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Success or Failure? Assessment of the Readmission Agreement Between the EU and Turkey from the Legal and Political Perspectives

ABSTRACT

The current refugee crisis, which created a collective action problem among the EU Member States in terms of sharing the responsibility, is indeed an indicator of the lack of solidarity as regards the implementation of the Dublin System. The pressures over the Common European Asylum System due to the high refugee influx from the Middle East into Europe following the Arab Spring and the Syrian civil war has driven the EU to cooperate with its neighbouring states at its external frontiers and the transit countries. Turkey, which is a transit country located at the external borders of the EU, and the only passage between Syria, Iraq and the EU, has been one of these countries with which the EU has negotiated a cooperation in solving the crisis. However, the case-law of the European Court of Human Rights, as well as the treatment of asylum-seekers in Turkey, brought forward the questions of considering Turkey as a “safe third country,” which is one of the principles lying on the basis of the agreement. Although there are several concerns at this point, the EU and Turkey agreed to sign the agreement, where the motive of national interest prevails over the protection of human rights from the point of view of both sides. In the light of this background, the aim of this paper is to discuss the motive behind the agreement, as well as elaborate whether Turkey is a “safe third country” under the Asylum Procedures Directive.



Introduction

Due to the massive refugee influx through the Eastern Mediterranean and the Western Balkans and from the Middle East into Europe in the aftermath of the Arab Spring and also due to the civil war in Syria, the EU and its Member States found themselves at a dead-end street in terms of finding a feasible and effective solution to handling such flow. Especially in the last two years, the influx has reached tremendous amounts, as well as becoming a humanitarian crisis at the external borders of the EU. Only in 2015, over one million irregular migrants arrived from across the Mediterranean, mainly in Greece and Italy (Clayton et al., 2015), and 885,000 of them reached the EU via the Eastern Mediterranean route (in other words, passing through Turkey to Greece) – 17 times the corresponding number in 2014 (FRONTEX, 2015). Under these circumstances, the EU and its Member States sought to manage the crisis by negotiating and cooperating with transit countries or the neighboring states at its frontiers, including Turkey, which is a transit country bridging Europe and Asia and the only passageway between war-torn Syria and Iraq and the external borders of the EU.

The inception of the negotiations between the EU and Turkey dates back to the informal meeting of the European Council on 23 September 2015, in which the ministers agreed on reinforcing the dialogue between Turkey and the EU (European Council, 2016a). The meeting on 8 October 2015 at the Eastern Mediterranean–Western Balkans route conference with Turkey, Jordan, Lebanon and the Western Balkan states, which aimed to enhance the partnership and solidarity, resulted in a declaration (ibidem). In order to further develop the cooperation with countries of origin and transit, including Turkey, a joint action plan between the EU and Turkey was brought to the agenda for the first time on 5 October (de Marcilly et al., 2016), and then adopted at the summit of 29 November 2015, where the heads of state and government of the EU Member States and Turkey met (European Council, 2016a). The parties agreed on the speedy implementation of the joint action plan on 7 March 2016, and expressed their aims to stop the flow of irregular migration via Turkey to Europe and migrant smuggling with an agreement on 17 and 18 March 2016 (ibidem). This agreement, which is embodied in the 18 March 2016 “EU-Turkey Statement,” is also known as the “readmission agreement.” In various meetings held on 23 May and 10 June 2016, ministers reviewed the current situation and discussed the acceleration of the resettlement of Syrian refugees from Turkey and the relocation of asylum-seekers from Greece and Italy (ibidem).

Notwithstanding a vast amount of NGOs and the UNHCR severely criticizing the readmission agreement, the parties continued to implement the agreement, which is said to have resulted in a drastic fall in the refugee influx on the Eastern Mediterranean route. In 2016, the total number of refugees passing over Turkey to Greece by sea has dropped to 164,176 (UNHCR, 2016a). Only in April 2016, the

number of arrivals in Greece dropped by 90% compared to March (FRONTEX, 2016) due to several reasons, including the EU-Turkey readmission agreement. Although the readmission agreement came to a halt due to the failed coup in Turkey on 15 July 2016, the parties revived the negotiations in August and September 2016.

Given the fact that Turkey and the EU had a sequence of negotiations which resulted in a readmission agreement and its implementation in such a short time interval, as can be seen from the abovementioned timeline, the paper will question the motive of national interest, which prevails over the motive of the protection of human rights from the point of view of both sides. It will further interrogate whether Turkey can be considered as a “safe third country” by giving concrete examples from the case-law of the European Court of Human Rights (the “ECtHR”) and the practices of the Turkish authorities at the refugee facilities.

