

Turkey's Migration and Asylum Policy within the Framework of the European Union's Accession Criteria

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When we look at Turkey's migration and asylum policy, at first, we see that the view of international migration as a threat is a relatively "new" concept for the country. Until the end of the 1990s, immigrants who had been considered "of Turkish descent and related to Turkish culture"¹ had been given permission to settle in Turkey on the basis of the Law of Settlement dated 1934.² In this context, between 1923 and 1997, more than 1.6 million immigrants from neighboring regions such as Bulgaria, Greece, Romania, Yugoslavia, Turkistan, etc. came and settled in Turkey (Kirişçi 2002: 11–12). However, this "Turkish descent" conditionality is quite vague as this law is not systematically applied in Turkey. It is sometimes applied and sometimes not, according to changing political circumstances. For instance, in recent periods, Bosnians, Kosovo and Bulgarian Turks have not been able to benefit from this stipulation and, correspondingly, they have also suffered from difficulties getting work and residence permits in Turkey. At the end of the 1990s, the migration flows arising from the political turmoil around Turkey, such as the Iran-Iraq war, the Gulf crisis, the Kosovo war, the disintegration of Yugoslavia and the Soviet Union, created an alarming situation at the state level. Between 1988 and 1999, nearly 1 million immigrants were given the right of residence in Turkey.³ From that time onwards, international migration as well as irregular migration and asylum issues have appeared as potentially problematic issue areas in Turkey.

In this framework, we can roughly argue that Turkish migration policy has been shaped on the basis of the categorisation of immigrants. The first group consists of "people of Turkish descent" such as Azeris, Turkmens, Ahıska Turks, Bulgarian Turks, etc. They had been "probably" permitted to settle in the country. The second group includes international migrants who come to Turkey for various reasons such as political turmoil, economic interests, or with the intention to go a third country such as a European country, the USA or Canada. This

¹ This term has been taken directly from the Law of Settlement (*İskan Kanunu*); Nr: 2510.

² Law of Settlement, Resmi Gazete Nr. 2733, 21.06.1934. This law was amended as Law of Settlement Nr. 5543, 19.09.2006, Resmi Gazete 26.09.2006 Nr. 26301 but the term "of Turkish descent and related to Turkish culture" has remained unchanged.

³ These are the official numbers, published in Turkey's National Action Plan on Asylum and Migration (*İltica ve Göç Alanındaki Avrupa Birliği Müktesebatının Üstlenilmesi İlişkin Türkiye Ulusal Eylem Planı*) (accessible at: <http://www.egm.gov.tr/hizmet.iltica.asp>).

group includes irregular migrants, asylum seekers and refugees. They usually have not been permitted to settle in Turkey.

This paper will focus on the second group of immigrants within the framework of Turkey's responsibilities in the European Union (EU) accession process. In this context, Turkey's legal and practical framework regarding the asylum issue and Turkey's commitments in the EU accession process are discussed in comparison to the EU's demands in the Accession Partnership Documents. In proceeding this way, the aim of the paper is to show the effect of EU conditionality on Turkey's migration and asylum policy.

Legal Framework: Turkish Asylum Procedure

When we look at the Turkish asylum system, we see that at this moment there is no unique asylum law in Turkey. The procedure has been handled by some international and national legal documents. The most important document constituting the basis of the asylum procedure is the United Nations Geneva Convention on the Status of Refugees (1951).⁴ Turkey ratified the Convention in 1961 with a geographical limitation clause. This implies that Turkey accepts only migrants coming from Europe as refugees. Others do not have any right to apply for refugee status in Turkey. This limitation is the source of today's problems because most of the migrants come from Asia, Africa and the Middle East to Turkey, but they cannot apply for refugee status in the country. However, Turkey has been obliged not to send them back to their country of origin where they can face inhumane conditions, and to give them temporary protection according to Geneva Convention Article 33 (1).⁵ Furthermore, Turkey is also bound by other international documents such as the United Nations Universal Declaration of Human Rights, which also has provisions protecting the rights of asylum seekers. Article 14 of this declaration specifically deals with the right of asylum, stating that everyone has the right to seek and enjoy in other countries asylum from persecution.⁶

As the only national measure addressing the asylum issue in Turkey, an Asylum Regulation (*Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Mümferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılar ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hak-*

⁴ Geneva Convention on the Status of Refugees (1951) (accessible at: <http://www2.ohchr.org/english/law/refugees.htm>).

