

# TÜRKİYE’NİN GÖÇ ALAN ÜLKEYE DÖNÜŞÜMÜ NEDENİYLE ZORUNLU GÖÇ POLİTİKALARINDA YAŞANILAN DEĞİŞİM

(Turkey’s Changing Forced Migration Policy by virtue of  
Transformation into a Country of Immigration)

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## ÖZET

Dünya genelindeki refah dağılımında görülen eşitsizlikler ve birçok ülkenin siyasal ve ekonomik açıdan istikrarsız yapıda olması nedeniyle insanlar daha iyi yaşam koşullarına ulaşmak ya da içinde buldukları olumsuzluklardan kurtulmak için yüzyıllardır göç etmek zorunda kalmışlardır. Siyasi ve coğrafi gelişmeler ışığında dönemsel olarak dünyanın birçok bölgesinde etkili olan bu eğilim sadece modern Türkiye’nin tarihinde değil Osmanlı İmparatorluğu zamanlarından itibaren mevcut sınırlar içerisinde etkili olmuştur. Asya ve Avrupa arasında köprü görevi görerek kıtaların keşiştiği bir noktada jeostratejik bir konuma sahip olması ve Irak, İran, Suriye, Filistin, Kafkaslar, Afganistan, Rusya ve Balkanlar gibi İltica hareketlerinin yoğun olarak gerçekleştiği bir coğrafyanın yakınında bulunması, nedeniyle sığınma ülkesi ya da üçüncü bir ülkeye sığınma öncesi geçiş ülkesi olarak kullanılan Türkiye’ye ilişkin olarak bu çalışmada öncelikle, tarihsel süreç içerisinde göç olgusu üzerinde durulacak; bu çerçevede Türkiye’nin İlticaya ilişkin geçmişten bugüne yaklaşımının mevzuatındaki yansımaları ve yapılan değişiklikler ışığında mevcut İltica sistemi hakkında genel bir bilgi verilecektir.

**Anahtar kelimeler:** Göç, Mülteci, Mülteci Statüsünün Kazanımı, 6458 Sayılı Yabancılar ve Uluslararası Koruma Kanunu, Geri Kabul Anlaşması

## Abstract

Inequalities observed in terms of distribution of welfare across the world as well as politically and economically instable structure in many countries have forced humans to migrate for centuries in order to reach better living conditions or get rid of negative conditions they are surrounded by. Such tendency that periodi-

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cally surfaces under the light of political and geographical developments have started taking its toll within current borders not only in the history of modern Turkey but ever since the times of Ottoman Empire. In this study, the phenomenon of migration will be discussed with regards to Turkey which is used as the shelter country or the passage country before immigrating into a third country because of her geostrategic position at the crossroads of the continents acting as a bridge between Asia and Europe and her location nearby a geography encompassing Iraq, Iran, Syria, Palestine, Caucasians, Afghanistan, Russia and the Balkans with frequent movements of asylum; in this framework, reflections of Turkey's approach to asylum yesterday and today upon her legislation and general details on the existing asylum system will be provided in the light of new Law on Foreigners and International Protection in Turkey.

**Keywords:** Migration, Refugee, Determination of Refugee Status, Foreigners and International Protection Law Number 6458, Readmission Agreement

## INTRODUCTION

Not only the Turkish Republic's history but also the Ottoman Empire's has been strongly affected by Migration waves. Especially the last decades of the Empire had experienced mass influxes of Muslims with different ethnic backgrounds who had to leave their homes and flee mostly to today's Turkish territories due to ethnic based independence movements which has cost to the Ottoman Empire large stretches of territory in the Balkans and Thrace. The estimated numbers of these fleeing people are 1.5 million<sup>1</sup> which is a pale number in comparison to another 4.5 million people ought to seek refuge again in today's Turkish territories due to the loss of many Ottoman provinces in the Caucasus and Black Sea shores following 1877-78 Russian-Ottoman war.

When the new Turkish Republic has been established in 1923, it had taken over a highly damaged and beaten population following the wars that lasted between the years 1912 and 1922 in former Ottoman territories, the Republic was forced to pursue a population policy that was based on reproduction in order to achieve its social and economic goals. Justin McCharty points out that peace lasted in the Ottoman territories for only 22 months in 11 years during the period between September 1911 and September 1922, and 20% of the Anatolian population perished during the period between 1914 and 1922 alone.<sup>2</sup> Moreover, from the mid-1920s onwards, due to the policies implemented by the states of Bulgaria and Romania with

<sup>1</sup> Eren, Halit, **Balkanlarda Türk Ve Diğer Müslüman Toplulukları Ve Göç Olgusu** (Turkish and other Muslim communities in the Balkans and the migration phenomenon), Balkanlar, İstanbul: Ortadoğu ve Balkan İncelemeleri Vakfı, 1983, pp. 293.

<sup>2</sup> McCarthy, Justin, **Müslümanlar ve Azınlıklar: Osmanlı Anadoluşunda Nüfus ve İmparatorluğun Sonu**, İnkılâp, 1998, p.120.

a view to scaring away the minorities living in their countries and thereby rendering their respective populations ethnically uniform, Turkey had no choice but to accept those Turkish/Muslim populations running for their lives.<sup>3</sup>

In this fashion, Turkey allowed the migration of 391.753 people from Greece, 101.507 people from Bulgaria, 114.807 people from Yugoslavia during the years between 1923 and 1950; and those “coming from Turkish race and affiliated with Turkish culture” were allowed in on the instructions of the Ministry of Internal Affairs as per the provisions of the Settlement Law number 2510 dated 1934. Those who did not claim settlement benefits were allowed to settle in any place they chose, whereas those who claimed settlement benefits were located to the areas designated by the government, while those “not coming from Turkish race” were located to the areas designated by the government even if they had not claimed settlement benefits.<sup>4</sup>

