

The Impact of the EU on Turkish Asylum and Immigration Policy

(AB'nin Türk Göç ve İltica Politikalarına Etkisi)

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Abstract

Although some features of welfare states are eroded away under the pressure of intense global competition and financial difficulties, they still give opportunities to their citizens which even cannot be dreamt of by people of undeveloped world. Thus, numerous people in undeveloped countries are dreaming of being a part of such a system and exploiting them as much as they can. However, the welfare systems are usually self-sufficient and there is either very little or no room for outsiders who may harm the order. The system is supported by huge budgets which are based largely on taxes of the citizens and the citizens tolerate this in expectation of benefiting from the system not helping the foreigners who had never paid and most probably will never pay for the system. Therefore, the European governments seek to prevent illegal immigration, in other words, the infiltration to their welfare states. Turkey is in the middle of the routes of illegal immigration and thus seemed as a key actor in solving the problem. However, there has been a considerable inconsistency between Turkish and European legislation on this issue and the EU forces Turkey to make change in its legislation and implement them immediately at least for reducing the immigration flow passing through Turkey. In this paper the inconsistency between the legislations of both parties and the legislative change in Turkish Illegal Immigration and Asylum policy will be examined. The method of this research will be assessing the relevant parts of the EU documents, i.e. progress reports, national programs and Accession Partnerships, and comparing the legislative documents of the EU and Turkey on Illegal Immigration and Asylum and thus determine the alteration in Turkish legislation under the influence of the EU.

Keywords: EU – Turkey Relations, EU Law, European Justice and Home Affairs Illegal Immigration, Welfare States.

Özet

Bazı özellikleri yoğun global rekabet ve finansal sorunlar nedeniyle aşınmış da olsa refah devletleri vatandaşlarına hala gelişmemiş dünyanın insanları için hayal dahi edilemeyecek fırsatlar sunuyor. Böylelikle gelişmemiş ülkelerdeki insanlar böyle bir sistemin parçası olmayı ve faydalanabildikleri kadar bu sistemden faydalanmayı hayal ediyorlar. Ancak refah sistemleri çoğunlukla kendi kendilerine yetmek üzere tasarlanmışlar, dışarıdan gelenler için çok az yere sahiptirler ve büyük bütçelerle desteklenmişlerdir ki bunlar da ağırlıklı olarak vatandaşlardan kesilen vergilere dayanırlar. Vatandaşlar da bu durumu kendilerinin sistemden yararlanacağı beklentisi ile tolere ederler sisteme hiçbir katkısı olmamış ve muhtemelen hiçbir zaman da olmayacak yabancıları desteklemek için değil. Bu yüzden Avrupa hükümetleri illegal göçleri veya bir başka deyişle, refah devletlerine sızmaları engelleyecek yollar aramaktadırlar. Türkiye illegal göç rotasının ortasındadır ve dolayısıyla bu sorunun çözümünde önemli bir aktör olarak görünmektedir. Ancak, Türkiye ve AB'nin illegal göç ve iltica mevzuatında dikkate değer bir tutarsızlık bulunmakta ve AB Türkiye'ye mevzuat değişikliği ve yapılan değişikliklerin hemen uygulanarak en azından Türkiye üzerinden geçen illegal göç akımında bir azalma gerçekleşmesi yönünde baskı yapmaktadır. Bu çalışmada her iki tarafın mevzuatı arasındaki tutarsızlıklar ve Türkiye'nin illegal göç ve iltica ile ilgili politikasındaki yasal değişiklikler incelenecektir. Bu araştırmanın yöntemi ise, Avrupa Birliği dokümanlarının ilgili bölümlerini incelemek (ilerleme raporları, katılım ortaklığı belgeleri, ulusal raporlar) ve Türk ve AB mevzuatını karşılaştırıp Türk mevzuatında AB etkisiyle yapılan değişiklikleri tespit etmek olacaktır.

Anahtar Kelimeler: AB – Türkiye İlişkileri, AB Hukuku, Avrupa Adalet ve İçişleri İllegal Göç, Refah Devletleri.

1- INTRODUCTION

By the end of 2010, the number of international immigrants is expected to reach 210 million

(United Nations Department of Economic and Social Affairs, 2008). 20 million of these are

expected to be refugees and asylum seekers in need of assistance or protection (United Nations Department of Economic and Social Affairs, 2008). This estimated number of immigrants accounts for almost 4 percent of the world population. In other words, almost 4 percent of all peoples of the world live as immigrants. The desire for better living standards is the motivation behind the act of migration. The issues that lead to migration of people range from economic problems to social disorder and political violence.

