related to journalistic activity as a basis for allegations of terrorist organisation propaganda or organisational links creates serious problems in terms of freedom of expression and the right to a fair trial.[75]

This context is not limited to journalism or high-profile political activity. Newroz, Kurdish slogans, photographs with Kurdish political figures, events organised in Kurdish institutions, the expression "Kurdistan," the colours of the Kurdish flag, or political comments concerning the Kurdish issue may become part of terrorist propaganda or organisation-related accusations in prosecutorial and court documents. For this reason, lawful political or cultural activities connected to Kurdish identity create a specific area of risk within the practice of criminal proceedings in Turkey.

HRW states that the criminalisation of elected political representatives in the context of the Kurdish issue sends the message that democratic participation, peaceful opposition, and advocacy of alternative solutions to the Kurdish issue are being punished. HRW also emphasised that Abdullah Öcalan's 2025 call for ending the armed conflict should be an opportunity to end the misuse of terrorism charges in Turkey to silence government critics, politicians, journalists, lawyers, and activists.[76] This, however, has not materialized so far.

Current discussions on peace or a solution process do not mean that judicial practice has changed automatically. In its 2025 Universal Periodic Review (UPR) submission, the Human Rights Association (*İnsan Hakları Derneği*, İHD) stated that, after the local elections of 31 March 2019, trustees were appointed to 48 HDP-governed municipalities,[77] and between 3 June 2024 and 25 January 2025, further trustees were also appointed to the municipalities of Hakkâri, Esenyurt, Mardin, Batman, Halfeti, Dersim, Ovacık, Bahçesaray, and Akdeniz. In the same text, it was assessed that since 2015 the Turkish government has systematically nullified democratic election results, particularly in Kurdish regions, by appointing trustees in place of elected officials.[78]

For this reason, the current political process or peace discourse cannot be regarded as an element that removes the risk to liberty where there is an open investigation or case file, an arrest warrant, a social media review, or previous political activity concerning the person. In assessing the return risk of an individual, Kurdish identity must be considered not only as their ethnic origin, but also together with how the person's lawful political and cultural activities may be interpreted in Turkey.

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75 See PEN Norway: "Turkey Indictment Project," Final Report 2025, see footnote 45.

76 HRW: "Türkiye: Use Call to Halt Violence as Catalyst to End Rights Abuses," 28 February 2025, available here.

77 In this context, the term "trustee" (*kayyım*) refers to the practice whereby an elected mayor is removed or suspended from office and replaced by a state official appointed by the central authorities, rather than by a replacement chosen by the elected municipal council.

78 İHD: "The Kurdish Question in the Context of Human Rights in Turkey, UPR Pre-Session on Turkey," 20 February 2025, available here.

7 Why HAGB and Judicial Control Cannot be Interpreted as Risk-Mitigating Factors

In Turkey, pending investigations, HAGB decisions,[79] or judicial control measures should not automatically be interpreted as risk-mitigating factors in the assessment of return risk. Although these mechanisms may, in some cases, appear to be alternatives to detention or outcomes favourable to the person, in criminal proceedings of a political nature, investigations or cases connected to freedom of expression, or investigations or cases related to the Kurdish issue, they may create continuous supervision and uncertainty affecting the right to liberty and security.

A pending investigation may turn directly into a risk of custody, statement-taking, referral to court or detention upon return to Turkey, particularly when the person's statement could not be taken because they were abroad or when an arrest warrant has been issued against them. The fact that the investigation has not yet resulted in an indictment does not eliminate this possibility. What is important here, however, is not that every pending investigation automatically amounts to a serious risk by itself. The decisive issue is the offence category under which the investigation is conducted, the political context in which it takes place, and the practice within which it is carried out.

A similar assessment must be made with respect to HAGB. HAGB may result in the person's release from prison or in the judgement not being announced; however, it does not completely eliminate the threat of punishment. The judgement remains pending during a five-year supervision period.[80] If the person commits a new offence during the supervision period and the statutory conditions are subsequently established, the court may proceed to announce the deferred judgement. In an environment, such as in Turkey, where accusations connected to freedom of expression are applied broadly, HAGB may turn into a powerful chilling mechanism that narrows the person's space for social media use, political expression, or public activity.

Judicial control also cannot be read merely as a light alternative measure. Measures such as a signature obligation, a travel ban, the prohibition on going to certain places, or the prohibition on leaving the residence may directly affect the person's daily life, freedom of movement, work opportunities, family life and sense of security. Therefore, the phrase "released under judicial control" does not mean that the risk in terms of personal liberty has ended.