⁵ The wording of paragraph 1 in article 33 is as follows: Prohibition of expulsion or return ("refoulement"): "No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

⁶ For the Universal Declaration of Human Rights see: <http://www.un.org/Overview/rights.html#a14>.

kında Yönetmelik) was enacted in 1994.⁷ Here, the most significant fact is that until this time, Turkey has not had to organize the asylum issue in its national legal framework. After the influx of migrants in 1980s and 1990s from neighboring regions, especially from Iraq in 1991, Turkey has faced the international migration issue, which, at the same time, has been different from previous waves and hence cannot be handled through the existing legal framework. This process had a decisive impact on the preparation of this asylum regulation. The regulation aimed to determine the migrants' legal status and certain of their rights (Kirişçi 1996).⁸ However, although this regulation covers the rights of employment, education and health care for asylum seekers and refugees, the real purpose of this regulation has not been to grant refugee status or protect the migrants' rights. The idea rather has been screening in order to decide whether an applicant was a "genuine" asylum seeker or not (Kirişçi 2002: 20). Depending on the outcome of this process, the applicant would either be permitted to approach the United Nations High Commissioner for Refugees' Office in Ankara, where it has been possible to find a third country for resettlement, or be deported. Additionally, there was a five-day time limit to file an asylum application, and this has caused considerable difficulties for asylum seekers, considering their lack of proficiency in the Turkish language and of other procedural knowledge in Turkey. In this context, it is hard to see this regulation as a measure ensuring the protection of asylum seekers and refugees. Instead, it has been considered an instrument driven by the security concerns of the Turkish state in the face of an influx of immigration.

Today in Turkey, besides the amended version of this regulation, the legal framework related to immigrants and asylum seekers is also determined by various provisions of other laws such as the Law on Settlement (*İskan Kanunu*, Nr. 2510), Passport Law (*Pasaport Kanunu*, Nr. 5682), Law on Settlement and Travel of Foreigners in Turkey (*Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanun*, Nr. 5683), Law on Work Permits of Foreigners (*Yabancıların Çalışma İzinleri Hakkında Kanun*, Nr. 4817), Law on Social Services and General Health Insurance (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Nr. 5510), etc. This fragmented structure of the legal framework causes inadequacies in the practical world where asylum seekers face a number of vulnerabilities.

Practical Framework: Main Problems of the Turkish Asylum System

The Turkish asylum system has been seriously criticized by various non-governmental organizations and international institutions. This criticism has mostly been

⁷ The Turkish name of this regulation is: *Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik*. The regulation is available in: Resmi Gazete Nr. 22127, 30.11.1994.

⁸ Unofficial translation of the regulation by Kemal Kirişçi.

related to the implementation side concerning a wide range of issues such as the legal status of immigrants, housing, work authorisation, health and education.

In Turkey, the first step in the practical life of an asylum seeker is to get an identification card. This is the first condition for being legal in Turkey. Asylum-seekers must apply to the Foreigners' Bureau for this. The second stage is obtaining a residence permit. The cost is approximately 300 US-Dollar, and the permit has to be renewed every six months. Most of the asylum seekers are unable to pay this amount, and for this reason their status becomes illegal at some point. The third stage is being settled in one of the satellite cities. Asylum-seekers now have the right to reside freely, but they encounter considerable difficulties both finding and renting housing. Prior to 2006, the law only allowed them to stay in particular satellite cities in Turkey. These satellite cities are generally not big cities like Istanbul, where most asylum seekers and irregular migrants prefer to live because of the social networks there that help them sustain themselves in the country. Foreigners accused of committing crimes, of entering or exiting the country illegally, or of staying and/or working without appropriate permits are apprehended and, until deportation arrangements have been made, are held in Foreigner Guest Houses (*Yabancılar Misafirhanesi*), newly named Readmission Centers (*Geri Gönderim Merkezi*) (İçduygu – Biehl 2009: 17). However, according to Geneva Convention Article 31, illegal entry or presence may not be a reason for apprehension and detention.⁹ These centers have been seriously criticized for the detention conditions and procedures. Recently, after September 2009, six judgments of the European Court of Human Rights, have addressed the detention conditions and procedures as well as deportation decisions in Turkey. Most importantly, in some judgements Turkey has been held responsible for violations regarding these issues.¹⁰

