GUESTS WHO DROWNED:

LEGAL AMBIGUITIES BEHIND REGUFEE VULNERABILITIES

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# DECLARATION OF ORIGINALITY

I, Şevin Gülfer Sağnıç, certify that

- I am the sole author of this thesis and that I have fully acknowledged and documented in my thesis all sources of ideas and words, including digital resources, which have been produced or published by another person or institution;

- this thesis contains no material that has been submitted or accepted for a degree or diploma in any other educational institution;

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ABSTRACT

Guests Who Drowned: Legal Ambiguities Behind Refugee Vulnerabilities

In 2015, several thousands of Syrian refugees made the illegal journey from Izmir, Turkey to Western Europe – mainly to Sweden and Germany. This resulted in thousands of drownings in the Aegean Sea and, as many people define, the biggest human tragedy since World War II. The question that keeps being raised among migration practitioners and theoreticians is "Why are they moving?" This study proposes to answer this overarching question by examining different but related queries: "Where are they going?" "Where are they not staying?", and "Why do so many people die to go to Europe?" It goes further and questions the legal framework behind refugee vulnerability. This thesis argues that the reasons to leave Turkey are constructed by Turkish laws, that vulnerability along the route is created by international laws, and that incentives to go to Sweden and Germany are shaped by Swedish and German laws. In order to gather the relevant data, desktop research was conducted using legal codes, treaties, academic literature, NGO reports and journalistic accounts. The Turkish legal framework on refugees is historically analyzed in order to understand what makes refugees pursue perilous voyages. The EU framework on refugees is evaluated in order to discuss the legal limbo during the border crossings. German and Swedish migration histories and laws are also evaluated and analyzed to show that, although they are creating powerful pull factors, they provide few means of legal travel to their territories.

ÖZET

Boğulan Misafirler: Mülteci Korunmasızlığının Arkasındaki Yasal Muğlaklık

2015 yılında binlerce Suriyeli mülteci İzmir-Türkiye'den başta İsveç ve Almanya olmak üzere Batı Avrupa'ya yasadışı bir yolculuğa çıktı. Bu dalga, Ege Denizi'nde binlerce insanın boğulmasına ve II. Dünya Savaşı'ndan bu yana yaşanan en büyük trajedilerden birine neden oldu. Göç alanında çalışan uzmanlar ve teorisyenler arasında en sık sorulan sorulardan birisi "Neden gidiyorlar?" oldu. Bu çalışma bu kapsamlı soruyu başka bağlantılı soruları da inceleyerek cevaplamayı amaçlıyor: "Nereye gidiyorlar?" "Nereden gidiyorlar?", "Neden bu kadar insan Avrupa'ya gitmek için ölmeyi bile göze alıyor?" Bu çalışma daha da derine inerek mülteci korunmasızlığının arkasındaki yasal çerçeveyi sorguluyor. Suriyelilerin Türkiye'yi terk etme nedenlerinin Türk yasalarıyla oluşturulduğunu, gidiş yolu üzerindeki güvenlik açığının uluslararası kanunlar tarafından yaratıldığını ve İsveç ve Almanya'ya gitmek için motivasyonlarının bizzat İsveç ve Alman kanunları tarafından şekillendirildiğini iddia ediyor. İlgili verileri toplamak için, yasalar, anlaşmalar, ilgili akademik literatür, STK raporları ve gazeteci hesapları kullanılarak masaüstü araştırması yapılmış; Türkiye'nin mültecilere ilişkin yasal çerçevesi, mültecilerin tehlikeli yolcuklara çıkmayı göz almalarına neden olan sebepleri anlamak için tarihsel olarak analiz edilmiştir; yasadışı sınır geçişlerindeki yasal boşluğu anlatmak için AB yasal çerçevesi; Almanya ve İsveç kanunlarının nasıl çok kısıtlı yasal seyahat imkanları sağlarken güçlü çekici faktörler yarattığını anlatmak için bu ülkelerin mültecilere dair yasalarını inceliyor.

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INTRODUCTION

On September 2ⁿᵈ, 2015, the dead body of a three-year-old boy, Alan Kurdî, washed up on a beach in Bodrum, a summer vacation town in southwestern Turkey. Soon after, his photo became the symbol of the grievances and perilous voyages of refugees. Only then did the human aspect of illegal journeys to Europe draw international attention.

The journey that took Alan's life is full of widespread catastrophes and tragedy. It involves working in sweatshops to pay thousands of dollars for fraudulent passports and smugglers, sleeping in the streets, and physical and sexual violence. If refugees can afford a smuggler to help them cross the sea, they travel in inflatable dinghies without any navigation equipment. Many refugees are attacked, if not capsized, by criminal gangs and border guards. In 2015, 3,784 fatal incidents were documented in the Mediterranean (IOM, 2017, p.2). Many people lost all of their family members. In the streets of Izmir, one may see a father who has lost his wife and young daughter in an unsuccessful attempt to cross the sea, trying to hug every passing little girl who is the height of his daughter (Sağnıç, 2016). If refugees survive the dangerous journey across the Aegean Sea, in addition to the thousands of kilometers on foot, they have to overcome vigil groups, volatile border controls, and the threat of hunger, disease, and harsh weather conditions. In this journey of approximately 2,500 kilometers, they put their lives in the hands of human smugglers and at the mercy of the Aegean Sea. They often end up losing a loved one, losing all their money, stuck in a border town or dead.

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Despite all this tragedy, every year thousands of refugees take this dangerous, torturous, humiliating journey to go Europe from Turkey. It is curious that despite the historical, cultural, religious, ethnic, and social similarities between the two countries, millions of Syrians decided not to stay in Turkey and chose instead to follow a perilous path to reach Northern European countries.

The most prevailing question that keeps being raised among migration practitioners and theoreticians is "Why are they moving?" This study proposes to answer this overarching question by examining different, related, queries: "Where are they going?", "Where are they not staying?", and "Why do so many people die to go Europe?" It goes further and questions the legal framework behind refugee vulnerability. Defining vulnerability as "not neediness but being left with no possibility" (Dalal, 2013), this study focuses on one of the vulnerability-producing mechanisms: legal frameworks. Various mechanisms and factors embedded in political and social systems of host societies create refugee vulnerability. These elements include an extensive informal market, problems in the education system, corruption, and widespread xenophobia. However, this study focuses on legal frameworks as the primary factor in refugee vulnerability, because laws, through legal categorizations, determine wider settings that no other factor is able to determine. Legally produced concepts such as "refugee", "migrant", "temporarily protected" and "citizen" define who is entitled to which rights. These concepts and their accompanying rights-bundles frame the legal, economic, political and cultural settings in which refugees act (Schuck, 2000, pp.137-187). Additionally, by determining what parents can provide to their children in terms of education and financial resources, they shape future prospects for subsequent generations. Consequently, legal frameworks are mechanisms that produce and reproduce the

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"refugee" and what being a refugee means in a particular society. In doing so, push and pull factors can be formed. Whilst the legal structure in Turkey offers nothing but insecurity and destitution, and therefore pushes refugees to seek different opportunities by risking their lives, Sweden and Germany offer a life in dignity with plenty of rights and opportunities, which pulls refugees – albeit with extremely limited and competitive legal means of reaching their territories. This is the main mechanism – in general – that creates migratory movement and vulnerability accompanying it. Consequently, host-related factors and target country-related factors must be analyzed together to provide the necessary analytic framework.

This thesis analyzes the legal regimes of the main destination countries - Sweden and Germany - and the sender country, Turkey, and asks: "How do the policies and laws of Turkey and Sweden and Germany trigger the flow of refugees and shape their course?" In the other words, "How do the legal frameworks drown refugees?"  To answer these questions, I argue that there is a major gap between the Turkish, Swedish and German refugee regimes. Whilst the Turkish regime offers nothing but uncertainty and threat of cessation of status, these European countries promise legal protection and a future. Consequently, the Turkish regime creates a push factor while the conditions in Sweden and Germany create a pull factor, whilst the EU-Turkey deal negotiations created a time pressure for refugees. However, while these European countries offer better life chances to refugees, there is almost no legal way to reach Europe. People have to find their own illegal ways. If they can survive the dangers on the way, they will be accepted into the European regime. The legal frameworks and the right bundles that a Syrian person would access when s/he arrives in Sweden or Germany do not protect her/him on the route. The existing international framework jeopardizes refugee movement with its loopholes and by

creating barriers to legal and safe ways. The Dublin Protocol and the EU Directive EC/2001/55 disable refugees to take planes or decent buses but, in a way, forces them to smuggle from state borders, take illegal and dangerous journeys. Ignoring the harsh conditions which refugees face on the route and signaling that they would be offered better life chances when/ if they arrive these legal frameworks becomes one of the responsible factors for the deaths and traumas.

Various theoretical frameworks are employed to explain why refugees make this journey. Network theory, for instance, explains how refugees get support from their family members and friends to decide their target country of destination. But it fails to explain why they leave Turkey in the first place. One expects integration levels to increase in proportion to the similarities between the host society and immigrant society. Turkey and Syria are both majority Muslim, are similar in terms of cultural and social habits, and there are many Arabic and Kurdish-speaking people in Turkey, just like in Syria. Some Syrians even have relatives with Turkish citizenship. Despite this cultural compatibility, thousands choose a long and torturous journey instead of staying in Turkey. Additionally, the extremely tragic conditions along the route show that it is not an ordinary economic migration aiming to reach a richer country. The push-pull theory provides necessary tools to analyze (in terms of legal frameworks) both ends of the migration process – the original host and target countries. It helps to explain host-related and target country-related factors in interaction with each other. Furthermore, it enables us to put the route's constraints into an analytical framework.

Legal professor Ronald Dworkin says: "it is profitable to study our most heated political controversies at a more philosophical level—to help begin a process that might later reinvigorate the argumentative dimensions of our politics (Dworkin,

2006, p. 8). This study aims to do that by analyzing the "poorly understood but significant role" of refugee and immigration policies, as reflected in immigration laws (Zolberg, Suhrke, & Aguayo, 1992).

The objective of this thesis is to reveal the international legal framework behind refugee vulnerability and discuss the importance of immigration laws. Answering these questions will contribute to the wider migration studies and theories by generating new theoretical and empirical insights into the way states and policies trigger and shape the course of refugee movements. Most of the studies whether migration or refugee-oriented, focus either on the receiving country or sending country. This is also the case for studies regarding Syrian refugees. Despite the fact that many researchers, journalists, and academics have underlined the deteriorating conditions of Syrians in Turkey, as well as their legal problems and desperate desire to leave Turkey, a holistic approach is lacking. This study is going to analyze both the conditions in Turkey and those that are offered from Europe.

1.1. Outline

In order to answer the research questions, first of all, the second chapter will provide the theoretical background. The lack of theorization for refugee movements and the strict dichotomy between refugee and migrant concepts will be examined and discussed, in addition to how laws shape the migration and migrant experience.

In the third chapter, the first part will discuss the EU-Turkey deal and the pressure that it put on refugees. The second part will focus on legal barriers limiting the access to the safe and legal journeys. This part will essentially answer the question, "why do Syrians not travel legally if they are recognized as refugees in their target countries?" The consequences of these barriers will be evaluated in order

to explain and discuss that it is not a simple decision of migrating to another country but risking everything even bare life and going through a dangerous, torturous and humiliating journey that takes months and sometimes even years. The volatile refugee route from Turkey to Germany will be explained and the accompanying threats, legal limbos, and uncertainties will be discussed. The route (known as the Balkan corridor) is not fixed. There are various routes that refugees follow. The cities and even states that refugees go through vary, as do the targeted destination countries. For many, the route includes Greece, Macedonia, Serbia, and Hungary. Others prefer not to take the Hungary route due to challenges at the Hungarian border. They go instead through Bosnia-Herzegovina, Croatia, and Slovenia to reach Austria. Most were reported to be taking trains from Austria to Germany. Germany is the main destination for many, although some continue on to Denmark and Sweden. For methodological purposes, the route that includes Greece, the Former Yugoslav Republic of Macedonia, Serbia, Hungary, and Austria will be analyzed here.

In order to answer the question of what is pushing and pulling people to take all the risks outlined above, the original host country (Turkey) and main destination countries (Sweden and Germany) will be analyzed in detail in the fourth, fifth and sixth chapters, respectively. To this end, each chapter will analyze individual countries using the same structure. The chapters will start with an evaluation of migration histories. This will enable the study to situate the current policies and attitudes in a historical context and provide a richer insight into patterns of migration policy-making. Subsequently, immigration and refugee laws will be discussed in detail. The main legal documents will be analyzed. This will provide the general framework of the legal structure surrounding asylum and migration in these

countries. Finally, the laws and regulations that Syrians are subject to in these three countries will be examined.

Finally, based on this analysis and discussion, these countries' legal frameworks and right bundles, as well as legal loopholes and their impact on refugee vulnerability will be discussed.


1.2. Methodology

Several delimitations will be employed to frame the research. Since the laws and policies of states frequently and responsively change, this study will focus on 2015. This year is particularly important as it saw refugee movement peak in comparison with the previous years.

Additionally, there are various routes. It is not possible to talk about a single corridor through which refugees pass. Syrian refugees take every possible route to reach Northern European countries, regardless of how perilous and fatal it may be. Hoping to halt – or at least slowdown – refugee movement, Southeastern European countries started to build fences and walls and tighten their border controls. Nevertheless, refugees find ways to these countries. It is important to understand how refugee movement as a whole responds to border policies and policy changes, but in order to limit the research   this study will focus on the route that goes through Turkey, Greece, Macedonia, Serbia, and Austria. A range of primary and secondary data will be employed for the research. Journalistic accounts, volunteers' blogs, refugees' testimonies, and academic and NGO reports will be analyzed in order to map the situation regarding the route. Additionally, I will rely on my personal professional field experience as a researcher of an NGO to exemplify the human tragedy on the route.

Turkey, Sweden, and Germany are picked for the case study because of their distinctive characters. Turkey hosts the highest number of Syrian refugees in the world (Amnesty International, 2015). Turkey, not known as a conventional immigration country, all of a sudden became one. Many legal and administrative steps have been taken to adapt the new situation. However, still thousands of people took the perilous journey. It should be underlined that not all Syrian refugees in Turkey are trying to flee, many of them prefer to stay. Though, this study focuses on those who are leaving and tries to understand the legal mechanisms behind this departure. All these changes and the high number of refugees residing in Turkey makes it a significant case for this research.

When a major wave of refugee movement, defined as the worst human tragedy since World War II (Collins, 2017) took place from Turkey to Europe, Sweden and Germany became the main destination countries for most of the refugees (Martinez, 2015). In 2015, Sweden received 51,000 applications from Syrians fleeing the war in their home country (Migrationsverket, 2017).At the same year, almost 442,000 people sought asylum in Germany (Connor, 2016). Cumulative data shows that this is not a picture specific to one year, 2015. Between 2011 and March 2017 these two countries received 65% of the total asylum application in Europe(UNHCR, 2016) Therefore, as the most popular target countries in Europe for asylum seekers they represent the most significant cases for the purposes of this research. Additionally, having these two countries for the analysis has the crucial merit of analyzing the impact of the suspension of the Dublin Protocol, since Germany suspended but Sweden did not.  The Dublin Protocol and its impact on refugee vulnerability will be elaborated both separately and in the cases of Sweden and Germany.

Migration histories of the three countries (Turkey, Sweden, and Germany) will be analyzed through official and unofficial sources. Legal documents regarding the asylum and migration rules of Turkey, Sweden, and Germany will be analyzed. Secondary sources will be employed to interpret these laws. Policy reports and migration indices will be also be used. Legal documents are one of the powerful forces that design the complex array of incentives and/or factors that groups and people take into consideration in deciding where to migrate and how to migrate (Schuck, 2000, p.201). As it will be discussed further in the theory chapter, they do so by constructing legal categorizations as asylum-seeker, refugee, and citizen and drawing the lines between these categories by the right-bundles that each category can access. That is the main reason why analysis of the legal documents will make the crux of this thesis.

MIPEX data for 2014 will be used to understand the individual situation of the three countries and as a point of comparison. From the wide range of data in the MIPEX database, the indicators were picked as relevant to the scope and objective of this study: overall score, access to education, access to the labor market, healthcare, and rights associated with status.

There are important limitations pertinent to refugee movement analysis. First of all, it is a flying target, since the movement continues as the research is conducted. The temporal and geographic limitations, on the other hand, were useful for framing the research. Additionally, many German and Swedish legal documents have not been translated into English. Secondary sources were used instead. Furthermore, not all Syrians residing in Turkey are registered, so it is uncertain exactly how many refugees live there. . Thirdly, the implementation gap, difference between laws on paper and exercise, has not been analyzed in this study. Finally, the agencies of

refugees are recognized in this study and importance of interviewing refugees to understand and elaborate their perspectives is appreciated. However, when this study was being drafted, the government restricted academic field works and surveys focusing on Syrian refugees (Kayaoğlu, 2015). According to the Ministry of Interior, the reason was protecting the privacy of Syrian population. Researchers were asked to apply for a research permit from the High Education Council *(Yüksek Öğretim Kurumu)*(Kayaoğlu, 2015).  Considering the vagueness of the research permit process and due to time limit, a different track has been followed, which is analyzing solely legal documents.

CHAPTER 2

THEORETICAL FRAMEWORK

It has long been thought impossible to theorize refugee movements. Because of this premise, the field of refugee studies remained under-theorized (Richmond, 1988; Hein 1993; Black 2001). Additionally, refugee studies' proximity to the work of policy-making encouraged scholars to focus on the issue's practical dimensions, and therefore to largely ignore the theoretical dimension.

Furthermore, the strict dichotomy between voluntary and involuntary migration makes scholars and policy-makers tend to classify a certain movement as one or the other type. This is also the case for the Syrian refugees. It was easy to recognize them as refugees when they crossed the Syrian borders to reach a nearby country. However, classification became more complicated when the same started to leave their original host countries for better conditions in Europe. How should this movement be classified? How should the conditions in the original host country and targeted destination countries' impact on refugees' decision to move be theorized? In order to address these theoretical and conceptual ambiguities, this theoretical discussion will question the dichotomy between voluntary and involuntary migration, underline the explanatory power of a continuum of these types, and offer the agency of the migrant as an indicator.

The first part of this chapter will focus on the production and reproduction of the "refugee" by laws and their impact on the refugee experience. The second part will briefly discuss attempts to theorize refugee movements. The last part will elaborate theoretical perspectives regarding refugees' agency in migratory movements.

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## 2.1. Laws and refugees

Legality and migration interaction has been subject to scholarly attention for good reason. Refugee, migrant, citizen and their variations are legal concepts constructed for legal purposes and managed by laws, regulations, and directives. Kitty Calavita explains the institutionalized citizen-migrant dichotomy as a direct consequence of "immigrant" being a legally constructed category. She argues that laws are able, together with the economy, to both construct and deconstructs the dichotomy between immigrant and citizen (Calavita, 2005, p.412). Another scholar, Linda Bosniak, discusses the "politics of foreignness" and underlines the fact that bundling rights around citizenship status leaves those who lack citizenship status unprotected (Bosniak, 2006, p.79). Citizenship means inclusion for those who have it. But for those who do not acquire it - refugees and migrants- it is the main source of exclusion and subordination.

Such a legal categorization also defines individuals' roles in the market system via the work permit system. Consequently, marginality created by legal conceptualization becomes self-perpetuating (Calavita, 2005, p.402), because if a sector limitation is imposed on immigrants and they are not allowed to work, they will engage with the informal sector, stuck with exploitative work conditions and they will have no access to legal protection. This economic marginality and legal limbo will impact subsequent generations since immigrant workers who earn minimal wages and lack many rights would not provide the necessary tools for their children to have a better life. Peter Schuck argues that not only do legal frameworks create a citizen-migrant dichotomy and economic marginality, but also contribute to the normative and cultural settings in which migrants act in order to survive and succeed in their new homeland (Schuck, 2000, pp.137-187).

Illegal aliens lose many of the basic rights that most human beings naturally have in the eyes of the law. Calavita refers to Marianne Constable, who notes: "the 'unlawfulness' or 'illegality' of the illegal alien is such that the alien individual seems not quite an autonomous legal subject, being neither a legally-recognized citizen nor legally a recognized stranger. They come to resemble under the law (...) the regulatable resources of the territory more than its self-determining subjects" (Constable, 1993, p.260: cited from Calavita, 2005 p.404).

From this vantage point the significance of the borderlines between citizen, migrant, refugee, and temporarily protected alien drawn by national and international laws is obvious. Discussing these borders enlightens discussions regarding refugee movements. In the following chapters, these conceptualizations and the transitivity of the legal categorizations will be discussed in the cases of Turkey, Sweden, and Germany to understand the roles that are cast for Syrians.

This thesis argues that opportunities provided by legal frameworks create refugee waves. Legal systems of states are important indicators in determining the direction of refugee flows and their course. As Weiner puts it: "States affect international migration by the rules they create regarding exit and entry. A corollary of this proposition is that these rules are affected by relations between states, for in determining what policies they should pursue with regard to international population movements countries take into account the actions of others" (Weiner, 1985, p. 442). This discussion will be employed to understand and elaborate right-bundles and loopholes of these right-bundles that a Syrian person subject in different countries. It will be further used to shed light on the legal framework behind the refugees' travel from Turkey to Sweden and Germany and reveal the complex spectrum of layers between legality and illegality in different contexts. For example, how the border-

crossings are illegal but those who cross the borders and survive would have access to a wide range of legal rights and how these facts produce and reproduce the legality and illegality together with the refugee vulnerability.

## 2.2. Theory of refugee movements

This study will focus on refugee flows and argue that there is a logic behind these flows. Scholars such as Kunz refuse to define refugee flows as separate events and underline the need to analyze refugee situations not as "individual historical occurrences, each distinctly different and circumscribed in its locus and time, but as reoccurring phenomena, with identifiable and often identical sets of causalities bearing on selectivity of participation and flight patterns, all of which in the long run affect refugee outcomes" (Kunz, 1973).

