

Evaluation of Readmission Agreements between the EU and Turkey as Conflict of Interest

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Abstract

Following the refugee crisis that started in 2015, the EU requested Turkey to implement the agreement adequately. In accordance with the Joint Action Plan adopted on 29 November 2015 as a result of negotiations, readmission agreement started to be fully implemented on 1 June 2016. The visa dialogue between the two parties, which was carried out depending on this agreement and a road map, was thus accelerated.

This study, which is about the Turkey-EU Readmission Agreement and the visa dialogue, evaluates the stages of the two processes, the scope of the agreement and roadmap, the EU's expectations from Turkey, and Turkey's steps and makes discussions predictions of implementations.

Keywords: readmission agreement, Turkey, the EU, refugees

Introduction

The relations between Turkey and the EU, which have drawn a fluctuating graphic for the last ten years, gained a different dimension with the Readmission Agreement (RAA) signed in late 2013 and the visa dialogue process initiated. Thus, a relationship plane was formed between the two parties outside the membership negotiations, and many steps were taken to fulfil mutual commitments. The fact that Europe faced a major refugee crisis in 2015 made the readmission and visa liberalisation processes a critical item on the political agenda. At the Turkey-EU summit held on 29 November 2015, it was decided to accelerate these two processes. As a result of the updates made at the summits held in March 2016, it was agreed that the full implementation of the Readmission Agreement would begin on 1 June 2016 and that Turkish citizens would be granted visa-free travel on the same date.

The Readmission Agreement that Turkey signed with the EU and the visa liberalisation offered to Turkish citizens in return provided significant benefits to both parties but also contained some uncertainties and risks. There are different opinions on the applicability of the Readmission Agreement in the face of intense waves of migration towards Europe, whether it covers refugees or not, and also about the long-term risks for Turkey of putting the agreement into practice for third-country citizens. Although the political rapprochement between the EU and Turkey after the refugee crisis has increased the expectations that visa liberalisation will

be implemented in the short term, the uncertainty about how the visa dialogue process will end has not completely disappeared.

Methodology

Secondary analysis is used in the article, which includes a review of the literature, articles, academic publications, and government publications. Secondary analysis of extremely high-quality qualitative work provides benefits. Such a study can improve context knowledge by presenting a range of perspectives on key issues, validating and opposing viewpoints, emphasizing common themes of the given content, and highlighting literature gaps. All secondary data from other documents was used to better understand the subject under consideration.

1. Conceptual Framework

1.1 Readmission Agreement and Dialogue Mechanisms of the European Union

Since the 1990s, the EU has been developing various mechanisms to keep immigration under control. The first major step was taken for the common visa regime by signing the Schengen Agreement on 14 June 1985 among some member states. The framework of the common visa and border security policies was drawn in the Schengen Agreement signed in 1990 on the agreement's implementation. In this agreement, it was decided that the parties to the agreement should determine a common visa policy and that third-country nationals can enter the Schengen area with a uniform visa. It was agreed that the border controls in the Schengen area should also be carried out as a common policy and that no party country should make any changes in this without the approval of the others. It was stated that if a third country citizen comes to the Schengen area without a valid visa, the carrier airlines and shipping companies would be held responsible, and the carrier companies were asked to take the necessary measures in this regard (Özcan, 2005).

With the expansion of the Schengen area over time and its borders moving to the east, the EU has accelerated its technical and financial support to neighbouring countries in the fields of illegal migration and border management. The primary purpose here is to carry out the supervision and control to be established on the migration movements as far away from the EU as possible and even to put the responsibility on this issue to other states. On the other hand, the generous asylum opportunities provided by Western European countries are one of the factors that encourage migration to Europe (Castles et al., 2013).

Another of the EU's strategies to combat irregular migration is readmission agreements (RAAs). In short, the RAA is an agreement that provides for a country to readmit people illegally present in another country into its territory. These persons may be nationals or stateless persons of the receiving country, or they may be third-country nationals who have unlawfully

transferred from the territory of this country to the country in which they reside. Since the mid-1990s, when the EU established a common return procedure, it has proposed readmission arrangements to various countries and signed bilateral RAAs with 18 countries (The European Council, 2021).

The RAA is a risky agreement in terms of potential costs for emigrant and transit countries. Today, since the main destination of irregular migration is Europe, these agreements impose responsibilities on the other side rather than the EU. Therefore, the EU offers some visa facilities to the countries with which it has entered into negotiations for the RAA in return for the signing and proper implementation of the agreement. The content and roadmap of visa facilities are determined specifically for each country. For example, the citizens of some countries that have signed the RAA have been provided with facilities such as shortening the procedures and procedures for Schengen visa applications, reducing the application fee, and granting multiple entry right to some people. Currently, there are visa facilitation agreements between the EU and Ukraine, Russia, Georgia, Armenia, Azerbaijan and Cape Verde (Refworld, 2016).

