Akdeniz University
Institute of Social Sciences

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School of Business, Economics and Social Sciences

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READMISSION AGREEMENTS AND HUMAN RIGHTS CONSIDERATIONS: IS TURKEY SAFE ENOUGH?

Joint Master's Programme European Studies Master Thesis

Antalya / Hamburg, 2014

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LIST OF ABBREVIATIONS

CAT : Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CEDAW : International Convention on the Elimination of Discrimination against Women

CERD : International Convention on the Elimination of All Forms of Racial Discrimination

CRC : Convention on the Rights of the Child

ECHR : Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR : European Court of Human Rights

ECJ : European Court of Justice

EU : European Union

HRW : Human Rights Watch

NGO : Non Governmental Organization

ICCPR : International Covenant on Civic and Political Rights

ICESCR : International Covenant on Economical, Social and Cultural Rights

TCN : Third Country National

TEU : Treaty on European Union

TFEU : Treaty on the Functioning of the EU

UN : United Nations

UNCHR : UN High Commissioner for Refugees

UDHR : United Nations Universal Declaration of Human Rights

SUMMARY

READMISSION AGREEMENTS AND HUMAN RIGHTS CONSIDERATIONS: IS TURKEY SAFE ENOUGH?

In today's politics the relation between human rights and national security can be described as a tug of war. The more measures are taken for security concerns, the less focus is given to the human rights concerns. One of the most controversial area which cause this dilemma is the migration control. As a result of the securitization of migration in Europe, EU adopted more preventive migration policy, which aims at transferring the responsibility of migration control to outside the EU. As a tool of this externalisation policy, the EU signed many readmission agreements to be able to return irregular migrants to their country of origin or third countries. Those readmission agreements are highly criticized by the NGOs for undermining the refugee protection. A recent readmission agreement between Turkey and EU has been signed in December 2013. When it is taken into account that majority of the irregular migrants directed to EU pass through Turkey from the countries which are not respectful to fundamental rights, the implications of the readmission agreement between Turkey and EU worth to examine. Accordingly this study examines the compatibility of readmission agreements with the human rights obligations and to what degree the international humanitarian and refugee protection norms are considered when negotiating and implementing EU readmission agreements.

Keywords: Irregular Migration, Readmission agreements, externalization, human rights, European Union, Turkey

ÖZET

GERİ KABUL ANLAŞMALARI ve İNSAN HAKLARI: TÜRKİYE YETERİNCE GÜVENLİ Mİ?

Günümüz siyasetinde insan hakları ve ulusal güvenlik arasındaki ilişki halat çekme oyununa benzetilebilir. Güvenlik kaygılarıyla alınan önlemler arttıkça, insan haklarına verilen önem azalmaktadır. Bu ikileme neden olan en tartışmalı alanlardan biri de göç kontrolüdür. Avrupa'da göçün bir güvenlik konusu haline gelmesi sonucu, Avrupa Birliği göç kontrolündeki sorumluluğunu AB sınırları dışına taşımayı hedefleyen önleyici bir göç kontrol politikası benimsemiştir. Bu dışsallaştırma politikasının bir aracı olarak AB, düzensiz göçmenleri kendi ülkelerine veya üçüncü ülkelere gönderebilmek amacıyla bu ülkelerle pek çok Geri Kabul Anlaşmaları imzalamıştır. Bu Geri Kabul Anlaşmaları, mültecilerin güvenliğini gözardı ettiği gerekçesiyle bir çok sivil toplum kuruluşu tarafından eleştirilmektedir. 2013 yılı Aralık ayında Avrupa Birliği ve Türkiye arasında bir Geri Kabul Anlaşması imzalanmıştır. İnsan haklarına saygılı olmayan ülkelerden kaçan ve Avrupa Birliğine ulaşmayı hedefleyen yasadışı göçmenlerin büyük bir kısmının Türkiye üzerinden geçtiği göz önünde bulundurulduğunda AB ve Türkiye arasında imzalanan Geri Kabul Anlaşması ve potansiyel sonuçları incelenmeye değer görülmüştür. Bu bağlamda bu çalışma Geri Kabul Anlaşmalarının, insan hakları yükümlülükleri ile uyumluluğunu ve uluslararası insani ve mülteci koruma normlarının anlaşmaların müzakere sürecinde ve uygulanmasında ne derece dikkate alındığını incelemektedir.

Anahtar Kelimeler: Düzensiz Göç, Geri Kabul Anlaşması, dışsallaştırma, insan hakları, Türkiye, Avrupa Birliği.

INTRODUCTION

Background and Aim of the Study

Throughout history people always moved from one country to another for various reasons: to escape from wars, violence, persecution, or just in search of a better life, and recently with education and job opportunity purposes. Based on the UN statistics, today almost 3% of the world population consists of the immigrants.[1] It s not surprising that the common migration routes are mostly directed to the western world which attracts people for better living conditions. In recent years there has been a great influx of people trying to reach Europe through both legal and illegal ways. According to Eurostat there are more than twenty million non-EU nationals residing in the EU, which equals to 4% of the total EU population.[2] When the issue shifts to the irregular migration the picture is not that clear due to the nature of irregular migration. In 2009 , the number of illegal immigrants apprehended in the EU was about 570.000.[3]

Migration which was a requirement initially for economical interests, started to be perceived as a security problem in the last decades (Bigo, 1994; den Boer, 1995; Huysmans, 2000; Albrecht, 2002; Green ve Grewcock, 2002; Berman, 2003; Geddes, 2003). Most important factors which cause Migration to be one of the world's biggest problems can be evaluated as economic inequality, the states' inability to provide security of life for their citizens, political turmoil and violence acts (Sever 2013, p.86). Especially, after September 11 terrorist attack in 2001 and London (2005) and Madrid (2004) bomb attacks, security problem which is associated with migration gained more significance and EU's migration policies were shaped accordingly. Those terrorist attacks have led the EU to deal with such threats at the EU level which was previously dealt with under the competencies of national sovereignty of EU member states, and the EU activated the third pillar of the Union (Justice and Home Affairs), which also means the 'Europeanization' of the national security concept. (Özcan and Yılmaz 2007, p.99).

As a consequence of the securitization of migration, in its fight against irregular migration, the EU adopted two distinct strategies. The first one is the preventive approach

[1] United Nations Statistics. Retrieved, February 15, 2014, from http://esa.un.org/unmigration/TIMSA2013/migrantstocks2013.htm
[2] Eurostat Statistics. Retrived Feb, 16, 2014, from http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/immigration/migration-in-eu-infographic_en.pdf
[3] European Commission. Retrieved Februaary, 16, from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/irregular-immigration/index_en.htm

which sought to eliminate the factors encouraging the migrants to travel to the EU. It addresses the root causes of migration through development assistance, trade, foreign direct investment or foreign policy instruments, and proposals to promote so called reception in the region, support refugee protection in the source countries. The second approach is the externalization of the migration control, which in turn involved two main components. The first one is the exportation of classical migration control instruments to third countries outside the EU. The strict border controls, measures to combat illegal migration, smuggling and trafficking, and capacity building of asylum systems and migration management in transit countries are main instruments of this way. The second element of externalization targets to facilitate the return of illegal migrants to their country of origin or third countries, of which main instrument is readmission agreements (Boswell, 2003).

This externalization policy has led many discussions as they contravene with the EU's role as a global actor which promotes fundamental rights. European Union, as an ideologically liberal entity, is known as an international actor with a normative power.

The EU defines Europe as the continent of humane values, liberty, solidarity, and diversity, and states that European Union's one boundary is democracy and human rights. (European Council, 2001). This value based approach is repeatedly emphasised by the European Council and the Commission. Moreover, Article 2 of the Treaty on European Union consolidated by the Treaty of Lisbon (TFEU) affirms that 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.' However the EU faces a dilemma in the issues of migration and asylum between the ideals it is aiming to represent, and its security (Kirişçi 2003, p.79, Tokuzlu 2007, p. 3). Within this context this study aims to examine the compatibility of readmission agreements, which is the main instrument of the externalzaiton policy, with the human rights obligations and to what degree the refugee rights are considered while negotiating and implementing EU readmission agreements through Turkish Case.

Methodology

The methodological focus of the study is qualitative, two data collection and analyzing methods are used. First the secondary analysis of the existing studies, documents and statistics and second the case study of Turkey. Since there is not an effective monitoring system of readmission agreements, and due to the parties' unwillingness to share statistics on the returns applied by readmission agreements, in this study mostly the NGOs' reports are analysed in

order to be able to answer the question whether human rights may be violated by the readmission agreements.

And secondly Turkey is chosen as a case study in order to be able to analyse to what extent the contracting parties are concerned about the refugee rights while concluding readmission agreemenrts and to what extent the values are embedded in the readmission agreements. The reason behind this preference is principally the geopolitical importance of Turkey. As a transit country at the junction of the Europe, Middle East and Africa, Turkey is one of the main transit routes for the irregular immigrants migrating from the countries such as Pakistan, Iraq, Iran and Afghanistan which are not respectful to human rights. Accordingly the potential implications of a readmission agreement between the EU and Turkey on protection seekers are highly important and to what degree Turkey is a safe country for them worth to examine.

In order to refrain from being too extensive, in this study securitization theory which is highly discussed in the migration frame has not been questioned and the emphasis has been given to the externalization of migration as a consequence of the securitization of migration.

Content of the Thesis

This thesis consists of five chapters including an introduction and a conclusion chapter. After the aim, methodology and the content of the thesis is explained in the introduction chapter, the second chapter is primarily written to provide an understanding of the EU's externalization policy in order to fight against irregular migration, an area which EU's policy is highly criticized for contravening with its role as a promoter of the human rights.In this chapter the EU's policy dilemma in values and security will be touched upon, as well. Moreover in the second chapter As a tool of externalization policy, the development of the EU readmission agreements will be explained. In the third chapter, the refugee rights put at stake by the readmission agreements and how they are protected by the international and EU law will be explained and the compatibility of the readmission agreements with those rights under protection will be questioned. In the fifth chapter through Turkish case study, to what degree the contracting parties are concerned about refugee rights while negotiating and implementing readmission agreements will be examined In the conclusion Chapter the findings of the thesis will be evaluated.

CHAPTER 1
IRREGULAR MIGRATION AND READMISSION

1.1 Theoretical and Analytical Framework

In order to make a healthy evaluation of readmission agreements it is important to look at the theoretical framework of the EU Asylum and Migration policy and accordingly the EU's externalization policy of which main instrument is the readmission agreement.

In today's world of growing security concerns, Western democracies are increasingly caught between political and security pressures to effectively control their borders one side, and their global market and rights-based norms on and on the other (Lahav 2003, p.89). When EU Asylum and migration policy is taken into consideration under a theoretical framework, it can be said that in general terms it is shaped around two naturally conflicting frames: the 'realist' frame of internal security and the 'liberal' frame of human rights (Lavenex 2001, p. 25).