While still receiving migration from outside, there was not a large scale outward migration from Turkey during the period up to the 1950s, except the period in which the state of Israel was established to where approximately 34.647 Turkish Jews were migrated.<sup>5</sup>

Furthermore, Turkey received 54.000 people from Bulgaria, 1900 people from Turkmenistan, 280 people from Romania, 16.797 people from Greece during the period between 1950 and 1970, majority of whom were free settlers and were later followed by 113.584 migrants of Bulgarian origin during the period between 1971 and 1986. Due to the military intervention in Afghanistan by the Soviets, 4.000 people of Turkish origin living in that country were also given shelter in Turkey.<sup>6</sup>

While the migration from Bulgaria during the years between 1969 and 1978 was considered to be normal –about 116.204 people-, a large new wave of migration was seen at the border gates of Turkey due to a new crisis in Bulgaria in 1989 where 300.000 Turkish people sought refuge. Since those migrations were considered as free migrations, the government was not involved in settlement affairs-in other words no settlement benefits had been provided for them-, and thus more than 50.000 people coming with the last wave of migration had to return to Bulgaria.<sup>7</sup>

<sup>3</sup> Duman, Önder, “Atatürk Döneminde Balkan Göçmenlerinin İskân Çalışmaları (1923-1938)”, **Ankara Üniversitesi Türk İnkılâp Tarihi Enstitüsü Atatürk Yolu Dergisi**, S 43, Bahar 2009, p. 474.

<sup>4</sup> Tekeli, İlhan, **Osmanlı İmparatorluğundan Günümüze Nüfusun Zorunlu Yer Değiştirmesi ve İskan Sorunu**, İlhan Tekeli Toplu Eserleri-3, Tarih Vakfı Yurt Yayınları, İstanbul, p.160-161.

<sup>5</sup> Bali, Rıfat N., **Cumhuriyet yıllarında Türkiye Yahudileri, Aliya: Bir Toplu göçün Öyküsü (1946-1949)**, İletişim, İstanbul, 2. Edition, 2003, p.258.

<sup>6</sup> Tekeli, İlhan, **Op cit.**, p. 164.

<sup>7</sup> **Ibid**, p.165.

Another major migration movement during the post 1950s period was that of the masses coming from Yugoslavia. The number of Yugoslavian migrants, who remained at tolerable levels due to the movement ban imposed on the Turkish and Muslim community during the years between 1939 and 1950, increased suddenly when the borders opened following the Balkan Pact signed between Turkey and Yugoslavia, which produced 150.000 free migrants entering in Turkey during the 1950s and 1960s. The influx of immigrants included Bosnians, Pomaks and non-Turkish speaking Muslim Albanians in addition to Turks. However such figures receded later on with the regime change in Yugoslavia, which decreased tolerable levels with a total of 1797 people in the 1970s. However due to increasing ethnic tensions in the region in the post Tito period, 2819 Bosnian refugees were given shelter in Turkey who fled from ethnic cleansing in Bosnia Herzegovina in 1992.<sup>8</sup> Moreover by passing the law number 3835 in 1992, Turkish government admitted 500 Ahiska families to be settled in Turkey who were formerly banished from their homes in Georgia to the Central Asia by Stalin in 1944.<sup>9</sup>

Turkey has not been a safe harbour only for those with Turkish culture or descent; it also provided shelter to mass influxes with different ethnic backgrounds other than Turks. Following the Iran-Iraq war that ended in 1988 and the first Gulf War of 1990-1991 brought about major changes in the number and profile of refugees coming into Turkey. Thus during these time periods mentioned above, half million Kurds fleeing from Saddam's regime in Iraq sought asylum in Turkey despite having the opportunity to return their homes following the ban imposed by the United Nations that forbade Saddam's Iraqi forces from entering the north of the 36th parallel, where the Iraqi Kurds used to reside before their displacement.<sup>10</sup>

Turkey still receives a large number of asylum applications from its eastern neighbours due to the conflicts taking place in Syria, Iraq, and Afghanistan and while it is also possible to speak about a newly emerging African asylum seeker profile consisting of those fleeing from countries like Sudan and Somalia, albeit in smaller numbers compared to the former.<sup>11</sup>

<sup>8</sup> Beltan, Şule Bahar; "Citizenship and Identity in Turkey: The Case of the Post-1980 Turkish Muslim Immigrants from Macedonia", Unpublished Master Thesis, Boğaziçi Üniversitesi Sosyal Bilimler Enstitüsü, İstanbul, 2006, p.24-27.

<sup>9</sup> Kirişçi, Kemal, "Migration and Turkey", in **The Collection of Turkish Jurisprudence on Asylum, Refugees and Migration**, UNHCR, Ankara,2000, p. 13-15.

<sup>10</sup> **Ibid**, pp. 26-30.

<sup>11</sup> Acer, Yücel; Kaya, İbrahim ve Gümüş, Mahir, **Küresel ve Bölgesel Perspektiften Türkiye'nin İltica Stratejisi**, USAK Yayınları, Ankara, 2010, p.17.

## **I. Conditions Sought in Admitting Immigrants to the Republic of Turkey and Migrant Categories:**

According to the former Turkish Settlement Law number 2510 dated 1934; anybody who met the criteria of being accepted as an immigrant<sup>12</sup> despite not having an asylum application was offered a chance to do so “for as long as they informed the highest civilian authority of the region they wish to migrate with the intention of settling down in Turkey and becoming a Turkish national within 2 years following their entry into Turkey”.<sup>13</sup>

According to the amended Law of Settlement<sup>14</sup> that entered into force on 26 September 2006 and preserved the same definition for immigrant as it is in the former Turkish Settlement Law number 2510, the criteria sought in a person to be admitted as an immigrant are as follows<sup>15</sup>:

1. They should be of Turkish descent and culture
2. They should not have been deported while possessing such characteristics
3. They should not pose any harm in coming to Turkey in terms of security considerations.