1. The Path to the Readmission Agreement

1.1 The Development of the EU Policy on Asylum

The foundation of the EU asylum policy involves several treaties ratified by the Member States and the 2004 Treaty Establishing a Constitution for Europe, i.e. the Constitutional Treaty (which, although never ratified, was also a source of inspiration in this regard). The Member States of the EU are also under the obligation to ratify the 1951 Geneva Convention and the 1967 Protocol Relating to the Status of Refugees (the “Geneva Convention”), and comply with its provisions. The institutionalization of the EU policy on asylum dates back to the late 1980s. The 1986 Single European Act, which enabled the free movement of goods, services, capital and labor among the Member States of the European Community, was the first and foremost legal document referring to the refugees. Before that, the 1985 Schengen Agreement was ratified by the five member states of the European Economic Community, which proposed some measures to abolish the internal border checks and create the Schengen zone. As a matter of fact, the parties to these two agreements, which aimed to promote common economic, foreign and security policies at that time, would not have foreseen the contemporary “migrant crisis,” in which irregular migrants can flow within Europe without any border controls.

The 1985 Schengen Agreement was then supplemented by the 1990 Schengen Convention in order to enable a “borderless Europe” by abolishing the border checks, and created a common visa policy. According to the 1990 Schengen Convention, whose asylum provisions were superseded by the 1990 Dublin Convention – which came into force in 1997, an asylum-seeker has to apply at the country of first entry within the EU borders in order to be granted a “refugee status” (Schengen Convention, 1990). In addition, if the application is found admissible, it is only valid in the country where the asylum-seeker has sought refuge. Instead of promoting the

rules facilitating the movement of and providing international protection to refugees and asylum-seekers by reducing the border controls in accordance with the norms of international refugee law, the 1990 legal documents of the EU introduced stricter rules. Also, the 1992 London Resolution did not enhance the situation of refugees and asylum-seekers by introducing the “safe third country principle”, which was evading the responsibility of the EU Member States by establishing a territorial exclusion (London Resolution, 1992).

The 1993 Maastricht Treaty institutionalized the cooperation on asylum and immigration among the Member States, and created the pillar structure of the EU, where asylum and immigration were regulated under the Third Pillar, which deals with Justice and Home Affairs. After four years following the adoption of the Maastricht Treaty, the 1997 Amsterdam Treaty abolished the Third Pillar and created an area of freedom, security, and justice for the first time.

Since 1999, the EU has been working to create a Common European Asylum System (“CEAS”) and improve the current legislative framework (European Commission, 2015). In 2003, the Dublin II Regulation, which is the successor of the 1990 Dublin Convention, was adopted by the EU Member States, excluding Denmark. The Member States that have realized the ineffectiveness of the Dublin II Regulation revised and approved the Dublin III Regulation in 2013, which currently governs the rules implemented in regard to the examination of asylum applications by the Member States. The Dublin III Regulation and the EURODAC Regulation, which is a fingerprint system identifying asylum-seekers and irregular migrants, were soon referred to as the current “Dublin System.” In addition to these regulations, the European Parliament and the Council adopted the Asylum Procedures Directive (“APD”) in 2013, which sets out the common procedures for granting and withdrawing international protection for asylum-seekers (European Parliament and the Council of the European Union, 2013), including the provisions for the principle of a “safe third country.”

1.2 What is Agreed by the Deal?

At the meeting of the European Commission with the Turkish President Erdoğan held on 5 October 2015, the parties expressed their aim to help refugees in Turkey by providing temporary protection for them, and strengthen the cooperation to prevent illegal flows of migrants who are entering the EU in the draft joint action plan (de Marcilly et al., 2016) in order to tackle the refugee crisis. This has been the first crucial step of the summits held in the next few months, which resulted in the readmission agreement of 18 March 2016.