The realist frame, which considers the political and economic determinants of international migration, emphasizes that states retain the sovereign right to determine the criteria for admission into their territory, therefore, undermines the importance of immigrants' rights (DeLaet 2000, p. 6). Within the realist frame no distinction is made between different cross-border movements: illegal immigrants, asylum seekers and refugees, they are all evaluated as third-country nationals whose entry into the state's territory must be controlled for the sake of internal security and stability rights (Lavenex 2001, p. 26). Unlike realist frame, the liberal frame follows a humanitarian perspective, which focuses on the individual and human rights norms. In terms of the refugees, liberal frame underlines their right to receive protection and to have access to equitable asylum procedures. To achieve an ideal immigration regime, one state must find the balance between realist and liberal regimes; otherwise too much liberalism might lead to control deficits and thus undermine state sovereignty and, ultimately, internal security; on the other hand, too much emphasis on control might undermine international human rights norms and the liberal principle of freedom of movement (Lavenex 2001, p. 26).

The liberal economic policies of the EU can be witnessed during the Cold War. The policies on the freedom of movement were shaped around a liberal ideology. At that period of time economic gains achieved from migration had as vital importance as the gains from trade

(Rudolph 2006, p.5). Accordingly in the 1950s and 1960s many bilateral agreements were signed for "guest worker" programs to achieve economic growth. After the economic growth of 1950s and 1960s, some problems associated with the guest worker program started. Within time, those temporary guest workers settled down and brought their family members to Europe (Rudolph 2006, pp. 104-105) subsequently, they began to be a part of the society and demanded social rights which caused societal concerns about the immigrants and the security concerns came to the stage. When the numbers of refugees increased in the early 1970s in developing countries, the demand in the labour market decreased and states started to introduce a range of measures to limit or manage immigration and refugee flows into their territories (Haddad 2008, p. 168; Boswel 2003, p. 619). In that period, we observe a shift from the liberal frame to the realist frame; the permissive immigration policy of 1950-60s motivated by the economic concerns leaves its place to a more restrictive policy motivated by the security concerns. With the collapse of the Berlin Wall and the disintegration of the Soviet Union, Western Europe faced with a threat of mass uncontrolled migration from Eastern Europe and the former Soviet Union. Migration which was previously a matter of 'low politics' became a concern of 'high' politics and security. This reflected broader changes in the European security agenda (Collinson 1996, p.76). However, the real security concerns came to the stage after in post 9/11 period. After the terrorist attack, the non-citizens were viewed as risky and suspicious since asylum application and economic migration were potential ways into the west for terrorists (Bosworth and Guild 2008, p. 708) Immigration became from being a civilian management issue to a politicized hard security concern (Rudolph, 2003:603). In such securitized environment, the distinction between irregular migrants, asylum seekers and refugees was hard to distinguish and they were all framed under the border control and national sovereignty. (Boswell 2003, p. 621; Huysmans 2000, p.755) Accordingly, the EU asylum law has also faced the challenge of finding a balance between the international refugee law and international human rights law resulting from the anti-immigration attitudes of the securitized post 9/11 world (Gondek, 2005:188). In this highly securitized environment the EU started to apply more restrictive migration policy through tighter border controls, increased visa requirements, carrier sanctions, accelerated return procedures, employer sanctions, labour enforcement, detention and removal of criminal aliens, changing benefits eligibility, and computer registration systems (Lahav 2003, p.89)

Restrictive migration policies resulted in a number of negative effects in other policy areas: reduced supply of workers needed in labour, tension on race relations; and strain with migrant-sending countries. Due to those negative effects, the EU has looked for an alternative

migration policy and has introduced some tools to externalize the migration control to the sending and transit countries through cooperation. This area of cooperation with third countries has become known as the 'external dimension' of EU cooperation in justice and home affairs (JHA) (Boswell 2003, p.619). The reflection of this cooperation with sending and transit countries is twofold on the migration policy of the EU. These two ways of migration control explained by many scholars under different terms: basicly one is the "preventive" approach and the second one is the "externalization" approach (Boswell, 2003; Collinson, 1996, Gammeltoft- Hansen, 2006; Lavenex, 2001, Lavenex and Uçarer, 2002; Castles, 2010; Brochman and Hammar, 1999).

The 'preventive' approach which sets liberal goals to cope with migration is designed to change the factors which influence people's decisions to move, or their chosen destinations. Measures under this category include attempts to address the causes of migration and refugee flows, or to provide refugees with access to protection nearer their countries of origin. Preventive approaches involve deploying a rather different range of tools to increase the choices of potential refugees or migrants: development assistance, trade and foreign direct investment, or foreign policy tools (Boswell 2003, p. 619) Shaped by a more humanitarian perspective, preventative approach depends on the elimination of the factors which cause immigration and copes with the migration through improving the living conditions in the country of origin aiming to prevent their passage to Europe (Bendel 2007, p. 43). Although prompted by the commission and supported by the international and non-governmental organisations, they failed to gain the support of the national governments (Sterkx 2008, p.135) The second approach is the externalization of the migration control to the third countries. The externalization of migration control has two components. The first one is to transfer the classical migration control instruments to third countries; border control, smuggling and trafficking, measures to combat irregular migration and capacity building of asylum systems and management of migration in transit countries (Boswell 2003, p.622). The second component is the facilitation of the return of irregular migrants to third countries of which main instrument is the readmission agreements and safe third country rule (Collinson, 1996, p. 83, Boswell 2003, p.636).

In the literature this externalization policies are highly criticized for shifting the burden of control on to migrant sending countries and transit countries that do not have the equipment to deal with these problems (Lavenex & Uçarer, 2002, p.8; Boswell 2003 p. 636). Subsequently, The externalization policies of the EU resulted in raising some questions about their impact on fundamental rights.

In order to fight against irregular migration, readmission agreements have been used for a long time at either national, or intergovernmental or the EU level (Cassarino, 2010, p. 12). While contracting parties are obliged to admit their own citizens under international law, there is not any obligation to readmit non-nationals. Accordingly returns of people to third countries are put on a legal basis through readmission agreements. Besides economical immigrants who enter the EU in an irregular way, asylum seekers and stateless people who are denied the refugee status may be sent back to their country of origin and third countries via readmission agreements. Behind the readmission agreements lays the externalization policy which aims at transferring the responsibility of asylum seekers to the third countries (Trauner and Kruse, 2008, p. 16).

1.2 Historical Overview of Readmission Agreements

Readmission policy is not a new concept; they are actually one of the oldest instruments employed by Member States to control migratory flows. (Bouteillet 2003, pp. 359–377). The origins of readmission agreements go back to seventeenth century on which the unwanted individuals were expelled without any cooperation with other states, however the traces of today's readmission agreements date back to the nineteenth century (Coleman, 2009, pp. 12-14). Many bilateral agreements were signed from the early nineteenth century until the Second World War to deal with the readmission of persons, who were displaced during the war. A characteristic of the conclusion of readmission agreements during this period is that it served primarily to enable the expulsion of undesirable persons to their countries of nationality, or former nationality (Coleman, 2009, p. 11).

The fight against migration flows gained significance in the middle of 1950's and the conclusion of readmission agreements for the purpose of regulating migration flows started (Coleman, 2009, p. 11). Since the internal borders of EU have not yet been abolished, those earliest generation of readmission agreements addressed the irregular movement of persons between European States in the pre-schengen area instead of with the third countries (Bouteillet- Paquet 2003, p.362). At that period of time migration was not perceived as a problem, therefore the conclusion of readmission agreements was not considered quite as essential as it would from the early nineties onwards (Coleman 2009, p. 16).

With the abolition of the Berlin Wall in 1989 and opening of the borders with the Central Eastern European Countries (CEEC), the CEEC's served increasingly as a transit road for illegal immigration from Eastern European countries and the Soviet Union. Accordingly the EU which lifted the internal borders in accordance with Schengen Convention started to

sign second generation of bilateral agreements with CEECs (Roig & Huddleston, p. 367). The main objective of the second generation of readmission agreements was to create a "cordon sanitaire" along the EU' eastern border through bilateral readmission agreements covering nationals and non nationals (Crepeau 1995, p. 285).

The inclusion of non-nationals was imported to the next set of readmission agreements with all third countries, known as the third-generation readmission agreements. (Roig and Huddleston 2007, p. 368) Until today, many readmission agreements both at the national and EU level were signed with third countries which are countries of origin or transit. In the last two decades as an important instrument to combat with irregular migration, readmission agreements gained more importance and a common readmission policy was embedded in the European Immigration policy.

The beginning of a policy at the EU level regarding the readmission of third country nationals dates back to early nineties. This early common policy concentrated on the conclusion of bilateral readmission agreements by the Member States with third countries. In the early 1990s through some policy papers the foundations of a common readmission policy was laid. In 1991, the Commission adopted Communications "on immigration" and on "the right of asylum". The Communication on immigration was the first call for a common readmission policy (Coleman 2009, p. 19).

In 1994 to facilitate the readmission of third country nationals to their country of origin, the council adopted an EC specimen agreement to be used by a member state wished to establish a common readmission agreement with a third country. Yet, it was not until 1999 that the EU gained competence to conclude readmission agreements at the EU level (Roig and Huddleston 2007, p. 368). With the Treaty of Amsterdam came into force in May 1, 1999, EU gained competence to conclude readmission agreements and the Treaty of Lisbon in December 2009 reaffirmed in a more explicit and unquestionable manner the shared competence of the Union in the field of readmission. Art. 3 and 4 of the Treaty on the Functioning of the European Union (TFEU) respectively list the areas of exclusive and shared competences.

Art. 79 of TFEU, which amended Art. 63(3) of the TEC, clarifies in points 2(c) and 3 the competence of the Union in the field of readmission:

Art 79, § 3 TFEU reads:

"The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States". With the new competence in mind, the Tampere Summit Conclusions, October 1999, called on the Council to integrate either readmission clauses covering nationals into cooperation agreements or conclude readmission agreements with third countries or a group of third countries.[4] Moreover The European Pact on Migration and Asylum, which was adopted by European Union heads of state and government at the European Summit of October 2008, endorses and recommends the conclusion of readmission agreements by the European Union. More recently, through the "Stockholm Programme adopted in December 2009, EU reiterated the significance of the readmission agreements as an important element in European Union migration management and stressed that the Council should define a renewed, coherent strategy on readmission on that basis, taking into account the overall relations with the country concerned, including a common approach towards third countries that do not co-operate in readmitting their own nationals". [5]

Since the adoption of the Treaty of Amsterdam (ToA), which empowered the European Commission to negotiate and conclude EU readmission agreements with third countries, so far Agreements with with Russia, Morocco, Pakistan, Sri Lanka, Ukraine, the Chinese Special Administrative Regions of Hong Kong and Macao, Algeria, Turkey, Albania, China, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Bosnia-Herzegovina, the Republic of Moldova, Georgia, Cape Verde, Belarus, Armenia, Azerbaijan, and Turkey has been concluded.[6]

[4] European Council, *Presidency Conclusions*, Tampere, SN 200/99, 15-16 October 1999 (paragraphs 26 and 27).
[5] European Council, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ C 115, 4.5.2010, p. 34.
[6]The information Retrieved, May 16, 2014, from http://eur-lex.europa.eu/search.html?qid=1401788810144&text=readmission%20agreement&scope=EURLEX&type=quick&lang=en&DTS_SUBDOM=INTER_AGREE

CHAPTER 2
HUMAN RIGHTS CONSIDERATIONS ASSOCIATED WITH READMISSION AGREEMENTS

> *No one knows the numbers who have died trying to get to Europe. No one knows the number of people who have died after seeking and being denied asylum at the European borders. No one knows the numbers who have died at the hands of officials of their own countries on being returned as rejected asylum seekers from Europe* (Abell 1999, p.80).

