

READMISSION AGREEMENTS IN EUROPE AND THE EUROPEAN UNION-TURKEY READMISSION AGREEMENT: FROM PAST TO PRESENT

Avrupa'da Geri Kabul Anlaşmaları ve Avrupa Birliği-Türkiye Geri Kabul Anlaşması: Geçmişten Günümüze

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ABSTRACT

Readmission agreements have been an implementation of the European Union (EU) over than 50 years due to irregular immigration. Recently, the EU's efforts in this area have intensified and become more strategic. Hereunder in this study, firstly, the concept of readmission has been examined and, readmission agreements of the EU have been divided into three periods in terms of their characteristics in the historical process. Secondly, the EU's attitude towards readmission agreements and the structure of them in EU law have been analysed. Finally, the focus of the study, the EU-Turkey Readmission Agreement which is one of the most strategic agreements in EU system and the obligations of the Agreement have been evaluated in detail and, improvement steps like the EU-Turkey Statement have been discussed.

Keywords: readmission, migration, law, European Union, Turkey

ÖZET

Avrupa Birliği (AB), düzensiz göçün önüne geçmek için 50 yılı aşkın bir süredir geri kabul anlaşmaları imzalamaktadır. Son zamanlarda AB'nin bu alandaki çabaları yoğunlaşmış ve daha stratejik hale gelmiştir. Bu çıkarımla yola çıkan çalışmada ilk olarak geri kabul kavramı incelenmiş ve AB geri kabul anlaşmaları, tarihi süreç itibariyle özellikleri bakımından üç döneme ayrılmıştır. Sonrasında, AB'nin geri kabul anlaşmalarına yönelik tutumu ve bu anlaşmaların AB hukukundaki yapısı ortaya konmuştur. Son olarak, çalışmanın odak noktası olan ve konuya ilişkin AB geri kabul sisteminde en çok öne çıkan anlaşmalardan biri olan AB-Türkiye Geri Kabul Anlaşması ile bu Anlaşma'nın yükümlülükleri ayrıntılı olarak değerlendirilmiş ve AB-Türkiye Mutabakatı gibi iyileştirme adımlarına değinilmiştir.

Anahtar Sözcükler: geri kabul, göç, hukuk, Avrupa Birliği, Türkiye

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INTRODUCTION

In world geography, from past to present, there have been mass migrations to Europe from regions where vital danger has emerged and, social and economic life has become unbearable. The European Union perspective characterizes the flow of migration to Europe as a crisis and, the EU has a distinct difficulty in managing this crisis. The increasing number of immigrants and refugees from regions with political instability such as the Middle East and Africa, Syrian asylum-seekers coming to Europe with the hope of a better life by fleeing war make the work of the EU policymakers complicated. The EU struggles with illegal immigration in various methods as policy instruments. One of them, the readmission agreement, is a significant action for the EU to fight illegal migration. Readmission agreements are prominent and functional solutions improved by the EU against the increasing immigrant flow since the 1970s. However, it seems that these agreements have recently been transformed into a strategic tool by EU bodies.

EU countries initially tried to sign readmission agreements with countries that were the source of irregular migration to prevent migrant flow. However, this method did not work for reasons such as the possibility of violation on the right to life of many immigrants who return to their countries of origin and lack of documents to prove which countries immigrants came. This trouble revealed the fact that readmission agreements should be made not only with the source countries but also with the transit countries which migrants pass to enter the EU territory. The EU's recently immigration policy has been on the axis of such readmission agreements. These readmission agreements, called third generation, specifically target the irregular migration mobility from third countries. These agreements are frequently signed with countries which have borderlines with EU or are close to the EU borders and which put pressure on migration to the EU.

The biggest refugee crisis since the World War II has been experienced in just south of Turkey that is at the EU's eastern borders. This crisis deepens day by day and causes serious human rights violations and many humanitarian problems. In contrast, the EU Member States follow a policy like keeping refugees out of their borders, as possible. In this context, the EU's expectation from Turkey is to accept refugees and to prevent irregular migration targeted at the EU territory by keeping away particularly Syrian refugees from the EU borders. Turkey is one of the main routes of illegal immigrants who wish to migrate from the Eastern Mediterranean to Europe. The Agreement between the European Union and the Republic of Turkey on the Readmission of

Persons Residing without Authorisation¹ which signed on 16 December 2013 between the EU and Turkey, and roadmap regarding to the Agreement should be evaluated from this perspective.

I. READMISSION AGREEMENTS IN INTERNATIONAL AND EUROPEAN LAW

Readmission agreements are briefly defined in the doctrine as agreements that require illegal immigrants to be sent from one of the state parties to the convention². Basically, with these agreements, a contracting state is committing to withdrawing its own nationals, who are in the other contracting state and are in the position of illegal immigrants. However, in practice, not only nationals of the contracting states but also nationals of third states and even stateless persons can be included in the content of readmission agreements³. It is also emphasized in the doctrine that this situation can be seen especially in the agreements between the EU and some countries and, the scope of readmission is so wide in the mentioned agreements⁴.

Readmission agreements are generally signed to prevent human trafficking and the movements of irregular migrants⁵. Undoubtedly, large-scale immigrant movements cause serious social, political and economic problems for transit and destination countries. Therefore, it can be claimed that these agreements were signed primarily to avoid such matters. In this regard, readmission agreements protect the target countries from irregular migrants and invite transit countries to head off such migration movements⁶.

