

CRITICAL ARGUMENTS ABOUT READMISSION PRACTICES AND POLICIES BETWEEN EU AND TURKEY*

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Abstract

This paper aims to analyze the historical background and the recent developments concerning the Readmission Agreement and free visa negotiations between Turkey and the European Union through the official documents of Ministry for Foreign Affairs and the European Union. As a third view, the policies of Turkey and the EU will be critically assessed from the perspectives of the international governmental organizations and non-governmental actors, namely the United Nations, Human Rights Watch and Amnesty International through their regular reports. Within the scope of the analyses, it is aimed to discuss the critical arguments on political approaches and security policies of the European Union and Turkey on migration control and elaborate why both sides preferred to solve the migration crisis through regional, and specifically, bilateral instruments.

Keywords: *European Union, Turkey, migration control, Readmission Agreement, Readmission Deal*

AB ve Türkiye Arasındaki Geri Kabul Uygulamaları ve Politikaları Üzerine Eleştirel Tartışmalar

Öz

Bu çalışma Türkiye ve Avrupa Birliği arasındaki Geri Kabul Anlaşması ve vize muafiyeti görüşmelerine ilişkin tarihsel arkaplanı ve güncel gelişmeleri, Dışişleri Bakanlığı ve Avrupa Birliği'nin resmi belgelerine dayanarak analiz etmeyi

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amaçlamaktadır. Türkiye ve Avrupa Birliği'nin politikaları, üçüncü bir göz olarak uluslararası hükümet ve hükümet dışı örgütler perspektifinden, özellikle Birleşmiş Milletler, İnsan Hakları İzleme Örgütü ve Uluslararası Af Örgütü'nün düzenli olarak yayınlamakta olduğu raporlar aracılığıyla eleştirel bir yaklaşımla değerlendirilecektir. Bu çerçevede, Türkiye ve Avrupa Birliği'nin göç kontrolünü sağlamak için sergilediği siyasi yaklaşımlar ve güvenlik politikaları üzerine kritik öneme sahip argümanlar tartışılacak; tarafların göç krizini neden bölgesel ve özellikle iki taraflı araçlarla çözmeyi tercih ettiği değerlendirilecektir.

Anahtar Kelimeler: Avrupa Birliği, Türkiye, Göç Kontrolü, Geri Kabul Antlaşması, Geri Kabul Mutabakatı

Introduction

The European Union (EU) regards readmission agreements as an important regional strategy to control migration flows to the EU, and to secure European territory. So far, the EU has signed 17 agreements with the third countries to externalize migration control. Turkey is one of these 17 states with which, since 2012, the EU has initiated regional strategies to find common grounds on the migration control. The Syrian crisis has led to massive migration flows into European countries, with unforeseen consequences.

Turkey is a transit country for irregular migrants¹ from Asia, the Middle East and Africa to Europe. According to Frontex, the border between Turkey and Greece is the most commonly used border by irregular migrants,² making Turkey a strategic actor in the EU migration policy. Turkey is also an EU candidate country since the Helsinki Summit in 1999. These two factors have encouraged the two sides to cooperate over stemming migration flows. The EU decided that to generate a solution to the crisis, negotiations with Turkey should be accelerated. The two parties signed a Readmission Agreement in 2013 and a Readmission Deal in 2016³. Within the respect of

¹ The paper confirms that it is inaccurate and discriminative to use the term 'illegal migration'. (Please see the details: https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/09/TerminologyLeaflet_EN_PICUM.pdf). In place of this, the term 'irregular migration' defined by International Organization for Migration is used to explain "the movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination". Please see the details; <https://www.iom.int/key-migration-terms>.

² "Migratory Map", FRONTEX, 2019, Accessed on November 20, 2019, <https://frontex.europa.eu/along-eu-borders/migratory-map/>

³ Readmission Agreement between Turkey and the EU was signed in 2013. The tragic developments in Syria and its reflections in Europe especially in 2015 have caused the EU to review the Readmission Agreement; thus Readmission Deal was put into effect in 2016.

the Agreement, irregular Turkish migrants and third country nationals in EU countries who had transited Turkey would be returned to Turkey.⁴ With the Deal in 2016, Greece and Turkey were selected as the key states to return irregular migrants to their countries through Turkey. The Agreement envisages free visa dialogue between Turkey and the EU countries. The EU has introduced conditionality for the dialogue, asking Turkey to adjust policies according to the 72 criteria determined by the European Commission. Turkey has met most of the criteria, except for 5, which have important implications for its security interests. Specifically, the Anti-Terror Law, the Criminal Code and the Internet Law have not complied with the EU acquis, due to the precautionary measures taken after the July 2016 coup attempt in Turkey.

This paper argues that political and security interests of Turkey and the EU have some critical points, such as candidacy process, migration flows and visa requirements. Turkey's candidacy process has been much longer than expected; Turkish citizens (service providers) have the legal right to enter the EU countries without visa requirements, however, since the 1973 Additional Protocol to the Association Agreement dated 1963, they are not accepted by the European authorities.⁵ The 2016 Readmission Deal aimed to resolve this conflict point between the parties and since that time Turkey has made efforts to meet the 72 criteria in visa liberalization roadmap demanded by the EU.