The first attempt to theorize migration was conducted by Ernst Georg Ravenstein, a nineteenth-century geographer (de Haas, 2008). He reflected on the idea that "migration appeared to go on without any definite law" and elaborated his thoughts in two articles in 1885 and 1889. "The Laws of Migration", 1889, is the essay in which Ravenstein tried to come up with a formula to understand migratory movements. His studies are based on his empirical observations of internal migration in the nineteenth century (Richmond, 1988). There are seven major laws that govern migration according to Ravenstien: (1) Distance is an important factor for migration, and most migrants prefer to move short distances; (2) migration, generally, is from agricultural to industrial areas; (3) each major migration stream produces its counter stream; (4) most of the short-distance migrants are female; (5) technology increases migration; (6) despite the fact that there are many other reasons for migration,

economy is the most common one.; (7) large towns grow by migration rather than by natural increase (King, 2012, p. 11; Lee, 1966, p. 48).

Technological developments that made moving longer distances easier, increasing migration levels in urban centers, changing gender roles and many other developments challenge Ravenstien's rules. However, the Laws of Migration is a keystone in migration studies as the first attempt to understand migratory movements.

Henry Pratt Fairchild, in "Immigration: A World Movement and Its American Significance", distinguishes invasion, conquest, and colonization from immigration as such (Richmond, 1988) and classifies migratory movements as peaceful and warlike by using the cultural level of emigrants and receiving populations as criteria. Fairchild makes an ethnocentric analysis in this classification. For example, his classification of England as a country with high-culture and India as a newly discovered country are regarded as very problematic by scholars.

Petersen fiercely criticizes the ethnocentric approach and argues that this typology is not able to explain all types of migration. To show the gaps in Fairchild's study Petersen creates a table based on Fairchild's typology (Petersen, 1959, p.257). The Table 1 shows that two types of migration are missing in the discussion: peaceful migration from low culture to high culture and warlike migration among countries that have similar cultural levels.

Fairchild's typology, according to Petersen, shows two points. First of all, it is logical to analyze migration with typologies instead of rules. Petersen argues that, unlike Ravenstein, scholars should not try to theorize rules of migration. In order to avoid generalizations, the most general statement should be on typologies.

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Table 1.  Fairchild's Typology

| Migration from | Migration to | Peaceful Movement | Warlike movement |
|---|---|---|---|
| Low culture | High culture | [missing] | Invasion |
| High culture | Low culture | Colonization | Conquest |
| Cultures on a level | | Immigration | [missing] |

Source: Petersen, 1959, p.257


Secondly, it is vital to pick distinguishing criteria carefully to avoid the similar kind of analytic traps, as ethnocentrism, that Fairchild fell victim to (Petersen, 1959, pp.257-258).Petersen classifies migration movements under five types: primitive, forced, impelled, free and mass. Mechanisms creating these classes are explained in the table 2. In the first column, the relations that have the potential to prompt migration has listed. The relation is between man and nature, man and the state, man and his norms, and collective behavior (in other words, man, and other men). For instance, if climate change forces man to migrate then the relation creating migration is between man and nature. The second column defines migratory force based on the relation that created migration. In the third column, migratory movements are classified according to the migratory force. For example, if the relationship is between man and nature, then the migratory force is the environment and the movement is classified as primitive.  The last column has two sub-sections: conservative and innovating. Here Petersen introduced a further classification based on the consequences of the movement (Richmond, 1988).

Table 2.  Petersen's Typology

| Relation | Migratory Force | Class of Migration | Type of Migration | |
|---|---|---|---|---|
| | | | Conservative | Innovating |
| Nature and man | Ecological push | Primitive | Wandering | Flight from the Land |
| | | | Ranging | |
| State (or equivalent) and man | Migration Policy | Forced | Displacement | Slave trade |
| | | Impelled | Flight | Coolie trade |
| Man and his norms | Higher aspiration | Free | Group | Pioneer |
| Collective behavior | Social momentum | Mass | Settlement | Urbanization |

Source: Petersen, 1959, p.266

Conservative migration means migrating in order to maintain a certain lifestyle. Innovative migration, however, seeks to improve life standards or, in Petersen's words, enables migrants to "achieve the new". The migration-activating agent determines the function of movement; a movement can be classified as conservative or innovative based on the objective of the activating agent. For example, if the aim of migration is to get rid of people by displacing them, then that migration is conservative. But if the objective of migration is to use manpower, as in the case of slavery, then it is innovative.

The first class of migration is primitive migration. Primitive migration is a result of an ecological push and man's inability to cope with natural forces. Forced and impelled migrations classification include an activating agent as an indicator. If a state or some functionally equivalent social institution pushes people and migrants

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have no role in the decision-making process of migration, this is forced migration. On the other hand, if a state or a similar institution pushes, but migrants retain some power to decide whether or not leave, it is impelled migration. According to Petersen, it is hard to set a boundary between the two classes.

In free migration, the migrant and activating agent are same. Individuals strongly motivated to seek novelty or improvement are the primary objects of such movement. This type of migration has a small-scale impact. When a pioneer migrant arrives at his new destination and encourages his compatriots to follow the same route, numbers of migrants grow. It could grow so much that it would turn into a social pattern. After that, Petersen says: "It is no longer relevant to inquire concerning the individual motivations"(Petersen, 1959, p.263)

After these early attempts of Ravenstein and Petersen, Everett S. Lee brought a new approach by analyzing "(t)he factors which enter into the decision to migrate and the process of migration" (Lee, 1966, p. 49). There are four headings for these factors: (1) factors associated with the area of origin; (2) factors associated with area destination; (3) intervening obstacles; and finally (4) personal factors (Lee, 1966, p. 49). In Lee's famous chart we can see the relationship between three factors – conditions of origin and destination and intervening obstacles. The fourth factor comes into play during the decision-making process of individuals.

The minus (-) sign, in Figure 1, indicates conditions that individuals do not favor; plus (+) indicates advantages; zero (0) indicates conditions to which individuals are indifferent. However, all these +s and –s would be different for every individual; one condition would be favorable for one person but repulsive for another one (Lee, 1966, p. 50).

Figure 1. Origin and destination factors and intervening obstacles in migration

Source: Lee, 1996, p.50

Intervening obstacles are another important factor in Lee's theory. These obstacles could change from person to person or could be same for everyone. Distance is a highly discussed obstacle; actual physical obstacles like the Berlin Wall, fences or restrictive immigration laws could also exist (Lee, 1966, p. 51).

Personal factors also affect migration and may facilitate or retard migration decisions. Personal perceptions, intelligence, awareness, and knowledge of conditions elsewhere, as well as personal networks and contacts, are all at play in migration. Additionally, an individual's reluctance to migrate, resistance to change or desire for change and seek for adventure would be also important. Consequently, migration decisions are not always rational, and, depending on an individual's personality, it may even be irrational (Lee, 1966, p. 51).

Push and pull theory, one of the oldest theories of international migration, will be employed in this study to conceptually explain the role of migration laws. In order to understand how the theory will be useful, criticisms leveled against it should be analyzed.

Push-pull models reflect the neoclassical economic paradigms of utility maximization and rational choice, as well as factor price differentials and labor

mobility (King, 2012, p. 13). Despite the fact that these models dominated the academia until the 1960s, since then they have been highly criticized for being deterministic, functionalist and ahistorical. The main criticisms of push-pull theory can be summarized as follows. First, it fails to explain why so many people do not migrate despite apparent incentives – pushing and pulling factors. Second, these models approach society as a single coherent unit; however, a negative condition for one person can be a positive one for someone else in the same society. Third, and relatedly, personal aspirations and the ways in which migrants perceive their worlds and relate to their kin, friends, and community members are not taken into account (Cross et al 1998). Fourth, structural constraints are not included in the analysis. These constraints change from person to person. Fifth, factors classified as push and pull mirror one another. For example, less job availability is a push factor and more job opportunity in a different county is a pull factor. But under the level "job opportunity" indicator, these are not two distinct factors.

Similar to the neoclassical economic models, the push-pull model can be criticized for unrealistically viewing migration as a cost-benefit calculation by individuals, without paying attention to structural constraints that imply that people typically have unequal access to resources. It is essentially a functionalist gravity model that supposes a tendency towards equilibrium between push and pull factors, an assumption that has rightfully been contested by historical structuralists. The push-pull model assumes full and equal access to information and various resources or "capitals", and humans are portrayed as more or less atomistic individuals that operate in an institutional, social, and cultural void. Furthermore, the push-pull model, as it is usually interpreted, is static and unable to explain migration as a part of broader transformation processes.

Kunz applies push-pull theory to refugee flows and looks to sub-types of these movements: anticipatory and acute refugee movements. The anticipatory refugee arrives before a deterioration of conditions can prevent his departure, and, generally, has some kind of knowledge about his host community's language, a plan, and information about the country of arrival.

Acute refugee movements arise from massive political changes. Reaching safety in a nearby country is the primary objective. Such displacements could occur en masse or at an individual/group level. Acute refugees have less information about the host country and less of a long-term plan. Kunz defines this situation as a "no man's land of midway-to-nowhere" (Kunz, 1973, p.133). Syrian refugees who fled Syria to neighboring countries including Turkey are acute refugees, but those going to Europe from Turkey are anticipatory refugees since they have more plans and information about the target country and because they were expecting conditions to deteriorate due to the EU-Turkey deal (see Chapter 3).

There is also the intermediate type of refugee movements. It carries characteristics of both anticipatory and acute movements. Kunz gives an example of anticipatory Jewish refugees who were followed by acute movement when their host country was attacked by Nazi Germany (Kunz, 1973, p.133).

For anticipatory refugees, conditions in their homeland (a push) coupled with a permit that allows entry to another state (a pull) creates a migration. It is not the desire to live in a particular country that determines the decision but the permit itself. Having a permit beforehand makes the situation easier for anticipatory refugees. On the other hand, because of mass entry and the lack of a permit, an acute refugee would be subjected to pressure in the host country. This would be administrative, economic, or psychological pressure. After the original push of home country, such

pressure in the host country plays a decisive role in further migration rather than the pull of the target country. Under the pressure of the host country, the refugee would take one of three different steps: s/he would try to reach another country that would offer more; would decide to stay in the current host country, or would return home country (Kunz, 1973).

When this theory is applied to the Syrian refugees going to Germany and Sweden, the home country's push is not the trigger of the movement but rather the original host country's push that is coupled with the pull created the Northern European countries.  Under the pressure of the pushing factors created by the legal framework in Turkey, many refugees decided to try to reach a new host country. The permit, suspension of the Dublin Procedure for example, and the open border policies of Germany and Sweden towards refugees played an encouraging role.

Eight years after the acute and anticipatory movement classification, Kunz made a more detailed analysis of refugee movements under the headlines of home-related factors, host-related factors, and displacement-related factors. Home-related factors are based on refugees' social relationship with their home country. This new criterion brings three new identifications (Kunz, 1981, p.42). Majority-identified refugees believe that the majority of their compatriots share their reasoning and that it is the government with which they are in conflict. Events-alienated refugees have the desire to be a part of society, but they are excluded. This alienation targets an economic, social, or ethnic segment of society. Marginalization of this kind of group has its roots in the past but comes to the fore in a sequence of events(Kunz, 1981, p.43). Kunz has Jews in Germany in mind when he is explaining this group. The last type is represented by self-alienated refugees who have no wish to identify

themselves with their societies. The alienation is a result of ideological considerations (Kunz, 1981, p.43).

Attitudes toward displacement determine whether a refugee or a group of refugees are active or reactive. Reactive-fate groups are victims of wars, expulsions, revolutions or revolutionary events - as in the case Syrian refugees fleeing Syria. Most of the people in this group also belong to the majority-identified national refugees. This criterion, being reactive or active, will be employed to explain the difference between Syrians' flight from Syria and Turkey and elaborate the spectrum of layers between migrant and refugee.

Kunz is not sure about whether to classify purpose groups as refugees or not because most of the time they are self-alienated because of their insistence on the overriding importance of a certain dogma, belief or ideology (Kunz, 1981, pp.43-44).

Ideological-national orientation in exile is another categorization factor for Kunz. Self-alienated people who leave their country for a different type of social or political order may continue to pursue similar aims in exile. Others who wish to forget their past may seek assimilation in their host community. There is also a passive type between these two extreme groups, according to Kunz(Kunz, 1981, p.50).

Host-related factors include cultural compatibility, population policies, and social attitudes. Similarities between home and host country have the most important influence on refugee resettlement. These similarities range from food, language, values, traditions, religion, and politics to interpersonal relations. When similarities increase, integration and harmonization of refugees with the host community become easier (Kunz, 1981, pp.47-50).

Turkey and Syria have very common characteristics in terms of culture, social attitudes, and religion - though different sects exist. Families and villages were separated by the border between these two countries. The cultural compatibility between two societies is at odds with the high rates of illegal border crossings out of Turkey. Based on the premise outlined above, one would expect Syrians to stay in Turkey. However, they leave Turkey, a country relatively similar to their own, for a religiously, culturally and socially different country, such as Germany or Sweden. This is not simply a travel from one country to another but travel that encompasses one of the biggest tragedies of human history. This trend shows that there are more powerful mechanisms that force people to reach another country, even risking their lives in the process.

Another important element is policies of the host state, and whether they are augmentative or self-sufficient. If the host state is trying to increase its population through immigration, following augmentative policies, resettlement in this country provides opportunities to refugees. However, such countries are very likely to see refugees as manpower to be exploited and have the desire to assimilate refugees (Kunz, 1983, p.48). According to Kunz, self-sufficient countries in terms of human resources would not accept large numbers of refugees and they would not try to assimilate those resettled (Kunz, 1983, p.48). Consequently, Kunz sees a tradeoff between assimilation and admission. The social receptiveness of host societies is a complimentary element to policies. If a host society is monistic and assimilationist then refugees would face challenges in protecting their distinctive identities.

Anthony Richmond is one of the scholars who challenge the widely accepted voluntary and involuntary migration dichotomy (Richmond, 1988) in light of the structuration theory of Anthony Giddens (1979, 1984, 1990). In the structuration

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theory, Giddens emphasizes the role of human agency in the process of structuring and restructuring social relations across space and time. Richmond explains migration as a continuum of proactive and reactive types instead of a bifurcated line with voluntary migration in one arm and involuntary migration in one (Richmond, 1988, p. 8). Such an understanding bridges the gap between the micro and macro level of analysis, according to Richmond (Richmond, 1993, p.10). The multivariate model Richmond offers for understanding migratory movements has five elements: predisposing factors; structural constraints; precipitating events; enabling conditions; and system feedback (Richmond, 1993, p.9).

New state formation, decolonization, ethnic nationalism in multicultural states, military industry and armament, globalization (namely the uncertainty created by the inclusion of third-world countries to the global system) and similar other conditions create a reactive migration. However, political factors are not the exclusive determinants of migration; wealth and resource inequality also have the potential to result in migratory movements (Richmond, 1993, p.12).

Structural barriers impact migration through serving to limit the actual incidence and scale of migration. These barriers can be states' border control, perceiving uncontrolled immigration as a threat, and aggravation of this perception through political and social problems in source countries (Richmond, 1993, p.15). The hostile attitudes of some European states and the international negotiations to limit the mobility of refugees are the basic structural constraints that Syrian refugees face.

Unlike other factors, precipitating events are sudden changes in the political, social, or environmental situation. Developments threatening ontological security

such as a revolution, war or genocide function as precipitating events for migration

(Richmond, 1993, p.16)

Predisposing factors or precipitating events cannot generate large scales of

migration by themselves; circumstances should enable potential migrants to move.

These enabling circumstances are important to overcome structural constraints. They

are basically the obverse of structural constraints. Relaxing border controls, rescue

missions, the establishment of refugee camps, issuing travel documents, relaxing

entry requirements, and the establishment of asylum procedures by governmental or

non-governmental organizations are examples of enabling circumstances (Richmond,

1993, p.17).

Reactive migration and reactions to reactive migration have feedback effects.

In the other words, enabling conditions and structural constraints would change in

response to migration. For example, if host states start to perceive the level of

immigration as a threat to their population they will tighten border controls, restrict

entries and visa, and conduct voluntary or involuntary repatriation to limit migration.

Toughening immigration policies, especially restricting the conditions for family

reunification in Sweden after a sudden increase of Syrian refugees, is an example of

system feedback (Richmond, 1993, p.17).

Using all these variables Richmond provides an extensive typology of

reactive migration as shown in the Table 3. Without ignoring possible interaction

between factors, in this typology, precipitating events and enabling circumstances to

constitute major determinants; and predisposing factors are secondary factors.

Reactive migration types that include political determinants (numbers 1-9 in the

chart) are more readily accepted as refugee movements (Richmond, 1993,

p.18).Despite the fact that the factors Richmond lists above are very similar to

traditional "push factors", he says since this typology understands the interaction between motivational factors on the one hand and the social and structural determinants, on the other hand, it is different than the push-pull theory. He underlines the interaction between various factors and says it is very problematic to define "refugee" with one element such as someone with "genuine fear of persecution," which is just a single factor in a causal chain "it also emphasizes the complex interaction between political, economic, environmental, social, and biopsychological factors in determining the propensity to migrate," argues Richmond (Richmond, 1993, pp.22-23). He also emphasizes the importance of choice and challenges the dichotomous understanding: "There is a continuum between proactive and reactive migration, in all of the above cases, but the structural constraints are greater in the latter, and the scope for rational choice for reactive migrants is limited" (Richmond, 1993, p.21).

Despite the fact that Richmond got one step closer to understanding the spectrum of layers between migrant and refugee conceptualizations, his theory is very structuralist. He is not able to avoid falling into the trap of providing deterministic structuralist forces and doing an ahistorical analysis. For example, with the increasing intensity of environmental problems resulting from global warming, a 15th type of migration in his chart, with environment as the primary and secondary reason, is increasing more importance and there is now even a concept of the "environmental refugee," which he himself later studied (see Richmond, 1994). Despite its pitfalls, Richmond's theory is vital to explaining different types of refugee movements. These factors and the interactions among them will be employed to analyze the nature of migration from Syria to Turkey and from Turkey to Germany and Sweden.

Table 3. Reactive Migration Typology [Highlights added]

| | | Major Determinant | | | | |
|---|---|---|---|---|---|---|
| | | Political | Economic | Environmental | Social | Bio-psychological |
| Secondary Factor | Political | 1 | 2 | 3 | 4 | 5 |
| | Economic | 6 | 10 | 14 | 18 | 22 |
| | Environmental | 7 | 11 | 15 | 19 | 23 |
| | Social | 8 | 12 | 16 | 20 | 24 |
| | Bio-psychological | 9 | 13 | 17 | 21 | 25 |

Source: Richmond, 1993, p. 17

This framework is useful to explain different determinants' and factors' interactive role in a migration movement. Because, the five factors used in the multivariate analysis (predisposing factors, structural constraints, precipitating events, enabling conditions, and system feedback) provide a dynamic understanding of Syrian refugee movements. Furthermore, it enables the study to elaborate the secondary factors without placing the movement into a strict category. For example, a movement would have an economic factor but it does not necessarily make it an economic migration.  As discussed above in the case of the Syrian refugee movements from Syria to Turkey and from Turkey to Germany and Sweden sometimes major determinants of two migratory movements would be the same but secondary factors would be different. Syrians' flight from Syria to Turkey can be classified as the first type, political-political since it is a result of a war. The movement from Turkey to Europe understood as the 6th type, political-economic, in

the reactive migration typology chart. Since, the war in Syria disables Syrians to return their country, it is the major determinant. But the better life chances provided via laws in Sweden and Germany are also playing role in the movement which can be classified as an economic factor. However, the interactions between the factors should not be ignored. For example, "social" as the secondary factor also has the potential to explain another dimension of the phenomenon within the network theory framework.

2.3. Agency as the missing part of the dichotomy

Up to this point, the early attempts to theorize migratory movements and the cornerstones of refugee theory have been discussed. The question of "what is the role of the migrant in these theories" remains to be addressed. According to Ravenstein, there are rules of migratory movements. Certain conditions create movement, almost automatically. He did not include migrant as an agent in his analysis. Fairchild takes societies as culturally and economically coherent entities. Additionally, he does not discuss individual migration. Petersen's typology includes man's relation to his norms as a possible drive for migration. Despite the fact that this is one of the first attempts to include migrants' agency in migration typologies, he did not mention the role of the migrant in migration decision in types other than "man's relation to his norms". And although he makes a clear distinction between "free", "forced", and "impelled" migrations, he does not discuss the possible relation between man's norms and his relationship with the state, for example. Lee gives a more detailed account of the migrant; he argues that personal factors such as perceptions, intelligence, awareness, and knowledge would affect the migration decision. Kunz and Richmond, who focused on refugee movements, do not ignore agency. Kunz's

anticipatory and acute refugees and Richmond's pro-active and reactive migration concepts open up space to agency and volition in that agency.