Although some features of welfare states are eroded away under the pressure of intense global competition and financial difficulties, they still give opportunities to their citizens which even cannot be dreamt of by people of undeveloped world. Thus, numerous people in undeveloped countries are dreaming of being a part of such a system and exploiting them as much as they can. However, the welfare systems are usually self-sufficient and there is either very little or no room for outsiders who may harm the order. The system is supported by huge budgets which are based largely on taxes of the citizens and the citizens tolerate this in expectation of benefiting from the system not helping the foreigners who had never paid and most probably will never pay for the system. Therefore, the European governments seek to prevent illegal immigration, in other words, the infiltration to their welfare states. Turkey is in the middle of the routes of illegal immigration and thus seemed as a key actor in solving the problem. However, there has been a considerable inconsistency between Turkish and European legislation on this issue and the EU forces Turkey to make change in its legislation and implement them immediately at least for reducing the immigration flow passing through Turkey.

In this paper the inconsistency between the legislations of both parties and the legislative change in Turkish Illegal Immigration and Asylum policy will be examined. The method of this research will be assessing the relevant parts of the EU documents, i.e. progress reports, national programs and Accession Partnerships, and comparing the legislative documents of

the EU and Turkey on Illegal Immigration and Asylum and thus determine the alteration in Turkish legislation under the influence of the EU.

2- METHODOLOGY

Various documents, written media, periodicals, journals and books can be subject to document analysis (Bailey, 1982). According to Bailey (1982), periodicals, books and such documents enable the researcher to analyze a research question based on an extensive period of time. In this type of research, researcher can find the required data without making an observation or an interview. In this sense, document analysis would help the researcher to save time and money (Yıldırım and Şimşek, 2008, p.188). In the process of document analysis, the words, themes, paragraphs in web sites were evaluated as research units and their contents were analyzed. Coding and conceptualization studies about some expressions were made in the process of analysis and significant conclusions had been driven from secondary information. Extension of the sample was provided through qualitative data collected from various documentary sources such as books, dissertations, articles, reports and web sources. Purposive sampling has been made in the study. In this research, articles, reports, dissertations and web sources have been considered sufficient for analysis. In this research it is assumed that the information and data collected from printed and web sources are valid and neutral.

3- MIGRATION POLICY IN THE EU

Until the mid-1970s, the European Community acted in accordance with the migration policy of the United Nations, which favored economic well-being of migration receiving states and human rights of immigrants (Weiner, 1995, p.158). However, the United Nations' direct focus on humanitarian assistance and in- country protection of immigrants began to run contrary to the demands of Western European countries beginning with the late 1970s. There are several reasons for this. One of them was the high flow of immigrants into Western European countries, especially refugees and asylum seekers, from Eastern European and Third World

countries. As the receiving countries viewed this amount of immigrants as more than tolerable, the economic cost of providing the immigrants with relief rather than humanitarian help became the primary concern for Western European countries (Weiner, 1995, p.158). From then onwards, Western European countries have taken measures to address migration outside of the United Nations framework (Weiner, 199, p.162).

On the other hand, increasing flow of labor migration had already become a concern for the European Community countries in the late 1970s due to large amounts of people fleeing into these countries, and their demand to be housed. Consequently, the European Community members no longer regarded migration and refugee policies as distinct, with the former based on utilitarian concerns of receiving countries and the latter based on the needs of exposed individuals in need of safeguard against persecution and violence (Weiner, 1995, p.163).

In addition, that large numbers of individuals in the 1970s were using the refugee claims to migrate for labor purposes added to the growth of conviction among the Community countries. Therefore, the refugee influx in the European Community was viewed in terms of political consequences of unwanted migration flows (Weiner, 1995 p.164).

As a result of these concerns, a tendency has developed within the European Union, which is a collection of states in the field of migration, to set the principles in dealing with migration as a threat to economic and societal security, and several steps were taken to decide upon a migration policy in constitutional terms. Establishment of the Trevi Group (Terrorism, Radicalism, and Extreme Violence International) in 1975 was prompted by several terrorist acts, particularly the hostage taking and the following massacre during the 1972 Olympic Games in Munich. It had a wide area of concern including organized crime, illegal migration, and drug trafficking (Monar, 2001, p.748). The next initiative was the formation of the 'Ad Hoc Group on Migration' in 1986 to ease intergovernmental cooperation among the Community members in migration related fields. The group brought restrictions to

the admission of migration flows as well as asylum applications to prevent fake documentation and promote intelligence exchange (Dearden, 2004, p.26). The Schengen Agreement of 1985 brought the elimination of border checks among Community members calling for common data bases, exchange of good practices, and a common visa policy between Schengen member countries (Bigo and Guild, 2005, p.233). The abolishment of internal border controls created the need to strengthen external border controls for which judicial and police cooperation was improved (Huysmans, 2000, p.757).

