

IPC-MERCATOR POLICY BRIEF



A STEP BACKWARD FOR TURKEY?: THE READMISSION AGREEMENT AND THE HOPE OF VISA-FREE EUROPE

Seçil Paçacı Elitok

Executive Summary

On December 16, 2013, Turkey signed the readmission agreement with the European Union (EU). According to the agreement, migrants using Turkish territory during their transit to the EU by illegal means will be readmitted to Turkey, and Turkey will then be responsible for repatriating these irregular migrants to their country of origin. However, rather than focusing on readmission, “visa liberalization” has dominated the discussion, and the agreement is presented simply as a step forward in removing visa obligations for Turkish citizens traveling to Europe.

This policy brief argues that the agreement is instead a step back for Turkey due to the following. First, based on Turkey’s acquired rights as an EU candidate country with regard to the free movement of its citizens, the agreement creates legal gaps. Second, since visa liberalization has been awarded to other candidate countries, even to non-candidate countries, before Turkey, the agreement itself contradicts the EU’s equal treatment principles. Third, the ambiguity of the visa exemption notion might impose extra duties and responsibilities on Turkey since the expectations from the EU have been left rather abstract and vague in both the readmission agreement and the roadmap. Fourth, the readmission agreement serves the needs of the EU in combating irregular migration and shifts the burden to Turkey by externalizing the issue beyond its borders. Hence, this brief unravels the linkage between the readmission of irregular migrants to Turkey and visa-free travel of Turkish citizens by analyzing the unfair and unethical nature of the agreement, and also touches upon the current deal between Turkey and the EU concerning the Syrian refugee crisis. Finally, policy recommendations sustaining Turkey’s long-term interests, as well as suggestions for burden-sharing in dealing with irregular migration flows and refugee crises, are presented.

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Introduction

Coinciding with the celebration of International Migrants Day, Turkey and the European Union (EU) signed the readmission agreement on December 16, 2013. Although Turkish public opinion and media have been more focused on the concept of “Europe without a visa” in the agreement than the “readmission” consequences for Turkey, the signature of this agreement will affect hundreds of thousands of migrants.

The signing of a readmission agreement was first brought up with regard to Turkey about a decade ago in the very early stages of the accession process. Hence, the signature of the agreement has also been part of a lengthy negotiation process.¹ The European Commission presented a roadmap to the Turkish government regarding its responsibilities in terms of the implementation of the readmission agreement and visa liberalization.² The Turkish government refused to accept some of the terms within the roadmap; therefore, an annotated version of the roadmap was put together instead. In return, the EU's compromise regarding the acceptance of the annotated roadmap included three significant terms. First, the geographical limitation reserve Turkey has on the 1951 Geneva Convention will not be affected by the readmission agreement, and Turkey will only consider a ratification if it becomes a member state of the EU. Second, Turkey accepts the application of the EU visa policy towards third countries, including the transit visa, only when Turkey becomes a full member of the union. Third, regarding some international agreements and treaties mentioned in the readmission agreement, Turkey will only accept responsibility for clauses that are directly subject to the good functioning of readmission of migrants and visa liberalization. In addition, the Turkish government has also added an annotation that Turkey will be able to withdraw

from the readmission agreement if the EU does not offer Turkey full visa liberalization by April 2018.³ According to the standard application of the readmission agreements, the EU will cover the costs of this process while migrants travel from the EU to Turkey, and Turkey will take on the costs upon the arrival of the migrant to Turkish territory until his/her repatriation. In this sense Turkey would be able to benefit from the European Return Fund that is set up to aid third country partners in matters of irregular migration and readmission.

The readmission agreement is likely to have many effects on Turkish migration policy and, more important, the visa regime.⁴ The readmission agreement is presented as a historical turning point that will remove the visa obligation for Turkish citizens to Europe. However, when compared to Turkey's existing rights as an EU candidate country, the agreement looks more like a step back for Turkey due to the legal gaps and the obligations it will impose on the Turkish side.

Legal Framework

After initiating the agreement, it was negotiated that “in parallel to the signature of the readmission agreement between Turkey and the EU, [the EU will]... take steps towards visa liberalization as a gradual and long-term perspective.”⁵ In this regard, Turkey has taken on several responsibilities in terms of the implementation of the readmission agreement’s requirements and also the roadmap for visa liberalization. This process of harmonization of legislation with the EU *acquis* on this issue area resembles the process of Turkey’s accession rounds and will be closely monitored by the EU. Turkey’s roadmap includes five main blocks: document security, migration management, public order and security, fundamental rights, and readmission of irregular migrants (cannot be inspected until the full commencement of the application of the agreement). The readmission agreement will not come into effect until 2018, three years after the ratification, and there will be an additional six month period to test its functioning. The provisions of the roadmap are parallel to Turkey’s accession negotiation Chapter 24 on Justice, Freedom and Security and may facilitate harmonization, thus anchoring Turkey more closely to the EU *acquis*.

