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BREAKING THE VICIOUS CIRCLE IN EU-TURKEY RELATIONS: VISA NEGOTIATIONS

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Against the backdrop of an accession process that has come to a virtual halt, the visa-free travel is the most tangible and visible area that Turkish nationals associate mostly directly with EU membership and seek to reap benefits from. The visa issue has been at the forefront of Turkey-EU relations and has become highly “politicized” and even “securitized”. It has also assumed a sui generis nature, which falls at odds with EU law, values and the coherence of EU policies.

Visa policy is a multi-faceted issue with legal, administrative, technical and economic dimensions. The visa liberalization between Turkey and the EU, however, has become highly and alarmingly political. This is the result of the EU’s new approach, which attempts to balance security concerns and external stabilization needs by offering the incentive of visa liberalization to neighboring countries. Increasing immigration fears as well as some other internal security concerns, have transformed the visa liberalization from a legal/technical matter into a security issue. In fact, closely related to the phenomenon of the “securitization of migration”², visa liberalization has become “securitized” because of its association with the inevitable increase in the number of (illegal) immigrants and asylum seekers and the subsequent challenges they pose to the EU member states’ internal security and welfare state.

Visa-Free Travel as a Foreign Policy Tool

Visa-free travel has become an important EU foreign policy tool. As the momentum of enlargement continuously diminishes, the EU has been using visa liberalization as an incentive for influencing reforms in neighboring countries. According to polls, visa liberalization is perceived as one of the most tangible benefits that non-EU citizens aspire to reap from the Union.

¹ This article has been published in *Turkish Policy Quarterly*, Vol. 11, No. 1, Spring 2012, pp. 121-131.

² Jef Huysmans, “The EU and the Securitization of Migration”, *Journal of Common Market Studies*, Vol.38, No.5 (December2000), pp.751-77.

The EU has recently reached many visa-liberalization agreements with several countries at its periphery. As an exchange, the states that benefited from these agreements were obliged to put forward and implement several reforms in their justice and home affairs area in order to align their legislation with the EU *acquis*. In the Western Balkans, for instance, the prospect of visa-free travel led to the signing of readmission agreements and the enforcement of comprehensive reforms.

The visa liberalization process has been successfully used as an influential foreign policy and integration tool which has helped the EU to increase its soft power and improve its international image.³ However, in the absence of clear and concise rules as how to obtain visa liberalization as well as mutual political will, and in an environment of mistrust and “accession fatigue” felt by Turkey, the package approach of the EU (visa facilitation in return for readmission) presents a rather perplexing picture.

Visa policy as a tool of “policing at a distance”⁴ is an effective way of drawing the lines between the “wanted” travelers and those who are perceived as a threat to security and could potentially destabilize the internal security and cohesion of the Schengen area. In addition, “unwanted travelers” are perceived as threats to the welfare state and labor market of the EU member states.

Visa liberalization for Turkey has been labeled and presented by European officials as a threat to the EU’s internal security since it would increase the crime rates in the member states. It has also been perceived as a threat to “societal security”⁵, because a potential flux of Turkish immigrants –who would take advantage of the visa liberalization– would erode the member states’ national identity. Turkish nationals have been “otherized” in the construction of the European identity and made the issue more vulnerable to political manipulation.

³ Zeynep Ozler and Ilke Toygur, “Visa-Free Travel: Is It Working as an EU Foreign Policy Tool?”, *FRIDE*, April 2011, <http://www.fride.org/publication/901/visa-free-travel:-is-it-working-as-an-eu-foreign-policy-tool>.

⁴ Didier Bigo and Elspeth Guild (ed.), *Controlling Frontiers: Free Movement Into and Within Europe* (England: Ashgate Publishing Co, 2005), p.1.

⁵ Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe* (London:Pinter, 1993), p.25.

Visa Issue in Turkey-EU Relations

In order to address this negative development, Turkish officials, academics and NGOs have been using legal arguments. More specifically, they have been asking to be given the rights that have been envisaged in the Association Agreement (1963) and its Additional Protocol that went into force in 1973. Although the rule of law is the backbone of the EU, the efforts of the European Commission to enact EU law have been rendered futile by the indifference and political resistance of some EU member states.