Each year thousands of people flee from war, persecution or ill treatment try to reach Europe. Because those vulnerable people mostly do not have valid travel documents, they try to reach their destinations through irregular ways, mostly at the hand of smugglers, at the cost of their lives. In 2013 the number of the asylum applications to the EU was 436.715. This equals to 43% of the total asylum applications in the world.[7] Those are the ones who are lucky enough to be able to claim for asylum. There are also others who are pushed back at the borders without being able to ask for asylum, or who are retuned without their asylum claims investigated properly and sadly the ones who die on their way. Obviously the EU is not in favour of being destination of these people, one can clearly observe this through EU's migration and return policy

When it is taken into account that there is an obligation for states to readmit their own citizens (Article 13 of 1948 UN Universal Declaration of Human Rights) but not to admit or readmit non-nationals to their territory (Coleman 2009, p. 225, Bouteillet – Paquet 2003, p. 362) the importance of readmission agreements for a credible return policy becomes clear.

Although the readmission agreements are not more than a tool for facilitating the return of the irregular migrants to their country of origin or a safe third country, there are basically two approaches in the literature: the first one focuses on the neutrality of the readmission agreements and the second focuses on the risk created by the readmission agreements for the refugee rights violations. Accordingly in this chapter, first refugee rights (the right to seek asylum and non refoulement) will be examined and second, the compatibility of readmission agreements with these obligations will be questioned.

[7] Eurostat Statistics.

2.1 International Human Rights Obligations with Respect to Refugee Rights

Within the European context (at least in 28 EU Member States of the 47 Council of Europe Member States), there are four main legal regimes for the international protection of asylum seekers and refugees:

- the 1951 Geneva Convention relating to the Status of Refugees (the Geneva Convention) and its 1967 Protocol
- the law of the European Union (EU law)
- the 1984 United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its protocols

Additionally, there are many various UN human rights treaties8 deal with asylum issues (Mole and Meredith 2010, pp. 8-9) but they do not utter a special importance for this study. In this section how right to seek asylum and non-refoulement principle which are claimed to be open to violations via readmission agreements will be identified

2.1.1 The Right to Seek and Enjoy Asylum

The right to seek and enjoy asylum has been explicitly protected by the Universal Declaration of Human Rights (UDHR).[9]

Article 14 of the UDHR reads that:

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Grounded in the UDHR Article 14, the right to seek asylum is a fundamental right recognised in the 1951 Geneva Convention relating to the Status of Refugees. The Geneva Convention Article 1A (2) defines a refugee 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..."

[8] 1996 international Covenant on Civil and Political Rights (ICCPR) and 1948 Universal Declaration of Human Rights (UDHR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1989 Convention on the Rights of the Child (CRC), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD)

[9] http://www.un.org/en/documents/udhr/index.shtml#a14

Charter of Fundamental Rights recognizes the asylum right with a reference to the 1951 Geneva Convention.

Article 18 of the EU Charter of Fundamental Rights states that:

"The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union".

Right to seek and enjoy asylum cannot be found in other general instruments of international human rights law such as ICCPR or ECHR. When those instruments were drafted the 1951 Geneva Convention relating to the Status of Refugees was thought to constitute a lex specialis which fully covered the need (Mole 1997, p.5).

Although above instruments recognize the right to seek and enjoy asylum as a fundamental right, they neither deal with the question of admission, and nor oblige a State to accept a protection seeker as a refugee status, or provide for the sharing of responsibilities (Goodwin-Gill 2008, p. 8). Moreover, the right to seek asylum which is understood as a procedural right is mostly hindered by the preventive procedures of the EU (Gammeltoft-Hansen, T & Gammeltoft-Hansen, H. 2008, p. 448).

When it is taken into consideration that individuals who wish to seek asylum within the EU are primarily nationals of countries requiring a visa to enter the EU and these individuals often do not obtain an ordinary visa, they may have to cross the border in an irregular manner. What is often termed the externalisation of border control in reality becomes a countermove to the right to an asylum process, as it denies the asylum seeker access to the procedural door. Various measures have been tabled in recent years in an attempt to replace the right to an asylum process in Europe with asylum procedures outside the EU and protection in host states closer to the country of origin (Gammeltoft-Hansen, T & Gammeltoft-Hansen, H. 2008, p. 448).

Namely it can be concluded that although right to seek and enjoy asylum is a fundamental right recognized in the international law, not all asylum seekers able to manage to access this right due to the externalization policies of the states.

2.1.2 Non-Refoulement Principle

Although there is not a direct obligation for states to admit asylum-seekers at the frontier or to grant asylum, once an asylum-seeker arrives at the frontier and asks for protection states have to examine the asylum applications and these states are bound by international law to protect the people against refoulement.

The principle of *non-refoulement*, which simply means no one should be returned to any territory where he or she is likely to encounter persecutions, is an inherent part of asylum and of international refugee law (Hansen 2011, p. 44). Arising from the right to seek and to enjoy asylum from persecution, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. In case of a potential return of a refugee to persecution or danger, these and other rights are threatened (UNCHR, 1997). Therefore, the history of this principle should be traced back to the emergence of the asylum notion. However, since states have been reluctant to restrict their sovereign rights on controlling entry or removal of persons, establishment of the principle of non-refoulement as a rule of international law is relatively recent (Tokuzlu 2006, p.7).

2.1.2.1 Non-Refoulement in International Law

1951 Convention Relating to the Status of Refugees[10] is the first instrument to deal specifically with the protection of refugees worldwide. The convention can be regarded as the historic cornerstone of protection from refoulement. At the universal level the most important provision in this respect is Article 33 (1) of the 1951 Convention relating to the Status of Refugees, which states 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.*

It can be said that the non-refoulement principle guaranteed by the Geneva Convention is limited to persons whose status is determined as refugee.

[10] 1951 Convention Relating to the Status of Refugees. Retrieved, February 15, 2012, from http://www.unhcr.org/pages/49da0e466.html

The 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[11] (CAT) is another International Human Rights Instrument, which includes the principle of the non-refoulement explicitly. Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment deals with non-refoulement and states that:

> *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.*

It provides protection against persecution and prohibits the return of applicants to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture. Contrary to 1951 Convention relating to the Status of Refugees, the Convention Against Torture's non-refoulement protections can be applied to anyone, regardless of his or her past activities. The Convention Against Torture is sometimes criticized for failing to include the risk of cruel, inhuman or degrading treatment as prohibiting refoulement , and only makes reference to the instance of torture (Harden & Sandusky,1999, p.9).

Article 13 of the International Covenant on Civil and Political Rights [12](ICCPR), which deals with refoulement states that:

> *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.*

The article does not mention refugees explicitly and only refers to aliens 'lawfully' within a state. Therefore the scope of the protection can be regarded as limited.

Article 7 of the ICCPR is also relevant as it protects against torture:

> *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.*

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[11] The 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved February 17, 2012 from http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a3bd1b89d20ea373c1257046004c1479/$FILE/G0542837.pdf

[12]The International Covenant on Civil and Political Rights. Retrieved February 17, 2012, from http://www2.ohchr.org/english/law/ccpr.htm adres

Although in the Covenant non-refoulement is not explicitly mentioned, the Human Rights Committee, in its interpretation of Article 7, accepts the principle of non-refoulement and rejects the possibility that state parties could ' 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: 382).

2.1.2.2 Non Refoulement in the European Context

European dimension of non-refoulement principle can be assessed within two context; one under European Union law and second under the Council of Europe .

2.1.2.2.1 Non Refoulement Under EU Law

Under the EU Law, non refoulement principle takes place in TFEU Article 78, Charter of Fundamental Rights Article 19, and in Qualification Directive.

TFEU Article 78(1) 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.

Moreover Article 19 of the Charter of Fundamental Rights states 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.

The third instrument which regulates non-refoulement is the Qualification Directive which brings into EU law a set of common standards for the qualification of persons as refugees or those in need of international protection. It includes the rights and duties of that protection, a key element of which is *non-refoulement* under 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.

However, neither Article 33 of the 1951 Geneva Convention nor Article 21 of the Qualification Directive prohibits refoulement for everbody. The articles allow for the removal

of a refugee in very exceptional circumstances, namely when the person constitutes a danger to the security of the host state or when, after the commission of a serious crime, the person is a danger to the community (FRA, 2013).

2.1.2.2.2 Non Refoulement Under Council of Europe

Council of Europe has a significant role through numerous authoritative recommendations and resolutions of the Committee of Ministers and of the Parliamentary Assembly as well as treaties adopted within its domain (Tozuklu, 2006: 193). Even though through Council of Europe's recommendations some achievements are held, the Council of Europe's hard-law instruments; the European Convention on Human Rights and its Protocols, European Agreement on the Abolition of Visas for Refugees, European Agreement on Transfer of Responsibility for Refugees, the European Convention on Extradition and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment appeared to be more effective in consolidating the prohibition of refoulement directly or indirectly. However, among those treaties, the *Convention for the Protection of Human Rights and Fundamental Freedoms* turned out to be the most important instrument both as a standard setting and monitoring instrument (Tozuklu, 2006, p. 196).

Although the European Convention for the Protection of Human Rights and Fundamental Freedoms does not contain any specific provision with respect to asylum right and non-refoulement, many articles of the convention can be a matter of non- refoulement. As analysed by Tozuklu, 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 deal with the non-refoulement principle (2006). However, although not mentioned its relevance to non-refoulement principle, Article 3 of the Convention gained a significant importance through case law of European Court of Human Rights regarding non-refoulement.

Article 3 of the European Convention provides that:

> *"No one shall be subjected to torture or to human or degrading treatment or punishment."*

Unlike the provisions in the 1951 Refugee Convention, Article 3 of ECHR is free from exceptions and the protections and applies to everyone, not simply to those who meet the Refugee Convention's definition of a 'refugee '. There is a common view that Article 3 of the European Convention offers individuals more protection from refoulement than Article 33

of the 1951 Refugee Convention in the area of human rights. (Duffy, 2008, p. 378). Based on Article 3, the European Court of Human Rights have developed a body of case law which has become a strong safeguard against any kind of forced removal of persons who fear that they will be tortured or ill-treated if returned to their home countries (Harden & Sandusky,1999, p.9)

2.1.3 Soering v. United Kingdom

Soering v. United Kingdom[13] case is a cornerstone regarding refoulement prohibition since the question of non-refoulement reached the European Court of Human Rights for the first time in 1989 with Soering v. United Kingdom Case (Harden & Sandusky, 1999, p. 28). Jens Soering is a German citizen and accused of murdering his girlfriends' parents in the State of Virginia in the United States in March 1985. He fled to England where he was arrested and prisoned in July 1986. The U.S. Government requested Soering's extradition under the terms of the Extradition Treaty of 1972 between the United States and the United Kingdom Meanwhile UK requested an assurance that death penalty will not be imposed or, if imposed, will not be executed. This assurance was transmitted to the United Kingdom Government under cover of a diplomatic note on 8 June 1987.[14] However arguing in case of an extradition, there is a serious likelihood that he would be sentenced to death; further, regarding the "death row phenomenon" he would be subjected to inhuman and degrading treatment and punishment, Soering invoked Article 3 of the ECHR before the European Court of Human Rights.[15],[16].

