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Dalkiran, Müge
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New Approaches to Conditionality in EU-Turkey Relations: Assessing the Role of Irregular Migration

Müge Dalkıran*

ABSTRACT

This article explores the evolving dynamics of EU-Turkey relations in the context of irregular migration. The European Union has historically employed conditionality as a political tool to influence Turkey's policy decisions and national legislation in alignment with EU standards. However, the EU's quest for the prevention of irregular migration and re-shaping its cooperation with Turkey in this manner has brought significant changes in their bilateral relationship. Moreover, there is a growing body of literature on how the EU's cooperation with third countries for "migration management" has resulted in the instrumentalization of irregular migration and reversed the conditionality against the EU by these countries, including Turkey.

Based on a comprehensive analysis of policy documents and academic literature, this article identifies how the EU's and Turkey's responses to the irregular migration have created a complex interplay and affected the nature of bilateral cooperation, which raises questions about the continuity of the EU's conditionality on Turkey. Further, it critically explores the newly created concept of "reversed conditionality". This article claims that the concept of "reversed conditionality" is a reductionist approach to EU conditionality mechanism to a shift in bargaining power in EU-Turkey relations.

Key words: Turkey's migration and asylum policy; conditionality; EU-Turkey relations; europeanization.

* PhD. Post-doctoral Researcher at Faculty of Arts and Social Sciences, Sabancı University (Turquía). [mugedalkiran@gmail.com]; [https://orcid.org/0000-0002-7249-288X].

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NUEVOS ENFOQUES DE LA CONDICIONALIDAD EN LAS RELACIONES UE-TURQUÍA: EVALUAR EL PAPEL DE LA MIGRACIÓN IRREGULAR

RESUMEN

Este artículo explora la dinámica cambiante de las relaciones entre la UE y Turquía en el contexto de la migración irregular. Históricamente, la Unión Europea ha empleado la condicionalidad como herramienta política para influir en las decisiones políticas de Turquía y en su legislación nacional para alinearla con las normas de la UE. Sin embargo, la búsqueda por parte de la UE de la prevención de la migración irregular y la reconfiguración de su cooperación con Turquía de este modo ha provocado cambios significativos en su relación bilateral. Además, cada vez hay más literatura sobre cómo la cooperación de la UE con terceros países para la “gestión de la migración” ha dado lugar a la instrumentalización de la migración irregular y ha invertido la condicionalidad contra la UE por parte de estos países, incluida Turquía.

Basándose en un análisis exhaustivo de documentos políticos y bibliografía académica, este artículo identifica cómo las respuestas de la UE y Turquía a la migración irregular han creado una compleja interacción y han afectado la naturaleza de la cooperación bilateral, lo que plantea interrogantes sobre la continuidad de la condicionalidad de la UE sobre Turquía. Además, explora críticamente el concepto recientemente creado de “condicionalidad invertida”. Este artículo afirma que el concepto de “condicionalidad invertida” es un

enfoque reduccionista del mecanismo de condicionalidad de la UE a un cambio en el poder de negociación en las relaciones UE-Turquía.

Palabras claves: Política turca de inmigración y asilo; condicionalidad; relaciones UE-Turquía; europeización.

INTRODUCTION

Since the official recognition of Turkey's candidacy status for the European Union (EU) membership at the Helsinki Summit of December 1999, the EU's conditionality mechanism has been used as a political tool for the adoption and implementation of a series of legislation and policies in Turkey in alignment with the EU rules. Turkey's migration and asylum policy and laws were among the areas that required reforms to harmonize with the EU standards. The “golden age” in Europeanization during the pre-accession period lasted only until 2005. Veto powers used by France and the Republic of Cyprus on opening new chapters, and then the EU's suspension decision of the opening of the negotiations in 2006 due to the Cyprus issue, and increasingly volatile conditions in political conditions in Turkey after 2007, almost brought the Europeanization process to a standstill (e.g. Kalaycıoğlu, 2012; Özbudun, 2014; Aydın-Düzgit & Kaliber, 2016). Yet, the reform process in Turkey and the bilateral cooperation in the area of migration and asylum exceptionally remained (Aydın-Düzgit & Kaliber, 2016). Nevertheless, it was not exempted from complications caused by the domestic political conditions in Turkey, EU-Turkey relations with ups and downs, and drastic geopolitical developments in the region.