Regarding the accommodation of unaccompanied children who applied for asylum-seeker status, these minors can be settled in Social Services and Child Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu*. SHCEK) institu-

⁹ Article 31. - Refugees unlawfully in the country of refuge.

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

¹⁰ Case of Abdolkhani and Karimnia v. Turkey Application Nr. 30471/08, 22/09/2009; Case of Z.N.S v. Turkey Application Nr. 21896/08, 19.01.2010; Case of Charahili v. Turkey Application Nr. 46605/07, 13.04.2010; Case of Tehrani and Others v. Turkey Application Nr. 32940/08, 41626/08, 43616/08, 13.04.2010; Case of Keshmiri v. Turkey Application Nr. 36370/08, 13.04.2010; Case of Ranjbar and Others v. Turkey Application Nr. 37040/07, 13.04.2010.

tions. However, it is obvious that because of increasing numbers, the capacities and facilities of these institutions will cease to be sufficient in the future.

Furthermore asylum seekers have to deal with living and housing expenses in Turkey. They rarely receive aid from the United Nations High Commissioner for Refugees' Office in Ankara, which helps asylum seekers find a third country where they can be accepted as refugees. Asylum-seekers and refugees can theoretically receive aid from the Social Assistance and Solidarity Fund (*Sosyal Yardımlaşma ve Dayanışma Fonu*) in Turkey; however, because funds are limited, this may not be possible in practice. Although they may receive limited aid from some charitable NGOs, such aid is either one-time only or not constant.

Another problem in Turkey is said to be that the education, health and settlement services provided for migrants by the government have not been adequate. The social service funds provided by the governorships of the satellite cities have been very limited. Concerning education, in Turkey, education for children between the ages 6–14 is compulsory and free of charge. Asylum seekers and refugees, if they are registered with the police and have residence permits, can register their children in schools. However, the fact that the children cannot speak Turkish creates an obstacle. The children may be accepted by some schools in theory, but in practice, the students may attend classes but cannot receive official records.

When it comes to health services, the asylum seekers may have limited access, provided they pay their residence fees. The procedures differ from city to city. Most commonly, an asylum seeker applies to the police for transfer to a hospital. The expenses are covered by the Social Assistance and Solidarity Fund, and in this way, asylum seekers have the chance of receiving care in government clinics or government hospitals. However, in practice, this procedure either does not work or takes a very long time. Asylum seekers and refugees with serious illnesses and/or in need of an operation do not receive treatment. Similar problems are encountered in their access to medication as well.

Regarding the work permit issue, according to the Law on the Work Permits of Foreigners (*Yabancıların Çalışma İzinleri Hakkında Kanun*), foreigners who hold a 6-month residence permit and have found a job can apply for work authorization from the Ministry of Labour and Social Security (*Çalışma ve Sosyal Güvenlik Bakanlığı*). Because this procedure is long and complicated, the number of asylum seekers and refugees who have been able to obtain a work permit is almost zero.

These practical problems are closely related to the lack of a unique asylum law in Turkey. Consequently, this situation has serious impacts on the rights of asylum seekers and refugees in Turkey. In this framework, the European Union membership candidacy process has emerged as a significant factor shaping Turkey's asylum procedures.