It is not only the early theories or scholars mentioned above that underestimate agency. Hein de Hass critically examines the major migration theories and points to the limited - if nonexistent - conceptualization of migratory agency. Historical-structural models can be elaborated as alternative approaches to push-pull theory. Dual-segmented labor markets, dependency theory, and world systems theory can be listed in this group. These models search for causes of migration in macro-structural factors that are historically formed. The exploitative and disequilibrating nature of capitalism is focused on these theories. Another alternative is the systems and networks approach. Network theory focuses on the microstructures of (Castles et. al, 1998, p.25) ties and social capital (Bourdieu and Waquant, 1991, p.112 quoted from Castles et. Al. 1985, p.25) that a potential migrant would have. Boyd and Nowak (2012) classify networks under three types: family networks, labor networks, and "illegal" migrant networks. Family networks provide a feeling of safety and hospitality to new immigrants and enable them to preserve their culture and ties with other members of the family (Castles et. al., 2013). It should be also underlined that having family members in a country reduces the legal barriers, as in the case of the EU right to family reunification (Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013). This regulation established the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person under the Dublin Regulation determination of the responsible state (Alliance des Avocats pour les droits de l'Homme, 2016). Consequently, having family members in a certain country are of

crucial importance in seeking refuge. This type of migration generally referred as 'chain migration' (Castles, et al, 1998, p. 25) Labor networks play a significant role, especially in economic migration. Ayhan Kaya explains this role in the following way: "Not only do they help potential migrants in obtaining information about the availability of job vacancies, but also help new migrants settle before starting a job" (Kaya, 2016, p.15).

Illegal networks consist of human trafficking and smuggling. These kinds of networks emerge when legal ways are closed to migrants. By their nature, these networks are exploitative and extremely dangerous. The illegal networks play an important role for the Syrian refugees going from Turkey to Western Europe. Even though sometimes refugees try to bypass smugglers, e.g. using inflatable boats that they bought when passing from İzmir to Greek islands, smugglers sustain the flow.

Connections between a pioneer migrant and his peers in his home country create networks. Kinship, friendship, or simply a shared origin with an immigrant provides information to potential migrants and decreases the risks and costs, therefore facilitating migration (Massey, Arango, Hugo, Kouaouci, & Pellegrino, 1993, pp. 42-43). Providing information about the journey decreases its detrimental effects and reduces anxiety. With the increasing level of internet usage refugees have been utilizing such networks when they are deciding their routes (Rebmann, 2016 quoted from Kaya, 2016, p.16).

These networks are complex, dynamic, responsive and ambivalent. Through these networks recruitment organizations, lawyers, agents, smugglers and even life-jacket sellers create a "migration industry" which can be both helpful and detrimental for migrants. When there are many potential migrants and when they follow illegal

routes the migration industry is mostly exploitative for migrants (Castless et. al, 2003, p.26)

Migration systems theory is not a separate theory but argues that migration flows "acquire a measure of stability and structure over space and time, allowing for the identification of stable international migration" (Massey, et al., 1993, p.454). These theories expect individuals to act automatic and predictable routes under certain conditions. Haas underlines the fact that migrants are portrayed as passive objects of gigantic mechanism that push or pull them (de Haas, 2014).

As this short summary illustrates, most scholars make a distinction between voluntary and forced migration. They do not take migrants' agency into account in the latter and discuss agency only in a limited manner in the former. Elizabeth Fussell says: "instead of questioning how the process generating one type of migrant differ from those generating the other type the international migration scholars seem to accept the dichotomy of voluntary and involuntary migration and overlook instances of international migration that cannot be constructed as a choice behavior. (...) evolution of the refugee studies as a tangential field of migration studies [instead of looking into the layers between these movements] reinforced this trend"(Fussell, 2012, p.39). She appreciates Kunz's and Richmond's attempts to question the degree of volition in migratory movements and to create a continuum of these movement types through concepts of anticipatory-acute and proactive-reactive refugee classifications. But she underlines that these scholars failed to integrate this continuum-based approach within the larger domain of voluntary migration. She argues that only a few migratory movements would be classified as totally voluntary or totally involuntary. This distinction, which is an artificial one raised to answer bureaucratic necessities, is the result of a scholarly mistake; focusing on either origin

or the destination country, and thus making a spatial divide(Fussell, 2012, pp.39-40).

Adding to Richmond's study, she analyzes migratory movement in a continuum as
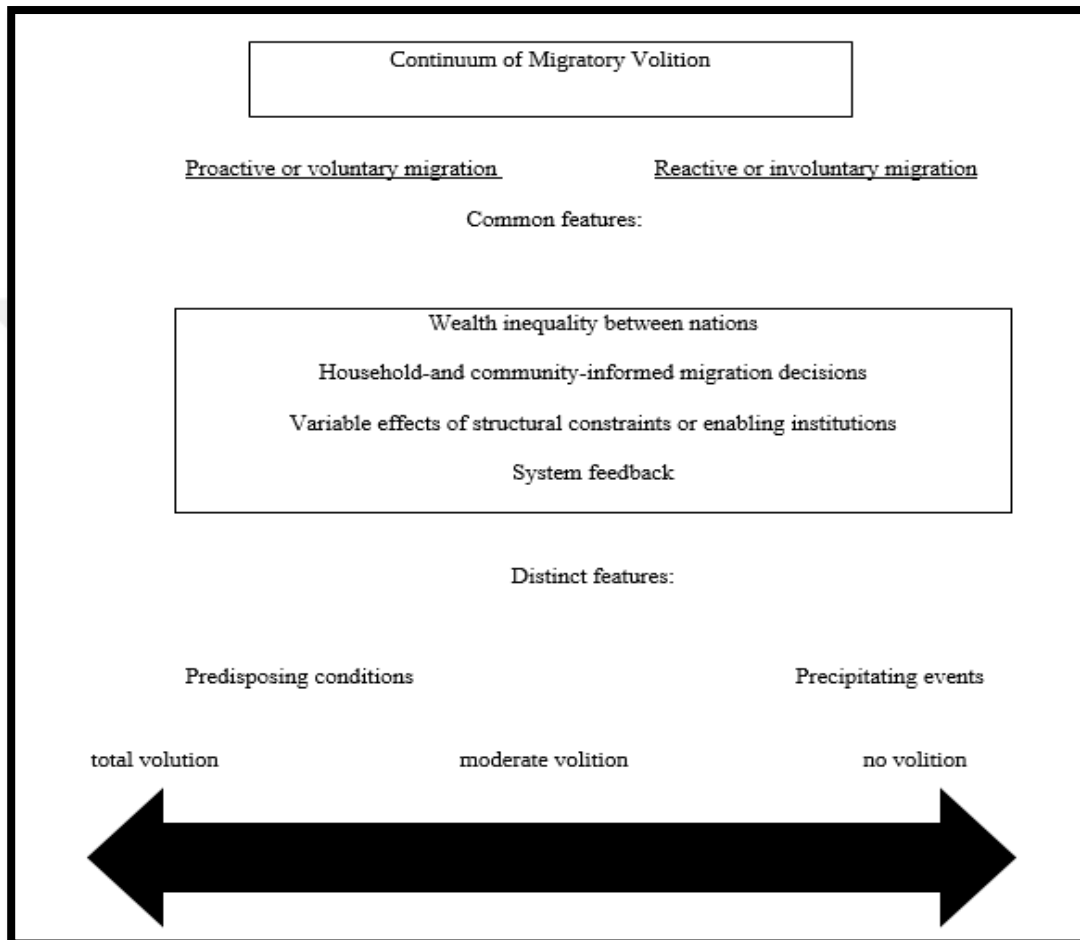
shown in the Figure 2.



Figure 2.  Fussel's reflection on Richmond's theory
Source: Fussell, 2012, p. 40

This new approach shifts the focus from the precipitating events and

conditions to the degree of volition exercised by migrants. Fussell asks "to what

extent the migration was forced by circumstances" to determine the degree of

volition and analyze the movement. Fussell summarizes her views in the following

way: "To understand the dynamics of contemporary migration, models of migration

should include factors that predispose people to migrate, structures that facilitate or

constrain migration, and events that precipitate migration to help determine the extent to which these factors cause people to migrate by threatening their lives and livelihoods or providing them with opportunities to improve their lives." (Fussell, 2012, p.43).

In this thesis, the push-pull theory will be employed to conceptualize the structural reasons for migration. Push-pull theory can incorporate a wide range of factors that affect migration. Although there are many well-grounded criticisms of the push-pull theory, it is frequently suggested for migration analysis because of its capacity to integrate different theories (de Haas, 2008, p.9). It enables researchers to analyze migratory movement in terms of the wide range of elements that played a role in it. In the case of Syrian refugees in Turkey, the host-related factors and target country-related factors should be examined together in order to grasp the mechanisms that make people take the decision to cross borders irregularly. The push-pull theory will be helpful in this endeavor. Furthermore, the theory will enable the study to include intervening obstacles into the analysis with an analytical framework. However, the push-pull theory will not be used uncritically, the agency enjoyed by Syrian refugees will not be ignored. Agency can be defined as "the limited but real ability of human beings (or social groups) to make independent choices and to impose these on the world and, hence, to alter the structures that shape people's opportunities or freedoms" (de Haas, 2014). The illegal routes that Syrian refugees pursue to reach Europe are an example of migrants' agency exerted on the structural. This case, consequently, shows how migrants' or refugees' agency may challenge such structures.

E. Fussell's method will be used to discuss the degree of volition in the movement. It will explain that although there is a relatively higher degree of volition

in the movement from Turkey to Northern Europe than in the movement from Syria to Turkey, the movement is not fully voluntary. Networks play a significant role in refugees' life in Turkey and the decision to leave Turkey (Kaya, 2016). Networks are at work throughout the process of migration, from coping with difficulties in daily life to accessing smugglers, getting prepared to leave Turkey and benefitting from family reunification. However, network theory falls short of explaining the driving mechanism of movement, as explained before. Networks' roles will be evaluated in the analysis, but this thesis will look at the structural legal context within which these networks operate. Furthermore, it is not ignored that having migrants' perspective to verify structuralist arguments and understanding its agency through migrants' interaction with macro factors is crucially important for such a study to avoid from the criticisms directed to structuralism. Because of the reasons explained in the methodology, such an analysis is lacking in this study.

CHAPTER 3

GRAY ZONE

"*When we were on our way, we went through a tragedy worse than the war itself, that of being a refugee: that of going through dangerous stages and not finding a country to welcome you*." Syrian man traveling with his wife and 6-year-old son

(MSF, 2015, p.15)

This chapter aims to explain the harsh conditions that refugees face on the way to Europe- to show it is not an easy decision of 'going to richer country' but risking everything including bare life. Talking about the 'journey' of refugees, it is crucial to understand the nature of the refuge. This perilous journey is also what this thesis problematizes. Refugees' arrival to Turkey and the conditions in Turkey are discussed in different chapters. This chapter will try to understand the question "what does it mean to reach Northern Europe from Turkey?" "Why the road is so perilous" "how the migration legal framework in Europe and in Turkey fail to protect those on the route".

The first part of the chapter will focus on the pressure created for refugees as a result of the EU-Turkey deal which came into force in 2016 and aims to curb the illegal migration by sending irregular migrants arriving at Greek Islands back to Turkey and in exchange, giving Turkey financial sources, visa-free travel to Europe and accepting another refugee for every returned one (Euronews, 2016; Kingsley, 2016) . The second part will answer how legal ways to travel are barred by laws and how refugees are forced to pursue illegal means - in other words, how the journey and refugees are criminalized. The third part will analyze the direct result of this

criminalization, namely the torturous and perilous journey, and how this already extremely hard journey is further jeopardized by incompatible and unpredictable border policies Based on Richmond's theorization structural constraints, enabling circumstances and the system feedback will be analyzed. All in all, the chapter will provide an overview of the legal barriers to a safe journey, the situation of the refugee route, what a refugee has to face to reach safety, and the threats to life that are created by the inconsistency of laws and policies.

## 3.1. EU- Turkey deal

Before discussing the tragedy and lack of protection along the route, one of the main drivers of migration should be explained – namely the EU-Turkey readmission deal, which created a time pressure for refugees. On March 18th, 2016 EU leaders met with their Turkish counterparts in Brussels to sign the deal. Two days later the EU-Turkey readmission deal came into force. The deal aimed to prevent irregular border crossings from Turkey to the Greek islands (European Commission, 2016). Despite the application and failure falls out of the temporal scope of this research and does not cover refugee movement in 2015, the deal is of crucial importance for the purposes of this research. First of all, the negotiations regarding the deal and the crux of the deal, sending Syrians back to Turkey, were public and took place within the time scope of this thesis. Secondly, criticisms towards the deal are essential to understanding and portraying why refugees were trying to leave before the deal was implemented

The negotiations over and main articles of the EU-Turkey deal were public long before it was signed on 18 March 2016. It was agreed that inadmissible irregular migrants and asylum seekers would be returned to Turkey as of March 2016. For

every Syrian being returned from the Greek islands back to Turkey, another Syrian will be resettled to the EU. Turkey will increase measures prevent irregular migration. In exchange of this, the EU will give €3 billion to Turkey by the end of 2018 and the visa liberalization process between Turkey and the EU will be accelerated with a view to lifting restrictions by the end of June 2016 at the latest (European Commission, 2016).

The deal has been criticized by many actors on different grounds. First of all, it is in contradiction with the European Convention on Human Rights, which prohibits collective expulsion of aliens in Article 4 of Protocol no. 4, in accordance with the definition of collective expulsion adopted by the European Court of Human Rights: "any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group" (European Court of Human Rights, 2017). In sending Syrians back to Turkey without individual case assessments, the deal represents an example of mass expulsion. After the deal was signed a prominent INGO, Doctors Without Borders, ceased its work in Moira camp, saying that "EU-Turkey deal turns reception centers into expulsion centers" (Euronews, 2016).

Secondly, Turkey cannot be accepted as a third safe country or safe first country of asylum, since Turkey has a geographical limitation to the Geneva Convention and therefore does not provide refugee status to Syrians. Furthermore, various rights violations are common. INGOs working in Turkey also claim that Turkey is sending Syrians back to Syria (Euronews, 2016). Additionally, Human Rights Watch says Turkey's borders with Syria have been closed since March 2015 and that Turkey violently pushes back women, men and children who try to cross the

border. Consequently, sending Syrians back to Turkey contradicts another principle –
the principle of non-refoulement, which prohibits all measures as "rejection at the
frontier, return or expulsion which would result in compelling him to return to or
remain in a territory if there is a well-founded fear of persecution" (Geneva
Convention, 1951, Art. 33). Furthermore, being in Turkey does not provide enough
protection, since it is very hard to access education, healthcare, and work permits
(Human Rights Watch, 2016).

Thirdly, the deal has potential to make refugees seek different routes, for
example via the Black Sea, Bulgaria and Italy, which are more dangerous (Kingsley,
2016). Only those crossing Mediterranean and reaching the Greek islands were
covered by the deal. By taking a longer and more treacherous journey, Syrians would
bypass it.

The deal, and especially the visa liberalization provision, was portrayed as a
massive bureaucratic victory by the Turkish government and the mainstream media
(A Haber, 2016; Anadolu Ajansı, 2015; Türkiye Gazetesi, 2016). Journalists and
politicians were racing to give the exact date of visa-free entry to Europe. Soon, it
turned out that it was unlikely for Turkey in 2016.

The deal created the impression that going to Europe would not be possible
for Syrians after the deal was signed. Thus the deal provided kind of a deadline for
refugees. An expectation that migration policies will be tightened creates an
intertemporal substitution effect on migration, according to Czaika and de Haas, who
define this as "now or never" migration (Czaika & De Haas, 2015). Refugees who
thought they had no chance with the resettlement programs or do not want to spend
several years in a legal limbo in Turkey waiting to be resettled had to go to Europe as
soon as possible.

In addition to the insecurities and uncertainties in Turkey and generous legal frameworks in Sweden and Germany, another important factor in refugees' decision to follow this perilous route was the EU-Turkey deal. After the deal signed refugees would not get anything – even if they took all the risks and faced hardship along the way. Consequently, the deal was increasing the 'grayness' of the route. As Syrians in Turkey were expecting the situation to deteriorate after the deal signed and trying to leave before, they qualify the anticipatory refugee defined by Kunz. Instead of a precipitating event that is starting the flow, the possibility of deterioration of conditions was the prominent factor. The deal, on the other hand, was expected to create a structural constraint since it had the power to curb the migration flow. This curbing attempt, the deal, was also a result of the high numbers of refugees crossing the Mediterranean irregularly. That is why, it is not only a structural constraint but also a system feedback.

## 3.2. Legal barriers to legal travel

It is not only the pushing and pulling factors created by the nation-state laws that shape refugee movement. A gray zone is formed by international laws creating structural constraints, forcing millions of people to pay smugglers and pursue perilous journeys. The Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 is one such vulnerability-producing law.

The Directive aims at "curbing migratory flows and combating illegal immigration effectively" (Art. 2) through imposing obligations to "carriers transporting foreign nationals into the territory of the Member States" (Art. 1) and harmonizing already existing financial penalties to carrier companies in the event

that they fail to fulfill this obligation. The financial penalties suggested by the Directive are extremely high; for each person carried, the minimum penalty cannot be less than EUR 3000 and the maximum penalty cannot be less than EUR 5000. Additionally, irrespective of the number of people carried, the maximum lump sum penalty for each infringement cannot be less than EUR 500,000 (Article 4). Furthermore, the sanctions are not limited to financial fines. Member states are allowed take other measures such as "immobilization, seizure, and confiscation of the means of transport, or temporary suspension or withdrawal of the operating license" (Art. 5).

As already stipulated by Article 26 (1)(a) of the Convention Implementing the Schengen Agreement, companies are responsible for returning third-country nationals who have been refused entry into their country of destination, in addition to returning passengers who were in transit if the carrier that was supposed to take them to their country of destination refused to take them, or if the authorities of the country of destination refused them entry (Article 2a, 2b). If the carrier company is not able to return the third country national immediately, then it has "to assume responsibility for the costs of the stay and return of the third-country national in question" (Article 3).

The Directive has been criticized heavily for various reasons. First of all, unlike the proposed drafts during the legislation process, there is no clear reference to the situation of asylum-seekers. Article 4(2) vaguely implies that the Directive should not be a barrier for international protection: "Paragraph 1 is without prejudice to Member States' obligations in cases where a third country national seeks international protection". Peers says that the "replacement of an enforceable asylum

exception with the fuzzy ambiguity of the Article 4(2)" is the biggest disappointment about the directive (Scholten, 2015, p.105).

Furthermore, carrier companies' staff are expected to take on responsibilities that police or other officers hold. However, as underlined by the European Parliament rapporteur, such staff will not have the same qualifications and experience as police. Since the Directive does not clearly state what is expected from carrier companies in checking documents, it creates another ambiguity (European Parliament, 2001).

Additionally, the article about "taking charge" of inadmissible passengers is extremely problematic since it opens up the possibility of detaining such passengers. The EP rapporteur says this obligation "would not only exceed the possibilities of the carrier but would also be contrary to the law since the words "take charge" seemed to mean some kind of detention"  (Scholten, 2015, p.99). Statewatch, on the other hand, underlines the fact that it would be difficult for passengers to challenge the acts and human rights violations of carrier companies (Scholten, 2015, p.105).

The Directive itself does not resemble a barrier for refugees' travel. In theory, a Syrian with a valid passport would take a plane and go to Sweden to claim asylum in Swedish territory. But the extreme financial fines and other possible sanctions make carrier companies' non-specialized staff refuse anybody without proper documentation, in order to avoid the risk. In the other words, indirectly, refugees are denied any kind of legal and safe travel via planes, buses, and ferries. Consequently, they are forced to make the illegal and extremely dangerous journey that will be explained in the following sub-chapter. But before discussing this perilous journey, it is essential to evaluate the Dublin III regulation as the accelerating factor of illegality.

The regulation, which came into force in 2013, is a technical document that determines which EU member state is responsible for the examination of an international protection claim. It lays out four main criteria: (1) Family Unity, under which the applicant may seek asylum from a country in which his family members have sought or already been granted protection; (2) Place of Legal Residence, under which applicants with valid or recently expired residence documents may apply for asylum in the country that issued the document; (3) Place of Entry, under which applicants who have irregularly entered a country must apply for asylum in the first country of arrival; (4) Place of Application, under which, if no other criterion is available, then the country in which that applicant filed for asylum examines the case (Alliance des Avocats pour les droits de l'Homme, 2016).

In order to avoid the third criteria and apply for asylum in a country of their own choosing, refugees must not be registered in any country on their way. For those going to a state that has suspended the regulation for a limited time and is not sending refugees back to the initial country of arrival, the third criterion is still hazardous. Any state on the route before the planned destination country, if it does not want to be a corridor country, would apply the Place of Entry criterion and push back refugees from its borders. As it will be explained in this chapter, it is not an uncommon situation. When a state chooses this policy, a refugee has two options: changing direction towards a less strict country, or crossing a border illegally. Both options increase the risks and vulnerability.

The discussion above showed that a refugee cannot take a plane to Berlin from Istanbul or a ferry from Izmir to Athens. Despite the fact that once they reach Germany or Sweden they will be provided with protection, they are not protected on the way. As the legal ways are closed to refugees, they have to follow illegal ways to

reach Europe. The following section will discuss how these legal barriers reflect the experiences of refugees and how they are trapped by inconsistent policies.

### 3.3. The trapping route

I have prepared the Figure 3 to visualize the route that refugees follow. Dikili-Izmir is the main point of departure for many who want to try their chances at sea instead of walking through Bulgaria. This route originates in Turkey and crosses the
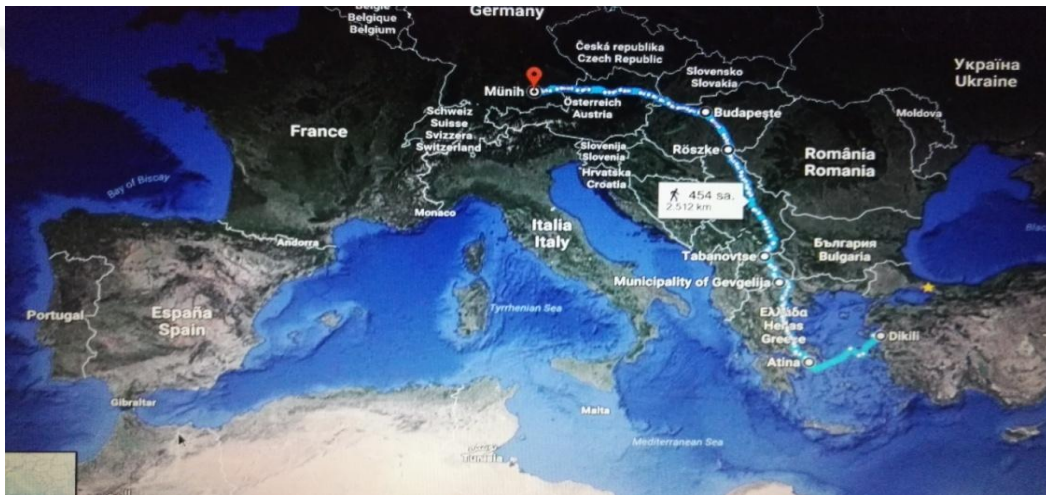


Figure 3. The route through Hungary

Mediterranean to Western Europe. It is one of the most popular routes among many others. It continues through the Greek islands, Macedonia, Serbia, Hungary, Austria, and for many it ends in Germany or Sweden. Every step of this route is full of threats and suffering for those who take it.

