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Schengen Visa Deadlock: The Unresolved Case of Turkish Citizens

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Abstract

The visa policy of the European Union (EU) member states against Turkish citizens has been a controversial topic for decades. Millions of Turkish citizens suffer from serious restrictions before their travel to the Schengen area for the purpose of their non-gainful activities. In time, two main options appeared before the visa-free travel of Turkish citizens, namely the opportunity brought by the interpretations of the Court of Justice of the EU (CJEU) based on the "stand-still clause" and secondly the Visa Liberalisation Dialogue. The objective of the article is to discuss whether the visa regime against Turkish citizens is justified or politically motivated. It connects the technical/legal analysis to a political analysis through the securitization theory. Security framing practices of the European actors at various policy levels are analyzed to explain the continuation of the restrictive visa regime against Turkish citizens despite two strong options that could have ensured visa-free travel. This article concludes that as a result of developments following the failed coup attempt in 2016, visa-free travel of Turkish citizens which was framed through the perceived threat of Turkish migration has transformed into a real threat.

Keywords: Securitization, Türkiye-EU Relations, Readmission Agreement, Visa Liberalisation Dialogue, Court of Justice of the European Union

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Introduction

One of the most controversial topics of Türkiye–European Union[1] (EU) relations has been EU's visa policy against Turkish citizens. The visa topic continues to be a contentious issue due to diplomatic, legal, economic, social and moral reasons. On diplomatic grounds, the visa issue has been an outstanding matter in Türkiye-EU relations since 1980s. Türkiye is the only candidate country whose citizens are subject to visa restrictions. In return, Türkiye adopts a non-reciprocal visa policy against the EU in which citizens of majority of the member states are exempt of visa. Even citizens of 14 member states do not need a passport to enter Türkiye

1 Even though European Union has acquired legal personality with the Lisbon Treaty, for the purpose of terminological simplification, the term European Union is used throughout the article also to refer to its institutional predecessors.

(Ministry of Foreign Affairs of Türkiye 2024). The legality of the visa is questioned under the Türkiye–EU Association Law. The jurisprudence of the Court of Justice of the EU (CJEU) based on Türkiye–EU Association Law, has ruled that Turkish citizens under certain categories should be exempt of the Schengen visa when entering into certain member states. One of the most controversial dimensions of the visa application is on economic grounds since under the Customs Union established between the EU and Türkiye back in 1996, free circulation of goods has been possible, yet Turkish businesspeople who are the owners and producers of those goods are not allowed to travel freely. Visa requirement against Turkish citizens has a societal impact as it restricts the business, tourism, and education related travels of Turkish citizens. It impairs people to people contact between Turks and Europeans. Perhaps the most challenging aspect of the Schengen visa is the discrimination the applicants face. According to a study conducted on the experiences of Schengen visa applicants in Türkiye, visa applications were rejected without any reason put forward; applicants suffer both financially and psychologically from the delays that occur in the issuance of visas; and applicants were subject to mistreatment by the staff at the consulates (Tezcan 2010). The visa process has turned out to become a hidden sanction against Turkish citizens.

The objective of this article is to discuss whether the visa regime against Turkish citizens is justified or politically motivated and thus, securitized by the EU. It analyzes the scenarios with regard to the visa-free travel of Turkish citizens for their non-gainful activities[2] to the EU member states. Mainly two options have emerged before Türkiye to become exempt from Schengen visa: 1) Progressive interpretations of the CJEU jurisprudence on the well-known "stand-still clause"[3] paved the way for the possibility of visa-free travel under certain conditions; 2) Türkiye has engaged in the Visa Liberalisation Dialogue with the EU in return for signing of the Readmission Agreement.[4] The article compares the Turkish experience of the visa liberalization process with those of the Western Balkan and Eastern Partnership countries, in order to underline the differential treatment which could also be explained by the securitization of Türkiye's visa process.

It is a fact that Western European countries hosting large Turkish populations have not yet come to terms with the post-war flow of Turkish citizens and their integration issues to the host societies. The fear of the possible flow of more Turkish people through the visa liberalization has made the issue turn out to be a security issue, which stands for more than technical and legal requirements. The article connects the technical/legal analysis to a political analysis through the securitization theory. Regarding the theoretical

2 Gainful activity refers to any paid or non-paid professional activity employed, self-employed or through the provision of services, while non-gainful activity covers any engagement without employment through tourism, education, medical treatment or business purposes.

3 In legal terms "stand-still clause" stands for the prohibition of introducing new restrictions to the already given conditions. The provision laid down in an agreement forbids a party from changing the conditions "from how they stand at the time of entry into force of the agreement to the detriment of the applicant" (Göçmen 2009, 151).

4 Readmission agreements are agreements between States, based on reciprocity, that establish and facilitate the procedures for the identification and safe return of persons who do not or no longer fulfill the conditions for entry or stay on the territories of the parties.

framework, the article refers to the Copenhagen School's securitization theory with the aim of deconstructing the political motivation of the European policy makers stemming from the social construction of the threat of Turkish flow. Security framing practices of the European actors at various policy levels are analyzed to explain the continuation of the restrictive visa regime against Turkish citizens despite two strong options that could have ensured visa-free travel.