In this research, it is aimed to analyze the historical background and the latest developments concerning, firstly, the Readmission Deal agreed in 2016 as a very considerable regional initiative, and secondly, the visa liberalization negotiations. Even though the EU and Turkey have regarded these agreements as significant tools on migration control, international governmental and nongovernmental organizations have taken critical positions.⁶ In order to elaborate the relevance of this Deal to the international

In the migration literature, 'EU-Turkey Statement' is also used to define Readmission Deal. However, throughout the paper, 'Readmission Deal' is used in parallel with the usages by international governmental and nongovernmental organizations.

⁴ Alexander Bürgin, "European Commission's Agency meets Ankara's Agenda: Why Turkey is Ready for a Readmission Agreement, *Journal of European Public Policy*, 19, no: 6, (2012): 883.

⁵ "Türkiye-AB Vize Muafiyeti Süreci ve Geri Kabul Anlaşması Hakkında Temel Sorular ve Yanıtları", Türkiye Cumhuriyeti Dışişleri Bakanlığı, Türkiye Cumhuriyeti Avrupa Birliği Başkanlığı, 2013, Accessed on November 20, 2019, <https://www.ab.gov.tr/49332.html>.

⁶ Ahmet İçduygu and Damla B. Aksel, "Two-to-Tango in Migration Diplomacy: Negotiating Readmission Agreement between the EU and Turkey", *European Journal of Migration and Law* 16 (2014): 351.

humanitarian norms, the paper has employed document analysis. With this qualitative method, the analysis covers not only the official documents of the EU and Turkey, but also the perspectives of international governmental and non-governmental actors such as the United Nations (UN)/United Nations High Commissioner for Refugees (UNHCR), Human Rights Watch (HRW) and Amnesty International (AI). Despite the criticisms of international community, controversial issues, such as ‘safe country’, ‘the principle of nonrefoulment’, ‘geographic limitation’, ‘temporary protection’, and ‘one for one scheme’ are discussed emphasising the degree of the overlap between the policies of the two parties. On the other side, the EU and Turkey have conflicting interests on some of the 72 criteria for visa liberalization. Therefore it is also aimed to focus on the political developments as significant indicator of conflicting interests, which have resulted in the suspension of the Readmission Agreement by Turkey in July 2019. In this regard, it is argued that the EU has preferred to manage the migration crisis through bilateral agreements, rather than more costly cooperative actions between the EU member states. Therefore, the paper assumes that the EU and Turkey have been following interest-based migration policies, which can be diagnosed through an understanding of the overlapping and conflicting points during the negotiations over the Readmission Agreement between 2011 and 2020.

I. Migration Policy of the EU and Readmission Agreements

The EU has long developed a migration policy because of the preference for irregular and regular migrants to work and live in Europe. After the Second World War, none of the industrialized European countries experienced civil war, and peace in the region has been maintained and strengthened through the European integration project, with the exception of the humanitarian crises in the Balkans. According to the data provided by World Bank (2019), GDP per capita in the EU was 36,546.4 US dollars in 2018.⁷ The EU has the lowest rate of poverty in G20 states.⁸ These political and economic conditions have made the EU a target for migrants in recent decades. The EU countries are among the signatories of 1951 Geneva Convention and 1967 The Protocol Relating to the Status of Refugees. In

⁷ “GDP per capita (current US\$) - Poland, Greece, Portugal, Germany, European Union”, World Bank, 2019, Accessed on December 6, 2019, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=PL-GR-PT-DE-EU>

⁸ “The EU in the World-living Conditions”, Eurostat, 2018, Accessed on December 6, 2019, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=The_EU_in_the_world_-_living_conditions

Article 1(A) Paragraph 2 of Geneva Convention, ‘refugee’ is defined as a person who has a

“well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

Based on the principles of those legal rules, one of the most important steps in developing an EU migration policy has been 1985 Schengen Agreement, which provided for the free movement of persons in Europe. The decisive step towards a common migration policy in the European Community (EC) was the 1990 Dublin Convention, which came into force in 1997. This Convention, called Dublin I, identified standards for assessing the asylum applications of the asylum-seekers.⁹ The 1992 Maastricht Treaty transformed the EC into a Union, and was an important step to construct a migration and asylum policy. Policies on migration and asylum were further developed with the Amsterdam Treaty in 1999. Thus the EU has initiated to develop a European Common Asylum System, which was agreed in the Tampere European Council in 1999.

In 2000, European Asylum Dactyloscopy Database (EURODAC) was established to ascertain asylum-seekers’ identities via recognition of the fingerprints. The ‘Temporary Protection Directive’ was agreed by the Council of the EU, in 2001 in order to avoid repeating humanitarian crises, such as the ones in the ex-Yugoslavian republics in the 1990s. This directive provided one year’s protection for the multitude of asylum-seekers in the EU countries. Resulting from the Hague Summit in 2003 was a plan for migration policy aiming to strengthen the asylum systems of countries of origin and transit countries, combat with irregular migration, implement resettlement programs and improve border security. In order to fill the gaps in the Dublin I Directive, a new directive, Dublin II, was agreed in 2003. According to this directive, the responsibility of scrutinizing the asylum-seekers’ documents was left to the country of application. This, however, caused burdens on the EU border countries, and the EU has been criticized

⁹ Yusuf Furkan Şen and Gözde Özkorul, “Türkiye-Avrupa Birliği İlişkilerinde Yeni Bir Eşik: Sığınmacı Krizi Bağlamında Bir Değerlendirme” *Göç Araştırmaları Dergisi (The Journal of Migration Studies)* 2, no 2 (2016): 98.