### 3.3.1. Turkey & the Aegean (Eastern Mediterranean Route)

The Eastern Mediterranean route from Turkey to Europe is the route that the majority of refugees have taken. Despite the fact that it is shorter than the Central

Mediterranean route, it is still extremely dangerous. Half of the migrants who died in 2015 died in Mediterranean. Why is it so dangerous? It is necessary to contextualize the dangers by explaining the context of departure.

In 2012, Greece erected a fence at its border with Turkey, and in 2013 Bulgaria did the same. These fences left the sea as the only non-fenced border to Europe. In Istanbul, in the neighborhoods in which Syrians are concentrated – such as Aksaray and Fatih – smugglers are everywhere. A journalist who disguised himself as a Syrian refugee wanting to cross the border reported that he found a smuggler in 10 minutes and got a Norwegian passport in two days. He also found out that there is a relatively flexible price-tariff based on destination country; Bulgaria: 1800 euros; the Greek islands: 1250-2000 euros; Italy: 4500 euros; Germany: 8000 euros; Scandinavia: 12000 euros; the USA: 200000 USD; Canada: 15000 USD; Australia: 150000 USD (Dinç, 2015). Many Syrians are working in inhumane conditions to collect the money for travel (Girit, 2015). Considering the fact that, they are often not paid and must also pay high rents, collecting enough money for all members of a family to travel is extremely challenging.

Most of the Syrians travel to western coastal cities of Turkey. Izmir is one of the hubs for smugglers and for those who decide to cross the Aegean Sea to reach Europe. They are not welcomed at their departure point. Since affordable hotels are full, many Syrians in spend nights in the parks of Izmir. Imams started to lock the doors of mosques to prevent Syrians from using toilets, and the governor of the city announced his plans to "deport those involved in human smuggling", adding that "Izmir is not a city of tents" (Ulu, 2015). In these coastal cities, there is an expanding "refugee market" ranging from plastic boat industry to human smugglers. This informal market itself is full of mortal threats for refugees. For instance, fake life

jackets filled with a sponge that absorbs water and drowns the wearer were produced in underground workshops by young Syrian girls who were employed informally (Aljazeera, 2016).

Various accounts state that going to the Greek islands from Izmir costs about 1000 euros (Montgomery, 2015; Ulu, 2015). A boat full of refugees means approximately 50,000-60,000 euros for smugglers, which makes it a very profitable business.

The journey to Greek shores can take 45 minutes to a few hours. But before the passengers arrive, many of them face the risk of drowning. The risk of shipwreck is very high since the majority of refugees embark on the journey using inflatable Zodiacs or wooden fishing boats. Very often smugglers do not take the journey and leave refugees with no experience alone on board and without any navigation equipment.

Despite all the money involved, finding a 'reliable' smuggler is also not an easy task. NGO workers in the field are not unfamiliar with stories of women who received promises from smugglers that they would get them across the sea in exchange for sex, only to disappear and leave the woman with a high chance of being thrown into the sea (Sağnıç, 2016). There are newspaper stories of refugees who were told by smugglers that they arrived in Greece but soon found out that the smugglers had left them on a mountain in Turkey (T24, 2013).

Technical and natural problems are not the only dangers refugees face. Médecins Sans Frontiéres (MSF) teams in Lesvos and Kos report that many refugees recount that they were robbed by masked groups in the sea and that even bigger dinghies tried to sink them by piercing holes in the refugees' vessels with long sticks. Some refugees claim that it is the Greek Coast Guard who tried to sink them. Some

video recordings and news reports also support these claims of refugees (Squires, 2015).

What happens if refugees fail to cross the sea? Most of them try again, but that is not the case for many people, since they may have lost all their money and/or their loved ones. In order to understand and discuss what refugees are risking and what they face as a result of the lack of legal routes, it is important to underline the tragedy of it.

3.3.2. Greece

If they manage to cross the sea, or, in other words, if they survive the fake life jackets, smugglers, flimsy boats, criminal gangs and sticks of coastguards, many refugees travel to Kos, Chios, Samos or Lesbos. Among these small islands, only Lesvos and Samos have reception facilities, and these have poor and insufficient reception conditions.

Families and single men are subject to different procedures in Lesvos. Before they depart from the port of Mytilini to reach Athens Syrian families register in Kara Tepe camp. In this camp, basic shelter is provided. Single Syrian men register at Moria Camp it is reported almost no assistance is provided (MSF, 2015,p.32). Common problems are dehydration, sun strokes, illnesses related to the time spent at the sea, and car crashes (Montgomery, 2015). If they overcome these troubles after registration, Syrians receive a temporary visa, which enables them to continue on their route. This departure is not free from violence, however. Volunteers and local bloggers note atrocities and humiliations at the port, relying refugees' own words:

> I want to ask you what we can do. In the morning an officer came on a motorbike. He parked and came over to the place we were sleeping on the street. Then he kicked this 16-year-old who is traveling alone twice and

shouted 'stand up'. We are no animals! If we had more time we would go to report this at the police station. We are not afraid, we have honor. We want you to publish this somewhere. The number of the motorbike was MTZ 415. It was around 5:30 in the morning of Sunday 2.8.15. Thank you(Infomobile, 2015).

In the other islands, such as Kos, the situation is worse, since there are no reception centers. In Kos, this lack is aggravated by the municipality's policy of not allowing NGOs to provide assistance. Additionally, refugees are not provided with basic information about the relevant procedures (MSF, 2015, pp.28-29). MSF notes: "The slow access to registration, the absence of information provided by the police or FRONTEX, and the lack of crowd control have given rise to chaotic situations" (MSF, 2015, p.29).

### 3.3.3. Western Balkan route

In 2012, EU visa restrictions on Albania, Bosnia and Herzegovina, Montenegro, Serbia and the Former Yugoslav Republic of Macedonia (FYROM) were relaxed. This eased the border-crossing from these states to Western Europe (European Parliamentary Research Service Blog, 2016).

However, it was not until 2015 that the Western Balkans became a major refugee corridor (see figure 4). As shown in the Figure 4, in 2015 there were 17 times more refugees than in 2014. In 2015 the number of refugees increased more 17 times.

The so-called Western-Balkans corridor is not a fixed route. Refugee movement changes direction according to the policies of the nation states along the route. When one state closes its borders the refugees walk through another one (see figure 1). For the scope of this research, the conditions along the route that includes 6 countries will be discussed
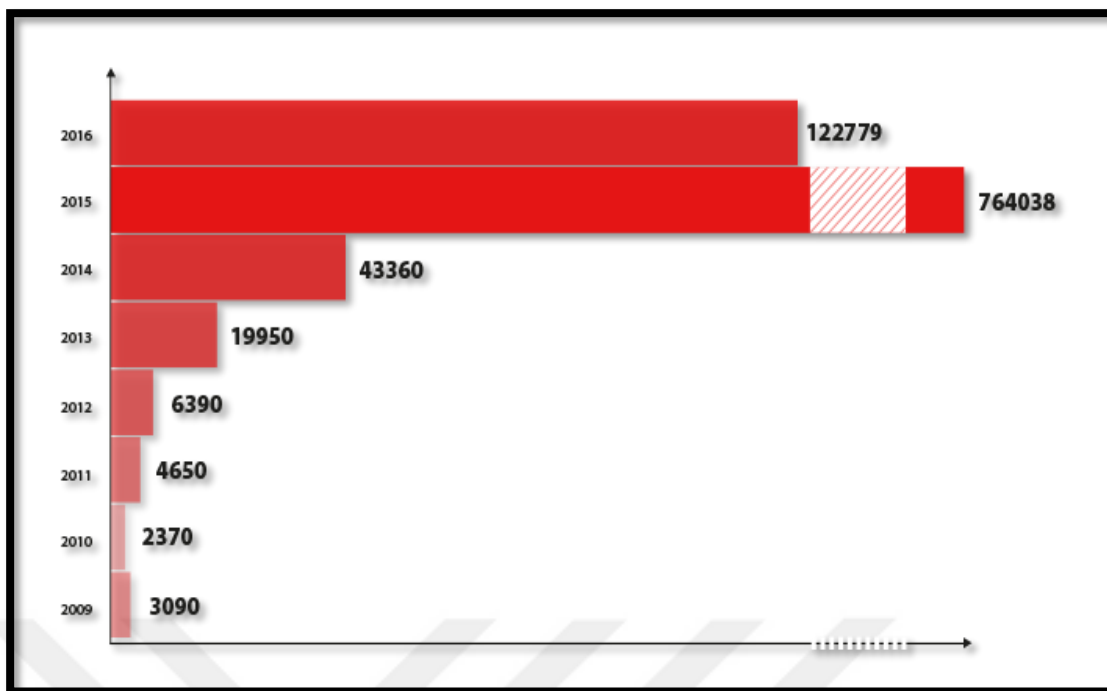
Figure 4. Illegal border crossings on the Western Balkans route in numbers

Source: Frontex, 2016

First of all, it should be noted that despite the fact that many refugees did not seek asylum in these Balkan states (in the other words, they were only 'transit' states), they created many barriers for refugees who were trying to reach Western European countries that opened their borders to welcome refugees. Why? Because these Western Balkan states feared the possibility that the destination countries (Germany and Sweden in this case) would close their borders without prior notice and that they would then be left to carry the burden of refugees already on their territory (Šabić & Borić, 2016, p.17). The policies and legislations that are discussed below should be analyzed with this fear in mind.

FYROM is the main corridor for people traveling from Greece to Serbia, with 214,343 people registered as having passed through the country between 19 June and 5 November 2015. People follow rail tracks and mountain routes to navigate and

cross the border. UNHCR defines the situation of these people as "worrying" since many of them are exposed to train accidents, challenging natural elements, criminal groups, and smugglers (UNHCR, 2015).

With the support and encouragement of the UNHCR and in response to the severe conditions that refugees are traveling through, FYROM changed its asylum law on 16 June 2015. According to the new legislation, people registering their intention to apply for asylum could remain on Macedonian territory for three days and cross the country (MSF, 2015, p.41).

In Serbia, a similar system was already in place: registration papers valid for 72 hours enabled refugees to travel from Serbia's border with FYROM to its border with Croatia. As of 11 November, 404,022 migrants and refugees had entered Serbia in 2015, which represented about 6,343 people arriving per day in early November (MSF, 2015, p.40).

On 20 August 2015, FYROM closed its borders with Greece and declared a state of emergency. After three days of violent clashes between police and refugees, the border was re-opened.

For refugees who come to Serbia from FYROM, there are two points of entry: Tabanovce and Miratovac. An ordinary route from Miratovac is as follows. They would travel to Presevo by foot, minivan, or bus. Then they would either go to Belgrade by train (11 hours/10 euros) or bus (5 hours/25 euros) or alternatively to Sid – on the Croatian border - by train (12 hours/12 euros) or bus (6 hours/20-30 euros). However, in order to get a bus refugees have to be registered. Otherwise, they must use illegal taxis, which cost 1,000 euros (Šabić & Borić, 2016, p.10). Before November 3, refugees had to walk across the border, but after this date, a free train

was organized by Sid and Slavonski Brod, Croatia (Šabić & Borić, 2016, p.10) which constitutes an enabling condition for refugees.

The Hungarian-Serbian border is one of the three main entry points into the EU. As of mid-September 2015, 170,000 asylum-seekers were registered (Hungarian Helsinki Committee, 2015, p.1). According to Hungarian law, asylum-seekers are transferred to the open holding centers. Since holding centers were open, refugees were able to easily leave and continue on their way.

In July 2015, Hungary started to construct a fence on the border with Serbia, and in September it was completed (Hungarian Helsinki Committee, 2015, p.1). In addition to the physical barriers, changes in legislation created further threats for refugees.

In one case, Serbia was accepted as a safe third country, in the other words a state in which the life and liberties of asylum-seekers are not threatened, the principle of non-refoulement is respected, and the asylum-seeker has a chance to request refugee status (European Commission, 2005). However, UNHCR and the Hungarian Supreme Court do not agree with the Hungarian government's designation of Serbia as a safe third country (Hungarian Helsinki Committee, 2015, p.1). This legislation resulted in the acceleration of asylum proceedings and "the quasi-automatic rejection at first glance of over 99% of asylum claims" registered (Hungarian Helsinki Committee, 2015, p.1). Judicial review of asylum decisions became almost impossible due to the short deadlines for appealing. The Office of Immigration and Nationality (OIN) got the power to oblige asylum-seekers to contact their country of origin about the asylum procedure - completely contrary to the logic of asylum-seeking. This law also allowed the creation of "transit-zones" to receive asylum applications and conduct the relevant procedures. On 15 September, two transit

zones started to operate between the Serbian and Hungarian border, and on the same day, the border was closed (Hungarian Helsinki Committee, 2015, p.2). The government also introduced legislation making it a felony to climb, breach or damage the fence, and announced it would arrest people who crossed the border irregularly (Hungarian Helsinki Committee, 2015, p.2).

Once such conditions were in place in Hungary, the flow of refugees and migrants went exclusively through Croatia (Šabić & Borić, 2016, p.9). Between 16 September and 10 November, 354,446 migrants and refugees were registered as having passed through the country. Then on 16 September, one month after the closure of the Serbian border, the Hungarian government closed its borders with Croatia. Refugees were left with two options: following the route through Slovenia, or staying in Slovenia. The Slovenian government set a quota of 2500 entries per day and therefore created another bottleneck. Less than a month later, on 11 November, Slovenia decided to build a fence on its border with Croatia (Šabić & Borić, 2016, p.9).

As noted above, in November 2015 a train service was put in place to transport refugees from Sid, Serbia, directly to the reception center in Slavonski Brod (Croatia, and from there to Dobova-Slovenia). From Dobova, people were transferred to centers near the Austrian border and eventually made their way to their final destinations in Europe (MSF, 2015, p.42).

In order to show the inconsistency of policies, it is important to note the fact that this relatively positive trend did not cover refugees from all nationalities. In mid-November 2015, a week after the decision to build a fence on the border with Slovenia was taken, Slovenia, Croatia, Serbia and the FYROM decided without any prior notice to only allow people who had registered as being from Syria,

Afghanistan, and Iraq. Thousands of refugees from different nationalities were stuck in legal limbo (Hungarian Helsinki Committee, 2015, p.6). They were in border towns without any shelter or assistance. Though important, this issue will not be discussed in this thesis.

The main threats that an ordinary refugee departing from Turkey will face on the way to Germany have been evaluated above. People who are indirectly forced by the conditions in Turkey have to survive harsh weather and natural conditions; a journey of thousands of kilometers on foot, swimming or riding; vigil groups and attacks, sometimes coming from a tripping journalist (The Guardian, 2016); robbery and sexual attacks. Furthermore, irregular border-crossings also create a system feedback which many times revealed itself as rapidly changing border policies; possible detention at borders and transit zones; puzzling legislations in foreign languages; rapid asylum case evaluations; push backs and lots of uncertainty, anxiety and trauma. Understanding the refuge and the problems of the refugee regime starts with unpacking the refugee experience. The thought, mostly cited by nationalist and rightist groups, that "they are coming for money", "they are economic migrants" or "they are opportunistic people looking for better living conditions" worsens the situation. It is not an easy decision to go to a richer country, but a constant life-and-death battle, most of the time also involving risks for those who matter most to you.

During the route from Turkey to Germany there is a lack of proper protection for refugees. Making this journey illegal, forces people to use informal channels. Far from state control and protection, this informality kills many people. Those who survive and cross the sea or a border are tolerated, but sometimes all of a sudden a state decides to end this tolerance and push people back. In the route evaluated in this chapter, it is clear that the policy of increasing structural constraints as wall and

fence-building create a domino effect: a high number of refugees move to another state, which in turn feels obliged to close its borders in order to control the flow. In the end, the whole system trips refugees in various ways.

CHAPTER 4

TURKEY

Currently, there are approximately 3 million Syrian refugees in Turkey. Every day hundreds of them try to reach Europe through illegal and perilous ways. In the meantime, the governments of European states and Turkey make agreements and regulations to stop the refugee movement towards Europe. Turkey, on the other hand, revises and improves its legislation on migration, establishes new institutions and spends increasing sums. Why are some of the refugees still desperately trying to reach Europe despite all these efforts? This chapter examines the role of Turkish law in this influx and asks: How do the policies and laws of Turkey trigger the flow of refugees and shape their course? It argues that Turkish law puts Syrian refugees in legal limbo and creates uncertainty. The current situation of refugees in Turkey should be put into historical context in order to understand and analyze it accurately. This chapter will, therefore, elaborate the general immigration history of Turkey, starting from the late Ottoman Empire to the period before the Syrian influx, from a legal perspective. It will show continuities and ruptures in the legal framework and Turkey's logic on migration management. In the light of this evidence, the chapter will discuss the rights and opportunities provided by the laws in order to analyze the pushing and predisposing factors.

4.1. Migration history

The multi-ethnic and multi-religious Ottoman Empire was shaken by nationalist waves coming from Balkans. These included the 1804 Serbian uprising followed by the Greek and the Morea peninsula rebellions and many other disturbances from

ethnic groups (Hecker, 2006, p. 2). Istanbul and Eastern Thrace were the only European domains of the Empire on the eve of the First World War. Subsequently, nation-building processes began both in Anatolia (during in the rule of the late Ottoman Empire and in the Republic of Turkey) and in the Balkans. These nation-building processes included forced migration and population exchanges between states, as well as instances of ethnic cleansing. The deportation and mass killings of the Armenian population between 1915 and 1916 and the Greek Orthodox Christians' flight after the victory of the Turkish army against the Greek army in 1922 are the main emigration movements just prior to the establishment of the new republic (Hecker, 2006, p. 2).

During the republican period, wartime population movements continued in a relatively settled way. The international recognition of the republic came with the Lausanne Treaty in 1924. This treaty also included a population exchange between Greece and Turkey. Ethnic Turks and ethnic Greeks were supposed to be exchanged, but in fact, all Muslims on Greek territory was accepted as Turkish and all Christians on Turkish territory were accepted as Greek. Consequently, the criterion was religious rather than ethnic (Korfalı, Üstübici, & De Clerck, 2010, p. 22).

Other Balkan states were also eager to send their Muslim populations to Turkey. The heir of an empire in the age of nation-states, Turkey was trying to build a nation. Furthermore, it had to overcome the problem of population losses due to long-lasting wars. Consequently, it also welcomed the arrival of the Muslim populations from the Balkans. Thus, friendship agreements with Bulgaria in 1925, Greece in 1930, and Romania in 1936 and Yugoslavia in 1950 included provisions on population exchanges (Korfalı, Üstübici, & De Clerck, 2010, pp. 22-23).

The Settlement Law of 1934 drew the legal framework of migration waves coming from the Balkans and laid the foundations of Turkish migration policy. The law states that:

Based on the map that will be prepared by the Internal Affairs Ministry and approved by the Council of Ministers, Turkey is divided into three groups in terms of settlement.

> Zone 1: Areas in which intensification of Turkish culture is desired.
> Zone 2: Areas that are reserved for the settlement of populations that are deemed to be assimilated into Turkish culture.
> Zone 3: Areas where settlement is prohibited owing to reasons related to health, the economy, culture, politics, the military and security.[1] (Settlement Law, 1934, Art. 2)

As it can be seen in this law, internal and international migration used as a tool for nation building. The law, as a reflection of the official ideology, also emphasized ethnicity in the stratification of immigrants. This constitutes a significant example of legality- migration relationship through categorizations. The law constructs a new category between migrant and citizen: *muhacir*. This is the most advantageous group of immigrants. They are people of Turkish descent or those who come either as an individual to settle in Turkey or who make their application as part of a group and share Turkish culture (Settlement Law, 1934, Art. 3). The Council of Ministers deems who is connected to Turkish culture and who is not. Article 4 of the law states that those who are not connected to Turkish culture, as well as anarchists, spies, and nomadic Gypsies, would not be considered *muhacir* (Settlement Law, 1934, Art. 4). Unlike other groups of immigrants, *muhacir* are immediately

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1 This part is omitted in the current official version of the 1934 Law, however it exists in the original and there are many studies on the nature and implications of this law.

naturalized. Refugees are defined as those who came to Turkey not by intention to settle but out of necessity (Settlement Law, 1934, Art. 3). Refugees and *muhacir* are settled by the government through the allocation of a home or land to build a home; artisans and merchants will receive a shop or store or capital to buy one; and livestock, seed and agricultural equipment and land will be given to farmers (Settlement Law, 1934, Art.17). In zones one and two, all moveable and immoveable property given to refugees is free of charge (Settlement Law, 1934, Art. 39).