¹ In this study, it will be briefly referred to as the “EU-TR Readmission Agreement”. See Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing without Authorisation [2014] OJ L134/57, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:134:TOC>> accessed 18 April 2021. It is published in Turkey’s Official Gazette which numbered 29076 and dated 2 August 2014 as follows: Number of Decisions: 2014/6652 Approval of the annexed – “Agreement between the Republic of Turkey and the European Union on the Readmission of Unauthorized Residents” signed in Ankara on 16 December 2013 and approved by Law No. 6547 of 25/6/2014; upon the letter of the Ministry of Foreign Affairs dated 16/7/2014 and numbered 6702424, it was decided by the Council of Ministers on 21/7/2014 in accordance with Article 3 of the Law No. 244 dated 31/5/1963. Official Gazette of the Republic of Turkey, No: 29076, 2 August 2014, <<https://www.resmigazete.gov.tr/eskiler/2014/08/20140802-1.htm>> accessed 29 November 2021.

² Nuray Ekşi, *Türkiye Avrupa Birliği Geri Kabul Antlaşması* (Beta 2016) 3.

³ ibid 3.

⁴ Annabelle Roig and Thomas Huddleston, ‘EC Readmission Agreements: A Re-evaluation of the Political Impasse’ (2007) 9 European Journal of Migration and Law 363, 364.

⁵ Ekşi (n 2) 6.

⁶ Esin Küçük, ‘Türkiye’nin Taraf Olduğu Geri Kabul Antlaşmaları’ (2008) 7(2) İstanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi 99, 101.



A. The Concept and Scope of Readmission

In accordance with Article 13/2 of the Universal Declaration of Human Rights⁷, everyone has the right to leave any country, including her own, and return to country of origin. This provision was further enhanced by the International Covenant on Civil and Political Rights⁸. As per Article 12/2 of this Covenant, everyone is free to leave any country, including their own country and, as per Article 12/4 of it, it cannot be arbitrarily deprived of anyone's right to enter their own country. A similar provision is also included in the Additional Protocol No. 4 of the European Convention on Human Rights⁹. However, in any of these legal texts, the right to return to country of origin is not regulated in detail and, the scope and limits are left uncertain.

It is controversial whether the state has an obligation to readmission of its nationals or foreigners under international law. The right to return to their countries, which are vested in international human rights conventions, imposes an obligation on states to accept them. However, discussed in the context of readmission agreements is not an obligation of readmission regarding the right to return, but whether or not a state has the obligation to readmit own national who illegally exists at other state¹⁰.

Regardless of the right of individuals to return to country of origin, Kay Hailbronner argues that the principle of a state's readmission to their nationals

⁷ Universal Declaration of Human Rights [1948] United Nations General Assembly Resolution 217A, <https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf> accessed 29 November 2021. It is published in Turkey's Official Gazette which numbered 7217 and dated 27 May 1949. See Official Gazette of the Republic of Turkey, No: 7217, 27 May 1947, <<https://www.resmigazete.gov.tr/arsiv/7217.pdf>> accessed 29 November 2021.

⁸ International Covenant on Civil and Political Rights, [1966] United Nations General Assembly Resolution 2200A (XXI), <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 29 November 2021. It is published in Turkey's Official Gazette which numbered 26250 and dated 5 August 2006 as follows: Number of Decisions: 2006/10692 Approval of the attached – "Optional Protocol to the International Covenant on Civil and Political Rights" signed in New York on February 3, 2004, approved by Law No. 5468 of 1/3/2006, together with the attached statements and reservations; Upon the letter of the Ministry of Foreign Affairs dated 7/6/2006 and numbered HUMŞ/226322, it was decided by the Council of Ministers on 29/6/2006 in accordance with Article 3 of the Law No. 244 dated 31/5/1963. Official Gazette of the Republic of Turkey, No: 26250, 5 August 2006, <<https://www.resmigazete.gov.tr/eskiler/2006/08/20060805-1.htm>> accessed 29 November 2021.

⁹ Gülnihan Ölmez Kıyıcı and Ummuhan Kaygısız, 'Avrupa Birliği'nin Geri Kabul Anlaşmalarının Avrupa Birliği Göç Politikaları ve İnsan Hakları Çerçevesinde Değerlendirilmesi' (2018) 10(25) Mehmet Akif Ersoy Üniversitesi Sosyal Bilimler Enstitüsü Dergisi 467, 478.

¹⁰ Kerem Batır, 'Avrupa Birliği'nin Geri Kabul Anlaşmaları: Türkiye ile AB Arasında İmzalanan Geri Kabul Anlaşması Çerçevesinde Hukuki Bir Değerlendirme', (2017) 15(30) Yönetim Bilimleri Dergisi 585, 586.

is generally regulated in the treaties signed under international law. Even he claims that because there is a standardized *opinio juris* and uninterrupted state practice, the readmission is an existing principle in customary international law¹¹. This is related to the current nationals and, it has been determined that there is no general obligation for states to retake their former nationals since there is not enough state practice in readmission of the former nationals and, there is not enough standardized *opinio juris*.

Despite the provisions regarding the readmission of states' own nationals and the readmission agreements signed by the EU regarding the readmission agreements of other state nationals in transit from a third state to an EU Member State, because of no *opinio juris* and common practice between states, there is no obligation arising from customary international law regarding the readmission of third-country nationals - even if they come through the territory of the third state by transit¹². However, Hailbronner claims that under the general principles of international law, third-country nationals living in a neighbouring state are under the obligation to readmission if their illegal immigration is tolerated or supported¹³. He bases this claim on the principle of good neighbourliness between states in international law. It should not be overlooked that this view is somewhat compelling and there is no clear principle in international law¹⁴. On the other hand, readmission agreements have become part of the law of international treaties, as both the readmission of nationals and the readmission of third-country nationals or stateless persons are included in the agreement texts. However, for a rule to be applied to all states, it must become a customary international law rule. There is no such customary rule in terms of readmission agreements, and these agreements are binding only for States parties.