for failing to share responsibilities over irregular migrants. As a security-based measure, FRONTEX was established in 2005 to protect its borders. In order to develop a common system for the member states on migration and asylum, the establishment of European Asylum Support Office (EASO) was agreed in 2010.¹⁰

Despite the abovementioned efforts, the EU was not able to extend its focus beyond member states with a coast on the Mediterranean Sea (Greece and Italy) and neighboring countries, and has externalized the migration control.¹¹ The Tampere Summit in 1999 was a turning point, after which the EU began to sign numerous readmission agreements with different countries to stop migration influx at European borders, and to return irregular migrants to their countries of origin. As part of the plan, costs, such as financial resources and technical support for the third countries, were calculated and provisions were made accordingly.¹² In 2009, with the Treaty of Lisbon, the EU was authorized to sign readmission agreements.¹³ Since 2011, the EU has increased initiatives for new readmission agreements to minimize the impact of the Syrian civil war on EU countries. However in 2015, the migration influx to EU countries increased unexpectedly and dramatically. In order to manage this crisis, the EU prepared an action plan on 20 April 2015. This plan had five main aims: to increase the budget and the capacity of the operations to enhance border control in the Mediterranean; to capture the sea vessels of human traffickers; to use FRONTEX and EUROPOL to catch the traffickers; to fingerprint all irregular migrants arriving Europe; and, finally, to sign readmission agreements with third countries to repatriate irregular migrants.¹⁴

The European Agenda on Migration, published by the Commission in May 2015, stressed that the EU must implement some policies concerning relocation, resettlement, refoulment and readmission, and also cooperate with countries of origin and transit countries.¹⁵ In the Article 78/1 of Treaty

¹⁰ Şen and Özkorul, “Türkiye-Avrupa Birliği”, 100.

¹¹ Charles De Marcilly and Angéline Garde, “The EU-Turkey Agreement and Its Implications”, *Fondation Robert Schuman Policy Paper, European Issues*, no 396 (2016): 1.

¹² İçduygu and Aksel, “Two-to-Tango”, 340.

¹³ İlke Göçmen, “Türkiye ile Avrupa Birliği Arasındaki Geri Kabul Anlaşmasının Hukuki Yönden Analizi”, *Ankara Avrupa Çalışmaları Dergisi (Ankara Review of European Studies)* 13, no: 2 (2015): 26.

¹⁴ “European Commission Makes Progress on Agenda on Migration”, European Commission, May 27, 2015, Brussels, Accessed on November 20, 2019, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5039.

¹⁵ European Council Presidency Conclusions on Migration, EUCO 22/15, Brussels, June 26, 2015, Accessed on February 21, 2020, <http://data.consilium.europa.eu/doc/document/ST-22-2015-INIT/en/pdf>

of Lisbon, it is also stressed that the rights of asylum-seekers and refugees would be strongly prioritized by the EU. The Commission suggested the resettlement of the migrants from Greece and Italy to the other EU countries.¹⁶ Additionally, the Commission invited Greece and Italy to act in solidarity with regard to the Article 78/3 in the Treaty of Lisbon:

“In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament”.

Although the member states have been invited to act in solidarity, and the EU norms protecting the third country nationals are emphasized by the EU elites, the EU countries have failed to find a commonly-accepted solution to the migration crisis since 2015. Despite initiatives to generate solidarity in Europe, Hungary, Slovakia, Slovenia, Czech Republic and Romania all vetoed quotas for the admission of irregular migrants, after Slovakia and Hungary started an annulment action to the European Court of Justice to halt the quota system. The EU, while using the discourse of ‘European solidarity’, has in practice externalized the migration crisis through third countries like Turkey.¹⁷ The developments during the migration crisis have shown that, the Central and Eastern European countries in particular lack motivation to follow the migration policy of the EU, and have a flawed solidarity principle. Accordingly, the EU has tried to solve the crisis with the countries of origin, transit or neighbour countries. At this point, readmission agreements have gained great importance for the EU, and became a priority instrument in its foreign policy.¹⁸ 17 readmission agreements have already been signed by the EU to control migration flows.¹⁹ These allow the EU countries to return irregular migrants to the countries of

¹⁶ “European Commission Makes Progress.”

¹⁷ Beken Saatçiođlu, “AB’nin Mülteci Krizi: Normlar-Çıkarlar Dikotomisi Üzerinden AB’yi Yeniden Deđerlendirmek”. In *Türkiye-AB İlişkilerinde Yeni Bir Konu: Mülteci Sorunu ve Türkiye-AB İşbirliği*, eds. Yaprak Gülcan, Sedef Akgüngör, Yeşim Kuştepe, (İstanbul: İktisadi Kalkınma Vakfı Yayınları, No: 293, 2017): 233.

¹⁸ “CFSP Report on Our Priorities in 2018”, Council of the European Union, Brussels, 2018, Accessed November 20, 2019, <http://data.consilium.europa.eu/doc/document/ST-10766-2018-INIT/en/pdf>.