However it will be in the responsibility of the Council of Ministers to “determine the Turkish descent and affiliation with Turkish culture” upon the proposal of the Foreign Ministry.<sup>16</sup>

Judging from the New Settlement law which states that the “Right of Immigration” can be given, collectively or individually<sup>17</sup>, to the persons of Turkish descent and culture living in other countries, one could make a distinction in the Turkish Immigration Law between “refugee immigrants” (national refugees) and “exchanged refugees”, in addition to the existing distinctions between “independent immigrants” and “settled or state sponsored immigrants”.<sup>18</sup>

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<sup>12</sup> **Those who fail to meet the acceptance criteria are:** 1) People not affiliated with Turkish culture, 2) Anarchists, 3) Spies, 4) Nomadic Gypsies, 5) Those exiled out of the country, See “Former Settlement Law” art. 4.

<sup>13</sup> Former Turkish Settlement Law Number 2510, art. 3/3.

<sup>14</sup> The new Settlement Law number 5543 replaced the Settlement Law number 2510 dated 14.06.1934 as well as the subsequent Laws entering into force under number 3657, 2848, 5682 and 1306.

<sup>15</sup> The new Settlement Law number 5543 art.4.

<sup>16</sup> The new Settlement Law number 5543 art.7.

<sup>17</sup> According to the article 3 of the New Settlement Law number 5543 “**Collective Immigrants**” are families of Turkish descent and culture who are collectively brought into Turkey as per the agreements signed between two countries and “**Individual Immigrant**” is a single family of Turkish descent and culture that comes to Turkey to settle in.

<sup>18</sup> Çiçekli, Bülent; **Yabancılar Hukuku**, Seçkin, Ankara, 2007, p.206.

While immigrants subject to population exchange based on mutual treaties signed between governments are called “**exchanged refugees**”<sup>19</sup>, those of Turkish descent and culture despite bearing foreign nationalities are considered as “**national refugees**” as per the international legislation, and not considered as international refugees by Turkey, in accordance with the provision of the clause (E) of the 1st article of the Convention Relating to the Status of Refugees dated 1951 which specifies that “this convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country”.<sup>20</sup>

While the term “**settled or state sponsored immigrants**” describes the families who are relocated in the designated areas in Turkey by government and allocated financial and social benefits to maintain their living; the term “**independent immigrants**” describes the families who come to Turkey with the intention of settling in the country with their own means, without receiving any benefits from the state.<sup>21</sup> The type of “settlement” designed for immigrants coming from foreign countries has proved to be unsustainable due to the increasing population growth and lack of resources and land from 1960s onwards. From that period onwards the “settled or state sponsored immigration” was replaced by “independent” immigration.<sup>22</sup>

Procedures for Admitting Independent Immigrants:

*a) For Collective Immigrants:*

People of Turkish descent and culture who wish to come to Turkey pursuant to the agreements concluded with foreign countries will be admitted as independent immigrants by the Ministry of Internal Affairs pursuant to the provisions of the said agreements and the resolution passed by the Council of Ministers upon the proposal submitted by the Ministry of Foreign Affairs.<sup>23</sup>

*b) For Individual Immigrants:*

People of Turkish descent and culture who wish to settle in Turkey should acquire an “independent immigration visa” first. Granting this particular visa depends on the positive outcome of the review to be conducted by the Ministries of Internal and Foreign Affairs within the scope of the provisions of the Settlement Law.

<sup>19</sup> Ibid, p. 207.

<sup>20</sup> Eroğlu, Ender Canan,, Taşkırın, Ruken;” *Sığınma Hakkı ve Mültecilerin Durumu*”, **Türkiye Barolar Birliği Dergisi**, 2002, S:1, p.121.

<sup>21</sup> The new Settlement Law number 5543 art.3.

<sup>22</sup> Erder, Sema, “*Türkiye’de Değişen Konjonktür, Değişen Göç ve İskan Politikaları*”, Coordinated by Ahmet İçduygu , in **Türkiye’nin Uluslararası Göç Politikaları, 1923-2023: Ulus Devlet Oluşumundan Ulus Ötesi Dönüşümlere**, Unpublished Country Report, 2009, p. 47 and 50.

<sup>23</sup> The new Settlement Law number 5543 art.6.

According to the provisions of the aforementioned law, application for an “independent immigration visa” could be made in two ways. A prospective immigrant of Turkish descent and culture who wish to settle in Turkey has to either make his/her application based on the reference provided by his/her Turkish national kin in first or secondary degree who is currently residing in Turkey or submit his/her intention of going to Turkey as an immigrant by personally contacting with the Turkish Consular Personnel in his/her country of residence.<sup>24</sup> In the event of first possibility, the Turkish national who wishes to bring his/her foreign national kin should apply to the governor's office in the province of his/her residence and undertake, as per the Security General Directorate Legislation dated 2002, that “he/she will be responsible for covering the maintenance and accommodation costs of the immigrants until they are able to take care of themselves should they decide to come to Turkey”.<sup>25</sup>

Those acquiring “independent immigration visas”, regardless of their method of application, are accepted as independent immigrants by the Ministry of Internal Affairs provided that they will not ask for any settlement benefits from the government.<sup>26</sup> Thus admitted into the country, the immigrants are then taken to the admission centers set up in the points of entry where their health, customs, administrative and transportation procedures will be finalized and their requirements will be covered by the former Ministry of Public Works and Settlement.<sup>27</sup>

Once such procedures are finalized, the “independent immigrants” will apply to the highest civilian authority of their place of settlement and receive their “Immigration Certificate” by signing a “Citizenship Acquisition Declaration” both for themselves and their families, while the “settled or state sponsored immigrants” brought in by special legislation will pursue the same procedures by applying to the highest civilian authority of their designated temporary or permanent place of settlement. The certificate valid for two years will serve as a temporary identity card for applicants.<sup>28</sup>

Those accepted as immigrants in this manner are then given citizenship as per the resolution of the Council of Ministers once their procedures are concluded by the relevant agencies. Acquired citizenship brings about a number of collective consequences. While the guardianship of minors is given to their parents or, in the absence of their parents, their relatives of blood or law; minors coming in without anybody accompanying them are given citizenship regardless of their age.<sup>29</sup>

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<sup>24</sup> The new Settlement Law number 5543 art.5.

