

Turkish-EU Readmission Agreement: A Critique of EU-Turkey Migration Dialogue

Türkiye-AB Geri Kabul Anlaşması:
AB-Türkiye Göç Diyalogu Üzerine Bir Eleştiri

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Abstract

Europe's immigration problem became a "crisis" from the EU perspective. The growing numbers of migrants and asylum seekers fleeing from politically destabilized regions like the Middle East and Africa or war-torn countries, most notably from Syria, as well as people who just looking for a better life seeking refuge in Europe, poses complex challenges for European policymakers. Europe deals with the illegal immigration via number of ways and policy instruments. Readmission agreements are one of the important components for the EU to tackle with the immigration issue. The third generation readmission agreements, particularly targeting irregular migration flow from third countries, are generally trying to be ratified with border neighbors/near border countries of the EU and especially with the ones that put migration pressure to the Union. Here, Turkey is one of the major routes of illegal migrants from the Eastern Mediterranean to Europe. Given the magnitude of the problem, recently signed Readmission Agreement and visa liberalization roadmap with Turkey should be viewed from this perspective. This article focuses on the timing and the possible impact of the Agreement on the EU-Turkey relations and it discusses the effect of the

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Readmission Agreement under the external governance and human security concepts. We, first of all, will analyze juridical structure and its role in EU law and attitude of EU towards readmission agreements. Secondly, we will study the readmission agreement with Turkey and its effects in terms of Turkey's relationship with the EU. Third, clauses of the Turkey-EU Readmission Agreement will be analyzed from external governance and human security concepts and questions characteristics of contemporary forms of border security mechanisms of the EU.

Keywords: *European Union, Turkey, external governance, human security, readmission agreement.*

Öz

Avrupa'ya göç sorunu Avrupa Birliği (AB) perspektifinden bakıldığında "kriz" halini almıştır. Orta Doğu ve Afrika gibi siyasi istikrarsızlıkların yaşandığı bölgelerden gelen göçmen ve mültecilerin sayısının artması veya en bilinen örneğiyle Suriye'de olduğu gibi savaştan zarar görmüş ülkelerden Avrupa'ya daha iyi bir hayat arayışıyla mülteci olarak gelenler Avrupalı politika yapıcılarını için karmaşık zorluklar oluşturmaktadır. Avrupa yasadışı göç ile farklı yollar ve politika araçları üzerinden mücadele etmektedir. Geri kabul anlaşmaları AB için göç ile mücadelede önemli bir bileşendir. Üçüncü nesil geri kabul anlaşmaları, özellikle üçüncü ülkelerden gelen düzensiz göç akışını hedefleyerek, genel olarak AB'ye sınır veya sınır yakını ve özel olarak da AB'ye göç baskısı oluşturan ülkelerle imzalanmaya çalışılmaktadır. Bu noktada, Türkiye, Doğu Akdeniz'den Avrupa'ya göç etmek isteyen yasa dışı göçmenlerin ana rotalarından biridir. Sorunun önemi üzerinden, Türkiye ile imzalanan Geri Kabul Anlaşması ve vize serbestleştirilmesine yönelik yol haritası da bu bakış açısından değerlendirilmelidir. Bu makale AB-Türkiye ilişkilerinde söz konusu Anlaşma'nın zamanlaması ve muhtemel etkileri üzerine odaklanmakta ve Geri Kabul Anlaşması'nın etkilerini dış yönetim ve insan güvenliği kavramları üzerinden tartışmaktadır. Bu nedenle ilk olarak hukuki yapı ve AB hukukundaki rolü ve AB'nin geri kabul anlaşmalarına karşı tutumunu analiz edeceğiz. İkinci olarak Türkiye ile imzalanan Geri Kabul Anlaşması'nın AB ve Türkiye arasındaki

ilişkilere etkisini inceleyeceğiz. Üçüncü olarak da Türkiye-AB Geri Kabul Anlaşması hükümleri dış yönetim ve insan güvenliği kavramları üzerinden analiz edilerek AB sınır güvenliği mekanizmalarının çağdaş formları sorgulanacaktır.

Anahtar Kelimeler: Avrupa Birliği, Türkiye, dış yönetim, insan güvenliği, geri kabul anlaşması.

1. Migration Problem for the EU and its Readmission Policies

Although the refugee crisis on the European borders have been seeing a major and an ever mounting problem for the past five years, the EU sees the migration issue as an area of concern for almost 20 years and tries to control irregular migration coming to Europe from third countries. In today's countries of destination, immigrants are considered as potential threats due to security and employment concerns. According to International Organization for Migration data, 1,034,745 people arrived Europe by whether land or sea since January 2015, which actually proves the fact that the externalization of border controls is the primary objective of the EU's external migration policy, at least initially and then the conclusion of readmission agreements was the primary goal.¹ Therefore, one can claim that readmission agreements are effective means of controlling irregular migration for the EU.

Since the importance and functionality of readmission agreements have been seen as a *sine qua non* for the advancement of relations with third countries, especially with countries of origin, it then becomes a pre-requisite for any discussions about regular migration.² The EU decided to form its policy in relation with economic cooperation and foreign policy of the Union under migration management concept while

¹ Georgia Papagianni, "Forging an External EU Migration Policy: From Externalisation of Border Management to a Comprehensive Policy?", *European Journal of Migration and Law*, 15 (2013), p. 291.