While the Europeanization is considered a *catalyst* in the transformation of Turkey's migration and asylum policy (Kale, 2005), various circumstantial changes, notably the political instabilities and conflicts in the Middle East and North Africa (MENA) after 2011 have had direct impact both on Turkey's and the EU's migration and asylum policies. Following the Syrian Civil War, Turkey became the largest host country with more than 3,5 million Syrian refugees, in addition to over one million refugees¹ from other nationalities, notably Iran, Iraq and Afghanistan (UN, 2023). Together with its continued role as a transit country, this situation has placed Turkey in a critical position for the EU. In particular, in 2015, the sudden increase in irregular crossings with over 800,000 from Turkey to Greece and over 34,000 to Bulgaria (UNHCR/IOM, 2015) intensified the cooperation between EU and Turkey on migration with the primary aim of preventing further crossings from Turkey to the EU. For this purpose, the Joint Action Plan between the EU and Turkey was adopted on October 15, 2015 (European Council, 2015), which was followed by the notorious EU Turkey Statement of March 18, 2016 (European Council, 2016). The year 2016 is a landmark for two main aspects: (1) the adoption of the EU-Turkey Statement that directly affected the nature of the EU-Turkey bilateral cooperation on migration and asylum, and (2) the failed coup attempt in Turkey. Both developments

started a new phase in the literature by focusing on the ineffectiveness of the EU conditionality (e.g. Dimitriadi *et al.*, 2018), and the instrumentalization of migration as a foreign policy tool (e.g. Tsourapas, 2019; Kaya, 2020), and most recently "reversed conditionality" used by Turkey against the EU (e.g. Janvier, 2023).

Taking into consideration all these shifts in the EU-Turkey cooperation in the areas of migration and asylum, and consequently the approaches to the use of EU conditionality on Turkey in the literature, this article traces new approaches to conditionality in EU-Turkey relations, and critically explores the recently emerged concept of "reversed conditionality". In the first section, the literature on the EU's conditionality is re-visited. The second section explores the complexities in the relationship between the EU conditionality and Turkey's immigration and asylum policy. To develop a better understanding of the effectiveness and limits of the EU's conditionality on Turkey's migration and asylum policy that took place, this section is divided into two parts: the high impact of Turkey's candidacy for the EU membership in the period between 1999 and 2015; and the period of 2015 and onwards in which the reasons of the loss of effectiveness of the EU conditionality are discussed. Nevertheless, recent debates argue that the conditionality went beyond its ineffectiveness but turned into a "reversed conditionality" due to a shift in the bargaining power in bilateral

¹ There are different categories of protection under the Turkey's asylum law as explained in detail in the second section. Here, the author uses the term of "refugee" categorically rather than a "Conventional" status to address the displaced persons due to generalized violence in their countries of origin or of (former) habitual residence.

relations. Therefore, the last section questions whether the conditionality has changed hands and become a “reversed conditionality”, and whether the change in power balance can be conceptualized as “reversed conditionality”.

RE-VISITING THE LITERATURE ON THE EU’S CONDITIONALITY

The EU has been exercising political conditionality with third countries to establish democracy and to protect human rights since the end of the Cold War. As defined by Smith (1997, p. 6) “Political conditionality entails the linking, by a state or international organization, of perceived benefits to another state (such as aid, concessions, cooperation agreements, political contacts, or international organization membership), to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles.” In alignment with the discourse on the EU being a “normative power” that promotes democracy, human rights, and rule of law, respecting these norms became an essential condition for EU membership (Manners, 2002; Withman, 2011). From this perspective, “democratic conditionality” has been used as a core strategy by the EU for the accession process (Schimmelfennig *et al.*, 2003). While the concept of political conditionality defined by Smith (1997) refers to broader relations and ties with third countries, Schimmelfennig *et al.* (2003) address the democratic conditionality applied by the EU during the accession process with the EU’s *would-be members*. Yet, both terminology is interchangeably used in the literature.

There are two types of conditionality: positive and negative. Positive conditionality refers to the promising benefits when the third countries fulfil the condition, whereas negative conditionality may terminate or suspend those benefits in the cases of violation of those conditions by the third countries (Smith, 1997, p. 6). Schimmelfennig *et al.* (2003, p. 496) conceptualizes the EU’s main strategy of conditionality as “reinforcement by reward” which involves the reaction of the EU to “the fulfilment or non-fulfilment of its conditions by granting or withholding rewards but does not engage in the coercion or large-scale support of non-compliant states.” At this point, non-usage of coercion appears as an important characteristic of the EU’s strategy of conditionality. Further, the corresponding reward changes depending on the success of the rule transfer with its size and speed (Schimmelfennig & Sedelmeier, 2004, p. 673). Therefore, the EU offers to grant larger rewards -not only material but membership as an ultimate carrot- for faster and larger rule adoption in third countries.

Since the EU’s conditionality aims at successful rule transfers and institutionalization of norms, notably human rights, democracy, and rule of law, its primary purpose is having a longer impact on the third countries’ domestic policies and laws to become compatible with the EU’s formal and informal rules. Within this Europeanization process, the external incentive model, which is an actor-based, rationalist bargaining model, appears as a preferred model for the effectiveness of the EU conditionality in the theoretical study that Schimmelfennig & Sedelmeier (2005) conduct-

ed. According to this model, the EU sets the rules as conditions with the expectation from the candidate countries to fulfil to receive the rewards. Therefore, this bilateral relationship is established on asymmetric power relations, in which the EU has usually more advantages for bargaining (Schimelfennig & Sedelmeier, 2005; Kirişçi, 2007; Tittel-Mosser, 2018). Yet, four important factors affect the effectiveness of the EU conditionality: the determinacy of conditions, the size and speed of rewards, the credibility of threats and promises, and the size of adoption costs. From this point of view, for higher effectiveness, the conditionality should be composed of:

(1) the rules that the EU sets as conditions should be clear and formal (determinacy of conditions)

(2) the rewards should be proportionate with the steps taken for rule adoption and the payment of the rewards should not be delayed (the size and speed of rewards)

(3) the consistency of provision of rewards determines the credibility, which is the core element of the reinforcement by reward strategy

(4) the number of veto players (the actors different from the government and whose agreement for rule adoption is necessary) should be small (Schimmelfennig & Sedelmeier, 2005).