In response, The court of Human Rights decided that:

The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3 (art. 3). It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for

[13] Soering v. United Kingdom. Retrieved March 05, .2012, from http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b6fec
[14] Soering v. UK, para. 1-20.
[15] Ibid, para. 76.
[16] Article 6 and 13 are also invoked by the applicant but as they do not have importance regarding this study, they will not be focused.

> ***believing*** *that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not* ***explicitly*** *referred to in the brief and general wording of Article 3 (art. 3), would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by* ***a real risk of*** *exposure to inhuman or degrading treatment or punishment proscribed by that Article (art. 3).*[17]

The outcomes of the decision are highly important for the protection against refoulement. First of all an absence of explicit reference does not exclude the possibility that responsibility under Article 3 for extradition of a person and extends the prohibition of extradition to "inhuman or degrading treatment" proscribed by Article 3. A state would be in violation of its obligations under the ECHR, if it extradited an individual to a state where that individual **was likely to suffer** inhuman or degrading treatment or torture. Here the Court emphasis that even though the torture or degrading treatment is not certain, if there is a potential of danger being subjected to torture, extradition cannot be accepted.

Furthermore, the Court introduces the **"real risk**" criterion for assessing the likelihood of treatment proscribed by Article 3 in the receiving State. For a violation of Article 3, the existence of a real risk of exposure to inhuman or degrading treatment or punishment is pre-condition.

The last but not least, the Court decided that an extraditing State party incurs liability under Article 3 "by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment".

> *[...]The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (art. 3) of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.* [18]

[17] Soering v. United Kİngdom, para. 88.
[18] Soering v. United Kingdom, para. 91

As mentioned by Coleman, this basis for responsibility under Article 3 is independent of whether the receiving State is party to the European Convention of Human Rights. The potential maltreatment need not necessarily be a violation as such within the jurisdiction of the receiving State itself. It is important that the inhuman treatment would have been illegal under the terms of Article 3 ECHR, if it occurred within the jurisdiction of the extraditing State. Moreover, the Court requires a casual link between the decision to extradite and the exposure to maltreatment. (Coleman, 2009, pp. 258-259).

Consequently the Court decided that it would be infringement of Article 3 ECHR, if decision to extradite Soering to the United States of America being implemented. So, United Kingdom wanted political assurance from USA that the applicant will not be subjected to the inhuman treatment. Even though USA was not eager to give assurance in the beginning, asuured that the applicant will not be charged with death penalty and will not exposure to ill treatment and the applicant was extradited to USA.

Moreover, the Court of Human Rights in its Soering judgement establishes the principle known as Soering Principle;

> *"no State Party shall ... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture".*[19]

Soering case is very important since it has drawn the frame of the non refoulement principle under European Convention on Human Rights. Another important decision which broadens the scope of the non-refoulement is the Cruz Varas v. Sweden Case.

2.1.4 Cruz Varas v. Sweden

The applicants of the Cruz Varas v. Sweden[20]case are Chilean citizens Hector Varas, his wife Mrs Magaly Maritza Bustamento Lazo (the second applicant) and their son Richard Cruz, born in 1985 (the third applicant). The applicant Hector Varas, who seeks asylum came to Sweden in 1987 and following his entrance to the country, his wife and son entered to Sweden in 1987, but the Board rejected the applicants' requests for declarations of refugee status and travel documents. Moreover, the Board considered that the applicants had not invoked sufficiently strong political reasons to be considered as refugees under Section 3 of the Aliens Act or the 1951 Geneva Convention relating to the Status of Refugees. In 1988 the applicant once more applied for asylum with new reasons but he was rejected second time. As

[19] Ibid, para. 88.
[20] Cruz Varas v. Sweden, Applicaiton no. 15576/89 (1991)
Retrieved 15.02.2012, from: http://www.unhcr.org/refworld/country,,ECHR,,CHL,,3ae6b6fe14,0.html

a result of ongoing procedures, in 1989 the Board decided not to stop the expulsion and on the same day Mr Cruz Varas was expelled to Chile. His wife and son, however, went into hiding in Sweden. [21]

The applicants alleged that the expulsion of Mr Cruz Varas to Chile constituted inhuman treatment in breach of Article 3 (art. 3) of the Convention because of the risk that he would be tortured by the Chilean authorities and because of the trauma involved in being sent back to a country where he had previously been tortured. The Court acknowledged that the treatment the applicant was subjected to in Chile before he came to Sweden was contrary to Article 3. Nevertheless, the Court found that at the time of expulsion there were no substantial grounds for believing that Mr. Cruz Varas faced a real risk of being subjected to treatment proscribed by Article 3. In rejecting Mr. Cruz Varas' claim, the Court relied on the changed political situation in Chile and noted that by the time of expulsion in October 1989 there were important improvements in the restoration of democracy and respect for human rights. The Court has also held that the general situation in the country of return, even if massive violations of human rights are reported, does not in itself give rise to a claim under Article 3. The applicant must always show the circumstances which put him or her individually in danger of ill-treatment.[22] Accordingly, in Cruz Varas judgement, the Court reaffirmed the principles arose from Soering judgement. Another importance of the case is that with Cruz Varas Case the concept of the non-refoulement principle was extended to the Asylum and Refugee context.

2.1.5 Chalal v. United Kingdom

The terrorist attacks on the World Trade Centre in 2001 caused the need for finding solutions for the security deficit and industrialized countries started to question the absolute nature of protection with regard to non refoulement cases where deportation of terrorists are concerned (Tozuklu, 2006). Chalal v. United Kingdom[23] case is one of them.

The applicant was an Indian national who came to UK in search of employment with illegal ways, but his stay in the UK was later regularized under a general amnesty for illegal entrants. On 1 January 1984 Mr Chahal travelled to Punjab with his wife and children to visit relatives. He also became involved in organising passive resistance in support of autonomy for Punjab. On 30 March 1984 he was arrested by the Punjab police. He was taken into

[21] Cruz Varas v. Sweden, para. 12-33.
[22] Ibid, para. 80-82.
[23] Chahal v. United Kingdom, Application no. 22414/93 (1996). Retrieved March 10, 2012, from http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=chahal&sessionid=89943977&skin=hudoc-en

detention and subjected to inhuman treatment there. After twenty-one days he was subsequently released without charge. He was able to return to the United Kingdom on 27 May 1984. Chahal had been politically active in the Sikh community in the UK and on his return as he continued his activities; he was arrested on several occasions and was convicted and served concurrent sentences of six and nine months. On 14 August 1990 the Home Secretary decided that Mr Chahal ought to be deported because his continued presence in the United Kingdom was unconducive to the public good for reasons of national security and other reasons of a political nature, namely the international fight against terrorism. A notice of intention to deport was served on 16 August 1990. Mr Chahal claimed that if returned to India he had a well-founded fear of persecution within the terms of the United Nations 1951 Convention on the Status of Refugees and applied for political asylum on 16 August 1990 but The Home Secretary refused the request for asylum. Until 1996 the procedures in the domestic law went on and on 25 March 1996 the applicant complained that his refoulement to India constitutes a violation of Article 3 ECHR.

In Chahal Case, the Court firstly affirmed that where a person involved in terrorist activity is not a citizen, one possible option is deportation (UK Position Paper, 2011).

> *[...] Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention,* ***to control the entry, residence and expulsion of aliens****.[...].*[24]

However, as mentioned in the paragraph above, an individual's deportation must be compatible with the Country's domestic and international human rights obligations, in particular Article 3 of the European Convention on Human Rights (ECHR)

Then, the Court reaffirmed its judgement in Soering Case that the prohibition of refoulement is absolute and went on further:

> *The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct.*

Bearing in mind that the terrorist violence the modern world face, the Court decided that protection against torture or inhuman or degrading treatment or punishment is absolute even in times of national emergency.

[24]Chahal v. United Kingdom, para.73.

> *[...] Article 3 (art. 3) makes no provision for exceptions and no derogation from it is permissible under Article 15 (art. 15) even in the event of* ***a public emergency*** *threatening the life of the nation [...]*

The last but not least, the Court decided that where substantial grounds have been shown for believing that the deportee would be at risk, his **conduct** cannot be a material consideration for the Court.

> *[...]In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration...*

However, the judgement is rigorously criticized by the Migration Watch UK that not only does this judgement prevent the deportation of terrorists and other criminals but it also acts as a positive encouragement for them to come to Britain - safe in the knowledge that they can never be returned to their own countries.

Namely The European Court of Human Rights (ECtHR) in Chahal v UK established the following important principles: States have the right to control the entry, residence and expulsion of aliens; however under Article 3, states have an unqualified duty not to remove a person where they have substantial grounds for believing that there will be a real risk of inhuman treatment; this obligation is absolute in the sense that there is no balance to be struck between the public interest served by the removal and the degree of likelihood that the real risk will materialise (UK Position Paper, 2008).

The last but not least, In Chahal judgement the Court concluded that Article 3 of the Convention has a wider scope than Article 33 of the Refugee Convention. It could be said that although not universally applicable, the European Convention offers more protections from refoulement than the Convention Against Torture, as it also regards refoulement to face cruel, inhuman or degrading treatment in violation of Article 3 (Duffy, 2009, p. 379).

Although there is not any explicit reference to non refoulement, as developed under the ECtHR case law, the European Convention on Human Rights provides an absolute protection against refoulement under Article 3. And all member states and Turkey are bound by the ECHR to respect the non-refoulement principle. Accordingly any return, either through a readmission agreement or not, which is in breach of non refoulement is prohibited by ECHR.

2.2 Compatibility of Readmission Agreements with the International Obligations

The European Commission defines European Union readmission agreement as:

"*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*".

The same definition normally applies for bilateral readmission agreements, except that they do not involve the European Union. (Strik 2010, p.9)

Apparently readmission agreements do not aim at creating a legal basis for the return of the asylum seekers or refugees, but the return of the irregular immigrants. Countries have the right to expel those irregular migrants, as long as the expulsion is not in violation of the international human rights obligations. Those who advocate the neutrality and harmlessness of readmission agreements, especially the EU and national governments, claim that it is not relevant to ask whether readmission agreements are in conformity with human rights or not. If a human rights issue arises, this happens while the return decision is being taken, not through readmission agreement; therefore human rights concern should already have been taken into account when making the decision (Strik 2010, p. 11-12). These arguments are reiterated by Coleman, who has a broad study on readmission agreements. He argues that readmission agreements neither provide a legal basis for the rejection, nor the expulsion of protection seekers and he emphasises that readmission agreements are not more than a tool to facilitate the execution of an expulsion decision (Coleman 2009, p. 286). Accordingly it is not possible to talk about an incompatibility with international human rights obligations. So what is the reason behind the criticism raised mostly by the NGOs? As pointed out by Strik, different links in the chain cannot be isolated, and one has to see the process as a whole. Readmission agreements are a part of this whole, and should not be detached from it (Strik 2010, p. 7). That is to say, not only the agreement itself but also the decision and its impacts for the protection seeker should also be assessed within the frame of readmission agreements.