In the 1950 Passport Law, the differentiation between *muhacir,* refugee and other immigrants who come to Turkey to settle continued. Acceptance of refugees into Turkey, whether or not they have passports, depends on the decision of the Internal Affairs Ministry (Passport Law, 1950, Art. 4). Another regulation on refugees came in the Law Regarding the Settlement and Travel of Foreigners in 1950. Under this law, political refugees can settle only in places permitted by the Internal Affairs Ministry (Law Regarding the Settlement and Travel of Foreigners, 1950, Art. 17). It was a rupture from the 1934 law, which allowed refugees to stay in places where they had relatives and/or friends.

These limited references to refugees in Turkish law were changed by international developments. One of the devastating results of the Second World War was the emergence of massive waves of refugees. People were fleeing from war, international borders were changing, and regimes were forcing people to leave. In order to cope with this humanitarian crisis, states signed a convention in Geneva in 1951, known as the Geneva Convention. The convention gave a detailed definition of a refugee:

> As a result of events occurring before 1 January 1951 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

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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. (Geneva Convention, 1951, Art. 1-A- 2)

Soon it was recognized that the refugee problem was not a temporary one. A Euro-centric approach and the time limitation in the 1951 definition wanted "to make the status of refugee exceptional, so as to preclude overwhelming numbers" (Zolberg et al 1989, p. 25 quoted from Rogers & Copeland, 2006, p.203). However, it was not able to meet the needs when the phenomena of forced migration moved to other continents as well. In 1967, a new protocol was signed in New York to make the refugee definition universal by removing the temporal and geographical limitations.

Whilst most states acceded simultaneously to both the Geneva Convention and 1967 Protocol, they must still make a formal declaration regarding the geographical application under 1B (1) of the 1951 Convention (UNHCR, 2011, p. 8). Turkey took part in the preparation process of the 1951 Convention and is a party to the Convention and 1967 New York protocol. It adopted the protocol in May 1961 (Göç İdaresi Genel Müdürlüğü, 2015). However, it still retains a geographical limitation. Turkey is one of four countries that have such a limitation, together with the Republic of Congo, Princedom of Monaco, and Republic of Madagascar (Kirişçi & Karaca, 2015, p. 299).

## 4.2. Mass refugee influxes and Turkey

The Turkish migration legislation soon after the adoption of the New York Protocol was challenged by big waves of migration. After relatively smaller waves (Iranian refugees in 1979 and Afghan refugees 1982), the first big refugee wave started in 1989. It came from Bulgaria. The second big wave started before the end of the first

wave - Iraqi Kurdish refugees who were on the border with Turkey. Briefly analyzing these two waves and different sets of legislation will help us to understand the background of subsequent legislation and give an overview of the current situation of Syrian refugees.

In the 1980s, the Bulgarian state was in the Communist block while Turkey was an ally of the Western Block. The Bulgarian government found it hard to trust its Turkish ethnic minority (Şirin, 2014, pp. 359-360). The government was trying to assimilate the Turkish population. Forcing people to change their Turkish names to Bulgarian ones, banning them from speaking in Turkish in public, banning the circumcision of boys and Muslim funeral ceremonies were major examples of the harshening conditions for the Turkish and Muslim populations. These policies created unrest and resistance in Bulgaria. Many people died in violent protests against the Communist government. Thodor Zhirkov, the president of Bulgaria at the time, allowed and encouraged Turks to make "touristic visits" to Turkey (Şirin, 2014, pp. 359-360). Afterward, thousands of people applied to passport offices to go to Turkey. Police and soldiers forced many people to leave as well. In the summer of 1989, about 300,000 Bulgarian Turks and Pomaks (Muslim Slav) arrived in Turkey (Kirişçi & Karaca, 2015, p. 301). It was the biggest wave of migration since the Second World War (Şirin, 2014, p. 360). When the number of arrivals remained high, in August Turkey decided to apply visa protocols for those coming from Bulgaria. The Zhirkov government avoided describing the movement as migration or refuge. Instead, it defined those involved as "tourists" (Şirin, 2014, p. 10). Turkey, on the other hand, tried its best to bring international attention to the issue. Turgut Özal, the Turkish President at the time, declared that Turkey was ready to accept all the Turks from Bulgaria. The Settlement Law of 1934 was on the agenda again.

Several articles regarding the naturalization and free of charge distribution of properties were outlawed in the 1970s. Additional articles 33 and 34 re-implemented articles on naturalization and the state support for home and workplace credits. More than 240,000 Bulgarian refugees naturalized, and some of them went back to Bulgaria after the fall of communism (Kirişçi & Karaca, 2015, p. 303). Scholars describe the Turkish State's policy on the Bulgarian refugee issue as "generous and dynamic" (Kirişçi & Karaca, 2015; Şirin, 2014). However, another refugee wave did not receive a similar response.

On 16 March 1988, during the Iran-Iraq war, the then President Saddam Hussein's forces bombed Halabja city with a cocktail of chemical gasses that left 46 meters of smoke clouds behind. Thousands of civilian people died. It was the first chemical assault in world history. When the Al-Anfal Campaign escalated, those who were fleeing from the massacre came to the Turkish borders (Long, 2010, p. 21). However, Turkey refused to open its borders until the international pressure became overwhelming. Fifty thousand refugees entered after the borders opened, and they were settled in four camps (Ihlamur-Öner, 2013, p. 195).

After Hussein's defeat by the US-led coalition in February 1991, the Kurdish population in Iraq launched an uprising. The civilian population feared Hussein's reprisal. In three weeks 1.3 million people fled to Iran and 400,000 to Turkey. Turkey closed its borders and left the refugees stranded (Long, 2010). When half a million more Iraqi Kurds started to cross the Turkish border in April 1991 the problem grew, mostly because of the assimilationist position of the Turkish government towards the Kurdish population in Turkey (Long, 2010). The Turkish government was ignoring the existence of a Kurdish nation, and defining its people as "mountain Turks". It was also the period during which an armed conflict between

Kurdish groups and the state started. Consequently, accepting a big number of Kurdish refugees was regarded as a security threat. Despite the fact that criticisms from the West during the 1988 crisis put pressure on the government, Western states held back from going further in order to avoid losing a close ally, and UNHCR's efforts were ineffective. The government decided to close the border. In the meantime, refugees had already started to cross it. Many people had close relatives in Turkey, which increased the internal unrest. The refugee tragedy attracted international public attention and damaged Turkey's reputation (Kirişçi & Karaca, 2015). The chaotic situation was solved with the creation of a "safe zone". It was a relief *in situ* plan announced by the US President George H. W. Bush. According to this plan, coalition forces at the Turkish border entered Iraqi territory and created a buffer zone. In this zone, 20 camps were constructed and refugees who were trapped in the mountains were settled. In five weeks 460,000 people went back to Iraq; the rest, only 14,000, settled in a camp in Turkey in order to seek asylum in a third safe country (Kirişçi & Karaca, 2015, p. 305).

UNHCR was particularly worried about the border closing policy of Turkey, its de facto recognition by international powers and the secure zone concept. Turkey's attitude and the secure zone were preventing people from seeking asylum, and forcing them to stay in a country in which they were subject to state violence. The UNHCR Representative clearly stated that: "Cross-border operations must be seen as the antithesis of the first principle of admission. Programs designed to keep people in their country of origin are also programs designed to keep them out of a country of asylum" (UNHCR Archives Geneva, quoted from Long, 2010, p. 19). The spread of the application of secure zones and the accompanying logic, following the Turkey example, was possible, and it was also a big threat to human rights and

asylum rights. The so-called voluntary repatriation of Iraqi Kurds was completely in contradiction to the basic tenets of the non-refoulement principle. It was an example of prioritization of state sovereignty at the expense of human rights and protection (Long, 2010, p. 23).

The situation not only contradicted international law and norms; it was also against the domestic law of Turkey that was discussed above. Additionally, the government realized there was a lack of legislation on asylum matters (Long, 2010, p. 23). Consequently, in 1994 "the Procedures and Principles Applicable to Possible Population Movements and to Foreigners Reaching Turkish Borders with the Purpose of Seeking Asylum from Turkey or Requesting Residence Permits with a View to Seeking Asylum from a Third Country, either as Individuals or in Groups" were introduced.

The geographic limitation on the refugee definition was kept in the Regulation. Non-European aliens who fulfill the refugee criteria are defined as asylum seekers (Regulation, 1994, Art. 3). One of the most debated articles was Article 4, which states that foreigners who enter Turkey in illegal ways are required to apply to local Governorates with five days. It was a very short time period and those who fail to comply with this requirement were "liable to immediate deportation without any consideration of asylum claims" (Latif, 2002, p. 25). International organizations as the UNHCR, Amnesty International and the U.S. Committee for Refugees severely criticized this article. Finally, in 1999 the five-day limitation increased to ten days and in 2006 it increased to "a reasonable time period".

Regarding groups wishing to seek asylum in Turkey, the 1994 Regulation brought worse conditions than individual applications. According to Article 8 of the regulation, the primary aim in this kind of situation is to stop the group of asylum

seekers and prevent any border crossing. The article was the legalization of the Turkish government's attitude during the 1991 crisis. The following articles explain subsequent policy steps, which can be listed as the disarmament of asylum-seekers and refugees; the rally of refugees in front-line assembly areas; the transfer of refugees and asylum-seekers to camps inside Turkish territory; interviews with refugees and asylum seekers in their own language; their registration; the settlement of refugees and asylum-seekers; and distribution of identification cards by governorates. During the period in which refugees and asylum-seekers stay in Turkey, they work and study, and emergent treatments are paid for by the state (Regulation, 1994, Article 19 & Article 27). After the end of the war, asylum-seeker and refugee groups shall be removed to their state (Regulation, 1994, Art. 26). In 1994, not only was the situation of refugees and asylum-seekers elaborated by the government but also an additional article to the 1934 Settlement Law had been passed, and with it, the free distribution of homes, livestock, lands, and stores to *muhacir* ended. *Muhacir* had to pay remuneration for immovable property in 20 installments over 20 years starting from the fifth year of the settlement (Regulation, 1994, additional provision 2). It was not a big change but it symbolizes that privileges given to *muhacir* were decreased in parallel with the diminished demand for them.

4.3. Current situation

When the European Union's relations with Turkey improved in 2001 and negotiation talks started in 2004, Turkey started to revise its legislation to adopt the EU acquis. Asylum and migration legislation were also part of this process.

In 2006, a new settlement law was introduced to replace the previous 72-year-old law. The objective of this law was to update the old law according to current conditions. The term *Muhacir* was replaced with the term 'migrant' in this law. The emphasis on Turkish culture was kept. The law mainly focuses on the concept of migration and the naturalization of migrants. Criticisms of the previous law were leveled against the 2006 legislation too. The ethnic criteria for migrant status; the ambiguity of the definition and determination of Turkish ethnicity and culture; and the "objective of settlement in Turkey" clause (because the determination of objective is very hard) are several examples of parts of the law that remain problematic (Yılmaz, 2007, p. 263).

In 2013, new legislation was introduced - the Law on Foreigners and International Protection *(Yabancılar ve Uluslararası Koruma Kanunu*, known as LFIP). It is the most detailed and longest single law on foreigners. It has five parts. The first part focuses on purpose, scope, definitions and the non-refoulement principle. The second part unifies several previous legislations such as the Passport Law, Law on Residence and Travel of Foreigners, and the Regulation on Asylum. It deals with issues of entry into Turkey and visas, residence, stateless persons and removal. The subsequent part is on international protection. It was the first time that international protection was discussed in a law in detail. This part starts with definitions and categorizations of foreigners, then explains general procedures on protection. The rights and obligations of foreigners, as well as provisions on protection, are also included in this part. Because of the purpose and scope of this paper, this part will be analyzed in detail later. Part four is about notifications, data collection, and the harmonization of foreigners. The last part is particularly important because it established a directorate within the Ministry of Interior. The establishment

of the Directorate General of Migration as a permanent office has the potential to increase coordination among migration-related institutions that provide expertise and satisfy the need for trained staff.

International protection is defined as the status granted for refugee, conditional refugee and subsidiary protection (LFIP, 2014, Art. 3-r). Non-refoulement is accepted under its definition in Article 33 of the Geneva Convention:

No one within the scope of this of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a social group or political opinion.

However, according to Article 54, those whose demand for international protection is refused; are to be excluded from international protection or if the international protection status has ended or been canceled they are to be removed (LFIP, 2014, Art. 54-i). There are four core definitions/conceptualizations in the LFIP: refugee, conditional refugee, subsidiary protection, temporary protection.

The definition of the refugee has not changed in the LFIP (article 61). Despite the removal of the geographical limitation stated as the primary aim of the first National Action Plan in 2001 (National Action Plan, 2001, p. 446), the limitation has been retained because of the incomplete process of securing removal agreements with neighboring countries. For people coming from outside of European countries but who fulfill the refugee criteria, the "conditional refugee" status had been created (LFIP, 2014, Art. 62). Subsidiary protection is one of the most debated articles in the law. It includes people "who qualify neither as a refugee nor a conditional refugee" but who, if returned to their habitual residence, would

a) be sentenced to death or face execution;

b) face torture or inhuman or degrading treatment or punishment;

c) face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict.

However, it is not clear how these three conditions differ from the refugee criteria. International protection terminates if/when the beneficiary voluntarily re-avails himself of the protection in their country of citizenship, voluntarily regains citizenship or acquires a new nationality; but more importantly when he "would avail himself or herself of the protection of the country of citizenship as the circumstances on which the status had been granted no longer apply" (LFIP, 2014, Art. 85). Subsidiary protection shall be also terminated when conditions in the home country change (LFIP, 2014, Art. 85-3). Despite the fact that there are no clear criteria on how the conditions should be examined, it is stated in the article that the significant and permanent nature of circumstances shall be taken into account. Still, the article is far from giving details of how they will be taken into account.

The law gives a bundle of rights to the beneficiaries. They have right to access to primary and secondary education. Those who are not covered by any health insurance and do not have financial means to have any are insured and premiums are paid by the Directorate (LFIP, 2014, Art. 89-a). A conditional refugee or an applicant of conditional refugee status may apply for work permit six months after the international protection claim is lodged. The refugee or subsidiary protection beneficiary may work after the status is granted. The identity document of the refugee or subsidiary protection beneficiary can be substituted for a work permit too. However, access to the labor market will be restricted for the refugee or subsidiary protection beneficiary when the sector and market conditions necessitate. These

restrictions cannot be applied to those residing in Turkey for more than three years, those who are married to Turkish citizens, or those who have children with Turkish citizenship (LFIP, 2014, Art. 89-4).

Syrians in Turkey are also covered by the temporary protection. Temporary protection is defined in the LFIP: "Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection" (LFIP, 2014, Art. 91).

The details of temporary protection are stipulated in the Temporary Protection Regulation, as indicated in Article 91 of the LFIP. It was introduced on 22 October 2014. The main difference between the temporary protection and other types of international protection is the specification of a mass influx. Mass influx makes an individual examination for international protection impossible (Temporary Protection Regulation, 2014, Art. 3-j). Nevertheless, the temporary protection beneficiary does not directly acquire one of the international protection statuses that are defined in the LFIP. These people would not be punished for illegal entry or stay if they are identified by the competent authorities upon entry or if they apply to those authorities themselves within a reasonable time period unless an administrative fine is levied (Temporary Protection Regulation, 2014, Art. 4). The Regulation, just like the Law for which it provides a foundation, refers to the non-refoulement principle (Temporary Protection Regulation, 2014, Art. 6).

The Regulation provides many services. Foreigners may be provided with health, education, access to the labor market, social assistance, interpretation and similar services. Beneficiaries do not pay contribution fees to public hospitals. Second and third step health services are provided but their cost should not exceed

the budget determined by the Presidency of Social Security (Temporary Protection Regulation, 2014, Art. 27). Education is provided by the Ministry of National Education in line with the relevant legislation. Language education, vocational courses, training and hobby courses *may* be organized depending on demand (Temporary Protection Regulation, 2014, Art. 28). Temporary protection beneficiaries may apply for work permits but there are regional, sectoral and professional limitations and variations (Temporary Protection Regulation, 2014, Art. 29). For example, Syrians working in a certain workplace cannot exceed ten per cent of number of Turkish citizen workers (Çalışma ve Sosyal Güvenlik Bakanlığı, n.d., p.5)

In order to enjoy these services foreigners have certain obligations, such as to "reside in a province, temporary accommodation center or a certain place determined by the Directorate General"; provide up-to-date information on employment status, personal data, and properties. If they do not comply with these obligations their rights are restricted, except in the areas of education and emergent health services (Temporary Protection Regulation, 2014, Art. 35-2).

The transience of the stay in Turkey is emphasized in the regulation many times. The status does not offer any future. According to the Regulation, the temporary protection will be terminated by the decision of Council of Ministers. After such a decision there are three possibilities: all persons benefiting from the temporary protection could be returned to their countries; the Council could collectively grant international protection status or assess the applications of those who applied for protection; or beneficiaries could be allowed to stay in Turkey subject to conditions determined by the Law (Temporary Protection Regulation, 2014, Art. 11). Another article gives the impression that the first option is more

likely: "Voluntary repatriation would be encouraged by projects and programs, and the necessary facilitation shall be provided" (Temporary Protection Regulation, 2014, Art. 42).

If the beneficiaries do not want to leave Turkey after the termination of their status, it is very hard to apply for Turkish citizenship or a residence permit. The temporary protection identification document grants the right to stay in Turkey but it is not equivalent to a residence permit or document; it does not grant the right for transition to a long-term residence permit, does not entitle its holder to apply for Turkish citizenship, and it is not taken into account when calculating the total term of residence. Additionally, beneficiaries would not easily go another country to seek international protection, because travel or permanent departure to a third country is subject to the permission of the Directorate General. Additionally, international protection cannot be demanded by those covered by temporary protection (Temporary Protection Regulation, 2014, Provisional Article 1).

## 4.4. Syrians and Turkey

Kunz argues that, similarities between home and host countries are the most important factors for refugee resettlement expecting integration and harmonization to become easier as similarities increase (see the Theory Chapter for more detail). Whilst food, language, traditions, religion, and values are very similar between Turkey and Syria resettlement has not been as successful as Kunz would expect, if it was successful at all. Since the host-related factors, the similarities between two societies that are defined by Kunz, would not possibly create a push factor for Syrians, there must be a different and more powerful mechanism doing so.

When first groups of Syrians started to arrive in April 2011, the government

pursued an open border policy and started to establish camps for the refugees. This

policy and humanitarian rhetoric gained international appreciation. However, the

number of people fleeing Syria kept increasing and therefore so did those seeking

asylum in Turkey as shown in the Figure 5. In the meantime, the Turkish Minister of

Foreign Affairs at the time, Ahmet Davutoğlu, was claiming Bashar Assad and the

regime in Syria would be overthrown within weeks or months (NTV, 2012).

Consequently, the government was expecting Syrians to go back to Syria, at most,

within a year. With this expectation, government officials refused to give a legal

status to Syrians in Turkey until 2014. They were mostly defined as "guests" by

officials. In 2014, it became clear that the Syrian regime would not be toppled so

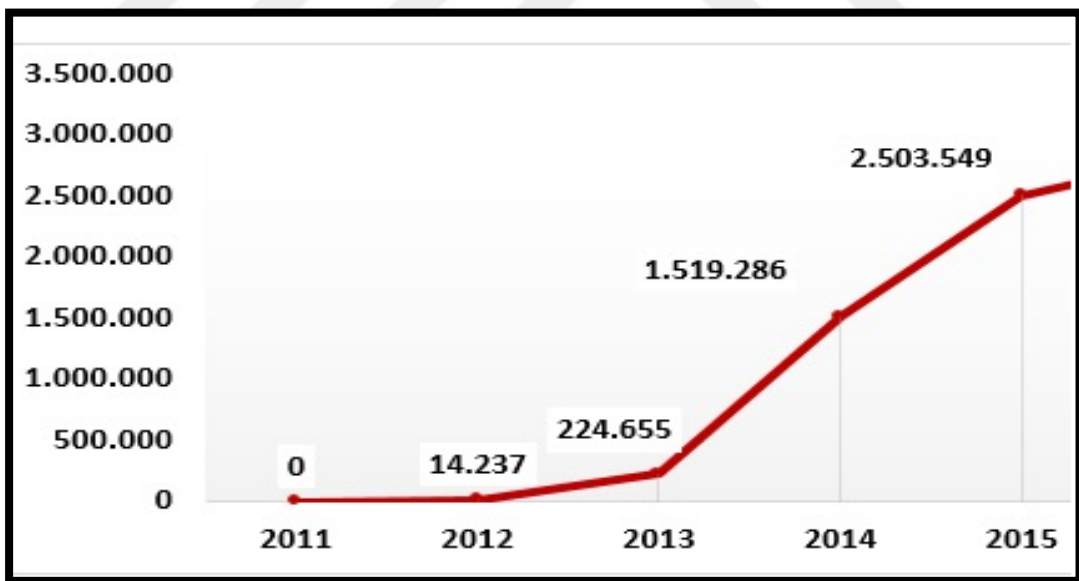soon and that the guests were not able to leave.



Figure 5.  Numbers of Syrians under temporary protection per year
Source: The Ministry of Interior, 2017.

The need to provide a legal status increased. As discussed above, the

Temporary Protection Regulation was passed with this aim and many previously

non-existing rights introduced and many positive steps have been taken.

However, rights are dependent on each other. Giving some basic rights but not others make it impossible to exercise any right. For example, giving the right to education without free access to language training is problematic since many children do not speak Turkish. Syrians did not have work permits until 2016 (Hürriyet, 2016). This made them work illegally, earning one-quarter of the salary that a local worker earns (Girit, 2015).

Since there is no protection mechanism against discrimination, landlords are charging more than normal rents. In the other words, Syrians earn minimum salaries and pay maximum rents. In order to pay rent and survive, almost all members of families have to work, including school-age children. Under these conditions, despite the fact Syrians have the right to access to the education, they are not able to access it due to the lack of implementation of other mechanisms and laws.