The EU's conditionality has been developed as a well-established strategic tool in the Europeanization process. The concept of "Europeanization" has been used in various ways from a process of institutionalization (e.g. Stone Sweet *et al.*, 2001) to a form of identification and "a strategy of self-representation" (e.g. Borneman & Fowler, 1997). In

this context, while the early examples in the literature referred only to the Member States while describing the relationship between the domestic and the European level policies and regulations, the second-generation Europeanization literature expanded the use of the concept towards the candidate countries and the third countries since the early 2000s (Lavenex & Uçar, 2004; Grabbe, 2006; Kaliber, 2013; Alpan, 2021). Rather than simple bargaining on short-term interests in bilateral relations with the EU and the third countries, it refers to a transformative mechanism aiming at inducing the third countries to adopt norms and rules in compliance with the EU rules. Therefore, it can be considered as a vertical mechanism involving a structured rule transfer framework and a monitoring mechanism through annual progress reports (Freyburg *et al.*, 2009).

Different from the Europeanization process for the member states, the Europeanization process as part of the external effect of the EU on non-EU member states is not limited to juridical dimension but it can involve both formal regulations and informal dynamics (Lavenex & Uçar, 2004). In this manner, the EU has influence on the domestic policy making in the candidate countries through "Europeanization" and the conditionality in both forms appear as modalities for policy transfer (Grabbe, 2006; Lavenex & Uçar, 2004). Following the official candidacy of Turkey for the EU membership in 1999 did not only intensify the EU-Turkey relations but also Turkey's accession started to be analysed within the frame of the second-generation Europeanization literature (Alpan, 2021).

**A COMPLICATED RELATIONSHIP
STATUS: THE EU CONDITIONALITY
AND TURKEY'S IMMIGRATION
AND ASYLUM POLICY**

The EU's transformative role has been crucial for improving mechanisms for human rights protection and democracy. In that sense, Turkey with its complexities during the pre-accession and accession processes has been an intriguing case for scholars to examine for the effectiveness of the EU conditionality (e.g. Schimmelfenning *et al.*, 2003; Aydın & Açıkmeşe, 2007; Schimmelfennig, 2008; Tocci, 2007; Saatçioğlu, 2009). Alpan (2021) defines the period between 2000 and 2005 as a "Europeanization as democratic conditionality", in which a series of EU-induced reforms occurred in Turkey. Yet, the significant reforms and cooperation in the area of migration and asylum took place in the following periods, respectively characterized as "Europeanization as retrenchment (2006-2011)" and "Europeanization as denial (2011 and the present)".

From this perspective, this section focuses on the interplay between the EU conditionality and Turkey's immigration and asylum policy. While the first part explains the transformation in Turkey's immigration and asylum policy due to the large impact of the EU conditionality, the second part explores the developments that limit on the effectiveness of the EU conditionality. In this way, this section uses the duality between the asymmetrical and top-down characteristics of the EU conditionality and Turkey's perspective as a third-country agency.

**Turkey's candidacy for the EU
membership and its implications on
the immigration and asylum policy**

At the European Council Meeting in Helsinki on 10-11 December 1999, Turkey was declared as an official candidate for full membership to the EU. After this decision, a new phase for EU-Turkey relations started. In 2001, the "Accession Partnership" (AP) Document that launched a pre-accession process, addressed critical issues for Turkey to start negotiations. The AP document prepared by the European Commission in 2001 (the Council Regulation, (EC) 390/2001) was revised subsequently in 2003 (the Council Decision, 2003/398/EC), 2006 (the Council Decision 2006/35/EC), and 2006 (the Council Decision, 2008/157/EC). It was followed by the adoption of the "National Programme for Adoption of the *Acquis*" (NPAA) in 2001 (Resmi Gazete, 2001) and also revised subsequently in 2003 and 2008 (Resmi Gazete, 2003; Resmi Gazete, 2008). Accession negotiations started officially on October 3, 2005 with the adoption of the "Negotiation Framework" Document by the Council of the European Union, which consists of three fundamental components:

- (1) Fulfilling the political criteria set by the Copenhagen European Council (Copenhagen criteria) in 1993 and continuing the reforms for further improvements in the respect of the principles of liberty, democracy, rule of law, human rights and fundamental freedoms,
- (2) Adoption and implementation of the EU *acquis*,
- (3) Establishment of an intensive political and cultural dialogue between civil society.