One of the main concerns is the absence of reference to refugees in the community readmission agreements. It causes the discussion that readmission agreements will let the removal of asylum seekers as unauthorised migrants to third countries (Coleman 2009, p. 224). As claimed by Hurwitz, there is not sufficient guarantee that the asylum seekers to be treated differently than any irregular migrant (Hurwitz, 71.)

European Commission in its evaluation report touches upon this concern as follows:

> *If the person in question has asked for international protection, the relevant EU asylum acquis provides that he/she is entitled to stay on the territory of a Member State until a decision on the claim has been issued. Only after a protection claim has been rejected, a return decision can be executed. A person having a valid international protection claim can never be readmitted since he/she could not be considered as illegally staying. International Human Rights instruments guarantee that no person may be removed from any Member State, if it would be against the principle of non-refoulement if in the recipient country, the person could be subject to torture or to inhuman or degrading treatment or punishment. In such cases no readmission procedure can be initiated and this is acknowledged by EURAs in what is called a 'non-affection clause' confirming the applicability of and respect for instruments on human rights (COM: 2011*).

However, what if a protection seeker may not find opportunity to claim for asylum due to the accelerated procedure? Or what if a Member state applies readmission agreement to send this person a third country assuming that he/she has pass through a safe third country and finds his/her application inadmissible? What if the readmitting countries are not safe enough for the protection seekers?

When it is taken into account that EU's externalization policy is the result of its unwillingness to accept immigrants and asylum seekers and to find a solution beyond its borders, and Member States are not always respectful to Human rights while taking return decisions, readmission agreements which facilitate the return process may also function as a catalyst for the enforcement of questionable decisions which are in dissonance with human rights and refugee law (PACE 2010, p. 12, Giuffre, 2013, p.3).

Human Rights Considerations with Respect to Readmission Agreements

Refugee rights may be jeopardized by a readmission agreement in two ways. One, due to the accelerated procedure, an asylum seeker may not find opportunity to claim for asylum and his or her/his return as an irregular immigrant may be in breach of non-refoulement principle, or second, a protection seeker's claim may not be investigated based on the safe third country policy. In both cases the right to seek asylum is put at stake and subsequently non-refoulement violations come to stage.

Under the accelerated procedure (i.e. at border-crossing points), the statement of a border officer suffices to provide evidence and readmit the person within two or three days. Taken into consideration that, protection seekers are the most vulnerable people fleeing from war, persecution or ill treatment, they mostly travel without proper documents such as a valid visa or passport and they automatically fall within the scope of irregular immigrants. This accelerated procedure may result in the return of those asylum seekers as irregular immigrant to his/her country of origin or a third country, which in breach of non-refoulement principle. Moreover it may prevent the authorities from carrying out a thorough examination of the person's personal history (Euro Mediterranean Human Rights network: 2012)

Another concern related to the readmission agreements is the expulsion of protection seekers to the so called safe third countries (Hurwitz 2002, p.5-6; Abell 1999, p.66; Lavenex 1999, pp. 77-78; Coleman 2009, p. 225).

As clearly indicated by the Commission:

> *Return could be aimed at the third country's own nationals, as well as other third country nationals for whom the third country has been or could have been a country of first asylum, if this country offers effective protection* (COM:2004)

Since transfer of responsibility for asylum seekers to another safe country does not find a legal basis in general international law, readmission agreements are commonly relied upon by the EU and its member states to obtain the necessary cooperation for readmitting third country nationals (Dedja 2012, p. 110, Giuffre 2013, p. 7).

Safe third country concept is basically determined under Directive on minimum standards on procedures in Member States for granting and withdrawing of refugee status (hereinafter procedures directive), which was adopted by the Council on 1 December 2005.[25] Namely, in accordance with Article 25 of the Procedures directive a member state may find an asylum application inadmissible if that protection seeker has used a safe third country on his or her way to the EU. It is obvious that without readmission agreements, third countries wouldn't accept those protection seekers to their territories. Accordingly, the EU has signed many readmission agreements with the third countries, however those countries are not always party to international conventions relevant to refugee protection, or do not meet the criteria of being safe third country (Coleman 2009, p. 224).

[25] OJL 326, 13 December 2005, p.13.

The procedures directive contains five safe third country exceptions. According to those exceptions an asylum claim may be inadmissible if another MS is responsible under the Dublin Regulation, Article 25(1); if the person have been granted refugee status in another MS, Article 25(2)(a); if the person enjoyed protection in a third country as a refugee, Article 25(2)(b); The most controversial exceptions pertain to safe third countries, Article 25(2)(c) in conjunction with Article 27 and European safe third countries, Article 36.

Within this study the most relevant exception is the Article 25(2)(c) in conjunction Article 27 which allows a MS to declare inadmissible the protection claims of persons for whom a safe third country (not a MS)can be identified.

According to Article 27(1):

(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.

These safety criteria reiterate the international refugee protection obligations of Article 33 of the Geneva Convention and Article 3 of the ECHR, however, it is very controversial that to what degree the so-called third countries are safety in fact.

As criticized by Abell, "... 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).

According to Coleman the literature often fails to draw the necessary distinction between safe third country policies and readmission agreements, he claims that safe third country policies are unilateral measures under national law while readmission agreements are treaties under general international law, accordingly each has a different function in the

expulsion of protection seekers to third countries and each stands in a different relation to international obligations of refugee protection (Coleman 2009, pp. 228-229). However, as opposed by Giuffre, nothing prevents EU member States from using readmission agreements to enforce safe third country policies. Accordingly asylum seekers can be subjected to readmission procedures as third country nationals transited through or resided in a "safe third country" (Giuffre 2013, p. 8). In my opinion as mentioned by Coleman readmission agreements are treaties under general international law but since they are implemented by the Member States after a decision taken at the national level, I agree with Giuffre: taken into consideration that there is not any safeguard against third country policy, there is not any reason for member states not to send the protection seekers back to transit third countries assuming they are safe countries.

Table 2.1 Annual Third Country Nationals Return Statistics in Europe[26]

Year	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
TCNs found to be illegally present	609665	577370	517165	483395	450595	404485
TCNs refused at the external borders	636330	500885	396115	344165	317170	318110
TCNs returned following an order to leave (total returns)	243665	252835	225435	198545	210415	176440
TCNs returned following an order to leave (to a third country)	212645	211810	201855	170945	180525	147925
TCNs ordered to leave	603410	594670	540095	507170	501790	404650

Source: Eurostat Statistics[27]

According to Eurostat, the number of third country nationals (TCNs) found to be illegally present in EU-28 is 386.225, the number of TCNs refused at the external borders is 317.845 and TCNs returned following an order to leave is 171.385 in 2013. You can also reach the number of the returns state by state; however, the reported data do not provide any information regarding; how many of them implemented through a readmission agreement,

[26] Date includes the returns from EU28 Member States, Iceland, Norway, Liechtenstein and Switzerland.
[27] The Statistics are available at: http://epp.eurostat.ec.europa.eu/portal/page/portal/product_results/search_results?mo=containsall&ms=third+country+nationals&saa=&p_action=SUBMIT&l=us&co=equal&ci=,&po=equal&pi=,

where those people are returned to, and whether the return was voluntary or forced. Accordingly the statistics provided by EU is not more than the numbers and does not make any sense for evaluating the readmission agreements. As criticized by Statewatch in 2002, the lack of a single report on what happens to migrants when they are sent under readmission agreement shows that the EU feels no responsibility for their lives. After the twelve years since the Statewatch's critique, today still there is not any reliable report prepared neither by the EU nor Member States. The fact that signatory parties of the readmission agreements are either unwilling to gather or release the statistics about the returns via readmission agreements, it is hard to talk about the direct violations raised or caused by the readmission agreements. However some NGO reports let us to evaluate the impacts of the readmission agreements on the refugee rights under protection of international law.

According to a report conducted by Human Rights Watch (HRW) evaluating the EU-Ukraine Readmission Agreement, Slovakia apprehended 978 migrants entering the country from Ukraine in 2008, 563 in 2009, and 203 in the first half of 2010. The vast majority of them deported to Ukraine: 691 in 2008, 425 in 2009, and 140 during the first six months of 2010. Although a readmission agreement has been signed between EU and Slovakia, since implementing protocols of the EU readmission agreement had not been finalized at that time, those returns are conducted under the bilateral agreements between Slovakia and Ukraine during the transitional period. Also some returns from Hungary to Ukraine are held in the same way. Hungary deported 425 migrants in 2008, 284 in 2009 and 164 in the first seven months of 2010. Both returns from Slovakia and Hungary took place under an accelerated procedure. According to interviews conducted with those people, they claimed that although they had asked for asylum, their claim has not been investigated and they had been swiftly expelled.[28] This is obviously an infringement of right to seek asylum. Moreover report reveals that the retuned asylum seekers subjected to mistreatments upon their return to Ukraine. They were tortured during interrogations in the custody of Ukraine's State Border Guard Service. The report also found that Ukraine's system was completely dysfunctional, unable to grant asylum to those found to be refugees.

More human rights violations caused by Slovakia and Hungary can be found in a research conducted by European Council on Refugees and Exiles (ECRE), accordingly three Somali nationals, one of whom was an unaccompanied minor, claimed they asked for protection in Hungary, but were readmitted to Ukraine. Two Vietnamese citizens readmitted

[28] For further information please see: Buffeted in the Borderland The Treatment of Asylum Seekers and Migrants in Ukraine : http://www.hrw.org/sites/default/files/reports/ukraine1210WebVersion.pdf

to Ukraine from Hungary alleged they were not provided with any information on asylum. Twenty Afghan nationals were readmitted from Slovakia to Ukraine, as well without being provided with any information on asylum. Some had been misled by the interpreters who said that if they signed certain papers they would be transferred to refugee facilities. Some unaccompanied minors stated that they are recorded as adults by the Aliens Police.

Those returns to Ukraine clearly point out that neither Slovekia nor Hungary took respectful decisions to international refugee rights while sending the irregular immigrants back to Ukraine.

Another country which is not respectful to right to seek asylum is Italy. Every year a number of immigrants are pushed back to Libya, a country which is known not to be a safe. Libya is not a party 1951 Geneva Convention and does not have a functional refugee system. The incompatibility of those returns under the bilateral agreement with the non refoulement principle was proved by the European Court of Justice Decision which condemned Italy for intercepting migrants at sea and returning them to Libya without assessing their need for protection.[29]

Spain is also famous for the push backs on its borders. Two migrants for Cameroon took Spain to the European Court of Human Rights for being expelled from Spain to Morocco, along with 71 other migrants. The two applicants claimed that they did not have access to an individual asylum procedure and were collectively returned to a country where the human rights of sub-Saharan migrants and refugees are systematically violated.[30]

Those returns and push backs based on a readmission agreement and ended in right to seek and non refoulement violations can be varied. Here one may question that those violations are caused by the bilateral agreements, not by EU readmission agreements and Readmission agreements at the EU level includes a non affection clause which functions as a safeguard against disrespectful decision. This clause determines that international obligations of the parties will not be affected by the application of the agreement. According to Coleman this clause is not strictly required, since it has no function more than confirming the

[29] Hirsi Jamaa and Others v. Italy: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231#{"itemid":["001-109231"]}

[30] The information retrieved May 4, 2014, from http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/500-spain-illegally-pushing-back-migrants-to-morocco.html

applicability of international obligations the contracting parties are already bound (2009, p. 306). Accordingly even without a non affection clause, all states are bound by international obligation while taking their return decisions.