¹⁹ “Migration and Home Affairs Return and Readmission”, European Commission, Accessed on November 20, 2019, https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en.

origin through countries with which the EU has agreements, or countries through which those people have recently transited.²⁰

The EU has conducted readmission agreements in step with visa liberalisation processes. Through this instrument, the EU aims to secure its borders and return irregular migrants to ‘safe’ countries. Those agreements seem to act as the EU’s condition for providing visa facilities for the signatory countries; if the states harmonize their migration policy with the EU, visa exemption will be provided.²¹ The EU has instrumentalized visa liberalization with readmission agreements in order to manage the migration influx; however, both these agreements and FRONTEX policies have violated the rights of irregular migrants to be granted refugee status, and have thus condemned them either to unsafe conditions, or to be killed.

II. EU-Turkey Readmission Agreement (2013) and Deal (2016)

The EU and Turkey have started to negotiate on a readmission agreement in 2005. In this respect, the readmission agreement between the parties came onto the agenda, not because of the Syrian humanitarian crisis starting in 2011, but because of Turkey’s geographical position on the irregular migrant route from the countries such as Afghanistan, Iraq and Iran. Turkey is regarded as a transit country for migrants to Europe, and a very strategic actor, and since 1999, a candidate country of the EU. Nevertheless, Turkey-EU relations have been negatively influenced by many problems, such as Cyprus issue, derogations for Turkey on full membership, and political unwillingness on both sides. Those problems have led to the absence of Turkey from the EU summits for a decade. Therefore, the 2015 Brussels Summit, to which Turkey was invited, opened a new door in bilateral relations. At this summit, it was agreed to accelerate Turkey’s accession negotiations, to organize new summits, to open new negotiation chapters, and to fulfill the criteria for visa liberalization.²²

On 16 December 2013, ‘The Readmission of Persons Residing without Authorization between the EU and Turkey’ was signed, and starting a dialogue for visa liberalization. This international agreement has the force of law for both parties.²³ The readmission agreement is based on the reciprocity principle; migrants in Turkey or any EU member country, except for Ireland

²⁰ “Türkiye-AB Vize Muafiyeti.”

²¹ “Türkiye-AB Vize Muafiyeti.”

²² Şen and Özkorul, “Türkiye-Avrupa Birliği”, 95.

²³ Göçmen, “Türkiye ile Avrupa Birliği”, 23.

and Denmark, must be returned to the country of origin within the frame of rules in the agreement.²⁴ It does not encompass legal Turkish residents and workers in the EU countries. It is only regularized for the irregular Turkish migrants and third country nationals in the EU.²⁵ Although the agreement was adjusted to come into effect in 2017, the Joint Readmission Committee, established with EU-Turkey Readmission Agreement, agreed to bring forward the date of effect of the agreement to 2016 due to the Syrian crisis and its enormous impact on irregular migration.²⁶ However, the Committee has no power to amend the articles in the agreement. Only the parties, the EU and Turkey, as the signatories of the agreement, can do this.²⁷ Following this new development, a Readmission Deal between the EU and Turkey was agreed on 18 March 2016. Within the framework of the Deal, the parties agreed on the following: the ‘one for one scheme’ for Syrian migrants only; the EU’s financial support to Turkey (6 billion Euros); opening new negotiation chapters, acceleration of full membership efforts, refreshment of the customs union agreement, and visa exemptions for Turkish citizens.²⁸

The Readmission Agreement between the EU and Turkey is related with Visa Exemption Dialogue. In order to allow the free movement of its citizens, Turkey has to fulfill the 72 criteria, determined by the Council of the EU, related to migration and border control, fundamental rights, document security, public order and security, the terror law, the fight against corruption and international protection.²⁹ In 2016, Turkey harmonized its document security and data protection policies with the European standards via the biometric passports.³⁰ Currently, only 5 of the 72 criteria remain to be harmonized with the EU law.³¹ However, the European Commission reported that Turkey has neither put into practice the recommendations of the EU in 2016 and 2018, nor made any further progress with the Anti-

²⁴ Nuray Ekşi, “Readmission Agreement between the European Union and Turkey: A Chain of Mistakes”. In *International Community and Refugees: Responsibilities, Possibilities, Human Rights and Violations*, (İstanbul: Amnesty International Turkey Publications, 2016): 157.

²⁵ “Türkiye-AB Vize Muafiyeti.”

²⁶ Şen and Özkorul, “Türkiye-Avrupa Birliği”, 106.

²⁷ Ekşi, “Readmission Agreement”, 163.

²⁸ “2016 EU-Turkey Statement”, European Council, March 18, 2016, Accessed on November 20, 2019, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

²⁹ “Türkiye-AB Vize Muafiyeti.”

³⁰ De Marcilly and Garde, “The EU-Turkey”, 4.

³¹ “Türkiye’nin 5 kriteri tamamlamasını bekliyoruz”, *Milliyet*, May 4, 2016, Accessed November 20, 2019, <http://www.milliyet.com.tr/dunya/turkiye-nin-5-kriteri-tamamlamasini-bekliyoruz-2239297>.