The EU has abolished short-stay visas with some countries with which it has signed the RAA. For example, following the entry into force of the RAAs, the EU granted visa-free travel to Serbia, Montenegro and Macedonia in 2009, Albania and Bosnia-Herzegovina in 2010, and Moldova in 2014. Having signed separate readmission agreements with the EU, Ukraine and Georgia, as well as the member states that recognise it, met the criteria for visa liberalisation, and the European Commission published its recommendations for the abolition of visas with these three countries in the first half of 2016. As a result of the votes to be held in the Council and the Parliament, it is expected that the visa exemption of the said countries in the Schengen area will come into effect. With Belarus, another country within the EU's Eastern Partnership scope, the RAA and visa liberalisation processes are carried out simultaneously.

The EU's visa liberalisation dialogue with a country depends on the signing and implementation of the readmission agreement with that country, as well as a roadmap that includes the reforms that the country in question must carry out. The details of the reforms discussed in the roadmap under the main headings such as document security, fight against irregular migration, border management, public order, public safety, foreign relations, and fundamental rights vary from country to country. EU experts carefully examine the steps taken by the governments in line with the roadmap, and accordingly, positive or negative opinions on visa liberalisation are conveyed to the Commission. The Commission recommends abolishing visas to the European Parliament and the European Council if satisfied with the reforms and implementations.

If the Parliament and the Council accept the proposal, visa liberalisation becomes law. While the absolute majority is required in the voting in the Parliament, a qualified majority in the Council is needed, that is, a number of affirmative votes to represent at least 55 per cent of the member states and at least 65 per cent of the EU population. Since the United Kingdom and Ireland, which do not adopt the Schengen visa regime, do not vote in this voting, the required rates for the qualified majority are calculated to exclude these two countries.

If the Parliament does not accept the proposal, the proposal is sent to the Council again, and after the Council's opinions are received, it goes to the Parliament for the second time. If the parliament accepts this version of it, the proposal becomes law; if it rejects, the process ends negatively. If the Parliament proposes changes on the proposal, it is sent to the Council, and if the Council finds these changes appropriate, the process is again positive. If there are points where the Council disagrees, the draft is finalised in a reconciliation commission formed by the Commission, Council and Parliament members.

1.2 Readmission Agreement of the European Union and Turkey

In the early 2000s, the EU brought the signing of a RAA with Turkey to the agenda. After the EU Council accepted the negotiation directives on this issue on 28 November 2002, the European Commission presented the agreement proposal to Turkey on 10 March 2005, and the negotiations between the two parties on the proposal started on 27 May 2005. After four rounds in about a year and a half, the negotiations were frozen due to the same opinions and resumed in 2009. The negotiations on the new draft text submitted by the EU to Turkey on 17 December 2009 have progressed positively. On 21 June 2012, the European Council representatives and Turkey's representatives initialled the text of the agreement in Brussels. On the same day, the Council invited the European Commission to enter into a dialogue with Turkey on visa liberalisation. Although this authorisation was given to the Commission, the EU expected Turkey to sign the RAA before the visa liberalisation process started. After Turkey did not sign the agreement for more than a year, the Council accepted the opening of the visa liberalisation to negotiations in order for Turkey to soften its stance, even though it stated that visa liberalisation would be evaluated with a "gradual and long-term perspective" when the agreement was initialled. After months of negotiations, a roadmap for visa liberalisation was agreed upon. Finally, on 16 December 2013, with the arrival of EU Interior Commissioner Cecilia Malmström in Ankara, the RAA was signed between the EU and Turkey. The dialogue process for visa liberalisation was officially started with the agreement's text signed together with the agreement.

It is understood that the main reason why the EU agreed to negotiate visa liberalisation with Turkey in the face of the signing of the RAA was to prevent immigrants from crossing into Europe illegally through Turkey. As one of the main routes of irregular migration to Europe,

Turkey's cooperation with the EU in border security and controls by signing the RAA will be an important measure to protect Europe against irregular migration; The EU has agreed to negotiate visa liberalisation in the face of Turkey's persistent stance. In addition, when the agreement was signed, a period of three years was given by the EU for Turkey, which did not have sufficient readmission capacity yet, to increase its readmission capacity and to sign readmission agreements with third countries.

The Turkey-EU Readmission Agreement officially entered into force in October 2014, following the approval of the Turkish Grand National Assembly on 25 June 2014.