The “Soysal” Case of February 2009 has been a milestone to this respect. The judgment of the European Court of Justice (ECJ) concerns two Turkish lorry drivers, Mr Soysal and Mr Savatlı, who were refused visas in order to drive to Germany. The case law stipulates Article 41(1) of the Additional Protocol is to be interpreted as meaning that it precludes the introduction, as from the entry into force of that protocol (1 January 1973), of a requirement that Turkish nationals must have a visa to enter the territory of a member state in order to provide services there on behalf of an undertaking established in Turkey, since, on that date, such a visa was not required. In this scope, Germany’s visa practice was deemed unlawful given that, starting from July 1980, Germany introduced a visa requirement for all Turkish nationals seeking entry into Germany. In other words, the Soysal judgment gives a personal right to any Turkish national who wishes to come to the EU to provide services, to enjoy access to the territory of any member state on the basis of the same conditions which applied either in 1973 or on the date when the relevant member state joined the EU. This includes the right not to have to obtain a visa to go to the Member State in question if such a requirement did not exist at the relevant time.

In the aftermath of the Soysal ruling, only Germany and Denmark complied to the European Commission’s request, although the Soysal ruling is bound to have implications in nine other member states as well⁶. However, even their response was inadequate in practice. The mere procedural change, namely the visa exemption document required by Germany for certain categories of visitors to enjoy visa exemption, was restrictive in scope (service recipients are not included) and in fact led to more confusion and paperwork, exacerbating complaints instead of addressing them. While administrative court rulings are ongoing in the Netherlands

⁶ For a detailed account refer to Prof. Kees Groenendijk and Prof. Elspeth Guild, *Visa Policy of Member States and the EU Towards Turkish Nationals After Soysal-Revised and Updated Second Edition* (Istanbul: IKV Publications, 2011).

and Germany with no hint of supportive political will, some other member states like Belgium, France and Italy have done nothing so far.

Despite the fact that Turkish citizens and especially some specific categories (Erasmus students, academics, civil society representatives etc.) have been adversely affected by the visa requirement, the Turkish business community is perhaps the most significantly and intensely affected category. Even though the Customs Union between the EU and Turkey allows the free movement of goods, the businessmen who manufacture and sell these goods cannot move freely because of the visa requirement. Sometimes the visa application procedure takes so long that when the visa is finally issued is of no use to the businessmen, because they have already missed an important business appointment. Also, the nature (violation of privacy and confidentiality) and number of the required documents (exceeding 20) have tremendously damaged Turkish businessmen who have lost many of their international professional contacts. These visa requirements create unfair competition, thus violating not only the provisions of the Customs Union but also of the Article 41(1) of the Additional Protocol of the Ankara Agreement.

On the contrary, their European counterparts are either exempt from the visa requirement or are able to acquire visas at the airport upon arrival by paying just a very small fee of 15 Euros. This in turn puts Turkish businessmen in a disadvantaged position and hampers arms-length bargaining. It becomes extremely difficult for them to conduct their regular business relations, let alone initiate new business deals. It should also be noted that Turkey is the only candidate country to be in the Customs Union prior to EU membership. This particular situation accompanied by the visa barrier has sparked debates about the need to re-evaluate and even to re-negotiate the Customs Union.

Another category that is significantly affected by the visa requirement is the one of Turkish Erasmus students. Since 2004, Turkish students have been participating in the Erasmus program, however this right is severely hampered by the visa practices of the EU consulates. This is absolutely against the Erasmus spirit and the objectives laid down in the Decision 2317/2003/EC of the European Parliament and the Council, which explicitly states the following: “In order to ensure that the beneficiaries of the program enjoy a high-quality welcome and stay, the Member States should endeavor to make their visa processes as straightforward as possible.”

In the same vein, the obligation to submit extensive documentation coupled with long bureaucratic procedures suffice to wear out an Erasmus student's initial motivation, enthusiasm and willingness to study abroad. There have been many cases of Erasmus students who were admitted to a European university but missed the courses because of a delayed visa approval and had to start their academic semesters later than their fellow classmates. Finally, many Turkish Erasmus students who were accepted to a Program did not go or even gave back the scholarships that they received. These cases reveal the magnitude of the problem and are not in any case "unfortunate incidents".

The results of the "Visa Hotline Project" confirm these problems. The project conducted by the Economic Development Foundation (IKV) and the Brussels-based NGO European Citizen Action Service (ECAS) with the support of the Union of Chambers and Commodity Exchanges of Turkey (TOBB) received well over 1000 complaints in Turkey and abroad within only 2 months – the hotline operated between November 2009 and January 2010.⁷ It was the first civil initiative documenting the nature and scope of the visa problem with real-life stories of the "visa victims" from different backgrounds. The study revealed the negative impacts of the visa requirement for Turkish nationals on trade, education and tourism. The project also presented the "human" dimension, which is often overlooked, the feelings of injustice, discrimination and humiliation voiced by the Turkish business community representatives, and shared by other segments of society, which in some cases have led to an emotional reaction towards the EU.