Terror Law, the Criminal Code or the Internet Law.³² The security policies and legislative practices following the military coup attempt in 2016 have had significant role in the noncompliance with the European standards, specifically on the definition of terrorism.³³ Turkey has been criticized by the EU for its wide definition of terrorism, which led to the imprisonments of journalists and opponents of the government.³⁴

In order to accelerate the negotiations in the visa liberalisation process, Turkey has made some reforms in the scope of the 24th negotiation chapter (Justice, Freedom and Security). The Settlement Law and 1994 Migration Regulation had previously been the only juridical references on migration.³⁵ The ‘Law on Foreigners and International Protection’, which came into force in 2014, was therefore a significant turning point for the protection of the rights of international migrants in Turkey. The Law provided for international standards as the basis for nonrefoulement principle, application procedures for refugee status, rights and obligations of the applicants.³⁶ ‘Directorate General of Migration Management (DGMM)’ was established under Turkish Ministry of Interior with the mission of “*endeavouring to settle the acts and actions of all foreigners, who apply for international protection, who are victims of human trafficking and who are trying to harmonize with Turkey, by developing people-oriented policies*”.³⁷ The Law on Foreigners and International Protection has provided ‘temporary protection status’ for the Syrians inside the country. Due to the open door policy for the irregular Syrian migrants, the number with ‘temporary protection status’ reached approximately 3.7 million in October 2019.³⁸

The relations between Turkey and the EU have been impacted by political factors such as the failed military coup and its aftermath, the Cyprus issue, terrorist organizations such as ISIS, FETÖ and PKK, and different

³² Turkey 2019 Report, European Commission, SWD(2019) 220 final, Brussels, (May 29, 2019): 32, 44, Accessed on January 27, 2020, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

³³ Seçil Paçacı Elitok, “Three Years on: An Evaluation of the EU-Turkey Refugee Deal”, *MiReKoC Working Papers* (2019): 4.

³⁴ De Marcilly and Garde, “The EU-Turkey”, 5.

³⁵ İçduygu and Aksel, “Two-to-Tango”, 352.

³⁶ Alexander Bürgin and Derya Aşıkoğlu, “Turkey’s New Asylum Law: a Case of EU Influence”, *Journal of Balkan and Near Eastern Studies* (2015): 2.

³⁷ Directorate General of Migration Management Mission, Accessed November 20, 2019, <https://en.goc.gov.tr/mission> (Accessed on 27.01.2020).

³⁸ “Syrians with Temporary Protection”, Turkish Ministry of Interior Directorate General of Migration Management, October 10, 2019, Accessed on November 20, 2019, www.goc.gov.tr.

interpretations of freedom of thought, the role of the media etc. Turkey has demanded the extradition the members of the terrorist organization -FETÖ- from Greece after the failed coup conducted by the organization in 2016. However, when Greek authorities declared that those people would have to be judged in Greek courts, Turkey decided to suspend the Readmission Agreement with Greece in July 2019. The Readmission Agreement, signed in 2001, was a significant contribution to the control the migratory flows from these transit countries. The current developments have led the Union to abandon the existing migration regime and suspend cooperation with Turkey, including the candidacy process.

Another important development in the same year was the EU's reaction to Turkey's gas drilling operations in the Mediterranean Sea. The Council of the EU gave notice that the EU would impose sanctions over Turkey unless drilling operations were paused. In response, Turkey suspended the Readmission Agreement with the EU in July 2019. It was elucidated by the Turkish Ministry for Foreign Affairs that there was a further reason to suspend the agreement: the reluctance of the EU to put into practice the visa-free regime.³⁹ The European Commission has been the authority to allocate 6 billion Euros to Turkey under the 'EU Facility for Refugees in Turkey' for projects conducted by the Turkish authorities. So far, 2.4 billion Euros have been allocated to Turkey.⁴⁰ On this topic, Erdenir asserts that Turkey has conducted significant projects to support Syrian migrants; however the complexity of the EU bureaucratic processes through the Instrument for Pre-Accession Assistance has delayed the funding to the projects.⁴¹ From this viewpoint, it can be argued that the EU has in fact assigned totally 6 billion Euros to Turkey, as promised in the Deal, but delays have occurred because the funding mechanism requires a detailed and relatively long process.

The relations between Turkey and the EU have been influenced by ongoing political and security developments. These recent developments indicate both sides seem to be reluctant to solve the migration crisis, which accelerated with the Syrian civil war. Since 2015, bargaining over migration policies has dominated relations.⁴² The EU decision on sanctions and

³⁹ "Çavuşoğlu: Geri Kabul Anlaşması'nı askıya aldık", *Deutsche Welle*, July 22, 2019, Accessed November 20, 2019, <https://www.dw.com/tr/%C3%A7avu%C5%9Fo%C4%9Flu-geri-kabul-anla%C5%9Fmas%C4%B1n%C4%B1-ask%C4%B1ya-ald%C4%B1k/a-49699277>.

⁴⁰ "European Civil Protection and Humanitarian Aid Operations", European Commission, 2019, Accessed on November 20, 2019, https://ec.europa.eu/echo/where/europe/turkey_en.

⁴¹ Interview with Assoc. Prof. Dr. Burak Erdenir, May 20, 2020.

⁴² İçduygu and Aksel, "Two-to-Tango", 360.

Turkey's suspension of the Readmission Agreement can be explained by conflicting arguments outweighing the overlapping ones.

III. Analysis on Controversial Arguments Regarding the EU-Turkey Readmission Deal

The Readmission Agreement in 2013 and the Readmission Deal in 2016 pose some questions in the minds of international community members. Whether those agreements conform to the international refugee law is debated in the literature. After the implementation of the Deal, it is true that the number of irregular migrants perishing in the Aegean Sea decreased from 434 in 2016 to 62 in 2017,⁴³ however, the migrants' rights based on the international norms remain unprotected, and have been instrumentalized for political and security interests of the regional powers.