Based on the summits in October and November 2015, and on 7, 17 and 18 March 2016, the EU and Turkey came to an agreement in which the leaders agreed that all irregular migrants crossing from Turkey to the Greek islands would be returned to

Turkey as of 20 March 2016 (European Council, 2016b). The parties also agreed on the criteria for the returning of irregular migrants. Firstly, migrants not applying for asylum would be returned to Turkey. However, it remains vague whether they will be given effective opportunities for submitting an application, which is a significant step in determining a country as “safe” under the APD and enabling the prohibition of refoulement. Secondly, applications for asylum would be processed individually, and migrants whose application has been found unfounded or inadmissible would be returned to Turkey (ibidem).¹ However, the fact that Turkey is a “safe third country” would result in the inadmissibility of an application, since “individuals who submit asylum claims will be determined to have arrived from a country where they had or could have claimed protection” (Collett, 2016).

Meanwhile, the idea of the “one-for-one swap” was brought forward, that “for each Syrian returned to Turkey from Greece, one Syrian refugee will be resettled in Europe from Turkey” (Hansson, 2016). The parties agreed on the resettlement of 72,000 Syrian refugees in the EU Member States, which is a harshly criticized move as it ignores the refugees originating from different countries (The Greens - European Free Alliance, 2016: 1), such as Iraq and Afghanistan. This agreement is also open to question in the sense that one can compare the number of refugees passing over the Eastern Mediterranean route, and the number of refugees that will be settled in the Member States. In addition, Turkey will take all necessary measures for the prevention of new sea or land routes for illegal migration, such as a route from Turkey to Bulgaria, and implement legislation related to international protection, facilitate refugee access to public services, and register migrants (de Marcilly et al., 2016). At this point, the parties will cooperate in order to improve the facilities and socio-economic conditions for Syrian refugees in Turkey under the temporary protection. Thus, they agreed on an initial €3 billion worth of resources to help Turkey, which will be financed both via the European budget and contributions of the Member States (ibidem). Recently, the EU agreed to pay more than €6 billion to Turkey (Greenhill, 2016: 327) in order to provide further funding for the facilities and services provided to Syrian refugees. The agreement also brought the acceleration of the visa liberalization process by lifting the visa requirements for Turkish citizens by the end of July 2016, the opening of a new chapter to re-energize Turkey’s accession process (Carrera et al., 2015: 9), and an upgrade of the Customs Union.

¹ Hereinafter the “EU-Turkey Statement.”

2. The Gap Between De Jure and De Facto

2.1 The Motive Behind the Agreement

The current Dublin System of the EU has been criticized by a vast amount of NGOs and scholars, as well as the UNHCR, since it is dysfunctional (ibidem: 13) and was not capable of managing or solving the current refugee crisis (Gedikkaya Bal, 2016: 17). The contemporary refugee crisis turned out to be a collective action problem among the EU Member States, and an indicator of the lack of solidarity regarding the implementation of the Dublin System. A lack of effective action in terms of remodelling the sharing of protection and human rights responsibilities between all the EU Member States took them beyond the current unworkable EU Dublin System (Carrera et al., 2015: 2). Therefore, they began to move closer to other countries for the purpose of cooperating with them – in other words, they are tackling the root causes of irregular migration (ibidem: 4) by cooperating with transit countries and the neighboring states at the external borders of the EU, such as Turkey, in managing the crisis.

At both the EU level and the national level, among the Member States, the crisis created a dilemma: interests versus the protection of human rights. At the EU level, the choice to prioritize internal security over fundamental rights allowed for a strong comeback of national interests over mutual solidarity (Tommaso, 2016: 3). The Member States which were deeply concerned about their internal security and territorial integrity chose to physically close their borders, as Hungary decided to do so in 2015 due to the high refugee influx coming from the Western Balkans and Greece (BBC, 2016).² On the other side, Germany implemented an open-door policy by providing international protection to the refugees, and received the highest number of asylum applications out of all the Member States in 2015, with more than 476,000 applications (ibidem). Even though the policy implemented by Germany seems to provide protection to hundreds of thousands of refugees, it is highly criticized by several scholars, as Germany uses the EU institutions to pursue its national interests (Janning et al., 2016: 5). Especially in the last decades, Germany has been acting as the sole representative of the EU in most of the Union's foreign affairs due to the number of its representatives at the Parliament and its influence in the European Council. Finally, with the leadership of Germany within the Union, increasingly divergent interests came to a consensus (Collett, 2016) when the Member States agreed to negotiate with third countries in order to sign readmission agreements.