The Maastricht Treaty of 1992, in its Title VI, addressed migration as a matter of common interest together with the fight against drugs and fraud, judicial cooperation in civil and criminal matters, customs cooperation and police in the fight against terrorism, drugs and trafficking and other forms of international crime. That is, migration and asylum issues were mentioned together with other criminal matters again in the Maastricht Treaty. Accordingly, common migration and asylum policy were made into one of the pillars of the European Union.

In the Treaty of Amsterdam of 1997, migration and asylum policy of the European Union was transferred to the First Pillar. With this move, the European Commission gained the ability to propose binding measures to the European Council, and migration and asylum policy were carried into the policy area dealt on a supranational basis (Bigo, 2009, p.579). The responsibility for migration flows including all visa applications, legal and illegal migration policies were transferred from the Justice and Home Affairs to the European Community with the Amsterdam Treaty. The treaty aimed at promoting societal security in Europe by restricting visa and asylum practices, and it presented illegal immigrants as a threat to the formation of an area of freedom, security and justice (Peers, 2000, p.2).

Apart from consideration of migration in the European Union countries as a security threat to the well processing of the nation state after the terrorist attacks of 2000s (Boswell, 2007,

p.592), immigrants are also formulated as 'bearers of multiple social threats' (Tsoukala, 2005, p.163). According to Tsoukala, addressing immigrants as such is formulated by politicians, officials, and the media, as a result of which immigrants became transformed into a threat to societal security (2005, p.163). Migration in the European Union is addressed through political discourses as a threat to internal security, demographic balance, identity and interests of the receiving societies (Tsoukala, 2005, p.164).

4- ILLEGAL MIGRATION IN TURKEY

Turkey's position in illegal migration is exceptional as it is a source, transit and destination country at the same time. Geographic location of Turkey is very challenging. Its position at the intersection of Asia, Europe and Africa allows it to be seen as a door opening to Europe for Asian and African migrants. The country's closeness to other European countries, its place at the intersection of the East-West and South-North routes, and the opportunity of traveling by land, sea or air make it further attractive. The image of Turkey as a junction in the South-to-North and East-to-West migration is making Turkey more and more detrimental for the European Union that it wants to join. Nevertheless, its image as a bridge will continue as it is impossible to change the geographic location of a country.

The largest part of the illegal migration in Turkey is caused by transit migrants on the way to mainly European countries and migrants employed irregularly. The reasons for these waves of irregular migrants can be summarized as follows:

- Continuing political disorder in the Middle East and ex-East Bloc region has forced people to move to other countries seeking a better life;
- Turkey's geographic location has made it a transit zone for migrants heading west and north;

- The strict immigration policies of developed European countries that created the expression “Fortress Europe” have diverted people to countries surrounding Europe;
- Turkey’s relative economic prosperity in the region attracts migrants (IOM, 2005, p.157-158).

Criminal networks facilitating illegal migration are mainly sea and land transporters, drug smugglers, terrorist organizations and sometimes the illegal migrants themselves. The methods used in human smuggling in Turkey can be summarized as follows:

- Illegal exit and entrance from places other than border checkpoints, such as mountainous territory;
- Buying an old and worn out ship and leaving illegal migrants in them to return with another ship and claim money from the insurance company;
- Entering the country legally and then continuing to stay illegally after the visa expires;
- Passing through the border checkpoints by using fraudulent documents;
- The organizations of the terrorist groups to take their members and sympathizers to other countries;
- Sending back the valid passport after leaving the country legally to be used for the exit of another person;
- Buying a round-trip ticket to enter a country and leaving that country illegally to enter another one (e.g. flying to Bosnia legally to leave for other European countries);
- Obtaining visa and residence permit by the help of the companies formed in Turkey;
- The attempts of especially Chinese citizens to enter by counterfeiting the passports of other far-east countries; and
- Using ships inappropriate for human transport or overloading small boats for migrant smuggling as the territorial waters are relatively shorter in the Aegean Sea to allow reaching ships waiting in international waters (BFBA, 2001, p.37).