In order to shed light on the rights of irregular migrants, the implementation of the international agreements and controversial arguments on the ongoing policies, an analysis on those rights and related critical concepts seem necessary. In this respect, an analysis is made of the reports and documents of selected international governmental and nongovernmental organizations: UNHCR, HRW and AI.

The pivotal criticism of the UNHCR has been on the Readmission Deal itself. UNHCR argues that the EU and Turkey should agree on legal instruments in order to find a solution to the migration crisis. On this point, Filippo Grandi, the 11th UN High Commissioner for Refugees said: "*Our point to both Turkey and the European Union, and, in fact, to the international community, is that legal pathways for admission are very powerful alternative to dangerous journeys*".⁴⁴ AI considered the Deal as a "*shameful stain on the collective conscience of Europe*" since the EU leaders preferred not to implement international obligations on protecting basic human rights.⁴⁵ HRW also strongly opposed 'deals' between the states on migratory issues, and declared that the EU should guarantee the

⁴³ Turkey 2018 Progress Report, European Commission 2018, Accessed on November 20, 2019, <https://www.ab.gov.tr/siteimages/kapbtblolar/20180417-turkey-report.pdf>.

⁴⁴ Laetitia Markakis, "UN Calls for More Help to Syrian Refugees", *Euranet Plus News Agency*, March 30, 2016, Accessed February 4, 2020, <https://euranetplus-inside.eu/un-calls-for-more-help-to-syrians-refugees/>

⁴⁵ "EU-Turkey Deal: A shameful stain on the collective conscience of Europe", Amnesty International, March 17, 2017, Accessed on May 21, 2020, <https://www.amnesty.org/en/latest/news/2017/03/eu-turkey-deal-a-shameful-stain-on-the-collective-conscience-of-europe/>

protection of human rights in readmission agreements, especially on the return of third country nationals to transit countries.⁴⁶ UNHCR has drawn attention to the gathering points, or hotspots, in Greece, and discontinued its support for the “*transfer of migrants*” in Greece to these locations, which have turned into “*detention camps*” after the Readmission Deal. Boris Cheshirkov, spokesperson for the UNHCR on Lesbos said:

“Previously, arrivals were coming through usually in the morning, going to the registration process, spending one or maybe two nights inside Moria and then departing towards the main land. That is no longer possible as everyone is held until there is a final decision on their future. ... Those that arrived on Sunday, when the deal came into effect, they are still there and the UNHCR, in principle is opposed to mandatory detention”⁴⁷

Hotspots in Greece were established in 2015 after the decision by the European Council to manage the migration flows to Europe. However this decision has been one of the temporary solutions of the EU to the crisis.⁴⁸ Erdenir agrees with this argument, stating that “*EU fails by finding only temporary solutions to the permanent crises*”.⁴⁹ Hotspots in Greece and the Readmission Deal with Turkey can be regarded as two of those temporary solutions. Unilateral options preferred by the EU member states have resulted in great burdens on Greece. Money and Lockheart argue that, in order to avoid the costs of a common asylum system, the states take bilateral measures with various states.⁵⁰ To manage the migration crisis, Readmission Deal with Turkey has been the best option in order not to avoid the challenge of finding common ground among the EU member states.

Regarding the EU-Turkey Readmission Deal, the greatest controversies have centered upon the concepts such as ‘safe third country’, ‘geographic limitation’ for refugees, ‘nonrefoulement principle’, ‘temporary protection’ and ‘one for one scheme’. The 1951 Geneva Convention brought rights for

⁴⁶ “Towards an Effective and Principled EU Migration Policy”, Human Rights Watch, June 18, 2018, Accessed on November 20, 2019, <https://www.hrw.org/news/2018/06/18/towards-effective-and-principled-eu-migration-policy>

⁴⁷ Laetitia Markakis, “Bumpy Kick-Off for EU-Turkey Migration Deal”, *Euranet Plus News Agency*, March 29, 2016, Accessed on February 4, 2020, <https://euranetplus-inside.eu/bumpy-kick-off-for-eu-turkey-migration-deal/>

⁴⁸ Christina Velentza, “The Greek Response to the Refugee Crisis in Eastern Mediterranean (The Period of 2015-2016): An Overview”, *MiReKoc Working Papers*, 12 (2018): 5.

⁴⁹ Interview with Assoc. Prof. Dr. Burak Erdenir, May 20, 2020.

⁵⁰ Jeannette Money and Sarah P. Lockheart, *Migration Crises and the Structure of International Cooperation*, (Athens: The University of Georgia Press), 2018, 86.

the protection of migrants fleeing persecution, and state that they should be resettled not in their intended destination states, but the “*first safe country*” that they arrive at. The EU member states agreed on this principle, as signatories of 1951 Geneva Convention.