² Paul James Cardwell, "New Modes of Governance in the External Dimension of EU Migration Policy", *International Migration*, Vol. 51 (6) 2013, p. 57.

fulfilling the aims of Global Approach to Migration and Mobility.³ Therefore, the Seville Council of 2002 was put the conditionality principle into readmission agreements, meaning more cooperation with third countries on irregular migration matters and suspending payment or aid when sufficient dialogue could not build.⁴ However, as conditionality measure has the potential to worsen the basic reasons of illegal migration in third countries such as development, human rights and democracy; the Commission noted it as unsuccessful as itself only. Therefore the Commission decided to take positive encouragement measures like visa facilitation and visa exemption in readmission negotiations.⁵ The current policy attracted readmission agreements through concessions and privileges given to the parties lead to differentiated integration with third countries. For example, with regard to the readmission agreements that are signed with Montenegro, Bosnia, Moldova, Ukraine, and Serbia, one of the important facts that enriched agreement negotiation was the EU's visa facilitation settlement to those countries. Hence, the Readmission Agreement with Turkey reflects the similar concern holding with visa facilitation negotiations between Turkey and the EU. Here, visa facilitation incentive includes facilitation of short term, multiple entry visas for certain categories and those agreements come into force when readmission agreements are signed and come into force. Visa exemption, on the other hand, gives exemption to enter Schengen area and stay there up to 90 days and this

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³ The first generation readmission agreements are signed in 1960's to prevent irregular migration between member states. Second generation readmission agreements are signed bilaterally by Member States and Central and Eastern European Countries aimed to readmit the irregular migrants coming from those countries after the fall of Berlin Wall. Daphne Bouteillet- Paquet, "Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and its Member States", *European Journal of Migration and Law*, Vol. 5, Number 3, 2003.

⁴ Sandra Lavenex, "Shifting up and out: The Foreign Policy of European Immigration Control", *West European Politics*, 29/2, 2006, p. 347.

⁵ Melike Akkaraca Köse, *Güvensizlik Sarmalında AB Göç Politikalarına Uyum, Türkiye'nin Dış Politika Tercihlerinde Rasyonalitenin Sınırları*, Derin Yayınları, İstanbul, 2014, p. 11.

procedure runs, if EU observes a successful implementation of readmission agreement and reforms on integrated border management, organized crime, and corruption in the third country.

1.1. Readmission Agreements in Primary Law of the EU

Migration policy has begun to take place as a common policy instrument of the European Community (EC) law by signing the Schengen Agreement dated 1985, which shows that migration policy has begun to take place as a common policy in the Community. Moreover, the Maastricht Agreement dated 1992 had a visible impact on EU migration policy by bounding visa, asylum, and migration matters to Justice and Home Affairs Pillar, which means that this policy would have an intergovernmental characteristic. However, Amsterdam Treaty was the most important agreement in terms of EU's intention regarding the common migration policy by which Community competences were defined and readmission agreements were put into the primary law of the EU. Negotiation and completing the powers of readmission agreements has been transferred from members to the Union with the Article 63-3(b) of the Amsterdam Treaty. On the other hand, Schengen Acquis were put into the Common Acquis (supranational level) and European Court of Justice has the power to give binding decisions on migration, visa, and asylum matters. That means, migration policy would have a supranational feature and third generation readmission agreements would work as a key measure to control border security of the EU from then on.

The Lisbon Treaty is the second treaty that discusses readmission subjects in the primary law of the EU after Amsterdam Treaty. The Treaty entered into force in 2009 after the successful ratification process and Article 79 of the Treaty on the Functioning of the European Union signifies that the Union may contract readmission agreements with third countries for illegal migrants. It shows a perspective that the EU is authorized to sign an agreement for one of the security concerns, which is against the third country nationals entering the territory of a member state and reside in the territory without meeting the residing conditions. Under these conditions, it authorized the EU to sign a readmission treaty with the country to which the third country nationals belong or

with the country from which third country national comes. Here, we can see a clearer security concern of the EU regarding irregular migration; therefore a more decisive attitude towards using its measures like readmission agreements towards them.

1.2. Structure of and Critics to Readmission Logic

All readmission agreements signed by the EU are formalized in a fully reciprocal way, including own nationals of parties, third country nationals, and stateless persons. The agreements are generally result of a negotiation process, which directs us to a specific kind of governance, which Bulmer and Padgett termed as “governance by negotiation.”⁶ This special kind of governance is generally used in the domestic policies of the EU and it is the process by which common rules and norms are agreed by the member states and adopted by the Union, generally by using the qualified majority voting principle.⁷ Governance by negotiation is actively used in external governance, named as negotiation system or network governance and it has become one sort of external governance method lately. Network governance delineates a relationship in which the actors are formally equal; meaning that actors have equal rights and that none of the parties can bind an obligation over another without the consent of the parties. According to Lavenex and Schimmelfennig, network governance at the macro-level of associative relations would explain a strongly institutionalized and unified system of ongoing horizontal co-ordination such as association councils, joint committees, working parties, action plans etc., that instructed with specific agreements.⁸ Hence readmission agreements are the unique examples of network governance as the parties negotiate on equality assumption,

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⁶ Simon Bulmer and Stephen Padgett, “Policy Transfer in the European Union: An Institutional Perspective”, *British Journal of Political Science*, Vol. 35, Number 1, January 2005, p. 109.

