

**BRITISH IMMIGRATION POLICIES VIS-A-VIS THE TURKISH
IMMIGRANTS IN THE CONTEXT OF THE BRITISH
MEMBERSHIP OF THE EU**

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by

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To My Family

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ABSTRACT

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BRITISH IMMIGRATION POLICIES VIS-A-VIS THE TURKISH IMMIGRANTS IN THE CONTEXT OF THE BRITISH MEMBERSHIP OF THE EU

Turkish immigration to the UK, with the exception of the Cypriot Turks, began with Turkey's EU (formerly EEC) membership application that started with the Ankara Agreement (1963) and its Protocols. However, the UK has not applied the rules of this Agreement completely and the UK had to start honoring the requirements of this Agreement as a result of the cases which were solved, not in the UK's national level, but at the supra-national EU level: the ECJ (The European Court of Justice). Even though the UK has enthusiastically supported Turkey's EU accession, it still brings problems when it comes to recognizing the EU-based rights of Turkish immigrants. The study aims to show this problematic aspect of the immigration policies of the UK vis-à-vis the Turkish nationals. This thesis argues that there is a clear contradiction between the UK's support for Turkey's accession and the UK's implementation of EU law favorable to the Turkish immigrants, stemming from the Ankara Agreement. In the study, firstly, the immigration laws and policies of the EU will be examined. Then the UK's place in the EU and how she acts towards EU-based immigration laws will be analyzed. The UK's immigration policies before its membership to the EU, and afterwards will be analyzed separately to illustrate if, and to what extent, the UK has implemented the EU immigration laws when it comes to the Turkish nationals.

Key words: EU, Immigration, Turkish immigrants, Ankara Agreement.

KISA ÖZET

Hilal ŞİMŞEK

Şubat 2011

İNGİLTERE'NİN AB ÜYELİK SÜRECİNDE TÜRK GÖÇMENLERE UYGULANAN GÖÇ POLİTİKALARI

Birleşik Krallık'a olan Türk göçü, Kıbrıs Türkleri hariç, Protokolun ve Ankara Antlaşması'nın sonucunda Türkiye'nin Avrupa Birliği'ne (önceden Avrupa Ekonomik Topluluğu) yaptığı üyelik başvurusu ile başlamıştır. Fakat Birleşik Krallık bu antlaşmadaki hükümlerini tamamen uygulamaya koymamıştır ve Birleşik Krallık ulusal düzeyde değil de uluslar üstü çözülen antlaşma şartlarına itibar etmeye başlamak durumunda kalmıştır: AAD (Avrupa Adalet Divanı). Her ne kadar Birleşik Krallık Türkiye'nin Avrupa Birliği adaylığını desteklemişse de Türk göçmenlerinin AB tabanlı haklarına gelince problem çıkarmakta geri kalmamıştır. Bu çalışma Birleşik Krallık'ın Türk vatandaşlarına ilişkin olarak problematik göçmen politikasını göstermeyi amaçlamaktadır. Birleşik Krallık'ın Türkiye'nin adaylığına olan desteğiyle Avrupa Birliğinin Ankara Antlaşması (1963) kaynaklı Türk göçmenleri lehine olan hukuki uygulamaları arasında belirgin bir çelişkinin olduğunu savunuyorum. Öncelikle, Avrupa Birliğinin göçmen hukuku ve politikası incelenecektir. Sonrasında Birleşik Krallık'ın Avrupa Birliği içindeki yeri ve Avrupa Birliği tabanlı göçmen hukukuna karşı tavrı analiz edilecektir. Birleşik Krallık'ın Avrupa Birliğine olan üyeliği öncesi ve sonrası Türk göçmenleri söz konusu olduğunda onlara karşı AB göçmen politikasını uygulayıp uygulamadığı ve uyguluyorsa ne kadar uyguladığı analiz edilip, ayrı ayrı ele alınacaktır.

Anahtar Kelimeler: AB, Göç, Türk Göçmenler, Ankara Antlaşması.