Another example is healthcare. Those covered by temporary protection have the right to access health care in the city that they are registered. If they go to another city they receive only emergency care. Even though Syrians know that they have this right, they are not able to use it for many reasons. There is a lack of information about city transportation, a lack of language skills and translators, and fear due to the discrimination and humiliation that Syrians face. Another very common problem is the fact that it takes several months to get identity cards for newborn babies, and if they need non-emergency treatment in the meantime they do not receive it (Sağnıç & Mackreath, 2017, pp.26-27).

In summary, the Turkish government for a long time neglected to provide a legal status and rights to Syrians. When it did, the status that it gave was just about being 'temporary', as the guest rhetoric emphasized. , the right bundle they have is putting them into a "guest room" (Göksel, 2016) no further. As discussed in the

theory chapter, under the push of the host contry, Turkey, Syrians have three options: trying to reach another country that offers more, staying in Turkey, and goingback to Syria. Despite the fact that, it is also important to analyze the two other options, this thesis will look at those who took the first option.

CHAPTER 5

SWEDEN

The previous chapters clarified the push factors and structural constraints in the

Syrians' movement from Turkey to the Northern European countries. The discussion

showed that the legal framework in Turkey, with its lacks and loop holes, creates

push factors. But the third chapter was already explained how the way to reach

Northern European countries is extremely hard and dangerous, in other words, the

structural constraints are high. The push factors of Turkey cannot be enough to

explain the migratory movement; as argued in the theoretical discussion. In order to

complete the picture, the pull factors will be addressed in the cases of Sweden and

Germany, the mostly targeted host countries. These pull factors will be analyzed

through the legal frameworks of these countries. This discussion will demonstrate the

interaction between push and pull factors and the importance of secondary factors of

migration.

The largest Nordic country, in terms of size and its population of nine

million, Sweden is known as one of the most immigrant-friendly states in Europe. It

is frequently referred to as the symbol of openness. As Fraser Nelson, Sweden-based

journalist, says: "Openness is the closest thing the Swedes have to a national

religion" (Nelson, 2015).

Sweden responded to the Syria crisis with its traditional welcoming attitude

by declaring that Syrians will be given permanent residency and they will be able to

bring their families. The Minister for Migration and Asylum in Sweden, then Tobias

Billstorm, said: "This decision (…) was built upon decade long praxis which is

invented in Sweden which says, from an integration point of view, it is important for

people to settle down" (Morris, 2013). As a result, the number of asylum applications increased unprecedently, and Sweden could not continue its generous policy for a long time.

This chapter will detail Swedish migration history and the general legal framework regarding asylum seekers and refugees, in order to create a background to understand this praxis. The impact on Syrian refugees will be discussed in light of this. This chapter will try to answer the question, "how did Sweden signallingSyrian refugees to undertake the perilous journey?" through analyzing the legal framework regarding asylum-seekers and Syrians in particular.

## 5.1. Migration history

Sweden was not always an immigration country. There are periods in Swedish migration history that marked by high rates of emigration as well. The official sources analyze Swedish migration history under five periods:

1.  The Great Emigration 1850- 1939

2.  Post-War Immigration 1940-1979

3.  Rise of Asylum Seekers 1980-1999

4.  Iraq War and EU migration 2000-2012

5.  Integration Issue 2013-2014 (Sweden, N/A)

There are different approaches to the migration history and so the periodization varies. The prominent scholar Charles Westin classifies immigrant and asylum-seeker receiving periods of Sweden as:

1) Refugees from neighboring countries (1938 to 1948)
2) Labor immigration from Finland and southern Europe (1949 to 1971)
3) Family reunification and refugees from developing countries (1972 to 1989)
4) Asylum seekers from southeastern and Eastern Europe (the 1990s) and the

free movement of EU citizens within the European Union (Westin, 2006, pp.2-3)

This chapter will employ the official periodization but analyze Westin's classification as well to discuss the different aspects of the migration history. The period between 1850 and 1939 is characterized by huge emigration waves. The rural population of Southern Sweden hit by several bad harvests (Westin, 2006, pp. 1-2). Poverty combined with religious persecution, political constraints created a lack of belief for future (Sweden, N/A). In the meantime, gold fever of America was spreading to the whole world as well as Sweden. These factors triggered huge emigration waves to North America until the 1930s. Some Swedes moved to Canada after settling in the Midwest United States. In this period, almost one-quarter of the population, about one-million people, emigrated. This emigration wave accepted as one of the most important marks on Sweden's cultural landscape (Sweden, N/A).

This trend continued until 1940, the Second World War, when refugees from Germany and other Nordic and Baltic countries started to arrive Sweden. Before the war erupted, however, Sweden hesitated to accept Jews who were fleeing from the Nazi regime. The main reasons for this attitude were, anti-Semitic, discriminatory ideology prevalent in Sweden that time, and Sweden's cautious policy to not to face problems with the Nazi Germany (Westin, 2006, pp. 2-3).

During the war, people who were fleeing different parties of the war sought asylum in Sweden. Despite the fact that the hesitant attitude continued for a while refugees were accepted and welcomed. The refugee existence was also useful for Sweden in order to fill the labor force gap that rose when most of Swedes went to war. Almost 30,000 survivors settled in Sweden between 1945 and 1948 (Westin, 2006, p.3)

The end of the war brought many immigrants who seek for job opportunities. By the end of the 1940s, Sweden started to recruit workers from less developed countries like many other European countries. However, unlike other European countries, Sweden did not apply "guest worker program" to these people but saw them as permanent and focused on their integration (Parusel, 2009, p.2). A developed resettlement program applied under the responsibility of the National Board of Labor in 1969 (Westin, 2006, p.4). Westin argues that this was not only a reflection of a humanitarian attitude but it was essential for generating the tax base required for the expansion of the public sector (Westin, 2006, p.4). Whatever the main reason was, foreign workers in Sweden's experiences were better than those in other countries.

In 1954, Sweden, Denmark, Norway, and Iceland formed the Nordic Council and introduced a common market among these four states. Finland joined the agreement later. Citizens' of Nordic Council members were able to enjoy the freedom of movement. Scholars underline the boosting impact of the foreign workers in this period (Parusel, 2009; Riniolo, 2016)

The attitudes and conditions of Sweden were so charming that, as addition to the recruitment program that the government continued together with the Swedish trade union confederation, people started to come by their own accord to find jobs (Westin, 2006, pp. 3-5). However, the end of the 1960s, LO (Swedish Trade Union Confederation) reacted to the entry of foreign workers underlining the decreasing salaries and difficulties in terms of protecting traditional industry (Riniolo, 2016, p.8). High immigration levels and this warning from LO made the government feel the need to control migration in the 1970s. Especially, workers were under strict regulations; they had to prove any employment offers, financial support, and housing arrangements to enter. In this time many workers returned to their countries. The best

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example of these returns is Finns, who went back to Finland in masses after the end of the economic boom. The labor recruitment program officially ended in 1972 for non-Nordic countries, 1973 oil crisis brought a certain end to the foreign labor (Parusel, 2009, p.2).

Asylum-seeker arrivals to Sweden started in the 1970s and picked in 1980s. The first non-European refugees one-thousand Ugandan Asians arrived in 1972; next year 5000 Chileans followed them after the coup against President Salvador Allende. Between 1973- 1989 numbers of Chileans in Sweden reached 18000. Additionally, 6000 people from Argentine Uruguay, Bolivia, Brazil, and Peru sought asylum in Sweden (Westin, 200, p.9).

Between 1970-1980s also, Middle Eastern groups, as Christian Orthodox Syrians, Kurds from Iran, Iraq, and Turkey were also seeking asylum in Sweden. When the revolution of 1979 and war against Iraq was making Iranians to seek protection in different countries, Saddam Hussein's authoritarian rule was forcing Iraqi people to leave their country (Sweden, N/A). Consequently, numbers of refugees in Sweden were increasing.

Sweden tightened its refugee acceptance procedures as a barrier against the increasing flow of refugees. In 1989 the government declared that humanitarian grounds for will no longer be used for granting asylum, but criteria set by 1951 Geneva Convention will be employed and treated strictly (Westin, 2006, p.5). However, it was also the time that the Soviet Union collapsed, and wars in Balkans (Bosnia-Herzegovina, Kosovo). Tragedies in wars did not allow Sweden to follow a strict asylum policy; it received thousands of applications, not only from the former Yugoslavia but also from the Middle East and practically approved all applications initially (Westin, 2006, pp.7-8). It was also the time Swedish economy was

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deteriorated and the number of unemployed people was rising (Riniolo, 2016, p. 11).

Around 50,000 people, mostly from Bosnia-Herzegovina, granted temporary

residence without individual examination. When the numbers of refugees were very

large and were increasing in 1993 the government introduced visa requirements for

those coming from Bosnia-Herzegovina, Croatia, Macedonia, and Kosovo (Westin,

2006, pp.6-7).  In addition to accepting refugees, Sweden also accepted people on

humanitarian grounds without providing refugee status. However, this had a negative

effect for refugees, they were not granted legal refugee status, and so were not able to

access the rights that introduced under the Geneva Convention. The protection on the

humanitarian ground was just an interpretation of laws by the government there was

no legal basis, consequently, the government could have easily changed its

interpretation and expel thousands of hundreds of people. That created an uncertainty

and fear of future for refugees (Westin, 2006, p.5).

As a summary, asylum-seekers marked the period between 1980 and 1999.

There were three main reasons for this trend: authoritarian regimes, Iran-Iraq war,

and dissolution of Yugoslavia. In 1980s asylum seekers from authoritarian countries

and military regimes started. Iran, Iraq, Lebanon, Syria, Turkey, Eritrea, Somalia,

and South American countries created the source of immigration in this period. The

eight-year-long Iran-Iraq war in that started in the September 1980, resulted in

34,000 refugees in Sweden. The war in former Yugoslavia and the ethnic cleansing

attempts created a massive immigration wave.

In 1995 Sweden joined the European Union (EU), and in 1996 it became a

party to the Schengen agreement. The first implementation of Schengen Agreement

in 2001 meant, all EU citizens are able to freely move in Sweden, and all Swedes are

able to move in other countries. However in this era also immigration rose. Main

reasons for immigration to Sweden in this period was; family reunification, asylum, work, education, and love. Relative open migration system of Sweden, economic boom due to the technological improvement and increasing job opportunities as a result, charming conditions of education for foreign students is important indicators (Sweden, N/A).

When 10 states of Eastern Europe joined the EU in May 2004, Sweden allowed the citizens of eight countries allowed to work without formally requesting a work permit. This would have expected to create a big migration flow but trade unions' regulations balanced the market (Sweden, N/A).

## 5.2. Current situation

### 5.2.1. Asylum procedure in Sweden

Sweden is a party of the Geneva Convention since 1953, as well as its three additional protocols prepared in 1976, 1977, and 2005. Consequently, refugee definition of the convention was adopted in the domestic law, and an individual examination of cases guaranteed by law. The Swedish Aliens Act 2005, the Aliens Ordinance and the Reception of the Asylum Seeker and Others Act 2006, The Ordinance on treatment of personal particulars in activities referring to acts on aliens law and citizenship 2001,the Act on Guardian for Unaccompanied Minors 2005 are the documents that create the general framework of the Swedish asylum policy. The Aliens Act is one of the most important documents.

There are three categories of protection in the Aliens Act: Refugee (in accordance with UN Convention); other protection (in accordance with Swedish legislation); subsidiary protection (in accordance with EU regulations) (Migrationsverket, 2017).

The Aliens Act defines refugee more detailed and inclusive than the Geneva Convention:

> an alien who- is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and - is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals. (Ch.2, Section 1).

Also, stateless people shall be considered a refugee when they experience the same conditions that listed above in their usual place of residence. (CH 2. Section 1.). An asylum-seeker needs to be in Sweden or at the Swedish border to apply for asylum in this country. The only exception to this principle is quota refugees who can apply for asylum via UNHCR in another country. The resettlement program will be discussed later in detailed.

There is another status of protection in the act that is person otherwise in need of protection. Neither in international conventions nor in EU legislation there is such a category or equivalent of this category (Migrationsverket, 2017). This status is also well defined in the act:

> an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she
>
> 1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,
>
> 2. needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or
>
> 3. is unable to return to the country of origin because of an environmental disaster. The corresponding applies to a stateless alien who is outside the

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country in which he or she has previously had his or her usual place of residence (Ch. 2., Section 2.).

Persons under this category also may receive refugee status declaration which is only applicable in Sweden (Swedish Migration Agency, 2017a). Declaration of refugee status is based on the request of alien. A declaration would be withdrawn if the alien can no longer regarded as a refugee. (Section 3.) Cessation of the refugee status is mostly based on voluntarism- naturalization in a different country, returning to the country of origin etc. but also major changes in the country of origin would cease refugee status. The act's conditions of cessation of the refugee status are in line with the Cessation of Refugee Status under Article 1C (5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses).

"Temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between the member states in receiving such persons and bearing the consequences thereof" (Ch 21, S 1-2). To receive temporary protection, an alien should be covered by the Directive 2001/55/EC, this directive and its implications have been discussed in Chapter 3. The Act also gives power to the government to prescribe additional categories of displaced people over and above the Council of EU's decisions for temporary protection (ch5 S3)

Sweden also has an annual quota for refugees. The system works in cooperation with UNHCR, embassies, and consulates in the countries where refugees are located as well as the IOM, municipalities and local actors in the host society. The Swedish government determines the number of quota refugees that it would take in one year. When an individual who is in need of protection registers to UNHCR, UNHCR then prioritizes which people are to be presented and to which countries. Then these cases would be administered through a delegation selecting refugees in

the country that they present or dossier selection through the board's evolution based on UNHCR's analysis of the case. If a person is granted refugee status through this system, then the Board should find an appropriate municipality to settle that person by taking family composition, language, age, education and work characteristics into account. However, it is the municipalities' decision to receiving or not receiving a refugee.

Those who receive protection either as refugee or person otherwise in need of protection receive residence permits (Ch.5, Section 2). Even before being offered protection or refugee status declaration, asylum-seekers may be granted a residence permit in exceptional cases due to exceptionally distressing factors. Serious health problems, adaptation in Sweden, and the situation in their native country are some examples of these circumstances (Swedish Migration Agency, 2017a). Most of the time, residence permits for all categories of protection are permanent. Additionally, those covered under this protection umbrella would bring their families to Sweden (Ch.5, Section 3). Additionally, for quota refugees, Swedish cultural orientation program can be implemented before their arrival to Sweden.

Being entitled to all these rights and receiving protection is based on evaluation conducted by the Swedish Migration Board, which is the main governmental institution on migration matters. It is the authority that considers applications for tourist visa, international protection, permanent residence, and citizenship (Swedish Migration Agency, 2017c). The Board is commissioned by the government and the parliament via letters of appropriation and instructions.

The Board is responsible for the reception of refugees. It provides housing and money for food during the asylum process. If a person is granted a permit the boards give compensation from the state to the municipalities and country councils.

Along with the Swedish Public Employment Services, these actors deal with the integration of aliens who received a residence permit. If a person is rejected then the board takes an active role in the process of having this person leave (Swedish Migration Agency, 2017b)

Act on the Introduction of New Arrivals entered into force on 1 December 2010 - regulating for the first time reception activities and responsibilities in a single Act it gives the national level the responsibility for introduction of refugees, other people in need of protection who have a residence permit and their close relatives between the ages of 20 and 64 who have applied for a residence permit within two years. Before municipalities have been responsible and the introduction has been designed differently across the country(Ministry of Integration and Gender Equality, 2010 p.2).

The reform entails among others the following. The responsibility for coordinating introduction activities will belong to the Swedish Public Employment Service. Activities, at least, should include Swedish language training, civic orientation, and activities that prepare migrants to the work-life in Sweden. A new benefit will be introduced for newly arrived immigrants in parallel to their active participation in introduction activities. Content and level of benefit will not be dependent on where they live in Sweden and during the introduction period newly arrived migrants will have an "introduction guide" who will assist them to find jobs. The guide will be an independent actor working for the Swedish Public Employment Service(Ministry of Integration and Gender Equality, 2010).

Municipalities, however, continue to be responsible for offering civic orientation courses. Housing provision and initiatives for children in schools and pre-schools, for example, continue to be the responsibility of municipalities. The

municipalities receive compensation from the state for these initiatives (Ministry of Integration and Gender Equality, 2010).

5.2.2. Syrians and Sweden

Sweden has a long history of migration, including different waves of immigration and emigration. A country of emigration in the 1850s, during the Second World War it later responded to the refugee issue. It signed the Geneva Convention in 1951 and thus became legally obliged to protect refugees as defined in the Convention. The liberal migration policy of the 1950s, designed to attract foreign workers, became relatively restrictive in the 1970s due to the economic crisis around the world and at home. Despite its intention to decrease levels of migration, Sweden accepted thousands of refugees in the 1990s from the Balkans, Latin America, and the Middle East. The immigrant profile can be broadly classified as being represented by foreign workers until the 1970s, and as refugees from then on (Riniolo, 2016, p.2) During all this time, Sweden learned why it is important "for people to settle down" from an integration point of view (Morris, 2013).

Sweden built its Syria policy on this praxis, as defined by the Minister for Migration and Asylum Policy, Tobias Billstorm (Morris, 2013). In 2012, all forced returns to Syria were suspended. Sweden announced that all Syrians would be given a permanent residence permit as of September 2013, instead of the temporary permit that had been provided until then. With permanent residency, Syrians also became entitled to family reunification (Riniolo, 2016, p.7). Consequently, reaching Sweden became a salvation for Syrian refugees as well as their family members. The numbers of asylum applications kept rising month by month as shown in the Table 4.

By the end of 2013, 24,800 Syrians had sought asylum (Lallerstedt, 2015, p.82), and in 2015 the number was over 160,000 (Riniolo, 2016).

In 2015, Syrian refugees reaching Sweden were directed to an arrival center, receiving permanent residence there. Then, they would be sent to one of the municipalities, according to national distribution quota. An introduction program of up to 40 hours per week, including language classes, social orientation courses, and employment support also awaited them, as well as a monthly living allowance of around 600 euros. Refugees also had rights of employment, education, and access to healthcare. Perhaps most importantly, they were saving all of their immediate family members (EuFoA, 2015, pp.5-6).

As a result of the family unification right, the immediate family members of permanent residency holders started to apply to be reunited with them. There were long queues in front of Swedish embassies. At the Swedish embassy in Cairo, it was reported that it could take over one year to get an interview (The Local, 2014). Magnus Skarbo, the press information officer for the Swedish Migration Board, said: "The waiting times differ from embassy from the embassy. Cairo is the one where there is a lot of applicants. For the refugees, it can be difficult as they can face a wait before being reunited with their families. From speaking to the people at the embassies I have a sense that they are calm and in control"(The Local, 2014).

When asked whether Swedish offers to Syrians were persuading migrants to undertake a dangerous journey, the government said it was "a cynical way to approach it" (Morris, 2013). Instead, other EU states should be providing similar packages to Syrians to decrease the incentive to reach Northern European countries.

Table 4. Number of Syrians Seeking Asylum

| Year – Month | Number | Of which male | Of which female | Of which children (unaccompanied minors included) | Of which unaccompanied minors |
|---|---|---|---|---|---|
| 2015-01 | 4,896 | 3,319 | 1,577 | 1,483 | 543 |
| 2015-02 | 4,040 | 2,673 | 1,367 | 1,328 | 460 |
| 2015-03 | 4,117 | 2,732 | 1,385 | 1,294 | 447 |
| 2015-04 | 3,917 | 2,667 | 1,250 | 1,162 | 445 |
| 2015-05 | 5,376 | 3,757 | 1,619 | 1,950 | 1,133 |
| 2015-06 | 6,619 | 4,621 | 1,998 | 2,552 | 1,426 |
| 2015-07 | 8,065 | 5,712 | 2,353 | 3,210 | 1,880 |
| 2015-08 | 11,746 | 8,484 | 3,262 | 5,134 | 2,959 |
| 2015-09 | 24,307 | 17,445 | 6,862 | 9,740 | 4,712 |
| 2015-10 | 39,726 | 25.,82 | 11,343 | 17,495 | 9,339 |
| 2015-11 | 36,726 | 25,383 | 11,343 | 18,155 | 8,808 |
| 2015-12 | 13,872 | 9,258 | 4,614 | 6,881 | 3,217 |
| Total | 162,877 | 114,728 | 48,149 | 70,384 | 35,369 |

Source: Rinilio, 2016, p. 2

Whilst accepting the need for a common interpretation of asylum laws and regulation across all EU member states, it should be underlined that Sweden did not offer a legal way to reach its territory other than the minimal number of resettlement quota. It did not suspend the EU Directive 2011/55/EC to enable Syrians to travel safely. Additionally, unlike Germany, Sweden did not suspend the Dublin Regulation(Asylum Information Database, 2016; Information, 2009). As a result, refugees had to avoid being registered in any other country on their way. It meant running away from border controls, police, and soldiers. This increased the level of threat for refugees.

CHAPTER 6

GERMANY

"We are at present largely no longer enforcing #Dublin procedures for Syrian citizens", tweeted Germany's Office for Migration and Refugees in the middle of the night on 21st of August, 2015 (Foster, 2016). It was in line with the attitude of the German Chancellor Angela Merkel, who is an advocate of accepting Syrian refugees and famously said "we can do it" regarding the challenge of accepting and integrating refugees (Foster, 2016). That night, love letters, postcards, and tweets were sent to Merkel (BBC, 2015). This decision gave a new boost to the refugee movement. In 2015, more than a third of the first time asylum seekers applied for asylum in Germany(eurostat, 2016). With the rising numbers of Syrians refugees, opposition groups and parties increased the level of protests against Merkel, questioning how "she can do that".