The EU’s definition of ‘safe country’ accords with that of UNHCR, as can be seen in the following passage:

“... on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict”.⁵¹

‘Nonrefoulement’ is also very critical principle in elaborating the concept of ‘safe country’ and the Readmission Deal. According to the Article 33(1) of the 1951 Geneva Convention, “*no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion*”. The article above also stresses the responsibilities of states which do not provide asylum status for migrants. After the Readmission Deal, Greek Asylum Appeal Committees refused to accept Turkey as a ‘safe third country’. In this regard, according to the Greek authorities, resettling asylum-seekers in Turkey would be unsafe and in violation to the ‘principle of nonrefoulement’. Reversing this action, the European Commission has added Turkey to the EU list of safe countries. Consequently, Greek authorities changed their positions with the amendments in the asylum law of Greece,⁵² showing that the EU has had a great impact on the changes in Greek legislation with strategic needs in migration policy. The recent approach of the EU has been regarded as “*outsourcing responsibility*”. On the basis of the ‘New York Declaration for Refugees and Migrants’ in 2016, the EU countries have embraced the global call by the UN General Assembly for the protection of asylum-seekers and

⁵¹ EU Asylum Procedures Directive, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing international Protection (Recast), Accessed on February 19, 2020, <https://easo.europa.eu/sites/default/files/public/Dve-2013-32-Asylum-Procedures.pdf>

⁵² “Q&A: Why the EU-Turkey Migration Deal is no Blueprint”, Human Rights Watch, November 14, 2016, Accessed on November 20, 2019, <https://www.hrw.org/news/2016/11/14/qa-why-eu-turkey-migration-deal-no-blueprint>.

refugees. HRW asserts that Turkey needs to be financially supported by international funding mechanisms in order to protect human rights of all Syrians within its borders. EASO and Greece have considerable responsibilities to welcome all asylum-seeking Syrian people.⁵³ It is now crucial to reformulate Dublin Regulation in order to fairly share the responsibility in migration policies. Moreover, the reform on the Regulation should ensure the abandoning of the imposition of “*mandatory admissibility or accelerated procedures based on safe country concepts*”.⁵⁴

According to UNHCR, HRW, AI and many international human rights organizations, the EU and Turkey are wrong to call Turkey as a ‘safe country’, since Syrians cannot be granted refugee status there. There is criticism of EU countries and Turkey over the deportation of irregular migrants back from Greece to Turkey, and not protecting the rights of asylum-seekers and refugees, although both sides are signatories of 1951 Geneva Convention and 1967 Protocol.⁵⁵ HRW emphasizes that “*only the countries that have ratified without limitations and effectively implement 1951 Refugee Convention should be included on any list of safe third countries*”.⁵⁶

Turkey has a ‘geographic limitation’ on 1951 Geneva Convention and 1967 The Protocol on the Legal Status of Refugees. In accordance with this, Turkey has recognized the refugee status only for the asylum-seekers from the Council of Europe member countries.⁵⁷ Therefore, Turkey does not provide refugee status for its Syrian migrants. Turkey’s legal arrangements granted Syrian migrants ‘temporary protection status’ by 2014, granting access to free health care and education for Syrian children and youth.⁵⁸ This is not a permanent solution for the socio-economic problems of Syrians in Turkey. However, it should be noted that those under temporary protection have the right to a work permit and Turkish citizenship if they meet the criteria in the law. Despite these benefits, as asserted by AI, ‘temporary

⁵³ “EU: Don’t Send Syrians Back to Turkey, Human Rights Watch”, June 20, 2016, Accessed on May 21, 2020, <https://www.hrw.org/news/2016/06/20/eu-dont-send-syrians-back-turkey>

⁵⁴ “Towards an Effective.”

⁵⁵ Kim Rygiel, Feyzi Baban and Suzan Ilcan, “The Syrian Refugee Crisis: The EU-Turkey ‘Deal’ and Temporary Protection”, *Global Social Policy* 16, no 3 (2016): 316

⁵⁶ “Towards an Effective.”

⁵⁷ “Turkey”, UNHCR Global Appeal, 2009, Accessed on November 20, 2019, <https://www.unhcr.org/publications/fundraising/474ac8e60/unhcr-global-appeal-2008-2009-turkey.html>.

⁵⁸ “Greece: Highest Court Fails Asylum Seekers”, Human Rights Watch, September 27, 2017, Accessed on November 20, 2019, <https://www.refworld.org/docid/59cba6174.html>.

protection status’, applied exclusively to the Syrian migrants, is not a solution to the more general problem of irregular migrants in Turkey.⁵⁹ Additionally, even though the EU and Turkey have stated that they prioritized the ‘nonrefoulment principle’, the irregular migrants have no opportunity to seek asylum or refugee status since they are quickly sent back to Turkey.

Despite denials by the Turkish authorities, HRW argued that, in 2018, Turkey suspended registration of Syrian migrants in nine cities bordering Syria, as well as in İstanbul. It is argued that this has resulted with rise in people smuggling, and the suspension of health care and education facilities for the new Syrian migrants in those cities. HRW has also criticized the EU’s silence over those developments, and has urged the EU and Turkey to allow registration of Syrians, and to protect their basic human rights.⁶⁰

HRW and AI criticize the voluntary repatriation forms that Syrian migrants in Turkey have been forced to sign, especially with the year 2019. They also emphasized that many Syrians complained to the İstanbul Bar Association over police pressure to sign. The organizations argue that these acts are out of line with the nonrefoulment principle; Ministry of Interior in Turkey denied this, declaring that only voluntary returns are allowed by the authorities.⁶¹

The ‘one for one scheme’ in the Readmission Deal is criticized by all three organisations for ignoring the humanitarian needs of Syrian migrants. The scheme aims to transfer one Syrian migrant currently living Turkey to the EU member countries in exchange for every Syrian who is returned from Greece to Turkey.⁶² According to HRW, the sheme has been practiced in order to “*punish the one returned for attempting to seek asylum irregularly*

⁵⁹ Kondylia Gogou, “The EU-Turkey Deal: Europe’s Year of Shame”, Amnesty International, March 20, 2017, Accessed on November 20, 2019, <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>

⁶⁰ “Turkey Stops Registering Syrian Asylum Seekers”, Human Rights Watch, July 16, 2018, Accessed May 21, 2020, <https://www.hrw.org/news/2018/07/16/turkey-stops-registering-syrian-asylum-seekers>.