Securitization Theory and EU's Securitization of Visa-Free Travel

Securitization theory formulated by the Copenhagen School has emerged as a response to the insufficiency of traditional security theories in explaining the global order following the Cold War (Buzan et. al. 1998; Waever 1996; Waever 1995). The theory is based on the idea that threats are perceived as social constructs and thus, security does not exist as a reality prior to language. As "security issues are made security issues by acts of securitization", discursive studies constitute the core of this school (Buzan et al. 1998: 204).

Securitization is described as an extreme version of politicization where an "issue is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure" (Buzan et al. 1998: 24). An issue is transformed into an existential threat through social construction via "speech-act" by the ruling actors (Waever 1995). By securitizing an issue, ruling elites declare an emergency and claim a right to use whatever means are necessary to prevent that threat (Waever 1995: 55). Who can perform the speech-act is as important as the discourse itself, as that actor also decides on existential threats and tries to justify extraordinary measures.

The conceptualization of the securitization process contains the following key items: The perceived threat is the core issue that is being securitized; the referent object is the matter that is under risk, which has a legitimate claim to survival such as nation, territory or, state; the securitizing actor is the ruling actor who sets the agenda by performing the discursive act and carrying out the security-framing practice; the audience is the public that has to be kept on board whose consent is critical for the implementation of emergency measures; and finally through the securitizing act the issue is framed in order to justify the extraordinary measure.

Securitization is an extraordinary method of dealing with issues. Therefore, it has a negative connotation. Preferably, routine and transparent procedures should replace extraordinary measures under normal politics. Desecuritization should be the optimal option in the long-run, by moving issues out of the existential threat–extraordinary measure loop, into the ordinary public sphere (Buzan et al. 1998: 29; Baysal 2020).

Revisions to the theory shifted the emphasis from "speech-act" to practices and policy-makers (Bigo 2002; Bigo and Guild 2005; C.A.S.E. 2006). As Bigo (2002: 74) underlines "to focus only on the role of political discourse in the securitization process is to underestimate the role of the bureaucratic professionalization of the management of unease." Security-framing practices led by the bureaucratic network are perceived critical to understand how

discourse works in practice. As a matter of fact, bureaucracy needs to institutionalize the security field to take control over the securitization process. A security issue emerges when it is presented as such by bureaucrats in their challenge to maintain their position and when the reproduced institutional knowledge justifies security concerns and extraordinary measures. Once securitization is perceived as a technical process operating in the bureaucratic field, the structure of political and bureaucratic interaction becomes the point of attention to deconstruct the security-framing activities.

Balzaq (2019) further contributed to the securitization theory by underlining the legal institutions as an actor through the role they fulfill within the process of securitization. The judgments of the legal institutions are critical since they provide legitimacy for the process (Balzaq 2019: 347). A critical judgment of a higher court not only provides legality for any extraordinary measure, but such a judgment will also be used and abused by ruling elites for the justification of the entire securitization process.

One of the most framed examples of securitization has been with regard to irregular migration flowing to Western Europe countries. Starting from the 1980s, migration of third country citizens to the EU countries has been politically constructed and securitized as an existential threat to the continent due to their destabilizing effect on internal market, welfare state and European identity (Mandacı and Özerim 2013). As Huysmans (2000: 752) puts it "social construction of migration as a security question (…) results from a powerful political and societal dynamic reifying migration as a force which endangers the good life in west European societies".

As the stability and internal security of Europe has become under risk, extraordinary measures were required to be taken by the EU. Following the establishment of the single market along with the abolition of internal border checks, the security problem of the external borders of the EU emerged as an existential risk. Maastricht Treaty addressed this concern through the establishment of a third pillar of cooperation in the fields of Justice and Home Affairs containing provisions on controls at the Union's external borders, establishment of a common asylum policy and combating illegal immigration. Likewise, the regular visits of third country national citizens were regulated as a need to restrict population flows. Schengen Agreement signed in 1985 established a common visa policy, with all countries applying the same visa rules including the conditions of entry and of the rules on short stay visas up to 90 days.[5] In 1995, the European Council adopted the first regulation on the third countries whose nationals were subject to visa for short stays. According to the Schengen Agreement (Article 7):

> "The Parties shall endeavor to approximate as soon as possible their visa policies in order to avoid any adverse consequences that may result from the easing of controls at the common frontiers in the field of immigration and security".

Hence, common visa policy introduced by the Schengen Agreement was not only about

5 As of 31 March 2024, 29 European countries, including 25 of the 27 EU member states and the four European Free Trade Association countries (Iceland, Liechtenstein, Norway and Switzerland) are part of the Schengen area.

regulating regular visits but also to take precaution for the risk of migration and asylum. In fact, "a more critical look shows that Schengen logic was clearly against freedom of movement of people and was conducted not only by fears about criminals but also migrants and foreigners from third world countries" (Bigo 2002: 67).

In addition to the Schengen arrangements, the EU has introduced a set of rules with the aim of regulating border controls such as the Visa Code, Schengen Border Handbook and Common Consular Instructions. Yet, EU's security-framing visa policies have been embodied as much in the visa issuing process of the Member States. In fact, one of the most problematic matters has been the arbitrary visa-issuing practices of the consulates. Consulates do reject visa applications without any reason put forward, applicants are required to disclose private and commercial information, issuance of visas are delayed on purpose, and applicants are subject to mistreatment by the staff at consulates. Visa-issuance process has turned out to be a part of the bureaucratic securitization. As Schengen visa has become "a metaphor of the new divides of our world where the globalization of surveillance is now oriented towards the control of the individuals (third country nationals)" (Bigo and Guild 2005: 9), securitization of the visa policy has contributed to the making of a "Fortress Europe".