<sup>25</sup> Çiçekli, Op. cit., p.209.

<sup>26</sup> The new Settlement Law number 5543 art.5.

<sup>27</sup> The new Settlement Law number 5543 art.8/1.

<sup>28</sup> The new Settlement Law number 5543 art.8/3.

<sup>29</sup> The new Settlement Law number 5543 art.8/4.



## II. References Concerning the Migration and Asylum Law in Turkish Legislation and Arrangement of the Terms Refugee and Asylum Seeker in Such References:

According to the former Law of Settlement number 2510, a refugee is identified as “a person sought shelter temporarily in Turkey due to necessity”<sup>29</sup> which is inconsistent with our current national legislation. With the ratification of the 1951 Geneva Convention on the Legal Status of Refugees<sup>30</sup> by Turkey on 29 August 1961 such definition of the refugee by the Settlement Law was rendered null and void.

According to the 2nd clause of the paragraph (A) of the 1st article of the 1951 convention, the terms of which was ratified and accepted by Turkey, the term refugee is replaced by the following new and more comprehensive description as following: “As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted<sup>31</sup> for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>32</sup>

While signing the convention, Turkey availed itself of the right provided by the provision included in the 42nd article of the said convention which specified that “**at the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive**”. Thus considering the peculiar characteristics of the region in which Turkey is situated, it sought a geographical limitation by exercising its right to choose in defining the refugee status. By virtue of such limitation, Turkey stated in the declaration published as per the law number 359 that it would only grant asylum to the applicants from Europe.

In the same vein, Turkey maintained such geographical limitation in the 1967 Protocol Concerning the Legal Status of Refugees which abolished the limitation “on granting refugee status with respect to the events that took place prior to 1951” as

<sup>30</sup> Turkey participated in the Agreement with the ratification law number 359 dated 29 August 1961. For the ratification law and the Turkish text of the Agreement see Official Gazette RG. 05.09.1961–10898.

<sup>31</sup> In the clause A/2 of the 1st article of the original Refugees Convention text it is stated that “a person who has a well-founded fear of being “persecuted” for reasons of race, religion, nationality, membership of a particular social group or political opinion”, however the Turkish translation of the Agreement replaced the term “persecution” with that of “prosecution”.

<sup>32</sup> For the original text see (Online) <http://www.unhcr.org/3b66c2aa10.html>, last access on 03.03.2015.



mentioned in the 1951 Convention, which was ratified by the Council of Ministers on 1 July 1968.<sup>33</sup>

While the term “refugee” was employed in the 1951 Convention and the subsequent 1967 Protocol; the term “asylum seeker” was used in the “Declaration on Territorial Asylum” and “Universal Declaration of Human Rights” which meant a person seeking a place of refuge and protection. As we can see the international literature also makes a distinction between the terms refugee and asylum seeker. Based on this distinction, a “refugee” is described as a foreign person who benefits from all the rights and privileges provided by the 1951 Convention and whose refugee status has already been legally accepted; while an “asylum seeker” is described as a foreign person who has been provided with protection for limited time and not been granted asylum status while his/her refugee status is still being examined.<sup>34</sup>

These two terms are often used as interchangeably in Turkish legislation.<sup>35</sup> A typical example of this case is the fact that the Turkish translation of the 1951 Convention on the Status of Refugees” used the term “refugee” while the original text used the same term in English, but the word “asylum” was included in the resolution of the Council of Ministers number 6/10266 dated 1 July 1968 concerning our participation in the 1967 Protocol Concerning the Legal Status of the Refugees.<sup>36</sup>

Moreover the use of these two terms brings about a number of distinctions in Turkey. Due to the geographical limitation imposed by Turkey in the 1951 Convention and the subsequent 1967 Additional Protocol, the “refugee status” can only be granted to the refugee applications coming from Europe, whereas those coming from outside Europe and applying for refugee status are considered as asylum seekers.<sup>37</sup>

Efforts were made to settle such a contradiction in terms by publishing “**The Regulation on the Procedures and the Principles Related to Population Movement 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 in Another Country**”<sup>38</sup> and directives and memorandums published with respect to the said Regulations, whereby the terms “asylum seeker and refugee” were identified in parallel with the implementation. According to the 1994 Regula-

<sup>33</sup> **İtica ve Göç Mevzuatı**, Başkent Matbaası, Ankara, 2005, p.12.

<sup>34</sup> Çiçekli, **Op. cit.**, p.212

<sup>35</sup> For further information on term confusions in the literature see; Odman, Tevfik, **Mülteci Hukuku**, A.Ü. S.B.F. İnsan Hakları Merkezi Yayınları, No:15, Ankara, 1995, pp. 188-190.

<sup>36</sup> *Ibid*, pp. 188-190.