The pre-accession and accession processes fundamentally involve the harmonization of Turkish legislation with the EU *acquis*, which generates a considerable impact of Europeanization on various domestic policy areas in Turkey. Turkey's immigration and asylum policy is one of these areas that have been largely affected by the Europeanization process (Kale, 2005; İçduygu, 2014; Kaya, 2021). Chapter 24 titled "Justice, freedom, and security" of the *acquis* lays out the rules on border control, immigration and asylum. Correspondingly, the AP set out the tasks and a time schedule for Turkey to complete the "rule adoption" process. In this regard, the following objectives for immigration and asylum policy were determined:

(1) Adoption of a comprehensive asylum law and establishment of a specialized agency on asylum procedures,

(2) Lifting geographical limitation in alignment with the *acquis*,

(3) Adoption and implementation of the *acquis* for prevention of irregular migration, notably taking measures for border management in alignment with the *acquis*,

(4) Completion of a readmission agreement with the EU,

(5) Visa legislation in alignment with the *Acquis*.

To draw a road map for reforms in this area, in addition to the NPAA, Turkey ad-

opted its National Action Plan for Asylum and Immigration in 2005 (DGMM, 2005). Both documents promised to make legislative changes to harmonize its migration and asylum laws with the EU *acquis*. These changes mainly focused on the areas of establishing reception centres for asylum seekers, building a database to keep track of asylum seekers and refugees' countries of origin, establishing an asylum system that would include new legislation and a new agency specialized in asylum, developing a social support system for refugees in the key fields such as education, health, employment, and interpretation services, a new legislation on visa for third country citizens, negotiations on readmission agreements with third countries (e.g. Russia, Ukraine, Egypt, Iran, and so on), and taking measures on combat against human trafficking (DGMM, 2005). Within the frame of the EU's conditionality, the AP was promising to finance projects through the pre-accession instrument if Turkey makes "concrete steps towards satisfying effectively the Copenhagen criteria and, in particular, specific priorities of this revised Accession Partnership" (the Council Decision, 2008/157/EC).

Despite the fact that lifting geographical limitation² on the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) was a major requirement mentioned in the AP for the full membership of Turkey, its

² When the 1951 Geneva Convention relating to the Status of Refugees was adopted, there were geographical and time limitations as stated in article 1B(1)(a). The 1967 Protocol relating to the Status of Refugees lifted both limitations. Nevertheless, Turkey as one of the first signatory countries accepted to lift only the time limitation but not the geographical limitation, which allows Turkey to grant refugee status to those who flee Europe (Kirişçi, 1996).

achievement was planned for a medium-term time horizon (DGMM, 2005). Two main difficulties prevented it from being considered as a short-term priority. First, Turkey considered asylum and refugee-related issues as an internal security concern. Second, the geographical limitation formed the core of the Turkish asylum system. Therefore, lifting the geographical limitation would mean drastic changes in the asylum system, which would require a transformation process involving national, international, and non-governmental actors (Kale, 2005). In the National Action Plan for Asylum and Immigration, Turkey stated its main concerns including the increasing mass displacements since 1980 and its impact on Turkey due to its geographical location, the risks of becoming a buffer zone, and mistrust in the burden-sharing mechanism (DGMM, 2005). In addition, Kirişçi (2007) argues that the mistrust of the EU's credibility with regard to the membership as the ultimate reward was a considerable reason for Turkey not to fully harmonize with the EU *acquis*. Further, the EU's growing externalisation policy on migration was considered a rising risk for Turkey to become a buffer zone where the EU would keep the "unwanted" migrants (Kirişçi, 2007).

Notwithstanding this, there were other areas in which Turkey made reforms in its migration and asylum system, including the signing of the readmission agreement, introduction of new visa requirements for third-country nationals, adoption of new legislation on asylum, and establishment of a new specialized agency. Since this section focuses on the transformation within the Turkish asylum system, the readmission agreement between the

EU and Turkey will be elaborated within the frame of EU-Turkey cooperation on migration in the following chapter.

As stated in Turkey's 2004, 2005, and 2006 progress reports, Turkey introduced new visa requirements in alignment with the EU negative and positive visa lists. Yet, Turkey provides sticker visas at the Turkish borders; therefore, its visa regime is still more liberal than that of the EU (Tokuzlu, 2007). The changes in the visa regime were followed by the amendment to the Law of Residence and Travel for Foreigners (Law No. 5683) in 2011 which regulates the residence and work permit of foreigners in Turkey (Resmi Gazete, 2011).

With regards to the cooperation between the EU and Turkey in migration, the EU-Turkey Readmission Agreement (EURA) signed in 2013, which came into force in 2014 signifies a key document, which interlinked various issues in EU-Turkey relations. The process of the EURA negotiations took over a decade as it was mentioned for the first time in the AP in 2002 (The Council, 2002). The main purpose of the readmission agreements is to return irregular migrants. Within the frame of this agreement, third countries readmit their own nationals who crossed irregularly to the EU or third-country nationals who transited through their territory (Wolff, 2014). The readmission agreements with third countries (e.g. Bosnia, Serbia, Morocco) are considered as a core strategy for the EU for its externalization policy of migration and border management (Ott, 2020). In return for signing the readmission agreements, the EU offers or facilitates certain incentives to the requested states, including mobility partnerships, regional and trade part-

nerships, and visa liberalization agreements (Trauner & Kruse, 2008; Wolff, 2014). Yet, as rational actors, third countries make cost-benefit analysis for accepting the readmission agreements with the EU, which vary for each country depending on the geographical location and its institutional closeness with the EU (İçduygu & Aksel, 2014).