While Germany is known for its Realpolitik, and Merkel for her predictability and prudence (Abe et al., 2015), this step appeared very bold. The first sub-chapter of this section, on migration history, will explain the historical background of this policy by analyzing different patterns of migration, profiles of migrants, and policies. The subsequent parts will discuss current laws and policies in their evolutionary framework and the legislation and policies directed towards Syrian refugees will be evaluated from this perspective.

This part will try to show that the German policy is not as refugee-friendly as it seems and that Merkel is not Mother Teresa[2]. The chapter will try to answer the questions, "why do Syrian refugees go to Germany?" and "how do Germany's laws and policies shape the refugee's course?" The pull of Germany and the formation of constraints through legal framework will be discussed to answer these questions. As the Dublin procedure suspended the degree of structural constraints were relatively lower in Germany than Sweden. But it also signaled a "permit" for refugees which increased the pull. In correlation with this, number of Syrian refugees arriving in the country was higher. The pull effect was more powerful since the obstacle was weaker. The pull factors will be analyzed within this vein.

6.1. German migration history

"Germany is not a country of immigration" is an often-repeated phrase especially by conservative politicians. It was popular in discussions about Syrian refugees as well. However, scholars treat this belief as a stubborn denial of a "'undeclared' country of immigration" (Kolb, 2008, pp. 1-2).

Until the end of the 19th century Germany was considered as a country of emigration but in the 20th century Germany started to receive Polish workers to employ in the mining sector. It was the first of many waves of foreign workers to Germany. In the Nazi Germany, millions of people from the occupied countries brought to Germany to work in the war industry (Oezcan, 2004, p.1). After the war,

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2 Der Spiegel's cover, in September 2015, with a photo of Angela Merkel dressed as Mother Teresa and its title "Mutter Angela" became popular image in discussions about Germany's policy (Foster, 2016).

between 1945 and 1949, ethnic Germans located in different countries as Poland, Czechoslovakia, Hungary, and Yugoslavia and some of those expelled during the Nazi period moved to Germany. These people constituted one-fifth of the West Germany in 1950 (Kolb, 2008, p.2). It is estimated that within this four-years 12 million people arrived. Between 1950 and 1987 1.4 million more people migrated to Germany (Oezcan, 2004, p.1).

In this period another type of migratory movement was also taking place, the place from East Germany to West Germany. Until these two economically and ideologically differentiated parts separated by a wall, the Berlin Wall in 1961, 3.4 million people moved to the Western side. Construction of the wall did not stop the migration. Until the fall of the wall in 1988, 400,000 people crossed the border (Oezcan, 2004, p.2)

The fall of the Berlin Wall and the Iron Curtain ended the travel restrictions from the Eastern Bloc countries. Additional three million ethnic Germans used this as a chance to settle in Germany between 1988 and 2003 (Oezcan, 2004, p.3). German governments tried to take these migration waves of the ethnic Germans under control through several measures throughout the period. Asking these people to prove that they are being discriminated because of their German origins, aiding these ethnic German communities in their countries of origin, and initiating quota system are some of these means (Oezcan, 2004, p.3).

It was not only people with German ethnicity migrating to Germany, in the second half of the 1950s there was a labor shortage and guest workers were invited to fill this gap. Series of bilateral agreements were signed with various states to recruit workers and determine the conditions of the program: Italy 1955, Spain 1960, Greece 1960, Turkey 1961, Portugal 1964, and Yugoslavia 1968. The program was aiming

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to prevent permanent settlement of foreign workers and expose industrial work to the sending countries as much as possible (Oezcan, 2004, p.3). Consequently, the rotation principle introduced to the program: foreign workers after one to two years working in Germany had to go back to their countries of origin to make room for newcomers (Oezcan, 2004, p.3). However, with the construction of the Berlin Wall in 1961 workers from the German Democratic Republic was absent from the work force of the Federal Republic of Germany, so called West Germany. There was a need for more foreign workers and the program intensified.

In 1973, the OPEC crisis or the Oil Shock created a period of economic recession. In order to cope with the increasing unemployment, the government banned the foreign worker recruitment. This maneuver did not stop the increasing numbers of foreign workers since many foreign workers had longer or permanent residence permits; because of the family reunification right family members were joining to already migrated workers; and Italians had right to cross German borders without any limitation as a member of the European Commission (Oezcan, 2004, p.4). In 1988 foreign workers accounted for 7.3 percent of the whole population (Oezcan, 2004, p.4)

By the end of the 1980s, Europe faced with different refugee groups with increasing numbers. In 1987, 57.400 people, and the following four years 1.1 million people applied for asylum in Germany. Concomitantly, anti-immigrant attitudes, including refugees, intensified and received a reaction from the Parliament. In 1992 total number of people applying for asylum in Germany was higher than those applied in whole Europe (Kolb, 2008, p.4). This situation created a political turmoil. In 1993, parties in Bundestag agreed about making the asylum law more restrictive by FRG Basic Law or interim constitution. This new legislation, known as the

"asylum Compromise" aims to end the "frivolous" asylum applications. With this aim, it listed which origin and transit countries would be deemed as "safe". Those who are coming from through these countries regarded as unqualified for refugee status in Germany. Employing the concepts of "safe third countries and "safe countries of origin" complicated the process of application for asylum in Germany. Additionally, the asylum compromise paved the way for the so-called airport procedure (Flughafenverfahren) which roughly means a pragmatic instrument of processing an asylum claim in the transit area of airports (Art. 18a of the Asylum Procedure Act/AsylVfG). The acceptance of the Asylum-Seekers' Benefits Act (Asylbewerberleistungsgesetz) initiated a social security system specific to asylum seekers with fall short of the regular benefits (Schneider & Engler, 2015). This legislation decreased total number of asylum applications (Oezcan, 2004, p.5)

However, when the world shocked by the violence in Balkans in the mid-1990s, Germany offered protection to 345,000 people. This protection was temporary and most of these people left Germany within the next 10 years (Kolb, 2008, pp.7-9). While limiting the refugee numbers Germany was continuing to sign temporary labor agreements: Yugoslavia 1988, Hungary 1989, and Poland 1990. Especially, Central and Eastern European countries were targeted this time since the Iron Curtain fell (Kolb, 2008, p.9).

After asylum became harder with the asylum compromise citizenship law relaxed. In 2000 a new citizenship law and in 2005 new an immigration law introduced the jus-soli principle into the naturalization process. Now, children born in Germany automatically receive the German citizenship if at least one of the parents "(1).has legally been normally resident in the domestic territory for eight years and (2) possesses a right of residence or has possessed for three years a

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residence permit for an unlimited period"("Nationality Act

Staatsangehörigkeitsgesetz, StAG,"). These children, when they become 18 years

old, must decide whether they want to take their parents' or German citizenship

(Kolb, 2008, p.9).


6.2. Current situation

Asylum is a right guaranteed by the Constitution, Basic Law of Germany. Article 16

states that: "(1) Persons persecuted on political grounds shall have the right of

asylum" (*Basic Law for the Federal Republic of Germany*, n.d.). The following

paragraph which could have created an obstacle for providing protection to Syrians

in Germany suspended.

(2) Paragraph (1) of this Article may not be invoked by a person who enters

the federal territory from a member state of the European Communities or from

another third state in which application of the Convention Relating to the Status of

Refugees and of the Convention for the Protection of Human Rights and

Fundamental Freedoms is assured.

This right is governed by the Asylum Procedure Act (AsylVfG). Other legal

documents related to asylum seekers and refugees include Residence Act; Asylum

act; The Act on Procedures in Family Matters and in matters of voluntary

Jurisdiction; and The Regulation on Residence. The Federal Office for Migration and

Refugees (BAMF) is the institution responsible for examining and deciding on an

application(BAMF, n.d.).

The Asylum Act and the Act on the Residence, Economic Activity and

Integration of Foreigners in the Federal Territory, known as the Residence Act, draw

the general framework of the German asylum legislation. While the Asylum Act

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systematizes the procedures of asylum application examination and processes to follow in cases of denying or providing asylum the Residence Act focuses on entry, stay, exit and employment rules. the According to the Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic an alien who makes a request for asylum is issued with a residence permit before the completion of the procedure (Section 11-1). If there is a case of protracted stay on humanitarian grounds, after having residence authorization for eight-year aliens may be issued with a residence license without time limit (Section 35-1). The spouse and unmarried minor children may benefit from this right as well (Section 35-2). The act also provides protection against deportation to those who have a residence permit or residence license, in asylum procedure (Section 48). Additionally, expelling victims of political persecution is also prohibited (Section 51). These victims are defined according to Geneva Convention of 1951.

Aliens who are granted refugee status receive a residence permit for three years. After that, they receive permanent residency (Asylum Act). The act provides another type of protection in case of a foreigner who "has shown substantial grounds for believing that he would face a real risk of suffering serious harm in his country of origin" (Section 4-1). The "serious harm" explain in the law as "death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". In this case, foreigner receives a one-year residence permit and a possible extension for two more years.

If a foreigner is denied any kind of protection and if there is no legal barrier for deportation applicants must leave Germany either in thirty days or in a week

according to their case evaluation. Deportations according to the Dublin Regulation are also being held according to this law (Asylum Act-36).

The UNHCR is recognized as an actor on asylum decisions. Foreigners may contact the UNHCR to present its views regarding individual applications, the UNHCR's access to foreigners, including those in detention centers and in airport transit zones, is guaranteed by the law. (AsylVfG Ch. 3, Sec. 9)

Refugees and asylum seekers receive assistance about food, housing, heating, clothing, healthcare and household items. This assistance would be in form of voucher or material. Asylum seekers who stay in reception centers primarily receive cash (Gesley, 2017, p.141). Asylum Seekers' Benefits Act guarantees state's assistance for clothing, shelter, food, and stipends for persons who are applying for asylum (Gesley, 2017, p.141).

Asylum status for an alien would bring the same status for his or her spouse or registered partner, minor unmarried child, or in case of minor unmarried child, parents unless there is a reason to repeal or withdraw the recognition of the person granted asylum status (AsylVfG Chapter 4, Sub. Ch. 3, Sec.26)

The refugee system in Germany also provides a smooth path to naturalization. There are two types of naturalization: entitlement and discretionary. After eight-years, generally, foreigners are entitled to apply for German citizenship. The waiting period for citizenship is being reduced by the time spent in the asylum process (Gesley, 2016, p.146). The requirements for naturalization are: legal residence in Germany for a period of eight-years; legal capacity; commitment to the free democratic constitutional order of the Basic Law of the Federal Republic of Germany; unrestricted right of residence at the time of naturalization; independent means of supporting him or herself and dependents without resorting to welfare

payments and unemployment benefits; has lost or given up former nationality; no criminal convictions; adequate German-language skills; knowledge of the legal and social system as well as living conditions in Germany (Nationality Act, Art. 10). If a foreigner fails to meet some of these criteria but the government agency decides that minimum criteria have been met and it is beneficial for the public he or she still be granted citizenship. Additionally, it is enough for recognized refugees to have six years of legal residence in Germany (Gesley, 2016, p.147).

6.3. Protection mechanisms and legislation for Syrians

Germany adopted new laws and protection mechanisms as a response to the situation in Syria. Additionally, in April 2011, the German government suspended Dublin returns to Syria (Foster, 2016).

In 2015 alone, three legislative measures were taken to improve conditions of Syrians. With the change in the Act to Redefine the Right to Stay and the Termination of Residence on August 1, 2015, the Federal Ministry of the Interior, in cooperation with the agencies of the German states, received the power to order the Federal Office for Migration and Refugees to grant a residence permit. The act aims to cover particularly vulnerable persons who have been designated as resettlement refugees (Kolb, 2008, p.8).

The Act on the Acceleration of Asylum Procedures was adopted on 24 October 2015. The act's objective is to accelerate the asylum process, substitute in-kind benefits for cash benefits, decrease the financial burden on states and municipalities, and improve integration through integration classes and employment. Additionally, Albania, Kosovo, and Montenegro were designated as safe countries of origin with this act (Kolb, 2008, p.4).

On November 1, 2015, the Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents entered into force. The act focuses on unaccompanied minors and aims to improve their circumstances. One of the important changes was providing legal guardians to those younger than 18 instead of only those under 16 (Kolb, 2008, p.4).

There are several protection mechanisms that directly and significantly affect Syrians: resettlement, private sponsorship, THAP and court decisions, In December 2011, in the Conference of the Ministers of the Interior of the Federal States, the establishment of a resettlement program was decided. Subsequently, in 2012, 2013, and 2014, Germany resettled 300 people per year. In 2015, the number increased to 500(European Resettlement Network, n.d.).

Those who are admitted to the resettlement program receive a 3-year temporary residence permit, renewable on an annual basis. After 5 years of legal residency, they can apply for a permanent residency. In 2014, in response to the Syria crisis, 200 places were reserved for refugees to be resettled from within Syria, including Iraqis, Somalis, stateless Palestinians, Ethiopians and Afghanis (European Resettlement Network, n.d.)

The Temporary Humanitarian Admission Program (THAP), announced in March 2013, was interpreted as a welcoming attitude for refugees. Within the framework of this program, plans were made to offer temporary protection to up to 5,000 Syrian refugees (UNHCR, 2013, p.1). Three types of people were the focus of this program:

1. Vulnerable persons

2. Those with German ties

3. Syrian re-builders (UNHCR, 2013, p.1)

Lebanon is the only country from which Syrian refugees are admitted. In order to not create an incentive to go to Lebanon, it was stated that only those who had already registered with UNHCR would be able to seek protection under this program (UNHCR, 2013, p.2).

Those who are in particular need of humanitarian protection are pre-selected by UNHCR's representation in Lebanon and its partner organizations. The individual files that contain data on Syrian refugees are forwarded to the Federal Office for Migration and Refugees of Germany. This office is responsible for taking the final decision on an individual's admission to the program(UNHCR, 2013, p.2).

Once admitted to Germany through the THAP, Syrian refugees have to stay for two weeks in the centers in Bramsche or Friedland. They are then distributed across the 16 regions according to a statistical procedure, which is also applied to asylum procedures. They will receive a residence permit according to section 23 paragraph 2 of the German Aliens Act, which will be issued for a two-year period with the possibility of extension (Divers, 2013). The holder of such a permit will have immediate access to the labor market, can claim children's benefits, and can take part in an integration course. If no job can be found, the permit holder will be entitled to employment benefits. The first 107 of these refugees from Lebanon arrived in Germany on 10 September 2013 (Divers, 2013).

Private sponsorship is a new concept for Europe. Until 2013, there was no single private sponsorship program in any European country, though it has a history going back more than thirty years in Canada and Australia. Syrians' plight as a result of the war saw the program raised as an option for refugee protection (Kumin, 2015, p.4).

There is no consensus on the definition of private sponsorship, and the content of the program varies from country to country. Still, it possible to mention two central features. Firstly, a private body – whether an individual, group or organization - assumes responsibility for a resettled refugee or refugee family. The responsibility includes financial, social and even emotional support for a pre-determined period of time until the refugee becomes self-sufficient. Secondly, sponsors have the right to name the refugee or the refugee family they are willing to support. This provides a chance for family reunification for bigger families (Kumin, 2015, pp.3-5)

In Germany, the Syrian diaspora was already large and active before the war. Forty thousand Syrian people were living in Germany, and there were various civil society organizations and stakeholders connected to this community (Ragab, 2017, pp.15-18). When the war broke out, these groups started to pressure the government to bring their relatives to Germany (Kumin, 2015, p.12).

Germany has a different practice of private sponsorship. First of all, the decision to implement the program lies with individual states (Kumin, 2015, p.12)In 2013, the German Conference of the Ministers of the Interior decided to leave federal states free to have admission programs for family members of Syrian residents. Fifteen out 16 federal states adopted programs following this decision (Ostrand, 2015, p.267). Syrian residents' spouses, immediate relatives, and wider family members were allowed to apply for the admission program. The program also covers stateless persons residing in Syria, its neighboring countries, or Egypt. In addition to the THAP, German states have approved approximately 5500 admissions through private sponsorship (UNHCR, 2014, p.1).

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The identification and selection of Syrian refugees with family connections or relatives in Germany is a complex process. Only citizens and foreigners with legal residency can apply to be sponsors; organizations cannot. Those who apply to sponsor a refugee must demonstrate they have the capacity and adequate means to do so, though there is no detailed explanation or open criteria for determining this capacity (European Resettlement Network, n.d.). Under this procedure, relatives in Germany make the first application regarding the admission of their relatives in Lebanon into the program. They fill in an electronic form on the UNHCR website. The form is sent to UNHCR-Lebanon from the UNHCR representation office in Austria or in Germany (UNHCR, n.d). The representation office in Lebanon compiles a list of refugees whose relatives have applied for the program and submits this list to the Federal Office for Migration and Refugees to take the final decision. The form includes parts of the personal information on the relative in Germany, in order to understand the capacity of this person to provide assistance to their relative if s/he is admitted to the program. The form and the program allow residents to apply for six relatives in Lebanon. If an individual is selected for the program, s/he becomes the contact person for the rest of the procedure (UNHCR, n.d.). The duration of sponsorship is not specified. Only Syrians can be sponsored, and they receive either a renewable residence permit for one or two years or a work permit (Kumin, 2015, p.32).

A common practice of the administrative courts is to postpone the decision until a clearer political situation comes about in Syria ("after the Civil War"), which may mean that a case is pending for a long time. As long as the court procedure is pending, the cases have suspensive effect, which means that the applicants have the right to stay in Germany because the asylum case has not been finally decided. As

cases are decided, the courts are willing to give protection against deportation, but less often refugee status or subsidiary protection. There are no recent decisions of the 16 higher Administrative Courts or the Federal Administrative Court (European Legal Network on Asylum, 2013, p.73).

There are also other forms of protection. Syrian nationals who enter Germany irregularly and have not applied for asylum may receive – according to specific regulations in the states (Länder) – a residence permit on a humanitarian basis(European Legal Network on Asylum, 2013, pp.40-41) According to the Residence Act this permit is issued for an 18-month period, with the possibility of extension ("Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act," n.d., sec.25 parag.3)


6.4. Syrians and Germany

In welcoming refugees, Germany pursued a different path to that of many EU countries. Germany became more appealing for Syrian refugees in compare to these states thanks to its protection policies and laws.

Germany is a top destination for asylum-seekers. Syrians, who come to Germany through legal or illegal ways, submit asylum applicants. The number of people who apply for asylum is increasing every year as seen in the Table 5. Germany received 7,930 asylum applications in 2012 and most of the applicants received refugee status. It is clear from the table that the number of asylum applications increased by a factor of six, however the number of those who were granted refugee status only increased by a factor of three.

Table 5.  Number of Asylum Application Between 2012 and 2014

| 2012 | | 2013 | | 2014 | | 2012-2014 | |
|---|---|---|---|---|---|---|---|
| Asylum Applications | Asylum Granted | Asylum Applications | Asylum Granted | Asylum Applications | Asylum Granted | Asylum Applications | Asylum Granted |
| 7,930 | 7,460 | 12,855 | 8,700 | 41,100 | 3,805 | 61,885 | 39,965 |

Source: Ostrand, 2015, p.270

Why do this many person seek asylum in Germany? The Table 6 shows different types of protection offered to Syrians and the rights-bundles associate with them. Those accepted for resettlement and humanitarian admission but do not have any family links in Germany receive assistance for their travel. All people who are accepted to Germany under different schemes have the right to work (European Resettlement Network, n.d.). Except those who came under the regional admission program, all have access to the welfare system, a legal right to an integration course, and receive subsidies from the municipality with which they are placed via the *Königssteiner Schlüssel* (quota system). Those accepted via the regional admission program for family members are expected to receive financial and integration support from their families, and they reside near their family (European Resettlement Network, n.d.). Consequently, the system ensures that a Syrian refugee works to sustain his/her life in dignity, learns how to seek a job in Germany, but also receives support in case of need. They have all the rights of education and healthcare as well.

When these rights-bundles are taken into consideration, it comes as no surprise that Syrians want to go to Germany. Suspension of the Dublin Regulation, additionally, had a twofold impact: first of all, it enabled those who were already registered in a country en route to Germany to seek asylum in Germany, and secondly it decreased the need to hide from officials in order to avoid being

registered involuntarily, and consequently also decreased the need for illegal crossings. However, Germany did not enable refugees to take flights. A Syrian refugee in Istanbul had to follow the illegal and perilous route described in the third chapter to reach what Germany was providing.

Additionally, as discussed in the third chapter, the German government's moves to initiate an EU-Turkey deal as soon as possible in order to keep more refugees in Turkey was creating a "now or never" feeling and forcing refugees to take the chance offered for a limited time by risking their lives.

Table 6. Resettlement, Humanitarian Admission and Regional Admission

|  | Resettlement | Humanitarian Admission | | Regional Admission Programs for Family Members |
| --- | --- | --- | --- | --- |
|  |  | Without family links | With family links |  |
| Travel arrangement | Assisted group travel | Assisted group travel | Self-organized | Self-organized |
| Reception | Two-week stay in centralized reception | Two-week stay in centralized reception | Direction reception by family members | Direct reception by family members |
| Permission to work | Yes | Yes | Yes | Yes |
| Access to general welfare system | Yes | Yes | Yes | No |
| Legal right to integration course | Yes | Yes | Yes | No |
| Integration subsidy for municipalities | Yes (for a period of two years after arrival) | Yes (for a period of two years after arrival) | Yes (for a period of two years after arrival) | No |
| Placement via Königssteiner Schlüssel | Yes | Yes | No | No |

Source: European Resettlement Network, n.d

CHAPTER 7

CONCLUSION AND DISCUSSION


This thesis has a basic question in its core: why do Syrians go from Turkey to Germany and Sweden? Especially, considering the fact that they are not only going from one country to another but are risking everything, facing danger, hostility, detention, torture, hunger, disease and the risk of being stuck in limbo, the question becomes more pressing. Without ignoring the diverse array of factors that affect the decision to embark on such a journey, this study focused on legal frameworks' impact on refugee movements, and more particularly, on Syrian refugee movement from Turkey to Germany and Sweden in 2015.

