

## **The Good, the Bad and the Ugly – 5 + 1 Steps Away From Visa-Free Travel for Turkish Nationals**

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### **Introduction**

Visa-free travelling to Europe is a long-standing dream of Turkish citizens and has become the most important bargaining tool in the recent EU-Turkey refugee deal. On 4 May 2016, as a historic step, the European Commission endorsed visa liberalisation for Turkish citizens in its final assessment report on Turkey<sup>1</sup> if and only if, Turkey fulfils the remaining five benchmarks. But while the ink of the report was still wet and the media was discussing future scenarios regarding the visa issue, something surprising happened: Prime Minister Davutoğlu, who is purported to be the architect of the refugee deal, was forced to leave his post and announced the next day that he would step down at an extraordinary party congress on May 22. This was the final and the most obvious sign of a power struggle between the two highest political dignitaries in Turkey. For Europe new questions emerged: Will this be the end of the refugee deal? Does the European Union need a plan B? How can the new Prime Minister Binali Yıldırım and, more importantly, President Erdoğan who signed the first readmission agreement that includes the 72 criteria for visa-free travel when he was Prime Minister in 2013, can be convinced to keep fulfilling the promised requirements? In order to really understand the current situation, one has to look back at Turkey's odyssey towards visa liberalisation. In this article we aim to draw a complete map of the road to visa-free travel for Turkish citizens connecting it to the internal dynamics of both, the European Union and Turkey.

### **Visas for Turkish citizens in Europe: a brief history**

It is more than 35 years ago that visa requirements for Turkish nationals were introduced by a European country. This country was Germany: it first required visas for Turkish nationals as a 'temporary procedure' in September 1980, following a request from the Turkish government to prevent political asylum for Turks after the military coup which had taken place on 12 September. Belgium, the Netherlands and France, and later the rest of the EU Member States followed with their own visa regulations. Recently Croatia introduced visas for Turkish citizens only months before its accession to the European Union in 2013 – in spite of the large numbers of Turkish citizens travelling to the country.

The burdensome visa procedure was an endless source of discussion and tension between Ankara and Brussels, and in the late 1980s the struggle was taken into the courtroom. The European Court of Justice (ECJ) passed its first judgment on visa regulations for Turkish citizens in 1987 in the Demirel case.<sup>2</sup> Since then, European courts and the national courts of the Member States have given judgments – in more than 50 cases pertaining to the subject. Whereas in the past Turkish governments had turned a blind eye to what happened in European courtrooms and left Turkish applicants alone in their legal struggles, the situation

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<sup>1</sup> The full text of the report can be found here: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third\\_progress\\_report\\_on\\_turkey\\_visa\\_liberalisation\\_roadmap\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf)

<sup>2</sup> The Demirel ruling in 1987 was the first to acknowledge the Ankara Agreement and Additional Protocol as an integral part of *acquis communautaire* and to admit that the provisions of the Additional Protocol could have a direct effect on visa free travel for Turkish nationals.

shifted after a case that was opened in the German national court (Berlin) and then forwarded to the ECJ for confirmation – the Soysal Case. The Soysal case of 2008 was a turning point in the legal discussion after the ECJ ruled in favour of Turkish service providers, aka business people, for the first time. The Soysal decision was important and made a real difference because for the first time the Court decided that visa requirement for Turkish nationals is incompatible with the Turkey-EU association agreement. However, the positive climate surrounding the legal situation disappeared with the ruling of the same court in 2013 in the Demirkan case, where the Soysal ruling was reversed. This effectively closed the doors to the courtrooms. With the Demirkan decision, Turkey was pushed to negotiate a readmission agreement with the EU. Although visa liberalisation (visa-free travel) had been negotiated behind closed doors, visa facilitation (that includes reduced visa fee, limited number of documents, shorter processing time etc.) for Turkish citizens was also on the table in the readmission agreement negotiations.

In December 2013, the EU presented Turkey with a visa liberalisation roadmap containing 72 criteria to be fulfilled together with the effective application of the readmission agreement. The readmission agreement covering readmission procedures with regard to the illegal migrants, i.e. illegal Turkish migrants who have entered the EU via Turkey, third-country nationals who have used Turkey as a transit country to enter the EU and Turkish citizens who initially fulfilled the required conditions for entry into the EU Member States, but have failed to do so upon arrival at the EU, which has been a constant source of discussion between both parties over the last 10 years. However, there was no real incentive for Turkey to take back all the illegal migrants crossing Turkey to reach Europe. The economic burden of the agreement was not shared between the parties and no benefits were offered.