TABLE OF CONTENTS

BRITISH IMMIGRATION POLICIES VIS-A-VIS THE TURKISH IMMIGRANTS IN THE CONTEXT OF THE BRITISH MEMBERSHIP OF THE EU	i
APPROVAL PAGE	iv
AUTHOR DECLARATIONS	v
ABSTRACT	vi
KISA ÖZET	vii
TABLE OF CONTENTS	viii
LIST OF ABBREVIATIONS	x
ACKNOWLEDGEMENTS	xi
CHAPTER 1	1
Introduction	1
1.1. Background	1
1.2. Purpose of the Study	3
1.3. Study Area & Literature Review.....	5
1.4. Methodology	6
1.5. Contents of the Thesis	6
CHAPTER 2	8
EU and Immigration Policies	8
2.1. Introduction	8
2.2. EU History	9
2.3. EU Immigration Policies.....	12
2.4. Treaties: Maastricht and Amsterdam	16
2.5. The Post-Amsterdam Period: Immigration Policies	20
CHAPTER 3	26
British Immigration Policies Before and After the EU Membership.....	26
3.1. Introduction	26
3.2. Immigration policies and Implementations of the British Government: Before the EU Membership	27
3.2.1 UK Immigration Acts.....	28
3.3. The UK Immigration Acts After the EU Membership.....	31
3.3.1 The UK's Position towards the Maastricht Treaty.....	32
3.4. Conclusion	37
CHAPTER 4	38
Turkish Immigration to the UK & the Ankara Agreement.....	38
4.1. Introduction	38
4.2. Turkish Immigration to the UK.....	39
4.3. The Ankara Agreement: Turkey and the UK.....	41
4.3.1. Case Laws	46
4.3.1.1. Demirel Case	46
4.3.1.2. Sevince Case	49
4.3.1.3. Kus Case	50
4.3.1.4. Eroglu Case	50
4.3.1.5. Savas Case.....	51
4.3.1.6. Tum and Dari Case.....	54

CHAPTER 5	57
CONCLUSION.....	57
BIBLIOGRAPHY	59

LIST OF ABBREVIATIONS

ADHCWGI	AD Hoc Working Group on Migration
CEB	Central European Bank
CER	Centre for European Reform
CFSC	Common Foreign and Security Policy
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EFTA	European Free Trade Association
EP	European Parliament
EPC	European Policy Center
EMU	Economic Monetary Union
EU	European Union
EURATOM	European Atomic Energy Community
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organization
SEA	Single European Act

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CHAPTER 1

Introduction

1.1 Background

Although the United Kingdom (hereinafter, the UK) is a very significant country in historic and agenda areas, it is not very common that we come across the issue of Turkish immigrants in the UK in the literature of international relations or international politics. There are only a few studies which focus specifically on Turkish immigrants and one of the reasons can be the small Turkish population residing in the UK. The Turkish community is itself fragmented, comprising of three main groups: Cypriot Turks, mainland Turks and Kurdish refugees. Turks from the mainland number approximately 90000. There is a lack of Turkish and English written sources in political science and international relations areas. I identified this lack is a gap and my purpose is to research this area.

The UK is one of the most important members in the EU. The UK is an island country and this has led the country to stay out of the continental Europe throughout history because of its geographic conditions. Although sometimes the UK acts together with Europe in economic and historical areas, it never acts completely as a part of Europe. The EEC invited the UK to the formation of the ECSC but this was rejected. The country only agreed to join regional organizations, such as the Council of Europe and NATO. The reason for this negative response was because of close economic and political relations with her former colonies. Furthermore, the UK chose to be closer to the US than Europe because the US was more appropriate to the UK's interests and it did not want to abandon its national sovereignty.

Gradually, the EC became successful and the UK's approach towards the Community was reevaluated. It decided to apply for membership but this was rejected. There were several factors for the application. The first was that the US expected the UK, as a significant ally, to become the member of the EEC because

they supported a strong Europe against the Soviet Union. A second reason was that the UK recognized that it could no longer be an imperial state as the Commonwealth countries had begun to gain their independence one by one. Also these countries tended to implement protectionist economic policies.

The UK could only become a member in 1973. After the EU membership in 1973, domestic divisions in the UK remained about the UK's policies towards the EU. However, the country continued to yield to the policies of Churchill who suggested that a United Europe was required, instead of just being part of Europe. The UK-EC relations have usually been uneasy. In the 1980s, during the Thatcher government in the UK, the problems with the EC gradually increased. The UK was the only member among 12 EC members that was against the establishment of the European Monetary Union (EMU) and the European Central Bank (ECB). The British Government in 1993 signed the Maastricht Treaty. However, it was opposed to this Treaty on some points because it saw some of this Treaty's goals as too interventionist and too centralizing. The UK also opposed to congregating for macroeconomic, defense and foreign policies under a single central authority, EC supranational framework. This was related to the Justice and Home Affairs (JHA) that included areas to combat international crimes, terrorism and third country national immigration.