5- MIGRATION POLICY OF TURKEY BEFORE HER CANDIDACY TO THE EU

There are a number of critical documents that provide the legal underground for Turkish migration policy, first among them being the Settlement Law (İskân Kanunu, Law 2510, June 14th, 1934). This law is an evidence of the labeling authority that the young Republic practiced. Kirişçi underlines that Law 2510 provides only individuals of “Turkish descent and culture” with the right to migrate to Turkey and get naturalized in time (Kirişçi, 2000, p.10). This piece of law did not address migration issue in the modern sense of the word but rather focused on the attempt to create a secular nation out of a community defined with reference to religion. In that vein, those that did not carry Turkish descent and culture were not encouraged to immigrate to Turkey. The second international legal document, which is another milestone for Turkish migration policy, is UN Convention Relating to the Status of Refugees signed in 1951 in Geneva. The Geneva Convention is the first international legal document to become part of Turkish legal system that refers primarily to migration. Up to then, Turkey had never attempted to regulate flow of people across her borders. The fact that Turkey signed and ratified this Convention rather smoothly compared to various other international documents to which she would be expected to accede can arguably demonstrate an early awareness regarding the international character of migration issue.

Although Turkey was among the drafters and original signatories of the Geneva Convention, she did not fail to sign the Convention with a geographical limitation as in the Article 1 B (1) (a). This article limits a country’s obligations under the Convention to asylum seekers and refugees only from Europe (Kirişçi, 2000, p.12). This reservation meant in practice that Turkey would extend asylum only to nationals of European countries. This practice reflects a

Cold War mentality in that Turkey would accrue refugee status only to people fleeing persecution in the USSR and the so-called East bloc. As a result of this reservation there emerged two tiers in Turkish refugee practice, namely convention refugees and non-convention refugees referring to the region from where they entered the country. In spite of this separation, one common point was that Turkey was more willing to have asylum applicants settled in a third country rather than giving them asylum herself.

In the cases of refugees from beyond Europe, Turkey assumed no legal responsibility at all. However, she did not block UNHCR to process asylum applications of these non-convention refugees together with Turkish authorities. Turkey still does not accept non-European refugees on *de jure* basis; it is a *de facto* situation that almost all asylum applications in the country come from non-Europeans” (İçduygu, 2002 p.7).

In 1999 Helsinki Summit Turkey was officially declared as a candidate country to the EU. From that date onwards, Turkey witnessed overwhelming changes in virtually every aspect of social and political life. The regular reports that the European Commission prepares for all candidate countries where the Commission presents the gaps and correspondences in national and European policies started to be prepared for Turkey as well. Turkey was presented with the flaws in her immigration practices alongside many other policy areas and intensification of relations with the EU from 1999 onwards provided a major impetus for Turkey to introduce reforms in her immigration policy and practices.

6- THE EU IMPACT ON TURKISH MIGRATION POLICY

Accession talks with Turkey were decided to be furthered under 35 chapters, 24th of which is titled Justice, Freedom and Security that encompasses the issues on border management, visa, asylum and migration. The *acquis* under this chapter is an outcome of the Union’s policies on internal security covering migration, asylum, combating illegal immigration, human trafficking and visa matters. This also covers the external dimension of migration policy

developed to incorporate third countries and the periphery of the Union for migration control. In this context, what does the EU want from Turkey regarding the area of freedom, justice and security? The answer is simple: to control its border more effectively particularly in preventing illegal immigrants passing to the EU via Turkey, accept asylum seekers from all around the world; treat them with certain standards, harmonize its legislation and practices with that of EU's and cooperate with European institutions. Realizing all these would mean becoming an instrumental part of the European ban-opticon, helping Europe stop asylum-seekers and illegal immigrants before reaching the borders of Europe and return back at the nearest possible entry point. To achieve these, several themes keeps recurring during accession talks.

Several documents discussed what Turkey should do and achieve in this process. European Commission has been preparing regular progress reports annually for Turkey since 1998 and they have been main instruments analyzing the existing situation in the country and criticizing the deficiencies. After Turkey was declared as a candidate country in 1999, the conclusions of Helsinki Council stated that Turkey will benefit from a pre-accession strategy that will support and promote the reforms. A crucial component of this strategy was the Accession Partnership Document (APD) first of which was prepared in 2001. European Council decided during 1997 Luxembourg summit that APD is one of the main components of pre-accession strategy especially in the sense of bringing all the aid under one, however tailor-made heading for each candidate. In this context, APD aims to specify main principles of accession, short and medium term priorities, targets, conditions and actions to be taken to adopt the EU acquis in various fields. It was based on the findings of the previous year's Progress Report prepared by the European Commission. Under the short term goals of the 2001 APD for the field of Justice, Freedom and Security, Turkey was expected to first develop information and awareness programs on the legislation and practices of the EU in this area, then to enhance the

fight against organized crime, drug trafficking and corruption. Whereas for the medium term a more detailed plan, which included the followings:

- Develop training programs on Community law and on the implementation of the JHA acquis.
- Further develop and strengthen JHA institutions with a view in particular to ensuring the accountability of the police.
- Adopt the EU acquis in the field of data protection so as to be able to fully participate in the Schengen information system and in Europol.
- Start alignment of visa legislation and practice with those of the EU.
- Adopt and implement the EU acquis and practices on migration (admission, readmission, expulsion) so as to prevent illegal migrations.
- Continue strengthening border management and prepare for full implementation of the Schengen Convention.
- Lift the geographical reservation to the 1951 Geneva Convention in the field of asylum and develop accommodation facilities and social support for refugees.
- Adopt and implement the EU acquis in the field of corruption, fight against drugs, organized crime, money laundering and judicial cooperation in criminal and civil matters; further intensify international cooperation in those fields (Accession Partnership Document, 2001, p.21-22).