The readmission agreement legally binds Turkey and EU member state partners that are part of the Schengen area, therefore, excluding readmission from the United Kingdom, Ireland, and Denmark. According to the reciprocity principle, the agreement concerns both readmission of migrants using Turkish territory to the EU and also migrants who are passing from the EU to enter Turkey by irregular manners, which is becoming an important reality with European nationals travelling to Syria to join the Islamic State. The agreement constitutes three main groups of migrants that will be returned to Turkey. Two of these groups are

Turkish nationals who have either entered the EU border area through Turkish territory in irregular or illegal conditions or entered the EU area legally but have overstayed their legal duration of stay. From Turkey’s perspective, of most concern are groups of third country nationals not of Turkish citizenship who have used Turkey as a transit country to enter the EU illegally. In this sense, it is required by the Turkish authorities that the EU will present proof and documents clearly showing that the migrant in question has passed from Turkish territory before the migrant may reenter. After readmission, Turkey will repatriate illegal migrants to their country of origin according to bilateral agreements Turkey has established with said countries of origin.⁶

Turkey’s compromise on her candidacy rights has been overlooked by the popular perception that the readmission agreement will open the doors of Europe to Turkish citizens. The source of this misperception stems from certain facts that are not presented in the news. In fact, Turkey and the EEC (European Economic Community) signed the Ankara (Partnership) Agreement in 1963, which should have then granted freedom of movement for Turkish citizens in Europe. Despite this, for various reasons the European side has so far failed to enact freedom of movement for Turkish citizens.⁷ This process in question has repeatedly been subject to resolutions of the European Court of Justice.⁸ On legal grounds, the current visa policy applied to Turkish citizens contradicts both the partnership agreement and the EU’s founding treaties (*acquis communautaire*). The “standstill” principle (Article 7 of the Ankara Agreement), which prohibits retraction on the implementation of ratified agreements, has been violated countless times, and through the additional regulations brought on by most European member states’ internal legislation, the right to freedom of movement for persons has not been materialized for Turkish

citizens. It is therefore crucial to point out that the dream of “visa-free Europe” has in fact been a long nightmare for a number of Turkish citizens over the past half a century. In order to illustrate what kind of hardships Turkish citizens go through in the visa process, it would be appropriate to recall the experience of Turkish businessmen, whom after the establishment of the Customs Union were not able to travel to Europe whilst their goods and products could.

Double Standards

As Turkey endures such treatment in regard to visa processes, the EU has given the right to visa-free entry conditions to all the other EU candidate country citizens.

In addition, also considering the fact that the EU has granted freedom of movement to other Balkan countries before having candidacy status, it is visible that the application of visa processes for Turkish citizens not only conflicts with the existing legal framework but also contradicts the EU’s equal treatment principles. When visa liberalization was awarded to other candidate countries, even to non-candidate countries, before Turkey, this proved that the EU holds unjust double standards against the country and its citizens. Therefore, the subject is rendered even more complicated when the already legally gained right of free movement of Turkish citizens to Europe is linked to the readmission agreement. Moreover, the fact that this is to be presented to the public as a success story is nothing more than a public relations strategy to affect the votes of the Justice and Development Party (AKP) with regards to its foreign policy.

The Ambiguity of the “Visa Exemption” Notion

Taking into account the visa experiences of Turkish citizens so far, we can say that the EU is neither being sincere nor forthright. While the expectations from Turkey are extremely detailed and concrete, the duties and responsibilities of the EU have been left rather abstract and vague in both the readmission agreement and the roadmap.

Moreover, the end of the process has been left completely open. Visa liberalization has been bound to Turkey’s fulfillment of its commitments and a subsequent dialogue process that will begin only at that time. In this regard, although a three-and-a-half-year transitional period has been defined, a careful reading of this process reveals that this will be a period filled with progress reports and performance evaluations. Additionally, the issue of visa-free travel depends on a decision by a qualified majority in the European Parliament. The facilitation of obtaining a visa—i.e. the reduction of visa fees, reducing the number of application documents, privileges granted to certain professional groups in short-stays, etc.—is not the same thing as a visa exemption (totally free movement). This, then, is an important point still not stressed and debated enough in the context of the readmission agreement, which will have extremely crucial consequences in the long run.