Turkey has had an association relation with the EU since 1963, is a party to the Customs Union since 1996 and a negotiating candidate since 2005. Therefore, it is important for both Turkey and the EU to establish sound relations and tackle deep-rooted prejudices and misperceptions in order both sides to be well-prepared for Turkey's full membership. Lifting the obstacles hindering the free movement is an effective tool of "Europeanization" and a significant step towards increased interaction at the civil society level. This would be in

⁷ Zeynep Ozler and Melih Ozsoz, *Visa Hotline Project-Final Report* (Istanbul: IKV Publications, 2010).

accordance with the strategy proposed⁸ by the European Commission whereby there would be three pillars with the third one concerning the creation and maintenance of political and cultural dialogue between both sides' civil societies.

Although Turkey is neither the migrant-sending country of the 1960's nor the political asylum-seeker country of the 1980's, the strict visa policy for Turkish nationals –that has been initiated since the 1980s– has remained the same. Even the idea of lifting visa restrictions is met with severe criticism by some member states. The shadow of the past, where fears for a Turkish migration wave prevailed, still exists without taking into account Turkey's new economic and political reality. Despite significant changes on the ground, such as the net return of Turkish immigrants from Germany and the legal implications of the recent case law by the European Court of Justice's decision to rule the visa requirement for Turkish citizens illegal, the visa application still exists.

Turkey's transformation from a migrant-sending country to a significant hub and transit point for irregular migrants has been causing serious concerns to some EU member states and makes them hesitant to accept the lifting of visa restrictions. The volume of irregular crossings at the Turkey-Greece border and the high number of third country nationals crossing through Turkey are often cited as the most alarming developments.

It is true that Turkey is an important land route for migrants coming from Africa, the Middle East and Asia with the aim to go to the Schengen countries. However, it is apparent that neither the use of military/police forces nor the creation of fences will offer long-term solutions to the problem of irregular migration. Such measures only intensify the feeling among Turks that Turkey is not perceived as a valuable partner but rather as the "other" that needs to be kept at the gate. The EU, as a rational actor, should come to terms with the reality and adopt a new understanding and policy towards Turkey concerning migration and security.

⁸ "Communication from the Commission to the Council and the European Parliament - Recommendation of the European Commission on Turkey's progress towards accession" *European Commission's website*, 6 October 2004, http://ec.europa.eu/enlargement/candidate-countries/turkey/key_documents_en.htm.

This will help the EU to protect more effectively the borders of Greece, Bulgaria and Romania, thus making the Schengen borders more secure.⁹

Among all the candidate and potential candidate countries, Turkey remains the only state without an official EU roadmap towards visa-free travel. After granting visa-freedom to the Western Balkan countries –initially Serbia, Macedonia and Montenegro and later Bosnia-Herzegovina and Albania while Kosovo is also on track– the EU has paved the way to visa-free travel for “Eastern Partnership” countries –initially Georgia, Moldova and Ukraine followed later by Armenia and Azerbaijan, with Belarus being the next– to enhance business opportunities and to facilitate interpersonal contacts. Unfortunately, the same level of political support does not exist in the case of Turkey. The application of the Visa Code –dating back to 5 April 2010– and European Commission’s Decision of 13 October 2011 on a harmonized list of documents are far from being an effective panacea to the current problems.

The European officials often use technical criteria for the resolution of the visa deadlock and assert that, unlike Western Balkans, Turkey has not fulfilled conditions ranging from readmission agreement to border management. The fact, however, that –despite inadequate financial assistance and little encouragement from the EU– Turkey is working hard to carry out major reforms in the field of justice and home affairs is often neglected. The introduction of biometric passports since June 2010, the drafting of a framework law on Foreigners and International Protection, by the Migration and Asylum Bureau of the Turkish Ministry of Interior –inspired by and going beyond EU standards– and the efforts in order to put forward an integrated border management strategy that will increase the number of readmissions and asylum capacity –during a critical point because of the turmoil in the Arab region and the refugee inflows from Syria– are significant measures that should not be overlooked. It can be argued that Turkey has still plenty of room for improvement but it is trying to put forward reforms despite the lack of significant incentives and much ambiguity from the EU.

The major obstacle towards a visa roadmap is the signing of an EU-Turkey Readmission Agreement. The readmission agreement negotiations, which started in 2003, have been into a stalemate for a long time because of major disagreements between the two sides. The

⁹ Hugo Brady, “Saving Schengen: How to protect passport-free travel in Europe”, *Website of Centre for European Reform*, 23 April 2012, <http://www.cer.org.uk/publications/archive/report/2012/saving-schengen-how-protect-passport-free-travel-europep.41>.