These medium term goals constitute the fundamentals of harmonization in this area. The Union expects Turkey to first disseminate knowledge in this field through training programs that is to create an intellectual capacity before implementation, or in other words a mental transformation. Following this mental transformation and in parallel what is expected is to create the necessary infrastructural situation to cooperate and work together with EU institutions. For instance to participate to Schengen Information System and other databases Turkey needs to adopt certain data protection laws as well as to harmonize its IT

infrastructure. Other topical issues are the visa policy and abolishing the geographical limitation to 1951 Convention. In return for the APD adopted by the EU, Turkey was expected to adopt an NPAA defining the timeline and roadmap to make necessary amendments to harmonize its legislation and practices. The NPAA was adopted and published in the Official Gazette on 24 March 2001. Similar to APD it was structured according to subject matters as well as according to yearly planning, stating specifically the actions to be undertaken. Turkish authorities revealed great political activism during 2001 and 2002 by adopting several legislative packages mostly relevant to political criteria. Following this, APD was revised in 2003 and Turkish Government also revised its NPAA in the year 2003. The documents adopted in 2003, did not bring any fundamental change in the direction of policy; they were built on the findings of the Regular Progress Report in 2002. In the short term the following goals were re-stated in 2003:

- Reinforce the fight against illegal immigration, negotiate and conclude as soon as possible a readmission agreement with the European Community.
- Continue to strengthen the fight against organized crime, drugs, trafficking in persons, fraud, corruption, and money-laundering, particularly through legislative alignment, improved administrative capacity and enhanced cooperation between different law-enforcement bodies, in line with EU standards.
- Further develop and strengthen all relevant institutions, with a view in particular to ensuring the accountability of the police. Improve cooperation between all law enforcement institutions, including the judiciary.
- Improve the capacity of public administration to develop an effective border management, including the detection of forged and falsified documents, in line with the acquis and best practices with a view to preventing and combating illegal migration.

- Strengthen efforts to develop information and awareness programs on the legislation and best practices in the European Union in the fields of justice and home affairs (Accession Partnership Document, 2003, p.49-50).

For the short term in 2003 the aims were a bit more specified and just the priorities have been shift. And as for the medium term goals, the following were stated in the 2003 APD:

- Strengthen efforts to develop sustainable training programs on the acquis and its implementation in the fields of JHA also with a view to increasing administrative capacity and improving inter-agency cooperation.

- Further develop the legal aid system to ensure that all citizens enjoy access to justice.

- Adopt the acquis in the field of data protection and exchange of personal data for law enforcement purposes and create the institutional capacity for its implementation including the creation of an independent supervisory authority so as to be able to fully participate in the Schengen information system and Europol.

- Pursue alignment of visa legislation and practice with the acquis.

- Adopt and implement the acquis and best practices on migration (admission, readmission, expulsion) with a view to preventing illegal immigration.

- Continue alignment with the acquis and best practices concerning border management so as to prepare for full implementation of the Schengen acquis.

- Start with the alignment of the acquis in the field of asylum including lifting the geographical reservation to the 1951 Geneva Convention; strengthen the system for hearing and determining applications for asylum; develop accommodation facilities and social support for asylum seekers and refugees.

- Adopt and implement the acquis in the fields of the criminal law protection of the euro and of the Community's financial interests, corruption, fight against drugs, organized crime, money-laundering and judicial cooperation in criminal and civil matters; further increase

administrative capacity, cooperation between the different law enforcement bodies and intensify international cooperation in these fields.

- Develop and start to implement a national drug strategy in line with the EU drugs strategy and action plan (Accession Partnership Document, 2003, p.54).

