EUROPEAN UNION READMISSION AGREEMENTS AS SECURITIZATION INSTRUMENTS: THE CASES OF TURKEY AND PAKISTAN

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
MIDDLE EAST TECHNICAL UNIVERSITY

BY

SELİM MÜRSEL YAVUZ

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF MASTER OF SCIENCE
IN
THE DEPARTMENT OF EUROPEAN STUDIES

JULY 2017

Approval of the Graduate School of Social Sciences

_____

Prof. Dr. Tülin Gençöz
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Science.

_____

Assoc. Prof. Dr. Galip Yalman
Head of Department

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Science.

_____

Assoc. Prof. Dr. Başak Kale
Supervisor

Examining Committee Members

Assist. Prof. Dr. Başak Yavçan (TOBB ETU, IR) _____

Assoc. Prof. Dr. Başak Kale (METU, IR) _____

Assist. Prof. Dr. Zerrin Torun (METU, IR) _____

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

Name, Last name: Selim Mürsel Yavuz

Signature:

ABSTRACT

EUROPEAN UNION READMISSION AGREEMENTS AS SECURITIZATION INSTRUMENTS: THE CASES OF TURKEY AND PAKISTAN

Yavuz, Selim Mürsel

M.S. Department of European Studies

Supervisor: Assoc. Prof. Dr. Başak Kale

June 2017, 210 Pages

Securitization theory argues that "security" is a speech act. By talking security, an actor tries to move a topic away from politics and into an area of security concerns thereby legitimating extraordinary means against the socially constructed threat. However, even though speech acts are also an area of concern, this thesis argues that the European Union (EU) officials do not necessarily use speech acts to move an issue to the security realm. Likewise, looking only to speech acts would not be enough to understand the securitization of migration in the EU. One should also consider the actions, ways of doing things, bureaucratic mechanisms, bilateral and multilateral agreements, and policy instruments in order to "feel" the securitization as it is argued by the Sociological Approach to Securitization. This research argues that European Union Readmission Agreements (EURAs) communicates migration as a security threat and legitimize the extraordinary measures against the constructed threat, and that EURAs are securitization instruments. This research adopts Sociological Approach to Securitization in order analyze EU's readmission agreements with Turkey and Pakistan. Geographically, both Turkey and Pakistan became the main target for the EU

to combat irregular migration because of the increased migration flows from or through these countries to its territories. EU's readmission agreements with Turkey and Pakistan are the cases chosen for this research to have an in depth discussion on EU's securitization of migration with readmission agreements. As it will be shown, although Turkey and Pakistan may not be considered as necessarily safe countries for readmissions according to international law and the EU law, the EU's conclusion of readmission agreements with these countries without ensuring the safety of irregular migrants can be a proof of its perception of migrants as a threat.

Keywords: European Union, irregular migration, readmission agreements, securitization, securitization instruments

ÖZ

GÜVENLİKLEŞTİRME ENSTRÜMANLARI OLARAK AVRUPA BİRLİĞİ GERİ KABUL ANLAŞMALARI: TÜRKİYE VE PAKİSTAN ÖRNEKLERİ

Yavuz, Selim Mürsel

Yüksek Lisans, Avrupa Çalışmaları Bölümü

Tez Yöneticisi: Doç. Dr. Başak Kale

Haziran 2017, 210 Sayfa

Güvenlikleştirme teorisi "güvenliğin" bir konuşma eylemi olduğunu iddia eder. Güvenlik odaklı konuşan aktörler bir konuyu politik alandan güvenlik alanına taşımaya çalışır; böylece sosyal olarak inşa edilmiş olan tehdit hakkında alınacak olan olağanüstü tedbirleri meşrulaştırmış olurlar. Konuşma eylemleri önemli olsa bile, bu tez Avrupa Birliği (AB) yetkililerinin bir konuyu güvenlik alanına taşımak için her zaman konuşma eylemlerini kullanmadığını savunmaktadır. Sadece konuşma eylemlerine bakmak AB'de göçün güvenlikleştirilmesini anlamak için yeterli olmayacaktır. Güvenlikleştirmeye Sosyolojik Yaklaşım tarafından öne sürüldüğü gibi, eylemler, işlerin yapılış şekilleri, bürokratik mekanizmalar, ikili ve çoklu anlaşmalar, politika araçları da güvenlikleştirmeyi "hissetmek" için göz önünde bulundurulmalıdır. Bu araştırma, Avrupa Birliği Geri Kabul Anlaşmalarının göçü bir güvenlik tehdidi olarak ele aldığını ve anlaşmaların inşa edilmiş tehdide karşı olağanüstü önlemleri meşrulaştırdığını, dolayısıyla bu anlaşmaların bir güvenlikleştirme enstrümanı olduğu savunmaktadır. Araştırmada AB'nin Türkiye ve Pakistan ile imzaladığı geri kabul anlaşmalarını derinlemesine analiz etmek için Güvenlikleştirmeye Sosyolojik

Yaklaşım teorisi benimsenmiştir. Coğrafi olarak hem Türkiye hem de Pakistan, bu ülkelerden kaynaklanan veya geçen göç akışlarının artması nedeniyle AB topraklarına yönelen düzensiz göçle mücadele için AB'nin başlıca hedefi haline gelmiştir. Bu nedenle, AB'nin Türkiye ve Pakistan ile imzaladığı geri kabul anlaşmaları bu tez için seçilen örneklerdir. Bu tezin bulgularıyla ortaya konulacağı üzere, Türkiye ve Pakistan, uluslararası hukuka ve AB hukukuna göre geri göndermeler için tam anlamıyla güvenli ülkeler olmasa da, AB'nin düzensiz göçmenlerin güvenliğini sağlamadan bu ülkelerle geri kabul anlaşmaları imzalaması göçü bir tehdit olarak algıladığının kanıtı olabilir.

Anahtar Kelimeler: Avrupa Birliği, düzensiz göç, geri kabul anlaşmaları, güvenlikleştirme, güvenlikleştirme enstrümanları

To My Parents Fulay, Nevzat, and My Brother Sermet

ACKNOWLEDGMENTS

I wish to express my deepest gratitude to my supervisor Assoc. Prof. Dr. Başak Kale for her guidance, advice, criticism, encouragements and insight throughout this research.

I would also like to thank Assist. Prof. Dr. Başak Yavçan and Assist. Prof. Dr. Zerrin Torun for their kind suggestions, constructive feedback and comments.

I would like to express my gratitude to my dear family members, Nevzat Yavuz, Fulay Yavuz, Sermet Reha Yavuz, Senem Çelik Yavuz and my cat "Kızım" for being with me and supporting me all the time. I would like to thank from the bottom of my heart to my dearest friends Abdullah Bera İçli, Batuhan Arslan, Ezel Bozlak, Gizem Yalçın and Mustafa Kamil İman for their precious friendship. Without their support, my life would have been inconceivable.

TABLE OF CONTENTS

PLAGIARISM iii
ABSTRACT iv
ÖZ vi
DEDICATION viii
ACKNOWLEDGMENTS ix
TABLE OF CONTENTS x
LIST OF ABBREVIATONS xii
CHAPTER
1. INTRODUCTION 1
2. THEORETICAL BACKGROUND 11
2.1. Securitization from the Perspective of the Copenhagen School 11
2.2. Sociological Approach to Securitization and the Critique of the Copenhagen School 17
3. MIGRATION POLICIES IN THE EUROPEAN UNION 26
3.1. Introduction 26
3.2. Historical and Institutional Development of Migration Policies in the EU 27
3.3. Securitization of Migration in the EU 31
3.3.1. Securitizing Discourses of Migration in the EU 33
3.3.2. Securitizing Instruments of Migration in the EU 37
3.4. Conclusion 40
4. EU READMISSION AGREEMENTS AS LEGAL INSTRUMENTS 43
4.1. Introduction 43
4.2. Readmission Related Refugee Rights in the International Law 44
4.2.1. Right to Seek and Enjoy Asylum 44
4.2.2. The Non-refoulement Principle 47
4.3. Protection of Readmission Related Refugee Rights in the EU 49
4.4. Historical Framework of the European Union Readmission Agreements 52

4.5. Legitimacy of the European Union Readmission Agreements 56
4.6. Conclusion 64
5. THE EU'S READMISSION AGREEMENT WITH TURKEY 67
5.1. Introduction 67
5.2. Negotiation Process and Signing of the Readmission Agreement between Turkey and the EU 70
5.3. Turkey as a Safe Country for Readmissions 83
5.4. Conclusion 94
6. THE EU'S READMISSION AGREEMENT WITH PAKISTAN 100
6.1. Introduction 100
6.2. Negotiation Process and Signing of the Readmission Agreement between Pakistan and the EU 103
6.3. Pakistan as a Safe Country for Readmissions 107
6.4. Conclusion 113
7. CONCLUSION 115
REFERENCES 121
APPENDICES 154
A. AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF TURKEY ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION 154
B. AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE ISLAMIC REPUBLIC OF PAKISTAN ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION 179
C. TURKISH SUMMARY 195
D. TEZ FOTOKOPİSİ İZİN FORMU 210

LIST OF ABBREVIATONS

ALDE	Alliance of Liberals and Democrats for Europe
CAT	United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CJEU	Court of Justice of the European Union
EC	European Communities
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEC	European Economic Community
EP	European Parliament
EPP	European People's Party
EU	European Union
Euromed Rights	Euro-Mediterranean Human Rights Network
EURA	European Union Readmission Agreements
FRONTEX	The European Border and Coast Guard Agency
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally displaced person
IR	International Relations
IOM	International Organization for Migration
JRC	Joint Readmission Committee

KAOS-GL	Kaos Gay and Lesbian Culture Research and Solidarity Organization
LFIP	Law on Foreigners and International Protection
MEP	Member of European Parliament
NARA	National Aliens Registration Authority
NGO	Non-Governmental Organization
OHCHR	The Office of the United Nations High Commissioner for Human Rights
PoR	Proof of Registration
S&D	Progressive Alliance of Socialists and Democrats
SEA	Single European Act
TCN	Third-country nationals
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

Increased migratory movements have proved to bring various political, social and economic challenges to societies and states around the globe. As of 2015, it is estimated that there are 244 million international migrants as well as 763 million internal migrants in the world (IOM, n.d.; United Nations, 2016). One could argue that before the 1970s, migration was mainly seen as a catalyzer for economic growth in Europe. The European Union Member States (the member states) did not consider it as a critical security challenge until the end of the Cold War. This was mainly because in the Cold War period there were different security challenges such as a possibility of a nuclear war (Dover, p. 113). Therefore, other issues such as migration were not at the top of the security agendas. However, starting from the late 1980s, some scholars and politicians considered migration as an international security challenge, by putting migration's negative implications on economic, political and social structures on the host states.

The collapse of the Berlin Wall in 1989, the dissolution of the Union of Soviet Socialist Republics (USSR) and the opening of the borders with the East and Central European countries, triggered irregular migration flows to Western European countries. Thereon, the member states have started to perceive migration as a threat to their identities and decided to take measures against irregular migration flows. The member states started to consider irregular migration flows as challenges to their economies, political systems and societies. During the same time, there was a paradigm shift at the European Union (EU) level on migration policies as well. The EU's highly securitized discourses and practices on migration contributed to the member states' security perceptions on migration. Different instruments have been

developed in the EU to tackle irregular migration, paying much attention to regional security while giving little attention to the humanitarian aspects. Readmission agreements, in that sense, are the most developed securitization instruments in the EU to combat irregular migration.

In this thesis, I will be looking at the securitization process of migration at the EU level. My focus will be the historical and institutional development of migration policies and their securitization within and outside the territory of the EU through the European Union Readmission Agreements (EURAs). My research question is as follows: To what extent the European Union Readmission Agreements are securitization instruments and to what extent Sociological Approach to Securitization explains this phenomenon?

We can think of the securitization as the process of placing certain issues into the field of security and turning them into issues that need to be dealt with urgency. Along with this process, political actors gain legitimacy to bypass public debates and democratic procedures (van Munster, 2012). The goal of this study is to examine the role of EURAs during the securitization of migration and understand the extent to which they constitute as a securitization instruments. Understanding the legal aspects of the readmission agreements in both international law and European Union law are important since the agreements are legally binding documents and that they must comply with the rights arisen from the international law.

EU's readmission agreements with Turkey and Pakistan are the cases chosen for this thesis. Geographically, both Turkey and Pakistan are the targets for the EU to combat irregular migration. The main reason is the increased migration flows from or through these countries because of the wars that have been going on in their neighboring countries of Syria and Afghanistan respectively. Those two agreements are also chosen because I believe; Turkey and Pakistan EURAs would constitute the best examples for

the security-driven practices of the EU since those two countries have the highest number of refugees as of June 2016. This is mainly because of the wars that have been going on for years in the respective neighboring countries of Syria and Afghanistan. Turkey is hosting around 3 million Syrians whereas Pakistan is hosting 1.6 million Afghans (UNHCR, 2016). It can be presumed, therefore, that irregular migrant flows coming from or through Turkey and Pakistan are the highest in the world. The important point that one should consider, then, is that how safe Turkey and Pakistan are for the readmission of irregular migrants.

This thesis argues that Turkey and Pakistan cannot be considered as safe countries for readmissions. Although there are significant improvements in Turkish legislation regarding the international protection, Turkey's geographical limitation imposed on the Convention Relating to the Status of Refugees (1951 Geneva Convention) continues to constitute a problem for a country to be considered as safe in terms of international law. This issue will be discussed in detail in the Chapter 3. Moreover, documented refugee rights abuses make it questionable regarding the safety of returnees. In Pakistan, the situation seems to be much worse in terms of human rights and refugee rights since Pakistan has not ratified many international human rights conventions including the 1951 Geneva Convention. Furthermore, current repatriation process of Afghan refugees to Afghanistan could constitute one of the biggest refugee rights abuses in history. Sending irregular migrants to places where their life would be threatened and where they cannot enjoy asylum in its full sense would violate both international law and the EU law. According to Sociological Approach to Securitization, instruments that communicate certain issues as security can try to legitimize extraordinary measures are securitization instruments. Therefore, if Turkey and Pakistan are not safe countries for readmissions, then it can be assumed that readmission

agreements signed with these respective countries can be accepted as securitization instruments simply because they prioritize security of the EU countries. This is the proof of the usage of an extraordinary measure at the expense of international law, international human rights principles and the EU law.

Before starting the discussion, it is important to clarify and define some of the relevant concepts and terminologies that I will be using throughout my thesis. First, this research adopts the traditional definition of the terms in migration studies such as, irregular migrant, refugee and asylum seeker. In that respect, migration means "the movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes" (IOM, 2011). Consequently, a migrant can be defined as "any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of the person's legal status; whether the movement is voluntary or involuntary; what the causes for the movement are; or what the length of the stay is" (IOM, n.d.).

Irregular migrants are those persons who, owing to unauthorized entry, the breach of a condition of entry, or the expiry of their visa, do not have a legal status in their transit or host countries. A refugee, on the other hand, according to the 1951 Geneva Convention, is "the person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (UN General Assembly, 1951, Art. 1(A)(2)). An asylum seeker is the "person who seeks safety from persecution or serious harm in a country other than his or her own and awaits

a decision on the application for refugee status under relevant international and national instruments. In the case of a negative decision, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds" (IOM, 2011).

Readmission agreements are international instruments, which address procedures, on a reciprocal basis, for one state to return non-nationals in an irregular situation to their home state or a state through which they have transited (Lilienkamp & Saliba, 2015). EURAs are in force together with bilateral readmission agreements made by the member states with non-EU countries; but EURAs take precedence over bilateral readmission agreements because "European law is superior to the national laws of Member States" (European Union Publications Office, 2010). For the conclusion of such EU-level agreements during negotiations, the EU has been offering visa facilitation and other incentives such as financial support or special trade condition. These incentives are used not only for the conclusion of the agreement but also for the execution of it. While prioritizing the EU's goals in preventing irregular migration flows to its territories, often times the agreements put a greater burden on the non-EU side. Therefore, in order to overcome the reluctance of non-EU countries, the EU came with the above-mentioned incentive approach.

The legal basis for concluding EURAs is Article 79 (3) of the Treaty on the Functioning of the European Union (TFEU). They are negotiated with the partner countries based on the power given to the Commission by the Council. EURAs will come into force after the approval of the European Parliament (Lilienkamp & Saliba, 2015). As of 2017, the EU signed sixteen EURAs with Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, China's Special Administrative Regions of Hong Kong and Macao,

Former Yugoslav Republic of Macedonia, Georgia, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine. The commonality about these countries is that they are not just source countries but also transit countries to EU. In other words, these countries are in critical importance for the EU's efforts to limit irregular migration to the EU.

As mentioned previously, readmission agreements provide mutual responsibilities for contracting states in sending and receiving irregular migrants back. As defined in the Return Directive (Directive 2008/115 / EC), readmission agreements are very important instruments for the EU return policy. There are some concepts in the EU law that are utilized for the facilitation of the returns. The member states often use these concepts as a basis for rejecting asylum applications of particular groups or categories of asylum seekers without examination of the merits. An asylum application may be found inadmissible on the grounds that the person coming from a "safe country of origin", "safe third country", "first country of asylum", or "European safe third country".

The country of origin of asylum seekers can be considered "safe" if the country of the asylum seeker is not listed as a country, producing refugees. However, the member states are set free on the "rules and modalities for the application of the safe country of origin concept" (European Parliament and Council of the European Union, 2013, p. 80).

A country could be regarded as a "safe third country" if an asylum seeker could have access to an effective asylum regime in a country where he or she has transited before arriving the destination country. For a country to be considered as a safe third country, the EU law lists five criteria, which includes respect for life and liberty of the refugees, respect for non-

refoulement principle and the application of 1951 Geneva Convention without any limitation and reservation.[1]

One of the other concepts/principles that the EU uses is "the first country of asylum". It means the country where the asylum seeker "has been recognized in that country as a refugee and he or she can still avail himself/herself of that protection; or he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement" (European Parliament and Council of the European Union, 2013). The notion of the first country of asylum is frequently used as a condition of access to the asylum determination procedure (IOM, 2011).

Finally, in the concept of the European safe third country, "Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances, as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2" (European Parliament and Council of the European Union, 2013, p. 81). The difference between the safe third country concept and the European safe third country concept is that in the European safe third country concept, the standards for the identification of the safeness

[1] "Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:
(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
(b) there is no risk of serious harm as defined in Directive 2011/95/EU;
(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;
(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention" (European Parliament and Council of the European Union, 2013).

of the country can be lowered. That is to say, a European safe third country does not have the obligation to guarantee that there will not be a threat to life and liberty and danger of suffering harm to the readmitted people. In other words, asylum seekers can be sent to a third state without knowing what will happen to the asylum seeker. The criteria for European safe third countries are the ratification and full implementation of the 1951 Geneva Convention and its 1967 Protocol without any geographical limitation; the existence of an asylum procedure foreseen by law (p. 81).

This thesis will examine the European Union Readmission Agreements whether they can be considered as securitization instruments by selecting two European Union Readmission Agreements signed by the EU with Turkey and Pakistan. I will try to present EURAs as securitization instruments by demonstrating that although these countries are not necessarily safe for readmitting people, the EU went through with the signing of the agreements. Proving that these countries are not safe for readmission would reveal the security-driven nature of these agreements. In doing so, I will examine the primary (the EURAs) and secondary resources (books, academic periodicals, conference proceedings, working papers, the EU reports and policy papers and statistical data from EU institutions etc.) to reach a comprehensive understanding if they can be considered as securitization instruments.

I will also use the web resources of the EU institutions, such as the European Commission, the Council, and the European Parliament while researching EU immigration policy to find answers to my research questions. Besides, the political discourses and policy instruments and publications of the EU will be taken into account with a distinct emphasis on policy instruments. The reasons for me to focus more on the policy instruments rather than discourses is that in the EU, the link between securitizing speech

acts and the audience, namely the public, is less certain than in nation-states. In addition, the institutional structure of the EU provides additional ambiguities on identifying a central securitizing actor in the EU (Neal, 2009).

I will structure my study within a theoretical framework. Accordingly, I intend to apply Sociological Approach to securitization in order to discuss and analyze the security-oriented policy instruments of the EU. Through a descriptive and qualitative analysis, I will be conceptualizing the processes of securitization of migration in the EU and making a distinction between security discourse and security practice. After I analyze what security practices mean, I will look at the relevance of the readmission agreements as a securitization instrument and then I will investigate two important EURAs signed with Turkey and Pakistan within the theoretical framework of this research.

One of the main constraints of this study was the limited number of resources and scientific research available so far in the area of EURAs. EURAs are relatively new policy instruments in the EU and the EURAs signed with Turkey and Pakistan, which I intend to investigate, were signed in 2014 and 2010 respectively.

This study will be divided into six chapters. The first chapter will start with a theoretical framework in which the Copenhagen School's perspective on security and securitization explained in order to understand how security is constructed through speech acts. In the second part of the first chapter, I will be mentioning the foundations of the securitization theory and the main arguments of the Copenhagen School. At the EU-level, however, Sociological Approach to Securitization is much more insightful on explaining the securitization of migration in the EU; because at the EU-level focusing solely on speech acts would not give a complete picture on the securitization of migration as it is going to be shown. In this regard, the first chapter will

formulate the theoretical ground of the study in order to understand how security practices contribute to the process of securitization. The second chapter will analyze how migration has become an issue of security at the EU's institutional level. I will start looking at the historical development of migration policies and briefly analyze security discourses and practices in the EU. In this part, I will also analyze the relevance of EURAs as a security practice. This will lead to reaching a comprehensive understanding of the securitization of migration in the EU policies since the foundation of the Union.

After evaluating the historical and institutional background of securitization of migration and security discourses and practices at the EU level, the third chapter will analyze the readmission agreements as legal documents. First, I will be discussing the rights of refugees in international law. Later, I will focus on European Union law to understand how these rights are enshrined and protected in the EU. Furthermore, in the last section of the third chapter it will established that EURAs are, in fact, securitization instruments and how securitization of migration could be felt in the existing EURAs, revealing the security-driven decision-making in the EU even though EURAS are not necessarily in compliance with international law.

The fourth and fifth chapters will analyze two existing EURAs with Turkey and Pakistan respectively. The chapters will examine whether the agreements are protecting the refugee rights by analyzing whether these countries are, in fact, safe for readmissions. Finally, the thesis will be concluded with a conclusion chapter, wrapping up the discussion on securitization of migration and readmission agreements as securitization instruments.

CHAPTER 2

THEORETICAL BACKGROUND

"Security is a mental state, not so much based deductive reasoning as inspired by faith and confidence… We sleep more securely in a country cottage surrounded by a garden than if that cottage gave directly on to the main road. The garden wall may totally ineffective as an obstacle; possibly we do not even lock the gate at night; but we are surrounded with a zone of space, and that zone, though it cannot physically guarantee security, yet psychologically imparts it. Transpose the garden wall into a nation frontier and the same effect is produced… We have replaced the "razor's edge" of sharp contact by blunter insulating zone. In future we just think frontiers, not as lines, but as zones, which, in effect they are."

−James Marshall-Cornwall, 1935,
Geographical Disarmament: A Study of Regional Demilitarization

2.1. Securitization from the Perspective of the Copenhagen School

During the Cold War, the notion of security developed only around rigid security understanding and nuclear competition. With the changing international conjuncture after the Cold War, the notion of security has also been transformed. In this transformation process, new conceptions of threats have emerged on the security agenda of the states. It has been presumed that these threats could not be solely solved by individual states; they had to cooperate with other states in order to overcome these problems. These threats, also called "soft security" issues, are thought to have consequences for national and international security. Climate change, epidemics, environmental problems, organized crime, terrorism and international migration were among the perceived threats. In this period, international migration has been believed to have significant effects on the security of communities and has been considered among the major regional and geostrategic dynamics (Faist, 2002, p. 20).

In contrast to Realist security approaches in which states should accumulate more power (mainly material) to ensure their security, non-

traditional security studies have different approaches to security. The Copenhagen School approach has an important place in the transformation of the security literature as well as with many different IR theories such as Feminist IR theory, Critical theory, and human security approach. The Copenhagen School can be interpreted as a combination of liberal, post-structuralist, and social constructivist approaches. According to the new terminology of IR, what remains between realism and post-structuralism are considered social constructivists, and for this reason, the Copenhagen School is seen as a social constructivist approach. Social constructivism advocates that people construct social reality and that it can and will change. There is no objective truth in this respect, but reality becomes more meaningful with people's approach. Therefore, beliefs, ideas, discourses, and insights are important.

Copenhagen School's foundation was laid in 1985 under the project entitled "Non-Military Dimensions of European Security" by the European Security Working Group, which was established within the scope of the Copenhagen University Peace and Conflict Research Center. The group members Wæver, Buzan, Kelstrup and Lemaitre published a book entitled "Identity, Migration and the New Security Agenda in Europe" in 1993. Bill McSweeney described this group for the first time as "Copenhagen School" in the article in which he criticizes the book and the authors (McSweeney, 1996, p. 81). In the book, security issues were looked at from a broader perspective than the classical military approach. It was argued that security objects other than the state (the object that threatens the security) must also be taken into consideration (Wæver, Buzan, Kelstrup, & Lemaitre, 1993). While the definition of security has been expanded, discussions have been held at three levels: international system level, state level, and sub-state level.

However, military security was still a priority in practice; therefore, most widely the states were considered as security objects.

Security, according to the members of the school, means to survive in the face of threats (Buzan, Wæver, & Wilde, 1998, p. 27). Security can also be defined as a concept that brings political priority to a cause and justifies the use of force, intensification of executive power, and other extreme measures. The use of the security concept for a topic makes the issue a priority for the political agenda and creates an immediate sense of urgency that requires the state to mobilize with its entire means (p. 208). The presence of a threat to existence makes it legitimate to take extraordinary measures to combat this threat. How security is understood and used influences not just the political life but also the social life. Excessive securitization, that is, continuously viewing many issues as a security matter that would require urgent and extreme measures will bring about a sense of paranoia for the governments (Wæver, 1995).

Securitization occurs "when a securitizing actor uses a rhetoric of existential threat and thereby takes an issue out of what under those conditions is normal politics" (Buzan, Wæver, & Wilde, 1998, pp. 24-25). Securitization approach was based on the idea that there are no "real" threats apart from the socially constructed world, and that one should and can only study the social construction of security. The securitizing actor defines an issue as a security issue, "moves a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it" (Wæver, 1995, p. 55). In this process, "speech act" is used to define an issue as an existential threat to the "referent object" such as nationality or state. If the "audience" also accepts this, the process is successful. That is to say, issues are not security concerns by themselves; rather, issues have been securitized through the interactions between the actor and the audience.

Wæver argues that absolute security is unattainable, therefore, it is a relative concept, and it is not objective but socially constructed (Wæver, 1993, p. 23). Copenhagen School scholars claim that security follows a logic and that their aim is to uncover that logic: "we seek to find coherence not by confining security to the military sector but by exploring the logic of security itself to find out what differentiates security and the process of securitization from what is merely political" (Buzan, Wæver, & Wilde, 1998, pp. 4-5). We can say that the Copenhagen School put speech acts, in which an issue is labeled as a security concern, as their main area of investigation, since "security is the speech act where a securitizing actor designates a threat to a specified referent object and declares an existential threat implying a right to use extraordinary means to fence it off", as they argue (Wæver, 2000, p. 251). Thus, one can define securitization as "the move that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics" (Buzan, Wæver, & Wilde, 1998, p. 23). Labeling an issue as the security issue gives a legitimacy to the securitizing actor to impose emergency and sometimes illegal measures (p. 24).

For successful securitization, according to the theory, securitizing actors and the relation between politicization and securitization are important issues to analyze. The state is a priority both as a securitizing actor and as a threatened object. The state is not the only security actor, but the most successful securitizing actors are politicians and governments. Other actors, such as the media, can also succeed in securitizing moves. Non-governmental organizations, for example, are the first to reveal the context between environment and security.

Furthermore, there is a linear relationship between politicization and securitization. One can consider politicization and securitization of the environmental issues as examples. When scientists and non-governmental

organizations expressed in the 1970s that environmental degradation was a threat to humanity, the environment was not yet part of the political debate. It is a fact that these groups aimed at launching a political debate in this area, whether or not it is necessary to securitize it. Therefore, in order to securitize an issue, it must first be politicized. Nevertheless, presenting an issue as a threat does not always result in securitization, but remains at the level of politicization. That is, while the issue gains a place on the political agenda, extraordinary measures might not be taken.

The Copenhagen School is implementing its securitization theory for five main sectors (Buzan, Wæver, & Wilde, 1998). First is the military security. It is based on reciprocal interactions between states' ability to carry military attacks and to defend themselves against military attacks, and their perceptions of other states' intentions. Intra-state separatist and terrorist movements and external threats in traditional sense are considered as threats in discourse. Second is the political security. Institutional stability of states includes governmental systems and ideologies that provide legitimacy to governments. Political power, governmental status, and recognition are all related. Issues such as ideological threats and diplomatic recognition in this sector are expressed as threats.

Third is economic security, which includes access to economic resources, financing, and markets in order to enable states to sustain prosperity. In this sector, trade, production, and financial relations are considered as important issues. For example, prevention of accession to external resources is a threat to some governments. Fourth is societal security and it is related to sustainability of language, culture, religion and national identity. Social identity relationships are important in this sector and identity issues are included in security debates. The community creates and responds to "we" consciousness against the threats. In this sector, immigration is being

built as a security element in public discourses. One can argue that societal security has gained more importance in the last two decades. Finally, the environmental security involves the preservation of the local environment and planetary biosphere as a necessary support system to the existence of all other humanitarian initiatives. Large-scale natural disasters and human-induced environmental problems in this sector are described as threats (Buzan, Wæver, & Wilde, 1998).

As opposed to securitization, Wæver argues that certain issues should be removed from the security area. He conceptualizes this process as "desecuritization". Desecuritization is defined as the transfer of problems from the security area, which involves taking extraordinary measures, into the ordinary public space (Wæver, 1995). The Copenhagen School is questioning whether it is a good idea to frame as many problems as possible based on security, since securitization strengthens the "we and the other" mentality. Therefore, the Copenhagen School argues that the issues should be kept in the normal policy area. Desecuritization is an ideal goal according to the Copenhagen School. Ole Wæver further explains the need for desecuritization of certain problems: desecuritization policies can be effective in solving the problem if approaching the problem with security-oriented mentality is not effective.

As stated in the theory, a subject can be configured as a security threat at a later time while it has not been previously securitized. Similarly, the securitization of a subject does not mean that it will remain so forever. For example, communism, structured and accepted as a successful threat before the end of the Cold War, has completely ceased to be a threat within four to five years. In this process, the discourse has completely changed (Wæver, 1995). This is one of the best examples of what is previously structured and accepted as a threat to be removed from being a threat, that is,

desecuritization. Another example of desecuritization is the EU integration after the Second World War as a result of the threat that such a great war could happen again between European countries (Wæver, 1995). As an output of this concern, policies of enlargement and deepening have emerged under the European integration. Hence, countries that have previously fought each other, especially Germany and France, have returned their relations to normal policy area with the European integration, and the integration has become one of the most important examples of desecuritization.

Wæver criticizes the fact that security studies have led people to think only of security. In other words, security studies strengthen securitization because they only take a security-oriented view of political and social problems. Wæver criticizes this approach of security studies with the concept of desecuritization. Copenhagen School's security approach are adapted by different authors to different areas such as migration, minority rights, AIDS, terrorism, human trafficking, development, democracy and the environment in different regions of the world and it is safe to say that the application areas of the theory are expanding.

2.2. Sociological Approach to Securitization and the Critique of the Copenhagen School

Wæver claims that their approach based on speech can also be applied to Europe as a tool to understand the security concerns of Europe: "in the European version of order/security, there is a state building logic at play. Security is invoked in a sense that can be interpreted as a call to defend a not-yet-existing social order" (1995, p. 74). While their assumption might be true for the national context, discourses of the EU officials are barely reported and almost never discussed in public. Therefore, even if there are a speech act and a referent object, there is no audience at the EU level and there is no interaction between the securitizing actor, namely the EU, and the audience.

This situation poses a great challenge to one of the core assumptions of the Copenhagen School since one cannot talk about a public debate on the EU's statements. Moreover, the institutional structure of the EU provides additional ambiguities on identifying a central securitizing actor in the EU (Neal, 2009, p. 336). In addition, the Copenhagen School's approach of securitization is very narrow to the extent that it only focuses on speech acts. It ignores the other ways of securitization such as policy instruments, images, treaties, etc. (McDonald, 2008, p. 564).

The Copenhagen School's over-emphasis on speech acts has been criticized by many scholars over the years. Especially on the securitization of migration, Bigo emphasized the importance of non-discursive practices (2000). This is not to say speech acts are not relevant, however, the securitization of migration "comes also from a range of administrative practices such as population profiling, risk assessment, and what may be termed a specific habitus of the security professional with its ethos of secrecy and concern for the management of fear or unease" (Bigo, 2002, p. 65). The Copenhagen School offers a formal definition of securitizing speech acts, whereas Sociological Approach to securitization led by Bigo does not give a formal definition of securitizing practices. According to Bigo, "it is possible to securitize certain problems without speech or discourse and the military and the police have known that for a long time. The practical work, discipline and expertise are as important as all forms of discourse" (2000, p. 194).

Furthermore, since securitization has been institutionalized over the years, it would not make sense to look at speech acts simply because securitizing actors would not need to speak on the issue to move it to the security realm as they have already done so. However, that is not to say the securitization process is complete. Securitizing actors continue to securitize issues with practices. Therefore, solely focusing on discourses would not give

us a complete picture of the securitization process. One should also analyze the practices of the institutions on a given "security issue". To analyze the issue empirically, defining and identifying securitizing practices is very crucial.

While Bigo does not give us the exact definition for securitizing practices, Balzacq who is another proponent of the Sociological Approach to Securitization, proposes a concept called "tool of securitization" or "instrument of securitization". He argues that "tool of securitization" is "an identifiable social and technical 'dispositif' or device embodying a specific threat image through which public action is configured in order to address a security issue" (2008, p. 78). In other words, securitizing practices could be any activity carried out by the securitizing actors that would communicate to its observers that the issue being dealt with is a security threat. It does not matter whether this communication is direct or indirect; if a practice or instrument convey the idea that the issue is a security threat, then we can identify that practice or instrument as a tool of securitization.

Securitizing actors try to achieve security through a securitization process. In addition, security cannot be reduced to a core understanding or a purely linguistic formulation. The "security" tag imposes a political program by evaluating who is to be protected, who can be sacrificed, and who can be assigned as a fear object. Any attempt to achieve maximum security in this securitization process results in maximum insecurity, not minimum insecurity, as opposed to traditional approaches to security (Bigo, 2008). In addition, it is profoundly political to define a subject or an object as security matter (Huysmans, 1998).

This thesis has adopted a sociological approach to securitization. Much of the IR literature, which claims to be pragmatic, positivist and realistic, ignores the diversity and influences of security-oriented practices.

They often define security normatively and give more importance to the position of the dominant speaker. The sociological approach to securitization refers to practices as forms of social interaction derived from objective relationships that are neither directly visible nor unconscious, but more real than any definition of a "matter" of a concept. The notion of practice comes from French sociology and was put forward by writers such as Pierre Bourdieu and Michel Foucault.

The securitization process is a process in which both discursive and non-discursive dynamics play a role, drawing the lines between the groups, and determining what is danger, risk, and threat. In this context, the sociological approach to securitization also shares the fundamental argument of Wæver and the Copenhagen School that there is a need for a social constructivist approach in order to understand security. Nevertheless, the Copenhagen School focuses too much on the discursive practices of political leaders and representatives in the process of securitization. They ignore the performative sides of these narratives and their resulting practices. Discursive constructions and speech acts are not enough to understand how securitization works. Academicians not only have to explain the nature of speech, but also have to examine the effects of these words in real life conditions (Bigo, 2006).

Complementary to speech act perspective, the sociological approach to securitization includes both discursive and non-discursive practices. In other words, the sociological approach is stronger than the securitization theory, which focuses entirely on speech acts, because it combines discursive and non-discursive formations, including knowledge, movements, policies, treaties and technologies. Since social interactions are not governed solely by a specific rule (as in the speech act perspective), non-discursive practices are not substitutes for discursive practices, but both are equally important for the analyst. They have different rationales, but they can produce the same effects.

According to Reckwitz, “practices” are a kind of routine behavior consisting of many interconnected elements. For those who analyze security practices, securitization is not necessarily the result of a rational design in which the targets are pre-determined by following a pre-determined agenda (2002, p. 249). As Pouliot puts it, “social action is not necessarily preceded by a premeditated design. A practice can be oriented toward a goal without being consciously informed by it” (2008, p. 261).

Security is best understood by focusing on the nature and function of the policy tools used by the intermediaries to cope with a specific problem, given the increasingly difficult untangling of discourses and ideologies, the increased thickness of security programs and the uncertainty between the security actors and the audience (Balzacq, 2008). Policy tools put “things” in a certain plane and contribute to the emergence of a security field and to the routinization of practices. Security tools or instruments are social devices where security agents conceptualize threat. They contribute to the acceptance of security practices. The tools are based on a background information on a threat and conceptualize how to face the threat.

As mentioned, Balzacq defines securitization tools as “an identifiable social and technical ‘dispositif’ embodying a specific threat image through which public action is configured to address a security issue” (2008, p. 79). In other words, securitization instruments include security practices. It provides four basic features of securitization instruments. First, each securitization tool has its unique features. For example, all EU Justice and Home Affairs databases require the collection, storage, and modification of information; however, they show significant differences in terms of the nature of the information they collect, the duration of storage, and the circumstances under which they can be used (p. 79).

Second, each instrument “has its own operating procedures, skills requirements, and delivering mechanisms, indeed its own ‘political economy” (Salamon, 2002, p. 2). Moreover, tools can be considered as a sequence of routines and procedures that structure the interaction between individuals and organizations. For example, a nuclear weapon does not only provide a sense of confidence or power to a state, it also changes the relationship it has with other states thereby configuring the international system. In short, policy instruments change social relationships significantly. In this context, instruments or tools “define who is involved in the operation of public programs, what their roles are, and how they relate to each other” (p. 19).