Considering that the EU and Turkey have come to an agreement in such a short time interval, one might think that there should be a win-win situation behind the deal:

² Hungary was the EU Member State with the highest number of asylum applications per 100,000 members of the local population in the EU in 2015. See: BBC (2016).

the accession talks between Turkey and the EU, which previously came to a halt, have been re-initiated in a more accelerated manner, and on the other side, the EU seems to have shifted the burden to Turkey rather than providing international protection to refugees. It is very questionable that the EU have sought to revive the accession process with a country which it severely criticizes at various fora in terms of human rights violations, the rule of law, suppression of the opposition and dealing with minorities. Recently, the European Parliament adopted its annual report on Turkey on 14 April 2016, which raised the Union's concerns about the worsening of the situation of human rights and freedoms in the country, including the freedom of the press, hostilities against the Kurds, and so forth (European Parliament, 2016). It shows that the deal between Turkey and the EU also meant that the EU is ignoring the human rights breaches in Turkey and depicting those violations in a way that is legitimated, whereas the Union defines itself as a political actor protecting human rights and promoting the rule of law (Greenhill, 2016: 328), and the Union's interests prevail over the protection of human rights.

The prioritization of national interest over the humanitarian concerns is also evident on the side of Turkey: the visa-free travel for Turkish nationals, the upgrade of the Customs Union, and the opening of a new chapter to re-energize the EU accession process could not have come to the agenda unless the protection and lives of millions of refugees in such a humanitarian crisis were of significance. It can be said that Turkey has made progress in its accession process and relations with the EU, even though none of the three abovementioned steps were carried out, as Turkey did not fulfil several of the benchmarks stated in the EU-Turkey Statement of 18 March 2016, including narrowing the scope of the legislation and practices related to terrorism in line with European standards (European Commission, 2016: 10). In addition, Turkey has to do nothing but open its doors for the Syrian refugees, and ameliorate the conditions at the facilities and services provided to Syrian refugees with the funding awarded by the EU budget and the contributions of the Member States. As a result, the EU has done everything for its "closed-door" policy against the refugees, merely creating a buffer zone in Turkey and shifting the burden to Turkey, while Turkey enjoys the political opportunism on the other side.

2.2 Compatibility with Human Rights Standards and Principles: Can Turkey Really Be Deemed as a "Safe Third Country"?

Several party alliances in the European Parliament expressed their concerns about the EU-Turkey readmission agreement in a joint declaration, as the deal is incompatible with several EU principles (The Greens - European Free Alliance, 2016: 1). One might consider that the following action point of the EU-Turkey Statement has to be questioned more in terms of its compliance with human rights standards

and principles than all other provisions of the readmission agreement of 18 March 2016:

All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. *Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey* [emphasis added]. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the EU. (European Council, 2016b)

The major problem arises out of the statement emphasized herein, which prescribes the criteria for irregular migrants that will be returned to Turkey. First, it is very vague whether all migrants will be given effective opportunities and the right to appeal for their asylum application before their being considered as “migrants not applying for asylum.” This is very significant, since under Article 13 of the European Convention on Human Rights (“ECHR”) and Article 39 of the APD, the right to an effective remedy has to be respected in order to protect the right to appeal against the decision about the asylum (ECHR, 1950; APD, 2013).

Second, in case an application is found unfounded or inadmissible by an EU Member State, this will also be a ground for an applicant to be returned to Turkey (APD, 2013). When an application is found “unfounded,” it is the rejection of an asylum application based on the merits of the applicant, whereas an application is found inadmissible when it is rejected before the consideration of the applicant’s merits under Article 33/2 of the APD on the grounds that Turkey is a “first country of asylum,” pursuant to Article 35, or a “safe third country” under Article 38 (*ibidem*).

The Geneva Convention does not explicitly contain the concept of a “safe third country”. According to the APD, the concept asserts that asylum-seekers should apply for asylum in the first safe country they are able to reach (APD, 2013; Farcy, 2015). This means that under the readmission agreement, Turkey will be responsible for asylum applications of asylum-seekers who reach it as the first safe country they

come to after leaving their country of origin, and if asylum-seekers somehow arrive in the EU by crossing Turkey, they will be returned to Turkey, since Turkey is considered as a safe third country. However, Turkey does not have an effective asylum procedure, as its domestic law is inadequate for providing an effective access to protection and granting refugee status to non-European asylum-seekers, whereas according to the APD, only a “safe third country” that ensures an effective access to protection and an effective asylum procedure can be accepted as a country for readmission (APD, 2013, art. 35 and 38). This dichotomy will be further discussed below.