In the case of Turkey, its main reluctance was about readmitting the third country nationals since it was a period where the irregular migrants' crossings through Turkey was increasing, which would lead Turkey becoming a buffer zone for irregular migrants (Kirişçi, 2007; İçduygu & Aksel, 2014). In return for signing the Readmission Agreement, the EU proposed visa facilitation for Turkey in the scope of the EU's conditionality (Kirişçi, 2007). Nevertheless, there was no consensus among the EU member states to start a visa dialogue for Turkey. While Greece, Austria, Germany, and France were reluctant due to the possibility of increased migration from Turkey to the EU, Italy, Finland, Spain, the UK, and Poland disagreed with the opinion, and supported the opening of a visa dialogue (Bürgin, 2012). When the proposal of the EURA was finally signed in June 2012, it consisted of rights and obligations for both sides for the readmission of Turkish nationals, third-country nationals who crossed irregularly to the EU via Turkish territory, and stateless persons. It also

involved a "Joint Declaration" on cooperation in visa policies. Consequently, the roadmap prepared in December 2012 included 72 criteria re-grouped under four blocks: document security, migration and border management, public order and security, and fundamental rights including ratification of some additional protocols to the European Convention of Human Rights (ECHR) (ESI, 2013; European Commission, 2013). In addition to the Readmission Agreement, Turkey was asked to fulfil these criteria for visa liberalization. The realization of visa liberalization was foreseen within three years after the EURA came into force. In this manner, the conditions put by the EU during the EURA negotiations overlapped with the Europeanization process of Turkey's migration and asylum policies, which led to the adoption of the LFIP and other developments in this area (Nas, 2015).

The major reform within the harmonization process was the adoption of the new Law on Foreigners and International Protection (LFIP) (Law No. 6458) in 2013, which came into force in 2014 (Dalkiran, 2016; Ineli-Ciger, 2018; Kaya, 2021; Şahin-Mencütek *et al.*, 2023). The LFIP has great importance since it is the first law with regard to refugee protection in Turkey. Before the adoption of the LFIP, the main legal document was the Asylum Regulation (1994/6169)³, which was a secondary legislation. Another importance

³ Full name: Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from Another Country.

of the LFIP is to recognize the non-refoulment principle (Article 4). Nevertheless, Turkey still keeps the geographical limitation on the 1951 Refugee Convention. There are four distinctive categories in the new law that regulate the protection: refugee, conditional refugee, subsidiary protection and temporary protection (Articles 61, 62, 63, 91). While the refugee status is recognized as defined in the 1951 Refugee Convention, the category of “conditional refugee” is created for non-European refugees due to the geographical limitation. According to Article 62, conditional refugees are allowed to reside in Turkey temporarily until their resettlement is completed. Therefore, it does not provide a permanent status for non-European refugees. Subsidiary protection is created for those who are not eligible for either refugee status or conditional refugee status, yet they cannot be sent back due to the risks that they may face in their country of origin or country of (former) habitual residence (Article 63). Subsidiary protection can be considered as an extension of the principle of non-refoulment. Finally, the temporary protection category is created to respond to the mass influx situations (Article 91). Yet, so far it has been granted only to those who fled the Syrian Civil War.

Another important dimension of the LFIP is the institutionalization of the Turkish asylum system. The lack of an effective asylum system was repeatedly stated by the European Court of Human Rights (ECHR) decisions (e.g. *Abdolkhani & Karimnia v. Turkey* no. 30471/08; *Z.N.S v. Turkey* no. 21896/08; *Tehrani and Others v. Turkey* no.32940/08). In response to these criticisms, the Directorate

General of Migration Management (DGMM) was established under the Ministry of Interior, which put the asylum system under a civil authority.

Apart from reforms within the frame of harmonization, the increasing migratory pressure as a result of the uprisings in the MENA after 2010-2011 entailed Turkey to transform its migration and asylum system and to reconsider its migration policy. Nevertheless, lifting the 1951 Refugee Convention in the area of border and migration management, and certain reforms in the area of fundamental rights (e.g. definition of terrorism) remained as disputed issues between the two parties that delayed and/or prevented the visa liberalization. As argued in the conceptual framework, the delay of the reward hurts the EU's credibility, which may lead to the effectivity of the conditionality mechanism (Schimmelfennig *et al.*, 2003). In this case, incorporating additional conditions and delaying visa liberalization can be considered as the factors that shook the EU's credibility in upholding its promises as argued in detail in the following section.