The question and possible answers are related to various long-standing theoretical and empirical questions and puzzles. Is this a case of refugee movement, or are these people economic migrants? If it is a case of refugee movement, is there a specific logic behind it or is it purely chaotic? What is the relation between laws and migration? Do laws impact migratory movements? If laws and other macro-factors trigger and shape the course of migratory movements or constrain them, what is the role of migrants' agency in migration?

In the theory chapter, conventional approaches to the migratory movements were discussed. Thıs discussion showed that, despite the lack of theorization regarding the premise that refugee movements are purely chaotic and untheorizable, and that they are separate from migration, there are also studies that are evaluating migratory movements in a continuum with fully voluntary at one end and fully involuntary at the other end. This shunning of clear-cut distinctions and the

categorization of migratory movement enable studies and policies to recognize the real nature of movements. Additionally, seeing migratory movements in a continuum helps us to understand the spectrum between a refugee and an economic migrant. Based on this discussion, Syrians moving from Turkey to Europe were considered refugees with a relatively higher degree of volition than Syrians fleeing Syria. Furthermore, this section showed that refugee movements need not always be considered chaotic and untheorizable; there may be a specific logic and macro factors affecting it especially when the degree of volition is higher.

The logic and macro factors described above are shaped by national and international laws. The second chapter also evaluated how the concepts of citizen, refugee, and migrant are legally constructed. Not only the concepts themselves but also the limits between these categorizations are drawn by laws. What do these limits determine? Since every category is constructed by laws, the limit determines which rights-bundle an individual would access. Law - whether on paper, in action or in mind - is essential to understanding "forces that drive, divert, and blunt migration, and that shape migrants' experiences in destination countries" (Schuck, 2000, p.201), the chapter argued. Accordingly, the subsequent chapters questioned the triggering, driving and blunting the impact of Turkish, Swedish, German and international laws on Syrian refugee movement in 2015.

Before discussing the individual state laws' pulling and pushing impacts on refugee movement, the third chapter focused on the insecurities along the route from Turkey to Sweden or Germany because it is crucial to understand what tragedy refugees are facing in order to lay the ground for a discussion of the laws.

One of the sub-questions answered in the chapter was "why do refugees not travel through legal and safe routes", or "how do international laws force refugees to

follow illegal routes". Since Syrians are given refugee status in Germany and Sweden, it would have been rational to take a flight from Istanbul to Berlin and claim asylum in Tegel Airport. The externalization of border control by the EU and the immense burden of responsibility and potential fines placed on the shoulders of private companies, established with EU Directive 2001/51/EC, was evaluated to answer this question. Because an airline company could face extreme fines and even the suspension of its activities, airline staff, who do not have the required knowledge about refugee law, do not allow refugees to board.

Another piece of EU legislation that increased the difficulty of travel was the Dublin Directive, which provides criteria for determining which state is responsible for a certain refugee. According to the first country criteria set by the directive, a refugee has to seek asylum in the first country of arrival in the Schengen Zone. This criterion made many refugees avoid registering in a country where they do not want to reside. In order to avoid registration, they had to cross the borders without being detected, further increasing the risks.

The refugee wave that was the focus of this thesis took place under the shadow of the EU-Turkey deal negotiations. Despite the fact that the deal was signed and applied in 2016, the negotiations in 2015 also had a crucial impact in the time frame of this research. The main tenets of the deal were public, and Syrian refugees were aware of the fact that they could lose the minor chance that they had before the deal was signed. In order to clearly portray what it was that Syrians were trying to avoid, the criticisms of the deal were elaborated. The deal almost set a deadline for refugees. The countries that had prepared the most generous packages for refugees were also trying to send refugees back to Turkey, which is not accepted as a safe third country by many expert organizations. Consequently, Syrians had to hurry in

order to avoid missing out on this 'limited offer'. This increased the 'grayness' or uncertainties of the route and the future of Syrian refugees in Turkey.

What are the results of the policies explained above? The second part of the third chapter focused on these results. The route starting from Turkey, going through the Greek islands, Macedonia, Serbia, Hungary, and Austria was examined. It was underlined that there are various routes and that existing routes are shifting in response to border policies. But this route remained popular during 2015.

The conditions on the route in the first half of the year were harsher. In the second half, a slight shift in the policies enabled relatively safer movement. However, in the meantime border closures, border controls and the erection of fences continued.

In order to explain the journey, first of all, the context of departure was evaluated. Getting prepared for the journey was no easier or safer than the journey itself. Refugees had to find their ways through many illegal options, creating a black market in many cities in Turkey. These markets consist of fraudulent passports, life-jackets, plastic boats and smuggling services. Choosing the wrong one could cost refugees their life. There were many fake life jackets that absorbed water, and many dishonest smugglers who just took the money and disappeared or sent people to sea without someone who knew how to control a boat, or even just killed people and threw them into the sea.

Awaiting departure in coastal cities (Izmir for the route evaluated in this thesis) is also torturous. Refugees have to spend days and even sometimes weeks in the streets, under harsh weather conditions. Municipalities refuse to help since they have electoral concerns, and they do not want to attract further refugees to their cities. This attitude turns even basic needs into luxuries. Civil society organizations

had to have very long negotiations with municipality officers to have mobile toilets

installed in areas where refugees were sleeping in the streets.

Table 7.  Border Controls and Erection of Fences in Europe Between April and
December 2015

| April | ❖ Bulgaria-Turkey border fences erected |
|---|---|
| August | ❖ FYROM-Greece borders closed for three days |
| September | ❖ Hungary-Serbia border fences erected<br>❖ Germany, Austria, Slovakia and the Netherlands introduce border controls |
| November | ❖ FYROM-Greece border fences erected<br>❖ Slovenia-Croatia border fences erected<br>❖ France and Norway introduce border controls |
| December | ❖ Austria-Slovenia border fences erected |

When they finally depart from Izmir, in most cases the last refugee to board

the boat drives it – whether or not they have any experience. Then, they have to find

their way to the Greek islands without any navigation equipment. During this

journey, there are many threats. The boat could capsize due to the waves and/or

overcrowding, refugees could lose their way, coast guards could try to sink them, and

criminal gangs of thieves could find them.

Reaching the Greek islands does not mean safety; the hostile conditions

continue. These include but are not limited to unhealthy camps, long waiting periods

for registration and the humiliating attitudes of officers. However, it is relatively

safer than the rest of the road, because when they leave the island and continue on

their way towards Northern Europe, direct threats to life await them. Some of these

threats can be summarized as follows. Refugees have to walk thousands of kilometers, which is by itself devastating. Furthermore, in order to not get lost, they very often follow railways and die in train crashes. There are also vigil groups and criminal gangs waiting for refugees on roadsides to rob them and/or kill them. Being detained without access to any legal assistance, being violently pushed away from borders, losing a family member in the chaos, hunger and diseases are some other examples of the challenges faced by refugees.

However, one of the major threats is border closures. When a state on the route all of a sudden closes its borders, refugees are stuck in limbo. They, then, have two options – following a longer route or seeking asylum in the country where they are at that point. A longer route means a more dangerous route.

But why do they take this dangerous and torturous journey? The fourth, fifth and sixth chapters individually and respectively examined Turkish, Swedish, and German migration histories, asylum frameworks, and the situation of Syrians in these states in order to discover the legal factors behind the conditions that make refugees accept these risks and tortures.

In order to contextualize the responses to the movement of refugees and to map out states' traditional policies regarding migrants and refugees, these three states' migration histories were evaluated.

The fourth chapter started with a description and analysis of previous refugee waves into Turkey. The continuity from the late Ottoman Empire was taken into consideration. It showed that the migration waves and regulations on migration were instrumentalized by Turkey for the purpose of nation-building. The Settlement Law of 1934, its division of Turkey into different zones and the privileges given to *muhacir* clearly show the logic behind the management of this migration. The 1950

Passport law was a reflection of the same logic in different legislation. However, Turkey was not blind to the developments in the world. When the refugee problem attracted international attention in the post-Second World War era, Turkey was one of the drafters of the new international norm, the Geneva Convention. The Convention and the subsequent New York Protocol was quickly signed and adopted into the national law. Yet, the logic of the 1934 law prevailed and the geographical limitation to the refugee definition was retained. The official reports explain the reason for this reservation as being "based mainly on security considerations and the proximity of Turkey to a number of countries marked by instability" (National Action Plan, 2001, p. 446). Two different refugee waves in 1988 from Bulgaria and Iraq showed the implications of the geographical limitation and continuity of the nation-building perspective of 1934. When Muslim populations came from Bulgaria, most were welcomed and had been settled; but borders were kept closed to Iraqi Kurdish refugees until the international pressure became overwhelming. In 1991, when still greater numbers of people fled to the border due to the threats to their lives, even international pressure could not change Turkey's decision. Hundreds of people died because of exposure to chemicals. A safe haven was established in the Iraqi territory by international forces. The non-refoulement principle and the right to seek asylum had been violated. The legislation in 1994, known as the Asylum Regulation, does not represent a rupture from the previous laws in terms of logic. It even legalized the unlawful border closure decision of 1991.

There have been several waves of refugees and migrants to Turkey but these had very little impact. Turkey found ad hoc solutions to the needs of these people. Consequently, the migration policy and legal framework are reactive instead of proactive. The reactions are also given with state-security and nationalistic concerns.

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Germany became an immigration state in the 19th century, and Sweden in the 20th. Both states received refugees after the Second World War. Sweden received Jewish refugees who had fled Nazi Germany and after the war, Germany received ethnic Germans from former German territories. In the meantime, Germany divided into two as East and West. People fled from East Germany to the West. Refugees made a positive impact on the West German and Swedish economies since the war created a gap in the labor force. Both states sought foreign workers in more or less the same period, with one major difference: Sweden did not approach the workers as "guests" or temporary, while Germany was expecting workers to leave after staying for several years. In both states, most of the workers settled, in Sweden with integration programs and in Germany spontaneously.

In the 1960s economies slowed down, and the recruitment of foreign workers. The 1973 OPEC crisis almost halted foreign labor programs. However, in the meantime, refugees were coming from Latin America and the Middle East to Europe, including to Germany and Sweden due to authoritarian regimes and the Iran-Iraq war. The 1990s, with the dissolution of Yugoslavia and the subsequent civil war, brought another refugee wave to these states. These experiences shaped Sweden's and Germany's policies, made these states prepare resettlement and integration programs, and as a result made them more proactive, not necessarily liberal though. Of course, it must be underlined that, there is a huge discrepancy between the numbers of Syrian refugees in Sweden and Germany and Turkey. Turkey hosts more than the total number of Syrians in Sweden and Germany. However, as this study focuses on the legal framework instead of implementation this difference is not focused.

These chapters analyzed the conditions in individual states through an assessment of the rights of Syrians within the general asylum law framework. The most important difference between the sender country and target countries is the fact that Turkey has a geographical limitation to the Geneva Convention and Sweden and Germany do not. Syrians, because of this reservation, do not have refugee status in Turkey. But in Germany and Sweden, all persons qualifying under the convention's refugee definition receive refugee status according to the principles and procedures determined by the convention.

In order to provide a point of comparison for understanding differences among these three states, the comparative table is shared below. The data in the Table-8 show the scores of Turkey, Sweden, and Germany in labor market mobility, family reunion, education, political participation, permanent residence, anti-discrimination and health services for migrants and gives an overall score according to these data. For 2014, Turkey's overall score is slightly unfavorable at 24. Germany is slightly favorable at 63 and Sweden favorable at 80. While labor market mobility was 98 in Sweden and 86 in Germany, it was 15 in Turkey.

The gap is huge. It is relatively less distinct on the family reunion indicator, where there is an 8-point difference between Turkey and Germany, and a 29-point difference between Turkey and Sweden. In education, however, the gap is immense. The difference between Turkey and Sweden is 72 points, and between Germany and Turkey is 42 points. While in Germany none of the indicators are below the halfway favorable level, Turkey reaches the halfway favorable level in only one indicator - family reunion - and the rest of the indicators are in the slightly unfavorable and unfavorable levels. The evaluation of the data is based on migrants, not refugees. But it provides an overview of the situation in these countries.

Table 8. Comparison of Germany, Sweden, and Turkey according to MIPEX Data

| INDICATOR | | COUNTRY | VALUE |
|---|---|---|---|
| Overall score | | Germany | 63 |
| | | Sweden | 80 |
| | | Turkey | 24 |
| Labour market mobility | | Germany | 86 |
| | | Sweden | 98 |
| | | Turkey | 15 |
| Family reunion | | Germany | 57 |
| | | Sweden | 78 |
| | | Turkey | 49 |
| Education | | Germany | 47 |
| | | Sweden | 77 |
| | | Turkey | 5 |
| Health | | Germany | 43 |
| | | Sweden | 62 |
| | | Turkey | 32 |
| Political participation | | Germany | 63 |
| | | Sweden | 71 |
| | | Turkey | 11 |
| Permanent residence | | Germany | 60 |
| | | Sweden | 79 |
| | | Turkey | 27 |
| Access to nationality | | Germany | 72 |
| | | Sweden | 73 |
| | | Turkey | 34 |
| Anti-discrimination | | Germany | 58 |
| | | Sweden | 85 |
| | | Turkey | 26 |
| Legend: 80-100 Favorable / 60-79 - Slightly favorable / 41-59 - Halfway favorable / 21-40 - Slightly unfavorable / 1-20 - Unfavorable / 0 - Critically unfavorable | | | |

Source: MIPEX, 2015

Additionally, as discussed in Chapter 4, Turkish migration laws are ad hoc and reactive. The improvement in EU-Turkey relations made Turkey introduce new legislation, including on asylum and migration matters. The LFIP can be analyzed as part of this trend. The Temporary Protection Regulation, however, was a response to the Syrian influx into Turkey. Despite the fact that the legislation seems like it provides many rights and protection to beneficiaries, it actually leaves them in legal limbo. The laws do not provide them with a chance to pursue a life in Turkey, but rather underlines repeatedly the transience of the stay. Since finding a solution to the crisis in Syria will take years, refugees will spend years in a "waiting room"(Göksel, 2016), during which they are not allowed to seek better life chances in another country. Another directive, the "Directive concerning the admission and accommodation of the nationals of the Syrian Arab Republic and stateless people residing in the Syrian Arab Republic who collectively seek asylum in Turkey", has not yet been shared with the public. This fact increases suspicions around the future of Syrians. The bundle of rights to education and healthcare becomes ineffective. Refugees do not want to register because they are afraid of being deported. Since life in Turkey is based on the transience principle, many of them would prefer to go to another country to settle and pursue a new life, rather than losing their time in Turkey.

In Sweden and Germany, unlike in Turkey, Syrians receive permanent residence permits. They are entitled to work. The integration programs are helping refugees to adapt to life in their new host states. These programs also support them in learning the language and finding jobs. If they cannot find jobs then refugees have the right to financial support from the state until they do find a job. Such legal frameworks provide the necessary tools for a refugee to set up a new life, engage in

social life and have access to education and the labor market, and also enables them to enjoy those rights.

It would be constructive to comparatively analyze an example in the cases of Turkey, Sweden, and Germany to show that rights are dependent on each other. A 12-year old Syrian girl has the right to education in all three states. In Turkey, however, if she does not know the language, there is no centralized program to teach Turkish to Syrian children, though there are some courses and volunteers available. In Germany and Sweden, the same girl would have the legal right to learn the language under the orientation programs. She and her family would not see their prospects as hopeful in Turkey since they are under temporary protection and could be expelled at any time. In Germany and Sweden, they have right to obtain permanent residence, allowing the family to stay as long as they want. This makes learning the local language a logical step. In Turkey, her family would not have proper income even if her parents were working. In order to survive, she also has to work. In Germany and Sweden, her family would receive financial support from the state for each person if the parents were not working. Since they have a work permit, if the parents are working they are doing so legally, and receive a fair salary. When she starts to work in Turkey, just like thousands of Syrian children, she would work in a textile or life jacket workshop. Since she works illegally, does not know the language, and for many other reasons, neither she nor her parents would likely go to the police in case of discrimination, under- or none- payment, or sexual abuse. If the family is residing out of the city they are registered in, they will not be able to access healthcare either.

This basic example shows that the exercise of a right is connected with other rights. If legal frameworks are not designed to enable people to access one basic right

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then the rest of the rights may become in-exercisable. The Turkish laws provide a bunch of rights but these are far from enough, and the exercise of provided rights is not guaranteed by the law. However, in Sweden and Germany, Syrian refugees have rights almost equal to those of a citizen. It is on this basis that the family of the girl described above would decide between letting their daughter work in a textile workshop or ensuring she gets a high-quality education, with access to proper healthcare – basically, having a future.

If they decide to leave, there are two avenues for going to these countries. The first is legally or illegally traveling to one of these states to claim asylum on its territory, and the second is being selected for a resettlement program in their host state (UNHCR 2011, p.3). But the resettlement quotas are very small and selective, and the process is long. Especially with the pressure of the EU-Turkey deal, it is hard to wait. Legal means of travel, as analyzed above and discussed in detail in the third chapter, are legally barred. This is when the illegal travel option comes into play. During this illegal journey, that little Syrian girl could drown in Mediterranean, fall ill in Mykonos, be robbed by a criminal gang in Macedonia, die in a train accident in Serbia, or be tripped by a journalist when she is trying to run away from border guards who all of a sudden decided to close the Hungarian border. But the gamble pays off if she reaches Germany or Sweden.

As the discussion above shows, migration is not only about emigrating or immigrating, not only about leaving a state nor arriving a new state. Migration is a process that includes these both ends, leaving and arriving, and also the route that migratory movement takes place. Focusing on one end of the process provides a limited understanding which has potential to lead to mistaken assumptions since most of the time there is a comparison between these ends to understand a

movement. Picking different ends to compare, or examining conditions in one end would give very different answers. For example, if the situation in Syria and Turkey are compared it would be very hard to understand why Syrians are leaving Turkey. However, it is crucial to understand what refugees are leaving Turkey for. Push-pull theory offers an analytical framework to understand the whole process of migration: host state's conditions (push), the route and hardships on the route (intervening obstacles), and the targetted states' conditions (pull). There are various factors that create the conditions in these countries. In this study legal frameworks have been focused as one venue, among many, to understand why and how the Syrians leave Turkey and end up in Sweden and Germany. Keeping in mind that refugee, migrant, temporary protection, asylum, border and many other migration related concepts are legal concepts migration and law are extremely interrelated. Focusing on the laws enables this study to deconstruct these concepts and analyze their components in each country through right bundles and their loopholes. What kind of life prospects offered in each state is understood with this discussion as well as limits of protection and production and reproduction of vulnerability.This thesis argues that the reasons for leaving Turkey are constructed by Turkish laws, that vulnerability on the route is created by international laws, and that incentives to go Sweden and Germany are shaped by Swedish and German laws. While Turkish asylum law does not provide a protection or future, German and Swedish legal frameworks do. What they do not provide are sufficient legal and safe ways to reach their territories. One of the main arguments and critiques of this thesis is that despite there are right bundles designed for refugees existing legal frameworks, mostly due to their loopholes, fail to protect the routes and those who take these routes. All states on the route that has been analyzed in this thesis are legally and morally obliged to protect refugees. However,

considering the fact that  at least 3,784 people died only in the Mediterranean in 2015 (IOM, 2017b), it is clear that they failed to fulfill their duties.  No concrete legal step has been taken to provide a legal passage to the refugees. The world witnessed a humanitarian tragedy while those who have potential to change the situation did not solve the problem. It also should be underlined that not only states examined in the thesis as pushing and pulling states are responsible. Also, international mechanisms and actors could not or did not protect those who are on the way to the Nothern European countries. The Syrian refugees' case is particularly important because there is no question that Syrians qualify the refugee criterion. Which means, every state on the route and targeted host countries are well aware of the fact that these people are refugees, required protection and protected by international laws. Thousands died in the middle of Europe, in territories of states that signed the Geneva Convention and the European Convention on Human Rights. Refugees who have economic and social assets and lucky enough to survive from the dangers on the route somehow have a chance to win the legal protection that a refugee by its nature has and legally has right to."One day, we will tell our children that Syrian refugees fled their land to ours on death boats, although Mecca was closer to them" says Angela Merkel (Fenton, 2015), apparently not expecting the children to question why the refugees came on "death boats" instead of planes.

As briefly discussed before, this thesis has several limitations that also have potential to offer new avenues of research. First of all, refugees' agency is lacking in this analysis due to the circumstances explained in the methodology chapter. It is crucially important to understand individual refugees' perspective for two main reasons. Firstly, understanding how refugees perceive legal frameworks, to what extent they are aware of laws and regulations and, relatedly, to verify, or falsify the

impact of macro mechanisms respectively. Without fully understanding refugees'

agency, many of the arguments are being grounded on assumptions. Secondly,

despite the fact that this study focused on those who want to leave Turkey, there are

still millions of Syrians residing in Turkey. It is equally important to understand the

social, economic, and political machine that makes them stay as well as the

differences between these two groups (those leave and that stay). Ayhan Kaya's

pivotal research (Kaya, 2016) provides a significant data on this question but still,

there is a need for more research. Thirdly, as noted before, many micro and macro

factors involve in a migration decision. Interactions between these mechanisms also

create significant indicators. This thesis only focused one of the many mechanisms.

Examining different mechanisms may give different or complementary answers. For

example, the importance of networks on refugees' decisions, economic reasons,

particular positions of minority groups within Syrians and Syrian diasporas' role in

terms of formation of legal ways to migrate should be analyzed and understood more

clearly.   Finally, laws on paper and laws in action are not necessarily the same.

There is a need to understand how these laws are being operationalized.

Implementation gaps of these three states should be investigated.

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