Securitization of visa-free travel contains the following items: third country nationals, immigrants and asylum seekers are perceived as the existential threat; the referent object is the internal market, welfare state and European identity; securitizing actors are European leaders, politicians and member states; the audience is the European citizens, while the extraordinary measure is EU's restrictive Schengen visa policy and practices.

Türkiye, whose citizens have been subject to visa requirements by member states since 1980s, was included in the negative list[6] of the consecutive regulations of the EU starting from 1995. The visa-free travel issue of Turkish citizens has been an outstanding issue since then. Yet, two strong options have emerged before the visa-free travel of Turkish citizens, of which their outcome would stand as an acid-test whether the visa regime against Turkish citizens is justified or securitized by the EU.

First Path: Türkiye–EU Association Law

Türkiye–EU Association Law corresponds to an aggregate body of legal instruments including the Ankara Agreement establishing an association between the EU and Türkiye that entered into force in 1964, Additional Protocol, the decisions of the Türkiye–EU Association Council and the Case Law of the CJEU on the interpretation of the relevant provisions. Ankara Agreement had foreseen the gradual abolishing of restrictions on free movement of workers (Article 12), freedom of establishment (Article 13) and freedom to provide services (Article 14).

6 Negative list is the list of countries laid down in EU's visa regulation, whose nationals require a visa when crossing the external borders of a member state, while the positive list in the visa regulation contains the countries whose nationals are exempt from visa requirement.

The Additional Protocol that entered into force in 1973 lays down the provisions regarding the abolishing of restrictions on freedom of movement. The text contains the well-known "stand-still clause" under Article 41(1) preventing Parties to introduce any new restrictions on the freedom of establishment and the freedom to provide services between themselves from the date of entry into force of the Additional Protocol.

As the decision-making body, Türkiye–EU Association Council was empowered to determine the timetable and rules for the free movement of these production factors based on the Treaty on the Functioning of the EU (TFEU). Accordingly, the Association Council has taken Decision No. 1/80 with regard to the "stand-still clause" on freedom of movement of workers. Article 13 of the Decision has prohibited the Parties to introduce new restrictions on the conditions of access to employment for workers and their family members legally resident in their respective territories.

Even though the relevant provisions of the Türkiye–EU Association Law have provided significant rights for Turkish citizens, in implementation they had limited impact on the visa free travel of Turkish citizens. However, the CJEU has taken an active position in a number of cases by interpreting the rights of Turkish citizens under the Türkiye–EU Association Law. The CJEU's interpretations in time enabled the transformation of status of Turkish citizens by applying the "stand-still clause" to conditions of first admission to the member states, which had major implications on the visa requirement (Wiesbrock 2013). Table 1 exhibits the major cases brought before the CJEU on Türkiye–EU Association Law.

Table 1. Major Cases Brought Before the CJEU Regarding Türkiye-EU Association Law

Appellant	v. Country	Decision Year	Legal Scope	Significance of the Decision
Meryem Demirel	Germany	1987	Direct applicability of the provisions of the Ankara Agreement	First case on Türkiye-EU Association Law brought before the CJEU
Sevince	Netherlands	1990	Direct applicability of Türkiye-EU Association Council Decisions	Türkiye-EU Association Council Decisions regarding the rights of Turkish workers have direct effect in Member States.
Abdulnasir Savas	United Kingdom	2000	Direct effect of Article 41(1) of the Additional Protocol in Member States with regard to freedom of establishment	First ruling on the direct applicability of the 'stand-still clause' in Member States without any additional measure for its implementation. Thus, from introducing new restrictions on the freedom of establishment and right of residence of Turkish citizens already lawfully integrated into the labor force of Member States
Eran Abatay and Nadi Sahin	Germany	2003	Direct effect of Article 41(1) of the Additional Protocol and Article 13 of the Association Council Decision No.1/80 in Member States with regard to free movement of workers and freedom to provide services	Scope of the 'stand-still clause' is extended to include free movement of workers and freedom to provide services.
Veli Tum and Mehmet Dari	United Kingdom	2007	Whether Article 41(1) of the Additional Protocol prohibits a Member State from introducing new restrictions on the conditions of entry to its territory for a Turkish national under the freedom of establishment.	For the first time, "stand-still clause" is deemed applicable to rules relating to the first admission of Turkish nationals into a Member State in whose territory they intend to exercise their freedom of establishment.
Mehmet Soysal and Ibrahim Savatli	Germany	2009	Whether Article 41(1) of the Additional Protocol prohibits a Member State from introducing new restrictions on the conditions of entry to its territory, including a visa, for a Turkish national under the freedom to provide services..	First ruling that explicitly stated that the visa requirement is prohibited for Turkish service providers under given conditions. The Court confirmed its jurisprudence that the 'stand-still clause' would take priority over EU's visa regulation since it was adopted after 1 January 1973.
Leyla Ecem Demirkan	Germany	2013	Whether the scope of freedom to provide services would include the recipients of services under the Türkiye-EU Association Law.	Freedom to provide services under the Türkiye-EU Association Law is interpreted as not to cover Turkish nationals as recipients of services and hence, a visa requirement would not be in breach of the "stand-still clause" for Turkish citizens visiting a Member State in order to obtain services. Turkish citizens travelling to Member States as recipients of services, with the purpose of non-gainful activities would be subject to the visa requirement for their first admission to any Member State.