Third, the instruments of securitization are restructuring the concept of public action for the issues identified as threats. Fourth and finally, the instruments describe a specific threat image and what to do about it (Balzacq, 2008). In this context, for example, the EU Justice and Home Affairs databases not only keep track of the numbers of individuals who enter the EU area and move in the territory but also establishes a specific system of control for those who enters. Securitization instruments also reveal policy choices and direction of actions. Despite the basic similarities, each tool used in the securitization process has different effects. In fact, different tools are not equally effective in all cases. Moreover, securitization instruments sometimes have limited consequences or indirect effects. The consequences of effects of the instruments depend on the nature of the instruments.

For this reason, the policy instruments do not represent a purely technical solution to a public problem. A narrow focus on the operational aspect of securitization instruments would ignore political and symbolic elements of the instruments. On the one hand, securitization tools are mainly political. To put it another way, both the choice and the use of security tools

depend on political factors, and it is extremely important that there is a political mobilization. On the other hand, there are symbolic qualities placed in policy instruments that communicate "what the securitizing actor is thinking and what its collective perception of problems is" (Peters & van Nispen, 1998, p. 3). In other words, focusing on the political and symbolic aspects of securitization instruments will help to understand how "the intention of policy could be translated into operational activities" (De Bruijn & Hufen, 1998, p. 12).

In general, security practices are connected mainly through two types of security tools (Balzacq, Basaran, Bigo, Guittet, & Olsson, 2010). First is regulatory instruments. The starting point here is that the regulatory instruments are trying to normalize the behavior of target persons. Such policy instruments are intended to influence the behavior of social actors by allowing certain practices to reduce threats; by forbidding certain types of political activity that have become a threat; encouraging certain perceptions of threats. For example, since 2002, almost all documents related to irregular immigration and asylum in Western countries have a strong connection with terrorism.

The second is capacity instruments. EURAs can be considered in this category. These, along with being the most controversial tools of the EU's strategy to combat terrorism, are the most preferred securitization instruments. Simply, capacity tools provide skills or legitimacy that is required to enable individuals, groups and organizations to make decisions and to carry out certain activities (Schneider & Ingram, 1990, p. 517). While regulatory instruments are primarily concerned with government processes, capacity instruments are specific methods for imposing external discipline on individuals and groups. In this sense, capacity instruments are necessary to achieve educational, military, and policy objectives.

"Tools change through practices; in turn, tools affect practices" (Balzacq, Basaran, Bigo, Guittet, & Olsson, 2010). An exceptional threat, whether it is real, perceived or manufactured, leads to exceptional answers that can be labeled as the state of exception. This concept, theorized by the philosopher Giorgio Agamben (2005), in which he "enlightens the blurred area where the state will not apply the existing legal principles and rules to its own action. Then, the state of exception constitutes a key feature in order to consider and analyze state practices in the field of immigration control, and their effective respect of human rights" (Gabrielli, 2014, p. 319). In the case of securitization of migration in the EU, any tools used by the EU officials that would communicate the migration issue is a security threat and combat this threat with extraordinary measures is also a tool of securitization or instrument of securitization.

After having defined the criteria for the securitization instruments, it possible to apply them to EURAs with a systematic and detailed analysis starting from their conception to today. Building on the Sociological Approach to Securitization and based on normative concerns, the major hypothesis of this thesis is that EURAs signed with Turkey and Pakistan are illegitimate and instruments of securitization since these countries are not safe countries for readmitting people in terms of international law and the EU law. Proving these countries are not safe third countries or first country of asylum would reveal the security-driven decision-making at the EU-level simply because the EU is taking an extraordinary measure and trying to legitimize these measures through these agreements, as these agreements are capacity instruments.

It should be noted that the analysis in this thesis is based on the idea that securitization does not occur suddenly; rather it is a process that has spread over a long period. In the next chapter, the development of the

migration policies in the EU will be briefly explained. The role of security discourses and instruments utilized to securitize migration in the EU will be shown.

CHAPTER 3

MIGRATION POLICIES IN THE EUROPEAN UNION

3.1. Introduction

Rome Treaty of 1957 which established the European Economic Community (EEC) with six European countries (Belgium, France, Germany, Italy, Luxembourg, the Netherlands) did not authorize the EEC on policymaking in the field of migration. Today, however, many Europeans regard "migration" as one of their greatest concerns. During the Brexit referendum in Britain, the most discussed topics were the Polish plumbers, which symbolizes the cheap labor coming from East and Central European countries, Syrian refugees, and Turkey's EU membership. Thin details are often lost to the public; asylum seekers, refugees, economic migrants, ethnic minorities and second or third generation immigrants are all categorized as "foreigners".

The problem with the securitization of migration is the failure of the securitizing actors to identify different migration types. Generalization of all migrants by associating them with instability and negative consequences would lead to societal fractions (e.g. grouping economic migrants and war refugees as asylum seekers and presenting all asylum seekers as a security issue). These societal fractions represent themselves in economic and political spheres, leading to rise of fascism, racism, and xenophobia. For example, in Greece, fascist political party Golden Dawn increased its influence because of the securitization of migration and increased intolerance against anything different. "Foreigners out", "Greece belongs to Greece", and "every immigrant causes an unemployed Greek" is among the famous slogans of this party's supporters (Themistocleous, 2013). Nevertheless, the situation in Europe was not always like this. In this chapter, I will be examining the

historical and institutional development of migration governance in the EU together with discourses and policy instruments on migration in order to understand how migration became a security issue in the EU.

3.2. Historical and Institutional Development of Migration Policies in the EU

Migration is a fact since the beginning of world history. Although the numbers are changing, the reasons stay the same: survival and/or better living conditions (Huysmans, 2000, p. 52). Nevertheless, the end of 20th century marked a significant increase in migratory movements. The reason behind this increase, according to scholars, is the increased demand for labor; and the increased demand for labor was due to the emergence of industrial capitalism (Dover, 2008, pp. 115-116). Migration was not considered as a security challenge until the end of the Cold War. This was mainly because of the fact that there were different types of security challenges because of the Cold War, such as a possibility of a nuclear war (p. 113). Therefore, other issues such as migration were in the background for many to be considered as a security issue. However, starting from the late 1980s, some scholars and politicians have viewed migration as an international security challenge by putting migration's negative implications on economic, political and social structures on the host states forward. 9/11 terrorist attacks in the United States of America (USA), further supported anti-migration rhetoric in international politics.

In Europe as well, the general pattern towards migration was the same as the international process. Especially after World War II, immigrant workers were the main catalyzer of economic development in Europe. They were cheap and flexible, as it was needed in the European labor market (Huysmans, 2000, pp. 753-754). Many European countries such as France, the Netherlands and Germany allowed labor migration to their countries and

even facilitated promotional migration policies. For instance, a special migration agency has been utilized in France to recruit the labor force directly from the origin countries. The legal status of migrant workers was not a huge concern as of that time since ambiguity of their status would contribute to flexibility and exploitability of them.

However, in the beginning of the 1970s, the status of migrant "guest" workers started to be part of the public debates. As a result of these public debates, we saw policy shifts from permissive migration policies to restrictive migration policies in many European countries (Hollifield, 1992). The policy changes did not immediately result in a public perception change towards immigrants, they were still perceived as guest workers. Yet, the policy change was a manifestation of a desire to protect the rights of the domestic labor force. Furthermore, political discourses kept associating migration with disorder and destabilization (Uğur, 1995). Even though permissive migration policies stopped to recruit more labor, the immigrant population grew based on family reunion laws. The continuous immigrant population increase drew public attention to the issue. Day by day, "guest workers" became permanent guests in the eyes of the public (Huysmans, 2000, p. 754).

In the late 1960s and the beginning of the 1970s, migration was not an important topic for newly established EEC. Nevertheless, the Council Regulation 1612/68 made clear that right to free movement is a prerogative for the nationals of the member states. According to Uğur, the Council decision "laid the foundation for 'fortress Europe' in the area of immigration" (1995, p. 977). In the 1973 Paris summit, it was confirmed that only the citizens of the member states could enjoy special rights derived from belonging to the EEC. In the summit, it was also agreed that there should be a common legislative action for the foreigners in the EEC. The EEC took its first move in developing a common migration policy by adopting an action

programme in 1974. This first step was actually in favor of migrant workers and their families with a right to family reunification (Callovi, 1992, p. 356). That was mainly because the EEC perceived migration as an economic and social right and an important component of the integration process of Europe.

Starting from the mid-1980s, the direction of the migration policies has changed. This was due to the politicization of immigration through presenting asylum as an alternative of economic immigration (den Boer, 1995, p. 93). For example, in the Austrian Presidency work programme document for July-December 1998, under Eurodac section, there was an explicit linkage between asylum and so-called "illegal" migration: "in recent years the steep rise in the number of illegal immigrants (and therefore potential asylum-seekers) caught has revealed the increasing need to include their fingerprints in the system…" (Huysmans, 2000, p. 755).

The politicization of the issue opened the way for the coordination of migration policies as well as institutionalization of European cooperation on migration. One of the most significant developments on the issue was the establishment of an intergovernmental forum called the Ad Hoc Group on Immigration and the Schengen group, TREVI (Bigo, 1994, pp. 164-165). These forums including TREVI were not the part of European integration; however, they were significant in the sense that they laid down the framework for future cooperation on the regulation of migration. After the Single European Act (SEA) of 1986, the framework developed in the TREVI group was incorporated into the Treaty on the European Union in 1992 by the introduction of the Third Pillar on Justice and Home Affairs in which migration was explicitly identified as a topic for intergovernmental regulation.

Soon after, the member states were not satisfied with the intergovernmental approach on migration policies since they believed it

would be more effective to have a supranational and harmonized migration policies. Therefore, they decided to move all policies related to migration such as policies of irregular immigration, asylum, and refugees, to the community pillar with the Treaty of Amsterdam in 1997 (Kostakopoulou, 2000, p. 510) Since the Treaty of Amsterdam, which came into force in 1999, we can talk about a harmonized migration and asylum policy in the EU. Nevertheless, in the Article 79 (5) of the TFEU, it is established that any EU-level measures on migration "shall not affect the right of member states to determine volumes of admission of third country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed" (Consolidated version of the Treaty on the Functioning of the European Union, 2012). In other words, while the EU still has huge say on a wide range of policies on migration such as asylum, expulsion and family unification, the member states have still a prerogative on determining the number of people to be admitted to their countries.

Common migration policies in Europe have focused on reducing the population flows to Europe (Uğur, 1995). The Dublin Convention, which came into force in 1997, in that sense, was significant since it aimed to limit the ability of signatory states to shift the responsibility of application for asylum. It was setting the criteria for determining which state must process a specific asylum application. While it was establishing a much quicker decision-making procedure, it also made it impossible for an asylum seeker to submit another application in a different European country (Huysmans, 2000, p. 756).

Moreover, restrictive policies on migration further represented in the development of Eurodac, which is the fingerprint database used to identify asylum seekers and irregular migrants in the EU. With the Lisbon Treaty in 2009, the Court of Justice of the European Union (CJEU) has been

empowered to act on migration policies. One of the significant decisions it has given was to limit the member states on their ability to return asylum seekers to their first country of entry. Series of directives passed in the 2000s covered much more issues in the area of migration. For example, in 2003, a directive concerning the family reunion established the conditions of which family member can enter to the EU, while recognizing the member states' rights to define what family is, and impose waiting periods to take integrative measures (Council of the European Union, 2003). There are many more examples of common migration policies in the EU that are control oriented; however, this thesis will not cover a detailed discussion. While migration was not a security issue right after World War II, the perception started to change with its politicization. Now, the EU migration policies strongly focused on limiting migratory flows to its territories.

3.3. Securitization of Migration in the EU

The previous section briefly discussed the historical and institutional development of the migration policies in the EU and explained how the perception of migration has changed over time. This perception change is due to the politicization and then the securitization of the issue. This section will focus on the securitization of migration in the EU. Securitization of an issue can be analyzed at international, regional, state and sub-state levels. Different levels of analysis would help us to differentiate between the reasons of securitization. At the international level, for example, securitization of migration is occurring to a limited extent simply because of various institutional structures and different political conditions among states. Nevertheless, one can argue that securitization of migration at the international level has been the case since the 9/11 attacks in the USA and the consequent declaration of War on Terror. Examining the securitization of an issue on regional and state levels would be more meaningful and easier

because of the similarities in the institutional structures and political atmospheres.

Some argue that the problem comes first, and then the policy response. This analysis considers the security challenge as given and policy instruments as a reaction against it. Meaning, increased immigration creates instability in the economy and social life that would lead to security responses to counter the problem. As many securitization theory proponents would disagree, I do not think this is the case and I consider this approach to be reductionist. It is important to understand how security discourses and tools can be defining actions in the process of construction of an issue as a security challenge. Security discourses help political actors to gain legitimacy on combating the "security challenge" in their respective communities (Wæver, 1995). For example, according to Wæver, the European integration process is the result of fear pumped by political actors to European people in which European integration presented as the only way out of another interstate war (1996). Wæver is right in the sense that the EU is not another example of a nation state; it was formed in the sense of security. Political actors of Europe configured the integration process in a way to present it necessary for the survival of European communities. As a project, the European Union is the result of a choice between integration and fragmentation.

It can be argued that it is the state oriented structure of the world politics that makes international migration visible (Zolberg, 1989). In Europe, however, the European integration process changed the border structures we understand in general sense. In the previous section, I tried to emphasize the transformation of migration governance in Europe. This transformation is both a product of and a contributor to the securitization of migration. The process of securitization is far more complex than one may be tempted to reduce it. It is continuously constructed and reconstructed with ideas,

discussions, interactions and practices. Securitizing actors are using these ideas and practices to develop narratives in a way to construct a "reality" on migration. A common, constructed reality on migration is to present it as a threat to stability, identity and the labor market (Geddes, 2005). At the other end of the spectrum, it is possible to construct migration as a beneficial thing to the economy and view it from a human rights perspective.

3.3.1. Securitizing Discourses of Migration in the EU

Intense political debates on migration have been the case since labor migration with bilateral agreements had stopped in Europe in the 1970s. Even though there were other factors for this move, such as the economic recession experienced in Europe because of the oil crisis; stopping labor migration could be considered as a step towards the securitization of migration in the EU since decision-makers labeled migration as a source of economic, social, cultural, religious and political instability when making this decision. Even at that time, some political actors and media described migration as a security threat.

Starting from the 1980s, migration is presented as a threat to economic stability and social cohesion (Bigo, 1994; den Boer, 1995). This was mainly because of the economic downturn experienced during the 1970s, and the desire to protect the social and economic rights of the workforce in a changing labor market. Securitizing actors moved migration issue not only to the political sphere but also to the security realm. One of the first examples of these securitizing actions was the 1990 Convention Applying the Schengen Agreement in which immigrants are associated with security threats such as terrorism. The agreement established a framework in which migration was dealt as an internal security matter. It called for the promotion of the harmonization of working methods for border control and surveillance in

order to combat “illegal” migration (Convention Implementing the Schengen Agreement of 14 June 1985, 2000).

One of the most significant discourses used by many political actors as well was derived from Huntington’s *The Clash of Civilizations and the Remaking of World Order*. In his book, Huntington pinpoints multiculturalism as the cause of societal fragmentation (1997). He argues that migration weakens the home country’s culture, traditions, and homogeneity. It is further argued in the book that a community should be homogenous in order to survive. For the survival of the community, social and cultural aliens, namely migrants, should be excluded from the community. Even though Huntington’s arguments are flawed in a way that they lack empirical evidence and support hatred as the necessary foundation of cultural identity; his work dominated public discourse in the West.

Today, in the EU, we can identify two political narratives that are used to justify the securitization of migration. One is the “humanitarian” discourse, which argues protecting migrants from human traffickers and smugglers is saving lives and the other one is the “utilitarian” discourse, which argues economics, national identity, and national security are affected badly because of “illegal” migration. (Gabrielli, 2014, p. 314). For example, the EU agency FRONTEX often uses humanitarian rhetoric in its actions to combat irregular migration (Horsti, 2012). According to a press release after the patrol operations in 2006, FRONTEX’s operations “were not about building ‘Fortress Europe’. They were of a humanitarian character and were aimed at saving lives at sea, as well as reducing illegal immigration and combating trafficking in human beings, a crime from which only the traffickers benefit” (p. 12).

A utilitarian approach can be seen in 2005 United Kingdom's Conservative Party leader Michael Howard when he explicitly connected migration with terrorism in his speech:

> We face a real terrorist threat in Britain today a threat to our safety, to our way of life, and to our liberties… We have lost control of our asylum and immigration system. At a time when Britain faces an unprecedented terrorist threat, we appear to have little idea who is coming into or leaving our country... We will start by cracking down hard on illegal immigration… There are now over 250,000 failed asylum seekers living in Britain who have no right to be here... To defeat the terrorist threat we need action not talk, action to secure our borders… (The Guardian, 2004).

In the speech, the political actor clearly connects asylum and immigration with terrorism and pledges to take action against this "national security matter".

Linguistic identifications are very important in the process of securitization. Some authors investigated the effects of discourses on shaping the public opinion and policy responses (Maneri, 2011; Düvell, 2011; Anderson, 2013). "Use of 'collective categories' that lack any descriptive coherence or precision, but are nevertheless replete with connotations and implicit associations ('clandestine', 'gypsies', 'extracomunatari', 'Muslims,' etc.) provide the raw material for the discourse on immigration" (Maneri, 2011). In that sense, use of the term "illegal migrant" is a prominent example of this kind of "collective categories". Illegality implies a criminal action. In the case of migration, labeling the act of passing a border as a criminal action is misleading. Lacking a proper administrative documentation cannot be considered as a crime. Moreover, there are many other scenarios to be

considered as an irregular migrant. For example, staying in a country longer than the specified period on the visa introduces new dimensions to the picture as Anderson argues, which can be called semi-compliance (Anderson, 2013). Therefore deducting the issue to illegality and legality is over-simplification.

Nevertheless, both officially and unofficially, the EU institutions sometimes prefer to employ the term "illegal migration" (European Commission, 2008; European Commission, 2006; Council of the European Union, 2016; European Commission, 2009; European Parliament, 2008). According to Bigo, Schengen and EU free movement agreements had strong discursive components in which political actors argued that complete abolition of borders would constitute a major security threat (cited in Parkin, 2013, p. 6). The notion that opening up of the internal borders could lead to an increase in crime, has served to justify compensatory security measures and the transnational cooperation in border policing. The use of criminal sanctions and imprisonment for combating irregular migration is not only a cause for harm for migrant but also an important sign of how society perceives migration in general.

In his study, focused mainly on Greece and Italy, Tsoukula found out that securitizing actors, in their securitizing discursive actions on migration, emphasized three dimensions in which irregular migrants have an effect on the society. A socio-economic dimension, a security dimension and an identity dimension (Tsoukala, 2005). Vollmer argues that these dimensions vary in degree and nature across different member states (Vollmer, 2011). In France, for example, securitizing actors emphasize the security and crime dimension of irregular migration, whereas in Austria socio-economic dimension is exploited. Still, he confirms that there is an element of threat and fear in all of the European discourses. In addition, another EU-funded study carried out in seven European countries, namely, Austria, Belgium, Ireland,

the Netherlands, Spain, Switzerland, and the UK, found out that politicians and journalists associated migration with crime and security when addressing the issue (Berkhout, 2012).

Furthermore, Maneri makes a connection between media and politics. He argues that if an issue is framed as a threatening matter, then the specific news item takes the attention of the public. The political actors exploit the increased public attention in order to gain legitimacy and support. What is left is a continuous cycle of news items focusing on threats and policy responses to that constructed threat (Maneri, 2011). The images used by the media together with the political rhetoric tend to shape public opinion much more easily and create certain perception towards migrants in the society. Since the media is framing migration as a security issue, politicians' messages are easily transmitted to the public further contributing the process of securitization of a migrant or foreigner. The media influences the attitude of society and help design an emotional background for immigration. Media does not just reflect the image of the migrant, but actively shapes it.

3.3.2. Securitizing Instruments of Migration in the EU

In the literature, few works have studied securitization instruments and security practices on migration issues at the EU level. Balzacq, who investigated the data exchange instruments within the EU, conducted one of them (2008). Another one was on the activities of the European Union's external borders agency (FRONTEX) (Leonard, 2010). Huysmans, also inspired by Bigo's works, analyzed the effects of speech acts on professional processes, which later leads to security practices (Huysmans, 2004). In the previous sections, I mentioned that 9/11 terrorist attacks were a breaking point for the securitization of migration at the international level. In Europe, one might trace the securitization of migration to the formation of the TREVI

group. It was an informal European intergovernmental platform in which migration was considered as a security challenge.

This intergovernmental platform sowed the seeds for the Schengen Convention of 1990, which then acquired into the EU *acquis* with the Amsterdam Treaty of 1999. In the Schengen Agreement, an explicit link between the migration and security has established as if it is similar to terrorism and crime (Gabrielli, 2014, p. 312). The Convention also changed the border relations within the signatory states, and creating a new external border, thus separating signatories from "outsiders". At first, policing of this new external border was done by the member states. However, the transfer of migration policies from the third pillar to the first pillar gave way to the Europeanization of the issue[1]. FRONTEX Agency has been assigned specifically for controlling the EU's external borders. Special EU funds have been allocated to monitor borders and the coordination on databases for asylum and immigration matter has been improved with the EUROSUR system, which is a framework for data exchanges between the member states and institutions. Feist claims that "dramatizing a publicly convenient link between international migration and security governments all over Western Europe and North America has strengthened not only borders and external controls but also internal controls of non-citizens" (2002, pp. 7-8).

Apart from the ones mentioned above, we can also list some other securitizing tools on migration that is carried out by the EU. For example, the AENEAS programme between the years of 2004 and 2006 was a financial and technical support instrument for the third countries for their abilities to control borders. Through this programme, the EU also has funded 107 capacity-building projects on border policing with an amount of over 120

[1] See Section 2 for a brief account of historical and institutional development of migration policies in the EU.

Million Euros. AENAS assisted third countries in the areas of migration and asylum through an "integrated, coherent and balanced approach" (European Commission, 2008, p. 2). The programme aimed to foster the links between migration and development; promote well-managed labor migration; fight illegal migration and facilitate the readmission of irregular immigrants; protect migrants against exploitation and exclusion; promote asylum and international protection (pp. 2-3).

Global Approach to Migration (GAM) and Global Approach to Migration and Mobility (GAMM) prepared by the EU in 2005 and 2011 respectively, are yet other examples of securitizing instruments of the EU on the migration issue (European Commission, 2011; Council of the European Union, 2005). Global Approach to Migration aimed at providing a complete action plan against irregular migration and human trafficking, as well as managing immigration and asylum issues in cooperation with origin and transit countries. According to this strategy, Europol would be involved in fighting human trafficking and FRONTEX in border management matters. Activities originally focused on Africa and the Mediterranean regions, since they were the most populous source of immigration to Europe. The Global Approach to Migration has linked immigration management and development policies. It tried to pay attention to "push factors" and alleviate migration pressure from these regions.

Five years after the implementation of the Global Approach to Migration, the Commission has introduced a revised strategy with an additional component called mobility. The Commission has declared mobility a "broader concept of migration" and has shown its intention to manage better the circulation of foreign nationals (students, visas, businesspersons, short-term high skilled workers and family members) who will visit the EU for a short time. The idea of mobility is based on the GAM's assumption that

circular migration can be a mutually beneficial strategy that serves both the EU's economic interests (labor force) and worker's country of origin ("avoiding brain drain"). GAMM has been criticized extensively for focusing on attracting high skilled migrants and overshadowing the important components of mobility such as family unity and seeing immigrants as disposable temporary workers instead of permanent residents.

Like GAM, GAMM also emphasized the importance of development in preventing migration (European Commission, 2011). It focused on eradicating push factors. GAMM further strengthened the idea of "for more"; so the more countries are willing to cooperate, the easier it is for visa facilitation for cooperating countries (Statewatch, 2012, pp. 1-2). Therefore, mobility was formally based on border control and the signing of a readmission agreement with the EU. Following this new migration strategy, mobility partnerships were signed with Moldova, Cape Verde, Armenia, and Georgia. Subsequently, readmission agreements were signed with several countries, including transit and/or source countries. Despite the improvements in the EU's approach on addressing push factors of migration, it still expected that the EU would utilize security-oriented policies towards source countries (Torun, 2012).

3.4. Conclusion

Europe has been a continent of migration for many years. Both incoming and outgoing migratory movements have been very intense. With the emergence of European integration after the Second World War, a multicultural approach has begun to develop in some European countries for some period, and ultimately multiculturalism was considered as a European value. Although initially, multicultural approach facilitated, this understanding has often stayed in rhetoric.

In addition, migration flows to Europe have created new minority groups in countries. Consequently, migration has become a high politics issue in the EU, as immigration to European countries has not stopped whenever the European governments wanted for economic and social reasons. From the overview of the European politics, it seems that the securitization of immigration began and intensified at the end of the 1970s.

The knowledge produced by the securitization instruments and qualities of them reflect a way of thinking on a certain matter. They also reveal policy choices and direction of action. Despite the basic similarities, each security tool of the securitization process is different in terms of effect. In fact, different tools are not equally effective in all cases (Balzacq, Basaran, Bigo, Guittet, & Olsson, 2010). Moreover, security tools sometimes have limited consequences or indirect effects. For this reason, while security tools have technical characteristics, it is important to look at as to why they are selected, how they work and develop (Peters & van Nispen, 1998, p. 3). In other words, focusing on the political and symbolic aspects of security tools is important because it would reveal, "the intention of policy" that "could be translated into operational activities" (De Bruijn & Hufen, 1998, p. 12). This is what this thesis tries to do on its focus on readmission agreements signed with Turkey and Pakistan.

Labeling migration as a security issue helps legitimize actions that are much more marginal. If immigration cannot be dealt with under normal politics, the issue has begun to be securitized. The most important consequences of securitization movements have been the normalization of nationalist, racist or xenophobic tendencies. Securitization of migration in Europe has created an environment that leads to the intolerance or hatred against "others". If intolerance and hatred became everyday practice and nationalist movements gain strength, European integration may also suffer.

The effort to realize the idea of living together in peace cannot be meaningful and successful in the environment of intolerance and hatred.

As it was briefly shown, the global security environment and political context played an important role in the securitization of migration and asylum policies in Europe. Especially after the 9/11 terrorist attacks securitization of migration in the EU has intensified. Together with discourses by the securitizing actors, the "EU migration instruments have been developed to tackle migration-security nexus" (Pinyol-Jiménez, 2014, p. 39). Often times these securitizing discourses and instruments have failed to address the humanitarian aspects of the issue. In the next chapter, this thesis will introduce the readmission agreements as legal instruments, which is considered as one of the most developed EU migration instruments.

CHAPTER 4

EU READMISSION AGREEMENTS AS LEGAL INSTRUMENTS

4.1. Introduction

Although there are some estimated figures, nobody knows how many people died when trying to reach Europe in the past decades. It is also not known how many of the returnees have died in the so-called safe third countries after their asylum application has been rejected in the EU countries. (Abell, 1999, p. 80). Every year thousands of people are trying to escape from persecution, war, and maltreatment and reach Europe. Because these people often do not have valid travel documents, they are trying to reach their targets at the expense of their lives, often through irregular ways in the hands of smugglers. As of 2015, the number of the asylum applications to the EU was 1.2 million (Eurostat, 2016). This number only indicates the ones who are lucky enough to get through the whole application process at the European borders. People who are returned from the border without being allowed to apply for asylum are not included in this figure. The EU does not want to be the destination of these people. This can be clearly observed through the EU's migration and return policy and through discourses and instruments.

Readmission agreements are instruments to facilitate the return of irregular migrants to their country of origin or to a safe third country. There are two perspectives on the literature about the readmission agreements. The first focuses on the neutrality of readmission agreements, the latter focuses on the risk that readmission agreements have for refugee rights violations. In this chapter, I will first examine the rights related to readmissions in the international refugee law. Then I will look into the historical and legal framework of the EURAs. This chapter will help us to understand the development of readmission policies, legal aspects of readmission

agreements in the EU and readmission related refugee rights in international law. In the last section of the chapter, I will examine whether these rights and legislations are respected in the existing EURAs.

4.2. Readmission Related Refugee Rights in the International Law

For centuries, states have been protecting people and groups who have been persecuted based on their race, religion, and views. However, modern refugee protection regime is largely the product of the second half of the twentieth century. Modern refugee law, just as the international human rights law, has emerged to protect the rights of victims of war after World War II. Article 14 (1) of the Universal Declaration of Human Rights (UDHR), adopted in 1948, guarantees that people can seek and obtain asylum in other countries.

The 1951 Geneva Convention and the 1967 Protocol define the refugee term, the rights of refugees and the principle of non-refoulement. The 1951 Geneva Convention does not define how a country should decide whether a person meets the refugee definition. Instead, assessing asylum claims and refugee status determinations have been left to the initiative of every state. This has led to differences among governments as governments have used different sources in preparing asylum laws and prioritize national security. Despite the differences observed at the national and regional level, the main goal of modern refugee law is to protect the oppressed who have to escape from their country. In this section, I will be focusing on the two basic rights that are now acquired into international customary law, rather than individually studying every treaty. The reason for this is that readmission agreements often open a way of violations of these two basic rights.

4.2.1. Right to Seek and Enjoy Asylum

The roots of the right to seek asylum can be traced back to ancient Greece to the Roman Empire and early Christian civilization (Goldman &

Martin, 1983, p. 309). The right to seek asylum in the modern sense is recognized in Article 14 of the UDHR. As states are highly committed to their sovereignty, the authority to grant asylum continues to be at the initiative of states (Harvey, 1998, p. 213). Considering today's security-oriented worldview, patrolling borders and granting asylum remain to be the ultimate rights of states. According to the Article 14 of the UDHR, "everyone has the right to seek and to enjoy in other countries asylum from persecution" (United Nations, 1948). Based on the UDHR, the Geneva Convention also establishes the right to seek and enjoy asylum as a fundamental human right.

A refugee is defined in 1951 Geneva Convention as "a person owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..." (United Nations, 1951). The mentioned conventions do regard the right to seek and enjoy asylum as a fundamental right, however, they do not require the states to grant of refugee status to a person requesting protection (Goodwin-Gill, 2008, p. 8). In 1951 Geneva Convention, the right to claim asylum was strengthened with the inclusion of non-refoulement principle. In Article 33 (1) of the 1951 Geneva Convention, it is stated that "No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (United Nations, 1951). When Articles 1 and 33 of the Convention are read together, states have an obligation to at least grant access to asylum procedures for the determination of refugee status.

The right to seek asylum is also promoted in Article 12 (2) of the International Covenant on Civil and Political Rights (ICCPR), which reads:

"Everyone shall be free to leave any country, including his own" (United Nations, 1966). The right to leave any country and receive asylum is two rights that support each other. Although the UDHR Article 13 (2) does not refer to a right to entry to any country, it is also an implicit right in international law if the 1951 Geneva Convention is assessed altogether, to enter any country at least for the assessment of refugee status.

International law provides a strong protection for migrants against their expulsions (Gorlick, 2000, p. 51). The 1951 Geneva Convention, in addition to providing a definition of "refugee" in Article 1, provides a number of articles on the rights of refugees in Articles 3 to 34. The 1951 Geneva Convention and the 1967 Protocol define the guidelines for the implementation of the treaty in signatory state courts. States are obliged to grant the declared minimum treatment standards to the refugees. In this way, a framework has been developed on how to treat refugees and asylum seekers in host countries, and the right to asylum, whose content was unclear, became clearer.

Contrary to the right to claim asylum, the right to enjoy asylum includes at least some of the rights of asylum. While a state has no obligation to accept an application for asylum, it has an obligation to ensure that the person, whom it admitted to its country, enjoys asylum. A UN Report, titled *The Right of Everyone to Leave any Country, including His Own, and to Return to His Country*, lists the elements of asylum: "to admit a person to the territory of a State, to allow the person to remain there, to refuse to expel, to refuse to extradite and not to prosecute, punish, or otherwise restrict the person's liberty" (Edwards, 2005, p. 303). As a minimum, the provisions of the 1951 Geneva Convention, which are not linked to legal residence, should apply to asylum seekers as well, as long as they are related to respect for basic human rights. Other rights depend on the acquisition of refugee status.

4.2.2. The Non-refoulement Principle

Although it is not a direct obligation of states to admit asylum seekers to their country, it is a requirement of international law to examine the asylum application thoroughly and to protect the asylum seeker from refoulement. The principle of non-refoulement is an international legal principle that means a person must not be sent to any country where he or she is likely to face persecution. This principle is an integral part of international refugee law deriving from the Article 33 of the 1951 Geneva Convention. This principle is, in fact, the result of the basic human rights of the right to life, the freedom from torture and inhumane, degrading treatment or punishment. Because, in the case of a refoulement, a refugee may be deprived of above-mentioned rights and freedoms. Nevertheless, since states are reluctant to restrict their sovereign rights to control the entry or exit of persons, the non-refoulement principle is a relatively new development in international law.

In that sense, the 1951 Geneva Convention is the world's first and most important convention on the rights of refugees. It is a turning point in international law that secures the principle of non-refoulement. As it is stated above, Article 33 (1) of the 1951 Geneva Convention reads: "No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (United Nations, 1951). The principle prohibits a refugee from being returned to any country where his or her life or freedom is threatened because of race, religion, nationality, membership to a certain social group or political opinion. Non-refoulement principle does not only protect against the refoulement on borders but also against cross border applications such as difficulties in reaching asylum procedures and visa restrictions.

Another international instrument signed in 1984, United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), also mentions the non-refoulement principle explicitly in its Article 3: "No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (United Nations, 1984). The main difference between the two documents is that while the Geneva Convention is only applicable to the people with refugee status, the CAT is applicable to anyone with the possibility of encountering torture. Article 13 of the ICCPR reads as: "an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority" (United Nations, 1966). In addition, Article 7 of the ICCPR reads as: "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation" (United Nations, 1966).

Despite the fact the non-refoulement principle is not explicitly mentioned in the ICCPR, the Human Rights Committee interpreted the above-mentioned articles as a manifestation of non-refoulement principle. The committee rejected the possibility of states to "expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement" (Duffy, 2008, p. 382). The Human Rights Committee provides various interpretations and opinions on the rights and obligations contained

in the convention. General Comments are not a result of a doctrinal study, nor do they constitute a second legal basis. However, these interpretations are based on the Committee's practices, resulting in a judicial function and prevent the Committee from having different opinions on subsequent events. Some of the General Comments are related to the non-refoulement principle such as the one mentioned above and these views are important because they have established a "judicial spirit".

4.3. Protection of Readmission Related Refugee Rights in the EU

There are four main binding legal bodies for the protection of asylum seekers and refugees in 28 EU member states. One of them is also considered as the basis of international refugee law: the 1951 Geneva Convention and its 1967 Protocol. The second legal body is the international human rights law, which is composed of many human rights treaties such as the CAT. The third one is the European Union law (the EU law). The last one is the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its protocols.

We have already covered the international law aspect. The legal framework in the EU for readmission agreements can be examined in two ways. The first one is covered by the laws of the European Union and the second one is covered by the Council of Europe. The non-refoulement principle is mentioned in the Article 78 of the TFEU, Article 19 of the Charter of Fundamental Rights and the Qualification Directive. Article 78 (1) of the TFEU states that "the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees,

and other relevant treaties" (Consolidated version of the Treaty on the Functioning of the European Union, 2012).

In addition, in the Charter of Fundamental Rights Article 19, it is stated that: "no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (Charter of Fundamental Rights of the European Union, 2000). The third document that refers to the principle of non-refoulement is the Qualification Directive (Council of the European Union, 2004). In conjunction with this directive, a number of common standards have been introduced to describe the qualifications of refugees and those in need of international protection. This directive also sets out the rights and duties of the member states and those in need of protection in accordance with Article 33 of the 1951 Geneva Convention. Article 21 (1) of the directive states that: "Member States shall respect the principle of non-refoulement in accordance with their international obligations" (United Nations, 1951). Nevertheless, Article 33 of the 1951 Geneva Convention and the Article 21 of Qualification Directive do not prohibit the refoulement for everyone. The articles allow a refugee to be removed as well when the person threatens the security of the host country, has committed a major crime, or the person considered as presenting a danger to the community.

The Council of Europe is another actor in the legislative framework for immigration in Europe with countless authoritative recommendations and decisions of the Committee of Ministers and the Parliamentary Assembly. Substantial achievements have been made through the recommendations and the legal regulations of the Council of Europe, the European Convention on Human Rights and Protocols, the European Convention on Visa for Refugees, the European Convention on the Transfer of Responsibilities for Refugees,

the European Convention against Torture and the European Convention Against Torture and the Inhuman or Degrading Treatment and Punishment. However, among these legal instruments, the Convention on the Protection of Human Rights and Fundamental Freedoms proved to be the most important instrument as a standard and monitoring tool. Although the ECHR does not include special provisions on the right to asylum and the principle of non-refoulement, it can be assumed that many articles of the Convention have committed the principle of non-refoulement.

One might argue that Right to Life (Article 2), Prohibition of Torture, Inhuman or Degrading Treatment or Punishment (Article 3) are directly; Right to Fair Trial (Article 6) Right to Liberty and Security (Article5), Right to Family Life (Article 8) Right to Effective Remedy (Article 13) are indirectly related to the principle of non-refoulement. Although Article 3 of the ECHR is not directly related to the non-refoulement principle, it took an important place in the case law of the European Court of Human Rights on its decisions related to refoulement. The Article 3 reads, “no one shall be subjected to torture or to human or degrading treatment or punishment” (European Convention on Human Rights, 1950). Contrary to the provisions of the 1951 Geneva Convention, Article 3 of the ECHR does not contain any exceptions and guarantees the freedom for all. There is a consensus that Article 3 of the European Convention provides more protection in the area of human rights than Article 33 of the 1951 Geneva Convention (Duffy, 2008, p. 378).