<sup>37</sup> Kaya, Ahmet, **Avrupa Birliğinin Yasa Dışı Göçle Mücadele Politikası ve Türkiye Üzerindeki Etkileri**, Unpublished Master Thesis, Ankara Üniversitesi Sosyal Bilimler Enstitüsü Avrupa Toplulukları Anabilim Dalı, Ankara, 2005, p. 18.

<sup>38</sup> Hereafter the 1994 Asylum Regulation.

tion the term “asylum” –which was failed to be addressed by the 1951 Geneva Convention and Protocol, which are the chief legal arrangements governing the issues of refugees and asylum seekers in our domestic legislation- is described as follows:

**Refugee:** A foreign national who, as a result of events occurring in Europe and owing to well-founded fear of being subject to legal prosecutions<sup>39</sup> for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

**Asylum Seeker:** A foreign national who, owing to well-founded fear of being subject to legal prosecutions<sup>40</sup> for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>41</sup>

According to the descriptions above, foreign persons coming from European countries and seeking international protection are called “refugees” while foreigners coming from other parts of the world and seeking international protection are called “asylum seekers”. Thus, with the 1994 Regulations on Refugees, foreigners coming to our country outside Europe such as Asian and African countries due to refugee crises and having qualified refugee criteria are granted asylum in our country until such time they are granted visas for going to a third safe country which will accept them.<sup>42</sup>

As we can see, while it is possible for a person to obtain refugee status under the International Refugee Legislation when he/she is recognized to have met the refugee criteria, a person, once qualified as an asylum seeker under Turkish Refugee Legisla-

<sup>39</sup> **Author’s Note:** The Turkish translation of the 1951 Geneva Convention Concerning the Legal Status of Refugees included the term “**prosecution**” instead of the term “**persecution**”. Since the 1994 Regulations also include the same definition as in the previous text, it is possible that the translation error is reflected in the latter text as well.

<sup>40</sup> **Ibid.**

<sup>41</sup> The Regulation on the Procedures and the Principles Related to Population Movement 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 in Another Country, Art. 3

<sup>42</sup> Terzioğlu, Mehmet (Head of Aliens’ Migration Border Department), “**Yasadışı Göç, İnsan Ticareti ve İltica Konularında Ülkemizin Durumu ve Yapılan Çalışmalar**”, (Online) [http://www.caginpilisi.com.tr/eski\\_sitemiz/10/15-16.htm](http://www.caginpilisi.com.tr/eski_sitemiz/10/15-16.htm) , last access on 03.03.2015.

tion, can never obtain refugee status.<sup>43</sup>

Following the announcement of Turkey's candidacy for European Union Accession in the Helsinki Summit on 11 December 1999, "Migration and Refugee" issues became all the more important in the European Union and Turkey relationships. European Union demanded in the Accession Partnership Document that Turkey took measures that are consistent with the European Union Legislation in matters concerning the "Determination of the Status of Asylum Seekers and Refugees", notably lifting the geographical limitation on refugees coming from outside Europe which was introduced in the 1951 Convention and 1967 Protocol.<sup>44</sup>

On the face of such developments and by publishing the "Action Plan Concerning Adoption of the European Union Legislation on the Fields of Migration and Asylum", the Republic of Turkey outlined the conditions by which it may lift such geographical limitation. According to the Action Plan, the lifting of geographical limitation should not harm Turkey's economic, social and cultural conditions.<sup>45</sup>

The issue of "lifting the geographical limitation" depended on the materialization of the following 2 conditions laid down in the Action Plan. These are:

- I. Introduction of the required legislation and infrastructure amendments in such a way so as not to encourage an influx of refugees into Turkey from east during the accession stage
- II. EU countries' willingness to show the required sensitivity in the issues of burden sharing

What is meant by "burden sharing" does not only include the participation of EU in covering the costs to be incurred following the refugees' entry into the country. Turkey also expects European Union to provide additional financing in building the required infrastructure for carrying into effect a migration law that is consistent with the European Union legislation prior to the actual lifting of the "Geographical Limitation" by the Turkish Government. What is meant by establishing the infrastructure is the as following<sup>46</sup>

- Establishment and running of asylum seeker admission, accommodation centres and refugee boarding houses and facilities,
- Training of the personnel to be employed in such facilities,

<sup>43</sup> Çiçekli, *Op. cit.*, p.213.

<sup>44</sup> Tefik, Odman; "*Mülteci Hukuku ve Türk Mülteci Hukuku Uygulaması*", Mülteci Çalıştayları 2004–2005, Amnesty International-Turkey, Ankara, 2008.

<sup>45</sup> Ekşi, Nuray; *Yabancılar Hukukuna İlişkin Temel Konular*, Beta, İstanbul, 2.edition, 2007, p.77.

<sup>46</sup> *İltica ve Göç Mevzuatı*, p. 47.

- Establishment of the immigrants country of origin and refugee information system,
- Establishment of the Training Academy and Refugee Unit Service Building in order to train the personnel to employed in such facilities.

In this respect, the Action Plan suggests that a task force be established consisting of Turkish and EU representatives in order to estimate the costs necessary to building the aforementioned infrastructure. Among the issues to be thoroughly examined by the said task force are the expected number of increase in the refugees coming to Turkey following the lifting of the geographical limitation and the size and costs of the centres where they will be accommodated, and the training of the personnel who will be taking care of the refugees as well as the amount of financing required for integrating such refugees into Turkey.