⁷ Ibid.

⁸ Sandra Lavenex and Frank Schimmelfennig, “EU Rules Beyond EU Borders: Theorizing External Governance in European Politics”, *Journal of European Public Policy*, Vol. 16, Number 6, September 2009, pp. 797, 798.

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they form an agreement with their consent as a result and those agreements constitute new institutions and rules expanding the scope of the EU. In this regard, Joint Readmission Committee, for example, is a clear output of network governance explained in each Readmission Agreement above.

By analyzing EU Readmission Agreements signed with a group of countries, namely Turkey, Montenegro, and Serbia, which all have candidate status and all signed the readmission agreement, we have observed that there exist almost identical article headings including commonality of provisions with minor differences. Each Agreement start with a Council Decision with an exceptional Explanatory Memorandum involving Political Legal Framework, Outcome of the Negotiations, and Conclusions sections for each country. The Decision part has five Articles in each of the agreements for Turkey, Serbia, and Montenegro and the only difference is observed in wording of Article 1 and Article 4. The Article 1 says, “*The Agreement between EU and Republic of Turkey ... is hereby concluded*” in Readmission Agreement with Turkey; however in Readmission Agreements with Serbia and Montenegro, Article 1 says, “*The Agreement between European Community and ... is hereby approved on behalf of the Community*”. Article 4, on the other hand, mentions EU as Union in Readmission Agreement with Turkey; and it mentions EU as Community in Readmission Agreements with Serbia and Montenegro. Those differences are result of Lisbon Treaty and its new institutional structure designed with the Treaty on European Union.

Texts of Agreements are attached as Annexes. Here, Readmission Agreement with Turkey has 25 Articles and six annexes; Readmission Agreements with Serbia and Montenegro have 23 Articles and seven annexes. Three extra articles are added to the Readmission Agreement with Turkey while other articles are ranged under same headings and they are similar with Readmission Agreements of Serbia and Montenegro. Those extra articles are Article 2, Article 8 and Article 23. Article 2 explains the scope and mentions subjects of the Agreement in terms of applying for the provisions. Article 8 in Section III explains content of the Readmission application including such information on readmission application. On the other hand, Article 23 in Section VIII explains

technical assistance including financial resources in order to support Turkey for implementation of this Agreement.

To explain similarities over some articles of these Texts of Agreements, for example, in regards to readmission obligations by Serbia, Turkey, and Montenegro, the First Section of the agreements declare the readmission of minor unmarried children of the persons and spouses holding another nationality. Here, related articles of Turkey, Serbia, and Montenegro are identical and as follows:

*“-minor unmarried children of the persons mentioned in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in the Requesting Member State, -spouses, holding another nationality, of the persons mentioned in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Serbia/Montenegro, unless they have an independent right of residence in the Requesting Member State.”*⁹ Agreement between Turkey and the EU on Readmission of Persons is identical about abovementioned clauses; however it has some extra provisions in the same Article. For example, it says *“if the said independent right of residence is held by the other parent who has legal custody of the children concerned”* to the first paragraph of the same article and it also enhances that *“unless it is demonstrated by Turkey that according to its national legislation the marriage in question is not legally recognized”* to the second paragraph of the same article.¹⁰

Clauses on formation of a Joint Readmission Committee exist in all three examples almost with the same words.¹¹ Here, again, the related

⁹ Serbia- EU Readmission Agreement Article 2 (2), Montenegro-EU Readmission Agreement Article 2 (2).

¹⁰ Turkey- EU Readmission Agreement Article 3 (2).

¹¹ The related subject is explained in Serbia-EU Readmission Agreement (Article 18) and in Montenegro-EU Readmission Agreement (Article 18) as follows: *“1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a joint readmission committee (hereinafter referred to as ‘the committee’) which will, in particular, have*

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clauses of Agreement with Serbia and Montenegro are identical and Agreement with Turkey has some extra sentences in the provisions. For example, Article 19(2) states that “following any necessary internal procedures required by the law of the Contracting Parties”, while Article 19(3) mentions the EU as Union, not Community as indicated in Montenegro and Serbia Agreements; as well as 19(3) of Turkey-EU Readmission Agreement includes clause such as “assisted by experts from member states.”¹²

The structure of readmission agreement seems to be a major tool for the EU on externalization of border control, as Papagianni mentioned. Moreover, this fact directs us to question EU’s dialogue with the candidate countries, which signed Readmission Agreement -whether those are seen as a future full members or they are seen as privileged partners, as mentioned for Turkey through negotiation process by the EU officials. Papagianni made a solid argument as she notes from Human Rights Council F. Crépeau’s Special Report, arguing that “EU’s external migration policy is still often perceived as primarily focusing on the externalization of border controls, regrettably not accompanied by appropriate human rights guarantees.”¹³ Her argument can be related with readmission agreements as those are considered as the primary tool for the externalization of the EU’s external orders, which builds common institutions like Joint Committees and gives technical assistance

the task: (a) to monitor the application of this Agreement; (b) to decide on implementing arrangements necessary for the uniform application of this Agreement; (c) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Serbia/Montenegro pursuant to Article 19; (d) to recommend amendments to this Agreement and its Annexes. 2. The decisions of the committee shall be binding on the Contracting Parties. 3. The committee shall be composed by representatives of the Community and Serbia/ Montenegro; the Community shall be represented by the Commission. 4. The committee shall meet where necessary at the request of one of the Contracting Parties. 5. The committee shall establish its rules of procedures.”