It is possible to approach the discussions on readmission of third-country nationals from a different perspective, from the perspective of international refugee law. As the influx of refugees towards Europe in the 1970s and 1980s began to increase, European governments almost completely stopped legal migration, except for humanitarian reasons. Asylum applications increased during this period, but whether the applicants were asylum seekers or economic migrants became controversial. As states refrained from granting refugee status, applicants began applying for asylum in more than one state, and the situation

¹¹ Kay Hailbronner, 'Readmission Agreements and the Obligation on States under Public International Law to Readmit their Own and Foreign Nationals' (1997) 57(1) *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 1, 34.

¹² Roig and Huddleston (n 4) 364.

¹³ Hailbronner (n 11) 48.

¹⁴ Batır (n 10) 587.



has become a growing problem¹⁵. In this period, states improved the concept of ‘the country where the first asylum application was made’ by making changes in their laws. According to this concept, those who will apply for asylum will make their applications in the country where they first set foot. Thus, asylum applications coming from other states were not accepted and their return to the source states was came to the agenda.

In the 1951 Convention on the Status of Refugees¹⁶, there is no regulation about which state is the application place to apply for asylum. Although it is not related to the application, the expression in Article 31 of the Convention, “... coming directly from the country where their lives and freedoms are under threat ...”, indicates that the requests for asylum are made in the country of origin¹⁷. It is prohibited by Article 33 of the Convention to send asylum seekers back or return to the borders of states whose lives or freedoms will be threatened. Thus, it is possible to return the asylum-seekers through readmission agreements to a “safe third country”¹⁸ where they come in transit and where their lives and freedoms are not threatened. Moreover, in EU law, the legal status of asylum seekers is assessed in the first phase after they arrive on the territory of a Member State, readmission agreements are used to ensure that those whose requests for protection are rejected under the EU Procedures and Qualification Directives are sent back to the state of origin or transit state¹⁹.

B. The Brief History of Readmission Agreements

Readmission agreements date back to the early 19th century²⁰. The obligation to readmit own nationals already existed in the treaties signed before 1950s²¹. World War II was a turning point in terms of readmission agreements. Because while the first readmission agreements are mostly related to the readmission of countries’ own nationals, readmission of third-country nationals started to

¹⁵ *ibid.*

¹⁶ Convention Relating to the Status of Refugees, [1951] United Nations. General Assembly Resolution 429 (V), <<https://www.ohchr.org/Documents/ProfessionalInterest/refugees.pdf>> accessed 29 November 2021. It is published in Turkey’s Official Gazette which numbered 10898 and dated 5 September 1961. See Official Gazette of the Republic of Turkey, No: 10898, 5 September 1961, <<https://www.resmigazete.gov.tr/arsiv/7217.pdf>> accessed 29 November 2021.

¹⁷ Batır (n 10) 588.

¹⁸ The concept of a ‘safe third country’ is discussed in the doctrine. There are some who justifiably argue that this criterion should be abolished in order to provide a legal and proportional solution. This notion is not appropriate to provide for permanent solutions on human rights regarding refugee crisis. *ibid.*

¹⁹ Mariagiulia Giuffrè, ‘Readmission Agreements and Refugee Rights: From a Critique to a Proposa’ (2013) 32(3) Refugee Survey Quarterly 79, 110.

²⁰ Hailbronner (n 11) 6.

²¹ *ibid.*

be arranged in the later agreements²². The second period is between 1950 and 1960. In this period, by readmission agreements, Western European countries resolved the immigration issue about each other's regions. The third period, in the early 90s, Europe's readmission policy began to take shape²³.

Readmission agreements set out and define a country's own nationals' readmission obligations. Some readmission agreements also set out the conditions under which States parties have the obligation to readmission of third-country nationals passing through their territory²⁴. These agreements are essentially only agreements for the readmission of irregular migrants. However, it is criticized that it could lead to refoulement of people who fall within the scope of the principle of non-refoulement. It is possible to classify readmission agreements as three separate generations from the date until today. In 1818-1819, a series of readmission agreements were signed between Prussia and other German states. The readmission agreement signed between Germany and the Netherlands in 1906 is considered to bring a similar method to the readmission agreements today²⁵. In the 1950s and 1960s, European states signed readmission agreements between themselves²⁶. Especially the agreements signed by the member countries of Benelux, which was established in 1958, had an impact on the deport and readmission of third-country nationals. Benelux signed readmission agreements with France in 1964, Austria in 1965 and Germany in 1966²⁷.

These agreements, which can be described as First Generation Readmission Agreements, were important during the period when border controls have not yet disappeared among the European Community (EC) countries and only workers and individuals engaged in an economic activity have benefited from the right to free movement. While these agreements include readmission of third-country nationals, persons whose readmission may be requested were limited to those previously legally present in the requested State. So, those

²² ibid 25.

²³ Nils Coleman, 'European Readmission Policy, Third Country Interests and Refugee Rights' in Elspeth Guild and Jan Niessen (eds.), *Immigration and Asylum Law and Policy in Europe Vol. 16* (Martinus Nijhoff Publishers 2009) 19.

²⁴ Tineke Strik, 'Readmission Agreements: A Mechanism for Returning Irregular Migrants' (2010) Report of Committee on Migration, Refugees and Population Doc. 12168, 7, <<https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=12439&lang=EN>> accessed 29 March 2021.

²⁵ Coleman (n 23) 13.

²⁶ For instance, Austria signed bilateral readmission agreement with Belgium in 1965. Julia Rutz, 'Austria's Return Policy: Application of Entry Bans Policy and Use of Readmission Agreements' (2014) International Organization for Migration, 51. <https://www.emn.at/wp-content/uploads/2017/01/EMNReturnStudy2014_AT-NCP_eng.pdf> accessed 30 March 2021.