The CJEU jurisprudence took off with the *Demirel* Case of 1987, which had ruled on whether the provisions of Ankara Agreement would have direct effect (Case C-12/86 1987). According to Article 216 of TFEU, international agreements which the Union conclude with third countries are legally binding upon the institutions of the Union and on its Member States. Yet, a provision in an agreement concluded by the Union with third countries must be regarded as being directly applicable if the provision contains a clear and precise obligation which does not require any further measure for its implementation. CJEU concluded that Article 12 of the Ankara Agreement and Article 36 of the Additional Protocol, do not constitute rules of EU law which are directly applicable in the internal legal order of the member states since they "are not sufficiently precise and unconditional" (Case C-12/86 1987: para. 23). On the contrary, the CJEU concluded in the *Sevince* Case that Association Council Decision No. 1/80 was adopted in order to implement Article 12 of the Agreement and Article 36 of the Additional Protocol and thus, confirmed that these texts uphold clear, precise and unconditional terms regarding the rights of Turkish workers (Case C-192/89 1990). This ruling on direct effect of Association Council Decisions would pave the way for the CJEU decisions on the free movement rights of Turkish citizens.

Through its *Savaş* Decision of 2000, the CJEU concluded that Article 41(1) of the Additional Protocol "lays down, clearly, precisely and unconditionally, an unequivocal 'stand-still' clause'", prohibiting Member States from introducing new restrictions on the freedom of establishment and right of residence of Turkish citizens already lawfully integrated into the labor force of Member States as from the date of entry into force of the Additional Protocol (Case C-37/98 2000: para. 46). This decision was significant in the sense that the Court had ruled for the first time that the "stand-still clause" would have direct effect in member states without the requirement of any additional measure for its implementation. However, the Court underlined that member states retain the competence to regulate the entry into their territories (Case C-37/98 2000: para. 59).

The CJEU held a broader interpretation through its *Abatay/Şahin* Decision by concluding that both Article 41(1) of the Additional Protocol and Article 13 of the Association Council Decision No.1/80 had direct effect in member states (Case C-317/01 2003). Therefore, the scope of the "stand-still clause" would be extended to include free movement of workers and freedom to provide services over the freedom of establishment ruled by the *Savaş* Decision. Yet again, by underlining "that the 'stand-still clause' can benefit a Turkish national only if he has complied with the rules of the host Member State as to entry", the Court did not confer on Turkish citizens a right of entry into the territory of a Member State (Case C-317/01 2003: para. 84). CJEU's *Tüm/Darı* Decision of 2007 has been a significant judgment in the progressive line of interpretations of the Court by connecting for the first time Türkiye–EU Association Law to the first admission to the territory of member states (Case C-16/05 2007). The Court held that the "stand-still clause" laid down in Article 41(1) of the Additional Protocol is valid for the rules on the first admission of Turkish nationals into a member state to exercise their freedom of establishment (Case C-16/05 2007: para. 63).

CJEU's progressive jurisprudence continued with the landmark decision of *Soysal/Savatlı* in 2009, [7] which ruled that Article 41(1) of the Additional Protocol precluded the introduction of a visa for Turkish service providers to enter the territory of a member state in case such a visa was not required at the time of entry into force of the Protocol (Case C-228/06 2009). This was the first ruling of the court that explicitly stated in its conclusions that the "visa requirement" was prohibited under given conditions.

However, the impact of the judgment has been limited since the "stand-still clause" did not prohibit the visa per se; it prohibited new restrictions. Therefore, the conditions of visa requirements for Turkish service providers in each country would have to be clarified. Accordingly, the European Commission invited member states to inform on their visa procedures regarding Turkish service providers at the time the Additional Protocol entered into force, respectively. Based on the information communicated to the Commission by the member states, it appeared that eleven member states did not require visa from Turkish citizens at the time the "stand-still clause" entered into force for them (European Parliament 2009). Eventually, only Germany, Denmark and the Netherlands (after the decision of the Dutch Council of State) have changed their legislation and implementation.

Following the *Soysal/Savatlı* Decision that had confirmed the right of visa-free travel of certain Turkish service providers in entering certain EU countries, the debate was focused on whether the scope of freedom to provide services would include the recipients of services. This was a significant issue since an affirmative answer to this question would pave the way for visa-free travel of Turkish citizens travelling with the purpose of non-gainful activities. The *Demirkan* Decision of 2013 put an end to this debate by giving a critical ruling with respect to the visa requirement for the travel of Turkish citizens who are recipients of services (Case C-221/11 2013). According to the case law of the CJEU based on the *Luisi and Carbone* Decision of 1984, freedom to provide services encompasses passive freedom of provision of services (Case C-286/82 and C-26/83 1984: para.16). Therefore, recipients of services including tourists and persons travelling for the purpose of receiving medical treatment, education or business are regarded to have rights under the freedom to provide services. However, the Court in its *Demirkan* ruling held an opposite interpretation regarding the Türkiye–EU Association Law. Even though Article 14 of the Ankara Agreement states that the provisions on freedom to provide services are guided by the relevant articles of the TFEU, the CJEU refuted automatic application by analogy between the TFEU and Ankara Agreement. According to the CJEU, the interpretation regarding the provisions of EU law on the internal market cannot be automatically applied by analogy to the interpretation of the Ankara Agreement which is purely economic and therefore, freedom to provide services did