From conditionality to transactionality: The Impact of the so-called “Refugee Crisis” in 2015 on the EU-Turkey Cooperation on Migration

Gradually increasing cooperation between the EU and Turkey in the areas of migration and asylum coincided with a period of deterioration of relations in almost all other areas. After the suspension of the accession chapters by Sarkozy in 2006 and the general elections in Turkey in 2007, there has been a stagnation in

reforms process except in the areas of migration and asylum policy (Aydın-Düzgit & Kaliber, 2016). Notwithstanding this, while the cooperation between the EU and Turkey on migration before 2011 is described as “occasional” (Dimitriadi *et al.*, 2018, p. 5), a new chapter opened in bilateral cooperation on migration following the year 2015 due to the large-scale refugee movement. The new chapter in this bilateral cooperation has a complex characteristic involving convergences, divergences, and contradictions at the same time. The complex nature of this situation is attributed to several factors, including the shift in priorities of Turkey’s foreign policy to become a “soft power” in the Middle East, the EU’s externalization policy on migration and alienation from normativity in migration and asylum policies, broken promises, the developments in Turkey’s domestic policies with the failed coup attempt in 2016, and finally instrumentalization of migration by Turkey to “re-balance” the asymmetric relationship with the EU and to have leverage in bargaining (Tsourapas, 2017; Tsourapas, 2019; Kaya, 2020).

Lavenex & Uçarer (2004) argue that adaptation through conditionality in certain aspects of immigration and asylum policy occurs via bilateral cooperation between the EU and the third countries. In this context, institutional relationship between Turkey and the EU expanded during this period through bilateral agreements and statements. Unlike the early phase, which focused on reforms and normative changes, this period placed significant emphasis on external actions. Initially, EU-Turkey cooperation on migration before 2011 was limited to taking gradual measures

to patrol migration on the Eastern Mediterranean route between Turkey and Greece (Dimitriadi *et al.*, 2018). Yet, the uprisings in the MENA, particularly the Syrian Civil War drastically affected the migratory flows in the Eastern Mediterranean route and put Turkey under a critical position due to its geographical proximity to the region, and extensive borders with the EU member states, Greece and Bulgaria. Moreover, the Turkish government saw the uprisings in the MENA as an opportunity to become a “soft power” in the region, which led to the “open door” policy towards Syrians in the first years of the Civil War (Kaya, 2021). The Justice and Development Party’s (JDP) religious connotations on its policies aimed at playing a regional mediator role in the region and shifted its security-centred approach to a humanitarian approach in foreign policy (Dimitriadi *et al.*, 2018). While immigration was instrumentalized to have a greater role in the region in the early stages of the Syrian Civil War, it did not take long to use it as a bargaining chip in the relations with the EU.

The year 2015 was a pivotal year for both the EU’s and Turkey’s migration policy. Within a year, the EU faced the largest refugee movement since World War II with over one million refugees crossing from Turkey to Greece and Bulgaria (UNHCR/IOM, 2015). As a response, the European Commission adopted the European Agenda on Migration in May 2015, which was based on four elements: the reduction of incentives for irregular migration, the pursuit of effective border management, the establishment of a strong common asylum policy, and the development of a new policy

on legal migration (European Commission, COM/2015/0240 final). Therefore, strengthening cooperation with Turkey became essential to prevent further refugee movements.

The response given by the EU, together with the images of the humanitarian crisis at the sea borders led to heavy criticism against the EU (e.g. Amnesty International June 25, 2015; MSF, 2015). While the EU was perceived as an actor that has not complied with its own norms and values (Gozdziak & Main, 2020), Turkey sat on the negotiation table with an upper hand different from the previous negotiations. Yet, Turkey's position was creating complications for the negotiations. On the one hand, hosting 3,5 million refugees provided an upper moral ground against the EU; on the other hand, the growing authoritarianism in domestic politics raised a serious concern for the negotiations (Pierini, 2016).

The first step in migration cooperation was made with the EU-Turkey Joint Action Plan of 15 October 2015 (European Commission, 2015). The Joint Action Plan involved two main pillars: support for Syrians under temporary protection in Turkey, as well as the host community, and the strengthening of cooperation for the prevention of irregular migration (Council of the EU / 5845/16 2016). In return for Turkey's enhanced cooperation with the EU institutions, particularly JHA agencies and the deployment of a liaison officer to Europol, the EU allocated its Instrument for Pre-accession (IPA) funding and created an EU Trust Fund for the Syrian crisis. Within the frame of the financial promises, it was agreed to establish a refugee facility (the Facility) in Turkey in November

2015 that cost 3 billion euros. The financial aid was conditional based on the fulfilment of the EU-Turkey Joint Action Plan. In addition to these financial promises, the visa liberalization dialogue was attached one more time to the cooperation in migration (Council of the EU / 5845/16 2016).

Meanwhile, in November 2015 and onwards, the countries on the Balkan corridor began to refuse the entry of irregular migrants unless they were from Syria, Afghanistan, or Iraq (Kasperek, 2016). In such a conjuncture, the notorious EU-Turkey Statement (the Statement) was adopted on March 18, 2016, primarily aimed at preventing new irregular migrant crossings from Turkey to Greece. The Statement outlined nine key action points: the return of those who had crossed from Turkey to Greece as of March 20, 2016; the 1:1 resettlement scheme for Syrians; new measures taken by Turkey to prevent new sea and land routes for irregular crossings; the activation of a Voluntary Admission Scheme; the fulfilment of the visa liberalization roadmap; lifting the visa requirements for Turkish citizens by the end of June 2016; additional financial support of 3 billion euros to the Facility; efforts for upgrading the Customs Union; re-energizing the accession process; and making joint efforts to improve the humanitarian conditions in Syria, in particular in the areas close to the borders between Turkey and Syria (European Council, 2016).