The Turkish Asylum System in the European Membership Process

The EU membership candidacy period, which began in 1999, has prompted Turkey to devise certain regulations regarding the asylum issue. In this process, it is observable that Accession Partnership Documents prepared by the European Union as a guide on the road to membership for candidate countries, have repeatedly raised some issues related to migration and asylum policies. These issues are listed under the heading of Justice, Freedom and Security:

- Continue to strengthen all law enforcement institutions and align their status and functioning with European standards, including through developing inter-agency cooperation. Adopt a code of ethics and establish an independent and effective complaints system to ensure greater accountability covering all law enforcement bodies,
- continue efforts to implement the National Action Plan on Asylum and Migration (including through the adoption of a roadmap), increase capacity to combat illegal migration in line with international standards,
- conclude urgently a readmission agreement with the EU,
- make progress in the preparations for the adoption of a comprehensive asylum law in line with the *acquis* including the establishment of an asylum authority,
- continue efforts to implement the National Action Plan on integrated border management including through the definition of a precise road map. Steps should be taken to establish the new border law enforcement authority”.¹¹

As a response to these demands, Turkey has prepared its national program, which also covers its commitments. Regarding the migration and asylum issue, it further prepared a special plan titled National Action Plan on Migration and Asylum (*İltica ve Göç Alanındaki Avrupa Birliği Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Eylem Planı*) at the end of 2004.¹² The aim of this plan is to regulate Turkey’s legal system pertaining to asylum seekers, migrants and foreigners in order to be consistent with the European Union *acquis* and related procedures. At the same time, the technical and financial problems involved with the implication of this plan have also been mentioned. In this plan, the issue of geographical limitation has been linked directly to the membership process and burden sharing with European Union countries and, furthermore, the establishment of the necessary infrastructure and laws in order not to worsen Turkey’s situation in terms of migration flows. The most important contributions of this quite detailed plan are its commitments to preparing a comprehensive asylum law, establishing an independent asylum authority and an effective complaint system, and ensuring social facilities and rights for asylum seekers.

¹¹ Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC (2008/157/EC) OJ L 51, 26.02.2008.

¹² For the National Action Plan on Migration and Asylum, see: *İltica ve Göç Alanındaki Avrupa Birliği Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Eylem Planı* (accessible at: <http://www.egm.gov.tr/hizmet.iltica.asp>).

When we look at the plan carefully, we see that the realization of these commitments are directly linked to the burden sharing and technical and financial capabilities. In this framework, Turkey demands further aid in addition to the pre-accession financial aid programs. The Turkish state has set a goal of 2012 for the realization of this plan.

Besides these commitments, concrete measures have been taken in the European Union membership process. These are, specifically, the amendment of the 1994 Asylum Regulation in the year 2006. The amendments can be listed as follows:

- The time limitation for the asylum seeker application procedure was set at 5 days in the 1994 Regulation. This was first extended to 10 days in 1998, and then in 2006, the amended regulation states that the application has to be made "without delay, within a considerable period of time". This change helps to prevent the extradition of asylum seekers on the grounds of exceeding the time limit for the application.
- With the 2006 amendments, asylum seekers are allowed to reside freely or stay in a specific center assigned by the Ministry of Internal Affairs. According to the 1994 Regulation, asylum seekers did not have the right to reside freely in the country. This change may have positive implications for the integration of asylum seekers in Turkish society.
- In the 1994 Regulation, the Ministry of Internal Affairs shared the responsibility and power to adjudicate asylum petitions with the Ministry of Foreign Affairs and other concerned ministries and institutions. The 2006 amendments have empowered only the Ministry of Internal Affairs with the authority to grant asylum.
- The 2006 amendments have widened the network of cooperation on asylum issues by allowing the Ministry of Internal Affairs to cooperate with various non-governmental organizations and international institutions".¹³

These amendments may be evaluated as the first signs of the government's accepting the need to adjust the legal framework in order to deal with "new types of migration waves", as well as the first signs of the impact of European Union conditionality on Turkey's asylum regulation.