Externalization of the Irregular Migration Issue

The readmission agreement is one of the most important tools of the EU common migration policy. The purpose of these agreements is to find solutions to the “irregular migration” problem outside the European common borders and to capture and return the migrants before they enter into the borders of the European Union. Turkey, by signing the readmission agreement, has committed

to the readmission of citizens of other countries illegally entering the EU countries to be readmitted to Turkey.⁹ In this context, the lucrative side of these treaties is always the EU, because it has guaranteed that Turkey will undertake the burden of all irregular migration through Turkey towards the EU to ensure that all illegal migrants do not reach the EU. What kind of gains and acquisition of rights this agreement will bring to the Turkish side other than an open-ended dialogue of facilitation of the visa process still remains a mystery. In the negotiations, Turkey could have used the readmission agreement card for the clarification and ratification of visa exemption rights beforehand—or at least could have stood its ground to demand the agreement and visa liberalization should be simultaneous.

Mutual Interests: Merkel-Erdoğan Meeting

Angela Merkel's meeting with President Erdoğan two weeks before the November 1 elections in Turkey, together with the delay of European Commission's Turkey progress report (due to its critical content on violations on freedom of expression and press), positively contributed to the pre-election strategy of the AKP.

Based on the common interests of the two leaders, the Merkel-Erdoğan meeting strengthened the main arguments of this policy brief. Three main points were negotiated during Merkel's visit: i) financial aid to Turkey in mitigating with the Syrian refugee crisis; ii) speeding up the visa-free travel to Europe and iii) opening up new chapters in Turkey's accession negotiations.

The very nature of the readmission agreement and the attitudes of both Turkey and the EU simply replicated themselves in the negotiations between Erdoğan and Merkel. In the face of Europe's biggest refugee crisis since World War II, the EU

needs Turkey now more than ever as a gatekeeper of refugees, providing security at the entry points to Europe from Turkey. This proposal is very much in line with the "externalization of the irregular migration issue," which is amongst the fundamental aims of the readmission agreement. That is why the EU is asking Turkey for better incentives to keep refugees in Turkey and offers visa-free travel and opening chapters in its EU accession path in return. However, bargaining over an international humanitarian issue of such enormous scale in order to benefit Turkey's EU membership process is unfair and unethical. Further, the promises made to Turkey in these agreements are normally extended to other candidate countries during or prior to their accession negotiations: This is further proof of the unfair treatment that Turkey has been subjected to for decades. Promises to open new chapters or visa-free travel are not favors of the EU that are open to negotiation; rather, they are the natural outcomes of the normal EU accession process. Moreover, sharing the burden of the refugee crisis with Turkey is not a favor but a necessity after leaving Turkey alone in her struggle with more than two million Syrian refugees since 2011. The future of Turkey's EU membership cannot be linked to the refugee issue since such a trade-off between partners deepens the never-ending trust crisis even more. Thus, the pressure of refugee inflows on Merkel's side and Erdoğan's defeat in June 7 elections conferred nothing more than short-sighted benefits for Germany and Turkey. However, the bargain between Erdoğan and Merkel neither brings a sustainable solution to the refugee crisis nor normalizes Turkey-EU relations.

Policy Recommendations

A Blow to the Process of Full Membership?

Following the December 16 signature, questions were raised regarding whether or not the readmission agreement will undermine Turkey's prospects for full EU membership. Considering that at every opportunity the EU brings up alternative models instead of full membership—such as a privileged partnership, the negotiation process based on the Customs Unions, and the Visa Exemption Agreement—the EU will likely gain more bargaining power against Turkey's full accession. From this perspective, it is highly probable that the EU will eventually propose a model wherein Turkish goods and citizens will move freely; however, this agreement, too, will most likely fail to grant full membership to Turkey. Hence, Turkey should be cautious against suggestions which propose partial membership alternatives.

Burden-Sharing or Burden Shifting: Lack of Preparatory Work

According to the 2013 Progress Report, Turkey's capacity to house irregular migrants diminished between 2012 and 2011. This decline raises a serious question: Does Turkey now have the capacity to house the immigrants that have been sent back after the agreement? Before the signature of the agreement, there had been no preliminary work done in order to assess how ready Turkey is to undertake the administrative, technical, financial, and legal burden that irregular migrants will impose on the state—nonetheless the burden imposed on the state as a result of the Syrian refugee crisis specifically. If a potential cost estimate had been conducted, Turkey would have had at least some bargaining power within the negotiations in terms of financial support and aid. As the EU has abandoned Turkey to deal with the

global refugee crisis on its own, there is little hope that in the future the EU will stand beside Turkey in the readmission process. In further negotiations, especially on financial aid, Turkey should be able to present exact figures regarding the potential financial burden of these policies.