²⁷ Coleman (n 23) 15.



who illegally crossed through the territory of the State party to the agreement and reached the other State were not covered by readmission agreements. Although it has got out of practice by the completion of the EC domestic market, Member States needed a similar tool to combat irregular migration from third countries²⁸.

In the 1990s, following the collapse of the Eastern Bloc, the EU countries, which faced intense migration from Central and Eastern European countries, signed bilateral readmission agreements²⁹ with these countries, and sought to solve the problem individually³⁰. According to these, also called Second Generation Readmission Agreements, irregular migrants from Central and Eastern European countries or those who travelled through these countries to the EU Member States were sent back. These bilateral agreements brought concerns about the protection of refugees, and the “safe third country” criterion used by European states has been criticized.

The readmission provisions included in the second generation readmission agreements generally consist of two parts. The first part includes the obligation of states to readmit their nationals, while in the second part there is a political commitment to negotiate a comprehensive readmission agreement, including the readmission of third-country nationals and stateless persons³¹. It is stated that the reason for the success of these agreements signed with the Central and Eastern European countries was the fascination of visa liberalization and the EU membership³².

‘Third Generation Readmission Agreements’ are the agreements that the EU has directly signed with third countries about readmission. There are two important factors in EU experience that distinguish such agreements from others. The first is that these agreements are signed directly by the EU, not by the Member States, and the second is that they include not only the readmission of nationals, but also other nationals of the state transiting from the concerned country. The EU has signed these agreements since 2001. The first agreement was signed with the Hong Kong in November 2001 and came into effect on March 1, 2004³³. Then, the agreements signed with many countries such as Macau, Sri Lanka and Albania followed it. However, in this process, many

²⁸ Batır (n 10) 589.

²⁹ Ölmez Kıyıcı and Kaygısız (n 9) 476.

³⁰ As an example, Austria signed bilateral readmission agreements in 90s with Croatia (1997), Bulgaria (1998) and Lithuania (1998). Rutz (n 26) 51.

³¹ Batır (n 10) 589.

³² Daphne Bouteillet-Paquet, ‘Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and Its Member States’ (2003) 5 *European Journal of Migration and Law* 359, 364.

³³ Coleman (n 23) 168.

third countries caused delays in every step in the negotiation process, signing and enforcement.

II. REFUGEE PROBLEM AND READMISSION POLICY OF THE EUROPEAN UNION

It is a fact that European countries have been exposed to mass migration movements throughout history. Undoubtedly, this situation has had serious effects in these countries in every aspect. However, the immigrant depressions on the European borders has been a grand and constantly rising matter for the last few years. The EU has been addressing the immigration problem as a problem for nearly two decades and is trying to check disordered immigration to Europe. This threat perception brought serious measures to the agenda with the end of 2015. So much so, as an example Hungary closed its border to Serbia and announced that it would build a wall along its border with Serbia. In addition, especially Germany and France and Austria, Czech Republic and Slovakia announced that they will start border checks, on the same dates. Even the Schengen implementation, which has been a source of pride for the EU countries for years, was opened discussion³⁴.

From the EU perspective, it has become compulsory to sign readmission agreements, which are considered as an effective strategy tool to struggle with irregular migration, especially with third countries³⁵. It is stated that the content of readmission agreements is determined on a wide scale by the negotiation guidelines of the Council. However, since the guidelines are not published, their content is not officially known³⁶. The signed readmission agreements give an idea of the unpublished directives since their texts is so similar.

One of the options offered to make EU readmission agreements attractive is to sign visa liberalisation agreements. While negotiating readmission agreements, the Commission simultaneously puts the agreement, which makes it easier for nationals of the relevant state to obtain visa on their travels to EU countries, on the negotiating table. In July 2004, the Council authorized the Commission to negotiate not only readmission but also visa facilitation. The connection between visa facilitation and readmission was made for the firstly with Russia and Ukraine³⁷. In a study on these agreements, it has been determined that there is no increase in irregular immigration towards the EU

³⁴ Oğuzhan Ömer Demir and Yusuf Soyupek, 'Mülteci Krizi Denkleminde AB ve Türkiye: İlkeler, Çıkarlar ve Kaygılar' (2015) *Global Politika ve Strateji*, 28.

³⁵ Ölmez Kıyıcı and Kaygısız (n 9) 475.

³⁶ Coleman (n 23) 88.

³⁷ Florian Trauner and Imke Kruse, 'EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood' (2008) 290 *Case Network Studies&Analyses*, 21.



from the countries where visa facilitation agreement has been signed. Member States continue to have full control over visa issuance. Therefore, it was emphasized that visa facilitation agreements will be an important incentive to ensure that readmission agreements are signed³⁸.

Today, immigrants are called a direct threat with concerns such as security and employment. The loss of lives of dozens of people every day in the way to Europe, in particular with the spread of photographs, which Baby Ayla's lifeless body hit the Bodrum/Turkey coast at September 2, 2015, the European public has recalled human rights and human values again³⁹. At this point, readmission agreements underpin the EU's foreign migration policy to achieve European border controls. Readmission agreements for the EU are among the most effective means of preventing irregular migration.

A. Readmission Agreements In European Union Law

With the entry into force of the Treaty of Amsterdam⁴⁰ in 1999, a new area has been added to the EU's mandate and a new chapter has been added to the EU agreements. The Treaty of Amsterdam empowered EU institutions to create secondary legislation in areas such as immigration, private law, civil procedure law, which are necessary for the right to freedom of movement, which is one of the four fundamental freedoms. Schengen treaties, which were not previously included in the *acquis*, were also included in EU legislation. With the inclusion of this field in the EU mandate, EU institutions have gained new powers in the fields of immigration, asylum and border controls. With this authority granted within the EU, the EU institutions have gained the authority to make agreements with third countries on the subject. In order to combat illegal immigration, the EU has developed a common visa policy and has attempted to set a return policy about persons already illegally in the Member States.