### **The road to visa-free travel**

It was in 2014 that the then Prime Minister and present President Recep Tayyip Erdoğan promised visa-free travel for Turkish citizens by the end of 2016, in spite of the European side's reluctance to mention any concrete date. Although this date may have initially appeared to be a pipedream, with the long-lasting war in Syria and the subsequent flow of refugees into Turkey and Europe, a new factor was added to the balance of power between Turkey and the EU, largely feeding Erdoğan's ambitions for 2016.

The year 2014 was characterised by the necessary political will in Turkey to fulfil the mandatory criteria for visa-free travel. Due to some new incentives to establish the readmission mechanism with the EU, Turkey handled its homework carefully and started working on the 72 criteria. The European Commission published its first assessment report on Turkey in October 2014 – just a few weeks after Turkey's 16<sup>th</sup> Progress Report – encouraging Turkey to fulfil the requirements on its way to visa-free travel. With most of the criteria being partially fulfilled, the Commission praised Turkey for its efforts, but also asked Ankara to accelerate its reform process. Unfortunately, 2015 was not a successful year in Turkey's long march towards Europe. Two general elections, on the one hand, and the conflict in Turkey's eastern region, on the other, dominated internal politics. The Turkish administration shelved the 72-criteria roadmap and the effective application of the readmission agreement until the end of the year. Meanwhile, Europe was faced with a sudden influx of Syrian refugees, mainly arriving on the continent via the Aegean Sea. Just before the November election in Turkey, the number of illegal crossings to Europe had reached over one million. Brussels and Ankara then saw the opportunity for a bargain: in return for a revitalisation of Turkey's EU

accession talks and visa-free travel for Turkish nationals, Turkey would help to stop the flow of refugees coming from its borders.

It took months for both sides to agree on the conditions of the deal. It was not until the EU-Turkey Summit in November 2015 that the Turkish side expressed its commitment to accelerate the fulfilment of the Roadmap, including moving forward with the application of all of the provisions of the EU-Turkey Readmission Agreement with the objective of obtaining visa liberalisation by October 2016. In return for readmitting a certain number of refugees into its territory, Turkey obtained a 3 billion EUR fund (which has been pledged to be doubled in the second round), a vague promise to open certain chapters on accession negotiations, a quickened visa liberalisation process and an institutional framework within which the leaders on both sides could regularly discuss the issues relating to Turkey's accession. Just before Turkey concluded its 10<sup>th</sup> year of accession negotiations with the EU in 2015, an important window of opportunity opened for both sides. The deal between Turkey and the EU was reached on December 2015, and Turkey has since made efforts to decrease the number of migrants crossing the Aegean. With fewer refugees and fewer casualties in the cold waters of the Mediterranean and after Turkey was able to fulfil a great number of criteria, the EU announced its second assessment of the visa-free roadmap in March 2016

#### **Visa-free travel: closer than ever?**

With the latest version of the refugee deal the date for visa liberalisation seemed closer than ever expected: June 2016. In its third assessment report, just weeks after the second, the European Commission sent a proposal to the European Parliament and the Council asking to lift the visas for Turkish nationals. The Commission explicitly emphasised that five criteria need to be fulfilled immediately if visa-free travel for Turkish citizens should become a reality in June 2016:

- 1) Adopting further measures to prevent corruption;
- 2) Aligning the legislation on personal data protection with EU standards;
- 3) Concluding an operational cooperation agreement with Europol;
- 4) Offering effective judicial cooperation in criminal matters to all EU Member States;
- 5) Revising legislation and practices on terrorism in line with European standards.

However, it is not the European Commission that has the final say on visa-free travel. The recommendation will be discussed in two committees of the European Parliament (LIBE and AFED) and finally voted in the plenary. Then the EP's decision will be communicated to the European Council, which will decide via qualified majority voting. The President of the European Parliament Martin Schultz has already pointed out clearly that the current criteria are not open to negotiation, despite President Erdoğan's attempts, and that the EP will not move forward until all criteria are fulfilled. This means that the institutional mechanism will not begin to move until Turkey has done its homework. This is a perfect example of the role the European Parliament can play: many of the democratically elected representatives of the European citizens have been suspicious of the refugee deal and its implications from the very beginning. This has also been echoed by Kati Piri, Turkey Rapporteur in the European Parliament, who said that visa-free travel for Turkish nationals is not possible in the short term unless Turkey will be able to fulfil the five remaining benchmarks. This also demonstrates the institutional division in the European Union. Even if the Commission passed

its report recommending visa-free travel for Turkish citizens after all the negotiations, the European Parliament stopped the process for now.