Furthermore due to the political instabilities and new war zones in Turkey's near abroad, a sharp increase had been faced in numbers of regular and irregular migrant alongside the asylum seekers in recent years, which turned Turkey from a transit country into a final destination country<sup>47</sup> İçduygu and Aksel are explaining this shift based on four main internal reasons besides "Globalization", namely; "Turkey's new liberal market economy attracting migration into Turkey", "Chancing Government policies enabling entry into Turkey much easier than before", "Turkey's ambition to become a member of the EU" and finally "political liberalization wave leaving its mark on the last decade which changes state's traditional conception of national identity".<sup>48</sup>

Due to these reasons present legal legislation on immigration issues turned to be insufficient to solve current problems. In addition to that cases kept being brought to European Court of Human Rights against Turkish Republic for infringement of article 5 of European Convention of Human Rights due to the lack of any internal legal arrangement for "Administrative detention" which also entailed legislative amendments.<sup>49</sup>

Based on such developments, the studies conducted in terms of rendering the existing legislation consistent with the European Union legislation in matters concerning the "Determination of Asylum Rights and Refugee Status" has finally reached a conclusion in 2013 and the "Foreigners and International Protection Law

<sup>47</sup> Ekşi, Nuray; **Yabancılar ve Uluslararası Koruma Hukuku**, Beta, İstanbul, 2.edition, 2014, p.12-17.

<sup>48</sup> İçduygu, Ahmet and , AKSEL Damla B., " *Turkish Migration Policies: A Critical Historical Retrospective*", **PERCEPTIONS**, Autumn 2013, Volume XVIII, Number 3, p.179.

<sup>49</sup> For further reading on "Administrative Detention in Turkish Law", see Ekşi, Nuray; **6458 Sayılı Yabancılar ve Uluslararası Koruma Kanunu'nda İdari Gözetim**, Beta, İstanbul, 2014, p.12-116.

Number 6458” was published on the Official Journal on 11 April 2013 and came into force on 11 April 2014.

According to the article 61 of the new law, which entered into force officially a year after its publication, the term refugee is again described in line with the existing legislation and based on the events taking place in European countries, which is described as follows: **”Refugee status is granted to a foreign person who, as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”**

Since Turkish Republic still preserves its reservation with respect to geography for Geneva Convention and therefore implements the said Convention’s provisions only to the refugee cases resulting from the events in Europe, “Foreigners and International Protection Law Number 6458” entered into force in 2014 contains new protection status such as “conditional refugee”, “subsidiary protection” and “temporary protection” for those fleeing from events outside of Europe.

Within this framework the 62nd article of the same Law includes the term **“Conditional Refugee”**, instead of the term “Asylum Seeker” used by Turkish authorities officially for years, to describe persons who have the well-founded fear of being persecuted based on the same reasons as refugees due to the events occurring in non-European countries, and maintained that such persons will be permitted to stay in Turkey until such time they are relocated in a third country which is in line with the current implementation. The relocation process is carried out by local UNHCR officers. However the number of relocated conditional refugees has significantly dropped in recent years. As Soykan stated in her research there are only a few countries accepting refugees recognised in Turkey such as Canada, Australia, Sweden, Finland, and Norway and under specific conditions small numbers of refugees may be recognised by the USA as a part of resettlement programme specifically designed for Iraqi refugees.<sup>50</sup>

Moreover the **“Subsidiary Protection”** concept, which was not defined in the existing legislation previously, was introduced in the 63rd article of the law number 6458 and it stipulated that in the event that it is established if the persons who do not qualify as refugees or conditional refugees once sent back to their country of origin or residence will;

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<sup>50</sup> Soykan, Cavidan, *“The New Draft Law on Foreigners and International Protection in Turkey”*, **Oxford Monitor of Forced Migration**, Volume 2, Number 2, p. 39.

- a) Face death sentence or be executed,
- b) Be subject to torture, inhuman or discreditable punishment or treatment,
- c) Face serious personal danger due to indiscriminate acts of violence in the event of international or national armed conflicts,

They will be granted subsidiary protection status.

Although the subsidiary protection concept has officially drawn up for the first time in Foreigners and International Protection Law, refugees falling under this categorization could not be deported even before this law was in force due to European Court of Human Right's decisions asking for implementation of non-refoulement principle.<sup>51</sup>

Applicable procedures in case of mass influxes has been clarified in the 91st article of the law number 6458 under "temporary protection" clause. Pursuant thereto it has been ensured that a temporary protection may be awarded for those foreigners "who has been forced to leave their home country, who is not able to return to his home country, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection"

Although article 91 settles the awarding of temporary protection status, it did not confer it nor set out the rights afforded by it. Instead of this it is stated in the same article that the entitlements that flow from "Temporary Protection" will be determined in a Directive to be issued by the Council of Ministers. Accordingly "Temporary Protection Directive" entered into force on 22 October 2014.

With this new Directive "**The Regulation on the Procedures and the Principles Related to Population Movement 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 in Another Country**" has been repealed.

Furthermore as Amnesty International mentions this Directive grants a secure legal status especially for refugees in Turkey from Syria<sup>52</sup> and enables them to receive identity cards along a range of rights and entitlements.<sup>53</sup>

<sup>51</sup> Ekşi, Nuray; **Yabancılar ve Uluslararası Koruma Hukuku**, pp.162-163

<sup>52</sup> As of March 2015, UNCHR data shows that there are 1,552,839 registered refugees alongside 70,000 awaiting registration, unofficial estimate of the total number of the registered and unregistered Syrian refugees over 1,600,000. For data see **UNHCR Syria Regional Refugee Response**, (Online) <http://data.unhcr.org/syrianrefugees/country.php?id=224>, last access on 07.03.2015.