For example, in the 1951 Geneva Convention, one must prove that they are afraid of persecution because of his or her race, religion, affiliation with a social group or political ideas. In the ECHR system, it is sufficient to prove that those rights in the Convention are at stake. Since it provides an abstract protection, not only refugees but also all foreigners are protected.

Unlike the other conventions, the Court is very serious about ensuring the rights recognized by the ECHR. The ECtHR interprets the convention in accordance with the changing world conditions and makes this convention a living legal text. There is a serious case law arising from ECtHR decisions concerning the application of the ECHR, which gives the ECHR superiority over other conventions.

In accordance with Article 3, the ECtHR has developed a law of jurisprudence, which provides strong protection against forcible removal of any person who fears to be tortured or ill-treated when he is returned to his country. The case law developed by the ECtHR improves the absolute and non-limiting nature of Article 3 and provides important guarantees, especially in the cases of border crossing and readmissions. There is no need for a person to be within the borders of a country in order for a responsibility to arise for that country. The contracting state has to provide foreseen protection in accordance with Article 3 of the Convention. In this respect, it does not matter whether the asylum seeker is legally in the country or not. Even though the person is outside the country, the contracting state is under obligation to provide protection and not to return the applicant. For example, in the case of foreign territorial liability, the asylum seeker may make such a claim at the country embassy. In the decision of W.M. vs. Denmark (1992), the applicant, an East German citizen, requested protection from the Danish embassy in Old East Berlin. The Applicant has been assured by the ECtHR that Denmark is responsible for ensuring protection under Article 3 of the ECHR, although it does not rely on the non-refoulement principle (Wouters, 2009, p. 218).

4.4. Historical Framework of the European Union Readmission Agreements

In the literature, three generation of readmission agreements are identified. Many bilateral agreements, from the beginning of the 20th century

to the Second World War, were signed to ensure the readmission of those who were displaced during the war (Coleman, 2009, p. 11). The struggle to regulate migration flows has gained importance in the mid-1950s. In this context, readmission agreements have been made frequently in order to regulate migration flows, but not to stop them. The readmission agreements concluded after the Second World War marked the first generation of readmission agreements in modern sense. Since the European internal borders had not yet been lifted, the first wave of modern readmission agreements were concluded within the European states (Bouteillet-Paquet, 2003, p. 362). As mentioned in the previous sections, immigration was not perceived as a security issue in the period before 1980s. For this reason, readmission agreements were not considered as an essential instrument (Coleman, 2009, p. 16).

With the collapse of the Berlin Wall in 1989 and the opening of the borders with the East and Central European countries, a rapid irregular migration flows to Western European countries began. Thereon, what is possible to call the second generation of readmission agreements were concluded with the East and Central European countries (Roig & Huddleston, 2007, p. 367). The main objective of the second-generation readmission agreements was to create safe lines along the eastern borders of the EU. The second-generation readmission agreements signaled a new era of European immigration policy, as they were a representation of a common policy developed and enforced by the Council. This common policy aimed at controlling the potentially destabilizing effect of flows of immigrants and asylum seekers after the fall of Berlin Wall and the dissolution of the USSR and Yugoslavia. The first of the second-generation readmission agreements was concluded in 1991 between the Schengen states and Poland (p. 368).

EU level readmission policies were also shaped in the early nineties. Various policy papers such as the one in 1991, the Commission communication concerning "immigration" and "asylum", laid down the foundations of a common readmission policy (Coleman, 2009, p. 19). These common policies, which began to take shape at the EU level, were initially about putting a common framework for the bilateral readmission agreements of the member states. In 1994, the Council approved an EU framework readmission agreement for the member states, which are seeking a readmission agreement with a third country (Roig & Huddleston, 2007, p. 368).

Finally, the third generation readmission agreements came into play with the Amsterdam Treaty, which transferred the authority to negotiate and conclude agreements with third countries. Until 1999, the EU had no authority to complete readmission agreements at the EU level. When the Treaty of Amsterdam entered into force on 1 May 1999, the EU gained the authority to conclude readmission agreements at the EU level. In Articles 4 and 5 of the TFEU, exclusive and shared competence areas are defined respectively. Taking into account the new competence, in October 1999 the Tampere Summit called on the Commission to integrate readmission provisions, and to complete readmission agreements with third countries (European Council, 1999). Thus, readmission agreements have become a primary instruments for the management of migration flows since multilateral agreements involving the EU as a supranational entity would be more effective than the bilateral ones (Kruse, 2003, p. 10). The inclusion of the readmission of non-nationals in third-generation readmission agreements was a major development which aimed to reduce the burden of control for the EU countries and to engage with third countries for the control of migration flows (Lavanex, 2006, p. 337).

Nevertheless, it soon became clear that the conclusion of EURAs would take longer than the member states have anticipated because these agreements only considered the interests of the EU and put great burden on the third countries. To facilitate the conclusion of readmission agreements, the EU came up with both sanctions and rewards. The sanctioning tools included the threat of withdrawing or cutting the aid or suspending already agreed grants. The 2002 Seville Council introduced a conditionality concept in EURAs: "insufficient cooperation by a (third) country (to manage migration) could hamper the establishment of closer relations between that country and the Union" (Coleman, 2009, p. 132).

In addition, it was agreed that compulsory readmission clause would be mandatory in each future EU association or cooperation agreement, that is to say, the EU will no longer sign any association or cooperation agreement unless the other side agrees to the standard obligations (Lavanex, 2006, p. 347). However, the EU opted to use the "Positive Incentives Package" approach for negotiating EURAs, which includes visa facilitation, developed or enhanced channels for legal migration for citizens, development and migration assistance, financial and technical assistance, and WTO-compatible trade concessions (Roig & Huddleston, 2007, p. 375). Among them, visa facilitation has become almost a standard reference over time.

Moreover, the European Pact for Migration and Asylum, adopted by the heads of states and governments of the European Union at the European Summit in October 2008, supported and recommended the conclusion of readmission agreements by the European Commission. With the Lisbon Treaty, concluding readmission agreements with third countries has become one of the EU's shared competencies more clearly and unquestionably. More recently, the EU affirmed in the "Stockholm Program" adopted in December 2009 that the readmission agreements are an important element of the EU's

migration management, and stressed that the Council should set an improved and systematic action plan in this regard. It proposed the development of a joint approach towards third countries that did not cooperate in taking their own citizens and third country nationals back (Council of the European Union, 2009).

The EU Justice and Home Affairs Council has set six criteria for negotiating readmission agreements with a third country as published in 2002. These criteria are the immigration pressure created by the third country on the EU; The geographical position of the third country relative to the EU; Regional and political balances; The existence of an EU co-operation agreement with a readmission clause; The added value of an agreement to be made at the EU-level; not being an EU candidate country (Council of the European Union, 2002). Until today, many readmission agreements at both national and the EU level have been signed with third countries, which are countries of origin or transit. Since then, these agreements became an indispensable part of European migration policy in combating irregular migration (p. 368). Countries where readmission agreements have been signed as of 2017 are Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, China's Special Administrative Regions of Hong Kong and Macao, Former Yugoslav Republic of Macedonia, Georgia, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine.

4.5. Legitimacy of the European Union Readmission Agreements

The European Commission has set a specific format for readmission agreements over the years. As a result, all agreements, including EU-Turkey and EU-Pakistan readmission agreements, are similar in content. All EURAs include provisions regarding the obligation to provide proof of travel documents in readmitting people, mutual obligation for the parties to readmit

their own nationals or third country nationals who have entered or stayed irregularly in the country, establishing a joint committee to supervise the implementation of the agreement, non-affection clauses that require the parties to follow the international human rights obligations and conventions.

EURA is defined as follows: "a Community Readmission Agreement is an international agreement between the European Community and a third country which sets out reciprocal obligations, as well as detailed administrative and operational procedures, to facilitate the return of illegally residing persons to their country of origin or country of transit" (Strik, 2010). The definition can also be applied to bilateral readmission agreements by taking the European Community term out of the definition.

All countries have the right to deport irregular migrants as long as they remain committed to the international principles and agreements mentioned in the previous sections. Those who advocate the neutrality of readmission agreements, especially the EU and the member states' governments, argue that it is not proper to discuss the compatibility of readmission agreements with refugee rights. They argue that even if there is a human rights violation arising from the readmission of a person, it is not by a readmission agreement, but by the decision of the judge since it is the judge that should evaluate the situation for the person (Strik, 2010). As Strik points out, readmission agreements are a part of the whole, and it is not reasonable to consider them separately from the whole. That is to say, not only the agreement itself but also the decisions and actions taken as a result of the agreement should be considered within the framework of readmission agreements.

While the readmission agreements are signed at the EU level, the implementation of the agreements are carried out by the member states. However, there are wide discrepancies in the implementation of the agreements among member states. Because of the considerable authority the

member states have on “determining transit of third country nationals through a certain country, and from there directly to the EU; assessing the nationality and age of the person illegally entering or residing in a country; assessing legal claims to asylum or humanitarian protection; the collection, storage and processing of a considerable amount of personal information for the sole purpose of deportation” often creates major inconsistencies among member states in relation to international law (Euromed Rights, 2013, p. 12). The inconsistent application of EURAs among the member states has also been criticized by the EU Commission, however, their discontent was not because it would create human rights violations, but because the member states were using “their bilateral arrangements which existed before the EURA entered into force” and this “undermines greatly the credibility of the EU Readmission Policy towards the third countries” (European Commission, 2011, p. 4).

One of the main criticisms of EURAs is that there is no reference to the status of refugees. This triggers the debate that asylum seekers can also be returned to third countries by deeming them as an irregular migrant (Coleman, 2009, p. 224). There is no adequate guarantee that asylum seekers will receive different treatment from any other irregular migrant. In its Return Handbook, The European Commission, states that if a person asks for international protection, he or she has the right to stay in the territory of a member state until a judgment is given in respect of the suitability of the person for the international protection under the relevant EU acquis. Returns may only be the case if the asylum application is not accepted (European Commission, 2015, p. 7). However, according to international human rights instruments, and the EU law, if the person in question is in danger of being subjected to torture, inhuman or degrading treatment or punishment in the territory to which they are to be returned, then the person should not be

returned under any circumstances since this would be a violation of the principle of non-refoulement.

The EURAs may endanger the principle of non-refoulement in two ways. The first of these is the accelerated procedure provisions in the readmission agreements. Under this procedure, an asylum seeker will be treated as an irregular migrant and will be sent to a safe third country in which he or she could apply for asylum. If the third safe country can provide "effective" protection, anyone who crosses the border using this country will be able to be sent back. The second risk the EURAs pose is as to the secureness of the third country specifically for a person, to where the irregular migrant is to be returned. Irregular migrants' situation and history must be assessed separately.

However, the accelerated procedure may lead to the return to the country of origin or the third safe country contrary to the principle of non-refoulement. Therefore, the key point here is that a person may not get a chance to apply for asylum due to the accelerated procedure provisions in the EURAs. Since EURAs open a way for the member states to send irregular migrants and asylum seekers to a third safe country claiming that the person passed through that country, non-affection clauses may not work at all. Protection seekers' individual statuses in respect to the so-called "safe third country" may not be thoroughly assessed. When we consider the fact that EU has come up with a common readmission policy in order to combat irregular migration, it would not be logical for the member states to respect human rights and thoroughly analyze each and every asylum application since EURAs would be very convenient instruments to remove the unwanted people (Giuffre, 2013, p. 111).

Moreover, the shifting of responsibility on asylum applications from one to another country is not a right derived from the international law.

Therefore, the EU aims to cooperate with third countries through signing a readmission agreement (p. 85). The Procedure Directive lists five cases where an asylum application may be found inadmissible: if the other member state is responsible for the asylum application under Dublin Regulation; if the person has already been granted refugee status in other member state and third country; and if the person passed through a European safe third country or a safe third country. That is to say, it is possible for a member state to find the asylum seeker's application inadmissible on the basis that he or she passed through a safe third country. As long as there are no readmission agreements, third countries will not accept protection seekers, as there is no obligation in international law to do so. In the case of an absence of a readmission agreement, the member states have to process the asylum applications in accordance with the international refugee law.

In this thesis, what constitutes the most important evidence that the readmission agreements are actually a securitization instrument is their incompatibility with Article 27 of the Procedures Directive. According to the Article 27 (1), a country may be declared as a safe third country if "(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; and (b) the principle of non-refoulement in accordance with the Geneva Convention is respected; and (c) the prohibition on removal in breach of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected; and (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention" (Council of the European Union, 2005). Abell argues that "the growing scale and complexity of refugee problem, the threat to a country posed by influxes of economic migrants, must not detract from the responsibility of the receiving country and the importance of principles

for the protection of refugees, including those prohibiting refoulement and providing for asylum" (Abell, 1999, p. 81). However, the EU signs many agreements with third countries without even considering the fact that sometimes countries are not fully committed to international conventions and do not meet safe third country or first country of asylum criteria.

According to a briefing paper presented to European Parliament in 2015, the number of third-country nationals (TCN) irregularly found in the member states is 547.335. The number of those sent back at the EU borders is 260.375 (European Parliamentary Research Service, 2015). Between 2008 and 2013, the number of people returned each year under EU Readmission Agreements (EURAs) or other arrangements fluctuated between 241.965 and 215.885 (European Parliamentary Research Service, 2015). As criticized by Statewatch, the EU has no reports of what happened to the returned people (Statewatch, 2003). Even this constitutes a striking fact that the EU does not accept any responsibility for the lives of irregular migrants or asylum seekers. It is difficult to talk about direct human rights violations that are caused by readmission agreements because the signatory parties often do not want to collect or share statistics on returns through readmission agreements. Returns under the readmission agreements may cause chain returns. That is, even if the asylum seeker is sent to a country, which the EU considers a safe third country or first country of asylum, there is no guarantee that the third safe country will not send asylum-seeker back to the country of origin. However, according to UNHCR, this situation cannot remove the responsibility of the state (UNHCR, 1994). That is, the EU member states are still responsible for the individuals who are sent through readmission agreements and have to make sure they get asylum somewhere.

A report issued by Amnesty International investigates the readmissions between Greece and Turkey. According to the report, the

Turkey-EU readmission agreement could lead to infringements of many refugee rights. Many people do not even have a chance to explain why they should not be sent back to Turkey. This is a clear violation of international obligations. In addition, Turkey or Pakistan could send immigrants to their country of origins where they could suffer from persecution or other harms (Amnesty International, 2013). Incidents that Turkey and Pakistan sent immigrants to their country of origins have been documented many times by the UNHCR. Therefore, this risk is quite realistic in practice[3].

For example, the UNHCR case no. 8 is about 31 Afghans and 2 Iranians who were sent to Turkey after being arrested in the port of Patras in November 2008. Some people in the group were "pink card" owners, i.e. registered asylum seekers. However, according to the statement they gave, a member of the group was deported to Afghanistan shortly after being returned to Turkey. The UNHCR case no. 9 mentions the unaccompanied Afghan child registered as an asylum seeker in Greece. Greece returned the child to Turkey in October 2008 and then Turkey sent the child to Afghanistan. In the UNHCR case no. 10, an Iraqi Kurd is forced to return Iraq by Turkey after being returned from Greece. The UNHCR case no. 18, includes the expulsion of an Afghani to Afghanistan by Turkey in May 2009 (UNHCR, 2009).

As mentioned earlier, the country in which the asylum claim is made cannot return a person if there is a vital threat to the person in question. This is a requirement of both EU law and international law. It is the responsibility of the both the readmitting country and the sending country to fulfill this requirement. Therefore, EU countries are also responsible for the readmissions from the countries considered as the third safe country. The non-refoulement principle will be violated if the readmitted person is sent to the

[3] Detailed case analyses will be made in the respective chapters.

source or transit country where there is a risk of persecution and ill-treatment (Ekşi, 2016, p. 104).

The fact that readmission agreements are securitization instruments is clearly emerging here. As the thesis will show with the agreements with Turkey and Pakistan, the EU sees irregular migrants as a threat and sends them to so-called safe third countries where they can be subject to arbitrary detention, torture and repatriation without properly assessing their applications. These violations also show that in theory, readmission agreements may become a means by which the member states can escape their responsibilities towards refugees. On the one hand, the EU tries to build a European identity and seeks to be a global power; on the other hand, it ignores its role in solving global challenges (Kale, 2017).

A European Commission communication paper issued on February 23, 2011 recognized the possibility of human rights violations via EURAs: "Many agreements (in particular those with third countries neighboring the EU) contain special arrangements for persons apprehended in the border region (including airports), allowing their readmission within much shorter deadlines — the so-called 'accelerated procedure'. Although the safeguards under the EU *acquis* (such as access to the asylum procedure and respect of non-refoulement principle) are by no means waived by the accelerated procedure, there is a potential for deficiencies in practice" (European Commission, 2011). Therefore, one can conclude that existing EURAs are, by nature, not compatible with the right to seek asylum and non-refoulement principle. They are legitimate to the extent that they protect the refugee rights. However, existing EURAs simply prioritize security concerns rather than human rights. In the next two chapters, how EURAs are utilized as securitization instruments, deriving upon the Sociological Approach to Securitization will be shown.

4.6. Conclusion

The removal of an immigrant from a country against the immigrant's own will is the result of a return decision taken under national laws. If the country in question is a member state of the European Union, the legislation on which the decision is taken must be based on the European Union Return Directive. In that sense, readmission agreements are a tool used to implement such a decision. Consequently, readmission agreements are utilized only after the competent authorities of the sending country have determined that the person has no right to stay in that country.

Even though an EU state has the sole authority to decide who can enter and reside in their territories, the decision to deport a person must be in accordance with the EU law, ECHR, 1951 Geneva Convention and other human rights instruments. For example, when readmitting a person to his country or a third country, this return should not be carried out if the person is at risk of being subjected to torture or inhuman or degrading punishment as defined in the ECtHR's case law. If the person would be deprived of basic social rights, especially when the readmission is not being made to the country of origin, then human rights concerns should be at the top of the agenda.

Advocates of the benefits of readmission agreements argue that it is not relevant to ask whether readmission agreements are in line with human rights. If a human rights issue arises, it is not through the implementation of a readmission agreement, but by the decision of a court. The reason for this is that human rights concerns should already be taken into account when deciding. They argue that readmission agreements provide a legal framework and are only a means of facilitating return. Agreements, if implemented with caution, can contribute to reducing uncertainty or detention times for migrants. However, as I have explained, I do not agree that current EURAs

are neutral. We have to evaluate the different connections of the chain as a whole, which leads to the reversal of a person's rights derived both from the EU law and from international law.

Readmission agreements are part of a securitization process, and these agreements can encourage the taking of bad return decisions that is in violation of international law. As a result, readmission agreements can serve as a catalyst for human rights violations. It is particularly important here to focus on the rights of third-country nationals who are at risk of finding themselves vulnerable and unable to access the asylum system. The criteria for respect and protection of human rights should be determined in advance in the selection of the countries to open negotiations of the signing of a readmission agreement. These criteria should respect the relevant human rights protection measures, right to seek and enjoy asylum and the non-refoulement principle.

With regard to asylum seekers whom the member states could not readmit to the country of origin, the transit country must be a third safe country for the person in question, not for the countries. When a country made a request for the readmission of a person to a transit country, it must first be ensured that the requested country can provide the returned person with a sustainable situation, or at least provide access to basic social benefits. If these conditions are not met, the sending country must waive the readmission request and grant access to minimum social rights as long as the person remains in its territory.

It will be shown in the last two chapters where readmission agreements are essentially a securitization instrument and are opening a way to human rights violations. As will be seen in the case of Turkey and Pakistan, these countries are not actually eligible countries to readmission and are the countries where the international refugee rights mentioned in this section are

violated. The EU continues to implement these agreements with a security-oriented approach, without respect for both their own legislations and the rights arising from international law.

CHAPTER 5

THE EU'S READMISSION AGREEMENT WITH TURKEY

5.1. Introduction

In this section, an analysis will be made whether the EU's readmission agreement with Turkey can be considered as a securitization instrument. According to Sociological Approach to Securitization, any policy tool used by the EU officials that would communicate that the migration issue is a security threat and would combat this threat by extraordinary measures is also a tool of securitization or instrument of securitization. In this chapter, the negotiations and the conclusion of a readmission agreement will be examined through the Turkish example. This chapter will also critically analyze how safe Turkey can be regarded for irregular migrants' possible returns. The logic behind this examination is that if the EU was trying to send irregular migrants to Turkey, even though Turkey cannot be considered as safe for readmissions according to international law and the EU law; then, it would be possible to consider the readmission agreement with Turkey as a securitization instrument. That is because the agreement communicates the migration issue as a security threat and takes an extraordinary measure to stop it.

Economically motivated Turkish emigration started with a bilateral labor recruitment agreement signed between Germany and Turkey on October 30, 1961 (Akgündüz, 2008). Similar agreements were concluded in the later years with almost all Western European countries. According to statistics, it is observed that about 4.6 million Turks are living in Western European countries and Turks are considered as one of the most prominent immigrant groups in Europe (Ministry of Foreign Affairs of the Republic of Turkey, n.d.). Since the beginning of the 1980s, Turkey has also become both a "receiving country" and a "transit country" for immigrants (İçduygu, 2006,

p. 1). Consequently, the choice of Turkey as an example comes from the fact that Turkey stands out as both a source and a transit country of migration to the EU. Especially with the outbreak of the Syrian Civil War, Turkey, as a both host and transit country with its geopolitical importance has been obliged to operationalize the readmission agreement because of the security-oriented view of the EU (Fargues, 2013).

Having a history of more than forty years, Turkey's relationship with the EU, began in legal terms with the establishment of an association agreement established between Turkey and the EEC in the 1960s. The relations between Turkey and the EU have gained a new dimension after the Helsinki Summit Conclusions of December 11, 1999 in which Turkey was considered as an official candidate for EU membership. Following the adoption of Turkey as a candidate country in the 1999 Helsinki Summit, the EU Commission prepared the Accession Partnership Document on November 8, 2000 and accepted on March 8, 2001. This document was a road map for Turkey to follow during the pre-accession process (Council of the European Union, 2001). Following this, a National Program for the adoption of the *acquis* was put into effect in 2001, in which the priorities and objectives recorded in the Accession Partnership were included and they were to be carried out on a timetable basis. For the first time in Turkey-EU relations, the Accession Partnership Document as an official document mentioned concrete tackling of irregular immigration within the medium-term priorities section.

Also in the Revised Accession Partnership Document in 2003, the fight against irregular migration was mentioned in both short and medium term priorities sections. The short term goals were "the development of the capacity of public administrations, the development of the capacity of public administrations in order to combat illegal immigration and the development of effective border management in line with EU *acquis* and good practice,

strengthening the fight against foreign migration and concluding a readmission agreement with the European Union as soon as possible"; and the medium term goals were "the adoption and implementation of the *acquis* and good practice of the municipality for the purpose of continuing the harmonization with the EU *acquis* and good practice of border management in order to ensure full implementation of the Schengen *acquis* and the prevention of illegal immigration" (Council of the European Union, 2003).

During the pre-accession process Turkey enacted many legislation in the domestic law for harmonization with the EC *acquis* and has implemented constitutional amendments (Özdal & Genç, 2005, p. 46). After these developments, it was decided to start negotiations on full membership with Turkey on 3 October 2005 at the EU Council Summit held in Brussels on 17 December 2004. At the EU Council of Ministers meeting held in Luxembourg on 2-3 October 2005, the Full Membership Negotiation Framework Document, which sets out the general principles of the accession negotiations between Turkey and the EU, was adopted. Following the adoption of this document, Turkey's EU accession negotiations were formally initiated with the Intergovernmental Conference held in Luxembourg on the same date.

The 2007-2013 Turkey's Programme for Alignment with the EU *acquis* was aimed at harmonizing visa definitions and visa types with the EU, and determining the procedures and the legislative framework for combating irregular immigration and employment (Akçadağ, 2012, p. 33). In the 2008 Accession Partnership Document, it was stated that Turkey should complete the readmission agreement as soon as possible, lift geographical limitation imposed on the 1951 Geneva Convention, adopt a comprehensive asylum law, and take steps to establish a new border police force (Council of the European Union, 2008).

The composition of current immigration flows continues to be mixed as search for international protection, especially from Syria, Iraq and Afghanistan has been intensified. As discussed in the EU's migration policies chapter, the GAMM was prepared as the main framework in combating this intensified irregular migration flows. The GAMM puts the cooperation with third countries on readmission of irregular migrants forward as the key element of the deterrence strategy for irregular migrants. The EU's deterrence strategy necessitated a special dialogue with Turkey on migration management. The political and diplomatic initiative launched on Turkey in order to prevent the irregular migration outside of the EU borders has been a matter of debate in many aspects such as its content, its timing and its approach. The EU's approach of stopping the migration in the third countries, was evaluated as the erosion of EU values, was found both unbalanced and morally problematic. In fact, the EU-Turkey Readmission Agreement places a responsibility on Turkey to stop irregular migration to Europe, host irregular migrants within the country. In this process, the EU provides material assistance and instrumentalization of the visa liberation as a "carrot".

5.2. Negotiation Process and Signing of the Readmission Agreement between Turkey and the EU

Readmission agreements are based on a reciprocity principle. Both sides declare that they will take back their own nationals as well as citizens of third countries who travelled through their territories in their journey. In practice, however, the agreement will usually put a burden on the non-EU side, as there is almost no immigration from the EU territories towards the signatory third countries (Trauner, Kruse, & Zeilinger, 2013, p. 16). It is therefore not possible to say that there is a symmetrical and balanced benefit from these agreements. Since third countries are also aware of this imbalance, they are not willing to sign these agreements as long as there are incentives.

In response, the EU tries to overcome the reluctance of the countries by offering financial and technical assistance and taking steps to improve trade relations. As mentioned before, the European Commission has been authorized to make "package deals" with which visa facilitation is guaranteed and all expenses originating from the agreement can be covered (Trauner, Kruse, & Zeilinger, 2013, p. 17).

As stated before, the EU Justice and Home Affairs Council has set six criteria for negotiating readmission agreements with a third country as published in 2002. These criteria are the immigration pressure created by the third country on the EU; the geographical position of the third country relative to the EU; regional and political balances; the existence of an EU co-operation agreement with a readmission clause; the added value of an agreement to be made at the EU-level; not being an EU candidate country (Council of the European Union, 2002). According to the last criterion mentioned, Turkey's readmission agreement with the EU should not even be issue of debate since Turkey has been considered as an official candidate country as of the 1999 Helsinki Conference although official negotiations for membership talks started in 2005. However, from 2002 to 2013, many negotiations on the readmission agreement were held and the agreement was signed.

In March 2003, the European Commission called Turkey for negotiations on the draft text of a readmission agreement. However, Turkey did not officially accept this invitation until 2004. When it accepted the invitation in 2004, it said that it could only sign an agreement that would facilitate the return of its own nationals and not the third country nationals (Coleman, 2009, p. 179). The first round of talks was held in Brussels in 2005. In 2006, four more meetings were conducted but no progress was achieved and negotiations were interrupted (Bürgin, 2012, p. 884). The main reason behind this delay was Turkey's reluctance to become a buffer zone (İçduygu,

2011, p. 14). Because of Turkey's geographical position, this agreement would result in the acceptance of irregular immigrants in very large numbers. Many of these irregular immigrants would stay in Turkey due to the principle of non-refoulement. This would put a great burden on Turkey financially (Bürgin, 2012, p. 884). For this reason, Turkey has requested that the regulations regarding the status of third country nationals under the readmission agreement to be put into effect only after Turkey's signing of a bilateral readmission agreement with the countries of origin (pp. 883-84).

In addition, the visa incentive offered by the EU in the face of the treaty was not found fair by Turkey. That was because visa facilitation was not an incentive for candidate countries, but an incentive for non-candidate third countries (Paçacı Elitok, 2015). Until the 1980s, almost none of the European countries had requested a visa for short visits by Turkish citizens. However, after the *coup d'état* of September 12, 1980, many Turkish citizens immigrated to Europe for political asylum, and the European countries began to apply visas to Turkish citizens. This ongoing visa requirement from the EU countries brings about a problematic situation for Turkey.

First, the legal basis of EU countries' visa requirements from Turkish citizens is a debated one. Article 41 of the Additional Protocol signed between Turkey and the EEC in 1970, which entered into force on 1 January 1973, stipulates that the parties will not be able to bring a new arrangement to prevent the settlement and service provision of the other party's citizens after the entry into force of the Protocol (European Communities, 1970). The 11 EEC countries agreed on lifting the visa requirement from Turkish citizens as of 1 January 1973. Their reapplication of visas for Turkish citizens after the 1980 coup contradicts the Article 41 of the Protocol. In the face of this controversy, some individual court cases have been filed in European courts

and have been won, but visa applications of EU countries to Turkish citizens have not changed (Ekinci, 2016, pp. 16-17).

Second, while the EU granted visa liberation to the citizens of other candidate countries, it did not so for Turkey. While Turkey has had candidate status since 1999, Western Balkan countries and countries like Ukraine and Moldova have been granted visa-free travel, even though they are much more behind than Turkey in terms of harmonization with the EU. The situation shows the double standard the EU imposes on Turkey.

Moreover, the Customs Union Agreement was signed between EU and Turkey in 1995. With the agreement, the Turkish goods have entered free circulation in Europe. Nonetheless, Turkish citizens cannot travel to Europe without a visa although there is free movement of goods. Especially when European businesspersons come and go to Turkey easily, the necessity of a visa for Turkish businesspersons to go to the member states brings an unequal situation in mutual trade. There are opinions that the visa requirement, which constitutes both a material and a psychological barrier for Turkish citizens, is contrary to the spirit of the Customs Union Agreement (Kirişçi, 2014). Therefore, Turkey stated that visa facilitation should not be under the scope of this agreement, but should be evaluated within the scope of EU membership of Turkey. The Foreign Minister Ahmet Davutoglu stated, “the Ankara Agreement, the Additional Protocol to the Ankara Agreement and the Customs Union agreement all necessitate that Turkey be given visa free travel rights even before the Western Balkan Countries” (Bürgin, 2012, p. 890). In that respect, Turkey demanded visa liberalization from the EU. The EU has proposed a number of visa arrangements to Turkey depending on the signing and implementation of a readmission agreement. For this reason, the readmission agreement negotiations between the two sides took quite a long time.

As stated, the EU has pushed for the signature of a readmission agreement with Turkey at the beginning of the 2000s. The European Commission presented the agreement proposal to Turkey on March 10, 2005 and negotiations between the two sides began on 27 May 2005. After four rounds in about a year and a half, the negotiations have frozen due to differences in views (Aka & Özkural, 2015, p. 256). In the meantime, Turkey's membership negotiations slowed down and almost stopped by the end of 2008. For this reason, visa facilitation became a more important incentive for Turkey day by day. Negotiations on the readmission agreement resumed in 2009 and parties agreed on a draft text in 2010. The EU also began to find vital for its security to sign a readmission agreement with Turkey because of the growing number of irregular migrants coming after the outbreak of Arab Spring movements and Turkey's proximity to the countries of origin (Paet, 2011). However, the EU still did not set a road map for the visa facilitation by the end of 2011; Turkey announced that it would not sign a readmission agreement without a roadmap for the removal of visas (Özkural & Aka, 2015, p. 257).

After period long negotiations, the readmission agreement between EU and Turkey was signed in December 2013, in exchange for the launching of negotiations for visa-free travel of Turkish citizens. According to the agreement "the provisions of the agreement related to the readmission of the nationals of the two sides, and those related to the readmission of the stateless persons and nationals from third countries with which Turkey has concluded bilateral treaties or arrangements on readmission, will enter into force on the first day of the second month following the date on which the EU and Turkey will notify each other that their respective ratification procedures have been completed. The provisions related to the readmission of any other third country nationals, instead, will enter into force only three years later"

(Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, 2014). When requested so, Turkey will have to take back its own nationals and the nationals of the third countries for which there is evidence that they reached the EU territory coming directly from Turkey, if those persons have entered or are residing in the territory of the EU in an irregular manner. A necessary condition is that there is a mutual agreement that there is sufficient evidence.

In addition, the EU-Turkey Readmission Agreement also includes an accelerated procedure, which raised concerns that human rights violations could be possible. According to this procedure, readmission applications must be presented within three working days and these applications must be answered within five days. The accelerated procedure can be applied to the people apprehended in border zones, customs, and at international airports (Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, 2014, Article 7 (4)). The Agreement also includes a "non-affection clause" that repeats the parties' international obligations (Article 18). Nevertheless, there is no provision that would result in the suspension or termination of the agreement if the rights of irregular migrants and asylum-seekers originating from international law were violated.

In exchange of signing a readmission agreement, the European Commission published the "Roadmap towards a Visa-Free Regime with Turkey" in which it has listed the conditions Turkish government must fulfill (European Commission, 2013). The visa liberalization dialogue addresses four blocks for the visa liberalization to be realized, which are documents security; migration and border management; public order and security; fundamental rights. In addition, the Roadmap includes a specific set of requirements in the area of readmission of irregular migrants, which Turkey

is expected to fulfill and which will be specifically monitored by the Commission (Kirişçi, 2014).

The goal of the visa liberation dialogue is to eliminate the visa obligation currently imposed on Turkish citizens traveling to the Schengen area for a short-term visit. The dialogue, which essentially consist of a screening of the Turkish legislation and administrative practices, will be carried out by the European Commission on the basis of the "Roadmap towards the visa-free regime with Turkey" (European Commission, 2013). "The Roadmap lists the requirements which should be fulfilled by Turkey to allow the Commission to present a proposal based on solid grounds to the Council and the Parliament to amend the EC Regulation 539/2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, so as to move Turkey from its negative to the positive list" (European Commission, 2016).

According to this roadmap, preventing irregular migration and imposing effective border controls is necessary for visa liberation. Therefore, the readmission agreement should be considered as a step forward in the way of visa liberation. Other blocks or criteria should not be forgotten in order to achieve the goal. "To establish migration and asylum systems in line with international standards, to have functioning structures for combating organized crime with a focus on migrants' smuggling and trafficking in human beings, to have in place and implement adequate forms of police and judicial cooperation with the EU Member States and the international community, and to respect the fundamental rights of the citizens and the foreigners, with a specific attention to persons belonging to minorities and vulnerable categories" are the other blocks which should be realized according to the roadmap (European Commission, 2016).

The progress achieved by Turkey was planned to be reported to the Justice and Home Affairs Council bi-annually and to the European Parliament on a yearly basis by the European Commission. Once the Commission considers that all the requirements listed in the Roadmap are fulfilled it will send a proposal to amend EC Regulation 539/2001 which lists the third countries whose citizens are exempt from visa requirements. Qualified majority by the Council of the European Union and the European Parliament, then, will vote this proposal. "The speed of the process towards visa liberalization will depend essentially on the progress which will be made by Turkey in addressing the requirements set out in the Roadmap. Once Turkey completes the process towards visa liberalization and starts the effective implementation of the readmission agreement, the Commission will be in the position to propose an amendment to the Regulation 539/2001 in order to shift Turkey from the negative list to the positive list of countries whose citizens are not required to obtain a visa to enter the Schengen area" (European Commission, 2013). Turkey has the right to suspend the readmission agreement, if the EU does not meet the terms of the visa liberation roadmap. Equally, for the visa liberalization to occur, the readmission agreement has to come into force and actually work along with the other blocks of the visa liberation roadmap (Aka & Özkural, 2015).

The EU's desire to make this agreement comes from its threat perception of irregular migration. For Turkey, the main reason for the signing of the agreement is visa liberty (Şenyuva & Üstün, 2016, pp. 2-3). In other words, neither the EU nor Turkey approached the agreement in the context of human rights. Decision-makers have transformed the readmission agreement negotiations "from a cooperation opportunity into a bargaining matter, an issue of winning and losing" (p. 3). It is understood that the main reason behind the EU's acceptance of negotiating visa liberalization with Turkey in

the face of the signing of a readmission agreement is to prevent irregular immigrants from moving to Europe through Turkey. The EU was willing to negotiate visa liberalization because cooperation with Turkey, which is one of the main routes to Europe for irregular migrants, would be an important measure to protect the EU against irregular migration.

The provisions concerning the readmission of Turkish nationals entered into force in 2014, however, the two sides agreed, taking Turkish legislation into account, which was inadequate about the asylum seekers and irregular migrants, that the articles concerning the readmission of the third country nationals and the stateless people to enter into force three years later, in 2017.

Nevertheless, the outbreak of Syrian Civil War added another dimension to the EU's security perceptions. Although initially, the EU harshly criticized Assad regime's use of force, it cannot be said that the EU developed an effective and common policy on Syria (Erdoğan, 2012). As part of the Arab Spring, demonstrations in Syria began in March 2011. Peaceful protests quickly evolved to a civil war as the result of the Syrian government's violent crackdown on protesters, which led to one of the most severe humanitarian crises of all time. As the division between the protesters increased, politics behind the conflict got complicated and civilian sufferings became worse and worse. Five years after the Syrian Civil War began, it is estimated that nearly 250.000 people died where half of them being innocent civilians. Since the beginning of the war, each year the headlines delivered record numbers of civilian war casualties as the methods and weapons of war grow more savage from landmines and barrel bombs, to chemical weapons. The escalated conflict presented that armed groups deliberately destroying civilian property, employing treachery, using incendiary weapons in

populated areas, killing the injured and prisoners of war, which is indicating the violation of laws and customs of war.

The war has continuously generated horrific images that have haunted the world. In September 2015, an image of drowned three-year old Aylan Kurdi, washed up on the shores of Turkey, dominated national and international news headlines. In January 2016, images of starving civilians trapped in Madaya and other besieged cities in Syria shocked the conscience of humankind. Today, people in Syria still lack basic needs such as food and healthcare. The pre-Civil War population in Syria was around 23 million. According to the United Nations (UN), the number of internally displaced persons (IDPs) is around 8 million whereas 5 million people have fled to countries like Turkey, Lebanon and Jordan (UNHCR, 2016). These figures give only a slight idea of the human sufferings the Syrians going through and this is where the international community fails to help people those in need and share the burden of hosting countries. As the High Commissioner for Refugees, António Guterres claims, "Syria has become the great tragedy of this century" (UNHCR, 2013).