While the RAA will only cover Turkish citizens, stateless persons and third-country nationals with bilateral readmission agreements with Turkey, it is foreseen that the readmission of other third-country nationals will start from 1 October 2017. However, with the intensification of irregular migration to Europe since mid-2015, the two sides agreed to change this calendar.

1.2.1 29 November 2015 Turkey-EU Summit

While Turkey put the RAA into effect, irregular migration to European countries, primarily from Syria and from various parts of Asia and Africa, started to increase unexpectedly. The uncertainty of when this migration wave will end has led the EU to develop cooperation with neighbouring countries on ensuring border security and preventing irregular migration. In this context, the EU has proposed a Joint Action Plan to Turkey, one of the most critical countries for stopping irregular migration, strengthening political relations, and accelerating reforms in the management of irregular migration and border security in return for some incentives. The negotiations between the two sides resulted in the agreement reached at the Turkey-EU summit held in Brussels on 29 November 2015, and it was decided to activate the Joint Action Plan. Accordingly, the two sides declared that they would act in coordination on issues such as ensuring border security, preventing human smuggling and fighting terrorism. While Turkey re-sets the implementation date of the RAA as 1 June 2016 for third-country nationals, the EU has committed to provide Turkey with the financial support of 3 billion Euros to be used in capacity building and to meet the needs of irregular migrants in Turkey and undertakes to provide technical assistance when necessary. The calendar of the visa dialogue, which is a process indexed to the full implementation of the RAA, was thus delayed. It is aimed to start taking steps to abolish the short-stay visas applied by the EU to Turkish citizens in 2016 and to complete the process by October "if the requirements in the roadmap are met". At the summit, it was also decided that Turkey's full membership negotiations should be accelerated with the opening of new chapters and that the two sides would be in constant communication with regular high-level summits and dialogue mechanisms.

With these decisions, while the cooperation between the EU and Turkey on border security and migration management issues is tried to be accelerated and intensified, the

burden-sharing between the two parties becomes more concrete. It is expected that the solidarity to be strengthened on these issues, which are described as "common challenges" faced by the two sides, will also contribute positively to the political, economic and strategic fields (İçduygu, 2014).

After the November 29 summit, the government of the Republic of Turkey stepped up its efforts to fulfil the reforms required for visa liberalisation. Immediate completion of some issues in the visa roadmap was targeted in the 2016 action plan of the 64th Government published on 10 December 2015. The Reform Action Group, which met on 11 December 2015 under the chairmanship of Prime Minister Ahmet Davutoğlu, set the target for visa liberalisation to come into effect in October 2016 and announced that the steps expected from Turkey would be taken rapidly in this direction. In the meantime, legislative changes that regulations could make were carried out quickly. For example, with the regulation that entered into force on January 15, 2016, foreigners under temporary protection have been granted the right to apply for a work permit.

1.2.2 March 2016 Turkey-EU Reconciliation

Unable to find a solution to the refugee crisis among themselves, EU countries have sought new measures to control irregular migration in the time that will pass with Turkey until the RAA comes into force. Through Turkey's positive attitude towards common burden-sharing, several important decisions were agreed upon at the Turkey-EU summit held in Brussels on 7 March 2016 (İçduygu, 2016).

Following the announcement of the memorandum, the government of the Republic of Turkey has accelerated its efforts to implement the necessary reforms until 4 May 2016, when the Commission will publish the evaluation report, taking into account the visa roadmap evaluation report published by the European Commission on 4 March 2016. In the report published on this date, the Commission, concluding that Turkey satisfies the criteria in the roadmap sufficiently, recommended the abolition of visas to the Council and Parliament.

Turkey-EU relations have been impacted by ongoing political and security developments. These latest developments indicate that both parties appear hesitant to resolve the migration crisis exacerbated by the Syrian civil war. Negotiations over immigration policies have dominated relations since 2015 (İçduygu & Aksel, 2014). For example; the EU's response to Turkey's gas drilling operations in the Mediterranean. The European Council stated that if drilling activities are not interrupted, the EU will impose sanctions on Turkey. In response, Turkey suspended the Readmission Agreement with the EU in July 2019. The Turkish Ministry of Foreign Affairs announced that there is another reason for the suspension of the agreement: the EU's reluctance to implement the visa-free regime (DW, 2019).

2. Readmission Agreement and Its Content

There is a five-year statute of limitations for the extradition of third-country nationals and stateless persons who have entered the EU via Turkey but can be identified by "unconfirmed presumptions". Therefore, readmission requests will not be made for those who left Turkey five years or more ago. There is no statute of limitations for those who can be documented to have passed through Turkey.