7 Turkish citizens Mehmet Soysal and İbrahim Savatlı working as lorry drivers employed by a Turkish logistics company engaged in international operations, drove trucks with Turkish license plates to Germany back and forth through visas endorsed by the German authorities without facing any problems. However, once they started driving lorries with German license plates for a German company, the German Consulate General in Istanbul rejected their visa applications. Mr.Soysal and Mr.Savatlı brought action before the Berlin Administrative Court, arguing that as lorry drivers providing services, they are entitled to enter Germany without a visa based on the 'stand-still clause' laid down in Article 41 (1) of the Additional Protocol. After the Berlin Administrative Court dismissed their application, they appealed to the Higher Administrative Court of Berlin-Brandenburg which decided to bring the case before the CJEU for a preliminary ruling.

not encompass passive freedom of services within the scope of the Türkiye–EU Association Law (Case C-221/11 2013: para. 44 & 51). The Court ruled that freedom to provide services laid down in Article 41(1) of the Additional Protocol cannot be interpreted as to cover Turkish nationals as recipients of services visiting a member state to obtain services and hence, a visa requirement would not be in breach of the "stand-still clause". In short, Turkish citizens travelling to member states as recipients of services, with the purpose of non-gainful activities including tourism, medical treatment, education or business would be subject to the visa requirement for their first admission to any Member State. The *Demirkan* Decision reversed the progressive line of interpretations of the CJEU on the freedom of movement rights of Turkish citizens, by putting an end to the possibility of visa exemption for Turkish citizens travelling with the purpose of non-gainful activities.

Second Path: Visa Liberalisation Dialogue

Facing large flow of irregular migration particularly from its Eastern borders, the EU pursued to complete readmission agreements with the neighboring countries starting from the 2000s. Based on the conditionality principle, readmission agreements were designed as incentive-based policy instruments coupled with visa facilitation/liberalization (Wolff 2014).[8] In return of signing readmission countries that provide the rules for managing the return of irregular migrants, the third countries were granted visa facilitation at the initial stage. Subsequently visa liberalization dialogues were conducted based on visa liberalization roadmaps/action plans, that contained benchmarks on border control, migration management, fundamental rights, public order and document security. Once the benchmarks were fulfilled, the third country would be awarded with visa liberalization, through which their citizens with biometric passports would be able to travel in the Schengen Area without a visa for their short stays.

Based on the conclusions of the EU–Western Balkans Thessaloniki Summit of 2003, EU launched visa liberalization dialogues with five Western Balkan countries (see Table 2), namely Albania, Bosnia and Herzegovina, North Macedonia, Montenegro and Serbia (European Commission 2003). Eastern Partnership countries Ukraine, Moldova and Georgia followed suit. As a first step, these countries signed readmission agreements in return for visa facilitation agreements (EUR-Lex 2011). The processes resulted in the granting of visa free travel to the citizens of Montenegro, Serbia and North Macedonia in December 2009, Albania and Bosnia and Herzegovina in December 2010, Moldova in April 2014, Georgia in March 2017 and Ukraine in June 2017.

8 Visa facilitation is a sort of simplified visa regime, through which non-EU citizens enjoy facilitated procedures to obtain Schengen visa such as standardized application forms, lower visa fees, faster application processes, while bona fide travelers are granted long-term, multiple-entry visas. In the case of visa liberalization, citizens of non-EU countries enjoy a visa free regime through which they can enter the Schengen area without a visa for short stays up to 90 days within a 180-day period.

Table 2. Visa Liberalization Processes of Türkiye vs. Western Balkan and Eastern Partnership Countries

	Population	Visa Facilitation Agreement	Start of Visa Liberalization Process	Date of Visa Free Travel	Duration of Visa Liberalization Process	Number of Completed/ Total Criteria
Türkiye	86,286,000	NA	December 2013	NA	Ongoing	66/72
Albania	2,825,000	√	January 2008	December 2010	32 months	41/41
Bosnia & Herzegovina	3,193,000	√	January 2008	December 2010	31 months	42/42
North Macedonia	2 ,082,000	√	January 2008	December 2009	22 months	41/41
Montenegro	626,000	√	January 2008	December 2009	22 months	41/41
Serbia	7,094,000	√	January 2008	December 2009	23 months	41/41
Georgia	3.716,000	√	March 2011	March 2017	57 months	65/65
Moldova	3,323,000	√	January 2008	March 2014	45 months	56/56
Ukraine	38,008.000	√	January 2008	June 2017	104 months	62/62

The EU offered Türkiye the standard approach of visa facilitation-readmission agreement-visa liberalization package. However, Türkiye refused this proposal claiming that Türkiye's process should differ due to its *sui-generis* position. While the other countries had put into force the readmission agreements in the initial phase of the process, Türkiye left it to the end, to somehow ensure visa liberalization. In December 2013, Türkiye and the EU signed the Readmission Agreement and simultaneously launched the Visa Liberalisation Dialogue. The European Commission presented a roadmap laying down 72 requirements which Türkiye was expected to meet in order to qualify for visa-free travel. The EU-Türkiye Readmission Agreement including the provision on the readmission of Turkish nationals entered into force on 1 October 2014, while the readmission of third country nationals would become applicable on 1 October 2017.[9]

Meanwhile, because of the increasing pressure of irregular migration flowing from Türkiye, on 18 March 2016 the parties agreed on the EU-Turkey Statement with the aim of relieving the refugee crisis. The Statement was based on the one-for-one mechanism. Accordingly, all irregular migrants crossing from Türkiye into Greek islands as from 20 March 2016 would be returned to Türkiye and for every Syrian being returned to Türkiye from Greek islands, another Syrian would be resettled from Türkiye to the EU (European Council 2016). In return, the visa liberalization process would be accelerated with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all the benchmarks have been met.