For this reason, in assessing return to Turkey, facts such as "the investigation is ongoing," "HAGB has been issued," "judicial control has been applied," or "the person is not currently detained" do not, on their own, show that the risk has disappeared. These circumstances must be assessed within the nature of the file, its political context, the person's profile, and the practice of implementation in Turkey. Neither can the formal availability or application of these mechanisms, without further examination, be treated as evidence that the judicial system operates predictably, without arbitrariness, or in accordance with rule-of-law safeguards.

8 Legal Uncertainty, Unpredictability and the Problem of Arbitrariness

In Turkey, legal uncertainty and unpredictability in files connected to freedom of expression and political activity create an important problem in terms of personal liberty. The same expression, social media post, use of a symbol, or participation in a meeting may lead to no criminal proceedings in one case and to the

[79] See footnote 19.

[80] As of 13 August 2026, the existing provisions governing HAGB remained in force. The Constitutional Court annulled the principal HAGB provisions in its judgement of 10 July 2025, with the annulment scheduled to take effect nine months after publication in the Official Gazette on 31 December 2025. Accordingly, the legal framework described in this report will require reassessment for any version finalised after 30 September 2026.

opening of an investigation in another. Where proceedings are initiated, the same conduct may also be associated with different offence categories, including insulting the President, terrorist propaganda, publicly disseminating misleading information, or insulting State institutions.

This uncertainty is reinforced by the broad and overlapping use of the offence categories discussed in Subsection V.5 above.

Legal uncertainty increases not only the possibility of prosecution, but also the possibility that the person may be deprived of liberty or that their liberty may be seriously restricted. The person cannot foresee which post, reshare, event participation, or political expression may be turned into a criminal accusation by law enforcement or prosecutorial authorities. For this reason, when the person returns to Turkey, they live not only with fear arising from already existing or known case files, but also with the fear that new — or even past — conduct in the same sphere of expression may become the subject of criminal accusations in the future.

This uncertainty also affects defence strategies. Openly acknowledging political reasons, expressions connected to Kurdish identity, or social media activities may be perceived by persons as a risk that could lead to more serious criminal consequences. For this reason, the removal of political context or the refusal to take ownership for expressive activity in criminal proceedings in Turkey should not automatically be assessed as a sign for lacking credibility, but should be interpreted within the fear and defence pressure created by the judicial practices illustrated in this report.

In this framework, legal uncertainty is not merely a technical problem of foreseeability. It creates a continuous field of pressure that limits the person's political expression, social media use, participation in assemblies and demonstrations, and cultural or political activities connected to Kurdish identity. This pressure is one of the practical consequences that must be taken into account in relation to the right to liberty and security after return.

VI. Conclusion

This expert report examines, on the basis of a limited number of well-documented cases, the legal and practical consequences faced by persons following their return or removal from Switzerland to Turkey after their asylum application had been rejected in Switzerland. The study shows that the risk of return to Turkey cannot be assessed solely on the basis of the formal stage of the criminal file, the statutory penalty attached to the alleged offence, or the person's public visibility.

The seven cases examined and the two limited documentary reviews conducted show that factors already existing before return may produce different consequences in Turkey after return. These consequences do not always take the form of long-term imprisonment immediately upon return. In some cases, the risk expressed during the asylum procedure may materialise months later, also as a result of the legal uncertainty in Turkey. For this reason, the harm that arises after return cannot be understood by focusing only on the isolated moment of return itself.

One of the main findings of the report is that low-profile persons may also face serious restrictions on liberty within the current criminal justice practice in Turkey. None of the persons portrayed here are known individuals such as politicians, journalists or human rights defenders. Nevertheless, their social media posts, political or cultural activities connected to Kurdish identity, harsh criticism of state officials, previous political associations, or lawful events they attended in Europe became the subject of criminal investigations, detention measures, or long-term judicial supervision. The accounts examined further indicate that perceived association with persons regarded by the authorities as political opponents may

itself lead to scrutiny, including questioning about third parties and the use of investigative measures extending beyond the person's own social media activity. This finding shows that an approach focusing only on categories of 'high-profile opponents' is insufficient in return assessments.