⁶¹ Gerry Simpson, “Repatriation of Syrians in Turkey Needs EU Action”, July 11, 2019, Accessed on May 19, 2020, <https://www.hrw.org/news/2019/11/07/repatriation-syrians-turkey-needs-eu-action>

⁶² “Greece: Message for European Leaders Beamed onto Acropolis on Anniversary of EU-Turkey Deal”, Amnesty International, March 18, 2019, Accessed November 20, 2019, <https://www.amnesty.org/en/latest/news/2019/03/greece-message-for-european-leaders-beamed-onto-acropolis-on-anniversary-of-eu-turkey-deal/>

and to reward another for sitting quietly and waiting”.⁶³ From the perspective of international law protecting the rights of refugees, the scheme has a discriminative approach for non-Syrians because Syrians have the opportunity to change their country of residence, unlike migrants from different nationalities.⁶⁴

After the suspension of the Readmission Agreement in July 2019 and Turkey’s decision to open borders for migrants in February 2020, the established regime needs to be replaced. However, the EU countries were not able to follow a united policy over the new arrivals. For instance, Greece suspended the access of asylum-seekers in March 1, 2020. Many asylum-seekers at the Greek border were exposed to the violence of “*police, army and special forces*”.⁶⁵ AI criticized these developments as follows:

“What we are seeing now at Turkey’s land and sea borders with the EU is that people seeking asylum are once again being used as bargaining chips in a deadly political game, a predictable consequence of the EU-Turkey deal”.⁶⁶

The statements above by HRW, UNHCR and AI have emphasized the failures of the Readmission Deal and of the parties in handling the crises. Recently, Turkey closed the border due to the pandemic in March 2020, but thousands of migrants remain in unhealthy conditions in camps on Greek islands.⁶⁷ Luxembourg agreed to accept a group of unaccompanied migrant children to the country. Germany, France, Portugal, Finland, Lithuania, Croatia and Ireland have also pledged to allow the children to relocate to their countries. In an open letter to the EU governments, HRW, AI and several organizations drew attention to the 1752 unaccompanied children, and the urgent need to relocate them to safe countries in Europe.⁶⁸

⁶³ “Q&A: Why the EU-Turkey.”

⁶⁴ Sergio Carrera and Roberto Cortinovis, “The EU’s Role in Implementing the UN Global Compact on Refugees”, *CEPS Paper in Liberty and Security in Europe*, no 2018-04 (2019): 4.

⁶⁵ “Greece: Violence Against Asylum Seekers at Border”, Human Rights Watch, March 17, 2020, Accessed on May 21, 2020, <https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border>

⁶⁶ “Turkey/EU: Refugees must not pay the price in political game”, Amnesty International, February 28, 2020, Accessed on May 21, 2020, <https://www.amnesty.org/en/latest/news/2020/02/turkeyeu-refugees-must-not-pay-the-price-in-political-game/>

⁶⁷ “Türkiye Avrupa’ya açtığı sınırları koronavirüs nedeniyle kapatıyor”, *Deutsche Welle*, March 18, 2020. Accessed May 21, 2020, www.amp.dw.com

⁶⁸ Open letter to European governments, Immediately honour commitments to relocate unaccompanied children from the Greek islands, April 3, 2020, Athens, 1, Accessed May 21, 2020, www.hrw.com

When considering these controversial issues, and also the new political developments in 2019 and 2020, it seems necessary for the EU and Turkey to develop an international agreement in place of a bilateral agreement, and to seek a broader approach in the region, in order to find a long-term, functional solution to the migration crisis.

Conclusion

The EU-Turkey Readmission Agreement has been regarded as one of the most important regional initiatives on migration crisis since 2011. The instrumentalization of the crisis based on the parties' political and security calculations has been debated by academia, international lawyers, and international governmental and nongovernmental organizations. In the light of the assumptions and the research, it can be concluded that while the Agreement is a significant step in overcoming the migration crisis, and an opportunity for Turkey to benefit from a free visa regime, it does not offer an ethical solution to the problems of irregular migrants. The parties of the Readmission Agreement and the Readmission Deal occasionally followed a common policy when the national and the EU interests overlapped. These overlapping interests allowed Turkey and the EU to cooperate on solutions to the migration crisis and historical problems. Because of the parties preferred to concentrate on regional and bilateral plans, the EU, as a regional power, failed to implement a common asylum system between 2011 and 2020, and failed to find a comprehensive solution to the crisis in the borders of Europe by protecting its cosmopolitan values. As an EU candidate and a geostrategic transit country, Turkey, overburdened with the migration crisis, has not been sufficiently supported by EU in sharing this burden, resulting in many human rights challenges for Syrians. The last nine years have seen no real changes in the positions of irregular migrants, especially for the Syrians in the region.

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