### **What is left to do?**

As for adopting further measures to prevent corruption, the European Commission has asked Turkey to ensure an effective follow-up to the recommendations issued by the Council of Europe's Group of States against Corruption (GRECO). For the followers of Turkey's EU history GRECO is not an odd and distant concept. In fact, it has been an issue in countless Progress Reports on Turkey. So far the European Commission has published 18 Progress Reports on Turkey, a record in European enlargement history. The reports altogether amount to 1,898 pages, the largest country-specific written document collection on European integration.

The second criterion Turkey has to fulfil quickly is the alignment of its legislation on personal data protection with EU standards, notably to ensure that the data protection authority can act in an independent manner and that the activities of law enforcement agencies fall within the scope of the law. The draft law on personal data protection has been on the Turkish Parliament's agenda for a long time. With the new momentum for visa-free travel, the Turkish government quickly adopted the law and checked the necessary criteria on its list. Third on the list is concluding an operational cooperation agreement with Europol, another benchmark that is connected with data protection. Fourth, Turkey has to offer effective judicial cooperation in criminal matters to all EU Member States, if it wants to convince the institutions.

The most important benchmark left is to bring Turkish legislation and practices on terrorism in line with European standards; notably by better aligning the definition of terrorism in order to narrow the scope of the definition and by introducing a criterion of proportionality. There are several factors that need to be taken into account with regard to the fulfilment of this criterion. First and foremost with the current security situation in Turkey, it becomes more difficult for the Turkish government to experiment with the legal definition of terrorism. Second, President Erdoğan – critical of European attitudes towards in his eyes terrorist organisations, namely the PYD (Kurdish Democratic Union Party) and the PKK (Kurdistan Workers' Party), is unwilling to change the Turkish definition. Third, and more internationally, there is no such thing as a common definition of terror, terrorism and terrorist. And lastly, different laws in Turkey have diverging definitions of terror, but the Ministry of Justice insists that the definition of terror in Turkish legislation is in line with European standards. However, what is being criticised in Europe is the application of this terror laws on journalists, academics and anyone else who is critical towards the government. In short, the problem is the practice, which is an issue which exceeds the question of definition.

### **Concluding remarks**

As mentioned before, the turbulent political atmosphere in Turkey has resulted in Prime Minister Davutoğlu stepping down. The ruling AK Party held an extraordinary party congress to elect the new party president and the new prime minister. In the meantime, President Erdoğan made a strong statement calling for Europe 'to deal with its own affairs' rather than pushing Turkey to change its definition of terror in return for visa-free travel. The newly appointed Minister for EU Affairs Ömer Çelik declared that the EU is not the only path and

choice for Turkey. What will happen now is not clear. Could it be the end of Turkey's 36-year odyssey?

On the European side, the leaders of the political groups in the European Parliament and its President Schultz have stated that the Commission's recommendation for visa liberalisation will not be taken into consideration before Turkey accomplishes the remaining benchmarks. President Schulz has declared that the Parliament would only start processing the file once steps for fulfilling the criteria are taken by the Turkish government. While the European side positioned itself very clearly, the Turkish President made it just as clear that there would be no definition or application change of 'terrorism'. Amidst rumours that Turkey will not fulfil its side of the refugee deal if the problems about the visa regulation are not resolved, other rumours have emerged claiming that the European Union is working on a Plan B for the refugee deal in case the deal with Turkey fails. This Plan B includes hosting refugees in the Greek islands with certain financial and operational assistance. Still, since the origin of the signing of the readmission agreement and the visa liberalisation promise for Turkish citizens is not the refugee deal, even though it has been the most important catalyser, there is still hope for a visa-free travel to Europe for Turkish citizens.

What to expect for the following weeks? The new Turkish Prime Minister and his cabinet have taken office. In the meantime, German Chancellor Angela Merkel visited Turkey once again, meeting both civil society representatives and the President himself to discuss the current situation. With regard to the interior situation, the lifting of the immunity of many Members of Parliaments, most of them Kurdish, has shown signs of a change in the balance of power, which in the end may lead to a regime change. With regard to EU-Turkey relations, the current official statements concerning the European Union and its criteria for visa-free travel are very alarming. After decades of back and forth, the image of the European Union in Turkish public opinion is already damaged and should not be strained any further. Struggling with its current challenges, Turkish civil society needs a European anchor point more than ever.