In the 1990s, the Amsterdam Treaty has granted powers in the area of readmission to the EC. In addition, the European Council has invited the Council of Europe to sign readmission agreements between the EC and third countries, or to set a standard readmission clause in other agreements. In the 2000s, the reason why the return of immigrants, who came to the Europe with irregular immigration and who were asked to leave the EU, could not be provided effectively has been based on the lack of cooperation between the EU

³⁸ *ibid* 4.

³⁹ Demir and Soyupek (n 34) 31.

⁴⁰ See, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C 340/ 40, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:1997:340:TOC>> accessed 03 December 2021.

and the countries of origin. In this process, it has been determined that the loss of the documents of the people to be returned is a major factor that makes it difficult to directly return the source country. In such a case, the Commission saw it as an alternative that sending irregular migrants whose identities were not identified but whose travel route was determined, to transit countries by signing readmission agreements instead of sending them to source countries⁴¹.

According to the EU law, readmission agreements are international treaties for the re-shipment of nationals of a country that is illegally in a Member State, or third-country nationals and stateless persons who pass through the territory of that country under certain circumstances⁴². The EU has been a party to many readmission agreements to date⁴³. The legal basis to sign these agreements is the Article 63.3(b) of the Treaty Establishing the European Community, amended by the Treaty of Amsterdam⁴⁴. Pursuant to this article, the Council will take measures in the area of illegal immigration and unlawful residency, including the return of illegal residents to their country of origin within 5 years from the entry into force of the Treaty of Amsterdam⁴⁵. With the enactment of the Treaty of Lisbon⁴⁶ in 2009, readmission agreements gained a stronger legal basis. Pursuant to Article 79/3 of the Treaty on the Functioning of the European Union, amended by the Treaty of Lisbon, the EU may sign treaties about readmission with third countries whose nationals are unable to meet the conditions of entering, residing or staying in the territory of one of the Member States. This provision gives the EU a clear mandate to conclude an agreement and sets out the scope of these treaties⁴⁷. It also avoids the confusion

⁴¹ Roig and Huddleston (n 4) 365.

⁴² Asli Bilgin and Pierluigi Simone, 'One Step Forward, Two Steps Back: Legal Arguments on the Visa-Free Travel of Turkish Citizens to the EU' (2019) 16(61) *Uluslararası İlişkiler* 75, 76.

⁴³ For the countries which the EU has signed a readmission agreement with, see. Commission, 'Return and Readmission' (2020), <https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en> accessed 08 April 2021.

⁴⁴ The term 'readmission' is not explicitly included in this Treaty. How to interpret the phrase "repatriation" mentioned in the Treaty has been the subject of discussion, and it is accepted that the word includes a wide acceptance and includes the readmission of the people concerned by the countries they came from and the countries they are nationals of. Batir (n 10) 593. See. Martin Schieffer, 'Community Readmission Agreements with Third Countries - Objectives, Substance and Current State of Negotiations', (2003) 5 *European Journal of Migration and Law* 343, 349.

⁴⁵ Bilgin and Simone (n 42) 77.

⁴⁶ See. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, [2007] OJ C 306/50, 17, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:306:TOC>> accessed 03 December 2021.

⁴⁷ Carole Billet, 'EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice', (2010) 12 *European Journal of Migration and Law* 45, 60.

of authorities that can be experienced between the EU and the Member States. Moreover, Member States continue to make bilateral readmission agreements⁴⁸. It was put forward that the provisions of bilateral readmission agreements signed by France differ from the readmission agreements signed by the EU, and these agreements are more comprehensive than the EU's agreements⁴⁹. However, if the EU has already concluded -or is negotiating- an agreement with a third state on readmission, Member States could not negotiate with the same third state anymore⁵⁰. The readmission agreement signed by the EU with a third country precedes and is superior to the readmission agreements signed by the Member States with the same third country⁵¹.

The procedure in readmission agreements operates as follows: The Council gives the Commission the duty to invite a state or a group of states to a bilateral or multilateral readmission agreement. Bilateral agreements between Member States and those states remain in force. However, as soon as the Commission has taken up the negotiating task, the Member States must give up negotiations. When the Council authorizes the Commission to sign an agreement on behalf of the EU, it must consult Parliament⁵².

B. The Impact of Refugee Problem on European Union-Turkey Relations

The refugee problem has been such a growing crisis in Europe that it has been compared to the migration period, which caused the fall of the Roman Empire. The EU realised that the crisis cannot be handled without finding a common solution with Turkey and started to make some strategic moves. So, the EU made new and comprehensive initiatives to revive relationships which stagnant for a long time with Turkey⁵³. In this context, on 26 June 2014 talks between EU officials with Turkey were carried out. In these negotiations, the EU has asked Turkey to take steps to ensure the refugees' stay in Turkey and has given commitment of financial support in return.

On the other hand, the EU countries also wanted to handle the refugee crisis from time to time without compromising much to Turkey and has resorted to different measures for this purpose. For example, by introducing a quota

⁴⁸ Batır (n 10) 594.

⁴⁹ Marion Panizzon, 'Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?', (2012) 31(4) Refugee Survey Quarterly 101, 131.

⁵⁰ Billet (n 47) 61.

⁵¹ Ölmez Kıyıcı and Kaygısız (n 9) 476.

⁵² Roig and Huddleston (n 4) 369.