Five main host countries, Turkey, Lebanon, Jordan, Iraq and Egypt have already done so much by overstretching their infrastructures and budgets. Nevertheless, the living conditions of the people who have fled Syria are very poor as only a small percentage of them live in camps and the others are scattered around the host countries. Escalation of war and increase of war casualties brought increasing numbers of people fleeing from conflict zones. Since the facilities and capabilities are limited and living conditions are not preferable in five main neighboring countries, asylum seekers began to migrate to Europe. Intensified migration to Europe took the member states by shock and they looked for a solution to limit the migration of asylum seekers.

Although the entry into force of the provisions related to the readmission of third country nationals was initially scheduled for 1 October 2017, with the intensification of irregular migration to the EU as a result of the Syrian Civil War from the middle of 2015, the two sides have agreed to change this calendar. Trying to combat the refugee flow it receives and trying to facilitate the readmission agreement, the EU leaders turned their faces to Turkey, as they understood that Turkey was the key actor in limiting irregular entries to the EU. In this context, the EU proposed a Joint Action Plan to strengthen political relations with Turkey, one of the most critical countries for stopping irregular migration, and to accelerate reforms in irregular migration management and border security areas in the face of certain incentives (European Commission, 2015). Although the plan was criticized as being unrealistic, "pragmatic, unethical, reactive, and overly strategic", negotiations between the two sides have resulted in an agreement reached at the Turkey-EU summit in Brussels on 29 November 2015, and the Joint Action Plan was put into action (Kale, 2016, p. 2; Yavçan, 2016).

Accordingly, the two sides agreed that they would act in coordination on issues such as border security, the prevention of human trafficking, and the fight against terrorism. Turkey has rescheduled the date of putting the readmission agreement into force for third country nationals on June 1, 2016, but in response to this, Turkey has been provided with 3 billion euros financial support by the EU, for the capacity building activities and meeting the needs of migrants in Turkey (European Commission, 2015).

The timeline for the visa dialogue, a process indexed to the full implementation of the readmission agreement, has also been rescheduled and if Turkey to meet the roadmap requirements, the process would have ended by October 2016. In the Summit, it has also been agreed that membership negotiations with Turkey should be accelerated with the opening of new

chapters, and that the two sides will be in constant contact with regular senior summits and dialogue mechanisms (European Council, 2015).

Following the November 29 Summit, Turkey has accelerated its efforts to fulfill the reforms necessary for visa liberalization. The EU has pushed Turkey on giving Syrians work permit, as they believed Syrians were not staying in Turkey because they could not work legally. By the regulation entered into force on January 15, 2016, the right to apply for permission to work was granted to foreigners under temporary protection (Official Gazette of the Republic of Turkey, 2016).

Nevertheless, since the member states were perceiving irregular migration as a threat to their existence, they were not satisfied with the agreed schedule as well. Once again, they turned to Turkey to ensure that irregular migration can be controlled by the time the readmission agreement with Turkey enters into force. Because of Turkey's positive attitude towards the common burden sharing, a number of important decisions were reached on the Turkey-EU Summit held in Brussels on 7 March 2016. These decisions have been discussed for a while between the member states and concluded at the EU Council summit held on March 17-18, which came to be known as the Deal (European Commission, 2016).

Accordingly, Turkey has accepted to readmit all irregular migrants crossing from its territories to the Greek islands in the Aegean region as of 20 March 2016. The Deal would utilize a readmission agreement that has been in force since 2002 between Turkey and Greece until the EU-Turkey Readmission Agreement enter into force. This practice, which envisages the implementation of accelerated readmission procedure, aimed to deter irregular migration and human trafficking concentrated on the Aegean Sea, and to remove undesired life losses according to official statements (European Commission, 2016). However, the EU wanted to keep not just economic

migrants but also asylum seekers away from its territories as we have seen they do not want the majority of Syrians and Afghans, which are escaped from conflict zones.

In the Deal, the EU also agreed to provide 3 billion euros by the end of 2018, in addition to the previously committed 3 billion euros. The text of the memorandum also referred to the visa dialogue process and stated that if Turkey to meet the required criteria, the European Commission would have given a positive opinion to the Council to remove visas with Turkey by the end of June 2016 at the latest. The Deal had foreseen that for every Syrian citizen to be returned to Turkey another Syrian refugee would be resettled to the EU countries. The Deal also included decisions on other aspects of Turkey-EU relations; it was adopted to open a new chapter in the accession negotiations, to review the Customs Union Agreement, and to cooperate in improving the humanitarian conditions in Syria (European Commission, 2016).

It is also worth mentioning that as of June 2017 the EURA signed with Turkey has not been fully operationalized because of the increased tension between the EU and Turkey and the EU's reluctance on giving Turkish citizens visa-free travel. Turkish Prime Minister Binali Yıldırım stated, "the agreement has been signed but unfortunately it has not been possible to fully put it into practice" and added "visa-free travel and readmission would in principle go into effect simultaneously" (FOX News, 2017). After reviewing the negotiation process and the conclusion of the readmission agreement with Turkey, it is now important to analyze Turkey as a safe country for readmissions. Then, it will be possible to see whether EURA signed with Turkey can be regarded as securitization instrument.

5.3. Turkey as a Safe Country for Readmissions

The EU law lists five criteria for a country to be considered as a safe third country: “a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; b) there is no risk of serious harm as defined in Directive 2011/95/EU; c) the principle of non-refoulement in accordance with the Geneva Convention is respected; d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; e) and the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention” (p. 80). Considering these criteria, it is obvious that in order for a country to be safe for readmissions, the country should respect human rights and be party to 1951 Geneva Convention without geographical limitation.

It was stated in the Articles 36 and 37 of the Directive 2013/32/EU, the member states may individually decide on which countries to designate as “safe country of origin” or “safe third country” basing their decisions on the criteria defined in the Directive. In order a country to be considered as “safe third country” there should be objective evidence that “there is generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict” (European Parliament and Council of the European Union, 2013). Therefore, even though it is up to the member states to decide on the designation of a country as “safe third country”, they should assess the country’s political situation, observe its respect for fundamental freedoms and rights, rule of law and see if there are any serious human rights violations.

In order to facilitate readmissions and to stop the irregular migration flows to EU, Turkey has been declared as a "safe third country" by Greece on February 5, 2016 (Ekathimerini.com, 2016). According to the EU law, this action meant that any returns from Greece to Turkey was in accordance with the legal standards since Turkey was regarded as a capable and secure state to assess asylum applications. Let us assume that what the EU is facilitating to combat irregular migration flows, which is declaring a country as a "safe third country", is legal under international law. Now the main question is whether Turkey can be considered as a "safe third country", since there are criteria outlined in the EU law that any member state should consider and evaluate the individual country before declaring the country as safe. This thesis argues that Turkey does not comply with the safe third country criteria considering its geographical limitation imposed on 1951 Geneva Convention and its documented violations of refugee rights throughout the years. Furthermore, this incompliance makes the readmission agreement a securitization instrument since international law and the EU law are ignored.

It is still a matter of debate whether third country nationals who have left their country for asylum can be sent back to Turkey under the readmission agreement. The principle of non-refoulement in international law and not being sent to a country where the lives of refugees are at stake is a critical point in readmission. So that a person found irregularly in the EU territory cannot be sent back to a country if they are exposed to life threatening situation or persecution. This principle also applies to readmission to third countries. The third country in question also should be able to provide the right to asylum in line with the 1951 Geneva Convention. Nevertheless, the EU Council's Directive 2013/32/EU on international protection allows for the return of asylum seekers to third countries, although it is controversial in terms of human rights. According to the directive, asylum seekers who have

been found to have passed through a third country with certain minimum requirements of protection may be rejected by member countries and returned to that country under the name of “first country of asylum” or “safe third country” (European Parliament and Council of the European Union, 2013).

First, Turkey’s geographical limitation on the 1951 Geneva Convention remains the most important challenge on refugee protection in Turkey. Asylum seekers who come outside of Europe (citizens of non-members of the Council of Europe) cannot be settled in Turkey after they are granted refugee status in Turkey due to the geographic limitation for non-European asylum seekers on 1951 Geneva Convention and its 1967 Protocol. Although Turkey grants refugee status coming from outside Europe, in accordance with the geographical limitation imposed to the 1951 Geneva Convention they are not allowed to stay in Turkey and resettled in third countries. During the course of the Syrian Civil War, this attitude has been changed in particular for the Syrians. Turkey has opened its doors to those who escaped from the war in Syria and has been hosting Syrians since then.

Growing number of Syrians coming to Turkey has triggered the legislative developments regarding the international protection in Turkey. Turkey introduced a new legislation with the Law on Foreigners and International Protection (LFIP). At this point, it is important to examine the legislative developments in Turkey regarding the asylum system. Turkey has accepted LFIP on 11 April 2013, while negotiations on the readmission agreement are still in progress. With this law regulating the situation of immigrants and refugees in Turkey, the Directorate General of Migration Management (DGMM) was established within the Ministry of Interior, and an important step was taken to integrate migration management under a single institutional framework. After the signing of the readmission agreement, it was requested from all relevant public institutions to provide all kinds of

support needed for the implementation of the agreement to DGMM by the Prime Ministry notice dated April 16, 2014 (Official Gazette of the Republic of Turkey, 2014).

The law has adapted the legal framework of the rights and obligations provided to migrants, refugees and asylum seekers under the international agreements that Turkey is a party to. The aim of this law was to regulate the situation of those who demand protection from Turkey, the procedures of entry of foreigners into Turkey, their settlement in the country until they are placed in a third country, and finally their departure from Turkey (Official Gazette of the Republic of Turkey, 2013, Art. 1). With the LFIP, Turkey maintained its geographical limitation in the acquisition of refugee status, and maintained the aim of providing international protection for persons who escaped from persecution by one of the European states (Art. 61). The concept of asylum seeker was abolished and a "conditional refugee" concept was introduced (Art. 62). In addition, the non-refoulement principle, which provides compliance with international norms, is also subject to this law (Art. 4). Another important point brought by the law is that the people outside of Europe who will meet the requirements for obtaining a refugee status will be provided with humanistic living conditions in order to stay legally in Turkey until they are resettled in a third country (Kaya & Yılmaz Eren, 2014, p. 23).

The LFIP identified four types of international protection for foreigners. Refugee status will be given to European state citizens who have been identified as those who are afraid of the possibility of being persecuted for reasons such as race, religion, citizenship, membership and thought, and justified reasons in accordance with 1951 Geneva Convention (Official Gazette of the Republic of Turkey, 2013, Art. 61).

The conditional refugee status will be given for those who cannot obtain refugee status in Turkey due to Turkey's geographical limitation, but

left their countries due to the same fears. Under Turkey's current asylum mechanism, both UNHCR and Turkish authorities conduct interviews with asylum seekers from the outside of Europe, and if they are recognized as "refugees" by both institutions, they are resettled in third countries. That is to say, non-European asylum seekers' applications are processed as "conditional refugees". Although they are allowed to remain in Turkey during the course of completing of legal procedures, once they receive refugee status, they are resettled in third countries (Kale, Forthcoming).

Secondary protection status will be given for those who do not necessarily meet refugee or conditional refugee statuses and fear to be subjected to persecution, death penalty, acts of violence directed at them personally if they are to return to their country (Official Gazette of the Republic of Turkey, 2013, Art. 63).

Finally, temporary protection status will be given to foreigners who have reached the territory of the Republic of Turkey and are separated from their countries other than their own wishes, need immediate and temporary protection (Art. 91). Temporary protection is a safeguard, regardless of whether there is an international protection request from immigrants. With this status, the time Syrians spent in Turkey to seek refuge in a third country is secured, and Turkey has bound itself with obligations towards Syrians.

According to Article 91 of LFIP, temporary protection can be offered in cases of mass movements. After a long period of legal ambiguity for their status in which they could not even applied for refugee status, Syrians were offered temporary protection in Turkey. However, the legal content of this protection was not clear, as it was not regulated by a legal instrument. As of 28 April 2011 based on the regulation published on October 22, 2014 (Official Gazette of the Republic of Turkey, 2014) the legal scope of this protection became clear. In the temporary protection status, it is also not

possible for Syrians to apply for a refugee status. However, a number of rights have been given to Syrians under this mechanism, which have brought Turkey to be considered as a "first country of asylum" for Syrian asylum seekers in the eyes of EU officials. The return of Syrian asylum seekers from the Greek islands to Turkey was possible because asylum seekers' asylum applications to Greece can be rejected on the basis of their having come from a "first country of asylum".

"Temporary Protection Regulation" was issued on October 22, 2014 in order to organize the temporary protection status covered by Article 91 of the LFIP in a broader framework (Official Gazette of the Republic of Turkey, 2014). In Article 89 of the LFIP, the rights of foreigners who have claimed or obtained international protection have been set out under three categories. According to the law, rights are identified as follows: "right to education, right to access to labor market and right to access to social assistances, services and allowances" (Official Gazette of the Republic of Turkey, 2013, Art. 89). Based on this law, Temporary Protection Regulation identified the rights to be provided under temporary protection. These rights include access to health services, education services, labor market services, social assistance, social services and interpreting services (Official Gazette of the Republic of Turkey, 2014, Art. 26-33). The Temporary Protection Regulation has categorized the Syrians as "temporarily protected", provided them with "Temporary Protection Identification Document" and ensured that they would benefit from rights and services regulated under the regulation (Ekşi, 2014, p. 83).

According to the 1951 Geneva Convention, refugees can benefit from the following rights: "Freedom of religion (Article 4), freedom to enjoy civil rights (Article 12), right to acquire property (Article 13), right to intellectual and industrial property (Article 14)), right to be a party to the courts (Article

16), the right to work (Article 17), the right to open a business and establish a company in the fields of agriculture, industry, arts and trade (Article 18), the right to practice a specialized occupation (Article 19), the right to education (Article 22), the right to social benefits (Article 23), the right to benefit from social insurance and labor legislation (Article 24)" (Kaya & Yılmaz Eren, 2014).

An important issue that concerns the future of the readmission agreement is whether Turkey's regulations on international protection in recent years have made Turkey a "safe third country". Because, if the EU member states declare Turkey as a "safe third country", it may be possible to reject the applications of all asylum seekers transited through Turkey. There were arguments in favor of declaring Turkey as a safe third country. It was argued that the LFIP and the regulations adopted in connection therewith provide a level of security that can be regarded as equivalent to sufficient international protection and therefore Turkey can be declared a "safe third country" without its not lifting the reservation on the 1951 Geneva Convention (European Stability Initiative, 2015). The fact that the Greek government decided to declare Turkey a safe third country with the support of the governments of Germany and France at the beginning of February 2016 suggests that all asylum seekers in this country may be sent back to Turkey (Ekathimerini.com, 2016). Since the EURA with Turkey did not entered into force as of February 2016, an existing readmission agreement between Turkey and Greece were utilized.

Although there are significant improvements in the Turkish legislation, it is obvious that Syrians under the temporary protection in Turkey does not have all of the above-mentioned rights. Syrians under temporary protection status have no right to claim refugee status, under the current temporary protection regime in Turkey. The motivation behind establishing

the temporary protection regime is that once the Syrian Civil War is over, Turkey will be expecting most of the Syrians to return to Syria. Under the temporary protection regime in Turkey, Syrians do not have access to a refugee protection under 1951 Geneva Convention.

The main problem in the Turkish asylum system, which is frequently criticized in the EU progress reports, is the geographical limitation that Turkey applies to grant refugee status. Although Turkey was one of the first signatories of the 1951 Geneva Convention, it preferred to apply the geographical limit according to Article 1b of the 1951 Geneva Convention. With the outbreak of the Syrian Civil War, it is clear that the vast majority of asylum seekers come from countries outside Europe. The new migration law in 2013 is welcomed by the EU and NGOs, but continues to be criticized for not lifting the geographical limitation. Lifting the geographical limitation is one of the main conditions that Turkey has to fulfill for EU membership, and Turkey is the only country that is still applying the geographical limitation. Therefore, with Turkey's current geographical limitation to the 1951 Geneva Convention, Turkey cannot be considered as a safe third country for readmissions.

International human rights organizations criticize harshly the idea of sending asylum seekers by accepting Turkey as a safe third country. Indeed, the argument that that asylum seekers could be sent to a safe third country on the basis that they arrive the EU from a safe third country is highly controversial one in both legal and moral terms. Each asylum seeker should be assessed individually based on the secureness of the readmitting country for that very person. However, it is evident by number of cases that the member states do not always make decisions in accordance with international refugee rights since they perceive migration as a threat to their existence. Hungary, for example, is one of the strictest member states on migration

management. It has attempted to send asylum seekers to Serbia, which is not considered as safe by the UNHCR, without even registering them as asylum seekers (Kleinfeld, 2015).

Secondly, in addition to the geographical limitation Turkey imposed on refugee admission, violations of refugee rights in Turkey have been documented. Many asylum seekers trying to cross Turkey have been detained and have been denied access to asylum procedures (Grange & Flynn, 2014). For example, in 2012, United Nations High Commissioner for Human Rights (OHCHR) Special Rapporteur on the Human rights of Migrants visited Kumkapı and Edirne detention centers and revealed this situation. Many people who could have gained a refugee status could not even seek asylum because they were not informed about asylum procedures and could not communicate with the UNHCR, lawyers and NGOs (Crépeau, 2013).

"Non-European asylum seekers" face arbitrary detentions and are treated without any respect for their humanity amounting to inhuman and degrading treatment as it is reported and documented many times by Amnesty International. In one of the interviews conducted by researchers of Amnesty International, a Syrian man, aged 40, said that his hands and feet were tied to each other in a room in the Erzurum Detention Center for seven days. He said to researchers: "When they put a chain over your hands and legs, you feel like a slave, like you are not a human being" (Amnesty International, 2015). The conditions of detention for irregular migrants should also be examined to determine whether Turkey is eligible for readmissions. It is frequently emphasized that Turkey should improve detention centers in EU progress reports. Many national and international observers have also criticized detention centers and detention conditions. There are criticisms that immigrants are physically ill treated, beaten, provided little or no access to

legal assistance and interpretation, not allowed to appeal to detainment decision, and are secluded (Levitan, Kaytaz, & Durukan, 2009).

The "Joint Declaration" attached to the EU-Turkey readmission agreement is planning to "establish reception centers and border police organizations" as part of Turkey's efforts to increase its capacity. Support has also been received from the International Organization for Migration (IOM) and foreign funds for increasing the legal, administrative and technical capacity of the Directorate and for the restructuring of readmission centers at international standards. When the readmission agreement was signed, the total capacity of admission and accommodation centers in Turkey allowed less than two thousand migrants to be accommodated for a maximum of 12 months. At the end of this period, the residents were taken out of the center by temporary accommodation. Following the signing of the agreement, the government has begun to work towards increasing the number of accommodation centers. DGMM also carries out projects to build new readmission and accommodation centers supported by pre-accession funds (IPA).

There are improvements in the capacity to receive and accommodate migrants; however, it is not for certain that Turkey's increased readmission capacity will meet the people to be returned under the readmission agreement. The application of the readmission agreement to third-country nationals suggests that Turkey will have to accept a large number of immigrants and that this will put a great burden on the country (Aygül, 2013, p. 330).

The two decisions taken by the ECtHR provide insight into the conditions of detention centers in Turkey. The first is the Abdolkhani and Karimnia v. Turkey case where the ECtHR finds that there are no clear provisions for the arrest and eviction of irregular migrants and that the periods of detention have not been specified (Ekşi, 2010). The second case is

Charahili v. Turkey in which it is stressed that the detention conditions of irregular migrants went as far as the violation of Article 3 of the ECHR, which prohibits torture (Ekşi, 2014, pp. 77-78).

Moreover, while the EU law requires the "safe third country" to respect non-refoulement principle, in the case of Turkey, the EU authorities ignores the EU law. Incidents of refoulement from Turkey have been documented many times. For example, a report from 1997 demonstrates that 23 Iranian asylum-seekers were arrested in Nevşehir and Kayseri 16 of which were recognized refugees who were accepted by third countries for settlement. After their arrest, Turkey sent everyone including 16 recognized refugees to Iraq, arguing that they entered Turkey illegally from Iraq, without even considering their legal status (Amnesty International, 1997). In 2000s, both Turkey and Greece have ignored the non-refoulement principle and sent migrants back to insecure conflict zones (Pro Asyl., 2013). There are also some reports indicating that Turkey is pushing Syrians back to Syria or is not letting them pass the border by using physical force from time to time (Human Rights Watch, 2015).

Some NGOs in Turkey have stressed the possible violations of human rights that would result from the agreement. Some of these NGOs were the Human Rights Association (İHD), Human Rights Agenda Association (İHGD), Kaos Gay and Lesbian Culture Research and Solidarity Organization (Kaos-GL), Refugee Solidarity Association. In the joint press release, these NGOs argued that asylum seekers would be sent back to Turkey without a detailed investigation due to the readmission agreement (KAOS-GL, 2013). In addition, they pointed out the possibility that Turkey could send third country nationals to the countries of origin. They argued in view of the fact that Turkey is a transit country for many asylum seekers, it will be understood how worrying the EU-Turkey readmission agreement is in the context of

human rights, and this agreement is meant to deter asylum seekers (KAOS-GL, 2013).

The EU-Turkey readmission agreement will not prevent Turkey from sending irregular migrants to countries where human rights violations are taking place. This can also be seen in the Syrian example. Although it is not operational as of 2017, there is a bilateral readmission agreement between Turkey and Syria. Between 2002 and 2013, 2675 people were returned to the Syrian regime (Kılıç, 2013). During the above-mentioned period, the safety of the returned irregular migrants could not be assessed clearly. Nevertheless, when a civil war broke out in Syria by 2011, Turkey opened its borders to hundreds of thousands of Syrian refugees.

It is clear that the readmission of third-country nationals, who intend to seek refuge in EU countries would be problematic in terms of human rights. All of the above-mentioned reasons give the impression that the EURA signed with Turkey tries to legitimize an extraordinary measure. Therefore, the EU utilizes the agreement as a securitization instrument. It can be estimated that some of the Syrians hosted by Turkey and other neighboring countries do not necessarily have the option of returning back to Syria as long as the war continues. With limited prospects in Turkey some will not willing to return Turkey, a country that is already hosting 3 million Syrians, and that they will try to pass back to Europe. It could be expected that among those Syrians who will be returned might try to reach Europe again through irregular means. In this way, it is possible to argue that readmission agreement in the long-term may not reach its desired outcome.

5.4. Conclusion

Following the experience of the Bosnian and Kosovo wars in the 1990s, the EU has adopted a temporary protection directive for those persons who are fleeing from armed conflict or widespread violence and those who

are subject to systematic or general human rights violations (Kaya & Yılmaz Eren, 2014, pp. 40-44). According to the directive, temporary protection can have a minimum duration of one year and a maximum duration of three years; and can be applied with a qualified majority by the Council (Council of the European Union, 2001, Art. 2,4 and 5). The member states have obligations to provide such as the right to work, education, health and social support to persons under temporary protection (Articles 8-16). However, while Turkey has provided temporary protection to asylum seekers from Syria, this Directive has never been on the agenda of the EU for the Syrians. It is not difficult to predict that this was because not to encourage irregular migration from Syria to Europe. This is a clear indication that EU countries do not take responsibility for hosting the Syrians. It is possible to imagine that EU countries will try to send a large number of Syrians and other asylum seekers back to the transit countries within the framework of readmission agreements, looking at the fact that Syrian immigrants are not even allowed to have temporary protection for a maximum of three years.

The EU has serious expectations from Turkey in managing irregular migration flows due to Turkey's presence on the migration route to the EU. Especially after the outbreak of Syrian Civil War, Turkey seemed to be a security corridor to protect the outer borders of the EU, as Turkey was the route to Europe for irregular migrants and asylum seekers. It was also very important for the EU to make readmission agreement with Turkey, as it was one of the most frequent transit routes for human traffickers used to reach to Europe (Coleman, 2009, p. 178).

Shortly after receiving the candidacy status from the EU, Turkey faced EU requests for the signing of a readmission agreement, and at first, it seemed reluctant to those requests because of its hesitation to increase irregular migration. In the face of EU's long-standing insistence and visa facilitation

proposals, Turkey has agreed to sign the agreement only when its citizens were promised visa liberalization. The agreement was signed on December 16, 2013 and entered into force on October 1, 2014. With steps taken since the signing of the Agreement, Turkey has made a lot of progress in legal and institutional matters.

Since the summer of 2015, irregular migration to Europe from various regions, especially from Syria, has reached an unexpected intensity. Whenever this irregular wave of immigration, which is uncertain, is likely to lead to irreversible political and economic crises in the EU, the member states as a measure have gone on to cooperate with the surrounding countries to increase border security and stop irregular migration. Due to the presence of migration routes in the European direction, Turkey is one of the countries that the EU considers most critical for stopping irregular migration. Under the pressure created by the economic crisis and structural problems it has been going through, the EU wants Turkey to act as a buffer zone between the migrants and its territories (Şenyuva & Üstün, 2015, p. 3).

Therefore, accelerating the implementation of the readmission agreement signed on December 16, 2013 between the EU and Turkey has become a critical issue for the EU. At the same time, the EU, which wants Turkey to take measures against irregular migration and the integration of Syrian asylum seekers more quickly, has offered technical and financial support to Turkey in order to do all of these. Thus, the EU aimed to stop the irregular migrants who were determined to cross Turkey on the one hand, and send those who came to the EU transiting through Turkey earlier than the agreed schedule.

Readmission agreement negotiations and visa dialogue processes have become a driving force for the restructuring of the border and migration management in Turkey. The institutions that are working in this field in

Turkey have started to carry out joint studies on the timely and proper implementation of the agreement. Many important steps have been taken to ensure that institutions related to border and immigration management are restructured in accordance with international standards. Material and technical support was obtained from the EU when these reforms were carried out. However, so far, policies in Turkey towards irregular migration in general and Syrians in particular, have been shaped around "temporariness" (Erdoğan, 2014, p. 72). Therefore, legal and institutional developments in Turkey are not enough to consider Turkey as a safe country for readmissions.

Political, social and economic crises that may be experienced in different countries in the future can also cause great migration waves. Persons seeking asylum seekers in various parts of the world can seek alternative routes to the Aegean and Balkan routes (Kingsley, 2016). In short, if normalization in Syria and other conflict areas is delayed and hunger, poverty and unemployment continue in many Asian and African countries, neither the coastal security measures to be implemented in the Aegean Sea nor the financial and technical assistance the EU will give to Turkey can stop irregular migration to Europe. Therefore, it can be said that readmission agreement with Turkey and the resolutions taken at the summit of November 29, 2015 and March 2016 suggest only temporary solutions to the international protection crisis.

Although it has also been decided that a Syrian refugee would be taken to the EU countries for every Syrian citizen to be returned to Turkey; this would be difficult to implement in reality. It remains unclear as to the legal context in which the Syrians are subject to resettlement after their refugee status has been granted. In addition, even before the Deal, the member states imposed some quotas for the settlement of the Syrians, but it could not have been possible to fill these quotas. Approximately 900 refugees could be

resettled in 2015 when 20.000 refugees were expected to be placed in various member states (Kale, 2016). There are various reasons for this difference to occur. For example, some member states require refugees to be from vulnerable groups (women, elderly, chronic illiterate or unaccompanied children), some other may require the refugees with qualifications of semi-skilled or skilled workers. This makes the process difficult; and even if conditions are met, placement could take several years. For these reasons, while readmissions are based on accelerated procedure, resettlement will not be as quick as readmission (Kale, 2016).

As it was shown in the chapter, EU law has very apparent criteria for the designation of a safe third country. In addition to the EU law, European Council on Refugees and Exiles (ECRE) has identified the criteria for the "safe third country" as follows: Ratification and enforcement of the 1951 Geneva Convention, the CAT, the ICCPR) and the ICESCR and other human rights treaties without any limitation; the existence of a fair, efficient and accessible asylum procedure; the existence of an agreement between countries on the readmission of the person and evaluation of the person's asylum request; desire and sufficiency in protecting people as long as they remain refugees. In light of above-mentioned criteria together with the EU law, Turkey is unlikely to be a "safe third country" because Syrians under temporary protection cannot apply to refugee status, it has a geographical limitation to grant refugee status, and many violations of refugee rights have been documented throughout the years.

There is no provision in the agreement that would directly prevent Turkey from sending readmitted persons to the source countries in which they would be at risk. In other words, no step has been taken to remove the negative consequences of the agreement, which would create a domino effect or chain effect (Ekşi, 2016, p. 111). The EU takes an extraordinary measure by signing

a readmission agreement with Turkey in which the EU utilizes the agreement as a securitization instrument. Based on the assumption that Turkey is a safe third country, asylum seekers are being sent to Turkey, which could have serious and irreparable consequences for those in need.

CHAPTER 6

THE EU'S READMISSION AGREEMENT WITH PAKISTAN

6.1. Introduction

The Agreement between the European Community and Islamic Republic of Pakistan on the Readmission of Persons Living without Authorization lays down the reciprocal procedures for the returns of Pakistani nationals, third-country nationals and stateless persons who have come from or transited through Pakistan and residing without lawful authorization within the territory of a member state of the European Union and vice versa (Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation, 2010). In other words, the EU-Pakistan readmission agreement allows the deportation of not just Pakistanis but also third-country nationals transiting from this country to the EU.

Just as the EU-Turkey readmission agreement is actually targeting the irregular migrants from countries like Syria and Iraq transited Turkey, the EU-Pakistan readmission agreement is targeting not only the Pakistanis but also the Afghans. Today there are 1.5 million refugees according to UNHCR data, which continues to be declining with voluntary and forced repatriation operations carried out by the UNHCR and Pakistani government (UNHCR, 2016). Human Rights Watch puts the figure somewhere above 2.5 million with 1 million undocumented and 1,5 million documented Afghan refugees (Human Rights Watch, 2017). Therefore, the geopolitical context of Pakistan should not be forgotten when the treaty is being investigated. As the situation in Afghanistan remains uncertain, Afghanistan, the Afghans, Pakistan and the Pakistanis continue to be deeply influenced. As will be seen in this chapter, Pakistan is not a country where people can be sent back without risking their

lives, and sending them back to Pakistan can be considered as a *de facto* violation of the principle of non-refoulement.

Above all, it is necessary to give brief information about the invasion of Afghanistan and Afghan refugees as well as the asylum system in Pakistan. Afghan refugees are Afghan citizens who have left their country due to wars or persecutions. The Soviet Union invaded Afghanistan in 1979, which led to the first wave of refugee flows from Afghanistan, to neighboring countries of Pakistan and Iran. In 1981, there were 1.5 million Afghan refugees in Pakistan. Those who escaped quickly organized a resistance movement known as *Mujahideen* (holy warriors) to fight for Afghanistan in order to save the country from Soviets "infidels" (Poppelwell, 2011). Cold War context contributed the anti-Soviet efforts of *Mujahideen* in which Western countries provided military and financial support. Pakistan, also, provided a regional base to organize the resistance movement. Major conflicts have taken place throughout the country, especially in urban areas. In 1986, about 5 million Afghans were refugees in Pakistan and Iran. When the war between the Soviets and ended in 1989, these refugees began to return to their homeland. In April 1992, a major civil war began after the *Mujahideen* took control of Kabul and other major cities. Afghans fled to neighboring countries again.

A total of 6 million Afghan refugees are hosted in Pakistan and Iran, making Afghanistan the largest refugee-producing country in the world for 32 years. Afghans are now the second largest refugee group after the Syrian refugees. According to UNHCR Global Trends Report of 2012, 95 percent of Afghan refugees are living in Iran and Pakistan (BBC News, 2013).

Pakistan has been hosting more than one million refugees for 40 years. It is reported that 1,5 million officially registered Afghan refugees live in Pakistan as well as about 1 million unregistered refugees (Human Rights Watch, 2017). However, there has been a recent influx of immigrants

returning to Afghanistan due to security concerns and growing political tensions between Pakistan and Afghanistan. Although being the second largest host country after Turkey, Pakistan is not a contracting party to the 1951 Geneva Convention and its 1967 Protocol. It also does not have any national legislation for the protection of refugees and has not established procedures to determine the refugee status of persons seeking international protection on their territory. Afghan refugees are assessed in accordance with the provisions of the Foreigners Act of 1946. This act is from the pre-independence time of Pakistan and it is the primary legislation governing the entry of foreigners into Pakistan, their presence, and departure from the country.

The Act has been amended by the Foreigners Ordinance in 2000, which contains a series of revisions to strengthen government procedures on aliens. Structured in seventeen sections, the amendment included a "the definition of a foreigner, mechanism to determine nationality of foreigners, penalties for certain offences relating to the Act, deportation of foreigners, custody of foreigners during trial or deportation proceedings, creation of the National Aliens Registration Authority (NARA), registration of foreigners under the NARA, and the permission for foreigners to legally work after registration" (Research Society of International Law, 2012, p. 37).

In the absence of a national refugee legal framework, UNHCR conducts refugee status determination under its mandate and on behalf of the Government of Pakistan in accordance with the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR (UNHCR, n.d.). Pakistan generally accepts UNHCR decisions to grant refugee status and allows asylum seekers and recognized refugees to stay in Pakistan until a permanent settlement is reached.

By February 2007, the Pakistani government completed the identification of Afghan refugees living in Pakistan and issued the "Proof of Registration (PoR)" cards, which provide temporary legal stay, free movement, and exemption from the application of 1946 Foreigners Act. Approximately 1.34 million Afghans have received PoR cards. These cards are currently valid until the end of 2017. Only newborn children of PoR cardholders may still be registered by Pakistan whereas new arrivals from Afghanistan will be required to go through UNHCR refugee determination procedure (UNHCR, n.d.).

6.2. Negotiation Process and Signing of the Readmission Agreement between Pakistan and the EU

As mentioned in the previous chapters, the EU has become one of the main destinations of immigration around the world. A necessary consequence of this phenomenon was a significant increase in the number of irregular migrants. The management of external borders has thus become an important priority for the EU. In this context, readmission agreements have increasingly emerged as the primary tools for combating irregular migration.

Millions of people have migrated to find better opportunities in the more developed regions of the world. It is safe to say that Pakistan has always been a source country of immigration to a certain extent. According to the Ministry Of Overseas Pakistanis And Human Resource Development, there are about 7.6 million Overseas Pakistanis working and living around the globe (Ministry Of Overseas Pakistanis And Human Resource Development, 2014). The main concentration of overseas Pakistanis is in the Middle East, Europe and America. Moreover, the country's economy has been heavily dependent on foreign remittances. The existence of such communities in European countries such as United Kingdom, France, Italy, and Greece since 1950, therefore, had an impact on the relationship between the European countries

and Pakistan (Ministry Of Overseas Pakistanis And Human Resource Development, 2014). These relationships were based on mutual understanding and balanced responsibility. However, especially after the invasion of Afghanistan by the Soviet, Pakistan became not just a source country of irregular migration but also a transit country for the Afghan refugees. Against this background, Pakistan found itself in a critical position in the EU's management of irregular migration.

The necessity of signing a readmission agreement with Pakistan was one of the measures proposed in the 1999 High Level Working Group Action Plan on Afghanistan and this is stated in the European Commission proposal for a Council Decision concerning the signing of the Agreement between the European Community and Pakistan on readmission (European Commission, 2009). In this context, on 18 September 2000, the General Affairs Council formally authorized the European Commission to conclude a readmission agreement with Pakistan. The European Commission sent a draft agreement text to the Pakistani government in April 2001. Following the summit of the ministers held in Islamabad on 18th and 19th of February 2004, the Cooperation Agreement on Partnership and Development between European Communities and the Islamic Republic of Pakistan was signed (European Commission, 2004). In April 2004, the first official negotiations for a readmission agreement were held in Islamabad. Six official meetings were held until the last one in Brussels on 17 September 2007 (European Commission, 2009). Following a lengthy discussion and examination process on both sides, the agreement was signed on 26 October 2009 subject to the ratification by the respective parliaments (European Commission, 2009).

Nevertheless, during the negotiations in the EP, there was strong opposition. For the first time since the Lisbon Treaty entered into force in 2009, the EP had the power to veto this and other readmission agreements.

Member of the Group of the Progressive Alliance of Socialists and Democrats (S&D) in the EP, Claude Moraes said, "the Lisbon powers mean MEPs should put human rights first and ensure that long-term agreements with third countries stick" (Peter, 2010). The European Parliament Rapporteur Sógor Csaba has admitted that there are human rights issues to come to the table regarding the EU-Pakistan readmission agreement (Statewatch, 2010). However, he put two arguments forward for the ratification of the treaty. First, he claimed, although Pakistan did not sign the 1951 Geneva Convention, there is an ongoing work for the establishment of a Ministry of Human Rights which would enhance the human rights conditions in the country (Statewatch, 2010).

The second argument was about the risk that a strong cooperative relationship with Pakistan could deteriorate if the agreement was not accepted. These arguments have not been described as convincing by a number of MEPs from S&D, ALDE and the Green Group (Statewatch, 2010). They argued that Pakistan has not accepted basic international documents aimed at strengthening the human rights regime in the country, which would also make the establishment of the human rights ministry ineffective (Statewatch, 2010). Although the European Commission claimed that the readmission agreement with Pakistan "fully respect human rights and fundamental freedoms", Parliament member Sylvie Guillaume viewed the agreement as "technically doubtful and politically dishonest" (Statewatch, 2010).

The UNHCR has also found the EU-Pakistan readmission agreement alarming and stressed that the agreement was not enough to respect the principle of non-refoulement (Peter, 2010). The agreement was supported by the center-right European People's Party (EPP), the largest block of the EP. EPP Member Dutch Parliamentarian Wim van de Campbell said such EU-

level agreements would be a "signal" to non-EU countries that they should take the responsibility of their own citizens. (Peter, 2010).