The returns under readmission agreements may also result in chain refoulements, which are more detrimental for the refugees. Even if the readmitting country is considered as a safe third country, a MS is still responsible for the asylum seeker against the risk of refoulement to his or her country of origin. The application of the 2001 bilateral readmission agreement between Greece and Turkey has given rise to concern. Under this agreement, Iraqi and Iranian citizens have been returned from Greece to Turkey. From Turkey some of the migrants were allegedly returned to Iran or Iraq, having not had the opportunity to apply for asylum in Greece or in Turkey. To returns from Greece to Turkey ended in chain refoulement will be given more emphasis in the next chapter, while examining the implications of EU-Turkey readmission agreement on refugee rights. As explained in the previous section, a requesting country may not send a person back to any country where he or she risks the envisaged threats. This is absolute in both EU law and international law. This obligation is not only limited to the requesting state's own acts but also the state must also prevent that the partner country expels the returnee to another country where he or she faces those risks.

These repeated violations indicate that EU Member States are not always respectful to refugee rights by sending third country nationals to third countries where they risk arbitrary detention, torture, refoulement, chain refoulement and other harmful treatment, often without properly assessing their asylum claims. These violations also show how readmission agreements which are neutral in theory can turn into a tool which enables Member States to escape from their responsibilities against refugees.

On 23 February 2011 the Commission issued a communication on the evaluation of the EU readmission agreements in general and acknowledged the potential violations under readmission agreements:

> *Many agreements (in particular those with third countries neighbouring 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 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* (COM 2011, p. 12)

Namely, from a legal point of view no one can claim that readmission agreements are incompatible with the right to seek asylum and non-refoulement. However it is obvious that they contravene with the spirit of the international instruments protecting refugee rights.

CHAPTER 3
EU-TR READMISSION AGREEMENT: IS TURKEY SAFE ENOUGH?

> *I, as a Turkish citizen, don't want to travel freely to France for a cup of coffee on the Champs-Élysées if an Asian or African migrant will be deported back to his country by Turkey after going through many ordeals and hardships, risking his/her life, especially if s/he will probably be executed, imprisoned or tortured there. This is because his/her tears or blood will be mixed with my coffee. Thanks, I don't want to take that coffee. I want to drink coffee if I will pay for it myself, alone. I don't want any cup of coffee that will be paid for by the citizens of third countries.*[31]

The quotation above constitutes the basis for my study. If an agreement- which may raise the risk for human rights violations- is signed for economical purposes or in exchange for visa exemption, to what degree the refugee rights are concerned worth to examine.

In the previous chapter the compatibility of the readmission agreements with human rights obligations has been analysed. Accordingly we concluded that as long as Member States take return decisions respectful to human rights, we cannot talk about an incompatibility, however, since signatory parties do not always take responsible decisions, the readmission agreements may result in violations as a facilitator of the return.

In this chapter through Turkish case, to what degree the values are concerned while negotiating, concluding and implementing a readmission agreement will be analysed and to what degree the Turkey is safe for the returned irregular immigrants will be questioned.

For this study, the EU-Turkey readmission agreement is particularly chosen for two reasons First, Turkey as a neighbouring state both to the Middle East and the Europe, functions as a transit country for the most vulnerable people fleeing from war in search of a better life in Europe as well as other unauthorised immigrants. Therefore possible human rights violations gain more importance when the readmitting country is Turkey.

The second, as a candidate country Turkey has a strategic priority for the EU. Although accession talks have not yet proceeded to direct discussion of migration related issues as part of chapter 24 on "justice, freedom and security," it appears that the importance of these issues within EU-Turkey affairs has steadily increased and has come to dominate the agenda of membership debates (İçduygu 2011, p.3). We can observe it through the progress

[31] http://www.todayszaman.com/news-334601-what-does-the-readmission-agreement-signifyby-taner-kilic-.html

reports. On its way to EU, there are basically two hot issues under Chapter 24, one is to conclude readmission agreement and second is to lift the geographical limitation.
Accordingly, in this chapter significance of Turkey as a transit country will be explained and starting from the negotiation process EU-Turkey readmission agreement and its potential implications for the returned persons will be questioned to evaluate to what degree the values are concerned in this process will be examined.

3.1 Significance of Turkey as a Transit Country

Contemporary migration flows to the EU mostly consists of transit immigrants and Turkey is one of the most important routes for the transit immigrants due to its significant location at the junction of Europe, Asia, Middle East and North Africa (MENA), with Mediterranean and Black sea coasts. This geo-politically important location makes Turkey a crucial player in terms of migratory regimes (EU migration report 2013). The pressure of EU to sign readmission agreement with Turkey depends on the location of Turkey as a transit country.

Table 3.1 The Number of Irregular Immigrants and Rejected Immigrants at the Borders

	Irregular immigrants	**Rejected immigrants at the borders**
1995	11.362	-
1996	18.804	-
1997	28.439	-
1998	29.426	-
1999	47.529	6.069
2000	94.514	24.504
2001	92.365	15.208
2002	82.825	11.084
2003	56.219	9.362
2004	61.228	11.093
2005	57.428	8.818
2006	51.983	8.107
2007	64.290	14.265
2008	65.737	11.046
2009	34.345	12.804
2010	32.667	15.227
2011	44.415	-
2012	47.510	-
2013	39.888	-
Total:	**960.974**	**147.587**

Source: Ministry of Interior, Directorate of Security [32]

[32] Ministry of Interior, Directorate of Security :The statistics available at http://www.egm.gov.tr/Sayfalar/yasadisi-goc-ve-gocmek-kacakciligi.aspx

The irregular migrants who come from the countries located in the East and South of Turkey are likely to be defined as potential transit migrants rather than the irregular migrants. (Icduygu 2008, p. 3).

It is difficult to separate the transit immigrants from the irregular immigrants, however taking the source countries into account, it is not wrong to say that the most of the irregular immigrants who enter from the east and south of Turkey are trying to reach to the western countries using Turkey as a transit country. Of course all of the irregular immigrants cannot be defined as transit immigrants but they can be defined as potential transit immigrants. Between 2000 and 2010 the top five source countries were Iraq (94.000), Palestine(66.000), Afghanistan (59.000), Iran (22.000) ve Bangladesh (17.000) (Icduygu, Aksel 2012, p. 22-23).

Those transit immigrants trying to reach to Western Countries mostly directs to the Europe's gate in the east, Greece. Almost half of the irregular migrants makes their way to Greece.

Table 3.2 Irregular Transit Immigrants' Destinations

Destination	
Greece	47%
Italy	12%
Germany	8%
France	5%
Canada	3%
Switzerland	3%
Austria	2%
Norway	2%
Other	15%

Source: EU Neighbourhood Migration Report 2013

Those figures are important to understand the importance of Turkey as a transit country. When it is taken into account that the number of third-country nationals detected in 2011 while entering or attempting to enter the EU illegally and coming through Turkish territory was 55,630[33], EU's pressure to sign a readmission agreement with Turkey is quite understandable, however, there is also a dark side of the picture. Besides economic

[33] The information retrieved February 20, 2014, from http://www.migrationpolicycentre.eu/migration-report/

immigrants, Turkey is also a transit country for the asylums seekers who should be protected internationally.

3.2 EU-TR Readmission Agreement Negotiations

Readmission agreements are concluded in a reciprocal manner which indicates that both states parties are obliged to readmit both their own nationals and TCNs who transited through their territories, however this is tend to be only theoretical between the EU and Non-EU states, since the direction of the move almost always is directed to the EU (Trauner and Kruse 2008, p. 16). Accordingly readmission agreements are not of mutual benefits. While destination party decrease its costs and remove both irregular immigrants and their responsibility easier, the countries of origin and transit countries face increased cost and responsibility. This situation force the EU offer some incentives to conclude readmission agreements, most of which are special trade concessions, prefential entry quotas for economic migrants, technical cooperation, increased development aid, the accession to regional cooperation, the accession to a regional trading bloc, and visa facilitation (Cassarino, 2007: 183) More recently the EU Commission authorised to offer "package deal" including both visa facilitation and compensation for the costs derived from the agreement (Trauner and Kruse, 2008, p. 17) as offered to Turkey.

As identified by the Justice and Home Affairs Council in 2002, there are six selection criteria for negotiation of readmission agreements with third countries: the migration pressure exerted by a third-country; its geographical position in relation to the EU; considerations of geographic balance and regional coherence; the existence of an EU association or co-operation agreement containing a readmission clause, the added value of a Community agreement in comparison to individual Member State agreements, and the last but not least the fact that the country must not be a candidate country with which the EU is already negotiating about accession[34] According to last criteria obviously a readmission agreement with Turkey which is a candidate Member State should have not been even discussed. However, from 2002 on which the European Union and Turkey agreed to open negotiations on a readmission agreement, until December 2013 a series of tough negotiations took place to conclude the agreement.

Turkey was invited to begin negotiations on a draft text of a readmission agreement by the commission in March 2003, but Turkey did not formally acknowledge the invitation until 2004. At that time Turkey emphasized that it would be ready to sign a readmission agreement

[34] Justice and Home Affairs Council, Presidency Conclusions, Council Doc. 7990/2002 COR 1.

with the EU that includes own citizens or permanent residents, but not third-country nationals (Coleman 2009: 179). The first round of negotiations took place in 2005, in Brussels. After four rounds held in 2006, no progress could be achieved (COM 2007, p. 5) and the negotiations were interrupted. The reason behind this delay can be simply explained by the reluctance of Turkey to sign the readmission agreement. So why Turkey was so reluctant to sign the readmission agreement? The overall reason was the high costs of a readmission agreement for Turkey. Turkey is one of the most common transit routes used by irregular immigrants to the EU. Consequently, Turkey would be obliged to take back large numbers of irregular immigrants who often cannot be sent back to their countries of origin because of the non-refoulement principle. Turkey feared to be a buffer zone for the irregular immigrants. Therefore, Turkey insisted that provisions related to the readmission of non-nationals to Turkey in the readmission agreement should come into force only after Turkey had signed bilateral agreements with countries of origin (Burgin 2012, pp. 883-884). Meantime, in 2006 the EU decided to freeze eight chapters due to Cyprus conflict accordingly, the uncertainty of its membership, Turkey would keep an open ended approach to the adoption of policies that do not offer mutual benefits" and obviously a readmission agreement was not mutual benefit (Bürgin 2012, p. 889). Moreover, the visa facilitation and liberalization incentives offered by the EU in return of the agreement was not found fair by Turkish officials, since the visa facilitation was a tool for third countries but not for a candidate state. Turkish officials felt that visa issues should be kept apart from readmission agreement but in the context of Turkey's accession to EU. Visa facilitations themselves were not a strong enough incentive for the Turkish government. Foreign Minister Ahmet Davutoğlu argued that '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' (Burgin 2012, p.890). In time the full membership negotiations slowed down and almost stopped. Because both parties find the membership of Turkey difficult in the near future, the readmission agreement gained more importance. Since Turkey is an important route on the way to Europe, EU pushed up for the agreement, and for Turkish aspect the visa facilitation and liberalization incentives became more and more important. Now it was a mutual benefit.