Readmission Agreement, because of its asymmetrical nature, is clearly and disproportionately to the disadvantage of Turkey since it will have to carry most of the burdens associated with the readmission. However, since the reset of the negotiations, Turkish officials have worked in close cooperation and in a constructive manner with their European counterparts based on the principle of the “fair burden sharing”. After long negotiations which were held behind closed doors, the text was approved in the Justice and Home Affairs meeting of 24 February 2011. However, a vague mention of the “visa dialogue and mobility for Turkish citizens” was far from meeting Turkey’s expectations. Additionally, a last minute insertion of a new paragraph, which explicitly stated that this dialogue does not constitute a negotiating mandate, made valid the Turkish fears¹⁰. Since then, Turkey’s official position is to sign the readmission agreement only when the EU explicitly commits itself to offering “visa liberalization” to Turkish nationals.

Turkish declaration is almost “breaking the routine” for the EU, which had established the pattern of granting *visa facilitation* to the Western Balkan countries in return for, among other criteria, readmission agreements ensuring third country nationals could be returned to the respective Balkan country they crossed to enter Schengen. For Turkey, visa facilitation by the EU is not a sufficient incentive. In fact, it is a step backwards because Turkish citizens already have the legal right to travel without a visa, even though Member States’ resist the practice of this right.

It is worth mentioning the results of a project carried out by ECAS regarding the implementation of the Visa Facilitation Agreements (VFA) in the Western Balkans. The project revealed, to put it bluntly, that the “visa facilitation does not really matter”¹¹. In the wake of visa facilitation, the desired positive effects seem have not come or have been offset by other delays and costs. Strikingly enough, with VFAs in force, it has become harder, not easier, to obtain visas compared with the past.

¹⁰ “Council Conclusions on EU-Turkey Readmission Agreement and related issues, Justice and Home Affairs Council Meeting”, *European Council website*, 24-25 February 2011, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/119501.pdf.

¹¹ ECAS, “Does it really matter? Visa facilitation in the Western Balkans: Monitoring of the New Agreements”, *ECAS website*, 25 April 2012, <http://www.ecas-citizens.eu/content/view/138/146/>.

Turkish EU Minister and Chief Negotiator Egemen Bağış constantly highlights this point –for domestic as well as international consumption– when he advocates for visa liberalization. On the other hand, some EU member states have been claiming that Turkey already enjoys visa facilitation.¹² This line of reasoning refers to the fragmented Turkish passport regime and specifically to the fact that special or green passport holders can already benefit from visa-free travel. Special passport is issued to former members of the National Assembly, former ministers, first, second or third grade public servants and pensioners, mayors as well as to the spouses and children (with limitations) of the special passport holders.¹³ Since 2007, more than 1 million green passports were issued, which constitutes 8 percent of the total number of passports.¹⁴ This fact had led many European officials to suggest to Turkey, as an alternative way for resolving the visa problem, to issue more green passports. In the same vein, it is also articulated that the widespread use of green passports is one of the reasons that the Turkish State did not focus enough or turned a blind eye on the visa problems and refrained from adopting a more pro-active stance on the issue when there were suitable opportunities – e.g. when the EU Visa Regulation of 539/2001 was amended in order to move the Western Balkan countries from Annex I to Annex II.

Going back to the link between visa facilitation and readmission, in order the EU to be able to effectively “sell” the readmission agreement to Turkey, it has to offer a set of well-defined rules leading to visa liberalization. An obscure mention of a “visa dialogue” is not enough in order to convince Turkish politicians and officials to carry out costly reforms. Furthermore, Turkey fears that even if all the reforms will be accomplished and the technical criteria will be met, the right to visa-free travel might still not be granted due to lack of political will of some member states.

Turkey’s Visa Policy

Faced with “closed doors” in the European front, Turkey has turned to its long-neglected neighbors. In an attempt to revitalize trade relations and tourism as well to enhance good-neighborly relations, Turkey has lifted visas for the nationals of Syria, Yemen, Libya, Jordan,

¹² Extracted from the author’s meeting notes with consulate officials working on the visa section.

¹³ “Information about Passports”, *Turkish Foreign Ministry website*, www.mfa.gov.tr.

¹⁴ “Number of Passports Produced”, *Website of General Directorate of Turkish Mint and Printing Office*, <http://www.darphane.gov.tr/upload/files/Pasaporturetim.pdf>.

Lebanon etc. This development, however, has raised concerns and questions in European circles as to whether Turkey is drifting away from the EU norms since it has lifted visas for countries that belong to the EU's "blacklist". By granting visa to its neighbors, Turkey intends to intensify trade and tourism opportunities as well as to improve neighborly relations at a time when Europe is suffering from a severe economic crisis.