As clear there is no major change in the direction of policy from 2001 to 2003 document. However, in 2003 some of the issues such as signing a readmission agreement are stated much more explicitly, clarifying the priorities of the European side which does not always overlap with that of Turkey. Similar to the process in 2001, Turkey revised its National Program in 2003 in line with the new Accession Partnership Document. Again Turkish Government committed itself in adopting the EU acquis and making necessary preparations. Here, the two crucial issues were lifting the geographical limitation to 1951 Convention and signing a readmission agreement with the EU. Regarding the geographical limitation, Turkey stated the condition that the EU would commit itself to burden sharing and those necessary measures would be taken to protect Turkey from possible mass influxes of refugees. A timeline of 2012 was mentioned if these conditions would be satisfied. Similar issues and priorities were re-stated in 2006 and 2008 APDs.

When these major documents of the EU regarding Turkish harmonization are reviewed several issues keep repeating: increasing the capacity of bureaucracy in terms of implementing EU acquis and cooperating with EU agencies, abolishing the geographical limitation for 1951 Geneva Convention, setting up a civilian, professional authority for border control, increasing the capacity to accommodate illegal migrants and asylum seekers.

7- TURKEY'S RESPOND TO THE EU

An initial step taken in this field by Turkish authorities following the 2001 APD was to set up a special task force in which representatives of all relevant institutions in charge of border

control, asylum and migration took part (Kirişçi, 2007, p.9). The aim of the task force was to facilitate complying with the EU acquis in the field of Justice and Home Affairs. Moreover, three working groups were established under this task force on migration, asylum and border control, all three of which became operational on 18 June 2002. These working groups had the main goal to initiate legislative scrutiny and arrange for necessary work including study visits with respect to border protection, illegal migration, the Schengen visa regime and asylum. The European Union Delegation in Ankara also worked closely with these task forces. The biggest outputs of all the three were the succinct Strategy Paper's defining the outlines of Turkey's policy in the related areas. These were: "Strategy Paper on the Protection of External Borders in Turkey" prepared in April 2003, "Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey's Accession to the European Union" prepared in October 2003 and "Strategy Paper to Contribute Migration Management Action Plan in Turkey" prepared again in October 2003 (Ministry of Interior, 2005, p.7). The National Action Plan (NAP) on Asylum adopted on 25 March 2005 (Ministry of Interior, 2005). The document foresaw crucial amendments to the legislation and practice regarding migrants and asylum seekers.

In this context, there are five crucial issues especially regarding the issue of asylum worth mentioning:

- 1- A new institutional authority to be established to deal with asylum and migration
- 2- Signing a readmission agreement with the EU
- 3- Abolishing the geographical limitation Turkey applies to the 1951 Geneva Convention
- 4- Providing effective procedures and legal support for asylum seekers and refugees
- 5- Improving the rights of refugees and asylum seekers (UPSAM, 2009).

Legislative amendments therefore constitute a big part of transformation. However, it was planned to be supported by institutional changes as well. "In Turkey asylum issues have been

dealt with by the Foreigners, Borders and Asylum Department, which is one of the 26 departments in the General Directorate of Security under the National Police Authority” (Kaya, 2009, p.12-13). This institutional set up receives criticism for mainly being inefficient and in need of resources (Kaya, 2009). In the action plan Turkey has committed itself to the establishment of a single and centralized institution under the MOI specialized in the determination of refugee status and fulfillment of the legislative, administrative and infrastructure needs for developing its operational capacity. Initial move has been setting up a separate unit under the MOI specifically dealing with asylum and migration issues.

a- Legal Regulations

i. The Passport Law

Passport Law (Pasaport Kanunu, Law 5682, July 7th, 1950) governs the rules related to illegal entry to Turkey or exit from Turkish borders. The same Law also penalizes people who control transportation means that carry those illegal aliens. However, these penalties were not enough deterrence for illegal migrants who are given only symbolic fines and got deported. Amendment of the Passport Law addresses this factor and aims to introduce deterrent fines and imprisonment for illegal migrants and transporters alike. Apart from specific provisions related to illegal entry and exit, it foresees imprisonment of one to two years for trafficking in human beings (İçduygu, 2003, p.59).

ii. The Turkish Penal Code

Illegal migration can be an isolated individual act as well as part of an international organization. When trying to control and contain migration, states have to be aware of the fact that not all illegal migration has to be voluntary on the part of migrants. Human smuggling and employment of people contrary to their will is a crime defined by the UN in December 12th – 13th, 2000 in Palermo. Turkey was among the initial signatories of the UN Convention in Palermo against Transnational Organized Crime as well as its Protocol to Prevent, Suppress

and Punish Trafficking in Persons, Especially Women and Children and the Protocol against Smuggling of Migrants by Land, Sea and Air (Çiçekli, 2005)¹³. With amendments made to the Penal Code and the Code of Penal Procedure in 2002, Turkey sought to fulfill the provisions of the above-mentioned UN Convention against Transnational Organized Crime and its additional protocols. Thus, human smuggling and trafficking in human beings were defined to be offences and entered Turkish legal system. With these amendments human smuggling and trafficking in persons were prohibited and serious penalties have been introduced (Türk Ceza Kanunu, Articles 201/a, and 201/b). 2003 Regular Report mentions that more trafficking-related arrests have been made since then (Commission 2003).