¹² Turkey- EU Readmission Agreement Article 19.

¹³ Papagianni, loc.cit., p. 295.

grants, seen in the Agreement with Turkey to implement the agreement provisions effectively.

Readmission agreements are criticized in regards to their lack of sufficient resources on infrastructure and experience to adopt the readmitted people or such possible problems arising from readmission due to the reduction of remittances and the risk of internal migration. As a result, the possible long-term negative effects of readmission agreements in line with lack of proper protection of human rights especially in the case of transit countries are seen as the major critics. Having said that it pays, at this point, to give more attention to EU-Turkey relations, giving that the European policy makers have recently admitted that the current migration crisis cannot be solved without cooperation with Turkey. We will review the EU-Turkey Readmission Agreement negotiation process and its outcomes.

2. The EU-Turkey Readmission Agreement: Negotiation and Results

In 2004, the EU decided that Turkey should be a new negotiating party and started the readmission process. When the negotiating parties prepared a draft agreement text in 2010, the Turkish side objected to enhanced cooperation on migration, visa, and mobility issues in the Declaration prepared by EU Justice and Home Affairs Council.¹⁴ In 2011, when the negotiations come to an end, Turkey insisted on implementation of a Roadmap including visa liberation to Turkish citizens. However, it took almost ten years of hard negotiations when finally it bears fruit. The EU signed Readmission Agreement (after all the Agreement negotiation process) with Turkey on December 16, 2013 and it came into force on October 1, 2014. Pointing out the timing and the extent of Turkey-EU Readmission Agreement, one of the reasons for

¹⁴ Ahmet İçduygu, “The Irregular Migration Corridor between the EU and Turkey: Is it Possible to Block it with a Readmission Agreement”, EU-US Immigration Systems No 14, *European University Institute Robert Schuman Centre for Advanced Studies*, 2011, p. 10.

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the EU is to prevent illegal migration via Turkey what is perceived as a result of Turkey's "liberal visa system."¹⁵ Turkey hosts nearly three million Syrian refugees "Under Temporary Protection" and many of them wish to migrate to Europe using illegal routes. For Turkey, on the other hand, Visa Liberalization Dialogue with the EU parallel with the signature of Readmission Agreement on December 16, 2013 was crucial. Therefore, when the Roadmap towards the Visa-free Regime for Turkey prepared by the Commission has been added to the Dialogue, it seems satisfied Turkish demand.

According to the Dialogue, visa liberalization is said to be achieved on the basis of the priorities and criteria set by the Roadmap and Turkey should finish visa liberalization process as soon as possible. On the other hand, Article 24 of the Agreement declares that since the provisions about readmission of third country nationals are applicable, if free visa regime that includes removal of visa obligations will not be implemented towards Turkish citizens in a reasonable time, Turkey reserves the right to end the Readmission Agreement.¹⁶ Due to Readmission Agreement provisions, Turkey will start to readmit third country nationals three years after the Agreement came into force -namely in 2017-, which means for finishing the visa exemption process successfully, Turkey should wait at least three years and the Council will give its decision under qualified majority voting.

Turkey's functioning capacity defined in Roadmap would be determinant for visa exemption. With a clearer explanation, Turkey can only have its visa exemption right if it fulfills the five basic obligations with 72 criteria in the Roadmap. The basic obligations are document

¹⁵ Meral Açıkgöz, "Turkey's Visa Policy: A Migration-Mobility Nexus, Summer 2015", *Turkish Policy Quarterly*, September 14, 2015, (Access Date: 24.12.2015) <http://turkishpolicy.com/article/762/turkeys-visa-policy-a-migration-mobility-nexus-summer-2015>

¹⁶ First Meeting of the EU- Turkey Visa Liberalisation Dialogue Agreed Minutes, Article. 2, 4. (Access Date: 18.03.2014) <http://www.mfa.gov.tr/data/agreed%20minutes%20ve%20annotated%20roadmap.pdf>

security, migration and border management, public order and security, readmission of irregular migrants, and lastly basic rights.¹⁷ However, the Visa Liberalization Roadmap First Evaluation Report for Turkey, launched on October 20, 2014, says that the Commission did not have enough ground for proposing the Council and the European Parliament to remove Schengen Visa conditions for Turkey. An important point here is that through the implementation of the Roadmap, the EU's security based migration policy and its institutional measures like EUROPOL, EURJUST, and FRONTEX, which are the security and border institutions, legitimately have an impact on a non-member country, that is actually a common method for EU's migration management concept.