Upon the identification of the person eligible for readmission from third-country nationals and stateless persons, the requesting country will apply to the Turkish authorities within six months, and the Turkish authorities will respond to this application within 5 to 60 days.

After the request is approved, the person's return will be completed within three months. On the other hand, those caught immediately after crossing the border illegally can be sent back with an accelerated three-day procedure.

According to the RAA, persons who meet the following conditions will not be extradited to Turkey. Those who do not have a visa to Turkey and only use the road to Turkey for airport transfer have obtained a visa or residence permit from an EU member country. Those who have entered an EU country that does not have a visa requirement for them. Turkey will bear the costs of accommodating these persons in Turkey and send them back to their country if they are third-country nationals (Article 16).

The RAA signed between Turkey, and the EU does not include the United Kingdom, Ireland and Denmark, and non-EU Schengen countries (Iceland, Norway, Switzerland and Liechtenstein), which prefer to stay out of the EU Lisbon Treaty in the areas of freedom, security and justice. In the legislatures it has put on its visa roadmap, Turkey has stated that if the mentioned countries apply visa exemption to Turkish citizens, it will apply the RAA towards these countries (Duyan, 2014).

Conclusion

The readmission Agreement has different meanings for the EU and Turkey. From the perspective of the EU, the Readmission Agreement is a routine agreement that has been negotiated with many countries since the early 2000s. Still, today it is seen as a critical mechanism for controlling the refugee crisis, which has reached severe dimensions. For Turkey, the agreement has two central importance.

First, the agreement has an accelerating effect in accelerating legal and institutional reforms on border and migration management and making practices efficient at international standards. Secondly, due to the fact that the Readmission Agreement is carried out together with the visa dialogue, it will be possible to abolish the tourist visas applied by the EU to Turkish citizens as a result of Turkey's enactment of the agreement. Turkey's expectation in this

direction has been a source of encouragement for the rapid and severe implementation of the Readmission Agreement.

With the RAA, the principles, rules and legal infrastructure related to the readmission of immigrants and asylum seekers between Turkey and EU member states have been regulated. The issue that might be a problem here is that Turkey faces readmission requests rather than EU member states. In particular, as of October 1, 2017, the readmission of nationals from other countries rather than their own will increase Turkey's economic and social burden.

The number of refugees in Turkey is announced as 4.5 million. This number will increase further with the implementation of the RAA. Syrians in Turkey are not considered refugees in accordance with their domestic legislation, with the reservation Turkey made to the Geneva Convention in 1951. In accordance with this legislation, temporary protection has been provided to Syrians. In this respect, they do not have refugee rights. In addition, due to their temporary nature, no legal and social studies have been conducted on their adaptation to living spaces. For this reason, asylum seekers who are readmitted will not have a permanent status and will be deprived of many fundamental rights. While this situation is known; The fact that the EU made such an agreement to send these refugees back to Turkey, which is an international humanitarian tragedy, reveals the EU's approach that prioritises itself and ignores Turkey's interests.

Although the RAA between Turkey and the EU seems to contain mutual rights and obligations for both parties, it was actually made to create a legal basis for the return of asylum seekers to Turkey, which the European countries did not want. In the face of this situation, considering the 4.5 million asylum seekers under temporary protection status in Turkey, it is not possible for Turkey to bear this burden alone. On the other hand, this attitude of the EU constitutes a violation of the jus cogens rules in international law. This situation may pose a problem in terms of international law in the future.

In the face of the situation as mentioned above, the first thing Turkey should do is to prepare the immigration reception centres as they should be, to determine the conditions for the admission of immigrants who came to the country with the RAA and to sign readmission agreements with the sending countries and share the responsibility of this burden.

On the one hand, the EU's erratic approach and reluctance make every 'normalization' a foreign policy success in terms of applying the established standards regarding the EU to Turkey; on the other hand, it increases distrust in the Turkish public and makes support for reforms and harmonization efforts fragile. Furthermore, by obscuring and weakening EU conditionality in benefit-cost calculations, it makes it increasingly difficult for Turkish politicians who do not want to bear the costs of internal policy monitors to fully and completely meet their compliance obligations (Rumelili, 2007).

As a result, after lengthy negotiations, the RAA was made on the condition that visa liberalisation and the right of free movement between Turkey and the EU would be achieved. Accordingly, the RAA will be dealt with mutually with visa exemption for both parties. In other words, whether or not the RAA will be implemented will depend on how well the EU will fulfil its promises in visa exemption. However, if we look at this from the EU side, the EU will put this commitment into practice according to the extent to which Turkey has implemented the RAA. In this process, Turkey and the EU need to work together, coordinate, re-establish the sense of mutual trust, and re-accelerate Turkey-EU relations with a broad perspective.

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