9 Türkiye ratified the entry into force of the third-country provisions of the EU-Turkey readmission agreement as of 1 June 2016, however, stated that it will not implement until the EU confirms that the remaining visa liberalization benchmarks have been fulfilled.

The one-for-one mechanism had been implemented effectively during the 2016-2020 period succeeding to curb illegal immigration stemming from Türkiye, thanks to the deal's deterring impact. The EU-Turkey Statement somehow replaced the Readmission Agreement. According to the Commission, the Statement "played a key role in ensuring effective management of migratory flows along the Eastern Mediterranean route" which was indeed the main objective of the Agreement (European Commission 2018a: 41). In the high time of the migrant crisis, Türkiye provided safe haven for around 3.6 million Syrians and 370.000 non-Syrians registered under international protection (European Commission 2020: 49). As long as the EU-Turkey Statement had achieved to reduce irregular migration from Türkiye, the Readmission Agreement had become irrelevant and hence, the incentive for the EU to grant visa-free travel to Turkish citizens had disappeared.

In parallel to the effective functioning of the Statement, Türkiye recorded a great progress by fulfilling almost 90 % of the benchmarks. In May 2016, the European Commission confirmed that Türkiye had met 65 of the 72 benchmarks of the Roadmap and tabled a proposal for the European Parliament and Council to take the necessary decision[10] on visa-free travel for Turkish citizens in the Schengen area, once all the requirements have been met by Türkiye (European Commission 2016a).[11] However, as a result of deteriorating bilateral relations post-2016, Türkiye had announced in 2019 that it had unilaterally suspended the Readmission Agreement. Meanwhile, in March 2020, EU suspended the resettlement program of the EU-Türkiye Statement due to the COVID-19 pandemic measures, while Türkiye suspended the return of irregular migrants from the Greek islands on similar public health reasons. Since then, Türkiye has not fulfilled the outstanding benchmarks and the Visa Liberalisation Dialogue has *de facto* stalled.

In fact, all of the Eastern Partnership and Western Balkan countries (except North Macedonia) were granted visa liberalization before being recognized as candidate countries to join the EU and hence, far before their accession negotiations had started. Türkiye is a candidate country for 25 years while its accession negotiations started 19 years ago. Türkiye had to deal with a much more complicated process when compared with those countries of the region. While the Western Balkan countries and the Eastern Partnership countries had to undertake approximately 40 criteria and 60 criteria, respectively, Türkiye was expected to meet 72 requirements. Yet, there has been one clear disparity between Türkiye's road map benchmarks vis-à-vis others'. The EU had asked only from Türkiye to "revise the legal framework as regards organised crime and terrorism, as well as its interpretation by the courts and by the security forces and the law enforcement agencies, so as to ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice", which is yet to be fulfilled (European Commission 2013). Even though the road maps of Western Balkan and Eastern Partnership countries contain requirements connected to citizens' rights, judicial cooperation,

10 Türkiye would be included in the positive list of Regulation No. 2018/1806 once the European Parliament and the Council agree on the adoption of European Commission's proposal through the ordinary legislative procedure. In the Council, the decision would be taken by qualified majority voting, while the Parliament would decide by simple majority voting.

11 Number of benchmarks reduced to six following the fulfillment of the benchmark on second-generation passports as of December 2018.

financing of terrorism and fight against corruption, none of the countries were scrutinized meticulously as Türkiye was on fundamentals of democratization such as fundamental rights, freedom of expression, judiciary, anti-terror law etc.

In case the evaluation Türkiye has been going through on core democratic values had been applied for these countries, they would most likely fail since the majority had not completely fulfilled the requirements of Chapter 23 on Judiciary and Fundamental Rights at the time they were granted visa liberalization. For instance, Serbia which was asked to "adopt and enforce legislation to ensure effective protection against discrimination" as per the Visa Roadmap, was criticized by the European Commission the same year it was granted visa liberalization that "there is ongoing discrimination, in particular against vulnerable groups such as Roma, persons with disabilities, and the LGBT population" (European Commission 2009: 17). Moldova which was granted visa-free travel back in 2014 was criticized by the European Commission in the Association Implementation Report of 2019, on core democratic values: "In 2018, backsliding in democratic standards and the rule of law raised serious concerns with regard to Moldova's adherence to EU key values and principles set out in the Association Agreement" (European Commission 2019: 21). Meanwhile, Ukraine was granted visa liberalization at a time when a serious conflict was taking place in the eastern part of the country where: "human rights and fundamental freedoms, such as freedom of opinion and of expression, continue(d) to be severely curtailed" according to the European Commission (European Commission 2018b: 3).