In 1995, the UK accepted the enlargement process of the EU with pleasure but opted out of the Schengen Agreement because it did not wish to allow free movement across its borders for non-EC citizens. The country wanted to maintain its strict immigration controls. Later, the British government signed the Lisbon Treaty in which the EU decided to have a period of reflection for the future of Europe. The UK was satisfied that its red-lines had been respected and national interests had been protected. Generally speaking, the UK remained outside the EU consensus in some important policy areas such as border and immigration controls.

After the UK became a member of the EU, the Association Agreement which provides association between Turkey and the EU became applicable to the UK as

well. However, looking through the research on the Turkish immigrants in the UK, the country has not applied the rules of this Agreement completely. The UK agreed to fulfill the requirements of this Agreement only as a result of the cases which were solved not at the UK's national level but at the supra-national EU level, the ECJ. Hence, this gave way to make research particularly interesting in this area, given the UK has been enthusiastically supporting the Turkey's EU membership as a result of which all Turkish citizens will have freedom of movement right across the EU including the UK. As known, the British governments, such as under Prime Ministers Tony Blair and Gordon Brown were main supporters of Turkey's accession to the EU. When the EU decided to open accession talks for Turkey's membership in the EU Summit held on 17th December 2004 and on 3rd October 2005, the UK showed strong support.

To summarize, the strong support of the UK to the Turkey's EU accession led me to investigate further to see if this rhetorical support is coupled with support in practice, especially in the very sensitive and hotly debated area of immigration.

1.2. Purpose of the Study

After WWII, the Western European countries recruited laborers for their economic reconstruction. According to the bilateral agreements between Turkey and countries such as France, Germany, and Holland as EU members, Turkish workers went to these Western European countries to work. Eventually, they brought their families and became permanent settlers. It must be noted that these agreements were at the national level of these countries. In these countries there are several studies which examine Turkish immigrants. Furthermore, there is much research related to the EU accession process of Turkey.

However, very little research has been done on Turks in the UK apart from studies on Cypriot Turks. Some research have pointed out that the small population of Turkish immigrants is literally disregarded in the academic area. The Pınar Enneli

Report, a recent study on Turks in Britain, Young Turks and Kurds¹ mention that there is very little research done on the Turkish diaspora in the UK. Therefore, in this study I will focus on Turkish migration to the UK.

Turkish immigration began with Turkey's EU (formerly EEC) membership application that started with the Ankara Agreement (1963) and its Protocols. The Agreement states in its beginning that the signatories:

“DETERMINED to establish ever closer bonds between the Turkish people and the peoples brought together in the European Economic Community;

RESOLVED to ensure a continuous improvement in living conditions in Turkey and in the European Economic Community through accelerated economic progress and the harmonious expansion of trade, and to reduce the disparity between the Turkish economy and the economies of the Member States of the Community;

MINDFUL both of the special problems presented by the development of the Turkish economy and of the need to grant economic aid to Turkey during a given period;

RECOGNIZING that the support given by the European Economic Community to the efforts of the Turkish people to improve their standard of living will facilitate the accession of Turkey to the Community at a later date;

RESOLVED to preserve and strengthen peace and liberty by joint pursuit of the ideals underlying the Treaty establishing the European Economic Community.”²

The UK supports Turkey's EU accession strongly. However, the UK has not completely applied the rules of this Agreement which, as stated above, stipulates that its main is to establish ever closer ties between the Turkish people and the peoples of the European countries. The UK did recognize the legal rights of the Turkish immigrants stemming from the Ankara Agreement and had to start honoring the requirements of this Agreement only as a result of the cases which were solved at the supra-national EU level: the ECJ (The European Court of Justice).

¹ Pinar Enneli, Tariq Modood and Harriet Bradley, “*Young Turks and Kurds: A set of invisible disadvantaged groups*”, UK: Joseph Rowntree Foundation, 2005.

These things led me to examine and write a study about Turkish immigrants in the UK in the Ankara Agreement framework. My research question is about what immigration policies does the UK, as a highly supportive country for the EU membership of Turkey, apply towards Turkish immigrants. This thesis argues that there is a clear contradiction between the UK's support for Turkey's accession and the UK's failure of implementation of the EU law favorable to Turkish immigrants, stemming from the Ankara Agreement.