⁵³ Enes Bayraklı and Kazım Keskin, *Türkiye, Almanya ve AB Üçgeninde Mülteci Krizi* (Turkuvaz 2015) 10, <http://file.setav.org/Files/Pdf/20151130112435_turkiyealmanya-ve-ab-ucgeninde-multeci-krizi-pdf.pdf> accessed 10 April 2021.

system, asylum seekers are divided into the EU Member States and various mechanisms have been developed to prevent refugees from moving from Mediterranean to Europe. In addition, by giving “safe third country” status to Turkey and some Balkan countries, the EU has tried to return refugees to these countries and keep them in these. However, after all, the EU realized that all these measures would not be enough and decided to keep asylum-seekers away from the EU as the most goal. This certainly has increased once again the EU’s attention on Turkey and put forth the importance of Turkey on migration and refugees⁵⁴. In line with the planned objectives of the EU to combat irregular migration, this has become a rational and strategic necessity.

Turkey as located on the migration route of large masses has always been one of the most important countries on migration issue for the Europe. The EU always has carried an expectation from Turkey to fight with migration flows⁵⁵. The idea of making a readmission agreement between the EU and Turkey has been first suggested in 2002. The EU Justice and Home Affairs Council, in a report prepared in 2002, has proposed the signing of readmission agreements with China, Albania and Turkey⁵⁶. In that sense, Turkey is very important for the EU as it is one of the main departure routes to Europe of migrants. If this route can be tightly controlled, a firewall would be built on the border of Europe⁵⁷. In this case, for dealing with the issue of the flow of migrants has been put on an inevitable readmission agreement between the EU and Turkey to the agenda⁵⁸.

III. THE EUROPEAN UNION-TURKEY READMISSION AGREEMENT

The EU Commission suggested the readmission agreement on 4 March 2003 for the first time to Turkey. The draft of readmission agreement, which was negotiated four rounds in 2005-2006, was discussed at the technical level in 2009 and 2010. As a result, it was initialled on 21 June 2012. The EU-TR Readmission Agreement was signed on 16 December 2013 and entered into force as an international treaty on 1 October 2014. As of this date, in the context of Article 24 of the Vienna Convention on the Law of Treaties⁵⁹,

⁵⁴ *ibid* 24.

⁵⁵ Küçük (n 6) 100.

⁵⁶ Ekşi (n 2) 36.

⁵⁷ Coleman (n 23) 178.

⁵⁸ İlke Göçmen, ‘EU-Turkey Readmission Agreement in the Wake of the Migrant Crisis: What might go wrong with it?’ (UACES 46th Annual Conference, London, September 2016), <<https://www.uaces.org/documents/papers/1601/gocmen.pdf>> accessed 10 April 2021.

⁵⁹ Vienna Convention on the Law of Treaties, [1969] United Nations Treaty Series/1155, 331, <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> accessed 29



it started to bear legal consequences. In accordance with Article 24/3, it is stated that the obligations regarding the readmission of third-country nationals and stateless persons can be applied three years after the date of entry into force of the Agreement. The contracting parties have gathered the 'Joint Readmission Committee' established with the Article 19 to get distance in visa liberalisation negotiations which go parallel with the Agreement process. With the Decision No. 2/2016 of this Committee, it has been decided that the provisions regarding the readmission of third-country nationals and stateless persons will be implemented as of June 1, 2016.

A. Preparation Process and General Content

The EU sent a draft of the Agreement in 2003 to Turkey. Turkey has indicated that negotiations could begin in 2004. In Brussels on 27 May 2005, negotiations for the Agreement were initiated by the parties⁶⁰. In this process, the Commission has put pressure on Member States to convince Turkey. The beginning of the process, Turkey was reluctant to make a readmission agreement, then its attitude has changed and it began to look favourably on the idea of making a deal⁶¹. No doubt, Turkey's efforts to be a member of the EU and desire to benefit from visa liberalization is the reason⁶². With the continuation of the negotiations, Turkey insists to recognition for visa liberalization in return for the Agreement⁶³. However, instead of opening a visa liberalization dialogue, EU officials committed to a very loose dialogue⁶⁴ on visa, mobility and migration.

At the beginning of concerns voiced by the Turkish side during the negotiations and the ratification of the Agreement was whether the gains that Turkish citizens have achieved, which comes with the framework of the EU-Turkey partnership or within treaties and case-law, lose or not. To resolve these concerns, the Preamble of the Agreement has stated the Agreement is not specified prejudice to the Ankara Agreement which establishes a partnership between European Economic Community and Turkey and, to the decisions of Association Council and, to the relevant case-law of the Court of Justice of the European Union (CJEU). Likewise, according to the Article 18/2 of the

November 2021.

⁶⁰ Ekşi (n 2) 37.

⁶¹ Coleman (n 23) 179.

⁶² See. Ahmet İçduygu, 'The Irregular Migration Corridor Between the EU and Turkey: Is It Possible to Block It With a Readmission Agreement?' (2011) 10 Robert Schuman Center for Advanced Studies of the European University Institute, <<https://cadmus.eui.eu/handle/1814/17844>> accessed 12 February 2021.

⁶³ Sarah Wolff, 'The Politics of Negotiating EU Readmission Agreements Insights from Morocco and Turkey' (2014) 16 European Journal of Migration and Law 69, 86.

⁶⁴ *ibid.*

Agreement, the Parties fully respect the rights and obligations, including of those who have been legally residing and working on the territory of one of the contracting Parties, provided by the provisions of the Ankara Agreement and its additional protocols, the relevant ‘Association Council’ decisions as well as the relevant case-law of the CJEU⁶⁵.