iii. Employment of Aliens

Terzioglu underlines that work permits for aliens used to be delivered by various separate institutions like Higher Education Institution, Undersecretary of Treasury and Ministry of Tourism (November 2002). Labor Law (İş Kanunu, Law 4857) that entered into force on September 6th 2003 aimed to pool delivery of work permits under one roof and thus to prevent illegal employment of aliens in the country. With this law, Turkish Employment Service was authorized to be the sole venue to recruit foreign workers (Articles 83, 85 and 105). The significance of this Law in terms of illegal movement of persons lies in the fact that it would legalize the employment market in Turkey and thus reduce the risk of migrants being subject to exploitation. Additionally, heavy fines would deter human smugglers and help the efforts to combat trafficking of persons.

iv. The Nationality Law

This amendment primarily targeted foreign women who were involved in prostitution in Turkey. According to the amended Law, naturalization procedures for foreign spouse would begin only 3 years after registration of the marriage. Thus, only if the marriage were a *bona fide* union, foreign spouse would be naturalized. Amended Nationality Law (Vatandaşlık

Kanunu, Law 4866) entered into force on June 4th, 2003. Thus, marriage of convenience entered Turkish legal system and a mechanism was set up to prevent its consequence of delivering Turkish citizenship. Again, in terms of illegal migration this amendment is significant because it aims to limit trafficking and illegal employment of persons.

b- Dispute Areas between Turkey and the EU

When Turkish National Program and consequent Regular Reports by the European Commission are investigated, one can see that there are some points over which the parties adopt conflicting views. Moreover, this clash occurs right over the foundations of migration policies and hence threatens a complete collaboration between Turkey and the EU. In order to satisfy the EU's demands, Turkey has to change the very basic assumptions on which she has been dealing with human flows on her territory ever since. This would be a painful process and would require great effort by Turkish and European authorities alike. The main issues are signature of a readmission agreement between Turkey and the EU, lifting of the geographical limitation Turkey has on the 1951 Geneva Convention and sharing the burden of processing illegal immigrants.

i. Readmission Agreement

Readmission agreements are favorite tools of the European Council when it comes to illegal immigration. The soul of readmission agreements mean that a country would agree to admit back any person that had made an illegal entry into another country from her territory. Thus, in the case of illegal immigrants that use Turkey as a transit route to EU countries which form the focus of this study, Turkey would have to readmit these people in accordance with a Turkey-EU readmission agreement. Turkey has long resisted pressures from the EU to start negotiations towards such an agreement but finally in March 2004 she agreed to open

negotiations on this issue, albeit very reluctantly. The main concern of Turkey on that subject has been the fear of being a dumping ground for unwanted immigrants. In case Turkey-EU readmission agreement is completed before completion of similar agreements with migrant creating countries Turkey may have to house illegal immigrants for unknown periods of time. Turkey emphasizes the risk to her domestic security and financial burden that these illegal immigrants would create. The main point to consider here is that Turkey is not the target country for the illegal immigrants in question. As a result, readmitting them to Turkey would not solve the problem but aggravate it. These people sometimes pay huge sums of money to organizers to arrange for their run and usually risk their lives in the search for a better life. It would be naive to assume that they would wait helplessly in Turkey until the day they would be returned to home countries. Many would try making illegal entry to Europe again. Besides, this would push these people to work illegally during their stay in Turkey. Consequently, this situation increases the risk for such people to fall victim to human traffickers.

ii. Geographical Limitation

Turkey is one of the signatories of the UN Convention on the Status of Refugees (Geneva Convention). However, at Law issue number 359 which is the law of approval for the said Convention, Turkey expressed her peculiar comment on Article 1 paragraph (b) of the Convention that mentions: “events occurring before 1st of January, 1951”. Turkey placed geographical reserve on this article and declared that she reads this article as: “events occurring before 1st of January 1951 in Europe”. Thus, Turkey did not assume any international obligation to extend refugee status to people coming from outside Europe. Additional Protocol to this Convention signed in 1967 annulled the time limit while allowing signatory parties to keep their existing reservations. In Turkish legal system there are no explicit provisions that govern asylum seekers from outside Europe. The geographical limitation to Geneva Convention hints which direction cannot be taken.