Article 38 of the APD particularly regulates the concept of a “safe third country” (ibidem). Accordingly, a “safe third country” is a country where (a) the life and liberty of the people concerned are not threatened by virtue of their race, religion, nationality, membership in a particular social group or political opinion; (b) there is no risk of serious harm with regard to torture and cruel, inhuman or degrading treatment, the death penalty, etc. (as defined in Directive 2011/95/EU); (c) and (d) the principle of non-refoulement in accordance with the Geneva Convention, and the prohibition of the removal of migrants to their country of origin, where the people concerned would face torture et al., are respected; and (e) the possibility exists for the migrant to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention (ibidem).

While considering the provisions of the APD, whether Turkey can be deemed as a safe third country is highly challengeable, as the recent and past examples indicate that the treatment of non-European asylum-seekers in Turkey is alarming. In 2000, in the case of *Hoda Jabari v. Turkey* at the ECtHR, the Court unanimously found that Turkey was responsible for the alleged violations against an applicant for asylum because she was to be deported to Iran, her country of origin, even though there was a well-founded fear of persecution in her country of origin under the Geneva Convention on her part, and also due to the treatment she faced during her detention in Turkey (ECtHR, 2000). In the case concerned, the principle of non-refoulement and the right to an effective remedy and the prohibition of torture et al. were not respected by the Turkish authorities (in contrast to Article 38/1(c), (d) of the APD). The principle of non-refoulement is involved in various international conventions, including the 1966 International Covenant on Civil and Political Rights (UNGA, 1966, art. 7), the 1984 Convention Against Torture (UNGA, 1984, art. 3), the Geneva Convention (1951, art. 33), and the ECHR (1950, art. 3), to which Turkey is also a State Party. The term refers to providing effective procedures for asylum applications, and the prohibition of sending refugees back to their country of origin and arbitrary detention of refugees (Kingsley et al., 2016). Under the Geneva Convention, it is not possible to make an exception to the non-refoulement obligation (Geneva Convention, 1951). Thus once Turkey has not respected the principle of non-refoulement in the case concerned, it also violated its obligations under the international agreements mentioned above.

Although Turkey is a State Party to the 1951 Geneva Convention Relating to the Status of Refugees, it ratified the 1967 Protocol by retaining the “geographic restriction” among its obligations under the Geneva Convention, but simply not recognizing non-Europeans as refugees. The current legislation on the international protection of refugees in Turkey, which is in line with its international obligations under the Geneva Convention since it has the force of law under Article 90 of the Turkish Constitution (Grand National Assembly of Turkey, 1982), remains inadequate in terms of providing protection for non-European asylum-seekers. Although the Law No. 6458 on Foreigners and International Protection was enacted in 2013 and entered into force in 2014 for the purpose of providing protection for foreigners, it did not foresee the Syrian refugee influx of the last two years (Directorate General of Migration Management, 2014).

As of June 2016, there are more than 2.7 million Syrians living in Turkey under the “temporary protection status” in relation to the Geneva Convention (Republic of Turkey, Ministry of Foreign Affairs, 2016; UNHCR, 2016b). At first, Syrian refugees were considered as “guests” until they were given the status of “temporary protection” under Article 7 of the Temporary Protection Regulation enacted in October 2014 under Article 91³ of the Law No. 6458. However, under the “temporary protection status,” only temporary residence and temporary protection are provided for non-European refugees (Farcy, 2015), which means they have fewer socio-economic rights than Turkish nationals, and no right to seek and apply for asylum in Turkey. Thus it is also dubious whether there is a possibility for Syrian refugees to request refugee status, receive protection in Turkey in accordance with the Geneva Convention and, as a result, consider Turkey as a “safe third country” under Article 38/1(e) of the APD (APD, 2013).

The treatment of refugees and asylum-seekers in Turkey remained the same despite the progress in the corresponding legislation in compliance with the EU *acquis* which started in the early 2000s, as can be seen in the case of *Abdolkhani and Karimnia v. Turkey*, where the ECtHR found that Turkey violated articles 3, 5 and 13 of the ECHR when two applicants for asylum were immediately arrested and deported to Iraq on the basis of their illegal entry into Turkey, regardless of their asylum request and recognition as refugees by the UNHCR (ECtHR, 2009). Just a few months after the EU-Turkey deal, in June 2016, Turkish border guards killed eleven Syrian refugees who attempted to cross the Syrian-Turkish border (Euro-Mediterranean Human Rights Monitor, 2016), and this case brought forth the question of the lives of the asylum-seekers being highly threatened (in contrast to Article 38/1(a) of the APD); indeed their right to life was violated by the Turkish authorities. This was the case also when the prohibition of torture et al. was not respected (in contrast to Article 38/1(b) of the APD) in a case in which the practices of the Turkish executives in the Aşkale

³ Temporary Protection Regulation (2014/6883).