The EU's inadequate response to the 2015 so-called "refugee crisis" and the Statement revealed the gap between the EU's norms and values, and its actions (Gürkan & Coman, 2021). This has led to growing literature on

how the EU's migration and asylum policy has ended up with a crisis in "European values" (Gozdziak & Main, 2020) and the negative impact of the Statement on the EU's normative identity (Lavenex, 2018). At this point, a crucial question has arisen regarding the effectivity of the EU conditionality mechanism while its normative power suffers from erosion.

The EU's diminishing credibility to fulfil its own norms and values, together with the developments in Turkish domestic politics, notably the failed coup attempt on July 15, 2016, changed the course of EU-Turkey relations (Kale *et al.*, 2018). The radical changes in the political and administrative structure in Turkey, including passage to the presidential system and constitutional changes deeply affected the checks and balances in Turkish democracy (Adar & Seufert, 2021). Rather than the expected visa liberalization, the suspension of Turkey's membership came to the agenda in the last quarter of 2016 (BBC, 2016). The deterioration of Turkey's democratic track after the coup attempt came to the point of being classified as a "not free" country by the Freedom House in 2018 (Freedom House, 2018). All these generated discussions on the weakening of the EU's democratic leverage (Müftüler-Baç, 2016), the ineffectiveness of the EU conditionality (Kale *et al.*, 2018), and even the de-Europeanization process of Turkey

(Aydın-Düzgüt & Kaliber, 2016; Alpan, 2021; Kaya, 2021) in the literature.

As mentioned earlier, the EU-Turkey cooperation in the areas of migration and asylum has created an exception after 2011 due to the deterioration of the EU-Turkey relations and gradual stagnation in the reform process (Kalaycıoğlu, 2012). Yet, after 2016, it became crystal clear that the relations were reduced to a transactional relation, in particular with the example of the Statement (Dimitriadi *et al.*, 2018). Kaya (2021) argues that the Statement demonstrates a strong motivation for cooperation, yet neither based on shared values nor the process of convergence, but only on mutual interests. In that sense, it appears that Turkey has transitioned from the category of pre-accession association to that of neighbourhood association. This shift entails a focus on more limited areas of cooperation and short-term interests rather than long-term transformation⁴. Within this category, the EU has lower leverage due to a weaker conditionality mechanism whereas its counterpart, Turkey in this case, gains more negotiation power. This changing dynamic sparked a recent debate on the concept of "reversed conditionality". The next section argues whether the new concept of "reversed conditionality" captures the essence of this new nature of cooperation.

⁴ In their research, Lavenex and Uçarer (2004, p. 428-433) categorize the dynamics of EU's external effects into four distinct groups: Comprehensive Association with Western European Non-EU countries, Accession Association with the New Member States, Pre-accession Association with Turkey and the Balkan Countries, and finally Neighbourhood Association with the Maghreb and Eastern European Countries.

INSTRUMENTALIZATION OF MIGRATION IN THE EU-TURKEY RELATIONS AND CRITICAL APPROACH TO THE EMERGING CONCEPT OF “REVERSED CONDITIONALITY”

In contrast to the early stages of the EU-Turkey migration cooperation where the impact of Europeanization was a focal point, there has been a growing literature delving into Turkish stakeholders' impact on the dynamics of the EU-Turkey relations in the field of migration and asylum (Alpan & Diez, 2014) and Turkey's new bargaining strategy through migration diplomacy (İçduygu & Aksel, 2014; Tsourapas, 2017; Kaya, 2020; Demiryontar, 2021) since the signing of the EURA. The analyses put forth by Tsourapas (2017) and Kaya (2020) assert that Turkey obtains new leverage in EU-Turkey relations by using migration as a diplomacy tool. At this point, Tsourapas (2017) identifies and categorizes two distinct forms of migration diplomacy—cooperation and coercion—employed by third-party nations.

Nevertheless, the threats used by Turkey, notably unilaterally opening borders for refugees' crossings to the EU were perceived as blackmail and received reactions (Reuters, 2020). Turkey is not the only party that has been receiving criticism but also the EU has been facing heavy criticism by reducing its cooperation with Turkey based on short-term mutual interests but not based on values (Yılmaz-Elmas, 2020; Demiryontar, 2021). In particular, following the adoption of the EU-Turkey Statement of March 2016, the EU's increasing dependence on third countries for migration policies became a new dimension in these discussions, which led to the (re)emer-

gence of a new concept of “reversed conditionality” to describe the shift of the dominant hand in the bargaining process (Tittel-Mosser, 2018; Janvier, 2023).