Enforcing Equal Treatment

It is to Turkey's advantage to disassociate the ongoing EU membership process with unrelated issues such as the refugee crisis. Turkey has every right to do so given that the EU did not take the necessary steps on time in terms of burden sharing until Syrian refugees rushed to European borders. As a matter of fact, rather than burden sharing, European states prefer burden shifting upon the shoulders of countries like Turkey in order to keep refugees outside Europe. Moreover, Turkey should insist on the lack of connection between her acquired rights as a candidate country and readmission of irregular migrants. This is an expected outcome of a normal membership process between equal partners.

Focus on Long-term Interests

The readmission agreement will drag Turkey into an uncertain future that may turn out to be nothing but a disappointment to thousands of Turkish citizens who are hoping to travel to Europe without a visa. Turkey, despite the treatment it has suffered over the decades as an EU candidate country, gave up its long-standing bargaining chip, the readmission agreement, in return for visa liberalization, and then switched its position in favor of an ambiguous process of visa facilitation. This shift begs the question that this might have been an action taken in consideration of the Turkish elections in March 2014 in order to deliver more votes. The refugee crisis is a temporary issue that cannot be tied into Turkey's longer journey towards EU membership.

Short-sighted decisions made under the pressure of elections not only harm the image of Turkey but also risk further negotiations. Leaving aside populist interests, Turkey should take into account the long-term benefits.

Implementation of the Roadmap

Although the signature of the readmission agreement and its consequences mark an improvement in the overall negotiation of Chapter 24, the implementation and harmonization of the roadmap that the visa liberalization is bound to paint a worrying picture that there could be considerable delay in the liberalization reported in the European Commission's progress report on December 10, 2014.¹⁰ The readmission requirement clauses, which are not in operation at the moment, will need to be followed closely in the future. Vis-à-vis the other items of the roadmap, Turkey has had considerable progress in terms of migration management and migration policy production with the establishment of the General Directorate for Migration Management (GDMM), which took on the duty of implementing the new Law on Foreigners and International Protection that came into full effect in April 2014. However, Turkey is still struggling with preventing human trafficking, corruption, border crimes, document fraud, organized crime, and cooperation with other international partners and norms.¹¹ In terms of document security, Turkey has been successful in providing a full conversion to biometric data passports and higher level security for the distribution and control of the national identity cards. Overall, Turkey needs tighter relationships with European institutions such as Europol, Eurojust, FRONTEX, etc. in order to reach European standards and finally achieve its long desired and worked for goal of free travel to the European Union.

END NOTES

1 | European Commission, Report from the Commission to the European Parliament and the Council on Progress by Turkey in Fulfilling the Requirements of Its Visa Liberalization Roadmap, pp. 7-21.

2 | See article by Kemal Kirişci <http://www.brookings.edu/research/opinions/2014/02/04-readmission-agreement-eu-turkey-kiris-ci>.

3 | See the Q&A Report from the Republic of Turkey Ministry for EU Affairs, 'Türkiye-AB Vize Muafiyeti Süreci ve Geri Kabul Anlaşması Hakkında Temel Sorular ve Yanıtları', available at: <http://www.abgs.gov.tr/index.php?p=49332&l=1>.

4 | See Göksel, Diba Nigar, 'Turkey's Visa Free Travel Process with the EU: Trap or Gift?'

5 | The agreement has not been put into practice yet, so it does not apply to Syrians. Syrians are not considered as refugees in Turkey, and therefore, they cannot be resettled or readmitted. They are rather under temporary protection according to the new law on Foreigners and International Protection.

6 | European Commission, Report from the Commission to the European Parliament and the Council on Progress by Turkey in Fulfilling the Requirements of Its Visa Liberalization Roadmap, p.2.

7 | See the Q&A Report from the Republic of Turkey Ministry for EU Affairs, 'Türkiye-AB Vize Muafiyeti Süreci ve Geri Kabul Anlaşması Hakkında Temel Sorular ve Yanıtları', available at: <http://www.abgs.gov.tr/index.php?p=49332&l=1>.

8 | See the İKV publication on this issue: <http://www.ikv.org.tr/icerik.asp?konu=haberler&baslik=AB İLE BAŞLATILAN VİZE MUAFİYETİNE İLİŞKİN BİLGİLENDİRME NOTU&id=3542>.

9 | See for a study that stresses the human rights aspect of the issue: http://www.zaman.com.tr/yorum_geri-kabul-anlasmasi-ne-anlama-geliyor_2184849.html.

10 | Among other reasons, the 1980' Turkish coup d'état and ensuing political chaos in Turkey led to an increase in the number of Turkish asylum seekers. Many western European countries and Germany especially, thus decided to freeze their free visa regime with Turkey.

11 | European Commission, Turkey 2014 Progress Report. Enlargement Strategy and Main Challenges, Brussels, 8.10.2014, available at: <http://www.abgs.gov.tr/?p=123&l=2>.

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