After a long period of disagreement over readmission agreement negotiations , in December 2009 the negotiations restarted and the EU and Turkey finally came up with a draft text in 2010 and in the beginning of 2011 the negotiations came to end but the lack of a clear road map for visa liberalization for Turkish citizens, did not satisfy Turkey's

expectation, therefore Turkey reacted that without a visa facilitation process and steps towards visa liberalization, the re-admission agreement would not be signed, initiated, or implemented (İçduygu 2011, p.10). However as a result of EU's pressure, the readmission agreement between EU and Turkey[35] was finally signed in December 2013 in exchange for opening talks on visa liberalisation for Turkish citizens travelling to Europe. And 'A roadmap towards a visa-free regime with Turkey'[36] which lists the requirements which should be fulfilled by Turkey was published by the EU Commission.

As clearly observed above, the focus of the readmission agreement is the visa liberalisation offered by the EU and there is no emphasis to human rights aspect by neither from EU side nor Turkish side. However, there are serious objections against the readmission agreement raised by a third party, NGOs.

Human Rights Association (İHD), Human Rights Agenda Association (İHGD), *Kaos Gay and Lesbian Cultural Research and Solidarity Organization (Kaos-GL),* Association for Solidarity with Refugees (Mülteci-Der) Amnesty International Turkey (UAÖ) put their concerns regarding the brand new readmission agreement through a common press release. They claimed that **t**hese readmissions will be held without investigating the asylum claims and people in need of protection will be send back to countries such as Bulgaria and Turkey which is lack of a healthy working refugee procedure. Moreover, taking attention to the fact that people in need of protection who reach Europe over Turkey mostly come from Syria, Afghanistan, Iraq, and Somalia where human rights violations are intense, they claimed that the possible return of these people to that countries via Turkey may cause irremediable results Therefore, the EU-Turkey agreement is all the more worrisome considering that Turkey is a transit country for a large number of irregular migrants and asylum seekers coming from third countries. Accordingly pointing out the deterrent effect of the readmission agreement on the asylum seekers they invited the states to take more active role and fulfil their legal and humanitarian responsibility for the people in need of protection. [37]

[35] Please see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0239:FIN:EN:PDF
[36]Please see: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf
[37] Please see: http://www.multeci.org.tr/haberdetay.aspx?Id=79

Moreover the Euro-Mediterranean Human Rights Network (EMHRN) and Migreurop38 also invited the European Parliament to vote against this agreement until the full respect of rights of migrants and refugees can be guaranteed.

3.3 EU Readmission Agreement with Turkey

Over the years the format of readmission agreements has been standardised by the European Commission. Consequently, all agreements, including the EU-Turkey readmission agreement, have similar contents:

* the obligation of the requested state to issue the travel documents for its own nationals or third country nationals having transited through the country for deportation
* the mutual obligation for the parties to readmit their own nationals or third country nationals who illegally entered or stayed in the territory of the other party;
* time frames.
* creation of a joint committee of experts to monitor implementation of the agreement;
* exclusion clauses for readmission
* non affection clause which requires the contracting parties to comply with rights and duties under other refugee and human rights conventions.

Taken into account the ill-developed Turkish tradition for dealing with asylum-seekers and refugees and the weak legislation in this area in Turkey, both parties agreed on a transition period of three years on readmitting third-country nationals and stateless people. Nevertheless an exception is made for nationals of "third countries with which Turkey has (already) concluded bilateral treaties. For instance under bilateral readmission agreement between Greece and Turkey, this three year transitional period will not be applied for the return of third country nationals and stateless people. Taken into consideration that 47% of the immigrants pass through Turkey, enter the EU by Greece borders, the three years period to readmit the third country nationals is not very sensible in Turkish case.

Moreover the agreement includes the accelerated process which was evaluated as detrimental to refugee rights in the previous chapter. Accordingly, under the accelerated procedure, readmission applications have to be submitted within 3 working days, and replies have to be given within 5 working days for persons apprehended in the "border region" as

[38]Please see: An EU-Turkey Readmission Agreement - undermining the rights of migrants, refugees and asylum seekers? http://www.euromedrights.org/eng/2013/06/20/an-eu-turkey-readmission-agreement-undermining-the-rights-of-migrants-refugees-and-asylum-seekers/

well as the sea ports including customs zones and international airports of the Requesting State (Article 7 (4)).

However, it won't be true to say that refugee rights are completely put outside of the door. EU committed to make financial and technical assistance to support Turkey in the implementation of the Agreement. Accordingly EU will help Turkey enhance its capacity to prevent irregular migrants from entering, staying, and existing in Turkey and capacity for the intercepted irregular migrants.

Moreover the agreement includes the non affection clause (Article 18) which reiterates the state parties obligations under international law. However, as mentioned before this clause is not constitutive, but declatory (Coleman 2009, p. 306). A safeguard which will result in the suspension or denouncement of the agreement, if the refugee rights are violated, doesn't take place in the agreement.

Namely it can be concluded that both the negotiation process and the content of the EU-Turkey Readmission agreement obviously indicates while concluding a readmission agreement contracting parties put much emphasis on their economical and political interests rather than the human rights considerations raised by the NGOs.

3.4 Is Turkey Safe Enough?

As explained in the third chapter of the study, Member States do not always take responsible decisions in compliance with the international refugee law and sometimes they fail to send people in need of protection to third countries under readmission agreements without investigating a protection seeker's asylum claim. Here the safety of the readmitting country gains importance. For example, Amnesty International evaluates Russia, Turkey and Ukraine, with which EU has readmission agreements, among those countries returned asylum-seekers to countries where they were at risk of serious human rights violations (2009). Accordingly in this section to what degree Turkey is safe for both third country nationals and protection seekers will be examined.

3.4.1 Turkish Asylum System

In 2011 it is announced by the UNCHR that Turkey is among the top five asylum receiving countries in the world (MPC, 2013)

Table 3.3 The Number of Asylum Applications in Turkey

	Asylum Application
2005	2.935
2006	3.550
2007	5.882
2008	12.002
2009	6.792
2010	8.932
2011	17.925
2012	29.678
2013	30.311

Source: Ministry of Interior- Directorate of Security

Each year Turkey receives thousands of asylum applications However until 2013, there was no provision regarding asylum in Turkish Constitution, and asylum issues had been regulated under various laws and regulations: the main instruments were the 1934 Settlement Law – renewed in 2006, the 1951 Geneva Convention relating to the Status of Refugees, the 1994 Asylum regulation, which fall short of providing a comprehensive coverage for asylum seekers.

In 2013, the "Law on Foreigners and International Protection," was adopted. Until the new law come into force, the current legislation will continue to be applied.

This current asylum legislation has been highly criticized for being lack of coherence, institutional capacity and human rights safeguards (EU Neighbourhood Migration Report: 2013). As repeatedly criticized in the progress reports, the most problematic issue in the Turkish asylum system is the geographical limitation that Turkey applies to grant refugee status. Turkey is one of the drafters and first signatories of the 1951 Refugee Convention. However, with a geographical limitation.. At the time of the ratification of the attendant Protocol Relating to the Status of Refugees in 1968, Turkey opted for the geographical limitation pursuant to Article 1b of the Convention. Accordingly, Turkey can only legally accept European asylum seekers as 'refugees'. When it is taken into account , as of the beginning of 2012, in Turkey there were only forty-four European refugees known under the Convention from Greece, Bulgaria, Serbia, Azerbaijan and Albania (UNHCR 2011: 25), and majority of the asylum seekers come from non-European States such as Iraq, Iran, Afghanistan, Somalia and Sudan, it is obvious that Turkey do not provide an effective protection for asylum seekers, but it does not mean that Turkey shuts the door completely to the asylum seekers. Turkey applies its own "temporary" protection mechanism under 1994

Asylum Regulation. Accordingly, Both UNCHR and Turkish authorities conduct interviews with non-European asylum seekers and if they are recognized as "refugees" by both institutions, they are resettled to third countries. However, not all refugees recognized by UNCHR are recognized by the Turkish authorities.[39] USA, Canada, Australia, Finland, Sweden, Norway and Netherlands which accept the refugees from Turkey, have increasingly criticised Turkey's preferred policy of resettlement arguing that Turkey should take responsibility of the refugees and asylum seekers entering Turkish territory instead of shifting the burden over to Western governments through resettlement (UNCHR 2003, p. 9)

The new law, which is going to bring significant improvements to Turkish migration and asylum law, is welcomed by the EU and NGOs. However, law does not lift the geographical limitation although it is one of the major conditions that Turkey has to fulfil for EU membership. Currently Turkey is the only country which applies geographical limitation.

3.4.2 Respect to Refugee Rights in Turkey

Besides a lack of a coherent asylum system and geographical limitation to refugees, the violations of refugee rights in Turkey are well documented. As explained by Durukan, for Global Detention Project (GDP, 2014), refugees in transit routinely find themselves in detention and are denied access to Turkey's asylum procedure (GDP, 2014). This is reiterated by the Special Rapporteur on the Human rights of Migrants (Crepau) during his visits to Kumkapı and Edirne removal centres in 2012, he met with several detained persons who could be granted refugee status but due to lack of information about asylum procedure and because they were not able to communicate with UNHCR, lawyers, or civil society organisations had no opportunity to ask for asylum. Some detained immigrant claimed that their asylum claims are ignored by the police officers at the removal centre, therefore Crepau is concerned that protection claims may go undocumented (SRHRM 2013).[40]

Moreover, there are a number of ECHR judgements condemn Turkey for not respecting the refugee rights. Between 1959 and 2013 the total number of the judgements is 2994 and in 2639 of them found at least one violation. There are only 63 judgements finding no violation. Within the scope of this study, violation of Article 3, which prohibits refoulement is important. Article 3 of the ECHR is the forth most violated article by Turkey. The court has found Turkey in violation of Article 3 in 479 decisions on the basis of

[39] The Ministry of the Interior (MOI) rejected asylum claims from refugees UNHCR had recognized more frequently during 2008, and made it difficult for UNHCR to secure exit visas for them. Rtrieves 19 May, 2014 from http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-wrs-country-updates/turkey.html

prohibition of torture, inhuman degrading treatment, and lack of effective investigation. Refugees' cases opened in ECtHR against Turkey can be evaluated as the reflection of Turkish Asylum policy's problems.

A very recent report published by Amnesty International investigates the returns between Greece and Turkey. Although these returns are not applied under the bilateral protocol between two countries, the interviews conducted with the people returned from Greece to Turkey indicates that the hottest border between European Union and Turkey faces a great number of refugee rights violations. Amnesty international reported that the people who are pushed back to Turkey were never given an opportunity to explain their situation or challenge their deportation. This is an infringement of international obligations. It also risks that people may be sent back to to a country where they may face persecution or other harm once they are in Turkey (Amnesty International, 2013).

This risk is not unrealistic in practice. As Documented by UNCHR, a number of people returned from Greece have been sent to countries where they can face persecution or other serious harm.