The EU-TR Readmission Agreement consists of 8 sections and 25 articles. According to the Article 1/n, “*readmission shall mean the transfer by the Requesting State and admission by the Requested State of persons (nationals of the Requested State, third-country nationals or stateless persons) who have been found illegally entering, being present in or residing in the Requesting State, in accordance with the provisions of this Agreement.*” The Agreement is applied on illegal immigrants located in Turkey and the EU territory. Geographical coverage is the EU Member States and the territory of Turkey. The three exceptions to this scope are the United Kingdom, Ireland and Denmark⁶⁶. The provisions of the Agreement do not include third-country nationals and stateless persons who have been determined as irregular migrants by the Requesting State and who left from the Requested state more than 5 years before⁶⁷. With this aspect, the scope of the Agreement in terms of individuals includes nationals of the contracting States residing in these countries without permission, third-country nationals and stateless persons⁶⁸. Pursuant to the Article 11, readmission requests are bound to a 6-month period and it is stated that the requests made without complying with these periods will be rejected⁶⁹. This deadline begins as of the date when the state, which will request readmission, learned the situation.

The EU-TR Readmission Agreement basically foresees the return of persons, who have illegally logged in to an EU Member State from Turkey or to Turkey from an EU Member State, to the opposite side. In accordance with the principle of reciprocity, Turkey will be able to request from an EU Member State the readmission of irregular migrants who came from that State’s territory and have illegally entered Turkey. However, since a significant migration from the EU countries to Turkey is not concerned, the EU-TR Readmission Agreement is interpreted as an agreement that brought more obligation on Turkey than the EU⁷⁰. Indeed, Turkey’s readmission obligations in the scope of the Agreement

⁶⁵ Batır (n 10) 597.

⁶⁶ United Kingdom, Ireland and Denmark being in a special situation and Community readmission agreements are neither binding to them. For more information, see. Schieffer (n 44) 351 ff.

⁶⁷ Ekşi (n 2) 65.

⁶⁸ Göçmen (n 58).

⁶⁹ Ekşi (n 2) 76.

⁷⁰ Mehmet Uğur Ekinci, *Türkiye - AB Geri Kabul Anlaşması ve Vize Diyalogu*, (SETA 2016)



are mostly seen in practice. Furthermore, in preparation process, Turkey has not made an assessment in terms of the reservations about geographic limitations⁷¹ it has made to the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees. Regarding the readmission obligations by contracting states, Article 3 and Article 5 regulate the readmission of own nationals and Article 4 and Article 6 regulate readmission of third-country nationals and stateless persons.

B. Readmission of Own Nationals

As per Article 3/1, upon application by a Member State, Turkey shall readmit Turkish nationals who do not or who no longer fulfil the conditions in force under the law of that Member State or under the law of the EU for entry to, presence in, or residence on, the territory of the Requesting Member State. This readmission obligation will also include unmarried children of Turkish citizens who are subject to readmission regardless of their place of birth and nationality, and their spouses with citizenship of another country.

Similarly, due to Article 5/1, upon application by Turkey, a Member State shall readmit own nationals who do not or who no longer fulfil the conditions in force for entry to, presence in, or residence on, the territory of Turkey. This readmission obligation will also include unmarried children of Member State citizens who are subject to readmission regardless of their place of birth and nationality, and their spouses with citizenship of another country.

Article 3 and Article 5 regulate not only the return of own nationals, but also the readmission of those who have been deprived or waived the citizenship in the past⁷². Pursuant to Article 3/3 and Article 5/3, these persons will be readmitted if they have not been promised at least to be naturalized by the Member State in question. Article 3/4, Article 3/5, Article 5/4 and Article 5/5 regulate the issues related to travel documents in the readmission process. Accordingly, after the readmission to contracting States positively respond to application (or the expiry of the period in Article 11/2), Turkish or Member State consular authorities would prepare the three months valid travel documents within three days. If the person cannot be transferred within this period, documents with the same validity period will be issued once again.

21, <https://setav.org/assets/uploads/2016/07/tu%CC%88rkiye-ab_gka_.pdf> accessed 12 February 2021.

⁷¹ Turkey has stated a geographical limitation in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees by making reservations that it will only accept asylum regarding events that take place in Europe. M. Tevfik Odman, *Mülteci Hukuku* (AÜ. SBF. İnsan Hakları Merkezi 1995) 169.

⁷² Batır (n 10) 598.

C. Readmission of Third-Country Nationals and Stateless People

In accordance with Article 4/1, Turkey shall readmit, upon application by a Member State and without further formalities to be undertaken by that Member State other than those provided for in the Agreement, all third-country nationals or stateless persons who do not, or who no longer fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State. In Article 4/2, the cases that the readmission obligation would not be concerned under Article 4/1 is counted.

Likewise, pursuant to Article 6/1, a Member State shall readmit, upon application by Turkey and without further formalities to be undertaken by Turkey other than those provided for in the Agreement, all third-country nationals or stateless persons who do not, or who no longer fulfil the conditions in force for entry to, presence in, or residence on, the territory of Turkey. In Article 6/2, the cases that the readmission obligation would not be concerned under Article 6/1 is counted.

IV. THE EUROPEAN UNION-TURKEY STATEMENT

After the EU-Turkey Readmission Agreement signed 6 December 2013, in order to ensure the functioning of the planning and visa dialogue with the perspective of the readmission operation, 28 EU Member States and Turkey issued a joint statement on 18 March 2016. The exact legal nature of the Statement is controversial in the doctrine. It is not an agreement according to CJEU. It is stated in the judgements of CJEU that the EU-Turkey Statement cannot be considered a treaty in the context of EU law⁷³. There is no doubt that the Statement is not a binding treaty under international law. In order to speak of for a valid international treaty/agreement, it is required that to be approved in the national law of the contracting States at least. No such procedure has been followed for this Statement. It is legally independent of the Agreement and is not an additional protocol or etcetera to it. The Statement is more like a mutual political commitment between the EU and Turkey.