Removal Centre, located in a small town in the Erzurum province in the east of Turkey, were not in line with the legislation, as the asylum-seekers started to protest the conditions of the Centre and the illegal deportations from it on 28 December 2015 (Ulusoy, 2016). Several NGOs in Turkey, including Amnesty International, immediately issued a joint declaration (Amnesty International Turkey, 2016) in which they condemned and addressed the severe conditions of the Centre, where the asylum-seekers were chained and inhumanely detained in cells.

All these practices of the Turkish authorities with regard to the asylum-seekers bring into question whether Turkey can really be considered as a “safe third country” under the APD, and whether there need to be changes in its legislation in order to provide full protection for the asylum-seekers arriving in Turkey. In addition, the Geneva Convention should be implemented in Turkey without limitations, regardless of the asylum-seekers’ country of origin. The parties of the readmission agreement in question should also take into consideration the rights of asylum-seekers in order to end human suffering and provide international protection in compliance with international human rights standards and principles, rather than pursuing their own interests.

Conclusions

The refugee crisis generated a collective action problem among the EU Member States, and indeed it is an indicator of the lack of solidarity as regards the implementation of the Dublin System. The pressures over the CEAS due to the high refugee flow from the Middle East into Europe in the aftermath of the Arab Spring and the Syrian civil war, which resulted in a humanitarian crisis at the external borders of the EU, have driven the EU to cooperate with its neighboring states at its external frontiers and the transit countries. Turkey, which is a transit country located at the external borders of the EU, and the only passage between Syria and Iraq and the EU, has been one of these countries which the EU has chosen for negotiation and cooperation on a readmission agreement.

The informal meeting of the European Council on 23 September 2015, by reinforcing the dialogue between Turkey and the EU, was the initiation of a busy agenda and resulted in the EU-Turkey readmission agreement on 18 March 2016. The ongoing process culminated in a steep fall in the number of incoming irregular migrants into the EU from the Eastern Mediterranean route in 2016. One might consider that the negotiations between the two parties have been fruitful and, in a way, successful; however, the issues concerned in the contemporary refugee crisis indicate the opposite, as Turkey is exposed to a tremendous Syrian refugee population in the same year and not able to provide an efficient international protection for them due to the lack of competent authorities at the refugee facilities, sufficient reception conditions and an adequate legislation.

The motive behind the agreement is also questionable, as it is evident that national interests prevail over the humanitarian concerns on the side of Turkey and the Member States, and the Union's interests prevail at the EU level. Granting visa-free travel for Turkish nationals, an upgrade of the Customs Union, and the opening of a new chapter to accelerate the EU accession process could not have come to the agenda, however, unless the protection of millions of refugees in such a humanitarian crisis was of importance. The EU has nevertheless done everything for its "closed-door" policy against the refugees, including the payment of more than €6 billion for funding the facilities for refugees in Turkey, which thus merely creates a buffer zone in Turkey and shifts the burden to Turkey, while Turkey enjoys the political opportunism on the other side.

The past and current examples in Turkey show that Turkey indeed cannot be considered as a safe third country under the APD. The case-law of the ECtHR, as well as concrete examples of the treatment of asylum-seekers in Turkey in the last decade, brought forth questions about the perception of Turkey as a safe country. Though Turkey also announced in July 2016 that it would offer citizenship to Syrian refugees (Weise, 2016), including work permits and residence permits, this will not be a solution in the long-term; on the contrary it will probably create a polarization among the Turkish nationals and Syrian refugees, and bolster the existing xenophobia. As a result, a possible solution might be a change in the legislation of Turkey to provide full protection for the incoming asylum-seekers in Turkey, as well as the implementation of the Geneva Convention without any geographic restriction. The EU and Turkey should also consider the rights of asylum-seekers in order to properly provide an international protection for them in compliance with international refugee law. This could, for example, include increasing the number of refugees which came into the EU that will be readmitted – in other words, changing the conditions for the "one-for-one swap" – under the readmission agreement.

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