The benchmarks on "fundamental rights" and "public order and security" laid down in the roadmaps had the objective of contributing to the democratization and stability of the countries so that the potential of political asylum and migration stemming from the country would be reduced, if not avoided. However, this conditionality was certainly not at the level of the leverage of the accession conditionality based on Copenhagen Political Criteria. In its 2023 Report on Visa Suspension Mechanism, the European Commission makes no assessment on democratization, judiciary or freedom of expression for the Western Balkan and Eastern Partnership countries that were granted visa liberalization years ago (European Commission 2023b). Rather the Commission states that those fundamentals of Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice and Home Affairs "are a cornerstone of the accession process and will determine the partners' overall pace of progress on their path towards the EU" (European Commission 2023b: 3). It is apparent that that visa dialogue should have a different systematic than the accession process. In the case of Türkiye, however, those fundamentals have appeared as an extra benchmark in the Visa Liberalisation Dialogue.

Securitization of the Turkish Visa-Free Travel Bid

By the 2000s Türkiye went through a major socio-economic transformation. With the launch of the EU accession negotiations in 2005, the country took significant steps for democratization and economic development. Thanks to these developments, the number of Turkish migrants flowing to the EU countries declined sharply. Starting from the year 2006, Turkish nationals emigrating from Germany exceeded those immigrating to Germany for the first time in years (European Stability Initiative 2012: 16). Moreover, because of the democratic reforms in the

country the number of asylum seekers in search of international protection reached historically low levels and Türkiye was proposed by the European Commission in September 2015 to be listed as a safe country of origin. At the time Türkiye and the EU engaged in the Visa Liberalisation Dialogue the number of asylum applications was at record low levels (UNHCR 2024). Therefore, visa refusal rates of Turkish citizens had declined in time and reached the lowest levels starting from 2014, as shown in Table 3 (Schengenvisainfo 2024).

Table 3. Schengen Visa Rejection for Turkish Citizens

Year	Number of Applications	Rejection Rate (%)
2011	568,917	4.9
2012	655,205	4.4
2013	766,610	4.4
2014	813,339	4.0
2015	900,789	4.0
2016	937,487	4.4
2017	971,710	6.5
2018	879,238	8.5
2019	906,862	9.7
2020	229,282	12.7
2021	271,977	16.9
2022	778,409	15.5
2023	1,055,885	21.7

The decline in the migratory threat was confirmed by several studies. European Stability Initiative prepared an extensive report on the facts and figures on possible Turkish visa-free travel concluding that the "claim that a lifting of the visa requirement would lead to a wave of Turkish migrants destined for the EU (…) would be a rather unlikely scenario" (ESI 2012: 2). According to the European Commission's Second Report on the visa liberalization roadmap, the migratory impact of the visa liberalization process would be limited thanks to the growing Turkish economy and prospering welfare in the country (European Commission 2016b). Besides the "possibility to emigrate within Turkey would result preferable to the possibility to emigrate abroad" (European Commission 2016b: 46). Let alone visa-free travel, studies also confirmed that there would not be significant migration to EU countries in case of Turkish accession (İçduygu and Karçay 2012; Erzan et al. 2004).

In short, the 2010s was high time for the lifting of visa restrictions for Turkish citizens. The argument that the visa-free travel would end up in huge flow of Turkish migration had lost ground. In parallel to these developments, there emerged two major options for visa liberalization. Even though facts and figures indicated that there was no substantial and real existential threat of migration from Türkiye and besides, the legal foundation was somehow suitable for ensuring visa-free travel, the perceived threat of huge population movements continued to dominate the mainstream discourse. The threat of Turkish flow through visa-free travel had intertwined with irregular migration, integration and accession issues. Against all facts, EU public opinion in favor of Turkish accession reached a historically low level of 7 % in 2016, from 36 % in 1996 (Lindgaard 2018). At a time when right-wing populism had

been surging, it would be surprising to see the contrary. Domestic pressure has supported and reproduced security-framing practices of the European policy-makers.

Following CJEU's landmark *Soysal/Savatlı* Decision, most of the member states within the scope of the judgment avoided the application of the decision. Regarding the implementation of the decision, the European Commission relied on the replies provided by the Member States and accordingly, amended its Practical Handbook for Border Guards (European Commission 2012). Lacking any research on each member state's legislation that had been in force in 1973, the guidelines appeared to be "unreliable" and "flawed" (Groenendijk and Guild 2010: 45). Except for Germany and Denmark, the relevant member states adopted an "ostrich approach" ignoring the visa-free travel rights of Turkish service providers (Groenendijk and Guild 2010: 43). The Netherlands even provided false information to the European Commission which was later corrected by the Dutch Council of State (European Stability Initiative 2013: 8). Majority of the relevant member states refrained from implementing the decision and those countries which have somehow considered the decision replaced the visa with an authorization which has been no different than a visa. As the guardian of the Treaties, the European Commission should have ensured that member states align with CJEU judgments properly. Unfortunately, the EU institutions failed their responsibilities by letting the member states ignore the application of the judgment. The benefits of the *Soysal* Decision had been a victim of the securitization by the EU and member states that had violated their principal duty of faithfully adhering to the EU law.

Member states retained their securitizing positions during the *Demirkan* case, as well. Taking into account the implications of the final ruling, member states including Germany, France, the Netherlands, the Czech Republic, Denmark, Estonia, Slovakia and the United Kingdom, alongside with the Council and the Commission submitted written observations against the case that was held in November 2012 (C-221/11 2013). It is striking to note that the same member states who have participated as interveners in the CJEU case against the prohibition of the visa restriction, just one year later had initiated the visa liberalization process through a consensus with the objective of granting visa-free travel to Turkish citizens.