1.3. Study Area & Literature Review

Having looked through both Turkish and English written sources I found that research and literature on Turks in the UK are few. The Turkish written sources are as follows: İhsan Yılmaz: 'Lonradaki Türkiye ve Türk Diasporası' & 'İngiltere Müslümanları ve Hukuksal Ayrımcılık'; Sedat Laçiner: 'Açık Kapı Politikasından Yabancı Düşmanlığına' and Tayfun Atay: 'Türkler, Kürtler, Kıbrıslılar İngiltere'de Türkçe Yaşamak'. One of the most competent studies written in English is from Talip Kucukcan 'Politics of Ethnicity Identity and Religion: Turkish Muslims in Britain' and for its summary see: Talip Kucukcan 'Reproducing ethnicity and identity in diaspora'.

Looking through the literature of Turkish immigration studies I found important analyses and research conducted by scholars such as İhsan Yılmaz; Sedat Laçiner; Kemal Kirişçi & Refik Erzan 'Turkish Immigrants in European Union, Determinants of Immigration and Integration'; Stephen Twigg 'Turks in Europe: Why are we afraid?'; Pınar Enneli 'Young Turks and Kurds'. I could not find any sources that mention a link between the support of the UK towards Turkey's EU accession and the Turkish immigrants. I have found sources from websites, books, and articles about the response of the UK to Turkey's EU accession.

² "Ankara Agreement", <http://www.abgs.gov.tr/index.php?p=117&l=2> (accessed April 9, 2007).

1.4. Methodology

Supporting my argument first of all, following the introduction, I mention the EU based migration issue. Here, legal developments on immigration policies will be demonstrated because in chapter three I will consider how the UK acts politically towards the EU, especially after the Maastricht Treaty. In the next chapter, I will focus on the UK' s immigration policies before its EU membership and its policies will be analyzed separately to find if they derive from EU migration policies In the fourth chapter, I will discuss the Ankara Agreement which was signed between Turkey and the EU. Here, I will examine legal cases such as Savas, Veli and Dari cases with benefiting from www.bailii.org. to demonstrate if and to what extent, the UK has implemented EU immigration laws when it comes to Turkish nationals. While I was preparing this research I benefited from web sites, books, academic articles, National Statistics Office of UK, the UK Home Office, Official EU websites, Turkish and English newspapers such as the Guardian, the BBC, Today's Zaman and the Independent. Furthermore, I gained a lot of information from a report from Pınar Enneli.

1.5. Contents of the Thesis

Following the introduction in the second chapter, the EU immigration policies will be examined laying out Maastricht and Amsterdam Treaties which were the significant Treaties for the immigration issue for the EU and the UK. But before this I thought that focusing on immigration issues in the EU would be useful to understanding how this issue is recognized in the EU. In the third chapter, the UK's immigration policies before its membership to the EU and afterwards will be analyzed separately. I try to find out whether they are based on EU migration legal arrangements or not. Furthermore, particularly after the Maastricht Treaty, the accession of the UK to the EU and her position towards the EU based migration issue will be examined. My purpose here is to show if and to what extent, the UK has implemented EU immigration laws when it comes to the Turkish nationals. In the fourth chapter, I will concentrate on Turkish migration to the UK relating to its EU

accession process with the Agreements' rules implementation on Turkish immigrants there. Turkey signed the Ankara Agreement with the EU and when the UK became an EU member this Agreement became applicable to the UK. However, it did not implement the rules about the Turkish immigrants' entry into the UK. Thus, in this chapter, I will put forward the cases of Turkish immigrants based on this Agreement. Moreover, the fifth chapter will include a detailed analysis which led me to reach a conclusion. In this framework I hope this study will be a source for further research on Turkish immigrants in the UK.

CHAPTER 2

EU and Immigration Policies

2.1. Introduction

In this chapter I will discuss the progress of the EU's immigration policies. As stated before, my thesis intends to find an answer to whether the UK's immigration policies related to Turkish immigrants is connected to the UK's support for Turkey's EU accession. Therefore, I will look for an answer to the question about whether the UK has an EU based immigration policy and first of all I will present the position of the UK in the EU. In order to understand the position of the UK in the EU it is important to discuss the EU first. Thus, firstly in this chapter, I will give some brief information about the EU.

In the second part of this chapter I would like to concentrate on the immigration issue in the EU. After WWII many immigrants went to Western Europe because of the economic boom. The influx of migrants created racism and xenophobia across Europe because the migrants settled there permanently and this caused people to worry. Thus, immigration to the EU did not just provide economic growth but also affected social and cultural areas. Therefore, racism and xenophobia towards these immigrants increased and immigration policies were developed partially in respect of this situation.

