

# European Union readmission agreements

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**The use of readmission agreements has prompted a debate on their compliance with international law, in particular the provisions on protection for refugees and asylum seekers.**

European Union (EU) readmission agreements allow for the readmission by states into their territory of both their own nationals and nationals of other countries – ‘aliens’ – in transit who have been found in an illegal situation in the territory of another state.<sup>1</sup> These agreements have quickly become a major issue for the EU in its relationships with neighbouring countries.

For European leaders, readmission agreements derive their legitimacy from the fact that they are specifically designed to facilitate returns of undesirable aliens to their country of origin in accord with the principle of state sovereignty. However, legal authorities and some researchers believe that readmission agreements, whether they are bilateral or across the EU, infringe the rules of international law on asylum, in particular the principle of *non-refoulement* which is recognised in both the Refugee Convention of 1951 and the European Convention on Human Rights.

## Identification of status

The first criticism relates to the definition of the concept of ‘illegal immigrant’ found in all readmission agreements; according to these, the requested state must readmit **any person** who does not, or who no longer, fulfils the entry or residence conditions applicable in the territory of the requesting state.

The notion of ‘any person’ is problematic insofar as it makes no distinction among immigrants who find themselves in an unlawful situation in the host country, with the potential for fundamentally undermining the principle of *non-refoulement* that is supposed to protect refugees and asylum seekers. The European readmission policy does not distinguish between aliens who are in an unlawful situation whose legal position should be protected, and those who are not.

Furthermore, the ambiguity that characterises the readmission legislation is illegal in respect of international asylum law, insofar as it leaves the ‘suspected’ person no opportunity to explain themselves properly in the absence of an individual or case-by-case review of their situation.

The structure of the EU readmission agreement requires the requesting state to send a readmission request to the state of whom the request is made so that the person concerned can be returned. However, there is no information in the request that clearly identifies the reasons why someone is being returned. As a result, it is impossible to know whether an asylum seeker has had the chance to go through a fair identification procedure, that is, to have their situation reviewed on an individual basis. In fact, several EU Member States have removed asylum seekers using a readmission procedure that involved refusing access to an individual review of their case, in violation of international law. This is a dangerous situation insofar as it helps to legalise the removal of asylum seekers in spite of the principle of *non-refoulement*.

## Risk of the domino effect

Conversely, failing to review the situation of individual asylum seekers on a case-by-case basis opens the way to serial onwards return to another country. This means that EU readmission agreements create the conditions for cases of removal where a country then returns people to places where human rights are not guaranteed. This is known as the ‘domino effect’.

Preventing the domino effect is considered to be a standard in customary international law and must also be prevented in implementing readmission agreements. In this respect, the Committee of Ministers of the Council of Europe confirms that: “If

the state of return is not the state of origin, the removal (readmission) order should only be issued if the authorities of the host state are satisfied, as far as can reasonably be expected, that the state to which the person is returned will not expel him or her to a third state where he or she would be exposed to a real risk.<sup>2</sup> The text of the EU readmission agreement, however, takes no account of the requirement to prevent the domino effect. On the contrary, it opens the way – by means of the ‘safe third country’ clause – to any individual being returned to their country of origin or to transit states, with the risk of their being exposed to inhuman and degrading treatment.

Let us take the example of the readmission agreement between the EU and Turkey, signed in December 2013. This provides for “the readmission [to Turkey] of illegal immigrants who have entered its territory in transit to Europe”. The agreement requires the Turkish authorities to take back not only their own nationals but also illegal aliens who have transited through their territory. The latter will then be sent back to their country of origin.

This is a highly dangerous provision given that the majority of foreigners who transit through Turkey are Afghan, Syrian or Iraqi asylum seekers fleeing persecution in their country of origin. According to Oktay Durukan, director of the NGO Refugee Rights Turkey: “A significant number of the people returned [under the EU-Turkey readmission agreement] will be refugees who need international protection, which they are not being given by EU countries. ... Turkey risks deporting the migrants in turn.”<sup>3</sup>

## Readmission

The EU-Turkey readmission agreement is not an isolated case. The example of Turkey can be equally applied to all countries that are negotiating and/or have entered into readmission agreements with the EU.

Furthermore, the EU encourages the domino effect when it invites its partners who are bound by EU readmission agreements to enter into these same agreements with other countries of origin, creating

a readmission network that may help to broaden the scope of forced returns of ‘illegal immigrants’, including asylum seekers, who risk being returned to persecution.

Turkey is a revealing example in this respect, since it has entered into bilateral agreements, similar to its readmission agreement with the EU, with several states such as Syria, Russia, Uzbekistan, Egypt and Nigeria, and is negotiating others with China, India, Iran, Iraq, Morocco and Pakistan. Some states on this list are known for their indifference to the fundamental rights of migrants whose situation is unlawful.

Faced with this situation, the Council of Europe’s Human Rights Commissioner has stated that this type of agreement, when “presented as part of a policy of migration management”, is a method that “corrodes established principles of international law”.<sup>4</sup> The European Parliament supports this approach, stating that “there is a risk that readmission agreements constitute a direct or indirect threat to the human rights of asylum seekers or migrants whose situation is unlawful”.<sup>5</sup>

This legal vacuum in respect of human rights that characterises the structure of readmission agreements reflects the increased focus on the security aspects of managing illegal migration, to the detriment of a broad approach based on the principle of shared responsibility, characterised by greater emphasis on the humanitarian aspect of regulating this highly complex phenomenon.

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1. [http://europa.eu/rapid/press-release\\_MEMO-05-351\\_fr.htm?locale=EN](http://europa.eu/rapid/press-release_MEMO-05-351_fr.htm?locale=EN)

2. Committee of Ministers of the Council of Europe (2005) *Twenty guidelines on forced return* [www.refworld.org/docid/42ef32984.html](http://www.refworld.org/docid/42ef32984.html)

3. <http://tinyurl.com/LeFigaro-Durukan-statement>

4. Council of Europe (2010) *Criminalisation of Migration in Europe: Human Rights Implications* <http://tinyurl.com/CoE-CriminalisationMigration>

5. Cassarino J-P (2010) *La politique de réadmission dans l'Union européenne*, Directorate-General for the Internal Affairs of the Union [www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2010/425632/IPOL-LIBE\\_ET%282010%29425632\\_FR.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2010/425632/IPOL-LIBE_ET%282010%29425632_FR.pdf)