In line with the slowing down of its accession process, Turkey can be seen as taking pragmatic steps to compensate for the lack of progress in its relations with the EU and the failure of the Union to initiate visa liberalization. However of course due to the recent developments in Syria, Turkey's efforts to open up to its non-European neighbors is also faltering.

Furthermore, Turkey's visa policy towards EU citizens is criticized as not being uniform, raising concerns among Commission officials.¹⁵ Currently 11 EU Member States must have a visa in order to enter Turkey, which can be obtained at the Turkish borders by paying 15 Euros. Citizens of 16 other Member States are exempted from the visa regulation for short stays. Furthermore, instead of taking steps in the direction of addressing EU's concerns, legislative change in the opposite direction is underway. Due to a recent legislative change, which aimed primarily to curb irregular migration and illegal residence in Turkey, foreigners can only stay 90 days in a period of six months. That is the equivalent of how much time a Turkish national holder of green-passport can spend in a European country, where he/she entered visa-free. Europeans now need to apply for a residence permit for stays exceeding three months. Also, criteria to obtain work permits are definitely not easy. These changes signal a tougher policy by Turkish officials or a tendency for more restrictive policies as a reaction for the EU's member states visa practices towards Turkish nationals. Whether these changes are the result of realistic calculations or are as retaliatory measures is debatable.

Turkish citizens' disillusionment with the EU increased when the EU lifted visas for Serbia, Macedonia and Montenegro. Public demands for Turkish authorities to implement the reciprocity principle –in other words, to impose a visa to EU nationals, has increased. This continuing frustration has made the visa problem the symbol of the deteriorating relations and slowing accession negotiations between Turkey and the EU. This has also adversely affected

¹⁵ European Commission, "Turkey 2011 Progress Report", *European Commission's website*, 12 October 2011, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf.

the integration efforts as well as the Europeanization process, which reached its peak in the 2003-6 period.

Minister Egemen Bağış has emphasized in many instances that it is “nonsense” and “ridiculous” that “remote countries” such as Belize, Paraguay and Uruguay enjoy visa-free travel while negotiations are being conducted with Moldova, Russia and Ukraine, but not with Turkey. Talking to some European diplomats in Brussels he said that: “When our citizens are insulted on a daily basis in the consulates of EU states [when they apply for visas], one may ask the question as to why we should help the EU with their problems when we are treated this way.”¹⁶

Future Perspectives

Croatia, which started the accession negotiations on the same day as Turkey on 3 October 2005, will join the Union on July 2013 as the EU’s 28th member. Currently, Turkey enjoys visa-free travel with Croatia but it will not last long given that Croatia will have to align with the Schengen acquis and thus demand visas from third countries. There will be another dividing line in the neighborhood between Turkey and the Western Balkan states because the latter –including Kosovo– will be enjoying visa-free travel, while Turkey will not. The same might be the case for Russia and other ex-Soviet Republics, and it will be ever more difficult for the EU to defend the coherence of its regional policies and conditionality.

In conclusion, EU’s visa policy towards Turkey is not sustainable.¹⁷ At this point, Turkey deserves a visa roadmap with clearly-set guidelines based on fair and objective criteria, which would reflect the EU’s honest commitment for visa liberalization. It should be understood that mere gestures or empty promises are not enough anymore. Time has come for the EU to really take action by reaching a new deal with Turkey on migration¹⁸. It is not only desirable to bring Turkey closer to the EU, but it is also the only possible way for ensuring Turkey’s vital

¹⁶ Valentina Pop, “Turkey to EU: No visa-free, no clampdown on migrants”, *Euobserver website*, 27 January 2011, <http://euobserver.com/15/31708>.

¹⁷ Gerald Knaus and Alexandra Stiglmeier, “Being fair to Turkey is in the EU's interest”, *Euobserver website*, 12 March 2012, <http://euobserver.com/7/115560>.

¹⁸ Hugo Brady, “Saving Schengen: How to protect passport-free travel in Europe”, *Website of Centre for European Reform*, 23 April 2012, <http://www.cer.org.uk>.

cooperation in migration and asylum management, which are of critical importance for the EU.

A political solution is needed. The legal, administrative and technical aspects are only parts of the broader picture and are not enough *per se* in order to give a solution to the current stalemate. Only politics can do this. The practical reflections of Turkey's attainments in the legal sphere so far depend solely on the political sphere and Turkey's success within this environment. In the meantime, several important legal, diplomatic and technical initiatives and reforms should continue to be supported as well as the stronger cooperation at the civil-society level.