In fact, the concept was used for the first time in 2007 by Jean-Pierre Cassarino. In his far-seeing article about the drawbacks of the informality of readmission agreements in the EU neighbourhood, he touches upon the conditions set forth by Morocco as a prerequisite for continuation of the readmission agreements with the EU and he states that this position can be considered a “reversed conditionality” (Cassarino, 2007). Therefore, the concept of reversed conditionality refers to a situation beyond the ineffectiveness of the EU conditionality but indicates that the third countries induce their conditions to the EU. More recently, “reversed conditionality” has been used as a conceptual framework while analysing the political implications of the mobility partnership with Morocco (Tittel-Mosser, 2018) and of readmission agreements between EU-Turkey in 2013 and EU-Pakistan in 2010 (Janvier, 2023).

In the studies mentioned above, the concept of “reversed conditionality” addresses a situation that re-equilibrates the position of third countries in the asymmetric relationship with the EU by “presenting their own conditions” (e.g. Tittel-Mosser, 2018). Therefore, the authors use the concept of “reversed conditionality” limited to the bargaining dimension of the EU conditionality, which has an eviscerating impact on the EU conditionality mechanism. Therefore, the use of “reversed conditionality” reduces the essence of conditionality mechanism to the exertion

of demands and it fails to fill the fundamental components of conditionality mechanism.

The first and foremost issue is the lack of a normative claim of reversed conditionality. As argued in the first section of this article, the EU conditionality mechanism aims at improving the protection of human rights, the rule of law, and democracy in third countries. Within the frame of the EU conditionality, the negotiations between the EU and the third countries involve the reforms in these areas as conditions. Yet, in the cases where the third countries use “reversed conditionality”, there is no claim for rule adoption or norm transfer, but the focus is more on the *ad hoc* gains.

Second, and in relation to the first difference, the EU conditionality targets long-term effects by triggering legislative, administrative, and institutional transformations in the third countries. However, from the examples given within the frame of “reversed conditionality”, the third countries like Turkey have short-term and/or strategic interests to accomplish rather than aiming at any transformation or long-term impact on the EU. For instance, the timing of Turkey’s unilateral border opening in 2020 indicates a strategic interest as the realm was to receive support in Idlib (DW, 2020).

The third issue is concerning the style of reinforcement. As mentioned earlier, the EU usually prefers to use positive conditionality by involving reinforcement by reward over negative conditionality. These rewards can be financial aid, some benefits in trade, visa liberalization or even accession negotiations. Nevertheless, the examples provided within the frame of “reversed conditionality” do not

go beyond blackmailing situations, bargaining hard or gaining leverage through coercion.

Finally, the sources of legitimacy represent a significant divergence between these two concepts. Smith (1997, p. 7) argues: “Multilateral conditionality can be considered more acceptable and legitimate than conditionality applied by a single state.” Here, the source of legitimacy is not only about presenting conditions by a single state but the content of conditionality far from any universal norms and values creates the questions around legitimacy. Having said that, the legitimacy problem, specifically around migration and asylum, has emerged primarily due to the EU’s reductionist approach to the third countries by following a transactional agenda and de-prioritizing the norms that give the essence of the EU conditionality mechanism.

CONCLUSION

The dynamics of the EU-Turkey relations surrounding the migration and asylum policy have evolved significantly since Turkey’s official candidacy for EU membership was announced in 1999. While the EU conditionality mechanism was effective in Turkey during the pre-accession period until 2005, substantial reforms in other policy areas in Turkey were witnessed in alignment with the *acquis communautaire*. The EU’s conditionality mechanism, initially seen as a catalyst for aligning Turkish legislation with European standards, entered a complex phase marked by both cooperation and challenges, except on migration and asylum. The EU-Turkey cooperation on migration intensified despite the deterioration

of the EU-Turkey relations. In particular, the outbreak of the Syrian Civil War in 2011 and the resulting refugee movement propelled Turkey into a critical role for the EU.

The growing dependency of the EU on Turkey for migration management gradually set the stage for a transactional relationship centred on migration cooperation, rather than the usual mechanism of the EU's democratic conditionality. The EU-Turkey Statement of 2016 indicated a shift towards a more transactional approach, with both sides prioritizing mutual interests over shared values. The decline in the EU's credibility to uphold its norms and values regarding the migration and asylum policy, and its reductionist approach to having transactional relations with the third countries in this area challenge the effectiveness of its traditional conditionality mechanisms.

At this point, using migration as a leverage tool in Turkey's foreign policy and Turkey's short-term demands in return for "keeping refugees" in the country prompted discussions on the concept of "reversed conditionality," wherein the third country, Turkey, sets its own conditions altering the traditional functioning of conditionality mechanism. Even though this new concept of "reversed conditionality" emphasizes the re-calibrating of the asymmetric relations between the EU and Turkey and the shift in the bargaining power in favour of the third country, it neglects the other dimensions – norms and values, transformative and long-term impact, the style of the reinforcement mechanism, and the source of legitimacy- of the original concept of political conditionality. Therefore, there is still need for

further research to conceptualize the changing nature of cooperation between the EU and Turkey around migration and asylum.

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