<sup>53</sup> **Amnesty International**, "Struggling to Survive Refugees From Syria in Turkey", Index: EUR 44/017/2014, 2014, London, p.20

However M. Erdoğan argues that this directive has been prepared in the shadow of concerns about Syrian refugee influx and therefore reflects worries about the consequences of the Syrian refugees' possible stay inside the country for indefinitely.<sup>54</sup>

According to article 3 of the said directive which also clarifies the current situation of Syrian refugees "temporary protection" has been defined as follows:

"Temporary protection is the protection may be provided for foreigners who have been forced to leave their country, cannot return to the country they have left, and have arrived at or crossed the borders of Turkey in a mass influx and whose international protection status cannot be determined on an individual basis. "<sup>55</sup>

In fact the "Temporary protection" status was initially conferred on refugees from Syria in an unpublished Ministry of the Interior circular issued in March 2012. As UNHCR indicates, although the directive met international standards, such as obeying non-refoulement principle and guaranteeing all Syrian residents including Palestinians resident in Syria access to Turkish territory and basic services, the directive was not communicated either to Turkish public or to Syrian refugees alongside civil society organizations working with them.<sup>56</sup>

The directive sets out that the issues such as when the temporary protection status will be commenced and ended alongside for whom and for which regions will be determined by Council of Ministers. (Art. 10-11) Furthermore the directive clarifies legal status and the entitlements for refugees in a mass influx such as the right to remain in Turkey (Article 25) and access to free healthcare (Article 27) through identity cards be issued which will also enable them to obtain straightforward work permits (Article 29); and access to state schools. The Directive also prohibits people for being punished for irregular entry and prohibits refoulement (Article 6).

The only group which is not entitled to benefit from the rights mentioned above is those who got engaged in human rights violations and resorted to force against civilians inside Syria.<sup>57</sup>

Another implementation that European Union asks Turkey to put into practice is the signing of "readmission agreements" between Turkey and EU in the shortest possible period of time. That way Turkey will acknowledge that people illegally entering into EU countries or whose refugee applications are rejected in such countries will be readmitted if and when it is established that they have actually entered

<sup>54</sup> Erdoğan, M. Murat, **Türkiye'deki Suriyeliler: Toplumsal Kabul ve Uyum**, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2015, p.55.

<sup>55</sup> Regulations for Temporary Protection 2014/6883,(Online) <http://www.resmigazete.gov.tr/eski-ler/2014/10/20141022-15-1.pdf>, last access on 03.03.2015.

<sup>56</sup> Amnesty International, **Op. cit.**, p.20

<sup>57</sup> Ekşi, Nuray; **Yabancılar ve Uluslararası Koruma Hukuku**, p. 165.



those countries via Turkey. However it is mandatory that Turkey have signed bilateral agreements with the countries of origin in order for such readmitted people to be returned to their countries of origin.<sup>58</sup> But Turkey has signed readmission agreements with only ten countries so far.<sup>59</sup> For this reason Turkey has approached this issue of “readmission agreements” with the EU with caution, bearing in mind the challenges it has experienced during the Customs Union Agreement era. This is because after Turkey signed the Customs Union Agreement, it had to exempt customs taxes from the goods of the third countries with which the EU signed customs union related contracts and since it could not benefit from the same practices applied to other member states, it had great difficulty in engaging in fair trade.<sup>60</sup>

However, despite all such reservations, by signing the “Readmission Agreement Between Turkey and EU” on 16 December 2013, the Turkish Republic has warranted that Turkish nationals entering EU countries illegally or becoming illegal aliens by overstaying their visas as well as the foreigner entering into EU through Turkey will be readmitted by Turkey.<sup>61</sup>

## CONCLUSION

Due to its geographical location, Turkey is greatly affected by the global refugee issue. In order to safeguard the rights and liberties of those seeking refuge in Turkey, Turkey ratified the 1951 Geneva Convention and the subsequent 1967 Protocol for determining the status of refugees. However, Turkey exercised its right to make reservations with respect to date and geography, and thus stated that it would implement the provisions of the Geneva Convention only in the refugee cases resulting from the events in Europe.

Such reservations in turn led to a dual distinction between the concepts of refugee and asylum seeker in Turkish legislation. Therefore, while the persons seeking refuge in Turkey due to European related refugee issues and thus qualify for refugee status according to the Geneva Convention fall into the first category; the persons

<sup>58</sup> Akyürek, Burcu İnayet; **Mülteci Hukuku ve Türkiye Uygulaması**, Unpublished Master Thesis, Kırıkkale Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku Anabilim Dalı, Kırıkkale, 2007, p.30.

<sup>59</sup> These countries are as following: Bosnia-Herzegovina (2012), Kyrgyzstan (2003), Moldova (2012), Nigeria (2011), Pakistan (2010), Romania (2004), Russian Federation (2011), Syria (2001), Ukrain (2005), Yemen (2011) Greece (2001) See Foreign Ministry of Turkey Web, (Online), Last Access on 23.07.2014.

<sup>60</sup> Kirişçi, Kemal, “*Border Management and EU-Turkish Relations: Convergence or Deadlock*”, **European University Research Report**, 2007, p.27.

<sup>61</sup> Demirtaş, Serkan; BBC Türkçe, **Türkiye-AB vize protokolü: 30 yıllık hayal gerçek mi oluyor?**, (Online) [http://www.bbc.co.uk/turkce/haberler/2013/12/131216\\_serkanemirtas\\_ab\\_turkiye.shtml](http://www.bbc.co.uk/turkce/haberler/2013/12/131216_serkanemirtas_ab_turkiye.shtml), last access on 04.03.2015.

who are not granted refugee status by the Turkish legislation due to the aforementioned geographical reservations made in the Geneva Convention and 1967 Protocol fall into the 2nd category.

While Turkey did not grant refugee status to the persons in the 2nd category who come to Turkey outside Europe to apply for refugee status or residence permit for applying for refugee status in another country, but it granted temporary residence permits to such persons until such time they are relocated in a third country in accordance with the provisions of “The Regulations on the Procedures and the Principles Related to Population Movement 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 in another country” that was entered into force in 1994.