Another instance of securitization was presented by the CJEU in the critical *Demirkan Case*. CJEU's judgment was criticized for its weak argumentation particularly on rejecting the analogous interpretation between TFEU provisions and Türkiye–EU Association Law (Bilgin and Simone 2019; Tezcan 2016; Hatzopoulos 2014; European Stability Initiative 2013; Groenendijk 2013; Gümrükçü 2013; Mattero 2013; Voegeli 2013). The ruling appeared as a politically motivated one, since an affirmative answer by the CJEU to encompass Turkish nationals who are service recipients under the freedom to provide services, would have serious economic and social consequences for the member states. Had the Court given an affirmative answer, hundreds of thousands of Turkish citizens travelling with the purpose of tourism, medical treatment, education, business etc. would have been granted the right for visa-free travel to the member states for which the "stand-still clause" is relevant. The highest court of the EU in charge of upholding the core European values had taken part in the securitization process of visa-free travel for Turkish citizens. As Balzaq (2019: 347) had underlined the role of legal institutions in the justification of the securitization process, the judgment of the CJEU

as a legal actor was critical in providing legitimacy for the continuation of the visa restriction as an extraordinary measure.

The EU and the member states securitized the Visa Liberalisation Dialogue, as well. Türkiye went through a much stricter process than those of the Western Balkan and Eastern Partnership countries. None of the countries were scrutinized as meticulously as Türkiye was on fundamentals of democratization such as fundamental rights, freedom of expression, judiciary, anti-terror law etc. Even though the Commission confirms that the visa dialogue has a different systematic than the accession process, in the case of Türkiye, however, the fundamentals of Chapter 23 on Judiciary and Fundamental Rights have appeared as an extra benchmark. Losing its leverage on the democratization process of Türkiye, EU seems to put pressure through the visa liberalization process instead of the frozen accession negotiations. Stretching accession related issues to the visa liberalization process which does not have any precedent has been a political choice by the EU.

As shown in Table 2, Türkiye with a population of 86 million is much larger than the cumulative of the eight countries of the region. Even though studies indicate that the migratory impact of the visa liberalization process would be limited, numbers are easy to manipulate against Türkiye that has traditionally been stigmatized as being "too big". The security framing policies of the EU and member states explain why Türkiye faced a differential treatment vis-à-vis Western Balkan and Eastern Partnership countries that acquired visa-free travel in a few years' time, albeit all their shortcomings in democratic credentials. The approach of the EU institutions and member states in the court cases before the CJEU and the Visa Liberalisation Dialogue provides clear evidence of the securitization of the Turkish visa issue.

Conclusion

The *Demirkan* decision demonstrated that that visa-free travel would not be achieved through court rulings and meanwhile, the Visa Liberalisation Dialogue had *de facto* stalled. Principally due to the securitizing efforts of the EU institutions and Member States, the legal and technical paths for visa travel become blocked.[12]

In fact, particularly following the coup attempt in 2016, the visa-free travel issue fell off the agenda. Because of the political turmoil and macroeconomic crisis in the county, the number of asylum-seekers originating from Türkiye increased steadily. The reason why the German government introduced the visa requirement back in 1980 was the sharp increase in the number of asylum applications. A similar crisis emerged starting from the year 2016. According to the European Union Agency for Asylum, Turkish nationals lodged approximately 101,000

12 Yet, this has been a two-way street since Türkiye had its share in the dismantling of the process. Parallel to the deteriorating bilateral relations, the Turkish government adopted a harsh rhetoric against the EU. At a time when the Turkish government confronted a coup attempt, the EU pushing for the amendment of the anti-terror legislation through the visa liberalization process was not welcomed. Taking into account the declining credibility of the EU in the Turkish public opinion, such rhetoric was highly supported by the people. Türkiye's providing safe haven for millions of refugees and thus, stopping the influx into EU Member States without receiving anything substantial in return had already triggered strong public reaction. The securitization rhetoric and approach from the Turkish side had definitely a strong impact on the process.

applications to the Schengen countries in the year 2023, which has been the highest ever recorded for Turkish nationals (European Union Agency for Asylum 2023: 7). It is striking to note that the number of Turkish asylum-seeker applications has ranked third after Syrians and Afghans. Türkiye which was a transit country of irregular migration has become a source country.

Meanwhile, the number of Syrians that obtained Turkish citizenship reached 238,000 as of November 2023 (Turkish Grand National Assembly 2023: 154). Naturalization of Syrian citizens who use Türkiye as a springboard to migrate to the member states has been a concern for the EU, since Syrians with Turkish passports would be able to benefit from the visa-free travel granted to Turkish citizens. Therefore, Schengen visa rejection rates for Turkish citizens have increased drastically post-2020, from 4% in 2014 to 21.7% in 2023.

Visa-free travel of Turkish citizens which was framed through the perceived threat of Turkish migration has transformed into a real threat through the recent developments. As the Copenhagen School asserts, desecuritization should be the optimal option in the long-run by moving issues out of the existential threat-extraordinary measure loop into the ordinary public sphere. However, in the case of Turkish visa–free travel, let alone a desecuritization happening, the threat has become real and the measure justified and thus, the concept of securitization has become void. Further studies on the unresolved Turkish visa case might have to consider the timeworn Cold War parameters through the lens of traditional security studies.

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Notes

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