After the First Evaluation Report, relations turned to a positive direction with Commission's final decision on granting Turkey three billion Euros under Refugee Action Plan on February 3, 2016. In March 2016, Visa Liberalization Roadmap Second Evaluation Report for Turkey was launched and it stressed on 42 articles that were not yet been implemented by Turkey out of 72 criteria. However, visa liberalization process reached a prominent level, when the Commission declared six principles on Turkey-EU cooperation for the "refugee crisis" in March 16, 2016 including Commission proposal to lift the visa requirements for Turkish citizens at the end of April 2016 if Turkey takes the necessary measures. Henceforth, visa liberalization and readmission agreement are related with Turkey's negotiations with the EU, as one of those principles was about accelerating the accession negotiations and opening new chapters for Turkey.¹⁸ However, the announcement of Visa Liberalization Roadmap Third Evaluation Report for Turkey in

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¹⁷ European Commission, Roadmap towards a Visa-Free Regime with Turkey. (Access Date: 20.03.2014) http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf?utm_source=Weekly+Legal+Update&utm_campaign=fdb688b29c-WLU_20_12_2013&utm_medium=email&utm_term=0_7176f0fc3d-fdb688b29c-419648261

¹⁸ COM (2016) 166 final, Communication from the Commission to the European Parliament and the Council, Next Operational Steps in EU-Turkey Cooperation in the Field of Migration, Brussels, 16.3.2016.

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May 2016 changed the positive atmosphere between the parties. The Report mentions five principles to be further integrated to Turkish system and one of them was on legal modifications on the Law to Fight Terrorism, which also contains changing the definition of terrorism in line with definitions used by the member states. This modification had a powerful negative reaction from Turkish Government plus the European Parliament decision on fulfilling all 72 criteria without exception for visa liberation started a political struggle between Turkey and the EU. Today the tension is quite high that actually damp down the hopes on visa free regime for Turkey and for the future of EU-Turkey Readmission Agreement as well.

Compared with other readmission agreements signed between EU and other third countries, Turkey's readmission potential is quite high for the EU. For example, the "Agreement between European Community and the Russian Federation on Readmission" was signed in 2006 and EU-Russia agreements concerning visa facilitation and readmission, entered into force on June 1, 2007 and a special clause of the Agreement provided Russia with a three-year transitory period. By November 2010, only 793 persons have been readmitted, including some police suspects and even some related to terrorist activity; cases of false documents have been discovered as well.¹⁹ Readmission Agreements with Serbia and Montenegro entered into force in 2008 and the Commission Evaluation of 2011 declares that Serbia has 249 applications under the accelerated procedure in 2008, falling to one application in the following year, and Montenegro with 88 applications in 2008, falling to three applications in the next year.²⁰ However, according to 2010 statistics, which was before the Syrian war, it is estimated that every year almost 72,000 illegal

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¹⁹ Oleg Koornev, "Exchanging Knowledge, Enhancing Capacities, Developing Mechanisms: IOM's Role in the Implementation of the EU-Russia Readmission Agreement", *Journal of Ethnic and Migration Studies*, 2014, Vol. 40, No. 6, p. 896.

²⁰ COM 2011(76 final), Communication from the Commission to the European Parliament and the Council, Evaluation of EU Readmission Agreements, Brussels, 23.2.2011, p. 5.

immigrants enter Europe via Turkey.²¹

Those statistics actually explains why third country national clause is important through agreement negotiation process including Turkey-EU Readmission Agreement. The provision to stop that kind of illegal migration is called as third country national clause and, according to this provision, the signatory parties shall readmit third country nationals residing or transiting the signatory countries illegally. This situation is explained in Articles 4 and 6 of the Agreement -explaining readmission obligations by Turkey and the Union in detail and Article 4 define third country national who shall be readmitted as

- (a) hold, at the time of submission of the readmission application, a valid visa issued by Turkey entering the territory of a Member State directly from the territory of Turkey; or*
- (b) hold a residence permit issued by Turkey;*
- (c) or illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Turkey.²²*

Concerning transit passes and readmission of third country nationals, the third country national clause may create an unequal situation and responsibilities for Turkey. That is probably why Turkey remained so far reluctant to sign the Agreement. To explain the process from this point of view, in 2003, Turkey formally rejected Commission's negotiation invitation on draft Agreement until 2004 and explained that EU's demands are not acceptable referring to third country national clause. Turkish officials said an agreement can only be signed with readmission of its own nationals and permanently residing people, but

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²¹ Alexander Bürgin, "European Commission's Agency Meets Ankara's Agenda: Why Turkey is Ready for a Readmission Agreement", *Journal of European Public Policy*, Vol. 19, Number 6, August 2012, p. 888.