During the period prior to 1994, the issues of such persons' entrance, residence, settlement, working in Turkey and deportation from Turkey were arranged by various laws, bylaws and regulations based on the legislation on foreigners. However since such arrangement fell short of addressing such issues, it was felt necessary to introduce the aforementioned 1994 regulations. However, it was also felt that such regulations were not up to the task, and therefore a National Action Plan which would bring about serious changes to the refugee policies in Turkey was prepared by the Ministry of Internal Affairs in 2005 and accepted by the Council of Ministers.

The National Action Plan has made clarifications in the asylum procedures and led the Council of Ministers to make amendments in the 1994 Refugee Regulations through the resolution number 2006/9938 dated 16.1.2006 due to the emphasis given to the fact that the delay in asylum application on the part of the asylum seeker “does not deny the use of asylum right”. Thus the paragraph in the 4th article of the regulations which limits the foreigners' application period for submitting their cases for seeking refuge or residence in Turkey to the competent authorities by 10 days has been replaced with the term “without delay” so as to loss of right.

However this progress could not be sufficient to fulfil the needs of current conditions due to the extensive immigration waves during the 1990s and 2000s and forced Turkey for transformation of its migration policies. The trend for this transformation has also been affected by the country's exposure to globalization and changing political and economic environment besides its eager to become a part of European Union.

As a result of the efforts made for drafting a new Law in order to provide international protection “Foreigners and International Protection Law Number 6458” entered into force in 2014 considering the increasing political turmoil in the region and the economic transformations inside the country with European Union's pressing demands.

Within this framework it was projected that the responsibility of management of refugees and asylum seekers will gradually be transferred from General Directorate of Security to new established Directorate General of Migration Management. Following that with publishing “Temporary Protection Directive” entered into force on 22 October 2014 the situation of refugees have arrived at or crossed the borders of Turkey in a mass influx situation has been clarified.

Although the new law on foreigners, which forms a basis for an effective immigration management with harmonization of national law with international refugee law and in addition to that securitizes the relevant person’s rights, has been defined as “a significant progress”<sup>62</sup> in Turkey’s 2013 Progress Report issued by European Commission, Turkey’s next step or future plans for securing social tranquillity and security considering Turkey’s potential for facing frequent mass influxes seems not to be clear.

Besides it can easily be argued that the “Temporary Protection Directive” has implicitly lifted Turkey’s geographical reservation for 1951 Geneva Convention.

Having drawn up a new road map for Turkey with respect to asylum and illegal migration, another issue which puts question mark in minds is the National Action Plan which seeks lifting of the geographical reservation officially in order to harmonize the Turkish asylum, migration and foreigners’ legislation with that of the EU legislation throughout the accession negotiations with the EU.

In this respect, Turkey expects that some of the investment projects needed for the completion of the technical and physical infrastructure necessary for the harmonization of the refugee legislation with that of the EU legislation will be covered by the EU Financial Aid Programs.<sup>63</sup>

However, the financial aspect is not the only consideration with respect to the “Lifting of the Geographical Concern”. In an age where new security threats emerge, Turkey’s geographical location becomes all the more precarious; when the politically destabilized nature of the neighbouring countries are considered, Turkey seems to be located right in the centre of the developments that shape up the new global security considerations. In this respect, the fact that the EU member states currently pursue harsh asylum and migration policies and that they still have discussions on the creation of a safe third country for the persons applying refugee status make it difficult for Turkey to realize some of the issues specified in the Action Plan.

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<sup>62</sup> **Turkey 2013 Progress Report**, SWD (2013) 417, Brussel, 16 October 2013, (Online Access) [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/tr\\_rapport\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/tr_rapport_2013_en.pdf), p.64, last access on 02.03.2015.

<sup>63</sup> **Ulusal Eylem Planı**, p.34.

Similarly, Kirişçi depicts the general fears that Turkish representatives may get the feeling that Turkey is being turned into a buffer zone for unwanted asylum seekers and refugees as a result of the considerations on the part of EU, who presses Turkey particularly hard for lifting its geographical limitation, to apply restrictive measures in the name of security and creating a 'European Fortress' and the Council's suggestion for the creation of a safe third country for refugees.<sup>64</sup>

However, despite all such reservations, the Republic of Turkey has signed the "Readmission Agreement Between Turkey and EU" on 13 December 2013, and thus accepted that Turkish nationals entering the EU countries illegally or becoming illegal aliens there by overstaying their visas as well as the foreigner entering into EU through Turkey will be readmitted by Turkey. In this respect, Turkey has warranted that it will build accommodation facilities for illegal immigrants to be readmitted and establish the necessary infrastructure.

In this respect it has become all the important for Turkey to benefit sufficiently from the financial aid funds prior to the participation and thereby reducing the costs resulting from the agreement and to take advantage of the readmission agreements signed by and between the European Union and 3rd countries throughout the three year transition period prescribed by the agreement. Otherwise when the persons coming from African, Asian and the Middle Eastern countries who have been identified to have entered Europe via Turkey are readmitted to Turkey, they will technically live their lives in Turkey on account of no "Readmission Agreements" having been signed between Turkey and their respective countries of origin.

The fact that the current state of Turkey has not been designed in such a way as to accommodate this many migrants and the expected size of the economic and social burden resulting from such conditions reminds us of the urgency of such arrangements. Especially due to the fact that beneath the economic concerns there has been also historical and cultural concerns rooting in Turkey's experience during the Iran-Iraq war and the 1st Gulf War of 1990-91 where nearly 600.000 people sought asylum in Turkey on a massive scale and during early days of new established Turkish Republic which had to gain a lot of experience due to resettlement of millions of new citizen.

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<sup>64</sup> Kirişçi & Apap & Carrera; "Turkey in the European Area of Freedom, Security and Justice", *Working Papers, Centre for European Policy Studies*, 2004, pp. 25–26.

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