Nevertheless, the majority of the EP were not convinced with these criticisms and ratified the agreement. This approval demonstrates that the EP follows the security considerations of the EC in concluding a readmission agreement. Since readmission agreements are security or securitization instruments, as this thesis argues, the majority in the EP agreed that the agreement with Pakistan was important for the security of the member states. Following the approval of the Parliament and the Council, the Agreement entered into force on October 7, 2010.

Five years after the agreement entered into force, Pakistan announced on November 6, 2015 that it had suspended the Readmission Agreement because of its "blatant misuse" (AFP, 2015). Interior Minister Chaudhry Nisar Ali Khan claimed that the EU countries were exploiting the agreement without confirming the nationality of returnees with Pakistani authorities: "Pakistanis travelling illegally to any Western country are to be deported after proper verification but, most of the (Western) countries are deporting people without verification by Pakistani authorities" (AFP, 2015). Khan said that 90,000 people were sent back to Pakistan only in a one-year period. "Another dangerous trend has emerged for the last several months under which Pakistanis traveling abroad without documents are deported on charges of terrorism without verification whether or not they are actually Pakistanis", he said (AFP, 2015). The statements came after Pakistan's refusal to accept 70 Pakistani nationals from a joint return flight coordinated by Frontex from Greece on November 4, 2015 (Frontex, 2015).

After the suspension of the agreement and dissatisfaction of Pakistan, the EU tried to solve the problem and restore the agreement. The EU officials held long meetings with the Pakistani authorities in the winter of 2016.

Finally, both parties at the Joint Readmission Committee (JRC) meeting in March 2016 in Brussels agreed on the procedures for verification, deportation and evidence sharing (Wasim, 2016). The European Union has assured Pakistan on identifying the nationality of deportees. A mechanism established by the Pakistan Ministry of Interior will be followed for the readmissions (Wasim, 2016). Pakistani Interior Minister Chaudhry Nisar Ali Khan endorsed and appreciated the EU's acknowledgment of Pakistan's reservations in the execution of EU Readmission Agreement. Admiring the EU's struggle for the mutual understanding of Islamabad's concerns, he said that this would offer a good platform for Pakistan and the EU to work in greater harmonization (Wasim, 2016).

6.3. Pakistan as a Safe Country for Readmissions

As I mentioned, the signing of a readmission agreement with Pakistan was one of the proposals from the 1999 Action Plan on Afghanistan, as it would also be seen in the beginning of the agreement. Therefore, it would not be wrong to say that this agreement was basically made for the return of Afghan citizens to Pakistan. Under the agreement, Pakistan must readmit its own citizens as well as third-country nationals and stateless persons. It is impossible to know that Afghan refugees returned to Pakistan will not be extradited to Afghanistan because there is no explicit guarantee in the agreement. The argument that Pakistan can send Afghan citizens to their country is not at all groundless because of the current repatriation operations carried out by the Pakistani government.

As of today, there are 1.5 million Afghan refugees in Pakistan (UNHCR, 2016). Though Pakistan is hosting the second highest refugee population in the world, it has ratified neither the 1951 Geneva Convention nor the 1967 Protocol. The status of these refugees in Pakistan has been regulated periodically within the framework of the trilateral agreement

between UNHCR, Pakistan, and Afghanistan (Human Rights Watch, 2017). The final agreement ended on December 31, 2015, and the Government of Pakistan extended the agreement for six months at the beginning of 2016 and later extended it for the second time until December 2016. The Government of Afghanistan wanted an extension until the end of 2017 at the Tripartite Commission meeting. Until the middle of September 2016, Pakistan announced that the refugee status of Afghans would end, as of December 31, 2016; and after that date, the Afghans would be deported (Human Rights Watch, 2017).

However, due to the pressures of the international organizations, the authorities have extended this date to March 31, 2017. It is reported that the federal cabinet in Pakistan approved the extension of the status of Afghan refugees by the end of 2017 on November 23, 2016 (Hashim, 2017). On February 24, 2017, Pakistani government officially announced that it extended the status of Afghan refugees until December 31, 2017 (Government of Pakistan, Ministry of States & Frontier Regions, 2016). Although the trilateral agreements include the principles of non-refoulement and voluntary repatriation, every Afghan refugee is now required to keep a refugee registration card, the absence of such documentation will result in deportation as it was documented many times by HRW (Human Rights Watch, 2017).

The UNHCR fulfills its functions primarily under the 1951 Convention and the 1967 Protocol. States are required to cooperate with UNHCR to carry out their duties. Cooperation with UNHCR can be achieved primarily under the 1951 Geneva Convention and the 1967 Protocol, and since Pakistan is not a party to the 1951 Geneva Convention, UNHCR has signed several agreements with the Pakistani government to protect the refugees in the host country (Khan, 2016). The rationale behind these joint

venture agreements is to extend the mandate of UNHCR and international refugee law to refugees outside the scope of the traditional legislation. Because Pakistan has signed few international agreements on human rights, NGOs have said that Pakistan is far from being a safe country to readmission.

According to a Human Rights Watch report, there are mass forced returns of Afghan refugees, which amount to the violation of non-refoulement principle (Human Rights Watch, 2017). Only in the second half of 2016, officials' threats of deportation and police abuses forced back to Afghanistan about 365.000 of 1.5 million registered Afghan refugees in the country. Besides, it is mentioned that 200.000 of the estimated 1 million unregistered Afghan population in addition to 1.5 million registered Afghan refugees in the country are forced to leave the country (p. 1). This repatriation operation has been recorded as the largest return act in recent history. Pakistani officials say they want similar numbers to return to Afghanistan in 2017 (pp. 1-2). It is obvious that the coercion of Pakistan to return hundreds of thousands of registered and unregistered Afghan refugees to Afghanistan is in violation of the principle of non-refoulement.

The European Commission has taken no effective measures to ensure that the rights of readmitted persons are respected and to ensure their safety. The only provision in the agreement that can be put forward as a preventive measure is the "non-affection clause" (Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation, 2010). Accordingly, the agreement will remain in force in accordance with international agreements. However, this expression is very ambiguous and vague. Moreover, an attached declaration to the agreement states that the European Commission will provide any kind of support for the signing of the 1951 Geneva Convention by Pakistan.

However, Pakistan is not very willing to sign the 1951 Geneva Convention. The situation of 1.5 million refugees registered in Pakistan remains uncertain. These refugees are constantly being expelled, arrested or consciously killed during anti-Taliban or anti-Pashtun uprisings (United Nations Assistance Mission in Afghanistan, 2016). The situation of returned Afghans is as uncertain as it would be in Pakistan. They are forcefully returned to a war-torn country and the government of Afghanistan is not able to provide even basic living conditions. Access to electricity, clean water, and good quality food is quite difficult. A person who has forcefully returned to Afghanistan from Pakistan says it all: "we are in our own country, but not even dogs live like this" (Bezhan & Wesal, 2017).

In addition to Pakistan's human rights abuses against Afghan refugees, Pakistani authorities are constantly abusing Pakistani citizens' economic, social and cultural rights as well. First of all, the government is restricting international civil society and human rights organizations. In October 2012, for example, all workers of an international charity organization, "Save the Children", are requested to leave the country after an intelligence report linked one of the doctors with CIA (BBC News, 2015). In 2015, Pakistani announced a new policy that gave the Ministry of Interior extensive authority over NGOs to review and scrutinize their resources and connections. The ambiguous provisions in the policy undermine the ability of NGOs to work independently without fear of closure and give the government great discretion in disrupting human rights work (Amnesty International, 2017, p. 6). Secondly, Pakistani courts have been very reluctant to cite international human rights law in their decisions that is because the Pakistani constitution does not include all internationally recognized economic, social and cultural rights (p. 7).

Third, discrimination against marginalized communities continues to constitute a problem. People are being discriminated both in legislative and practical terms based on their gender, nationality, religion and sexual orientation. For example, women's testimony on courts are deemed as half of that of a male witness (p. 8). Blasphemy laws in Pakistan mandates death penalty which is an obvious violation of freedom of expression and religion. Christians are being discriminated in workplaces, and experience hard times in finding jobs (p. 8). Although transgender people are recognized as "third sex" on their identity cards, it is still a crime to engage in consensual same-sex relationships (pp. 8-9).

Fourth, people have trouble in reaching basic rights in Pakistan, including right to work, right to social security and adequate standard of living, right to health, right to education and right to culture. Workers from Pashtun or Afghan backgrounds have been discriminated against by private employers and subject to surveillance and harassment by the authorities, making it harder for them to access or continue work. Large numbers of people who work in the informal economy have no access to social security, health benefits, or occupational safety. Only 3% of workers in Pakistan are currently unionized. Businesses have increasingly resorted to hiring contract workers, which allows them to dilute the power of trade unions and escape paying pensions and employment benefits (pp. 9-11). Children living with disabilities, often experience discrimination, are out of school in large numbers and often do not have access to inclusive education. Few school buildings are accessible to people living with disabilities. Of the schools that do exist, many of them lack drinking water and toilets. In recent years, schools have come under attack from armed groups (p. 14). Armed groups have attacked and killed members of religious minorities, including Shias, Ahmadi Muslims, Christians, Sikhs and Hindus. Sectarian leaders promote the hatred

of religious minorities on television, including denouncing them as "blasphemers" and "enemies of Pakistan", language that has the potential to incite violence (pp. 15-16).

Bomb attacks, tribal conflicts, persecution of Christian and Ahmadi minorities, violence against women, the arrest of children even from the age of seven, two years of imprisonment and whipping punishment against homosexuality, is part of everyday life in Pakistan (MigreEurop, 2010, p. 2). In addition, it should not be forgotten that the death penalty is still in force, and just as Amnesty International has shown, discrimination and rights violations against Afghans that are readmitted to Pakistan occur almost every day (Waraich, 2016; Pakistan: Code of Criminal Procedure 1898, As amended by Act II of 1997, 2007, p. 78).

Women are far more in danger than men in Pakistan are. In a global perceptions survey, the Thomson Reuters Foundation requested 213 gender experts from five continents to identify the risk levels of countries by taking into account six risk factors including health threats, sexual violence, non-sexual violence, cultural or religious factors, access to resources and overall crime rates. The assessment of experts showed that Pakistan is the third most dangerous place in the world for women (The Express Tribune, 2011). According to experts, the main reasons for this evaluation are acid attacks; forced marriages in childhood; cultural, tribal and religious practices; physical abuses and stoning punishments. Another fact revealed in the survey is that more than 1.000 women and girls are victims of "honor killings" each year and 90% of women are exposed to domestic violence (The Express Tribune, 2011). In addition, "reforms to raise the legal age of marriage of girls, from 16 years to 18 years, were blocked by the Council of Islamic Ideology. The Council also blocked a law passed by the Sindh Assembly to

prevent the forced conversion of non-Muslim women" (Amnesty International, 2017, p. 8).

All this information makes it very clear that not just Afghan refugees, but also Pakistanis are not safe in Pakistan. Afghan refugees can be arbitrarily detained then sent to Afghanistan, and subjected to targeted killings from ethnic and tribal conflicts there. UNHCR emphasizes that hundreds of Afghans have been deported each month by Pakistan (UNHCR, 2016). For this reason, the expulsion of Afghans to Pakistan under the EU-Pakistan readmission agreement will create a "leap" effect and cause expulsion of some deportees to Afghanistan after a while, leading to torture, inhuman and degrading treatment, punishment and even death. This is completely contrary to the international commitments of the EU.

During the debates regarding the agreement in May 2010, some MEPs succeeded in publishing a declaration that non-refoulement principle and that the rights of third country nationals would be respected among other things such as "the respect of maximum detention periods of EU member states, the possibility to encourage legal migration for Pakistani citizens, technical assistance from the EU towards Pakistan as well as commitment to dialogue with the aim of facilitating people-to-people exchanges" (Council of the European Union, 2010). Even though these declarations has been added to the agreement, they do not have any legal value and therefore will not create the expected effect in both legal and practical terms. The applicability of these declarations has only been left to the mercy of Pakistan. It will not go beyond a symbolic declaration made to prevent criticism in the EP.

6.4. Conclusion

Pakistan is subject to the universally binding customary rules of law. Therefore, they cannot force anyone to return to a place that they would face a risk of persecution, torture or cannot forcefully return to a life-threatening

place. This is a right derived from international law that protects the rights of all individuals. Pakistan is oppressing not only unregistered Afghans but also hundreds of thousands of registered Afghan refugees to make them return to Afghanistan, which is an obvious violation of the international legal obligations. As of early 2007, Pakistan did not register new Afghan refugees, although there has been no meaningful change in human rights conditions in Afghanistan.

Since the UNHCR in Pakistan did not have the sufficient ability to register and process hundreds of thousands of Afghan asylum seekers, only a limited number of Afghans could demand protection from the UNHCR and leave the rest as under the protection of Pakistan's national protection legislation. Most of the undocumented Afghans have been under pressure together with the registered Afghan refugees. Taking all of the above factors into account, we can conclude that Pakistan is not only a dangerous country for third-country nationals, but also for its own citizens. For this reason, the readmission agreement with Pakistan is nothing more than a securitization instrument that the EU is trying to send unwanted people, regardless of returnees' future safety and prospects.

CHAPTER 7

CONCLUSION

Known as a human rights advocate in foreign policy, the EU faces a dilemma on migration and asylum matters, between its security and the ideals it intends to represent in foreign policy. The EU countries, on the one hand, led the way in creation of a global refugee regime with their role in preparation of the 1951 Geneva Convention; on the other hand, they are substantially damaging the system they have created, with the securitization instruments they have been using in order to combat irregular migration. In fact, the perception that immigration and asylum issues are a security problem are its own creation. The perception that the large immigration trends to the EU posed a threat to national security brought restrictive and preventive policies on migration that carried the struggle beyond its borders. This is called externalization of EU immigration policy. This externalization policy is very controversial because it aims to create a buffer zone around the borders of the EU. In this context, readmission agreements can be said to be one of the main means of externalization policies in the EU. These agreements put up a wall far beyond the EU borders, and these walls are not made of bricks but are made of words.

In a narrow sense, readmission agreements oblige the parties to accept only their own citizens. In fact, even in the absence of readmission agreements, states have the obligation to accept their own nationals according to international law. Therefore, readmission agreements, which provide for the readmission of only their own citizens, do not create a new obligation and but rather confirm an obligation derived from international law (Ekşi, 2016, p. 77). However, the EU utilizes these agreements in order to combat irregular

migration, which is seen as a security threat by the EU, by extending their provisions to third country nationals and stateless persons.

Although it is stressed that readmission agreements are designed to prevent irregular migration and to save lives by combating human trafficking and human smuggling; these agreements are in fact more broadly enforced. Once an asylum request is rejected, the asylum seeker then will be treated as an irregular migrant and consequently fall within the scope of readmission agreements. That is to say, readmission agreements include readmission of irregular migrants as well as the readmission of rejected asylum seekers. Yılmaz points out that the EU has closed its borders, which is already difficult to reach, to asylum seekers by concluding readmission agreements without securing the rights of refugees (Yılmaz, 2014, p. 2). He adds that tight border management policies implemented by the EU have caused the lives of the people who want to reach to the member states (p. 2). Readmission agreements provide grounds for the refusal of asylum claims from countries considered to be safe countries by an accelerated procedure. In fact, the existence of a readmission agreement with a country encourages the member states to deny asylum applications even without an evaluation on the basis that the country in which the applicant come or transited through is safe (Ekşi, 2016, p. 27). It is obvious that this practice is contrary to the minimum standards that should be recognized for asylum seekers.

It is also worth mentioning that the scope of the agreement might be *de facto* extended to the countries that are not parties to the agreement. If a stateless or third-country citizen transits through Turkey to an EU member state and then to Denmark, which is not a party to the readmission agreement, Denmark may deport the person from its own country and send the person to the member state he or she came from. The member state in question, then, may send this person to Turkey based on the readmission agreement with

Turkey. Thus, the readmission agreement can be *de facto* extended to a country which is not a party to the agreement, creating a domino effect.

As mentioned before, there are two different approaches in the literature regarding the readmission agreement. While the first focuses on the neutrality of the agreements, the latter focuses on the risks created for refugee rights. I also tried to show in the thesis that readmission agreements are securitization instruments by focusing on the risks they pose to human rights. To illustrate this, the thesis has looked into the Turkish and Pakistani examples through which I showed Turkey and Pakistan did not comply with the criteria laid down in the EU law and refugee rights relating to readmissions in international law and that the EU did not pay any attention to the protection of refugee rights stemming from international law. As seen in these cases, the right to seek and enjoy asylum and the principle of non-refoulement in international law is greatly affected by the readmission agreements of the EU.

Although some say that readmission agreements are nothing more than a legal framework; those agreements are clearly leading to human rights violations and only consider the EU's security. This means that if some or all of the asylum seekers, refugees or economic migrants sent back through the readmission agreements suffer a loss of their rights, tortured, losing their lives, then the EU is equally responsible because of their security-oriented immigration policies.

The readmission agreements made with both the source and transit countries like Turkey and Pakistan are worrying practices. If Turkey and Pakistan are considered as a bridge for irregular migrants from the Middle East, North Africa, and Central Asia to Europe, it is likely that the irregular migrants sent back often consist of people who need to be protected because of these countries' proximity to conflict zones. As shown in this thesis, EU

countries, Turkey and Pakistan do not readmit migrants in accordance with international refugee law and are constantly violating refugee rights. The EU seems to have forgotten the criteria set out in its legislation on the designation of safe countries. As seen in the case of Turkey, asylum seekers from outside Europe can be granted the refugee status but will not be allowed to stay in the country due the geographical limitation on the 1951 Geneva Convention. Moreover, many irregular migrants in the country face human rights violations in detention centers, and face the risk of refoulement.

In the case of Pakistan, the situation is much worse. Pakistan is not party to the 1951 Geneva Convention, and it has not signed many international human rights treaties. Human rights violations in Pakistan have been documented much more clearly. It is clear that the Pakistani authorities have forcibly sent Afghans with refugee status to Afghanistan and forced many undocumented migrants to leave. It is therefore obvious that Pakistan is not a safe country for readmission. As a result, when we consider the theoretical framework provided by the Sociological Approach to Securitization, we can say that the readmission agreements are securitization instruments because it gives the impression that the issue agreements deal is security problem and that even laws and human rights can be violated to solve this security problem.

Wæver sees the European integration process as a representation of the fear of the return to the balance of power system in which the European countries were devastated because of the world wars (Wæver, 1996). The immigration policy developed in the EU is undecided in the way it treats this fear. On the one hand, the Europeanization of the immigration policies indirectly raises nationalist, racist and xenophobic reactions against immigrants. Immigrants and asylum seekers are primarily depicted on adverse conditions. They are presented as an acute problem that challenges

social and political stability and the effective functioning of the internal market (Huysmans, 2000, p. 766). In doing so, the EU is fostering the idea that immigrants do not belong to European communities and that they are a serious burden for European societies and should therefore be kept away. This is a policy that confirms nationalist and xenophobic positions and undermines the multifaceted attempts to institutionalize Europe, which will provide comprehensive political, economic and social rights to migrants.

On the other hand, the EU is launching a campaign against the revival of nationalism, racism and xenophobia-based reactions. Moreover, European integration is essentially a multicultural project that supports the integration of different nations in social, economic and political spheres. The securitization of immigration has not only led to a restrictive immigration policy that weakens multiculturalism in the EU; it also contributed to the apparent emergence of multiculturalism in discussions on European integration (p. 766).

According to the Sociological Approach to Securitization, the instruments of securitization are restructuring the concept of public action for the issues identified as threats. They also describe a specific threat image and what to do about it (Balzacq, 2008). In this context, the policy instruments do not represent a purely technical solution to a public problem. A narrow focus on the operational aspect of securitization instruments would ignore political and symbolic elements of the instruments. Symbolic qualities placed in policy instruments that communicate "what the securitizing actor is thinking and what its collective perception of problems is" (Peters & van Nispen, 1998, p. 3). In other words, focusing on the political and symbolic aspects of securitization instruments will help to understand how "the intention of policy could be translated into operational activities" (De Bruijn & Hufen, 1998, p. 12).

As the thesis has shown with the agreements with Turkey and Pakistan, the EU identifies irregular migration as a specific threat image in these agreements. To combat this threat, these agreements take extraordinary and even illegal measures and legitimize these measures through these agreements. The EU sees irregular migrants as a threat and sends them to so-called safe third countries where they cannot enjoy asylum as defined in 1951 Geneva Convention and can be subject to arbitrary detention, torture and repatriation without properly assessing their applications. These violations also show that in theory, readmission agreements may become a means by which the member states can escape their responsibilities towards refugees. Therefore, one can conclude that existing EURAs are, by nature, not compatible with the right to seek asylum and non-refoulement principle and are securitization instruments. They are legitimate to the extent that they protect the refugee rights. However, the existent EURAs simply prioritize security concerns rather than human rights.

REFERENCES

Abell, N. A. (1999). The Compatibility of Readmission Agreements with the 1951 Convention Relating to the Status of Refugees. *International Journal of Refugee Law, 11*(1), 60-83.

AFP. (2015, November 6). *Pakistan suspends EU migrant readmission agreement over 'misuse'*. Retrieved from Mail Online: http://www.dailymail.co.uk/wires/afp/article-3307665/Pakistan-suspends-EU-migrant-readmission-agreement-misuse.html

Agamben, G. (2005). *State of Exception.* (K. Attell, Trans.) Chicago: University of Chicago Press.

Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation. (2010, Octover 7). Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Ajl0057

Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation. (2014, May 7). Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22014A0507(01)

Aka, H., & Özkural, N. (2015). Turkey and the European Union: A Review of Turkey's Readmission Agreement. *The European Legacy, 20*(3), 255-272.

Akçadağ, E. (2012). *Yasa Dışı Göç ve Türkiye.* İstanbul: Bilge Adamlar Stratejik Araştırmalar Merkezi. Retrieved from http://www.bilgesam.org/Images/Dokumanlar/0-96-2014032653yasadisigocveturkiye.pdf

Akgündüz, A. (2008). *Labour Migration from Turkey to Western Europe, 1960-1974: A Multidisciplinary Analysis.* Routledge.

Al Jazeera Turk. (2015, December 8). *Sorularla geri kabul ve vize muafiyeti*. Retrieved from http://www.aljazeera.com.tr/haber/sorularla-geri-kabul-ve-vize-muafiyeti

Amnesty International. (1997). *Turkey: Refoulement of non-European refugees - a protection crisis.* Retrieved from https://www.amnesty.org/download/Documents/160000/eur440311997en.pd

Amnesty International. (2013). *FRONTIER EUROPE Human Rights Abuses On.* Retrieved from http://www.amnesty.org/en/library/asset/EUR25/008/2013/en/d93b63ac-6c5d-4d0d-bd9f-ce2774c84ce7/eur250082013en.pdf

Amnesty International. (2015). *Europe's Gatekeeper. Unlawful Detention and Deportation of refugees from Turkey.* Retrieved from https://www.amnesty.org/download/Documents/EUR4430222015ENGLISH.pdf

Amnesty International. (2017, June 12). *Pakistan: Economic, social and cultural rights under attack.* Retrieved from http://www.refworld.org/country,,,,PAK,,593fe6864,0.html

Anderson, B. (2013). *Us and Them? The Dangerous Politics of Immigration Control.* Oxford: Oxford University Press.

Aygül, C. (2013). Visa Regimes as Power: The Cases of the EU and Turkey. *Alternatives: Global, Local, Political, 38*(4), 321-337.

Balzacq, T. (2008). The Policy Tools of Securitization: Information Exchange, EU Foreign and Interior Policies. *Journal of Common Market Studies, 46*(1), 75-100.

Balzacq, T., Basaran, T., Bigo, D., Guittet, E.-P., & Olsson, C. (2010). Security Practices. (R. Denemark, Ed.) International Studies Encyclopedia Online. doi:10.1111/b.9781444336597.2010.x

BBC News. (2013, June 19). *More than seven million refugees displaced in 2012 - UN*. Retrieved from http://www.bbc.com/news/world-22963060

BBC News. (2015, June 12). *Pakistan orders Save the Children to leave country*. Retrieved from http://www.bbc.com/news/world-asia-33105128

Berkhout, J. (2012). *Changing Claims and Changing Frames in the Politics of Migration in Western Europe, 1995-2009.* Support and Opposition

to Migration: A cross national comparison of the politization of migration (SOM Project). Retrieved January 23, 2017, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2168713

Bezhan, F., & Wesal, W. (2017, February 16). *'Not Even Dogs Live Like This' -- Afghan Refugees Return Home To Find Squalid Conditions*. Retrieved from http://www.rferl.org/a/afghanistan-pakistan-refugees/28312923.html

Bigo, D. (1994). The European Internal Security Field: Stakes and Rivalries in a Newly Developing Area of Police Intervention. In M. Anderson, & M. den Boer (Eds.), *Policing Across National Boundaries* (pp. 161-173). London: Pinter Publishers.

Bigo, D. (2000). When Two Become One: Internal and External Securitizations in Europe. In M. Kelstrup, & M. C. Williams (Eds.), *International Relations Theory and the Politics of European Integration: Power, Security and Community* (pp. 171-204). London: Routledge.

Bigo, D. (2002). Security and Immigration: Toward a Critique of the Governmentality of Unease. *Alternatives: Global, Local, Political, 27*(Special Issue), 63-92.

Bigo, D. (2006). Security, Exception, Ban and Surveillance. In D. Lyon, *heorizing Surveillance. The Panopticon and Beyond* (pp. 46-68). Devon, UK: Willan Publishing.

Bigo, D. (2008). International Political Sociology of Security. In P. Williams, *Security Studies. An Introduction* (pp. 116-129). New York: Routledge.

Bouteillet-Paquet, D. (2003). Passing the Buck: A Critical Analysis of the Readmision Policy Implemented by the European Union and its Member States. *European Journal of Migration and Law, 3*, 359-377.

Buzan, B., Wæver, O., & Wilde, J. d. (1998). *Security: A New Framework for Analysis.* Boulder, CO: Lynne Rienner.

Bürgin, A. (2012). European Commission's agency meets Ankara's agenda: why Turkey is ready for a readmission agreement. *Journal of European Public Policy, 19*(6), 883-899.

Callovi, G. (1992). Regulation of immigration in 1993: pieces of the European Community jig-saw puzzle. *The International Migration Review, 26*(2), 353-372.

Charter of Fundamental Rights of the European Union. (2000, December 18). Retrieved from http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Coleman, N. (2009). *European Readmission Policy : Third Country Interests and Refugee Rights.* Leiden: Martinus Nijhoff Publishers.

Connor, P. (2016, August 2). *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*. Retrieved from PewResearchCenter:

http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/

Consolidated version of the Treaty on the Functioning of the European Union. (2012, October 26). Retrieved from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:12012E/TXT

Convention Implementing the Schengen Agreement of 14 June 1985. (2000, September 22). Retrieved from EUR-Lex: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):en:HTML

Council of the European Union. (2001, March 8). *COUNCIL DECISION of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey.* Retrieved from http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/l_08520010324en00130023.pdf

Council of the European Union. (2001, July 20). *Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof.* Retrieved from http://www.refworld.org/docid/3ddcee2e4.html

Council of the European Union. (2002, April 16). *Criteria for the identification of third countries with which new readmission.*

Retrieved from http://www.statewatch.org/news/2003/may/12i7990-02-c1.pdf

Council of the European Union. (2003, May 19). *COUNCIL DECISION of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey*. Retrieved from http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Apd/Turkey_APD_2003.pdf

Council of the European Union. (2003, October 3). Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification. Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF

Council of the European Union. (2004, April 24). *COUNCIL DIRECTIVE 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*. Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML

Council of the European Union. (2005, December 1). *COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*. Retrieved from http://eur-

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF

Council of the European Union. (2005, December 13). *Global approach to migration: Priority actions focusing on Africa and the Mediterranean.* Retrieved from http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015744%202005%20INIT

Council of the European Union. (2008, February 18). *COUNCIL DECISION of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC.* Retrieved from http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Apd/Turkey_APD_2008.pdf

Council of the European Union. (2009, December 2). The Stockholm Programme – An open and secure Europe serving and protecting the citizens. Brussels.

Council of the European Union. (2010, October 7). *EU-Pakistan readmission agreement.* Retrieved from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/116918.pdf

Council of the European Union. (2016, August 4). *Preventing illegal migration flows*. Retrieved from

http://www.consilium.europa.eu/en/policies/migratory-pressures/preventing-illegal-migration-flows/

Crépeau, F. (2013). *Report by the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Turkey (25–29 June 2012).* Human Rights Council.

De Bruijn, A., & Hufen, J. (1998). The Traditional Approach to Policy Instruments. In B. Peters, & F. van Nispen, *Public Policy Instrument: Evaluating the Tools of Public Administration.* New York: Edward Elgar.

den Boer, M. (1995). Moving Between Bogus and Bona Fide: The Policing of Inclusion and Exclusion in Europe. In D. Thränhardt, & R. Miles (Eds.), *Migration and European Integration: The Dynamics of Inclusion and Exclusion* (pp. 92-111). London: Pinter Publishers.

Dover, R. (2008). Towards a Common EU Immigration Policy: a Securitization Too Far. *Journal of European Integration, 30*(1), 113-130.

Duffy, A. (2008). Expulsion to Face Torture? Non-refoulement in International Law. *International Journal of Refugee Law, 20*(3), 373-390.

Düvell, F. (2011). Paths into Irregularity: The Legal and Political Construction of Irregular Migration. *European Journal of Migration and Law, 13*, 275-295.

Edwards, A. (2005). Human Rights, Refugees, and The Right 'To Enjoy' Asylum. *Int Journal of Refugee Law, 17*(2), 293-330.

Ekathimerini.com. (2016, February 5). *Hot spot work intensifies as Greece agrees to recognize Turkey as 'safe' country*. Retrieved from http://www.ekathimerini.com/205708/article/ekathimerini/news/hot-spot-work-intensifies-as-greece-agrees-to-recognize-turkey-as-safe-country

Ekinci, M. (2016). *TÜRKİYE-AB GERİ KABUL ANLAŞMASI VE VİZE DİYALOĞU.* Ankara: SETA (SİYASET, EKONOMİ VE TOPLUM ARAŞTIRMALARI VAKFI).

Ekşi, N. (2010). *Avrupa İnsan Hakları Mahkemesi Abdolkhani ve Karimnia-Türkiye Davası.* İstanbul: Beta Yayınevi.

Ekşi, N. (2014). Geçici Koruma Yönetmeliği Uyarınca Geçici Korumanın Şartları, Geçici Koruma Usûlü, Sağlanan Haklar ve Geçici Korumanın Sona Ermesi. *İstanbul Barosu Dergisi, 88*(6), 65-89.

Ekşi, N. (2014). İLTİCA TALEPLERİ REDDEDİLEREK TÜRKİYE'DEN SINIRDIŞI EDİLMELERİNE KARAR VERİLEN YABANCILARA İLİŞKİN AİHM KARARLARININ YABANCILAR VE ULUSLARARASI KORUMA KANUNU'NA ETKİSİ. *TAAD, 5*(19), 53-99.

Ekşi, N. (2016). *Türkiye Avrupa Birliği Geri Kabul Anlaşması.* İstanbul: Beta Basım Yayım.

Erdoğan, M. (2012). Avrupa Birliği'nin Suriye Politikası. In B. Akgün (Ed.), *Suriye Krizi'nde Bölgesel ve Küresel Aktörler (Perspektifler, Sorunlar ve Çözüm Önerileri)* (pp. 16-22). Ankara: Stratejik Düşünce Enstitüsü.

Erdoğan, M. (2014). Perceptions of Syrians in Turkey. *Insight Turkey, 16*(4), 65-75.

Euromed Rights. (2013). *An EU-Turkey Readmission Agreement: Undermining the rights of migrants, refugees and asylum seekers?* Euro-Mediterranean Human Rights Network.

Euromed Rights. (2014, February 25). *EUROPEAN PARLIAMENT: DO NOT VOTE IN FAVOUR OF AN EU-TURKEY READMISSION AGREEMENT!* Retrieved from http://www.euromedrights.org/publication/european-parliament-do-not-vote-in-favour-of-an-eu-turkey-readmission-agreement/

European Commission. (2004, September 1). *Cooperation agreement between the European Community and the Islamic Republic of Pakistan, relating to the partnership and to development*. Retrieved from http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=368

European Commission. (2006, July 19). *Communication from the Commission on Policy priorities in the fight against illegal*

immigration of third-country nationals. Retrieved from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52006DC0402

European Commission. (2008). *Aeneas programme: Programme for financial and technical assistance to third countries in the area of migration and asylum.* Retrieved from https://ec.europa.eu/europeaid/sites/devco/files/publication-aeneas-programme-projects-funded-2004-2006_en_7.pdf

European Commission. (2008, June 17). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 June 2008 – A Common Immigration Policy for Europe: Principles, actions and tools*. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ajl0001

European Commission. (2009, March 6). *Proposal for a Council Decision concerning the signing of the Agreement between the European Community and Pakistan on readmission*. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009PC0106(01)

European Commission. (2009, March 9). *Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents*. Retrieved from https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/sec2009_320_report_from_commission_en_1.pdf

European Commission. (2011, February 23). *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Evaluation of EU Readmission Agreements.* Retrieved from http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52011DC0076

European Commission. (2011, May 4). *Communication on migration* . Retrieved from http://www.statewatch.org/news/2011/may/eu-com-migration-com-248-11.pdf

European Commission. (2011). Communication on the Global Approach to Migration and Mobility (GAMM). Brussels. Retrieved from http://ec.europa.eu/anti-trafficking/eu-policy/communication-global-approach-migration-and-mobility-gamm_en

European Commission. (2013, December 16). *Roadmap Towards a Visa-Free Regime with Turkey*. Retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf

European Commission. (2015, October 15). *EU-Turkey joint action plan*. Retrieved from http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm

European Commission. (2015, October 1). *Return Handbook.* Retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-

do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf

European Commission. (2016, March 19). *EU-Turkey Agreement: Questions and Answers*. Retrieved from http://europa.eu/rapid/press-release_MEMO-16-963_en.htm

European Commission. (2016). *EU-Turkey Statement: Questions and Answers.* Retrieved from http://europa.eu/rapid/press-release_MEMO-16-963_en.htm

European Communities. (1970, November 23). *Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force*. Retrieved from Official Journal of the European Communities: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21970A1123%2801%29

European Convention on Human Rights. (1950, November 4). Retrieved from http://www.echr.coe.int/Documents/Convention_ENG.pdf

European Council. (1999, October 15-16). *TAMPERE EUROPEAN COUNCIL*. Retrieved from http://www.europarl.europa.eu/summits/tam_en.htm

European Council. (2015, November 29). *Meeting of the EU heads of state or government with Turkey, 29/11/2015*. Retrieved from

http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/29/

European Parliament. (2008, June 18). *Parliament adopts directive on return of illegal immigrants*. Retrieved from http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20080616IPR31785

European Parliament and Council of the European Union. (2013, June 26). *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*. Retrieved from http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032

European Parliamentary Research Service. (2015, April). Irregular immigration in the EU: Facts and Figures. *Briefing*. Retrieved from http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/554202/EPRS_BRI(2015)554202_EN.pdf

European Stability Initiative. (2015, October 17). *TURKEY AS A "SAFE THIRD COUNTRY" FOR GREECE.* Retrieved from http://www.esiweb.org/pdf/ESI%20-%20Turkey%20as%20a%20safe%20third%20country%20-%2017%20October%202015.pdf

European Union Publications Office. (2010, October 1). *Precedence of European law*. Retrieved from Summaries of EU legislation: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:l14548

Eurostat. (2016, March 4). *Record number of over 1.2 million first time.* Retrieved from Eurostat News Release: http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/

Faist, T. (2002). 'Extension du domaine de la lutte': International Migration and Security before and after September 11, 2001. *The International Migration Review, 36*(1), 7-14.

Fargues, P. (2013). *EU Neighbourhood Migration Report 2013.* Firenze: European University Institute Migration Policy Centre. Retrieved from http://www.migrationpolicycentre.eu/publications/migration-report/

FOX News. (2017, June 13). *Prime Minister: Turkey wants to continue EU membership talks*. Retrieved from http://www.foxnews.com/world/2017/06/13/prime-minister-turkey-wants-to-continue-eu-membership-talks.html

Frontex. (2015). *Evaluation report joint return operation Greece to Pakistan.* Warsaw.

Gabrielli, L. (2014). Securitization of Migration and Human Rights: Frictions at the Southern EU Borders and Beyond. *16*. Urban People / Lidé Mesta journal. Retrieved January 23, 2017, from http://lidemesta.cz/assets/media/files/16,%202014,%202/Gabrielli.pdf

Geddes, A. (2005). Europe's Border Relationships and International Migration Relations. *Journal of Common Market Studies, 43*(4), 787-806.

Giuffre, M. (2013). Readmission Agreements and Refugee Rights: From a Critique to a Proposal. *Refugee Survey Quarterly, 32*(3), 79-111.

Goldman, R., & Martin, S. (1983). International Legal Standards Relating to the Rights of Aliens and Refugees and United States Immigration Law. *Human Rights Quarterly, 5*(3), 302-326.

Goodwin-Gill, G. (2008). The Politics of Refugee Protection. *Refugee Survey Quarterly, 27*(1), 8-23.

Gorlick, B. (2000, October). Human rights and refugees: enhancing protection through international human rights law. Stockholm, Sweden: UNHCR. Retrieved from http://www.unhcr.org/research/working/3ae6a0cf4/human-rights-refugees-enhancing-protection-international-human-rights-law.html

Government of Pakistan, Ministry of States & Frontier Regions. (2016, February 24). *Notification to be published in the extra ordinary Gazette of Pakistan.* Retrieved from http://unhcrpk.org/wp-content/uploads/2014/07/Notification-of-extension-of-PoR-card.pdf

Grange, M., & Flynn, M. (2014). *Immigration Detention in Turkey.* Geneva: The Global Detention Project.

Harvey, C. (1998). Taking Human Rights Seriously in the Asylum Context? A Perspective on the Development of Law and Policy. In F. Nicholson, & P. Twomey, *Current Issues in UK Asylum Law and Policy*. Dartmouth: Ashgate.