²² Council Decision Concerning the Conclusion of the Agreement between the European Union and Republic of Turkey on the Readmission of Persons Residing without Authorisation, COM(2012) 239 Final, Brussels, 22.06.2012, Article 4 (1)

not third country nationals.²³

The political turmoil in the Middle East and North Africa followed by what is called Arab Spring in general and civil wars in Libya and Syria in particular encouraged both sides to review their approaches. The EU has shifted its policy towards Turkey and Turkey, in return, altered its reluctance and accepted to sign the Agreement. The deal is struck as Turkey has accepted to take the issue within the framework of EU's migration management concept. As İçduygu claims, now it is possible to see that the Agreement is transformed to conditionality measure for proceeding and completing the Turkish EU membership negotiations.²⁴ Kirişçi, on the other hand, explains this situation as EU's desire to turn Turkey to a buffer zone and dumping ground for irregular migrants. He thinks visa-facilitation offer of the Commission let Turkish officials wonder about Turkey's status because visa-facilitation is perceived as a tool for third countries, but not for a future member-state.²⁵

3. Analysis of EU-Turkey Readmission Agreement under External Governance and Human Security Concepts

This section of the paper examines the EU-Turkey Readmission Agreement from two International Relations (IR) concepts -namely external governance and human security- in order to understand governance method of the EU or the dialogue logic behind EU's migration management concept. This analysis will ease to understand whether the EU have a mission on outsourcing its borders, as Gammeltoft-Hansen explains as a policy carried through delegation of migration control and derogate itself from international protection of asylum seekers.²⁶ Therefore, starting from the meaning and scope of these concepts, clauses of the Agreement will be our area of concern, which would actually helps us

²³ Bürgin, loc.cit., p. 888.

²⁴ İçduygu, loc. cit, p. 2.

²⁵ Bürgin, loc. cit, p. 884.

²⁶ Thomas Gammeltoft-Hansen, "Outsourcing Asylum: The Advent of Protection Lite", in L. Bialasiewicz (Ed.), *Europe and the World: EU Geopolitics and the Transformation of European Space*, Aldershot, UK: Ashgate, 2011, p. 139.

to analyze both future settlement of Turkey-EU relations regarding migration policy and the Agreement's long-term real effects over readmitted people.

3.1. External Governance Concept

The provisions of the Readmission Agreement have some elements that delineates external governance concept. First of all, expanding rules and procedures of EU over Turkey can be seen in Articles 4(4) and 6(4) in Section I and II on Readmission Obligations by Turkey and by the Union. Those Articles explain the readmission of third country nationals and stateless persons. It explains preparation of emergency travel documents for readmission activity and, regarding the external governance, it says that "in case there is no diplomatic mission or consular office of the Member State in Turkey or if the Member State has not, within three working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes", which means implementing EU rules to a (yet) non-member country on such conditions.

The other significant indicator provision of EU-Turkey Readmission Agreement under external governance concept is Article 19, explaining the foundation and function of Joint Readmission Committee. Proclaimed in the previous topic, negotiation system survives with common or macro level associations. Hence, readmission activities between Turkey and the EU will be organized and monitored through an institution called the Committee. According to Article 19(1) of the Agreement, the Committee has the task of

- (a) monitoring the application of this Agreement;*
- (b) deciding on implementing arrangements necessary for the uniform application of this Agreement;*
- (c) having regular exchanges of information on the implementing Protocols drawn up by individual Member States and Turkey pursuant to Article 20;*
- (d) recommending amendments to this Agreement and its Annexes.*

The Committee is composed of both representatives of Turkey and the Union and the Union shall be represented by the Commission

according to Article 19(3) of the Agreement. Due to its function and mission, the Committee is the permanent institution that aims sustainability of readmission activities of the parties and, therefore, it can be argued that the Committee is the protector of negotiation governance and one can question external governance between Turkey and the EU over readmission subject and specifically over Joint Readmission Committee.

3.2. Human Security Concept

Human Security, as a concept, generally means freedom from fear and want, and it has its roots in Millennium Development Goals in IR that was created at the turn of the millennium by all heads of states under United Nations (UN). The Declaration on Millennium Development Goals was aggregated in eight specific goals and designed to track the outcomes of a comprehensive approach to human development. Therefore, we can say that the concept is strongly connected with human development. First launched by the UN as Human Development Report in 1990, it said that development must be focused on people rather than security of their national boundaries, and on advancing health, education, and political freedom in addition to economic well-being.²⁷ Taking this report into consideration, the UN designed the Millennium Development Goals not only with economic and income based concerns, but also with other components of development.

However, as Picciotto rightly points out, widespread disillusion has set in by comprehending that most developing countries would not achieve agreed goals less than five-year time period. On the other hand, some events like 9/11 attack showed a change in post-Cold War era security concept and revealed a need to revise the Millennium Development Goals. Therefore, the September 2005 Summit in New York provided an opportunity to fill the gap between expectations and

²⁷ Gary King and Christopher J. L. Murray, "Rethinking Human Security", *Political Sciences Quarterly*, Vol. 116, No. 4, Winter 2001- 2002, p. 587.

realities of UN Member States.²⁸ Thus, human security as a concept was seen in the major commitments of the 2005 United Nations Summit and this concept became popular in IR afterwards. The concept was discussed in the sixth commitment of the Summit and it was summarized as “discuss and define the notion of human security in the General Assembly” in the final conclusions of the Summit. Responding efforts to security aspirations resulted with Millennium Security Goals of the UN, on the other hand, and the High-Level Panel on Threats, Challenges, and Change summed up the recommendations in eight security goals including directly human security. Those goals are formulated as “implement and enforce effective sanctions to protect human security” in the fifth goal and “reform the UN to meet the challenges of human security” in eighth goal.²⁹