Another important step taken in the European Union membership period has been the enactment of a decree by the Ministry of Internal Affairs, also in 2006, to ensure the correct and effective application of the amended regulation.¹⁴ Here, the aim is to prevent any discrepancies between the legal procedures and their implementation during the preparation period of the asylum law. In this way, probable loopholes in the regulations and problems regarding their implementation can be better defined.

¹³ *Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılar ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik'te Değişiklik Yapılmasına Dair Yönetmelik*, Resmi Gazete Nr. 26062, 27.01.2006.

¹⁴ Decree Nr. 57 of the Ministry of Internal Affairs (*Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılar ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkındaki 57 numaralı Genelge*), 22.06.2006. For this Decree see: Ekşi 2010: 174-209.

Efforts to regulate the asylum system and prepare a unique asylum law have been accelerated since the beginning of 2010. On October 15, 2008, an official bureau was already established under the Ministry of Internal Affairs for the task of improving the asylum and migration law, and the administrative capacity as well as implementation (*İltica ve Göç Mevzuatı ve İdari Kapasitesini Geliştirme ve Uygulama Bürosu*). Recently, the Ministry of Internal Affairs issued a new decree on March 2010.¹⁵ This decree provides solutions for issues long criticized, such as the residence permit fee and problems arising from the ambiguities in the legal status of immigrants. After this decree, asylum seekers and refugees are not required to pay the residence fee if they are unable to. All foreigners holding a six-month residence permit also have a foreigner ID number entered on their residence permit document. Further, immigrants who become illegal due to a variety of reasons now have the option to apply for asylum. The authorities are required to receive their application and process it according to the provisions of this decree. Secondly, two projects supported by the European Union were inaugurated on 11 March 2010 at the Headquarters of the Turkish National Police in Ankara. The projects are the first elements of broader parallel programs aimed at supporting Turkey's capacity to combat irregular migration through the establishment both of removal centers and of a system of reception, screening and accommodation for asylum seekers and refugees.¹⁶ Under this project, reception centers and removal centers throughout the country will be established. Each of these centers is designed to accommodate 750 persons.

Despite the fact that many significant legal adjustments have taken place during past five years in Turkey, implementation of these measures is strictly related to the enactment of a unique asylum law. At the present moment, the Ministry of Internal Affairs is in the process of discussing the draft Turkish asylum law, which is not yet accessible to the public. Consequently, it is currently not possible to know the exact content of the first Turkish Asylum Law. However, the aforementioned process and measures imply that the European Union will continue to be the main actor on this road.

Conclusion

It can be said that in Turkey, as well as in the rest of the world, migration policy used to be shaped by the security concerns of the state. However, new migration patterns compel the state to consider the social and humanitarian side of the phenomenon and hence to establish a comprehensive approach to migration and asylum issues with an emphasis on the human rights dimension.

¹⁵ Decree of Ministry of Internal Affairs dated March 2010 (*İç İşleri Bakanlığı Mart 2010 Genelgesi*), 2010/19 Sayı B.050.ÖKM.0000.11-12/631, konu: Mülteci ve Sığınmacılar, T.C İçişleri Bakanlığı Özel Kalem Müdürlüğü.

¹⁶ See: <http://ecohr.wordpress.com/2010/03/14/migration-and-asylum-problems>.

When we look at the Turkish case, the effects of EU conditionality obviously dominate the measures and regulations concerning the asylum issue. However, the main problem still lies in their implementation. Today, the economic and social burden and the importance of state's sovereignty are major factors that prevent states from voluntarily participating and cooperating in policy formation and law enactment concerning this group of people.

Turkey, as a candidate member of the European Union, seems to perceive the formation of a comprehensive migration and asylum policy as part of the EU accession process. On the other hand, asylum and migration issues have long been discussed in the European Union structure in their legal and practical dimensions. However, we still are not able to talk about a completely communitarized asylum and migration policy within the Union although important steps have been taken in this regard. In these circumstances, Turkey may also be able to construct its own way to deal with the migration issue according to its own priorities.

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