Hashim, A. (2017, February 7). *Afghan refugees' status extended until end of year*. Retrieved from Al Jazeera: http://www.aljazeera.com/news/2017/02/afghan-refugees-status-extended-year-170207180402885.html

Hollifield, J. (1992). *Immigrants, Markets and States.* Cambridge: Harvard University Press.

Horsti, K. (2012). Humanitarian discourse legitimating migration control: FRONTEX public communication. In M. Messier, R. Wodak, & R. Schroeder, *Migrations: Interdisciplinary Perspectives* (pp. 297-308). Vienna: Springer Science& Business Media.

Hubbard, B. (2015, September 26). *Money Flows With Refugees, and Life Jackets Fill the Shops*. Retrieved from https://www.nytimes.com/2015/09/27/world/middleeast/money-flows-with-refugees-and-life-jackets-fill-the-shops.html?hp&action=click&pgtype=Homepage&module=second-column-region&region=top-news&WT.nav=top-news&_r=0

Human Rights Watch. (2015, November 23). *Turkey: Syrians Pushed Back at the Border*. Retrieved from

https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border

Human Rights Watch. (2017). *Pakistan Coercion, UN Complicity - The Mass Forced Return of Afghan Refugees.* New York: Human Rights Watch. Retrieved from http://www.refworld.org/docid/58a195374.html

Huntington, S. P. (1997). *The Clash of Civilizations and the Remaking of World Order.* New York: Simon & Schuster.

Huysmans, J. (1998). Security! What Do You Mean? From Concept to Thick Signifier. *European Journal of International Relations, 4*(2), 226-255.

Huysmans, J. (2000). The European Union and the Securitization of Migration. *Journal of Common Market Studies, 38*(5), 751-777.

Huysmans, J. (2004). A Foucaltian View on Spill-over: Freedom and Security in the EU. *Journal of International Relations and Development, 7*(3), 294-318.

İçduygu, A. (2006). *Türkiye-Avrupa birliği ilişkileri bağlamında uluslararası göç tartışmaları.* İstanbul: TÜSİAD.

İçduygu, A. (2011). *The Irregular Migration Corridor between the EU and Turkey: Is it Possible to Block it with a Readmission Agreement?* San Domenico di Fiesole: European University Institute, Robert Schuman Centre for Advanced Studies .

International Organization for Migration. (2011). Glossary on Migration. (Second Edition). (R. Perruchoud, & J. Redpath-Cross, Eds.) Geneva, Switzerland. Retrieved February 16, 2017, from http://www.epim.info/wp-content/uploads/2011/01/iom.pdf

International Organization for Migration. (n.d.). *Key Migration Terms*. Retrieved from http://www.iom.int/key-migration-terms

International Organization for Migration. (n.d.). *Migration in the world*. Retrieved from http://www.iom.sk/en/about-migration/migration-in-the-world

Kale, B. (2016, April 10). *Geri göndermeler Avrupa bütünleşmesinin sonu olabilir*. Retrieved from BirGün: http://www.sanalbasin.com/geri-gondermeler-avrupa-butunlesmesinin-sonu-olabilir---basak-kale-13573494/

Kale, B. (2016). The EU-Turkey Action Plan is Imperfect, But Also Pragmatic, And Maybe Even Strategic. *On Turkey, 112*, 1-4.

Kale, B. (2017). Türkiye'de Bulunan Suriyeli Mülteciler ve Uluslararası Toplumun Koruma Sağlamadaki Etkisizliği. *Şehir ve Toplum, 6*(Göç Özel Sayısı).

Kale, B. (Forthcoming). The Limits of an International Burdensharing Approach: Syrian Refugee Protection Crisis and its Consequences. *Perceptions*.

KAOS-GL. (2013, December 19). *Dünya Göçmenler Günü AB-Türkiye Geri Kabul Anlaşması'nın Gölgesinde Geçti*. Retrieved from http://www.kaosgl.com/sayfa.php?id=15441

Kaya, İ., & Yılmaz Eren, E. (2014). *TÜRKİYE'DEKİ SURİYELİLERİN HUKUKİ DURUMU.* Ankara: SETA (SİYASET, EKONOMİ VE TOPLUM ARAŞTIRMALARI VAKFI).

Khan, M. (2016, July 20). *International Refugee Law: A Case Study Of Pakistan*. Retrieved from http://courtingthelaw.com/2016/07/20/commentary/international-refugee-law-a-case-study-of-pakistan/

Kılıç, T. (2013, December 18). *Vize muafiyeti/Geri Kabul Anlaşması ne anlama geliyor.* Retrieved from http://www.multeci.org.tr/wp-content/uploads/2016/10/Vize-muafiyeti-Geri-Kabul-Anlasmasi-ne-anlama-geliyor-Av.-Taner-Kilic-18.12.2013.pdf

Kingsley, P. (2016, March 9). *Balkan countries shut borders as attention turns to new refugee routes*. Retrieved from The Guardian: https://www.theguardian.com/world/2016/mar/09/balkans-refugee-route-closed-say-european-leaders

Kirişçi, K. (2014). *Will the readmission agreement bring the EU and Turkey together or pull them apart?* Brussels: Centre for European Policy Studies.

Kirişçi, K. (2014). Will the Readmission Agreement Bring the EU and Turkey Together? Brookings Institute. Retrieved from http://www.brookings.edu/research/opinions/2014/02/04-readmission-agreement-eu-turkey-kirisci

Kleinfeld, P. (2015, October 22). *Refugees Deported by Hungary Left 'In Limbo'*. Retrieved from BalkanInsight: http://www.balkaninsight.com/en/article/refugees-deported-by-hungary-left-in-limbo--10-21-2015

Kostakopoulou, D. (2000). The "Protective Union": Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe. *Journal of Common Market Studies, 38*(3), 497-518.

Kruse, I. (2003). Creating Europe Outside Europe: Externalities of the EU Migration Regime. *Theories of Europeanisation.* Marburg: ECPR Conference Marburg, 18-21 September 2003, Submission to Panel 15-5.

Lavanex, S. (2006). Shifting up and out: The foreign policy of European immigration control. *West European Politics, 29*(2), 329-350.

Leonard, S. (2010). FRONTEX and the Securitization of Migrants through Practices. *European Security, 19*(2), 231-254.

Levitan, R., Kaytaz, E., & Durukan, O. (2009). Unwelcome Guests: The Detention of Refugees in Turkey's "Foreigners' Guesthouses"'. *REFUGE, 26*(1).

Lilienkamp, M., & Saliba, S. (2015). *EU Readmission Agreements: Facilitating the return of irregular migrants.* Brussels: European Parliamentary Research Service. Retrieved from http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/554212/EPRS_BRI(2015)554212_EN.pdf

Maneri, M. (2011). Media Discourse on Immigration: Control Practices and the Language We Live. In S. Palidda (Ed.), *Racial Criminalization of Migrants in 21st Century* (pp. 77-93). Farnham: Ashgate.

Mannaert, C. (2009, May). *Irregular migration and asylum in Turkey: Working Paper No. 89* . Retrieved from UNHCR: http://www.refworld.org/pdfid/4ff2b4292.pdf

McDonald, M. (2008). Securitization and the Construction of Security. *European Journal of International Relations, 14*, 563-587.

McSweeney, B. (1996). Identity and Security: Buzan and the Copenhagen School. *Review of International Studies, 22*(1), 81-93.

MigreEurop. (2010). *EU-Pakistan readmission agreement: The European Parliament has to deny its approval.* MigreEurop.

Ministry of Foreign Affairs of the Republic of Turkey. (n.d.). *Turkish Citizens Living Abroad*. Retrieved from http://www.mfa.gov.tr/the-expatriate-turkish-citizens.en.mfa

Ministry Of Overseas Pakistanis And Human Resource Development. (2014). *Year Book 2013-14.* Islamabad: Ministry Of Overseas Pakistanis And Human Resource Development.

Neal, A. (2009). Securitization and Risk at the EU Border: The Origins of FRONTEX. *Journal of Common Market Studies, 47*(2), 333-356.

Official Gazette of the Republic of Turkey. (2013, April 11). *YABANCILAR VE ULUSLARARASI KORUMA KANUNU*. Retrieved from http://www.resmigazete.gov.tr/eskiler/2013/04/20130411-2.htm

Official Gazette of the Republic of Turkey. (2014, October 22). *Geçici Koruma Yönetmeliği.* Retrieved from http://www.resmigazete.gov.tr/eskiler/2014/10/20141022-15-1.pdf

Official Gazette of the Republic of Turkey. (2014, April 16). *Genelge: Geri Kabul Anlaşması*. Retrieved from http://www.resmigazete.gov.tr/eskiler/2014/04/20140416-10.htm

Official Gazette of the Republic of Turkey. (2016, January 15). *2016/8375 Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine Dair Yönetmelik.* Retrieved from http://www.resmigazete.gov.tr/eskiler/2016/01/20160115-23.pdf

Özdal, B., & Genç, M. (2005). *Avrupa Güvenlik ve Savunma Politikası'nın Türkiye AB İlişkilerine Etkileri.* İstanbul: Alfa Aktüel Yayınevi.

Özkural, N., & Aka, H. (2015). Turkey and the European Union: A Review of Turkey's Readmission Agreement. *The European Legacy, 20*(3), 255-272.

Paçacı Elitok, S. (2015). *A Step Backward for Turkey?: The Readmission Agreement and the Hope of Visa-Free Europe.* İstanbul: İstanbul Policy Center.

Paet, U. (2011, May 21). *Time for a visa waiver with Turkey*. Retrieved from https://euobserver.com/opinion/32369

Pakistan: Code of Criminal Procedure 1898, As amended by Act II of 1997. (2007). Retrieved from https://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf

Parkin, J. (2013). The Criminalisation of Migration in Europe. *CEPS, 61*.

Peter, L. (2010, July 16). *EU-Pakistan deal sharpens debate on migrants*. Retrieved from BBC News: http://www.bbc.com/news/world-europe-10645082

Peters, G., & van Nispen, F. (1998). *Public Policy Instruments, Evaluating the Tools of Public Administration.* Cheltenham: Edward Elgar.

Pinyol-Jiménez, G. (2014). The Migration-Security Nexus in short: Instruments and actions in the European Union. *Amsterdam Law Forum, 4*(1), 36-57.

Poppelwell, T. (2011). *FMO: Research Guide: Afghanistan*. Retrieved from Forced Migration Organization: http://www.forcedmigration.org/research-resources/expert-guides/afghanistan/causes-and-consequences-of-forced-migration

Pouliot, V. (2008). The Logic of Practicality: A Theory of Practice of Security Communities. *International Organization, 62*(2), 257-288.

Pro Asyl. (2013). *Pushed Back: Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish land border.* Retrieved from https://www.proasyl.de/wp-content/uploads/2014/02/proasyl_pushed_back_24.01.14_a4.pdf

Reckwitz, A. (2002). Toward a Theory of Social Practices: A Development in Culturalist Theorizing. *European Journal of Social Theory, 5*(2), 243-263.

Research Society of International Law. (2012). *EU – Pakistan Readmission Agreement Desk Review Report.* Pakistan: Research Society of International Law.

Roig, A., & Huddleston, T. (2007). EC Readmission Agreements: A Re-evaluation of the Political Impasse. *European Journal of Migration and Law, 9*, 363-387.

Salamon, L. (2002). The New Governance and the Tools of Public Action: An Intorduction. In L. Salamon, *The Tools of Government: A Guide to the New Governance.* Oxford: Oxford University Press.

Schneider, A., & Ingram, H. (1990). Behavioral Assumptions of Policy Tools. *Journal of Politics, 52*(2), 510-529.

Statewatch. (2003, April). *EU: Mass deportations by charter flight - enforcement and resistance*. Retrieved from http://www.statewatch.org/news/2003/aug/03deport.htm

Statewatch. (2010, May). *Statewatch Briefing: Readmission agreements with Pakistan* . Retrieved from http://www.statewatch.org/analyses/no-97-readmission-agreements-pakistan.pdf

Statewatch. (2012). *The Global Approach to Migration and Mobility: the state of play* . Retrieved from http://www.statewatch.org/analyses/no-215-gamm-state-of-play.pdf

Strik, T. (2010, March 16). *Readmission Agreements: A Mechanism for Returning Irregular migrants.* Strasbourg: Parliamentary Assembly of the Council of Europe. Retrieved from http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12439&lang=en

Şenyuva, Ö., & Üstün, Ç. (2015). A New Episode in EU-Turkish Relations: Why so Much Bitterness? *On Turkey,* 1-4.

Şenyuva, Ö., & Üstün, Ç. (2016). A Deal to End "the" Deal: Why the Refugee Agreement is a Threat to Turkey-EU Relations. *On Turkey, 136*, 1-4.

The Express Tribune. (2011, June 15). *Pakistan ranks 3rd on list of most dangerous countries for women*. Retrieved from https://tribune.com.pk/story/189294/pakistan-ranks-3rd-on-list-of-most-dangerous-countries-for-women/

The Guardian. (2004, September 22). *Full text: Michael Howard's speech.* Retrieved from The Guardian: https://www.theguardian.com/politics/2004/sep/22/conservatives.uk1

Themistocleous, A. (2013, May 16). Securitizing Migration: Aspects and Critiques. The Globalized World Post. Retrieved January 23, 2017

Torun, Z. (2012). The European Union and Change in the Middle East and North Africa: Is the EU Closing Its Theory-Practice Gap? *Ortadoğu Etütleri, 4*(1), 79-97.

Trauner, F., Kruse, I., & Zeilinger, B. (2013). Values versus security in the external dimension of EU migration policy: a case study on the readmission agreement with Russia. In G. Noutcheva, K. Pomorska, & G. Bosse, *The EU and its neighbours: values vs. security in European foreign policy* (pp. 201-217). Manchester: Manchester University Press.

Tsoukala, A. (2005). Looking at Migrants as Enemies. In D. Bigo, & E. Guild (Eds.), *Controlling Frontiers: Free Movement into and Within Europe.* Aldershot: Ashgate.

Uğur, M. (1995). Freedom of Movement vs. Exclusion: A Reinterpretation of the "Insider" - "Outsider" Divide in the European Union. *International Migration Review, 29*(4), 964-999.

UNHCR. (1994, August 1). *UNHCR Position on Readmission Agreements, 'Protection Elsewhere' and Asylum Policy.* Retrieved from http://www.refworld.org/docid/3ae6b31cb8.html

UNHCR. (2009). *Observations on Greece as a country of asylum.* Retrieved from http://www.refworld.org/pdfid/4b4b3fc82.pdf

UNHCR. (2013, September 3). *UNHCR: Two million Syrians are refugees*. Retrieved from http://www.unhcr.org/522484fc9.html

UNHCR. (2016, June 20). *Figures at a Glance*. Retrieved from http://www.unhcr.org/figures-at-a-glance.html

UNHCR. (2016). *REPATRIATION OF AFGHAN REFUGEES FROM PAKISTAN.* UNHCR. Retrieved from http://www.unhcr.org/uk/partners/donors/5817147f7/unhcr-repatriation-afghan-refugees-pakistan-revised-supplementary-appeal.html

UNHCR. (2016, May). *Syria Regional Refugee Response.* Retrieved May 21, 2016, from http://data.unhcr.org/syrianrefugees/regional.php

UNHCR. (2016, April 19). *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan.* Retrieved from http://www.refworld.org/docid/570f96564.html

UNHCR. (n.d.). *Asylum System in Pakistan*. Retrieved from http://unhcrpk.org/about/asylum-system-in-pakistan/

United Nations. (1948, December 10). *Universal Declaration of Human Rights*. Retrieved from United Nations: http://www.un.org/en/universal-declaration-human-rights/

United Nations. (1951, July 28). *Convention relating to the Status of Refugees Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950*. Retrieved from United Nations: http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx

United Nations. (1966, December 16). *International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966*. Retrieved from United Nations: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

United Nations. (1984, December 10). *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly*

resolution 39/46 of 10 December 1984 . Retrieved from United Nations: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

United Nations. (2016). *International Migration Report 2015.* New York: United Nations Department of Economic and Social Affairs .

United Nations Assistance Mission in Afghanistan. (2016, February 14). *CIVILIAN CASUALTIES HIT NEW HIGH IN 2015*. Retrieved from UNAMA: https://unama.unmissions.org/civilian-casualties-hit-new-high-2015

van Munster, R. (2012, June 26). *Securitization*. Retrieved from http://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0091.xml

Vollmer, B. A. (2011). Policy Discourses on Irregular Migration in the EU – 'Number Games' and 'Political Games'. *European Journal of Migration and Law, 13*, 317-339.

Wæver, O. (1993). Societal Security: the Concept. In O. Wæver, B. Buzan, M. Kelstrup, & P. Lemaitre, *Identity, Migration, and the New Security Agenda in Europe* (pp. 18-40). London: Pinter Publishers.

Wæver, O. (1995). Securitization and Desecuritization. In R. D. Lipschutz (Ed.), *On Security.* New York, NY: Columbia University Press.

Wæver, O. (1996). European Security Identities. *Journal of Common Market Studies, 34*(1), 103-132.

Wæver, O. (2000). The EU as a security actor: reflections form a pessimistic constructivist on post-sovereignty security orders. In M. Kelstrup, & M. Williams (Eds.), *International relations theory and the politics of European integration: power, security, and community.* London: Routledge.

Wæver, O., Buzan, B., Kelstrup, M., & Lemaitre, P. (1993). *Identity, Migration and the New Security Agenda in Europe.* London: Pinter Publishers.

Waraich, O. (2016, August 21). *Pakistan: Afghan refugees still languish in limbo*. Retrieved from Amnesty International: https://www.amnesty.org/en/latest/news/2016/08/afghan-refugees-lives-in-limbo/

Wasim, A. (2016, February 8). *Understanding on deportation issue reached with EU*. Retrieved from Dawn: http://www.dawn.com/news/1238076

Wouters, K. (2009). International Legal Standarts for the Protection from Refoulement. E.M. Meijers Institute of Legal Studies, Leiden University.

Yavçan, B. (2016). On Governing the Syrian Refugee Crisis Collectively: The View from Turkey. *Near Futures Online, 1*(Europe at a

Crossroads). Retrieved from http://nearfuturesonline.org/on-governing-the-syrian-refugee-crisis-collectively-the-view-from-turkey/

Yılmaz, B. (2014). The Readmission Agreement between the EU and Turkey: Compatible with the right to seek asylum? Uppsala Universitet Department of Law.

Zolberg, A. (1989). The Next Waves: Migration Theory for a Changing World. *International Migration Review, 23*(3), 403-430.

APPENDICES

A. AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF TURKEY ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION

AGREEMENT

between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation

THE HIGH CONTRACTING PARTIES,

THE EUROPEAN UNION, hereinafter referred to as 'the Union',

and

THE REPUBLIC OF TURKEY, hereinafter referred to as 'Turkey',

DETERMINED to strengthen their co-operation in order to combat illegal immigration more effectively,

DESIRING to establish, by means of this Agreement and on the basis of reciprocity, effective and swift procedures for the identification and safe and orderly return of persons who do not or who no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Turkey or one of the Member States of the Union, and to facilitate the transit of such persons in a spirit of co-operation,

EMPHASISING that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Turkey arising from international law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms and the Convention of 28 July 1951 on the Status of Refugees,

EMPHASISING that this Agreement shall be without prejudice to the rights and procedural guarantees for persons who are subject to return procedures in or who apply for asylum in a Member State as laid down in the respective legal instruments of the Union,

EMPHASISING that this Agreement shall be without prejudice to the provision of the Agreement of 12 September 1963 establishing an Association between the European Economic Community and Turkey, its additional protocols, the relevant Association Council decisions as well as the relevant case-law of the Court of Justice of the European Union,

EMPHASISING that the persons holding a long term residence permit granted under the terms of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents enjoy a reinforced protection against expulsion under Article 12 of that Directive,

EMPHASISING that this Agreement is based on the principles of joint responsibility, solidarity, and an equal partnership to manage the migratory flows between Turkey and the Union and that in this context the Union is ready to make available financial resources in order to support Turkey in its implementation,

CONSIDERING that the provisions of this Agreement, which falls within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union, do not apply to the United Kingdom and Ireland, unless they 'opt-in' in accordance with the Protocol on the position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice Annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union,

CONSIDERING that the provisions of this Agreement, which falls within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union, do not apply to the Kingdom of Denmark, in accordance with the Protocol on the position of Denmark Annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Agreement:

(a) 'Contracting Parties' shall mean Turkey and the Union;

(b) 'National of Turkey' shall mean any person who holds the nationality of Turkey in accordance with its legislation;

(c) 'National of a Member State' shall mean any person who holds the nationality of a Member State of the Union;

(d) 'Member State' shall mean any Member State of the Union, with the exception of the Kingdom of Denmark;

(e) 'Third-country national' shall mean any person who holds a nationality other than that of Turkey or one of the Member States;

(f) 'Stateless person' shall mean any person who does not hold a nationality of any country;

(g) 'Residence permit' shall mean a permit of any type issued by Turkey or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence permit;

(h) 'Visa' shall mean an authorisation issued or a decision taken by Turkey or one of the Member States which is required with a view to entry in, or transit through, its territory. This shall not include airport transit visa;

(i) 'Requesting State' shall mean the State (Turkey or one of the Member States) submitting a readmission application pursuant to Article 8 or a transit application pursuant to Article 15 of this Agreement;

(j) 'Requested State' shall mean the State (Turkey or one of the Member States) to which a readmission application pursuant to Article 8 or a transit application pursuant to Article 15 of this Agreement is addressed;

(k) 'Competent Authority' shall mean any national authority of Turkey or one of the Member States entrusted with the implementation of this Agreement as designated in the implementing protocol in accordance with point (a) of Article 20(1) thereof;

(l) 'Person residing without authorisation' shall mean any person who, in accordance with the relevant procedures established under national legislation, does not or no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Turkey or of one of the Member States;

(m) 'Transit' shall mean the passage of a third country national or a stateless person through the territory of the Requested State while travelling from the Requesting State to the country of destination;

(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;

(o) 'Border crossing point' shall mean any point designated for the purpose of crossing their respective borders by the Member States or Turkey;

(p) 'Border region' of the Requesting State shall mean an area within its territory extending inwards up to 20 kilometres from the external border of the Requesting State, whether or not the border is shared between the Requesting State and the Requested State as well as the sea ports including customs zones and international airports of the Requesting State.

Article 2

Scope

1. The provisions of this Agreement shall apply to persons who do not or who no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Turkey or one of the Member States of the Union.

2. The application of the present Agreement, including Paragraph 1 of this article, shall be without prejudice to the instruments enumerated in Article 18.

3. The present Agreement shall not apply to third country nationals or stateless persons as referred to Articles 4 and 6 who have left the territory of the Requested State more than five years before the Requesting State's competent authorities has gained knowledge of such persons unless the conditions required for their readmission to the Requested State as stipulated by Articles 4 and 6 can be established by means of documents enumerated in Annex 3.

SECTION I

READMISSION OBLIGATIONS BY TURKEY

Article 3

Readmission of own nationals

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 this agreement, all persons 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 Union for entry to, presence in, or residence on, the territory of the requesting Member State provided that in accordance with Article 9, it is established that they are nationals of Turkey.

2. Turkey shall also readmit:

— minor unmarried children of the persons mentioned in Paragraph 1 of this Article, regardless of their place of birth or their nationality, unless they have an independent right of residence in the requesting Member State or if the said independent right of residence is held by the other parent who has legal custody of the children concerned;

— spouses, holding another nationality, of the persons mentioned in Paragraph 1 of this Article, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Turkey unless they have an independent right of residence in the requesting Member State or unless it is demonstrated by Turkey that according to its national legislation the marriage in question is not legally recognised.

3. Turkey shall also readmit persons who in accordance with the Turkish legislation have been deprived of, or who have renounced, the nationality of Turkey since entering the territory of a Member State, unless such persons have at least been promised naturalisation by that Member State.

4. After Turkey has given a positive reply to the readmission application or, where appropriate, after expiry of the time limits laid down in Article 11(2), the competent consular office of Turkey shall, irrespective of the will of the person to be readmitted, within three working days, issue the travel document required for the return of the person to be readmitted with a period of validity of three months. In case there is no consular office of Turkey in a Member State or if Turkey has not, within three working days, issued the travel document, the reply to the readmission application shall be considered as the necessary travel document for the readmission of the person concerned.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent consular office of Turkey shall, within three working days, issue a new travel document with a period of validity of the same duration. In case there is no consular office of Turkey in a Member State or if Turkey has not, within three working days, issued the travel document, the reply to the readmission application shall be considered as the necessary travel document for the readmission of the person concerned.

Article 4

Readmission of third-country nationals and stateless persons

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 this 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 provided that in accordance with Article 10 it is established that such persons:

(a) hold, at the time of submission of the readmission application, a valid visa issued by Turkey entering the territory of a Member State directly from the territory of Turkey; or

(b) hold a residence permit issued by Turkey; or

(c) illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Turkey.

2. The readmission obligation in Paragraph 1 of this Article shall not apply if:

(a) the third country national or stateless person has only been in airside transit via an international airport of Turkey; or

(b) the requesting Member State has issued to the third country national or stateless person a visa which was used by the person for the entry on the requesting Member State's territory or residence permit before or after entering its territory unless that person is in possession of a visa or residence permit issued by Turkey, which has a longer period of validity; or

(c) the third country national or stateless person enjoys a visa free access to the territory of the requesting Member State.

3. After Turkey has given a positive reply to the readmission application or, where appropriate, after expiry of the time limits laid down in Article 11(2), the Turkish authorities, if necessary, shall within three working days, issue the person whose readmission has been accepted with the 'emergency travel document for aliens' required for his or her return with a period of validity of at least three months. In case there is no consular office of Turkey in a Member State or if Turkey has not, within three working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel documents for expulsion purposes (*).

4. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the 'emergency travel document for aliens' that was initially issued, the Turkish authorities shall within three working days extend the validity of the 'emergency travel documents for aliens' or, where necessary, issue a new 'emergency travel document for aliens' with the same period of validity. In case there is no consular office of Turkey in a Member State or if Turkey has not, within three working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel documents for expulsion purposes (*).

SECTION II

READMISSION OBLIGATIONS BY THE UNION

Article 5

Readmission of own nationals

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 this agreement, all 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 provided that in accordance with Article 9 it is established that they are nationals of that Member State.

2. A Member State shall also readmit:

— minor unmarried children of the persons mentioned in Paragraph 1 of this Article, regardless of their place of birth or their nationality, unless they have an independent right of residence in Turkey or if the said independent right of residence is held by the other parent who has legal custody of the children concerned;

— spouses, holding another nationality, of the persons mentioned in Paragraph 1 of this Article, provided they have the right to enter and stay or receive the right to enter and stay in the territory of the requested Member State unless they have an independent right of residence in Turkey or unless it is demonstrated by the requested Member State that according to its national legislation the marriage in question is not legally recognised.

3. A Member State shall also readmit persons who in accordance with its legislation have been deprived of, or who have renounced, the nationality of a Member State since entering the territory of Turkey, unless such persons have at least been promised naturalisation by Turkey.

(*) In line with the form set out in EU Council recommendation of 30 November 1994.
(*) Ibid.

4. After the requested Member State has given a positive reply to the readmission application or, where appropriate, after expiry of the time limits laid down in Article 11(2), the competent diplomatic mission or consular office of that Member State shall, irrespective of the will of the person to be readmitted, within three working days, issue the travel document required for the return of the person to be readmitted with a period of validity of three months. In case there is no diplomatic mission or consular office of a Member State in Turkey or if the requested Member State has not, within three working days, issued the travel document, the reply to the readmission application shall be considered as the necessary travel document for the readmission of the person concerned.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic mission or consular office of that Member State shall, within three working days, issue a new travel document with a period of validity of the same duration. In case there is no diplomatic mission or consular office of a Member State in Turkey or if the requested Member State has not, within three working days, issued the travel document, the reply to the readmission application shall be considered as the necessary travel document for the readmission of the person concerned.

Article 6

Readmission of third-country nationals and stateless persons

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 this 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 provided that in accordance with Article 10 it is established that such persons:

(a) hold, at the time of submission of the readmission application, a valid visa issued by the requested Member State entering the territory of Turkey directly from the territory of the requested Member State; or

(b) hold a residence permit issued by the requested Member State; or

(c) illegally and directly entered the territory of Turkey after having stayed on, or transited through, the territory of the requested Member State.

2. The readmission obligation in Paragraph 1 of this Article shall not apply if:

(a) the third country national or stateless person has only been in airside transit via an International Airport of the requested Member State; or

(b) Turkey has issued to the third country national or stateless person a visa which was used by the person for the entry on the Turkish territory or residence permit before or after entering its territory unless that person is in possession of a visa or residence permit, issued by the requested Member State, which has a longer period of validity; or

(c) the third country national or stateless person enjoys a visa free access to the territory of Turkey.

3. The readmission obligation in Paragraph 1 of this Article is for the Member State that issued a visa or residence permit. If two or more Member States issued a visa or residence permit, the readmission obligation in Paragraph 1 is for the Member State that issued the documents with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in Paragraph 1 is for the Member State that issued the document with the most recent expiry date. If no such documents can be presented, the readmission obligation in Paragraph 1 is for the Member State of last exit.

4. After the Member State has given a positive reply to the readmission application or, where appropriate, after expiry of the time limits laid down in Article 11(2), the Member State's authorities, if necessary, shall within three working days, issue the person whose readmission has been accepted the travel document required for his or her return with a period of validity of at least three months. In case there is no diplomatic mission or consular office of the Member State in Turkey or if the Member State has not, within three working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes (1).

(1) Ibid.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State's authorities shall within three working days extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. In case there is no diplomatic mission or consular office of the Member State in Turkey or if the Member State has not, within three working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes (1).

SECTION III

READMISSION PROCEDURE

Article 7

Principles

1. The Member States and Turkey shall make every effort to return a person referred to in Articles 4 and 6 directly to the country of origin. For this purpose, the modalities of the application of this Paragraph shall be determined in accordance with point (b) of Article 19(1). The provisions of this Paragraph shall not apply to cases in which the accelerated procedure is applicable in accordance with Paragraph 4 of this Article.

2. Subject to Paragraph 3 of this Article, any transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 3 to 6 shall require the submission of a readmission application to the competent authority of the Requested State.

3. If the person to be readmitted is in possession of a valid travel document or identity card and, in the case of third country nationals or stateless persons, a valid visa used by the person for the purpose of entry on the territory of the Requested State or a residence permit of the Requested State, the transfer of such person shall take place without the Requesting State having to submit a readmission application or written notification referred to in Article 12(1) to the competent authority of the Requested State.

The previous Subparagraph shall not prejudice the right of the relevant authorities to verify at the border the identity of the readmitted persons.

4. Without prejudice to Paragraph 3 of this Article, if a person has been apprehended by the Requesting State in the border region after having entered illegally and directly from the territory of the Requested State, the Requesting State may submit a readmission application within three working days following this person's apprehension (accelerated procedure).

Article 8

Content of the readmission application

1. To the extent possible, the readmission application is to contain the following information:

(a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and — where possible — place of birth, and the last place of residence) and, where applicable, the particulars of minor unmarried children and/or spouses;

(b) in case of own nationals, indication of the means with which proof or prima facie evidence of nationality will be provided as set out by Annexes 1 and 2 respectively;

(c) in case of third country nationals and stateless persons, indication of the means with which proof or prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons as provided for by Annexes 3 and 4 respectively;

(d) photograph of the person to be readmitted.

(1) Ibid.

2. To the extent possible, the readmission application shall also contain the following information:

(a) a statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;

(b) any other protection, security measure or information concerning the health of the person, which may be necessary in the individual transfer case.

3. Without prejudice to Article 7(3), any readmission application shall be in writing and shall use a common form attached as Annex 5 to this Agreement.

4. A readmission application may be submitted by any means of communication including electronic ones e.g. facsimiles, e-mails etc.

5. Without prejudice to Article 11(2), a reply to the readmission application will be given in writing.

Article 9

Evidence regarding nationality

1. Proof of nationality pursuant to Article 3(1) and Article 5(1) can be particularly furnished through the documents listed in Annex 1 to this Agreement. If such documents are presented, the Member States or Turkey respectively shall for the purpose of this Agreement, recognise the nationality. Proof of nationality cannot be furnished through false documents.

2. *Prima facie* evidence of nationality pursuant to Article 3(1) and Article 5(1) shall be particularly furnished through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Turkey shall deem for the purpose of this Agreement, the nationality to be established, unless following an investigation and within the time limits laid down in Article 11, the Requested State demonstrates otherwise. *Prima facie* evidence of nationality cannot be furnished through false documents.

3. If none of the documents listed in Annexes 1 or 2 can be presented, the competent diplomatic and consular representations of the Requested State concerned shall, upon a request included in the readmission application by the Requesting State, make arrangements to interview the person to be readmitted without undue delay, within seven working days from the requesting day, in order to establish his or her nationality. In case there are no diplomatic or consular representations of the Requested State in the Requesting State, the former shall make the necessary arrangements in order to interview the person to be readmitted without undue delay, at the latest within seven working days from the requesting day. The procedure for such interviews may be established in the implementing Protocols provided for in Article 20 of this Agreement.

Article 10

Evidence regarding third-country nationals and stateless persons

1. Proof of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 4(1) and Article 6(1) shall be particularly furnished by means of the evidence listed in Annex 3 to this Agreement. Proof of the conditions for the readmission cannot be furnished through false documents.

2. *Prima facie* evidence of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 4(1) and Article 6(1) shall be particularly furnished through the means of evidence listed in Annex 4 to this Agreement; it cannot be furnished through false documents. Where such *prima facie* evidence is presented, the Member States and Turkey shall deem the conditions to be established, unless following an investigation and within the time limits laid down in Article 11, the Requested State demonstrates otherwise.

3. The unlawfulness of entry, presence or residence shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence permit for the territory of the Requesting State are missing. A written statement by the Requesting State that the person concerned has been found not having the necessary travel documents, visa or residence permit shall likewise provide *prima facie* evidence of the unlawful entry, presence or residence.

Article 11

Time limits

1. The application for readmission must be submitted to the competent authority of the Requested State within a maximum of six months after the Requesting State's competent authority has gained knowledge that a third-country national or a stateless person who does not or who no longer, fulfil the conditions in force for entry, presence or residence.

If the third country national or the stateless person entered the territory of the Requesting State before the day on which Articles 4 and 6 become applicable pursuant to Article 24(3), the time limit mentioned in the previous sentence begins to run on the day on which Articles 4 and 6 become applicable.

Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request by the Requesting State, be extended but only until the obstacles have ceased to exist.

2. A readmission application must be replied to in writing:

— within five working days if the application has been made under the accelerated procedure (Article 7(4));

— without undue delay, and in any event within a maximum of 25 calendar days in all other cases, except for cases for which the initial detention period in the national legislation of the Requesting State is less, in which case the latter period shall apply. Where there are legal or factual obstacles to the application being replied to in time, the time limit may, upon request and giving reasons, be extended up to 60 calendar days, except if the maximum detention period in the national legislation of the Requesting State is less than, or equal to, 60 days.

This time limit begins to run with the date of receipt of the readmission request. If there was no reply within this time limit, the transfer shall be deemed to have been agreed to.

Reply to a readmission application may be submitted by any means of communication including electronic ones e.g. facsimiles, e-mails etc.

3. After agreement has been given or, where appropriate, after expiry of the time limits laid down in Paragraph 2 of this Article, the person concerned shall be transferred within three months. On request of the Requesting State, this time limit may be extended by the time taken to deal with legal or practical obstacles.

4. Reasons shall be given in writing for the refusal of a readmission request.

Article 12

Transfer modalities and modes of transportation

1. Without prejudice to Article 7(3), before returning a person, the competent authorities of the Requesting State shall notify in writing at least 48 hours in advance the competent authorities of the Requested State regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer.

2. Transportation may take place by air, land or sea. Return by air shall not be restricted to the use of the national carriers of Turkey or the Member States and may take place by using scheduled or charter flights. In the event of escorted returns, such escorts shall not be restricted to authorised persons of the Requesting State, provided that they are authorised persons by Turkey or any Member State.

Article 13

Readmission in error

The Requesting State shall take back any person readmitted by the Requested State if it is established, within a period of three months after the transfer of the person concerned, that the requirements laid down in Articles 3 to 6 of this Agreement are not met.

In such cases, and with the exception of all transport costs of the person in question which shall be borne by the Requesting State as referred to in the previous Paragraph, the procedural provisions of this Agreement shall apply mutatis mutandis and all available information relating to the actual identity and nationality of the person to be taken back shall be provided.

SECTION IV

TRANSIT OPERATIONS

Article 14

Transit principles

1. The Member States and Turkey should restrict the transit of third-country nationals or stateless persons to cases where such persons cannot be returned to the State of destination directly.

2. Turkey shall allow the transit of third-country nationals or stateless persons if a Member State so requests, and a Member State shall authorise the transit of third-country nationals or stateless persons if Turkey so requests, if the onward journey in possible other States of transit and the readmission by the State of destination is assured.

3. Transit can be refused by Turkey or a Member State:

(a) if the third-country national or the stateless person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit; or

(b) if the third-country national or the stateless person shall be subject to criminal sanctions in the Requested State or in another State of transit; or

(c) on grounds of public health, domestic security, public order or other national interests of the Requested State.

4. Turkey or a Member State may revoke any authorisation issued if circumstances referred to in Paragraph 3 of this Article subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey through possible States of transit or the readmission by the State of destination is no longer assured. In this case, the Requesting State shall take back the third-country national or the stateless person, as necessary and without delay.

Article 15

Transit procedure

1. An application for transit operations must be submitted to the competent authority of the Requested State in writing and is to contain the following information:

(a) type of transit (by air, sea or land), possible other States of transit and intended final destination;

(b) the particulars of the person concerned (e.g. given name, surname, maiden name, other names used/by which known or aliases, date of birth, sex and — where possible — place of birth, nationality, language, type and number of travel document);

(c) envisaged point of entry, time of transfer and use of escorts;

(d) a declaration that in the view of the Requesting State the conditions pursuant to Article 14(2) are met, and that no reasons for a refusal pursuant to Article 14(3) are known of.