Human Security defined as a shift from the state to the individual and encompassing military as well as non-military threats in security matters of international relations highly deals with generalized poverty concept that occurs when an individual falls below the threshold of any key domain of human well-being. From Williams’ words, it questions “an alternative line of critique of the inhuman characteristics of contemporary forms of border security under the banner of humanitarianism”³⁰ when analyzing the Readmission Agreement. Due to this reason, definition of human security has come with generalized poverty and it occurs when an individual falls below the threshold of any key domain of human well-being.³¹ In 1994, when the UN Development Program issued its Human Development Report and focused mainly on the topic of human security, it proposed that threats to human security could be grounded in seven categories: economic, food, health, environment, personal, community, and political. The Report also identified the essential

²⁸ Robert Picciotto, “Why the World Needs Millenium Security Goals”, *Conflict, Security and Development*, Vol. 6, Number 1, 2006, p. 111, 112.

²⁹ Ibid, p. 119.

³⁰ Nick Vaughan-Williams, “We are not animals!” Humanitarian border security and zoopolitical spaces in Europe, *Political Geography*, No: 45, 2015, p. 9.

³¹ King and Murray, loc. cit, p. 585.

characteristics of human security by explaining that these are universal, its components are interdependent, it is best ensured through prevention, and it is people-centered.³² Therefore, combining the definition and fixed threats by UN Development Program, one can speak about human security whenever a person dips below the pre-defined threshold in any of the above-mentioned components.

This section of the article specifically analyses the generalized poverty situation referring to human security concept of the Readmission Agreement between Turkey and the EU. Starting with the readmission obligations by Turkey, in Article 3(4) and (5) where method for readmission of its own nationals is explained, it says that “Turkey shall, irrespective of the will of the person to be readmitted, within three working days, issue the travel document required for the return of the person to be readmitted with a period of validity of three months” without including any security or protection mechanism referring to human security. There is the same condition in Article 4(3) for the readmission of third country nationals and stateless persons. Furthermore, the Section II on readmission obligations by the EU has the same obligations defined for the Union. Here in Article 5(4) explaining the readmission of its own nationals and Article 6(3)(4) and(5) defining the readmission of third country nationals and stateless persons, only time limits, procedures, and responsible parties are explained accordingly.³³

A similar situation can be seen in Article 7 that set the principles of readmission procedure. Article 7(1) says that “the Member States and Turkey shall make every effort to return a person referred to in Articles 4 and 6 directly to the country of origin”, however attributing no reference to security or safety of these people. It gives the authority on making modalities of application to the Joint Readmission Committee according to Article 19(1) (b).

³² Ana Androsik, “Human Security and Economic Empowerment. Multi-Ethnic Women’s Representations in the Small and Medium Enterprise Sector. Selected Cases From Kosovo”, *Transcultural Studies*, Vol. 2, No. 3, 2006- 2007, p. 110.

³³ COM(2012) 239 Final, Article 3(4)(5), Article 4(3), Article 5(4), Article 6(3)(4) and(5).

On the contrary, the Agreement clearly addresses human security concept in two separate sections that are readmission application content and transit principles sections. Beginning with Article 8 explaining content of readmission application, Paragraph 2 says that the application shall contain some information which obviously concern security measures related to the people to be readmitted by indicating

- (a) *a statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;*
- (b) *any other protection, security measure or information concerning the health of the person, which may be necessary in the individual transfer case.*³⁴

On the other hand, Article 14 on transit principles has important implications for human security. In the second Paragraph of Article 14, the term “transit” is explained under the Agreement logic as the onward journey in possible other States of transit and the readmission by the State of destination is assured. The third Paragraph of the same Article implies refusal conditions of transit by referring -mostly political and personal threats- human security concepts, hereunder defined as

- (a) *if the third-country national or the stateless person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit; or*
- (b) *if the third-country national or the stateless person shall be subject to criminal sanctions in the requested State or in another State of transit; or*
- (c) *on grounds of public health, domestic security, public order or other national interests of the Requested State.*³⁵

³⁴ COM(2012) 239 Final, Article 8(2).

³⁵ COM(2012) 239 Final, Article 14(3).

Furthermore, Article 14(4) determines the result of such a situation occurred in abovementioned paragraph. It says that “Turkey or an EU Member State may revoke any authorization issued if circumstances referred to in Paragraph 3 of this Article.” It also emphasizes that if a situation against 14(3) occurs, the Requesting State shall take back the third-country national or the stateless person, as necessary and without delay, showing its precision about generalized poverty situation.

4. Conclusion

This article has analyzed integration forms and Turkey’s general status in the European system of rules through the recent Readmission Agreement signed between Turkey and the EU in 2013 and it has also studied the elements attributed to external governance and human security in terms of Agreement provisions.