The EU-Turkey Statement is the effort of the EU to make the EU-TR Readmission Agreement more functional. As the EU members Bulgaria and Greece, which have both land and sea borders with Turkey, are signatories in the Statement, it is therefore so important to take the EU-Turkey Readmission

⁷³ CJEU made the legal qualification of the EU-TR Statement dated 18 March 2016 in three cases resolved on 28 February 2017 and concluded that this Statement is not an international treaty. The legal basis for the decision made by CJEU in these three cases is the Article 263 of the 'Treaty on the Functioning of the European Union'. Nuray Ekşi, '18 Mart 2016 Tarihli AB-Türkiye Zirvesi Bildirisinin Hukuki Niteliği', (2017) 1(1) İktisat ve Sosyal Bilimlerde Güncel Araştırmalar 47, 64.



Agreement into action. The Statement regulated that the immigrants, who has come illegally to the EU countries and in particular the Greek islands, are sent back to Turkey, and in return Syrians who are legally staying in Turkey accepted by Europe as a refugee. In substance, the Statement has aimed to promote solidarity between the EU and Turkey and joint into action prevention of irregular migration after the Agreement. The Statement was signed considering of the positive progress made in the implementation of the ‘EU-Turkey Joint Migration Action Plan’ as set forth in Brussels on 29 November 2015⁷⁴. Its ultimate aim is to prevent irregular migrant influx to the Greek islands, to increase the measures against migrant smugglers by borderline countries and to end their humanitarian grievances in the Aegean Sea as soon as possible.

In the frame of the Statement, a Syrian from Turkey is going to be placed to the EU countries for each Syrians in Greek islands who is going to be accepted by Turkey. In the first period, the number of Syrians to be placed in the EU countries was determined as 72000. The EU has divided this according to the situation of the member countries and has determined quotas. If the number of 72000 is completed, it is requested from the member countries on the basis of volunteering to determine quotas. During the placement, Syrians who did not go or did not attempt to go to the EU illegally are prioritized and it is stated that the placement would be provided by the United Nations High Commissioner for Refugees, the EU Commission and the Member States.

According to the Statement, the EU have promised to Turkey that 3 billion Euros financial assistance and that take steps on visa liberalisation Turkish citizens and Turkey’s accelerate to the EU accession process. As financial support, the EU has stated that it will accelerate the allocation process of 3 billion Euros financial resources to be provided on a project basis to the needs of Syrians in Turkey. It has committed to provide an additional 3 billion Euros by the end of 2018⁷⁵. According to the Commission’s press release of 10 December 2019, 4.3 billion euros of the 6 billion euro budget was committed to projects deemed appropriate and 2.7 billion euros were paid⁷⁶. The confusion regarding visa liberalization and the EU membership process is going on and it is obvious that a distance cannot be exceeded in these issues in short term.

In the 4th year of the EU-Turkey Statement, the EU is reported that since the Statement has been in place, arrivals and deaths have decreased significantly. From 10000 people crossing in a single day in October 2015, daily crossings

⁷⁴ Ekşi (n 73) 59.

⁷⁵ Batır (n 10) 600.

⁷⁶ Commission, ‘The EU Facility for Refugees in Turkey: €6 billion to support refugees and local communities in need fully mobilised’ (2019) <https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6694> accessed 21 April 2021.

have decreased to an average of 105 people per day. While the number of deaths in the Aegean Sea was 1175 twenty months before the Statement has been in place, it has decreased to 439⁷⁷.

CONCLUSION

Readmission agreements have an important place in the EU's foreign policy towards migration recently. For this reason, efforts have been made to sign readmission agreements with many states, especially neighbouring states. The most important problem experienced in the negotiations for readmission agreements is that non-nationals and stateless persons are also asked for readmission. If the EU excludes these people's return from readmission agreements, it will be able to sign these agreements with more states. This view has been defended in the literature recently and it is suggested to exclude this issue from readmission agreement texts that will be offered to countries other than the borders of the EU.

Readmission agreements lead the measures taken by the EU against the influx of immigrants. However, it is criticized that the EU's obligation to protect its external borders to third countries through these agreements and thus externalize the issue. Within the framework of the integrated migration management policy it has developed over time, the EU is being placed more heavily on third countries, but it does little work to tackle the root cause of the problem. Especially in this process, human rights have a slightly value and in secondary position. The EU should not consider the subject as a strategic and political tool and should focus both on illegal immigration and humanitarian aid and economic development support to reduce these migrations.

The EU-TR Readmission Agreement has been an important tool in the refugee crisis after the outbreak of the Syrian war. This Agreement implicitly abolishes the geographical limitation that Turkey has placed on the 1951 Convention on the Status of Refugees. Turkey has considered the Agreement as similarly with the EU as strategic and a package along with the visa liberalization process will be provided to Turkish citizens. Although the Agreement has come into force, there has been no significant progress in visa liberalization so far. To date, the pledge of the visa liberalisation to Turkey could not connect to a precise timetable. Consequently, in February 28, 2020 Turkey has decided to open own borders to the refugees and migrants who would pass by sea or land to the EU countries and to not to hinder them. These kinds of negative steps

⁷⁷ Commission, 'The EU-Turkey Statement Four Years On' March 2020, <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf> accessed 21 April 2021.

which based on the politic strategies also caused the negotiations on the EU-TR Statement to be clogged.

While the solution efforts are sacrificed among political conflicts, the crisis is deepening day by day. Meanwhile, some people continue a journey of hope by an inflatable boat in the middle of the sea. Even though they have a real brush with death. To abuse the readmission phenomenon, which is norm of law in fact, as a politic strategy, means putting human rights aside and to be blind to new humanitarian catastrophes.

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