A common form to be used for transit applications is attached as Annex 6 to this Agreement.

A transit application may be submitted by any means of communication including electronic ones e.g. facsimiles, e-mails etc.

2. The Requested State shall, within five working days after receipt of the application and in writing, inform the Requesting State of the admission, confirming the point of entry and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal. If there was no reply within five working days the transit shall be deemed to have been agreed to.

Reply to a transit application may be submitted by any means of communication including electronic ones e.g. facsimiles, e-mails etc.

3. If the transit operation takes place by air, the person to be readmitted and possible escorts shall be exempted from having to obtain an airport transit visa.

4. The competent authorities of the Requested State shall, subject to mutual consultations, assist in the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

SECTION V

COSTS

Article 16

Transport and transit costs

Without prejudice to Article 23 and without prejudice to the right of the competent authorities to recover the costs associated with the readmission from the person to be readmitted including the persons referred to in Article 3(2) and 5(2) or third parties, all transport costs incurred in connection with readmission and transit operations pursuant to this Agreement as far as the border crossing point of the Requested State for requests under Sections I and II of the Agreement; or as far as the border of the State of final destination for requests under Section IV of the Agreement shall be borne by the Requesting State.

SECTION VI

DATA PROTECTION AND NON-AFFECTION CLAUSE

Article 17

Data Protection

The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of Turkey or a Member State as the case may be. The processing and treatment of personal data in a particular case shall be subject to the domestic laws of Turkey and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC and of the national legislation of that Member State adopted pursuant to this Directive. Additionally the following principles shall apply:

(a) personal data must be processed fairly and lawfully;

(b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating authority nor by the receiving authority in a way incompatible with that purpose;

(c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed; in particular, personal data communicated may concern only the following:

— the particulars of the person to be transferred (e.g. given names, surnames, any previous names, other names used/by which known or aliases, sex, civil status, date and place of birth, current and any previous nationality),

— passport, identity card or driving licence (number, period of validity, date of issue, issuing authority, place of issue),

— stop-overs and itineraries,

— other information needed to identify the person to be transferred or to examine the readmission requirements pursuant to this Agreement;

(d) personal data must be accurate and, where necessary, kept up to date;

(e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;

(f) both the communicating authority and the receiving authority shall take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data where the processing does not comply with the provisions of this Article, in particular because those data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification, erasure or blocking to the other Party;

(g) upon request, the receiving authority shall inform the communicating authority of the use of the communicated data and of the results obtained there from;

(h) personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;

(i) the communicating and the receiving authorities are under an obligation to make a written record of the communication and receipt of personal data.

Article 18

Non-affection clause

1. This agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Turkey arising from international law including from international conventions to which they are party, in particular:

— the Convention of 28 July 1951 on the Status of Refugees as amended by the Protocol of 31 January 1967 on the Status of Refugees,

— the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms,

— the international conventions determining the State responsible for examining applications for asylum lodged,

— the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,

— where applicable, the European Convention of 13 December 1955 on Establishment,

— international conventions on extradition and transit,

— multilateral international conventions and agreements on the readmission of foreign nationals.

2. The present Agreement shall fully respect the rights and obligations, including of those who are or have been legally residing and working on the territory of one of the Parties, provided by the provisions of the Agreement of 12 September 1963 establishing an Association between the European Economic Community and Turkey, its additional protocols, the relevant Association Council decisions as well as the relevant case-law of the Court of Justice of the European Union.

3. The application of the present Agreement shall be without prejudice to the rights and procedural guarantees of persons being subject of return procedures as laid down by Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [1] in particular with regard to their access to legal advice, information, temporary suspension of the enforcement of a return decisions and access to legal remedies.

4. The application of the present Agreement shall be without prejudice to the rights and procedural guarantees for persons applying for asylum as provided by Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers [2] and by Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status [3] and in particular with regard to the right to remain in the Member Sate pending the examination of the application.

[1] OJ L 348, 24.12.2008, p. 98.
[2] OJ L 31, 6.2.2003, p. 18.
[3] OJ L 326, 13.12.2005, p. 13

5. The application of the present Agreement shall be without prejudice to the rights and procedural guarantees for persons holding a long term residence permit granted under the terms of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

6. The application of the present Agreement shall be without prejudice to the rights and procedural guarantees for persons granted residence under the terms of the Council Directive 2003/86/EC on the right to family reunification.

7. Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements.

SECTION VII

IMPLEMENTATION AND APPLICATION

Article 19

Joint readmission committee

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a joint readmission committee (hereinafter referred to as 'the committee') which will, in particular, have the task:

(a) to monitor the application of this Agreement;

(b) to decide on implementing arrangements necessary for the uniform application of this Agreement;

(c) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Turkey pursuant to Article 20;

(d) to recommend amendments to this Agreement and its Annexes.

2. The decisions of the committee shall be binding on the Contracting Parties following any necessary internal procedures required by the law of the Contracting Parties.

3. The committee shall be composed by representatives of Turkey and the Union; the Union shall be represented by the Commission, assisted by experts from Member States.

4. The committee shall meet where necessary at the request of one of the Contracting Parties.

5. The committee shall establish its rules of procedures.

Article 20

Implementing Protocols

1. On request of a Member State or Turkey, Turkey and a Member State shall draw up an implementing Protocol which shall, *inter alia*, cover rules on:

(a) designation of the competent authorities, border crossing points and exchange of contact points;

(b) conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort;

(c) means and documents additional to those listed in the Annexes 1 to 4 to this agreement;

(d) the modalities for readmission under the accelerated procedure;

(e) the procedure for interviews.

2. The implementing Protocols referred to in Paragraph 1 of this Article shall enter into force only after the readmission committee, referred to in Article 19, has been notified.

3. Turkey agrees to apply any provision of an implementing Protocol drawn up with one Member State also in its relations with any other Member State upon request of the latter and subject to the practical feasibility of its application to Turkey.

Member States agree to apply any provision of an implementing Protocol drawn up between Turkey and any other Member State also in their relations with Turkey upon request of the latter and subject to the practical feasibility of its application to those Member States.

Article 21

Relation to bilateral readmission agreements or arrangements of Member States

Without prejudice to Article 24(3), the provisions of this Agreement shall take precedence over the provisions of any legally binding instrument on the readmission of persons residing without authorisation which have been or may, under Article 20, be concluded between individual Member States and Turkey, in so far as the provisions of the latter are incompatible with those of this Agreement.

SECTION VIII

FINAL PROVISIONS

Article 22

Territorial application

1. Subject to Paragraph 2 of this Article, this Agreement shall apply to the territory in which the Treaty on the European Union is applicable, as defined in Article 52 of that Treaty and in Article 355 of the Treaty on the Functioning of the European Union, and to the territory of the Republic of Turkey.

2. This Agreement shall not apply to the territory of the Kingdom of Denmark.

Article 23

Technical assistance

Both parties agree to implement this Agreement based on the principles of joint responsibility, solidarity, and an equal partnership to manage the migratory flows between Turkey and the Union.

In this context, the Union is committed to making available financial resources in order to support Turkey in the implementation of this Agreement in accordance with the attached joint declaration on technical assistance. In doing so, attention will be devoted in particular to institution and capacity building. Such support is to be provided in the context of the existing and future priorities jointly agreed by the Union and Turkey.

Article 24

Entry into force, duration and termination

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.

2. Subject to Paragraph 3 of this Article, this Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first Paragraph of this Article have been completed.

3. The obligations set out in Articles 4 and 6 of this Agreement shall only become applicable three years after the date referred to in Paragraph 2 of this Article. During that three-year period, they shall only be applicable to stateless persons and nationals from third-countries with which Turkey has concluded bilateral treaties or arrangements on readmission. During that three-year period, existing bilateral readmission agreements between individual Member States and Turkey shall continue to apply in their relevant parts.

4. This Agreement is concluded for an unlimited period.

5. Each Contracting Party may denounce this Agreement by officially notifying the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

Article 25

Annexes

Annexes 1 to 6 shall form an integral part of this Agreement.

Done at Ankara on the sixteenth day of December in the year two thousand and thirteen in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Turkish languages, each text being equally authentic.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen
Avrupa Birliği Adına

За Република Турция
Por la República de Turquía
Za Tureckou republiku
For Republikken Tyrkiet
Für die Republik Türkei
Türgi Vabariigi nimel
Για τη Δημοκρατία της Τουρκίας
For the Republic of Turkey
Pour la république de Turquie
Per la Repubblica di Turchia
Turcijas Republikas vārdā –
Turkijos Respublikos vardu
A Török Köztársaság részéről
Għar-Repubblika tat-Turkija
Voor de Republiek Turkije
W imieniu Republiki Turcji
Pela República da Turquia
Pentru Republica Turcia
Za Tureckú republiku
Za Republiko Turčijo
Turkin tasavallan puolesta
För Republiken Turkiet
Türkiye Cumhuriyeti Adına

ANNEX 1

Common list of documents the presentation of which is considered as proof of nationality

(Articles 3(1), 5(1) and 9(1))

Where the Requested State is either one of the Member States or Turkey:

— passports of any kind,

— *laissez-passer* issued by the Requested State,

— identity cards of any kind (including temporary and provisional ones),

— military service books and military identity cards,

— seaman's registration books and skippers' service cards,

— citizenship certificates and other official documents that mention or clearly indicate citizenship.

Where the Requested State is Turkey:

— confirmation of identity as a result of a search carried out in the Visa Information System (1),

— in the case of Member States not using the Visa Information System, positive identification established from visa application records of those Member States.

(1) Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

ANNEX 2

Common list of documents the presentation of which is considered as *prima facie* evidence of nationality

(Articles 3(1), 5(1) and 9(2))

— photocopies of any of the documents listed in Annex 1 to this Agreement,

— driving licenses or photocopies thereof,

— birth certificates or photocopies thereof,

— company identity cards or photocopies thereof,

— written account of statements by witnesses,

— written account of statements made by the person concerned and language spoken by him or her, including by means of an official test result,

— any other document which may help to establish the nationality of the person concerned, including documents with pictures issued by the authorities in replacement of the passport

— documents listed in Annex 1 whose validity has expired,

— accurate information provided by official authorities and confirmed by the other Party.

ANNEX 3

Common list of documents which are considered as proof of the conditions for the readmission of third country nationals and stateless persons

(Articles 4(1), 6(1) and 10(1))

— visa and/or residence permit issued by the Requested State,

— entry/departure stamps or similar endorsement in the travel document including in a falsified travel document of the person concerned or other evidence of entry/departure (e.g. photographic),

— documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts etc.) which clearly show that the person concerned stayed on the territory of the Requested State,

— named tickets and/or passenger lists of air, train, coach or boat passages which show the presence and the itinerary of the person concerned on the territory of the Requested State,

— information showing that the person concerned has used the services of a courier or travel agency,

— official written account of statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border,

— official written account of a statement by the person concerned in judicial or administrative proceedings.

ANNEX 4

Common list of documents which are considered as *prima facie* evidence of the conditions for the readmission of third country nationals and stateless persons

(Articles 4(1), 6(1) and 10(2))

— description issued by the relevant authorities of the Requesting State, of place and circumstances under which the person concerned has been intercepted after entering the territory of that State,

— information related to the identity and/or stay of a person which has been provided by an International organisation (e.g. UNHCR),

— reports/confirmation of information by family members, travelling companions etc.,

— written account of statement by the person concerned.

ANNEX 5



[Emblem of the Republic of Turkey]

.....

(Designation of requesting authority)

.....

(Place and date)

Reference: .....

To

.....

.....

(Designation of requested authority)

☐ ACCELERATED PROCEDURE (Article 7(3))

☐ INTERVIEW REQUEST (Article 9(3))

READMISSION APPLICATION

pursuant to Article 8 of the Agreement of ..... between

the European Union and the Republic of Turkey

on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

Photograph

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known or aliases):

.....

6. Nationality and language:

.....

7. Civil status: ☐ married ☐ single ☐ divorced ☐ widowed

If married: name of spouse

.....

Names and age of children (if any)

.....

.....

8. Last address in the requested State:

.....

B. PERSONAL DETAILS OF SPOUSE (IF APPROPRIATE)

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, color of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known or aliases):

.....

6. Nationality and language:

.....

C. PERSONAL DETAILS OF CHILDREN (IF APPROPRIATE)

1. Full name (underline surname):

.....

2. Date and place of birth:

.....

3. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

4. Nationality and language:

.....

D. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE

1. State of health

(e.g. possible reference to special medical care; Latin name of contagious disease):

.....

2. Indication of particularly dangerous person

(e.g. suspected of serious offence; aggressive behaviour):

.....

E. MEANS OF EVIDENCE ATTACHED

1.

..... (Passport No.) ..... (date and place of issue)

..... (issuing authority) ..... (expiry date)

2.

..... (Identity card No.) ..... (date and place of issue)

..... (issuing authority) ..... (expiry date)

3.

..... (Driving licence No.) ..... (date and place of issue)

..... (issuing authority) ..... (expiry date)

4.

..... (Other official document No.) ..... (date and place of issue)

..... (issuing authority) ..... (expiry date)

F. OBSERVATIONS

.....

.....

.....

.....

.....

.....

.....

(Signature) (Seal/stamp)

ANNEX 6



[Emblem of the Republic of Turkey]

.....

.....

(Designation of requesting authority)

.....

(Place and date)

Reference: .....

To

.....

.....

(Designation of requested authority)

TRANSIT APPLICATION

pursuant to Article 15 of the Agreement of ..... between

the European Union and the Republic of Turkey

on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

Photograph

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known or aliases):

.....

6. Nationality and language:

.....

7. Type and number of travel document:

.....

B. TRANSIT OPERATION

1. Type of transit

☐ by air ☐ by land ☐ by sea

2. State of final destination

.....

3. Possible other States of transit

.....

4. Proposed border crossing point, date, time of transfer and possible escorts

.....

.....

.....

5. Admission guaranteed in any other transit State and in the State of final destination (Article 14 paragraph 2)

☐ yes ☐ no

6. Knowledge of any reason for a refusal of transit (Article 14 paragraph 3)

☐ yes ☐ no

C. OBSERVATIONS

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

(Signature) (Seal/stamp)

Joint Declaration on the cooperation in the area of visa policy

The Contracting Parties reinforce their cooperation in the area of visa policy and related areas, with a view to further promoting people to people contacts, starting with ensuring the efficient application of the judgment of the Court of Justice of the European Union issued on 19 February 2009 in case no C-228/06 Mehmet Soysal, Ibrahim Savatli v Germany and other relevant judgements on Turkish Service providers' rights based on the Additional Protocol of 23 November 1970 annexed to the Agreement establishing an Association between the European Economic Community and Turkey.

Joint Declaration on Article 7(1)

The Parties agree that in order to demonstrate 'every effort to return a person referred to in Articles 4 and 6 directly to the country of origin', the Requesting State, while submitting a readmission application to the Requested State, should at the same time submit a readmission application also to the country of origin. The Requested State shall reply within the time limits mentioned in Article 11(2). The Requesting State informs the Requested State if a positive reply to the readmission application has been received from the country of origin in the meantime. In case where the country of origin of the person in question could not be determined and therefore a readmission application could not be submitted to the country of origin, the reasons of this situation should be stated in the readmission application which will be submitted to the Requested State.

Joint Declaration on technical assistance

Turkey and the Union agree to intensify their cooperation to meet the common challenge of managing migration flows and to tackle irregular migration in particular. By doing so, Turkey and the Union will express their commitment to international burden sharing, solidarity, joint responsibility and common understanding.

This cooperation will take into account geographical realities and build on Turkey's efforts as a negotiating candidate country. It will also take into account Council Decision 2008/157/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and the 2008 National Programme of Turkey for the Adoption of the EU *acquis*, in which Turkey accepts and is prepared to implement the full EU *acquis* in this area upon accession to the Union.

In this context, the Union is committed to making available reinforced financial assistance in order to support Turkey in the implementation of this Agreement.

In doing so, attention will be paid in particular to institution and capacity building to enhance Turkey's capacity to prevent irregular migrants from entering, staying and exiting its territory, as well as its reception capacity for the intercepted irregular migrants. This could be achieved through, amongst others, purchase of border surveillance equipment, establishment of reception centres and border police structures, and support to training activities, in full respect of the current rules governing EU external assistance.

In order to support continued full and effective implementation of this Agreement, EU financial assistance, including a sector support programme in the area of integrated border management and migration, will be developed according to modalities to be defined together with the Turkish authorities and, beyond 2013, within and in accordance with the next EU financial perspectives.

Joint Declaration concerning Denmark

The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark, nor to nationals of the Kingdom of Denmark. In such circumstances it is appropriate that Turkey and Denmark conclude a readmission agreement in the same terms as this Agreement.

Joint Declaration concerning Iceland and Norway

The Contracting Parties take note of the close relationship between the Union and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen *acquis*. In such circumstances it is appropriate that Turkey concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement.

Joint Declaration concerning Switzerland

The Contracting Parties take note of the close relationship between the Union and Switzerland, particularly by virtue of the Agreement concerning the association of Switzerland with the implementation, application and development of the Schengen *acquis*, which entered into force on 1 March 2008. In such circumstances it is appropriate that Turkey concludes a readmission agreement with Switzerland in the same terms as this Agreement.

Joint Declaration concerning the Principality of Liechtenstein

The Contracting Parties take note of the close relationship between the Union and the Principality of Liechtenstein, particularly by virtue of the Agreement concerning the association of the Principality of Liechtenstein with the implementation, application and development of the Schengen *acquis*, which entered into force on 19 December 2011. In such circumstances it is appropriate that Turkey concludes a readmission agreement with the Principality of Liechtenstein in the same terms as this Agreement.

B. AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE ISLAMIC REPUBLIC OF PAKISTAN ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION

AGREEMENT

between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation

THE HIGH CONTRACTING PARTIES,

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the Community',

and

THE ISLAMIC REPUBLIC OF PAKISTAN,

hereinafter referred to as 'Pakistan',

hereinafter also referred to individually as 'a Party' and collectively as 'the Parties',

DESIRING to strengthen their cooperation to combat illegal immigration effectively,

DESIRING to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry into, presence in, or residence on the territories of Pakistan or one of the Member States of European Union, and to facilitate the transit of such persons in a spirit of cooperation,

EMPHASISING that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Member States of the European Union and Pakistan under international law,

CONSIDERING that the provisions of Title IV of the Treaty establishing the European Community, and all acts adopted on the basis of that Title, do not apply to the Kingdom of Denmark,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Agreement:

(a) 'Member State' shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark;

(b) 'National of a Member State' shall mean any person who holds the nationality, as defined for Community purposes, of a Member State;

(c) 'National of Pakistan' shall mean any person who holds the nationality of Pakistan;

(d) 'Third country national' shall mean any person who holds a nationality other than that of Pakistan or one of the Member States;

(e) 'Stateless person' shall mean any person who does not hold a nationality;

(f) 'Residence authorisation' shall mean a permit of any type issued by Pakistan or one of the Member States entitling a person to reside on the territory of the issuing State;

(g) 'Visa' shall mean an authorisation issued or a decision taken by Pakistan or one of the Member States which is required with a view to entry into, or transit through, its territory. This shall not include an airport transit visa;

(h) 'Requesting State' shall mean the State (Pakistan or one of the Member States), which submits a readmission application pursuant to Articles 2 and 3 or a transit application pursuant to Article 12;

(i) 'Requested State' shall mean the State (Pakistan or one of the Member States) to which a readmission application pursuant to Articles 2 and 3 or a transit application pursuant to Article 12 is submitted.

SECTION 1

READMISSION OBLIGATIONS

Article 2

Readmission of nationals

1. The Requested State shall readmit, after the nationality having been proved in accordance with Article 6, upon application by the Requesting State any of its nationals who does not, or who

no longer fulfils the conditions in force for entry into, presence in, or residence on, the territory of the Requesting State.

2. The Requested State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her readmission, which shall be valid for at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document, the Requested State shall issue a new travel document with the same period of validity within 14 days.

Article 3

Readmission of third country nationals and Stateless persons

1. The Requested State shall readmit, upon application by the Requesting State and without further formalities other than those provided for in this Agreement, any third country national or Stateless person who does not, or who no longer, fulfils the conditions in force for entry into, presence in, or residence on, the territory of the requesting State, provided that such persons:

(a) hold, at the time of submission of the readmission application, a valid visa or residence authorisation issued by the Requested State; or

(b) entered the territory of the Requesting State unlawfully coming directly from the territory of the Requested State. A person comes directly from the territory of the Requested State within the meaning of this subparagraph if he or she arrived on the territory of the Requesting State, or, where the Requested State is Pakistan, on the territory of the Member States, by air or ship without having entered another country in-between.

2. The readmission obligation in paragraph 1 shall not apply if:

(a) the third country national or Stateless person has only been in airside transit via an international airport of the Requested State; or

(b) the Requesting State has issued to the Third country national or Stateless person a visa or residence authorisation before or after entering its territory unless that person is in possession of a visa or residence permit, issued by the Requested State, which has a longer period of validity.

3. If the Requested State is a Member State, the readmission obligation in paragraph 1 is for the Member State that issued a visa or residence authorisation. If two or more Member States issued a visa or residence authorisation, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date.

4. The Requested State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return which shall be valid for at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document, the Requested State shall issue a new travel document with the same period of validity within 14 calendar days.

SECTION II

READMISSION PROCEDURE

Article 4

Principles

1. Subject to paragraph 2, any transfer of a person to be readmitted on the basis of the obligations contained in Articles 2 and 3 shall require the submission of a readmission application to the competent authority of the Requested State.

2. Without prejudice to Articles 2(1) and 3(1), no readmission application shall be needed where the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence authorisation of the Requested State.

3. No person shall be readmitted only on the basis of prima facie evidence of nationality.

Article 5

Readmission application

1. A readmission application shall contain the following information:

(a) the particulars of the person to be readmitted (e.g. given name, surname, date of birth, place of birth, and the last place of residence);

(b) indication of the means for the proof of nationality, transit, the conditions for the readmission of third country nationals and Stateless persons and unlawful entry and residence.

2. The readmission application, to the extent possible, will also contain the following information:

(a) a statement indicating that the person to be readmitted may need help or care, provided the person concerned has explicitly consented to the statement;

(b) any other protection or security measure which may be necessary in the individual readmission case.

3. A common form to be used for readmission applications is attached as Annex V to this Agreement.

Article 6

Means of evidence regarding nationality

1. Evidence of nationality cannot be furnished through false documents.

2. Proof of nationality pursuant to Article 2(1) may be furnished through any of the documents listed in Annex I to this Agreement, even if their period of validity has expired. If such documents are presented, the Requested and the Requesting States shall mutually recognise the nationality without further investigation being required.

3. Proof of nationality, as required under Article 2(1), may also be furnished through any of the documents listed in Annex II to this Agreement, even if their period of validity has expired. If such documents are presented, the Requested State shall initiate the process for establishing the nationality of the person concerned.

4. If none of the documents listed in Annexes I or II can be presented, the competent authority of the Requesting State and the diplomatic or consular representation of the Requested State shall, upon request, make arrangements to interview the person for whose readmission an application has been submitted, without undue delay.

Article 7

Means of evidence regarding third country nationals and Stateless persons

1. Proof of the conditions for the readmission of third country nationals and Stateless persons laid down in Article 3(1) shall be particularly furnished through the means of evidence listed in Annex III to this Agreement. It cannot be furnished through false documents. Any such proof shall be based on elements that are mutually recognised by the Requested and the Requesting States.

2. Proof of the conditions for the readmission of third country nationals and Stateless persons laid down in Article 3(1) may also be furnished through the means of evidence listed in Annex IV to this Agreement. Where such means of evidence are presented, the Requested State will deem them appropriate to initiate investigation.

3. The unlawfulness of entry, presence or residence shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence authorisation for the territory of the Requesting State are missing. A statement by the Requesting State that the person concerned has been found not to have the necessary travel documents, visa or residence authorisation may provide prima facie evidence of the unlawful entry, presence or residence.

Article 8

Time limits

1. The application for readmission must be submitted to the competent authority of the Requested State within a maximum of one year after the Requesting State's competent authority has gained knowledge that a third country national or a Stateless person does not fulfil, or no longer fulfils the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request, be extended but only until the obstacles have ceased to exist.

2. A readmission application must be replied to without undue delay, and in any event within a maximum of 30 calendar days; reasons shall be given for refusal of a readmission application. This time limit begins to run from the date of receipt of the readmission application. Where there are legal or factual obstacles to the application being replied to in time, the time limit may, upon request and giving reasons, be extended up to 60 calendar days, except if the maximum detention period in the national legislation of the Requesting State is less than, or equal to, 60 days. Where there is no reply within this time limit, the transfer shall be deemed to have been agreed to.

3. After agreement has been given or, where appropriate, upon expiry of the time limit mentioned in paragraph 2 of this Article, the person concerned shall be transferred within three months. Upon request, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 9

Transfer modalities and modes of transportation

Before returning a person, the competent authorities of Pakistan and the Member State concerned shall make arrangements in writing in advance, regarding the transfer date, the border crossing point, possible escorts and means of transport.

Article 10

Readmission in error

Pakistan shall take back without delay any person readmitted by a Member State, and a Member State shall take back without delay a person readmitted by Pakistan, if it is established within a period of three months after the transfer of the person concerned that the requirements laid down in Articles 2 and 3 of this Agreement were not met. In such cases, the competent authorities of Pakistan and the Member State concerned shall also exchange all available information relating to the actual identity, nationality or transit route of the person to be taken back.

SECTION III

TRANSIT OPERATIONS

Article 11

Principles

1. The Requested State may allow the transit of a third country national or Stateless person when such a national or person cannot be returned to the State of destination directly after being satisfied, on the basis of written evidence, that the State of destination has committed itself to readmitting its national or the person as the case may be.

2. The Requested State may revoke consent if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured. In such cases, the Requesting State shall take back the third country national or the Stateless person at its costs.

Article 12

Transit procedure

1. An application for transit operations must be submitted to the competent authorities in writing and shall contain the following information:

(a) type of transit, possible other States of transit and final destination;

(b) the particulars of the person concerned (e.g. given name, surname, date of birth and — where possible — place of birth, nationality, type and number of travel document);

(c) envisaged border crossing point, time of transfer and possible use of escorts.

A common form to be used for transit applications is attached as Annex VI to this Agreement.

2. The Requested State shall, within 14 calendar days and in writing, inform the Requesting State of its decision and, if it allows transit, confirm the border crossing point and the envisaged time of transit.

3. If the transit operation is effected by air, the person to be transited and possible escorts shall be exempted from having to obtain an airport transit visa.

4. The competent authorities of the Requested State shall, subject to mutual consultations, support the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose, in accordance with its laws and rules.

SECTION IV

COSTS

Article 13

Transport and transit costs

Without prejudice to the right of the competent authorities of the Requesting State to recover the costs associated with the readmission from the person to be readmitted or third parties, all transport costs incurred in connection with readmission and transit operations pursuant to this Agreement as far as the border of the State of final destination shall be borne by the Requesting State. In the case of readmission in error, under Article 10, these costs have to be borne by the State which has to take back the person concerned.

SECTION V

DATA PROTECTION AND CONSISTENCY WITH OTHER LEGAL OBLIGATIONS

Article 14

Personal data

1. The processing of personal data shall only take place if such processing is necessary for the implementation of this Agreement by the competent authorities of Pakistan and the Member States. For the purposes of this Article, the definitions contained in Article 2 of Directive 95/46/EC [1] apply. Where the controller is a competent authority of a Member State, such processing shall be subject to the provisions of Directive 95/46/EC and of national legislation adopted pursuant to this Directive, including the rules concerning the transfer of personal data to third countries.

2. Additionally, the processing of personal data for the implementation of this Agreement, and in particular the communication of personal data from Pakistan to a Member State and vice versa, shall be subject to the following principles:

(a) personal data must be processed fairly and lawfully;

(b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating authority nor by the receiving authority in a way incompatible with that purpose;

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

(c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed, in particular, personal data communicated may concern only the following:

— the particulars of the person to be transferred (e.g. given name, surname, any previous names, nicknames or pseudonyms, date and place of birth, sex, current and any previous nationality),

— passport or identity card (number, period of validity, date of issue, issuing authority, place of issue),

— stop-overs and itineraries,

— other information needed to identify the person to be transferred or to examine the readmission requirements pursuant to this Agreement;

(d) personal data must be accurate and, where necessary, kept up to date;

(e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;

(f) both the communicating authority and the receiving authority shall take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data where the processing does not comply with the provisions of this Article, in particular because that data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification, erasure or blocking to the other Party;

(g) upon request, the receiving authority shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;

(h) personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;

(i) the communicating and the receiving authorities are under the obligation to make a written record of the communication and receipt of personal data.

Article 15

Consistency with other legal obligations

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Pakistan arising from or under international law, and international treaties to which they are Parties.

2. Nothing in this Agreement shall prevent the return of a person under other bilateral arrangements.

3. This Agreement shall be without prejudice to the remedies and rights available to the person concerned under the laws of the host country including international law.

SECTION VI

IMPLEMENTATION AND APPLICATION

Article 16

Joint Readmission Committee

1. The Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a Joint Readmission Committee (hereinafter referred to as the Committee) which will, in particular, have the task of:

(a) monitoring the application of this Agreement;

(b) deciding on technical arrangements necessary for its uniform execution, including amendments to Annexes III and IV;

(c) having a regular exchange of information on the implementing Protocols drawn up by individual Member States and Pakistan pursuant to Article 17;

(d) proposing amendments to this Agreement and Annexes I and II.

2. The decisions of the Committee shall be taken by unanimity and be implemented accordingly.

3. The Committee shall be composed by representatives of the Community and Pakistan. The Community shall be represented by the European Commission, assisted by experts from Member States.

4. The Committee shall meet where necessary at the request of one of the Parties, normally on an annual basis.

5. Disputes which cannot be resolved by the Committee shall be settled through consultations between the Parties.

6. The Committee shall establish its rules of procedure, including establishing a working language common to both Parties.

Article 17

Implementing protocols

1. Pakistan and a Member State may draw up an implementing Protocol which shall cover rules on:

(a) the designation of the competent authorities, the border crossing points and the exchange of contact points;

(b) the conditions for escorted returns, including the transit of third country nationals and stateless persons under escort;

(c) means and documents other than those listed in the Annexes I to IV to this Agreement.

2. The implementing Protocols referred to in paragraph 1 shall enter into force only after the Committee, referred to in Article 16, has been notified.

Article 18

Relation to bilateral readmission agreements or arrangements of Member States

The provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorisation which have been or may, under Article 17, be concluded between individual Member States and Pakistan, in so far as the provisions of the latter are incompatible with those of this Agreement.

SECTION VII

FINAL PROVISIONS

Article 19

Territorial application

1. Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty establishing the European Community is applicable and the territory of Pakistan.

2. This Agreement shall not apply to the territory of the Kingdom of Denmark.

Article 20

Entry into force, duration and termination

1. This Agreement shall be ratified or approved by the Parties in accordance with their respective procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to in paragraph 1 have been completed.

3. Without prejudice to existing obligations of the Parties under customary international law to take back own nationals, this Agreement, and the Implementing Protocols, shall apply to persons who entered into the territories of Pakistan and the Member States after its entry into force.

4. Either Party may terminate this Agreement at any time by officially notifying the other Party. This Agreement shall cease to apply six months after the date of such notification.

Article 21

Annexes

Annexes I to VI shall form an integral part of this Agreement.

Done at Brussels on the twenty-sixth day of October in the year two thousand and nine in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, each of these texts being equally authentic.

За Европейската общност
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Ghall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
För Europeiska gemenskapen

За Ислямска република Пакистан
Por la República Islámica de Pakistán
Za Pákistánskou islámskou republiku
For Den Islamiske Republik Pakistan
Für die Islamische Republik Pakistan
Pakistani Islamivabariigi nimel
Για την Ισλαμική Δημοκρατία του Πακιστάν
For the Islamic Republic of Pakistan
Pour la République islamique du Pakistan
Per la Repubblica islamica del Pakistan
Pakistānas Islāma Republikas vārdā
Pakistano Islamo Respublikos vardu
A Pakisztáni Iszlám Köztársaság részéről
Ghar-Repubblika Iżlamika tal-Pakistan
Voor de Islamitische Republiek Pakistan
W imieniu Islamskiej Republiki Pakistanu
Pela República Islâmica do Paquistão
Pentru Republica Islamică Pakistan
Za Pakistanskú islamskú republiku
Za Islamsko republiko Pakistan
Pakistanin islamilaisen tasavallan puolesta
För Islamiska republiken Pakistan

ANNEX I

Common list of documents the presentation of which is considered as evidence of nationality (Articles 2(1) in conjunction with article 6(2))

— Genuine passports of any kind (national passports, diplomatic passports, service passports, collective passports and surrogate passports including children's passports),

— computerized national identity cards,

— genuine citizenship certificates.

ANNEX II

Common list of documents the presentation of which shall initiate the process for establishing nationality (Article 2(1) in conjunction with article 6(3))

— Digital fingerprints or other biometric data,

— temporary and provisional national identity cards, military identity cards and birth certificates issued by the Government of the Requested Party,

— photocopies (*) of any of the documents listed in Annex I to this Agreement,

— driving licences or photocopies (*) thereof,

— photocopies (*) of other official documents that mention or indicate citizenship (e.g. birth certificates),

— service cards, seaman's registration cards, skipper's service cards or photocopies (*) thereof,

— statements made by the person concerned.

(*) For the purpose of this Annex, the term 'photocopies' shall mean photocopies officially authenticated by the authorities of Pakistan or the Member States.

ANNEX III

Common list of documents which shall be considered as means of evidence of the conditions for the readmission of third country nationals and stateless persons (Article 3(1) in conjunction with article 7(1))

— Entry and/or departure stamps/endorsements in the travel document of the person concerned,

— valid visa and/or residence authorisation issued by the Requested State.

ANNEX IV

Common list of documents which are considered as means of evidence to initiate the investigations for the readmission of third country nationals and stateless persons (Article 3 in conjunction with article 7(2))

— Official statements made, in particular, by border authority staff and other official or bona fide witnesses (e.g. airline staff) who can testify to the person concerned crossing the border,

— description, by the competent authorities of the Requesting State, of the place and circumstances under which the person concerned has been intercepted after entering the territory of the Requesting State,

— information related to the identity and/or stay of a person which has been provided by an international organization (e.g. UNHCR),

— reports/confirmation of information by family members,

— statement by the person concerned,

— named tickets as well as certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, etc.) which clearly show that the person concerned stayed on the territory of the Requested State,

— named tickets and/or passenger lists of air or boat passages which show the itinerary on the territory of the Requested State,

— information showing that the person concerned has used the services of a courier or travel agency.

ANNEX V

[Emblem of the Islamic Republic of Pakistan]

.....
.....
.....
.....
.....

.....
(Designation of requesting authority)

.....
.....
.....
.....
.....

(Place and date)

Reference:

.....

To:

.....
.....
.....
(Designation of requested authority)

READMISSION APPLICATION

Pursuant to Article 5 of the Agreement of 26 October 2009 between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

Photograph

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known or aliases):

.....

6. Nationality and language:

.....

7. Civil status: ☐ married ☐ single ☐ divorced ☐ widowed

If married: Name of spouse .....

Names and age of children (if any) .....

.....

.....

.....

8. Last address in the

(a) Requesting Party:

.....

(b) Requested Party:

.....

B. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE

1. State of health

(e.g. possible reference to special medical care; Latin name of contagious disease):

.....

2. Indication of particularly dangerous person

(e.g. suspected of serious offence; aggressive behaviour):

C. MEANS OF EVIDENCE ATTACHED

1. ..... (Passport No) ..... (date and place of issue)

..... (Issuing authority) ..... (expiry date)

2. ..... (Identity card No) ..... (date and place of issue)

..... (Issuing authority) ..... (expiry date)

3. ..... (Birth certificate) ..... (date and place of issue)

..... (Issuing authority) ..... (expiry date)

4. ..... (Other official document No) ..... (date and place of issue)

..... (Issuing authority) ..... (expiry date)

D. OBSERVATIONS

.....

.....

.....

.....

(Signature) (Seal/stamp)

ANNEX VI

[Emblem of the Islamic Republic of Pakistan]

.....
.....
.....
.....
.....

.....
.....
.....
.....
.....

.....
(Designation of requesting authority)

(Place and date)

Reference:

.....

To:

.....
.....
.....
(Designation of requested authority)

TRANSIT APPLICATION

Pursuant to Articles 11 and 12 of the Agreement of 26 October 2009 between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

Photograph

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known or aliases):

.....

6. Nationality and language:

.....

7. Type and number of travel document:

.....

B. TRANSIT OPERATION

1. Type of transit

☐ by air ☐ by sea ☐ by land

2. State of final destination .....

3. Possible other States of transit .....

4. Proposed border crossing point, date, time of transfer and possible escorts

.....

.....

.....

5. Admission assured in any other transit State and in the State of final destination

☐ yes ☐ no

C. OBSERVATIONS

.....

.....

.....

.....

(Signature) (Seal/stamp)

JOINT DECLARATION CONCERNING ARTICLE 1(f)

For the purpose of Article 1(f), the Parties agree that residence authorisation shall not include temporary permissions to remain on their territories in connection with the processing of an asylum application or an application for a residence authorisation.

JOINT DECLARATION CONCERNING ARTICLE 2(1)

The Parties take note that, according to the current Pakistan Citizenship Act, 1951, and the Rules made thereunder, a citizen of Pakistan cannot renounce his citizenship without having acquired or having been given a valid document assuring the grant of citizenship or nationality of another State.

The Parties agree to consult each other as and when the need arises.

JOINT DECLARATION CONCERNING ARTICLE 3

With regard to Article 3, the Parties will endeavour to return, as a matter of principle, any third country national or Stateless person who does not, or who no longer fulfils the conditions in force for entry into, presence in, or residence on the territory of either Party, to his or her country of origin.