Kurdish identity and activities connected to the Kurdish issue constitute one of the common denominators of the cases examined in this report. This report is not based on the conclusion that Kurdish identity alone automatically gives rise to risk or persecution. However, criminal risk in Turkey intensifies where Kurdish identity intersects with critical social media posts, Newroz-related activities, expression in Kurdish, symbols associated with the Kurdish political movement, contact with Kurdish institutions, and previous political activities. The current political process or peace discourse does not, in itself, alter this risk profile or mean that these factors have ceased to carry criminalisation risk.

Similar caution is required in relation to HAGB, judicial control, and pending investigation files. Although these mechanisms may in some cases appear to be alternatives to detention or outcomes favourable to the person, in the cases examined they illustrate that the legal risk, in fact, has not ended, but rather has been extended over time. Measures such as the five-year supervision period, signature obligations, bans on leaving the country, a prohibition on leaving the residence, and the uncertainty created by open files may directly affect an individual's freedom of movement, family life, work opportunities, and sphere of expression. Moreover, in the current judicial context in Turkey, the possibility that further political or social media expression may generate new criminal proceedings can intensify the chilling effect created by these mechanisms and, where the relevant legal conditions are met, lead to further restrictions on liberty.

The findings of this report cannot be assessed independently of the current judicial and criminal context in Turkey. Structural problems concerning judicial independence, the non-implementation of ECtHR judgements, the broad interpretation of offence categories connected to freedom of expression, the practical effect of detention and judicial control measures, and the practice of criminalisation in the context of the Kurdish issue show that the risks returned persons may face cannot be regarded as merely theoretical or remote possibilities.

For this reason, the central issue to be assessed in files concerning return to Turkey is not only whether the person will receive a final conviction. The assessment must also include the possibility that the person may be deprived of their liberty upon or after return to Turkey, that their liberty may be seriously restricted, that they may remain under long-term judicial supervision, that they may live in legal uncertainty because of open criminal files, and that they may be forced to narrow their sphere of expression.

Assessed cumulatively, prolonged legal uncertainty, repeated contact with law enforcement, restrictions on movement, effects on family life and compelled self-censorship is also relevant for the assessment of serious disadvantages, including measures exerting intolerable psychological pressure, under Article 3(2) of the Swiss Asylum Act.

At the time this report was being finalised, three further cases were brought to the attention of the author — two before the extended version of this report was shared with SEM (J, K), a third (L) after that:

In August 2026, person J, whose asylum application in Switzerland had been rejected, was removed from Switzerland to Turkey with her two children. She was immediately taken into custody upon arrival and, approximately one day later, detained on remand and transferred to a prison in Istanbul together with her 15-month-old child. Her legal representative in Switzerland had previously informed the Swiss authorities that criminal investigations and proceedings were pending against her in Turkey and that she faced a risk of detention upon return. According to subsequent information provided by her lawyer in Turkey, the proceedings leading to her detention concern a case in which a number of social media posts have been

combined as the basis of the criminal accusation. At the time of finalisation, efforts to establish direct contact with J's family and obtain the relevant legal documents were still ongoing.

In addition, the author received information that K was taken into custody in Turkey because of five separate arrest warrants. K was released after the statements required in the relevant files had been completed and was not detained on remand. However, the related criminal proceedings remain ongoing and continue to create legal uncertainty and the possibility of further measures including arrest.

Furthermore, L was forcefully returned from Switzerland to Turkey in September 2026. According to L's legal representative in Turkey, L was arrested immediately upon arrival and has been detained since.

These three cases are not included among the nine cases analysed in this report, as sufficient direct contact and documentation had not been completed in due time. They are recorded here only as recent developments. Nevertheless, they further underline the importance of continued post-return monitoring and assessing the practical consequences of open criminal files rather than treating release after questioning, or the early procedural stage of a case, as sufficient in itself to exclude continuing risk.

The cases examined serve as an important illustration regarding the consequences that may arise after a return decision by Switzerland. The findings show that, in the cases of individuals in similar situations, a concrete, contextual, and on-the-ground-practice-oriented assessment is required.

In conclusion, this study shows that the risk of return to Turkey must be assessed not as an abstract legal possibility, but through the concrete restrictions on liberty that can arise within the current practice of criminal proceedings in Turkey. This case study both makes visible the effects of return decisions on the right to liberty and security, and demonstrates the need for careful, case-by-case assessments of similar cases. Furthermore, it highlights the importance of systematic monitoring and documentation of return practices to Turkey, in order to inform the re-evaluation of related assessment guidelines.

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