The European Commission extensively criticized Turkey in Regular Reports because of her geographical limitation to Geneva Convention. Turkey has been asked to establish her own asylum and refugee protection schemes and become a safe haven for non-European immigrants as well. However, Turkey underlines her security concerns towards the region in question. Continuing political turmoil in the main countries of origin may cause a wave of immigration to Turkey. In the absence of geographical limitation, Turkey would have to evaluate thousands of asylum applications every year, provide shelter to applicants in the process of evaluation and then allow for integration of refugees to Turkish society.

Lifting the geographical limitation would come to mean a substantial change at Turkey's approach to immigrants and refugees. As discussed by İçduygu and Keyman (2000, p.390), the EU targets settling asylum seekers outside EU reception countries and in transit and safe third countries. This conflicts with the traditional Turkish approach of repatriating or resettling in third countries non-European immigrants. Thus, Turkey would be a part of the **buffer zone** that the EU is accused to design particularly at southeast Europe.

iii. Burden Sharing

Turkey also expects the Union to commit economically and has made lifting of the geographical limitation conditional secondly upon the EU's financial and technical contribution. According to the National Program Turkey would follow a two-tier policy to combat illegal immigration. The first tier covers reinforcing eastern borders and aims to stop illegal movements on the border. Turkey has to use high technology devices to watch and guard the border while employing and training adequate number of personnel. What is more, in order to detect fraudulent documents on border gates and issue visas in line with Schengen requirements Turkey needs to invest heavily in necessary equipments. The second tier of Turkey's illegal immigration policy covers legalization of the status of those people that are currently allowed to stay but otherwise unwelcome. To this aim, Turkish authorities would

have to scrutinize asylum applications with a very critical eye to determine the bona fide asylum seekers among immigrants many of which are illegal. In this process, asylum applicants would be settled temporarily and sustained in Turkey. Additionally, those immigrants with ill-founded asylum applications or who make illegal stay in Turkey would be deported out of the country. In order to carry out the procedures regarding such people and finally deport them, certain mechanisms should be set in place and detention and deportation centers should be opened. Turkish authorities have selected a number of towns where such centers would be established. However, the financial burden of such a project is enormous. The National Program foresees a financing need of 60.000.000 Euros for construction of refugee guesthouses, asylum admission and deportation centers. This figure does not cover training, personnel, consultancy, translation and miscellaneous needs. In the National Program Turkey stipulated that 45.000.000 Euros of the above figure would be covered from EU funds. However, the European Commission argues financing for detention centers should be covered from national sources and that no candidate country has ever received any funds from the EU to that aim.

8- CONCLUSIONS

In this paper the inconsistency between the legislations of both parties and the legislative change in Turkish Illegal Immigration and Asylum policy were examined. The method of this research was assessing the relevant parts of the EU documents, i.e. progress reports, national programs and Accession Partnerships, and comparing the legislative documents of the EU and Turkey on Illegal Immigration and Asylum and thus determine the alteration in Turkish legislation under the influence of the EU. First of all the migration policy of the EU has been examined through a historical perspective. It was observed that, especially after the 1970s, the big amounts of intolerable refugee and labor flews to Europe altered European's view on migration dramatically. Migration in the European Union is addressed through political

discourses as a threat to internal security, demographic balance, identity and interests of the receiving societies. Turkey's position in illegal migration was also dealt and it has been noted that it is exceptional as it is a source, transit and destination country at the same time. Moreover, Turkey's immigration policy before her candidacy to the EU was considered, as well. Turkey's policy on the migration was based on two legal documents: Settlement Law of 1934, which briefly states that Turkey would only accept refugees of Turkish decent. Geneva Convention as the second basic document in which, according to Turkey's abstains, Turkey would accept international refugees only from European countries. The impact of the EU on Turkish migration policy was examined through official documents concerning the migration policy issued by the European Union on Turkey's accession process, such as progress reports, accession partnerships. Turkey's respond to those documents was analyzed firstly by taking the National Program into consideration, accordingly the amendments made in several Turkish legislations was assessed, such as, Turkish Penal Code, Passport Law, Employment of Aliens and Nationality Law. Finally the dispute areas between Turkey and the EU discussed. The very controversial readmission agreement between Turkey and the EU was the first issue discussed in the last section which was followed by the subjects of lifting geographical limitations and burden sharing. To conclude it could be argued that the gap between Turkish and European legislation on illegal immigration is lessening, especially after Turkey's recognition as an official candidate to the EU in 1999. However, there are still problems on the above mentioned dispute areas, specifically on the readmission agreement. The EU wants Turkey to adopt the EU rules on migration but Turkey has some rational fears about being a refugee dump and do not want to take the risk before being a full member of the EU or at least expects the EU to loosen the visa application for Turkey.

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