> *UNHCR case no. 5, April 2007, involving 136 persons (123 Iraqis, 4 Iranians, 3 Bangladeshis, 2 Afghans, 2 Pakistanis, 1 Indian, 1 Kashmiri of unclear nationality) who were forcibly returned from Bari (Italy) to Igoumenitsa. There, the persons previously registered as asylum-seekers were released, whereas the others were transported to detention facilities in the Evros region without the opportunity to claim asylum. One Iraqi managed to seek asylum through the help of his fiancée, but all others were deported to Turkey.*
>
> *UNHCR case no. 8, involving 31 Afghans and 2 Iranians deported to Turkey in November 2008 after having been arrested in the Patras harbour area. The group included "pink card" holders (i.e. registered asylum-seekers). According to the testimony of one of them, another member of the group was subsequently deported to Afghanistan.*
>
> *UNHCR case no. 9, October 2008, involving the deportation to Turkey and then to Afghanistan of an unaccompanied Afghan child registered as asylum-seeker in Greece.*
>
> *UNHCR case no. 10, involving an Iraqi Kurd who according to his own testimony, was deported in October 2008 by plane to Iraq (Erbil).*

UNHCR case no. 15, involving 2 Afghans and 2 Iraqis, deported in April 2009 to Turkey. The Iraqis were subsequently deported to Iraq according to their own testimony when interviewed (by phone from Iraq) by an NGO.

UNHCR case no. 18, involving an Afghan deported to Turkey in May 2009 and subsequently to Afghanistan, according to his testimony to his lawyer (by phone from Afghanistan) (UNCHR, 2009).

AS mentioned before almost 50% of the irregular immigrants which seek to reach EU are apprehended at the Turkey- Greece borders. And each year nearly 50.000 people are apprehended at the Greece borders coming from Turkey. This indicates that most of the returns under the EU and Turkey readmission agreement will be held between Greece and Turkey, both of which are not respectful to refugee rights as one clearly observe from the above cases.

The EU-Turkish readmission agreement lacks any possibility to prevent Turkey from sending third-country nationals and stateless persons to countries that are widely recognised as committing human rights violations. This can be observed in Syrian Case, as well. There exist a bilateral agreement between Turkey and Syria. After the civil war broke out in Syria in 2011, Turkey opened its doors to thousands of Syrian refugees, UNCHR estimates that Turkey is sheltering some 600.000 Syrian refugees and the total number of the Syrian refugees will be doubled by the end of 2014.[41] This is highly appreciated in the international arena. However, criticized by Mülteci Der, human rights violations in Syria go back much earlier than 3 years before, and between 2002- 2013 2675 people are returned to Syria Regime by the Turkish authorities[42] This indicates that Turkey's policy to Syrian refugees is more political than being human rights based.

Besides the risk of refoulement and chain refoulement raised by EU-Turkey readmission agreement, the detention conditions in Turkey for the readmitted irregular immigrants may be detrimental as well.

3.4.3 Detention Conditions

All detainees, including refugees, have the right to be treated in conformity with international of international law including the CAT (Articles 1 and 16), ICCPR (Articles 7

[41] The information Retrieved June 1, 2014, from http://www.aa.com.tr/tr/dunya/283859--suriyeli-multeci-sayisi-yil-sonunda-iki-katina-cikacak

[42] According to official data taken by Ministry of Interials- General Directorate of security by Mülteci Der. Retrieved 18 May, 2014, from http://www.zaman.com.tr/yorum_geri-kabul-anlasmasi-ne-anlama-geliyor_2184849.html

and 9), and ECHR (Article 3), detention conditions that fall below these standards may constitute "inhuman or degrading treatment." In the January 2010 ruling on the case *Z.N.S. v. Turkey*, the ECtHR found that conditions at two Turkish detention facilities amounted to inhuman or degrading treatment in violation of Article 3 of the Convention.

As pointed out by Dedja in his study examining the EU-Albania readmission agreement from a human rights perspective: although a readmission agreement can take place only after a prior notification by requesting state and an official response given by Albania, this didn't work in Greece- Albania case. In 2008, of all 66,009 returns, only 654 were carried out after a prior notification and 63, 555 people were sent to Albania without a notification in advance. In 2009 the situation did not change, around 65.000 people were readmitted to Albania and 233 of them were held after a prior notification (Dedja, 2012, p. 105). A return without a prior notification can result in the overload in the detention centres.

Given that most returns are carried out without a prior notification from Greece to Albania, there is not any reason to believe that the situation will be different in Turkey. Accordingly detention conditions for the returned irregular immigrants and asylum seekers worth to examine as well.

In the European Commission's progress reports on Turkey's EU accession process, it is repeatedly emphasized that the treatment of refugee/migrant detainees in detention centres needs to be improved. This is also very important to address the judgment issued by the European Court of Human Rights (ECtHR) in particular on the following two cases related to Turkey : the judgement in Abdolkhani and Karimnia v Turkey and Z.N.S. v Turkey, where the Court found that the detention and deportation of irregular migrants to their country of origin, due to the absence of clear provisions for ordering and extending detention, the lack of notification of the reasons for detention and the absence of any judicial remedy to the decision on detention were in breach of the European Convention on Human Rights; and to the judgment in Charahili v Turkey, where the Court concluded that the applicant's conditions of detention amounted to a violation of Article 3 of the European Convention on Human Rights, prohibiting torture.

The detention conditions also have been repeatedly criticized by the national and international observers : the common critiques shape around the physical ill treatment (beating), limited ability to contact their families, virtually no access to legal assistance or consular services, little to no professional interpretation services, and restricted ability to challenge their detention (HRW 2008, and HCA 2007, CPT 2011).

A “Joint Declaration” on technical assistance annexed to the EU-Turkey readmission agreement provides for the “establishment of reception centres and border police structures” as part of an effort to enhance Turkey's capacity to prevent irregular migrants from entering, staying, and exiting its territory, as well as to improve the “reception capacity for the intercepted irregular migrants.”

In its position paper on the notion of the “safe third country” the European Council on Refugees and Exiles (ECRE) sets the criteria for a safe third country:
(1) ratification and implementation – without geographic limitation – of the Refugee Convention and other human rights treaties such as the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR):
(2) a fair, efficient, and accessible asylum procedure;
(3) agreement to readmit the applicant and assess the claim; and
(4) willingness and ability to provide protection for as long as the person remains a refugee

Keeping in mind the above criteria, Turkey which applies a geographical limitation to grant refugee status, and currently with a deficient asylum system failing to provide efficient and accessible asylum procedure (the new law’s consequences is not known yet), and as a country of which human rights violations are well documented, it is obvious that Turkey is not a safe third country for the non-nationals. The readmission agreement, which opens the way for the returns of asylum seekers to Turkey based on the assumption that Turkey is a safe third country may result in serious and irreparable consequences for the people in need of protection.

CONCLUSION

The EU which is known as a human rights promoter in its foreign policy faces a dilemma in the issues of migration and asylum between the ideals it is aiming to represent, and its security. After the huge flows of immigrants to the EU and with the perception that irregular migration is a threat to national security, the EU started to adopt more restrictive and preventive migration policy in the last decades, which aims at dealing with migration beyond its own borders, which is known as externalization of EU's migration policy. This externalization policy has been highly discussed since it seeks to create a buffer zone close to its borders at the cost of asylum seekers and immigrants' life. One of the main instruments of this policy is the readmission agreements which facilitate the return of the irregular immigrants to their country of origin or third countries. In the literature there are basically two different approaches: First focuses on the neutrality of the agreements and second focuses on the risk they create for refugee rights. Within this scope refugee rights represent the right to seek asylum and non-refoulement, both of which are under protection of international law. Although "right to seek asylum" is under protection of Universal Declaration of Human Rights, Charter of Fundamental Rights (with respect to 1951 Geneva Convention), they neither deal with the question of admission, and nor oblige a State to accept a protection seeker as a refugee status, or provide for the sharing of responsibilities (Goodwin-Gill 2008, p. 8). Therefore, it can be concluded that although right to seek and enjoy asylum is a fundamental right recognized in the international law, not all asylum seekers able to manage to access this right due to the externalization policies of the states. However protection for non-refoulement is more absolute. Although it is protected by a number of international instruments, the absolute prohibition without any exception can be found under Article 3 of ECHR, which does not refer non-refoulement explicitly, but protected by the case law of ECtHR. Whether readmission agreements are compatible with the refugee rights under protection was my first research question. Accordingly we cannot talk about an incompatibility, since readmission agreements are not more than a tool which facilitates a return decision taken by the states. However the study showed that the readmission agreements both at the national level and EU level may result in violations, if the readmission decision is not taken in a responsible manner. We also saw that neither Member States (Greece, Slovakia, Hungary, and Poland, within this case) nor the third countries (Turkey, Ukraine) are always respectful to right to seek asylum and non refoulement. Accordingly any agreement which facilitate the return process automatically may facilitate and boost the

violations. The situation is much more worrisome for the transit countries such as Turkey. When it is taken into consideration that Turkey is a bridge between Europe, the main destination of the irregular immigrants and Middle East and Africa the main refugee producing countries. It is probable that the returned irregular immigrants will mostly consist of people in need of protection. As established by the study, neither Greece nor Turkey takes return decisions in compliance with international refugee law and repeatedly violates refugee rights. Besides right to seek asylum and non refoulement violations, chain refoulement may be a matter of fact since Turkey seeks to conclude bilateral readmission agreements with third countries as well. It is known that Iranian and Iraqis asylum seekers readmitted by the Greece and Turkey readmission protocol, deported to Iran and Iraq, which are highly detrimental for asylum seekers. Moreover since Turkey has not an effective asylum system currently (the consequences of the new law is not known yet), it lacks providing a coherent protection to asylum seekers. Moreover, Turkey is the only country which applies a geographical limitation to 1951 Geneva Convention and does not grant refugee status to the non-European asylum seekers. This is highly criticized by the countries who accept the asylum seekers under resettlement programs. It shows that both EU and Turkey avoid being a hub for asylum seekers. As established by the study, detention conditions of the irregular immigrants and asylum seekers also are not in compliance with the international law. Accordingly no one can claim that Turkey is a safe (third) country for irregular immigrants and asylum seekers to send third nationals.

While examining the EU-Turkey readmission agreement from a human rights perspective, we also aimed to analyse to what degree the human rights are concerned while negotiating and implementing readmission agreements at the EU level. When the EU-Turkey readmission agreement is taken into consideration, it is obvious that the negotiations evolve around the visa facilitation conditionality. Neither the deficiencies of the Turkish asylum system, nor the existing refugee rights violations prevent EU from concluding a readmission agreement with Turkey. This clearly indicates the security based policy of the European Union. Also in an environment where there is no distinction between the asylum seekers and irregular immigrants, it is obvious that EU's readmission policy leans on the realist frame.

To sum up, it is sad but true that there is such a risk: an asylum seeker originated from Iraq, who passes through Turkey and Greece to reach Belgium can be returned first from Belgium to Greece under Dublin Regulation; from Greece to Turkey under a readmission agreement; and from Turkey to Iraq again under a bilateral readmission agreement, if he or

she is still alive on this route full of dangers. Obviously this risk does not emerge from the agreements but the contracting parties' disrespectful decisions to international refugee law.

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DECLARATION OF AUTHORSHIP

I declare that this thesis and the work presented in it are my own and have been generated by me as the result of my oriqinal research.

None of the part of this thesis has previously been submitted for a degree of any other qualification at this University or any other institution

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