JOINT DECLARATION CONCERNING ARTICLE 3(1)(b)

The Parties agree that mere airside transit stays in a third country shall not be considered as 'having entered another country in-between' within the meaning of those provisions.

JOINT DECLARATION CONCERNING ARTICLE 8(2)

The Parties agree that, with regard to readmission applications submitted by Member States whose maximum detention period in their national legislation is lower than, or equal to, 30 days, the time limit of 30 calendar days mentioned in Article 8(2) includes, in case of a positive reply to the readmission application, the issuing of the travel document required for his or her readmission in respect of Article 2(2) and Article 3(4) of the Agreement.

JOINT DECLARATION BETWEEN THE EUROPEAN COMMISSION AND PAKISTAN ON LEGAL MIGRATION

In keeping with Pakistan's interest in benefiting from opportunities for legal migration existing in the Member States of the European Union, the Parties agreed that the application of this Agreement will be instrumental in encouraging individual Member States to offer legal migration opportunities to Pakistani citizens. In this context, the European Commission calls upon Member States to enter into talks with Pakistan, according to their own national legislation, regarding legal migration possibilities of Pakistani citizens.

JOINT DECLARATION ON TECHNICAL ASSISTANCE

The Parties are committed to implement this Agreement on the basis of shared responsibility and a balanced partnership in a spirit of solidarity as regards the management of migratory flows between the European Union and Pakistan.

In this context, the European Union will support Pakistan, through Community assistance programmes, notably the Aeneas Programme, in the implementation of all components of this Agreement, including support aimed at resettlement and welfare of the readmitted persons.

Such support can in principle also cover fostering the links between migration and development, organising and promoting legal economic migration, managing illegal migration, and protecting migrants against exploitation and exclusion.

JOINT DECLARATION CONCERNING DENMARK

The Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark, nor to nationals of the Kingdom of Denmark. In such circumstances it is appropriate that Pakistan and Denmark conclude a readmission agreement in the same terms as this Agreement.

JOINT DECLARATION CONCERNING ICELAND AND NORWAY

The Parties take note of the close relationship between the European Community and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen *acquis*. In such circumstances it is appropriate that Pakistan concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement.

JOINT DECLARATION ON A COMPREHENSIVE DIALOGUE ON MIGRATION MANAGEMENT

The Parties are committed to engage in a comprehensive dialogue on migration management within the framework of the Joint Commission to be established under the EC — Pakistan Third Generation Cooperation Agreement. This dialogue will include visa policies, with a view to facilitating people-to-people exchanges.

C. TURKISH SUMMARY

Göç her zaman dünya tarihinin ayrılmaz bir parçası olmuşsa da, son yıllarda konuyla ilgili yaşanan tartışmalar Uluslararası İlişkiler (IR) disiplinine damgasına vurmuştur. Bunun nedeni göçmen sayısının sürekli ve hızlı bir şekilde artmasıdır. 2015 yılı itibarıyla 244 milyon uluslararası göçmen ve 763 milyon iç göçmen olduğu tahmin edilmektedir. Soğuk Savaş döneminde, güvenlik kavramı yalnızca katı güvenlik anlayışı ve nükleer rekabet etrafında gelişti. Soğuk Savaş sonrasında değişen uluslararası konjonktür ile birlikte güvenlik kavramı da değişime uğradı. Bu dönüşüm sürecinde, devletlerin güvenlik gündeminde yeni tehditler ortaya çıkmıştır. Bu tehditler arasında devletlerin tek başına çözemeyeceği, diğer devletlerle işbirliği yapmak zorunda olduğu, iklim değişikliği, salgın hastalıklar, çevre sorunları, örgütlü suçlar, terörizm ve uluslararası göç gibi konular vardı. Ulusal ve uluslararası güvenliğe tehdit olacağı düşünülen bu sorunlar "yumuşak güvenlik" sorunları olarak tanımlandı.

Güvenlik, Kopenhag Okulu üyelerine göre, tehditler karşısında hayatta kalma anlamına gelmektedir. Ayrıca güvenlik, bir konuya siyasi öncelik sağlayan ve güç kullanımını, yürütme gücünü yoğunlaştıran ve diğer aşırı tedbirleri meşru kılan bir kavram olarak da tanımlanabilir. Güvenlikleştirme yaklaşımı, sosyal olarak inşa edilmiş dünyadan başka "gerçek" bir tehdit bulunmadığı ve yalnızca güvenliğin toplumsal inşasının incelenebileceği fikrine dayanıyordu. Güvenlikleştiren bir aktör bir konuyu güvenlik meselesi olarak tanımlar. Kopenhag Okulu, bu süreçte en önemli şeyin konuşma eylemleri olduğunu iddia eder. Güvenlik kavramının bir konu için kullanılması, konunun siyasi gündem için bir önceliğe sahip olmasını sağlar ve devletin tüm araçlarıyla harekete geçmesini gerektiren bir aciliyet hissi yaratır. Bir tüzel kişiliğe yönelik bir tehdidin varlığı, bu tehdide karşı savaşmak için olağanüstü önlemlerin alınmasını meşru kılar. Güvenlik nasıl

anlaşılır ve kullanılırsa sadece politik yaşamı değil aynı zamanda toplumsal yaşamı da etkiler. Aşırı güvenlikleştirme, yani pek çok meseleyi acil ve aşırı önlemleri gerektirecek bir güvenlik meselesi olarak sürekli olarak izlemek, hükümetler için paranoya hissi yaratacaktır.

Kopenhag Okulu'nun konuşma eylemlerinin belirleyiciliği üzerine varsayımları ulusal bağlam için geçerli olabilse de, AB yetkililerinin söylemleri pek haber yapılmaz ve kamuoyunda neredeyse hiç tartışılmaz. Yani AB ve kamuoyu arasında gözle görülür bir etkileşim yoktur. Bu durum, Kopenhag Okulu'nun temel varsayımlarından birine karşı büyük bir sorun oluşturur, çünkü AB'nin ifadeleri üzerine kamusal bir tartışma hakkında konuşamıyoruz. Dahası, AB'nin kurumsal yapısı, AB'de merkezi bir güvenlikleştiren aktörün belirlenmesi konusunda ek belirsizlik sağlamaktadır. Buna ek olarak, Kopenhag Okulu'nun güvenlikleştirme yaklaşımı yalnızca konuşma eylemlerine odaklandığı için çok dardır. Politika araçları, resimler, anlaşmalar gibi güvenlikleştirmenin diğer yolları göz ardı edilmiştir. Dolayısıyla, sadece söylemlere odaklanmak, güvenlikleştirme sürecinin tam bir resmini vermez. Belli bir "güvenlik meselesinde" kurumların uygulamalarını ve kullandıkları politika araçlarını da analiz etmeliyiz.

Sorunu ampirik olarak analiz etmek için güvenlik enstrümanlarını tanımlamak çok önemlidir. Güvenlikleştirmeye Sosyolojik Yaklaşım, "güvenlikleştirme enstrümanı" veya "güvenlikleştirme aracı" olarak adlandırılan bir konsept önermektedir. "Güvenlikleştirme aracı", bir güvenlik meselesini çözmek için eylemlerin yapılandırıldığı, belirli bir tehdit görüntüsünü temsil eden bir sosyal ve/veya teknik bir cihaz olarak tanımlanmıştır. Başka bir deyişle, güvenlikleştirme enstrümanları, gözlemcilerine, ele alınan meselenin bir güvenlik tehdidi olduğunu anlatan, güvenlikleştiren aktörler tarafından gerçekleştirilen herhangi bir faaliyet olabilir. Bu iletişimin doğrudan veya dolaylı olup olmadığı önemli değildir;

bir uygulama ya da enstrüman, konunun bir güvenlik tehdidi olduğu fikrini ortaya koyarsa o uygulamayı ya da enstrümanı güvenlikleştirme ya da güvenlikleştirme aracı olarak tanımlayabiliriz.

Bahsedildiği gibi göç, Soğuk Savaş'ın sonuna kadar bir güvenlik sorunu olarak görülmedi. Bunun temel nedeni, Soğuk Savaş nedeniyle, nükleer savaş olasılığı gibi çok daha önemli güvenlik sorunlarının bulunmasıydı. Dolayısıyla, göç gibi diğer konular pek çok kişiye göre güvenlik meselesi olarak düşünülmek için arka planda kalmıştı. Yine de 1970'lerde Avrupa'da ikili anlaşmalara dayalı işçi göçü durdurulduğundan beri göç konusunda yoğun siyasi tartışmalar yaşanıyordu. Petrol krizinden dolayı Avrupa'da yaşanan ekonomik durgunluk işçi göçünün durdurulmasında temel faktör olsa da, bu karar verilirken göç, ekonomik, sosyal, kültürel, dini ve siyasi istikrarsızlık kaynağı olarak etiketlendiği için, AB'deki göçün güvenlikleştirilmesine yönelik bir adım olarak görülebilir. O dönemde bile bazı siyasi aktörler ve medya, göçü güvenlik tehdidi olarak nitelendirdi. Bununla birlikte, 1980'lerin sonundan başlayarak, bazı bilim adamları ve politikacılar göçün ev sahibi ülkelerin ekonomik, politik ve sosyal yapıları üzerine olumsuz etkilerini öne sürerek konuyu bir güvenlik sorunu olarak görmeye başladı. ABD'de yaşanan 11 Eylül terörist saldırıları, uluslararası politikada göç karşıtı söylemi daha da destekledi.

Birçok siyasi aktör tarafından kullanılan en önemli söylemlerden biri, Huntington'un *Medeniyetler Çatışması ve Dünya Düzeninin Yeniden Kurulması* kitabından türemiştir. Huntington kitabında, çok kültürlülüğü toplumsal parçalanmanın nedeni olarak belirlemektedir. Göçün, ülkenin kültürünü, geleneklerini ve homojenliğini zayıflattığını savunmuştur. Kitapta bir toplumun hayatta kalabilmek için homojen olması gerektiği ileri sürülmektedir. Toplumun hayatta kalması için sosyal ve kültürel yabancılar, yani göçmenler toplumdan uzaklaştırılmalıdır. Her ne kadar Huntington'un

argümanları kusurlu, ampirik kanıtlardan yoksun ve nefreti kültürel kimliğin gerekli bir temeli olarak desteklemişse de; çalışması Batı'daki kamu söylemine hükmetmiştir.

Üye ülkeler artık düzensiz göçün, yaşadıkları ekonomik, sosyal ve politik zorluklara katkıda bulunduğunu düşünüyorlar. Bununla birlikte, sadece üye ülkeleri de suçlamak doğru olmayacaktır, çünkü AB düzeyinde de göç politikaları konusunda bir paradigma değişikliği görüyoruz. AB'nin göçle ilgili güvenlikleştiren söylemleri ve uygulamaları, üye ülkelerin konuyu kendi varlığı için bir tehdit olarak görmelerini kaçınılmaz kılıyor. Bu bağlamda, düzensiz göçe karşı koymak için AB'de farklı araçlar geliştirildi, konunun insani boyutlarına pek önem vermeyen bu araçlarda, bölgesel güvenliğin sağlanması amaçlandı. İddia edilebilir ki geri kabul anlaşmaları, düzensiz göçle mücadele için AB tarafından kullanılan en gelişmiş güvenlik araçlarından biridir.

Geri kabul anlaşmaları, düzensiz göçmenlerin ülkelerine veya güvenli bir üçüncü ülkeye geri gönderilmesini kolaylaştırmak için kullanılan araçlardır. Geri kabul anlaşmaları hakkında literatürde iki perspektif bulunmaktadır. Birincisi, geri kabul anlaşmalarının tarafsızlığı üzerinde dururken, ikincisi geri kabul anlaşmalarının mülteci hakları ihlalleri için sahip olduğu risk üzerinde durmaktadır.

Devletler, yüzyıllar boyunca ırk, din ve görüşlerine dayanılarak zulüm gören insanları ve grupları korumaktadır. Bununla birlikte, modern mülteci koruma rejimi büyük ölçüde yirminci yüzyılın ikinci yarısının ürünüdür. Uluslararası insan hakları hukuku gibi modern mülteci hukuku da II. Dünya Savaşı'ndan sonra savaş mağdurlarının haklarını korumak için ortaya çıkmıştır. 1948'de kabul edilen Evrensel İnsan Hakları Bildirgesi'nin (UDHR) 14 üncü maddesi (1), insanların başka ülkelerde sığınma talebinde

bulunmalarını ve bu ülkelerden sığınma hakkı elde etmelerini garanti etmektedir.

1951 Cenevre Sözleşmesi ve 1967 Protokolü mülteci kavramını, mültecilerin haklarını ve geri göndermeme ilkesini tanımlar. Ancak 1951 Cenevre Sözleşmesi, bir kişinin mülteci tanımına uyup uymadığına bir ülkenin nasıl karar vermesi gerektiğini tanımlamaz. Bunun yerine, sığınma taleplerini ve mülteci statüsü tespitlerini değerlendirmek her devletin inisiyatifine bırakılmıştır. Bu durum, hükümetlerin sığınma yasalarını hazırlamada farklı kaynaklardan yararlanmasına ve ulusal güvenliğe öncelik vermesine, yani anlaşmanın uygulanmasında hükümetler arasında farklılıklara yol açmıştır. Ulusal ve bölgesel düzeyde gözlemlenen farklılıklara rağmen, modern mülteci hukukunun asıl amacı, ülkelerinden kaçmak zorunda kalan kişilerin korunmasıdır.

Pek çok uluslararası insan hakları dokümanında yer aldığı şekliyle sığınma talep etme ve sığınmadan yararlanma hakkı ve geri göndermeme prensibi artık uluslararası hukukun bir parçası olmuştur. AB'de de sığınmacıların ve mültecilerin korunması için dört temel bağlayıcı yasal çerçeve bulunmaktadır. Bunlardan biri uluslararası mülteci hukukunun da temelini oluşturan 1951 Cenevre Sözleşmesi ve 1967 Protokolüdür. İkinci yasal çerçeve, İşkence ve Diğer Zalimane, İnsanlık Dışı veya Küçültücü Muamele ve Cezaya Karşı Sözleşme gibi birçok insan hakları sözleşmesinden oluşan uluslararası insan hakları hukukudur. Üçüncüsü Avrupa Birliği Hukuku (AB hukuku) ve sonuncusu 1950 Avrupa İnsan Hakları ve Temel Özgürlükleri Koruma Sözleşmesi (AİHS) ve protokolleridir.

AB geri kabul anlaşmaları nispeten yeni enstrümanlar olmasına rağmen, Avrupa ülkeleri uzun süredir geri göndermeler yapıyor. Hatta geri göndermenin kökenleri 17. yüzyıla kadar uzanmaktadır. O zamanlarda bireyler, diğer devletlerle herhangi bir işbirliği yapmadan ülkeden sınır dışı

edilirdi. Modern anlamda ise geri kabul anlaşmalarının izleri 20. yüzyıldan itibaren bulunabilir.

Literatürde üç nesil geri kabul anlaşması tanımlanmıştır. Savaş sırasında yerinden olmuş kişilerin geri kabulünü sağlamak için, 20. yüzyılın başından İkinci Dünya Savaşı'ndan önce birçok ikili anlaşma imzalandı. Ancak göç akımlarını düzenleme mücadelesi 1950'lerin ortalarında önem kazandı. Bu bağlamda geri kabul anlaşmaları, göç akışlarını durdurmak için değil bunları düzenlemek için sık sık yapılmaktaydı. İkinci Dünya Savaşı'ndan sonra yapılan geri kabul anlaşmaları modern anlamda ilk geri kabul anlaşmaları olarak kabul edildi. Avrupa iç sınırları kaldırılmadığından, modern geri kabul anlaşmalarının ilk dalgası Avrupa devletleri arasında sonuçlandırıldı. Daha önce belirtildiği gibi göç, 1980'li yıllardan önceki dönemde bir güvenlik meselesi olarak algılanmadı. Bu nedenle geri kabul anlaşmaları devletlerin güvenliği için temel bir araç olarak değerlendirilmemiştir.

Berlin Duvarı'nın 1989'da yıkılması ve sınırların açılması ile Doğu ve Orta Avrupa ülkeleri, Batı Avrupa ülkelerine hızlı bir düzensiz göç akımına kaynaklık etti. Bu tarihlerde de, Doğu ve Orta Avrupa ülkeleriyle, ikinci nesil geri kabul anlaşmaları olarak nitelendirilebilecek anlaşmalar yapıldı. İkinci kuşak geri kabul anlaşmalarının ana amacı, AB'nin doğu sınırları boyunca güvenli hatlar yaratmaktı. İkinci nesil geri kabul anlaşmaları, Avrupa Konseyi tarafından geliştirilen ve yürürlüğe konulan ortak bir Avrupa göç politikasının yansımasıydı. Berlin Duvarı'nın yıkılması ve SSCB ve Yugoslavya'nın dağılmasından sonra göçmenlerin ve sığınmacıların potansiyel olarak istikrarı bozucu etkisini kontrol etmeyi amaçlayan bu ortak politikanın bir tezahürü olarak ikinci nesil geri kabul anlaşmalarının ilk örneği 1991'de Schengen devletleri ve Polonya arasında imzalandı.

Son olarak, üçüncü kuşak geri kabul anlaşmaları, üçüncü ülkelerle anlaşmaların müzakere edilmesi ve sonuçlandırılması yetkisini AB Komisyonuna devreden Amsterdam Antlaşması ile şekillendi. 1999 yılına kadar, AB'nin geri kabul anlaşmalarını AB düzeyinde tamamlama yetkisi yoktu. Amsterdam Antlaşması 1 Mayıs 1999'da yürürlüğe girdiğinde, AB, geri kabul anlaşmalarını AB düzeyinde tamamlama yetkisine sahip oldu. AB'nin İşleyişi Hakkında Anlaşma'nın 4. ve 5. Maddelerinde sırasıyla münhasır ve paylaşılan yeterlilik alanları tanımlanmaktadır. Yeni yetkinliği göz önüne alarak, Ekim 1999'da Tampere Zirvesi'nde üye ülkeler, Avrupa Komisyonu'nu, geri kabul hükümlerini bütünleştirmeye ve üçüncü ülkelerle geri kabul anlaşmalarını tamamlamaya çağırdı. Bu tarihten sonra, geri kabul anlaşmaları göç akımlarının yönetimi için AB düzeyinde birincil araç haline gelmiştir, çünkü AB'yi bir ulusüstü varlık olarak içeren çok taraflı anlaşmalar ikili olanlardan daha etkilidir. Ayrıca üçüncü nesil geri kabul anlaşmalarında anlaşmaya taraf olmayan devletlerin vatandaşlarının da geri kabul edilmesinin dâhil edilmesi, AB ülkelerinin kontrol yükünü azaltmayı ve göç akışlarının kontrolü için üçüncü ülkelerle etkileşimde bulunmayı amaçlayan önemli bir gelişmeydi.

Bahsedildiği gibi, geri kabul anlaşmaları, düzensiz göçmenlerin ülkelerine veya güvenli bir üçüncü ülkeye geri gönderilmesini kolaylaştırmak için kullanılan araçlardır. Ancak bu tezde geri kabul anlaşmalarının bir güvenlikleştirme sürecinin bir parçası olduğu ve bu anlaşmaların, uluslararası hukuka aykırı olan kötü iade kararlarının alınmasını teşvik edebileceği savunuluyor. Yani geri kabul anlaşmaları, insan hakları ihlallerinde bir katalizör görevi görebilir. Burada kendilerini savunmasız bulma ve sığınma sistemine erişememe riski altında olan üçüncü ülke vatandaşlarının haklarına odaklanmak özellikle önemlidir. İnsan haklarına saygı ve insan haklarının korunması ölçütleri, geri kabul anlaşmasının imzalanmasıyla ilgili

müzakerelerin başlatılacağı ülkelerin seçiminde önceden belirlenmelidir. Bu ölçütler, ilgili insan hakları hukukuna, sığınma arama ve sığınmadan yararlanma hakkına ve geri göndermeme ilkesine saygı göstermelidir.

Uluslararası hukuka ve AB hukukuna göre üye devletler sığınmacılara ilişkin bir gönderme kararı alırken, sığınmacının geçtiği transit ülke, üye ülke için değil söz konusu kişi için üçüncü bir güvenli ülke olmalıdır. AB hukuku, bir ülkenin güvenli bir üçüncü ülke olarak düşünülebilmesi için beş kriter listeler. Bir ülkede a) kişinin yaşamı ve özgürlüğü, ırk, din, uyrukluk, belirli bir toplumsal gruba üyelik veya siyasi görüş nedeniyle tehdit altında değilse; b) kişiye yönelik 2011/95/AB sayılı Direktifte tanımlanan ciddi zarar riski yoksa; c) ülke 1951 Cenevre Sözleşmesi uyarınca geri göndermeme ilkesine uyuyorsa; d) uluslararası hukukta belirtilen işkence ve zalimane, insanlık dışı veya onur kırıcı muamelenin yasaklanmasına saygı gösteriyorsa; e) ülkede mülteci statüsünü talep etme imkânı ve mülteci olduğu tespit edildiğinde 1951 Cenevre Sözleşmesi uyarınca koruma altına alınma imkanı varsa, o ülke güvenli bir üçüncü ülke kabul edilebilir.

Bir üye ülke, bir kişinin transit ülkeye geri kabul edilmesini talep ettiğinde, öncelikle, istenen ülkenin geri gönderilen kişiye sürdürülebilir bir durum sağlayabileceği veya en azından temel sosyal yardımlara erişebileceğinin garantisini vermesi gerekir. Bu koşullar karşılanmazsa, gönderen ülke geri kabul talebinden feragat etmeli ve kişiye kendi topraklarında kalması koşuluyla asgari sosyal haklara erişim izni vermelidir. Türkiye ve Pakistan ile imzalanan geri kabul anlaşmalarında görüleceği üzere, bu ülkeler aslında geri kabul için uygun ülkeler değildir ve tezde bahsi geçen uluslararası mülteci haklarının ihlal edildiği ülkelerdir. AB, hem kendi mevzuatlarına hem de uluslararası hukuktan kaynaklanan haklara saygı duymaksızın, bu anlaşmaları güvenlik odaklı bir yaklaşımla uygulamaya devam etmektedir.

Tezde ilk örnek olarak AB-Türkiye geri kabul anlaşması incelenmiştir. AB'nin bu anlaşmayı yapma arzusu güvenlik kaygılarından gelmişken, Türkiye için anlaşmanın imzalanmasının başlıca nedeni vize özgürlüğüdür. Bir başka deyişle ne AB ne de Türkiye, bu anlaşmaya insan hakları bağlamında yaklaşmıştır. AB tarafından Türkiye'ye yapılan veya yapılacak olan geri göndermelerin bugünkü şartlar altında uluslararası hukuka aykırı olduğu savunulmuştur. Bu uluslararası hukuka aykırı durumun sorun edilmeden anlaşmanın yapılmış olması, AB-Türkiye geri kabul anlaşmasının bir tehditle mücadele ettiği izlenimini verdiği için anlaşmanın bir güvenlik enstrümanı olarak değerlendirilebileceğini gösterir.

Anlaşmanın uluslararası hukuka aykırı yönlerinden birisi, Türkiye'nin 1951 Cenevre Sözleşmesi üzerindeki coğrafi kısıtlamasıdır. Avrupa dışından gelen sığınmacılar (Avrupa Konseyi üyesi olmayan ülkelerin vatandaşları), mülteci statüsünü kazandıktan sonra Türkiye'de yerleşememektedir. Türkiye, 1951 Cenevre Sözleşmesine getirilen coğrafi kısıtlamaya uygun olarak, Avrupa dışından gelenlere mülteci statüsü vermese de, Suriye İç Savaşı sırasında Türkiye, özellikle Suriyeliler için tutumunu kısmen değiştirmiş ve Suriye'deki savaştan kaçanlara kapılarını açmıştır.

Bunun yanı sıra Yabancılar ve Uluslararası Koruma Kanunu (YUKK) ile yeni bir mevzuat çıkardı ve 22 Ekim 2014'te yayınlanan yönetmelik uyarınca 28 Nisan 2011'den itibaren Suriye'den gelip sığınma talep edenlere geçici koruma sağlandı. YUKK ile Türkiye mülteci statüsünün kazanılmasında coğrafi kısıtlamasını sürdürdü ve Avrupa ülkelerinden kaçan kişilere uluslararası koruma sağlama amacını sürdürdü. Mülteci statüsü kazanma şartlarını yerine getirecek Avrupa dışından gelen kişilere, üçüncü bir ülkeye yerleştirilene kadar yasal olarak Türkiye'de kalmak için insani koşulların sağlanacağı garantisi verildi.

YUKK, yabancılar için dört uluslararası koruma türü belirledi. Mülteci statüsü, 1951 Cenevre Sözleşmesi uyarınca ırk, din, vatandaşlık, üyelik ve düşünce sebebiyle zulme uğrama ihtimalinden korkan Avrupa devletlerinin vatandaşlarına verilecektir.

Türkiye'deki coğrafi sınırlamalar nedeniyle mülteci statüsüne sahip olamayan ancak aynı korkular yüzünden ülkelerinden ayrılanlar için şartlı mülteci statüsü verilecektir. Hukuki işlemlerin tamamlanması sırasında Türkiye'de kalmalarına rağmen, mülteci statüsüne kavuştuktan sonra bu kişiler üçüncü ülkelerde yeniden yerleştirileceklerdir.

Mülteci veya koşullu mülteci statüsünü karşılamayan ancak zulme, ölüm cezasına tabi tutulmaktan ve kendilerine yönelik şiddet eylemlerine maruz kalmaktan korkanlar için, ikincil koruma statüsü verilecektir.

Son olarak, Türkiye Cumhuriyeti topraklarına giren ve kendi istekleri dışında ülkelerinden ayrılmış, acil ve geçici koruma ihtiyacı olan yabancılara geçici koruma statüsü verilecektir. Geçici koruma, göçmenlerden gelen uluslararası bir koruma talebi olup olmadığına bakılmaksızın verilen bir güvencedir. Bu statüyle, Suriyelilerin üçüncü bir ülkeye sığınmak için Türkiye'de geçirdikleri zaman yasal güvence altına alınmıştır.

YUKK'nin 91. Maddesi kapsamındaki geçici koruma statüsünü daha geniş bir çerçevede düzenlemek için 22 Ekim 2014'te yayınlanan "Geçici Koruma Yönetmeliği" ile geçici koruma altındaki kişilere verilen haklar tanımlamıştır. Bu haklar sağlık hizmetlerine, eğitim hizmetlerine, işgücü piyasası hizmetlerine, sosyal yardımlara, sosyal hizmetlere ve çevirmenlik hizmetlerine erişimi kapsar. Geçici Koruma Yönetmeliği Suriyelileri "geçici olarak korunanlar" olarak kategorize etmiş, kendilerine "Geçici Koruma Kimlik Belgesi" sağlamış ve yönetmelikle düzenlenen haklardan ve hizmetlerden yararlanmalarını sağlamıştır. Türk mevzuatında önemli

ilerlemeler olmasına rağmen, geçici koruma altındaki Suriyeliler 1951 Cenevre Sözleşmesi'nde sözü edilen tüm haklara sahip değildir. Türkiye'deki Suriyelilerin 1951 Cenevre Sözleşmesi uyarınca bir mülteci korumasına erişimi yoktur.

İkinci olarak, Türkiye'de mülteci haklarının ihlali pek çok kuruluş tarafından belgelenmiştir. Türkiye'yi geçmeye çalışan birçok sığınmacı gözaltına alındı ve sığınma prosedürlerine erişmeleri engellenmiştir. Avrupa dışından gelen sığınmacıların keyfi tutuklamalarla karşı karşıya kaldıkları Uluslararası Af Örgütü gibi kuruluşlar tarafından defalarca belgelendiği ve insanlık dışı ve onur kırıcı muameleye maruz kaldıkları belirtilmiştir. Birçok ulusal ve uluslararası gözlemci gözaltı merkezlerini ve gözaltı koşullarını eleştirmiş; göçmenlerin fiziksel olarak kötü muamele gördükleri, dövüldükleri, hukuki yardım ve çeviri hizmetlerine çok az ulaşabildiği veya hiç ulaşamadığı, tutuklama kararına itiraz etme imkânlarının bulunmadığı ve gözlerden uzak yerlerde tutulduklarını rapor etmiştir. AB yasası, "güvenli üçüncü ülkenin" geri göndermeme ilkesine saygı duymasını gerektirirken, Türkiye örneğinde AB hukuku unutulmuş gibi görünüyor. Türkiye'den geri gönderme olayları defalarca belgelenmiştir. Bazı raporlar, Türkiye'nin zaman zaman bazı Suriyelileri Suriye'ye geri gönderdiğini ya da fiziki güç kullanarak sınırı geçmesine izin vermediğini belirtmiştir.

Tezde ikinci örnek olarak incelenen Pakistan'da ise durum çok daha vahimdir. Pakistan ile geri kabul anlaşması imzalamanın gerekliliği, 1999 Yüksek Düzeyli Afganistan Eylem Planında önerilen önlemlerden biriydi. Pakistan'ın tarihsel olarak göç veren bir ülke olduğunu söylemek mümkündür. Ayrıca ülke ekonomisi büyük oranda yurtdışında yaşayan vatandaşlarının ülkeye gönderdiği paraya bağımlıdır. Bu nedenle, 1950'den beri Avrupa'da Pakistanlıların varlığı, Avrupa ülkeleri ve Pakistan arasındaki ilişkiyi etkilemiştir. Bu ilişki, karşılıklı anlayışa ve düzensiz göç eden

vatandaşların geri kabul edilmesine ilişkin dengeli sorumluluğa dayanmaktadır. Bununla birlikte, özellikle Afganistan'ın SSCB tarafından işgal edilmesinden sonra, Pakistan sadece düzensiz göç kaynağı bir ülke değil, aynı zamanda Afgan mültecilerin transit olarak kullandığı bir ülke haline geldi. Bu bağlamda Pakistan kendini, AB'nin düzensiz göçle mücadelesinde kritik bir konumda buldu.

Pakistan 40 yıldır bir milyondan fazla mülteciye ev sahipliği yapıyor. Ülkede resmi olarak kayıtlı 1,5 milyon Afgan mültecinin yanı sıra yaklaşık 1 milyon kayıtlı olmayan mültecinin yaşadığı tahmin ediliyor. Pakistan, Türkiye'den sonra en çok göçmen barındıran ikinci ülke olmasına rağmen, 1951 Cenevre Sözleşmesi ve 1967 Protokolü'ne taraf değildir. Ayrıca, mültecilerin korunması için ulusal bir mevzuat da bulunmamaktadır ve uluslararası koruma arayan kişilerin mülteci statüsünü belirleme prosedürleri oluşturulmamıştır. Bir ulusal mülteci yasal çerçevesinin yokluğunda, BMMYK, Pakistan Hükümeti ile BMMYK arasında 1993 yılında imzalanan işbirliği anlaşması uyarınca, mülteci statüsünü belirleme görevini yerine getirir ve Pakistan Hükümeti adına yürütür. Pakistan genel olarak BMMYK'nın mülteci statüsü vermek için aldığı kararları kabul etmiş ve Afganistan konusunda kalıcı bir sonuç sağlanıncaya kadar mültecilerin Pakistan'da kalmalarına izin vermiştir.

Pakistan'daki Afgan göçmenlerin durumu BMMYK, Pakistan ve Afganistan arasındaki üçlü anlaşma çerçevesinde periyodik olarak düzenlenmektedir. Son anlaşma 31 Aralık 2015'te sona ermiş ve Pakistan Hükümeti sözleşmeyi 2016'nın başında altı ay boyunca uzatmış ve daha sonra Aralık 2016'ya kadar ikinci kez uzatmıştır. Afganistan Hükümeti 2017 yılının sonuna kadar bir uzatma istemektedir. Uluslararası örgütlerin baskılarından dolayı, Pakistan bu tarihi 31 Mart 2017 tarihine kadar uzatmıştır. Pakistan federal kabinesinin Afgan mültecilerin statüsünü 2017 yılı sonuna kadar

uzattığı duyumları olsa da henüz bir kamuoyu açıklaması olamamıştır. Bu üçlü anlaşmalar geri göndermeme prensibini içerse de her Afgan mültecinin bir mülteci kayıt kartı tutması gerekmekte ve bu belgelerin yokluğu sınır dışı edilmeye neden olmaktadır.

Pakistan insan haklarıyla ilgili pek az uluslararası sözleşme imzaladığından, birçok STK Pakistan'ın geri kabul için uygun bir ülke olmaktan çok uzak olduğunu belirtiyor ve bu konuda haksız değiller. Bombalı saldırılar, aşiret çatışmaları, Hıristiyan ve Ahmadi azınlıklara yapılan zulüm, kadınlara yönelik şiddet, yedi yaşından küçük çocukların tutuklanması, homoseksüelliğe karşı iki yıl hapis cezası ve kırbaçlama cezalarının verilmesi Pakistan'daki gündelik hayatın bir parçası. Buna ek olarak, ölüm cezası halen yürürlükte ve Uluslararası Af Örgütü'nün göstermiş olduğu gibi, Pakistan'a geri kabul edilen Afganlara yönelik ayrımcılık ve insan hakkı ihlalleri hemen hemen her gün gerçekleşmektedir.

Pakistan'daki kadınlar ise erkeklere göre çok daha büyük tehlike altındadır. Thomson Reuters Vakfı'nın yapmış olduğu bir küresel algı anketi Pakistan'ın dünyadaki kadınlar için üçüncü en tehlikeli yeri olduğunu gösterdi. Uzmanlara göre, bu değerlendirmenin başlıca sebepleri kadınlara yönelik asit saldırıları; çocuk yaşta yaptırılan zoraki evlilikler; kültürel, kabilesel ve dini uygulamalar; fiziksel tacizler ve taşlama cezalarıydı. Ankette ortaya çıkan bir başka gerçek, her yıl 1.000'den fazla kadının "namus cinayetine" kurban gittiği ve kadınların %90'ının aile içi şiddete maruz kaldığıydı.

Dahası, yakın tarihli bir rapora göre, geri göndermeme ilkesine aykırı bir şekilde binlerce Afgan mültecinin Afganistan'a zorla geri gönderildiği belgelenmiştir. Bu şekilde geri gönderilenlerin kayıtlı Afgan mülteci sayısı 2016 yılının ikinci yarısında 365.000 kişiyi bulmuştur. Ayrıca, ülkedeki 1 milyon kayıtlı kayıt dışı Afgan nüfusun 200.000'inin ülkeden ayrılmak

zorunda kaldığı belirtiliyor. Bu geri gönderme operasyonu, yakın tarihteki en büyük yasadışı zorla geri dönüş eylemi olarak kaydedildi. Pakistanlı yetkililer 2017'de de benzer sayıların Afganistan'a dönmesini istediklerini söylüyorlar. Pakistan'ın yüzbinlerce kayıtlı ve kayıt dışı Afgan mülteciyi Afganistan'a geri göndermesinin, geri göndermeme ilkesine aykırı olduğu açık. Avrupa Komisyonu da, geri kabul edilen kişilerin haklarına saygı gösterilmesini sağlamak ve bunların güvenliğini sağlamak için etkili bir önlem almadı.

Geri kabul anlaşmalarının güvenlik araçları olduğu gerçeği bu iki örnekle ortaya konulmaktadır. Tez, Türkiye ve Pakistan ile yapılan anlaşmalarla gösterdiği gibi, AB düzensiz göçü bu anlaşmalarda belirli bir tehdit imgesi olarak tanımlıyor. Bu tehditle mücadele etmek için, geri kabul anlaşmaları olağanüstü ve hatta yasadışı tedbirler alıyor ve bu anlaşmalarla da bu tedbirleri meşrulaştırıyor. Tez ayrıca AB'nin, sığınmacıların başvurularını doğru bir şekilde değerlendirmeksizin uluslararası hukuktan ve AB hukukundan doğan haklarına erişemeyecekleri, keyfi gözaltı, işkence ve geri göndermeye tabi tutulabilecekleri sözde güvenli üçüncü ülkelere gönderdiğini savunuyor. Bu ihlaller teoride, geri kabul anlaşmalarının üye devletlerin mültecilere karşı sorumluluklarından kaçabileceği bir araç olabileceğini de göstermektedir. Bir yandan AB, bir Avrupa kimliğini inşa etmeye çalışıyor ve küresel bir güç olmak istiyor; diğer yandan, küresel zorlukların çözümündeki rolünü göz ardı ediyor.

Bazıları, geri kabul anlaşmalarının sadece yasal bir çerçeve olduğunu iddia etse de, söz konusu anlaşmalar açıkça insan hakları ihlallerine yol açmakta ve sadece AB'nin güvenliğini göz önüne almaktadır. Dolayısıyla AB, insan hakları ihlalleri bağlamında, Türkiye ve Pakistan'dan daha kötü durumdadır. Sığınmacıların, mültecilerin veya ekonomik göçmenlerin bir kısmının veya tamamının geri kabul anlaşmalarıyla geri gönderdiklerinde, uluslararası hukuktan ve AB hukukundan doğan haklarını kaybetmeleri,

işkence görmeleri, hayatlarını kaybetmeleri durumunda, AB'nin güvenlik odaklı göç politikaları yüzünden AB'nin sorumluluğu daha fazladır.

D. TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü ☐

Sosyal Bilimler Enstitüsü ■

Uygulamalı Matematik Enstitüsü ☐

Enformatik Enstitüsü ☐

Deniz Bilimleri Enstitüsü ☐

YAZARIN

Soyadı : Yavuz
Adı : Selim Mürsel
Bölümü : Avrupa Çalışmaları

TEZİN ADI (İngilizce) : EUROPEAN UNION READMISSION AGREEMENTS AS SECURITIZATION INSTRUMENTS: THE CASES OF TURKEY AND PAKISTAN

TEZİN TÜRÜ : Yüksek Lisans ■ Doktora ☐

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir. ■
2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir. ☐
3. Tezimden bir bir (1) yıl süreyle fotokopi alınamaz. ☐

TEZİN KÜTÜPHANEYE TESLİM TARİHİ: