



An EU-Turkey Readmission Agreement - Undermining the rights of migrants, refugees and asylum seekers?

Policy Brief

EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان



Executive Summary

On 21 June, 2012, Commissioner Cecilia Malmström met the Turkish ambassador in Brussels to officially initial – in other words preliminarily agree on – a readmission agreement between the European Union (EU) and Turkey. Once the signature and ratification steps are completed, the agreement will allow both parties to return foreign nationals irregularly entering and/or residing on their territories.


In exchange for signing the readmission agreement, the EU has opened up the way for visa liberalisation for Turkish nationals. The conditions under which visa liberalization would finally happen and its timing are still unclear, at the moment constituting a main delay for the ratification of the agreement. However, it is obvious that the prospect of visa free travel to the EU provides a significant incentive for Turkey to sign the readmission agreement.

In this policy brief, the Euro-Mediterranean Human Rights Network (EMHRN) details how the readmission agreement due to be concluded between the EU and Turkey risks failing to respect the rights of regular and irregular migrants, refugees, and asylum seekers. The EMHRN thus calls on all parties to safeguard these rights in practice.

EU-led readmission agreements illustrate the European trend on migration and asylum; a trend driven by the will to strengthen external borders in order to sustain internal free movement within. Even if readmission agreements as such are nothing new and have been used as migration control tools by states for decades, what is different about EU-led agreements is that it is now a supranational body that is politically responsible for negotiating these agreements, while EU Member States are responsible for the practical implementation of the readmission procedure. In terms of accountability, the watering down of responsibilities between different actors makes monitoring and effective remedies against abuses potentially difficult to address.



Despite the statement by Malmström that under the agreement, returning foreign nationals to their country of origin will be carried out “in full respect of international law and fundamental rights,”¹ the implementation of previous agreements between the EU and member states and third countries has so far resulted in substantial violations of the rights of migrants, refugees and asylum seekers, on both the European side and the one of the contracting party.

¹ “Statement by EU Commissioner Cecilia Malmström on the initialing of the EU-Turkey Readmission Agreement”, Reference: MEMO/12/477, 21 June 2012.



Based on the provisions included in the agreement, current implementation of previous agreements, and conditions in relevant EU states and Turkey for migrants and refugees, a readmission agreement between the EU and Turkey at the moment risks to undermine the right to asylum in Europe and spread abuses faced by third country nationals in Turkey. This is particularly the case for those who, despite being eligible for refugee status or the domestic “temporary asylum” status in Turkey, may still face arbitrary detention or deportation. Transparent negotiations and independent monitoring of the agreement’s implementation are vital to minimize risks that migrants and refugees see their rights violated in the framework of a future EU-Turkey readmission agreement. Turkey’s importance as a transit country for a large volume of irregular migrants and asylum seekers makes the potential for these abuses all the more worrying.

Main Recommendations

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- Refrain from concluding any readmission agreement until Turkey’s new law on Foreigners and International Protection is fully implemented and the compliance of Turkey’s migration management practices with international human rights norms is verified by independent reports;
 - If the agreement is implemented before the new law is fully implemented in practice, ensure that asylum seekers have unrestricted access to the UNHCR and all applications for the domestic “temporary asylum” status, including that claims expressed in immigration detention facilities are duly processed and assessed in a fair procedure by Turkish authorities;
 - Ensure that the implementation of any such readmission agreement does not pose obstacles, legislatively or in practice, to the right of asylum seekers to submit asylum or protection applications in EU member states;
 - Engage in a genuine consultation process with civil society in both Turkey and EU states in the framework of negotiations regarding the implementation of the readmission agreement and allow access to aspects of the agreement which have indirect or direct impact on the rights of migrants, refugees, and asylum seekers;
 - Put in place a proper monitoring mechanism to ensure an implementation of readmission agreements that is in accordance with international law and, in particular, with human rights principles and the rights of migrants and asylum seekers. To this end, involve national and international NGOs as well as the European Parliament in the independent monitoring of the implementation of procedures.

Introduction

Readmission agreements aim to facilitate repatriation of irregular migrants back to their country of origin and strengthen obligations that states have under international customary law, such as the obligation to readmit one's own nationals. However, by imposing to readmit as well third country nationals believed to have transited through one of the countries party to the agreement – which is not an obligation under international customary law² – these agreements have become increasingly used by states – and the EU – to “combat” irregular migration flows.

This policy brief provides a historical overview of the EU readmission negotiations with Turkey, and highlights three areas of concern regarding the rights of migrants and refugees. These concerns are based, on the one hand, on the provisions included in the agreement and the condition of migrants and refugees in EU member states and Turkey, and on the other on analyses of how agreements with previous countries have been implemented and their impact on the rights of migrants and refugees. Following this analysis, the EMHRN formulates a set of recommendations addressed to both EU and Turkish authorities and policymakers.

More on EU Readmission Agreements

A common European readmission policy saw the light of day in 1994. In dealing with deportation of irregular migrants, member states saw the convenience of adopting a standardized readmission procedure with the neighboring countries of the Union. In 1999, as the Treaty of Amsterdam entered into force, the European Commission was given the actual power to negotiate and sign EU readmission agreements with third countries on behalf of all member states. In 2002, the European Council gathered in Seville recommended that readmission clauses be inserted in any cooperation agreement discussed with third countries.

Since then, the European Commission has taken part in more than twenty different negotiations on readmission. Agreements have been signed with sixteen different countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, FYROM, Hong Kong, Georgia, Macao, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, and Ukraine), while negotiations are still ongoing with China, Algeria, Belarus, Morocco and Tunisia (in addition to Turkey).

² For more information see İçduygu A. and S. Toktas “How Do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East?”, in *International Migration* Vol. 40 (6), 2002.

The EU-Turkey Readmission Agreement: a short road map

Turkey was first invited by the EU to enter into negotiations on a readmission agreement in 2003. By this time, the Turkish-Greece corridor had become one of the main routes for irregular migrants – mostly from neighbouring countries, such as Iraq or Iran, or from South Asia – wanting to reach Europe from the East.³

Turkey's initial reluctance to enter into negotiations with the EU was based on a broader political issue: accession into the EU. Having become an official candidate Member State in 1999, the Turkish government had little interest in undertaking parallel negotiations on a readmission agreement as a mere “third country” party.


As EU accession negotiations stalled, however, negotiations on readmission agreements resumed. Turkey expressed its willingness to readmit its own nationals, in accordance with international law, as well as third country nationals with a Turkish residence permit, but not, however, migrants who had transited irregularly in Turkey.⁴ Only after strong political pressure from the EU did the Turkish government reluctantly ease its position, nonetheless arguing that, given Turkey's geographical position and the volume of irregular migration flows transiting throughout the country, accepting irregular third country nationals would be extremely burdensome. For this reason, such a commitment by Turkey would have to be matched by a European engagement of similar proportions with respect to other matters.

While the interest for EU countries to enact a readmission agreement is clear, it is less so for many non-EU countries, both of origin and transit, for which migration (whether regular or irregular) might prove beneficial in economic (remittances) and social terms (safety valve for local unemployment), and for which such measures may turn out to be very costly in terms of domestic support. For this reason, both Member States⁵ and the EU have been increasingly linking readmission agreements to more comprehensive cooperation on labour migration management, development and technical assistance, and at the same time also offering certain benefits in

³ Coleman N. *European Readmission Policy: Third Country Interests and Refugee Rights*, Martinus Nijhoff Publishers, Leiden, 2009.

⁴ Italy, Spain, and France have been particularly active in this respect with neighboring third countries, such as Libya, Tunisia, and Morocco.

⁵ That is the case, for example, of EU 'mobility partnership' agreements currently under discussion with several countries of the Euro-Mediterranean region. See, for more info, Euro-Mediterranean Human Rights Network, [EU Mobility Partnerships with Tunisia and Morocco: Guarantees for the respect of rights must be a prerequisite to any agreement](#), 4 July 2012.



exchange (special trade concessions, entry quotas for labour migrants, increased development aid and, in rare cases, possible visa facilitation or visa exemption).⁶

In this vein, as a new phase of negotiations started in 2009, the Turkish government demanded that readmission talks be linked to negotiations on visa liberalisation for Turkish nationals travelling to the EU. To this respect, the Turkish authorities made it quite clear that the two issues would not be treated separately: any progress on readmission negotiations would be made conditional on significant progress on the visa issue.

A consensus on a draft readmission agreement was finally reached in January 2011, although no real progress was made until June 2012, when the draft was initialled following a shift in the EU's position from a mild engagement on "visa facilitation" to a stronger stance "towards visa liberalisation as a gradual and long term perspective".⁷

No official date has so far been announced for the signature of the final document. However, a draft version of the related Council decision, which also postpones the obligation for both parties to readmit third country nationals for a transitional period of three years after entry into force of the agreement, is publicly available.⁸

Critical analysis of the EU-Turkey readmission agreement

In order to ensure policy coherence, the European Commission has standardised the format of readmission agreements over the years. As a result, all agreements, including the EU-Turkey draft document,⁹ have similar conditions.

Such conditions include: compliance with obligations under 1951 Convention relating to the status of refugees and related 1967 Protocol, international conventions on extradition and transit, the 1966 Covenant on Civil and

⁶ See the Council of the European Union, "Council conclusions on EU-Turkey Readmission Agreement and related issues, 3071st Justice and Home Affairs Meeting", 24 and 25 February 2011; "Council conclusions on developing cooperation with Turkey in the areas of Justice and Home Affairs, 3177th Employment, Social Policy, Health and Consumer Affairs Council meeting", 21 June 2012.

⁷ Legislative Observatory of the European Parliament, "2012/0122(NLE) Legislative Proposal", 22 June 2012.

⁸ The following refers to the "Draft Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing without Authorization", as of January 2011.

⁹ UNHCR, "2013 UNHCR country operations profile Turkey".



Other similar conditions provided for in readmission agreements include:

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 – maximum of six months between the notice of illegal entry or stay and submission of a readmission application, maximum of 25 days (or 60 days under exceptional circumstances) to reply to readmission requests, maximum of three months to take charge of persons whose readmission has been agreed; transportation costs for deportation at the expense of the requesting state; creation of a joint committee of experts to monitor implementation of the agreement; and exclusion clauses for readmission (public health, state security or public order).

Political Rights (ICCPR), the 1984 UN Convention against Torture, and the 2000 EU Charter of Fundamental Rights, as well as, with respect to unaccompanied minors, the UN Convention on the Rights of the Child.

Despite the inclusion of such safeguards, however, EU-third country agreements have so far failed to adequately respect the rights of migrants, refugees and asylum seekers. The practical implementation of the agreements has resulted in frequent human rights violations on both sides, including violation of the right to asylum and of the non-refoulement principle. In light of this, 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.

Three aspects of the agreement and its implementation are particularly problematic: 1) the lack of substantial human rights safeguards concerning the treatment of third country nationals upon readmission by Turkey, who may be subject to arbitrary detention or be deported despite being eligible for refugee status or the domestic “temporary asylum” status, and 2) the excessive room for discretion left to EU member state authorities when examining protection claims and inconsistent respect of international obligations in connection with the treatment of intercepted irregular migrants subject to readmission returns; 3) the lack of transparency, monitoring and accountability over the drafting and the implementation of the agreement.

Concerns about the treatment of readmitted third-country nationals in Turkey

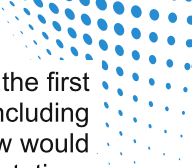
A key concern about the future implementation of the EU-Turkey agreement regards the treatment of third-country nationals (TCNs) by Turkey upon readmission. Although until now readmission of third country nationals in the framework of EU agreements has been relatively uncommon due to the high level of bureaucracy involved, there are reasons to worry that this will not be the case in the framework of an EU-Turkey agreement. While in the case of Hungary and Ukraine strong relations between the countries' authorities have made the implementation of their bilateral readmission agreement fairly manageable, the bilateral readmission agreement between Greece and Turkey has been highly dysfunctional. Turkey only accepts a small percentage of readmission requests put forward by Greece meaning that a huge number of assumed irregular migrants remain on Greek territory. In this context, there is reason to assume that an EU readmission agreement would provide the necessary political weight to ensure higher readmission rates by Turkey of third country nationals.

Turkey's current domestic legal framework and practices in the field of asylum and irregular migration management fall short of providing adequate safeguards and has led to well-documented violations and incidents of refoulement in recent years.

Despite the fact that Turkey is party to the 1951 Refugee Convention and its 1967 protocol, the country "maintains a 'geographical limitation' under Article 1 (B) of the Convention, whereby it is not obligated to apply the Convention to refugees from outside Europe".¹⁰ This means that non-European asylum seekers cannot remain permanently in Turkey as refugees. Instead Turkey offers them a lesser, domestic status called "temporary asylum", which allows them to stay in Turkey on a temporary basis until they can find a long-term solution elsewhere in the shape of resettlement with the assistance of UNHCR.¹¹

¹⁰ Global Detention Project, "Turkey Detention Profile", March 2010.


¹¹ See *Abdolkhani and Karimnia v. Turkey* (Appl.No.30471/08), *Keshmiri v. Turkey* (Appl.No.36370/08), *Tehrani and Others v. Turkey* (Appls.Nos.32940/08, 41626/08, 43616/08), *M.B. and Others v. Turkey* (36009/08), *Z.N.S. v. Turkey* (Appl.no.21896/08), *Charahili v. Turkey* (Appl.no.46605/07), *Ranjbar and Others v. Turkey* (Appl.no.37040/07), *Ahmadpour v. Turkey* (Appl.no.12717/08), *Alipour and Hosseinzadjan v. Turkey* (Appl.nos.6909/08, 12792/08, 28960/08), *D.B. v. Turkey* (Appl.no.33526/08) and *Dbouba v. Turkey* (15916/09), among others.



Turkey has adopted in April 2013 a promising new law on foreigners and international protection. It provides, for the first time, a proper domestic law basis for the rights and status to be granted to international protection seekers, including those escaping from generalised violence and other human rights violations. When it is fully in force, the new law would also provide a wide range of procedural safeguards, including guaranteed access to UNHCR and legal representatives for immigration detainees and appeals against negative asylum decision and deportation orders with suspense effect.

Despite this, however, whether it will lead to adequate safeguards in practice remains to be seen. The law still maintains its 'geographical limitation' policy for non-Europeans, labelling them as "conditional refugees". Moreover, while the process for the adoption of the new law was formally completed in April 2013, the substantial and procedural provisions of the new law will not come into force for another year, during which Turkey will set up a new civilian Migration Directorate General and develop the relevant implementing legislation. The new agency will take over the mandate for all policy and implementation in the area of migration and asylum from the National Police. Given the challenges of this massive overhaul in the country's legislative and institutional setup for the management of asylum and migration, it is not yet clear how long the full transition will actually take.

Pending this uncertainty about the prospects of Turkey's reform process and until the new law is fully in force, the country's inadequate current legislative and administrative framework and the rights violations it generates continues to be a major concern.



In parallel, while Turkey's current "temporary asylum" regime provides for some protection for international protection seekers, problems persist in terms of access to asylum procedures for detained asylum seekers who have been apprehended in border regions upon arrival or intercepted in transit. A series of recent judgments by the European Court of Human Rights in cases brought by rights advocates against Turkey on behalf of refugee claimants establish a clear pattern of systematic denials of access to asylum procedure, structural failure of preventive domestic remedies in refoulement situations, and lack of a proper domestic law basis and basic procedural safeguards governing Turkey's detention practices.¹² The absence of screening mechanisms and special treatment for unaccompanied minors apprehended while in transit is another critical concern.¹³

¹² See Helsinki Citizens' Assembly Turkey Report "Childhood on Hold: Conditions and Treatment of Separated Minor Refugees in Turkey", March 2010.

¹³ See Art.24 of the text initialed in June 2012.

According to the text initialled by the two parties in June 2012, the EU-Turkey readmission agreement will not apply to most TCNs for a 3-year transitional period, **nevertheless an exception is made for nationals of “third-countries with which Turkey has (already) concluded bilateral treaties or arrangements on readmission”**.¹⁴ Indeed, in recent years Turkey has secured such bilateral readmission agreements with several countries of origin and transit for migrants and refugees, and is aggressively seeking similar deals with a many other countries, mainly in anticipation of the EU-Turkey readmission agreement – to ensure that TCNs readmitted from EU Member States do not stay in the country indefinitely (see map below).¹⁵

While these agreements would enable repatriation, they may also lead to chain refoulement of persons fleeing persecution or armed conflict situations¹⁶ to unsafe countries – if the individuals concerned are not given the opportunity to access a functional asylum procedure and effective remedies in Turkey upon readmission in order to challenge their onward removal. This is an alarming trend, considering the gross shortcomings and failures of the national asylum systems in several external border EU Member States, most notoriously Greece, projected to be the Member State to actively seek most use of the future EU/Turkey readmission agreement.¹⁷

Although in theory individuals who need international protection should not be subjected to a readmission return, it is feared that in reality at least a percentage of the TCNs readmitted by Turkey under the future EU-Turkey agreement will be international protection seekers arbitrarily denied access to an asylum procedure in Greece. Therefore, until it can be demonstrated that Turkey's current reform efforts have led to actual improvements in practice, no readmission returns should be carried out to Turkey.

¹⁴ For more info, see Helsinki Citizens' Assembly Turkey Briefing Note: 'Current State of the Negotiations for a Turkey/EU Readmission Agreement and Prospects for the Future', October 2012.

¹⁵ In the framework of the EU-Ukraine readmission agreement, HRW documented that Ukraine also violated the principle of non-refoulement at its turn, by extraditing potential refugees back to their countries (such as Uzbeks to Uzbekistan).

¹⁶ See the European Court of Justice's Case of M.S.S. vs. Belgium and Greece (Appl. No. 30696/09), and Human Rights Watch's report "The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece".

¹⁷ Human Rights Watch, "Buffeted in the Borderland. The Treatment of Asylum Seekers and Migrants in Ukraine," 2010.

Who has Turkey signed bilateral readmission agreements with?



In **green**: countries with which Turkey has negotiated and concluded readmission agreements: Syria, Greece, Kyrgyzstan, Romania, Ukraine, Pakistan, Russian Federation, Nigeria, Bosnia Herzegovina. In **red**: countries which, according to public information, Turkey has approached to negotiate bilateral readmission agreements. However no information is available as to the status of negotiations.

Undermining the right to asylum in the EU

Another main concern of the EMHRN is the strong risk that the right to asylum in Europe will be undermined in the implementation of this readmission agreement.

While the agreement is signed at EU level, the implementation of the agreement is carried out on the ground by EU Member States. However, vast inconsistencies in the implementation of agreements from one EU member state to another seem to continue due to the considerable discretion left to national authorities in terms of: a) determining transit of third country nationals through a certain country, and from there directly to the EU; b) assessing the nationality and age of the person illegally entering or residing in a country; c) assessing legal claims to asylum or humanitarian protection; d) the collection, storage and processing of a considerable amount of personal information for the sole purpose of deportation.

Human Rights Watch, in its analysis of the EU-Ukraine readmission agreement,¹⁸ has already documented that EU Member States have deported asylum seekers and persons from other vulnerable groups (including unaccompanied minors) whose conditions of eligibility for protection had not been adequately evaluated. Both Hungary and Slovakia have deported unaccompanied children back to the Ukraine despite their international obligations to protect them, while most of the 50 individuals interviewed by HRW in Ukraine who had been sent back from the two countries said that they had asked for asylum upon arrival but their request had been ignored and they were sent back within a few hours.

EU Member States have also been found guilty of sending third country nationals to third countries where they risked arbitrary detention, torture, refoulement, and other harmful treatment, often without properly assessing their asylum claims or providing them with the possibility to file a request.

In the framework of its Treaty of Friendship, Partnership and Co-operation signed in 2008 with Libya, Italy began intercepting migrants at sea and returning them to Libya. Despite the fact that Libya is widely known to not be a safe third country, potential asylum seekers and unaccompanied minors have still been forcibly sent back by Italian authorities without prior identification or having the possibility to request asylum. In a historical judgment,

¹⁸ See the European Court of Human Rights' Judgment, Case of Hirsi Jamaa and Others v. Italy (Appl. No. 27765/09), and Amnesty International's Report, S.O.S. Europe, Human Rights and Migration Control, 2010.

the European Court of Justice condemned Italy for intercepting migrants at sea and returning them to Libya without assessing their need for protection. Following this judgment, Italy however signed a new agreement to stem irregular migration with the transitional authority in Libya, in an agreement that has not been made public.¹⁹

The inclusion of an accelerated readmission procedure for migrants found in border areas also increases the risk of migrant rights being violated. Not only does this type of procedure strongly reduce possibilities for asylum seekers to apply for refugee status – reduced time-frame, impossibility for the authorities to carry out a thorough examination of the person's personal history – but it also hampers means of judicial protection, such as access to effective legal remedies against deportation or rejection of the asylum application. The HRW report documented widespread abuse of this procedure by EU members, and suggested that accelerated procedures were also applied outside border areas. Concerns about accelerated procedures were also raised by in the Parliamentary Assembly of the Council of Europe's (PACE) assessment of readmission agreements in 2010.²⁰

The accelerated readmission procedure and the inconsistent implementation of readmission agreements by EU Member States in effect curtail the rights of migrants and asylum seekers, and often block access to legal channels to apply for asylum or make an appeal against deportation or detention. However, despite the repeated violations mentioned above, and implications in terms of EU members' international obligations, there has been until now a lack of political will to ensure that rights are safeguarded in the implementation of agreements. In this context, implications for the rights of migrants and refugees in the framework of the soon-to-be-signed readmission agreement with Turkey are extremely worrying. This concern is further exacerbated by the fact that Greece, whose treatment of migrants and asylum seekers is considered in violation of EU standards, figures to be the main member state that would take advantage of the future EU readmission agreement with Turkey.

¹⁹ See: "Readmission agreements: a mechanism for returning irregular migrants", Committee on Migration, Refugees, and Population, Rapporteur: Ms. Tineke Strik, Parliamentary Assembly, Council of Europe, Doc. 12168.

²⁰ See Migreurop's note, "Accords de réadmission : La "coopération" au service de l'expulsion des migrants", no. 1, December 2012.


The agreement negotiations: lack of transparency and accountability

Readmission negotiations with Turkey, as with other third country partners, are being conducted with very little transparency by the European Commission. This has prevented political institutions and civil society from expressing their concerns in due time about the agreement prior to the initialing of the agreement, and has also prevented them from conducting extensive research on the issue.

Following the Treaty of Lisbon of 2007, the European Parliament is now required to give its approval over the final agreement. However parliamentarians are not involved in the negotiations process and can only approve or reject the full agreement once signed by both parties. Furthermore, no MEP or NGO may be part of the Joint Readmission Committee established under the agreement to review its implementation, and which will become operative once the final agreement has been signed. Moreover, NGOs, civil society organisations and individual citizens do not have easy access to EU documentation on readmission negotiations, on grounds that their public disclosure might damage EU relations with third countries and jeopardise the agreements itself.²¹ The consequence has been that agreements have been drafted with skewed prioritisation given to decreasing migration flows at the expense of human rights, as illustrated by the fact that no human rights clause is included in readmission agreements for fear of further discouraging third countries.

In addition to the lack of transparency in the negotiation process, there is still insufficient monitoring of the implementation and impact of readmission agreements even after these are put in place. The Joint Readmission Committee provided for in agreements has a limited mandate, monitoring only technical aspects of their implementation. Statistics about the number of migrants readmitted and the situation of those that are readmitted is rarely assessed, as highlighted in the 2010 PACE report mentioned above. This lack of monitoring is particularly concerning in light of the many accounts of human rights violations that have occurred within readmission agreements, due to a lack of asylum legislation, hostile laws towards foreigners, and criminalisation of irregular entry or exit in the readmitting country.


²¹ See the Report [“Detention at the Borders of Europe: Report on the Joint Global Detention Project”](#), International Detention Coalition Workshop in Geneva, Switzerland, 2–3 October 2010.



Lack of regular independent monitoring also leaves scope for skewed needs-assessments related to the implementation of the agreement, for example when balancing budgets between funding border control technologies and detention centres outside EU borders, using them as a quick fix for minimising migration flows or allocating sufficient funds to the development of administrative competencies and structures to safeguard the rights of migrants and refugees in both EU and third countries.


The need for independent monitoring has been voiced several times, including by the PACE rapporteur Tineke Strike. Monitoring by NGOs and other international actors should be facilitated and seen as an integral part of the implementation of readmission agreements, and agreements suspended if systematic violations have been identified. Despite some positive openings of the Commission, which called for a greater involvement of civil society in the monitoring of the agreement, such as including NGOs as observers in the Joint Committee, no further steps have been taken so far.

Conclusion



The European Union and its Member States have concluded readmission agreements with countries that not only lack functioning asylum systems but whose authorities regularly violate the rights of readmitted migrants – either through their detention practices, lack of economic and social rights, chain-refoulement to countries where they risked torture and other violations. Certain clauses included in readmission agreements, such as accelerated procedures in areas close to the border or airports, have raised significant concerns that asylum seekers claims were not being adequately assessed before being sent back. Monitoring of readmission agreements has been rare and sporadic at best, leaving significant scope for abuse and the creation of skewed incentives by actors who stand to gain from the increased securitisation of migration management.

Past violations committed in the framework of these agreements have yet to be rectified, as demonstrated by the quick re-signing of a cooperation agreement between Italy and Libya in 2012 despite Libya's continued detention of migrants. This lack of political will to place the safeguard of the rights of migrants and refugees at the centre of all readmission and other agreements negotiated with third countries – Turkey included – is worrisome and leads the EMHRN to believe that human rights abuses will continue within the framework of new agreements. While Turkey has taken positive steps in passing a much-improved law on Foreigners and International Protection, the results of the implementation of this law remains to be seen and there continue to be significant gaps



in Turkey's respect for the human rights of asylum seekers and intercepted irregular migrants. The EMHRN urges the EU and Turkey not to implement any readmission agreement until the full respect of rights of migrants and refugees can be guaranteed, at all stages of the readmission procedure and by both requesting EU member states and Turkey.

Recommendations

Compliance of readmission agreements with international norms on the fundamental rights of migrants, refugees, and asylum seekers:

To the European Union and its Member States:

- Refrain from adopting any readmission agreement with Turkey until the country's new law on Foreigners and International Protection is fully and effectively implemented. The compliance of the Turkey's future migration management practices in light of the new law must be verified by independent observers;
- In the future implementation of a readmission agreement with Turkey, ensure that any asylum claims by individuals concerned are properly processed and evaluated by EU Member State authorities – and secured by the right of suspensive appeal – before initiating any readmission procedure with Turkey for the individuals concerned;
- Refrain from returning any person who, for the mere fact of having emigrated, risks arbitrary detention or criminal punishment upon readmission, in Turkey and/or in the country of origin.

To the European Union, its member states and Turkey:

- As a principle, refrain from including provisions for the return and readmission of **third country nationals** who have transited or appear to have transited through Turkey;
- Remove any provision relating to accelerated readmission procedure in the final readmission agreement;
- Explicitly refrain from sending back vulnerable persons, and in particular unaccompanied minors, when a readmission procedure is carried out;
- Ensure that gender and the particular vulnerability of woman migrants and refugees is taken into account in the implementation of readmission agreements;
- Put in place a proper monitoring mechanism to ensure an implementation of readmission agreements that is in accordance with international law and, in particular, with human rights

principles and the rights of migrants and asylum seekers. To this end, involve national and international NGOs in the independent monitoring of the implementation of procedures.

EMHRN recommendations with regards to the guarantee of the rights of refugees and asylum seekers:

To the European Union and its member states:

- Promote and continue to provide strong support for the development of an effective asylum system in Turkey which protects the rights of refugees and asylum seekers and is in accordance with international human rights standards, within the framework of Turkey's EU accession process and the broader cooperation agenda on migration. Initiatives to support Turkey's capacity-building should not only target Government agencies but also the civil society actors, which have an important oversight role.


To Turkey:

- Remove the 'geographical limitation' clause and guarantee full respect of the Geneva Convention;
- In light of the welcomed recent adoption of the new law on Foreigners and International Protection, continue efforts to reform the legislative and administrative infrastructure to ensure that that irregular migrants and asylum seekers are not subject to arbitrary detention and/or harmful treatment and the rights of asylum seekers are fully respected in compliance line with international norms;
- Until the new law is fully in force and implemented in practice, guarantee and ensure that asylum seekers have unrestricted access to the UNHCR and all applications for the domestic "temporary asylum" status, including claims expressed in immigration detention facilities are duly processed and assessed in a fair procedure.

EMHRN recommendations with regards to transparent and inclusive negotiations and partnerships:

To the European Union, its member states and Turkey:

- Allow representatives of civil society and democratically elected institutions to monitor the implementation of the readmission agreement, including by but not limited to taking part in the Joint Readmission Committee;
- Make publicly available all documentation related to any agreements and on-going negotiations dealing with readmission and migration cooperation, including those with third countries, by the EU,



its member states and Turkey, in order to facilitate monitoring of their implementation by civil society and others;

- Allow civil society and democratically elected institutions access to relevant documents in the negotiation phase of the implementation of the agreement, in particular to provisions that may have an impact on the rights of migrants and refugees.
- Ensure that, in the future, civil society organizations working in the field of human rights, refugees and migrants in the EU and Turkey, as well as democratically elected institutions of both parties (Parliaments) be informed of related negotiations and of their content, and that they be regularly consulted at the various preparatory stages of any agreement on migration.



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

Vestergade 16 – 1456 Copenhagen K – Denmark
Tel: + 45 32 64 17 00 - Fax: + 45 32 64 17 02
info@euromedrights.net – www.euromedrights.org



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