One of the most important reasons behind signing Turkey-EU Readmission Agreement is transit passes targeted Europe using via Turkey especially after the Syrian war that turned to a refugee crisis for Europe lately. It is subjected in the Agreement and the provision to stop that kind of illegal migration and is called as third country national clause. The third country national clause, especially on transit passes and readmission of third country nationals creates unequal situation and responsibilities for Turkey, which may explain why Turkey acted reluctantly on signing the Agreement. However, if we consider Turkey as the third country, the Agreement may be turned to conditionality measure under negotiation system by signing the Roadmap explaining methods and process of visa liberation to Turkish citizens in line with the signature of Readmission Agreement. According to the Roadmap, Turkey can only have its visa exemption right if it fulfills the five basic obligations and those obligations, in fact, may open the question for a new governance dialogue between Turkey and the EU on EU’s security based migration policy. It also questions Turkey’s status as third country rather than a future member state as it’s quoted about visa facilitation in previous chapters. Articles 4(4) and 6(4) in Section I and II explaining preparation of emergency travel documents for readmission activity of Turkey-EU Readmission Agreement, in fact, flashes the related argument. Regarding the external governance, it says that “In case there is no

consular office of Turkey in a Member State or if Turkey has not, within three working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes”, that means implementing EU rules to a non-member country on such conditions. Moreover, Article 19 explaining the foundation and function of Joint Readmission Committee may be another indicator provision for external governance, and hence negotiation system survives with common or macro level associations.

The argument of security understood as “human” security refers to a considerable shift from the state to the individual and it should encompass military as well as nonmilitary threats. Hence, provisions between Turkey and the EU, Article 3(4)(5), Article 4(3), Article 5(4) and Article 6(3)(4)(5) of this Agreement that explains readmission procedures for own nationals, third country nationals, and stateless persons of both Parties’ in general, has no security or protection mechanism referring to human security. A similar situation can be seen in Article 7 that set the principles of readmission procedure. On the contrary, the Agreement clearly addresses human security concept in two separate sections that are readmission application content and transit principles sections. Therefore, Article 8 explaining content of readmission application, Paragraph 2 says that the application shall contain some information which obviously concern security measures related to the people to be readmitted. Also, Article 14 on transit principles has important implications for human security, especially determining refusal conditions of transit by referring -mostly political and personal threats- human security concepts in Article 14(3). Lastly Article 14(4) determines the result of such a situation occurred in Article 14(3) and declares its precaution by taking back the third country national or the stateless person, as necessary and without delay.

Özet

Uluslararası Göç Örgütü (IOM) verilerine göre, Ocak 2015’ten bu yana Avrupa’ya 1.034.745 kişi kara veya deniz üzerinden ulaşmıştır. Bu durum bir yandan başta Suriye Savaşı olmak üzere Orta Doğu ve

Afrika'daki siyasi karmaşanın olumsuz etkisinin Avrupa'da gün geçtikçe daha fazla hissedileceğini gösterirken, diğer yandan AB'nin yaklaşık 20 yıldır düzensiz göçü önleme alanında girişimlerinin yoğunlaşarak ve farklı araçlar kullanarak artacağını da bir göstergesidir. Bu anlamda ilgili makale, üçüncü nesil geri kabul anlaşmaları olarak bilinen AB göç politikası aracının göç yönetimindeki etkisini inceleyerek Türkiye ile 2013 yılında imzalanan ve yürürlüğe girmesinin ardından üç yıl sonra ilk geri gönderme uygulamalarının yapılacağı Geri Kabul Anlaşması'nın dış yönetim ve insan güvenliği kavramları üzerinden tartışmaktadır. Özellikle Arap Baharı, Libya ve Suriye İç Savaşlarının gerçekleşmesiyle birlikte Türkiye için bir "şartlılık aracına" dönüşen geri kabul anlaşması meselesi, 2004 yılından bu yana süren müzakerelerin ardından AB ile Türkiye arasında üyelik müzakerelerinin hızlandırılması, vize kolaylaştırmalarının ve aynı zamanda vize muafiyetinin gerçekleştirilmesi gibi şartlılık koşulları altında ve Anlaşmaya eklenen vize serbestleştirilmesine yönelik Yol Haritası ile beraber 2013 yılının Aralık ayında taraflarca imzaya sunulabilmiştir. AB'nin geri kabul anlaşması imzaladığı diğer ülkelerle genel bir karşılaştırma yapıldığında, bu süreç ve sonunda gelinen nokta, Türkiye'nin AB üyelik müzakerelerini yürütmekte olduğu bir aday ülke olarak, iki temel konuyu sorgulamamıza yol açmaktadır. Esasen bu makale, Türkiye ile imzalanan anlaşmada insan güvenliği konusunda özellikle belirli maddelerde bu hususa değinilmemiş olması (Madde 3(4)(5), Madde 4(3), Madde 5(4) ve Madde 6(3)(4)(5)) ve dış yönetim konusunda AB mevzuatı ve uygulamalarına daha fazla öncelik veren bir tutuma yer verildiğinin saptanması da söz konusu iki soruyu daha net olarak ortaya koymaktadır. Bunların biri Türkiye ile imzalanan Geri Kabul Anlaşması'yla AB'nin güvenlik temelli göç politikasında yeni bir yönetim diyalogunun kurulmak istenip istenmediği; diğeri ise Türkiye'nin AB üyeliği nezdindeki statüsünün gelecekte tam üyelik olarak mı yoksa daha çok AB ile yakın ilişkiler kuran ve ayrıcalıklara sahip bir üçüncü ülke olarak mı devam edeceği sorusudur.

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