Lastly, EU immigration policies will be analyzed in this chapter as I will discuss whether the UK policies were derived from the EU after its membership to the Union. Then, I will mention the Maastricht Treaty which was the second major amendment to arrangements which were made under the Treaty of Rome. Here immigration policies were not yet institutionalized, but with the Amsterdam Treaty as a third major amendment, these policies began to be institutionalized. In other words, these policies have fully become the Community (EU) responsibility. In

addition I will write about immigration policies after the Amsterdam Treaty was signed. After this treaty member states have a common approach on a common immigration and asylum policy. It is argued that there are difficulties in implementing this policy because these areas are still in the member states' national prerogatives.

2.2. EU History

After the WWII, Europe was split into two blocs. This was called the Cold War period in which USA and Soviet Union came to forefront. "There were deep-rooted ideological, economic and political differences between USA and Soviet Union before the WWII. These differences got intensified as a result of their mutual suspicions immediately after the Second World War."³ Europe experienced many wars for hundreds of years included WWII. So, "Europeans were determined to prevent such killing and destruction ever happening again."⁴

On 9th May, 1950 the French Foreign Minister Robert Schuman presented a plan which was the first step to providing and maintaining peace in Europe. This plan proposed that the production of coal and steel in France and Germany be controlled by a common "High Authority" and it welcomed other European countries to participate.⁵ The reason for this proposal was that in this way, "none can on its own make the weapons of war to turn against the other, as in the past."⁶ Thus on 18th April 1951, six countries established the European Coal and Steel Community (ECSC) formally signed at the Treaty of Paris which entered into force on 23rd July 1952 and expired on 23rd July 2002. The six countries which signed this Treaty were Germany, France, Italy, the Netherlands, Belgium and Luxembourg. This Community was the first European supranational community and it was based on the

³ Vipul Singh et.al., *History & Civics*, ICSE 10/1e, (UK: Longman, 2009), 207.

⁴ Gurminder K. Bhambra, "Postcolonial Europe or Understanding Europe in Times of the Postcolonial," in *European Studies*, ed. Chris Rumford, (UK: SAGE Handbook, 2009), 73.

⁵ Roy H. Ginsberg, "Regional Economic Integration, the Schuman Plan, and The United States," in *Demystifying the European Union: The Enduring Logic of Integration*, (UK: Rowman & Littlefield Publishers, 2007), 43.

⁶ "1945-1959 A Peaceful Europe-the Beginnings of Cooperation", http://europa.eu/abc/history/1945-1959/index_en.htm. (accessed, December 21, 2010).

principles on supranationalism.⁷ On 25th March 1957 the European Economic Community (EEC) was established which provided the customs union signed by the Treaty of Rome and entered into force on 1st January 1958. At the same time, European Atomic Energy Community (EURATOM) was established by the same Treaty. EURATOM was created to allow coordination among the research programmes of the member states about using nuclear energy in a peaceful way. The Euratom Treaty “today helps to pool knowledge, infrastructure, and funding of nuclear energy.”⁸ In 1967, under the name European Communities (EC), three Communities merged by signing a merger treaty which provided a Single Commission and a Single Council in Brussels. Customs Union was founded in 1968. This Union was an essential element of the internal market. In 1993 the single market came into force which allowed for internal borders and customs procedures to be abolished.⁹

The UK, Norway, Denmark and the Republic of Ireland were attracted by the Community’s success and applied for membership in 1969 in the Hague Summit. The UK, the Republic of Ireland and Denmark were accepted as members of the EC in 1972.¹⁰ Norway did not join the EC due to the results of the national referendum. This was the first enlargement of the EC and so it gained deeper cooperation because of the responsibilities in social, regional and environmental areas.¹¹ The second enlargement occurred when Greece became a member in 1980 and the third enlargement occurred when Portugal and Spain joined in 1986.

The establishment of the common market was to create economic integration within the EC. However, on 19th February 1986, the EC signed the Single European Act to create a Single Market. The objective defined in Article 8A was that this is “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty”.¹²

⁷“Avrupa Birliğinin Tarihiçesi”, The History of the European Union, <http://www.abgs.gov.tr/index.php?p=105&l=1> (accessed, May 10, 2010).

⁸ *The 2007 EC Budget: Report of Evidence*, 39th Report of Session 2005-06, (UK: House of Lords Papers 218, 2006), 30.

⁹ “Customs Union”, http://europa.eu/scadplus/glossary/customs_union_en.htm. (accessed October 15, 2010).

¹⁰ At this point within the following chapters, my focus will be EU membership process of the UK.

¹¹ Ibid, “Customs Union”.

¹² Hemme Battjes, “The ‘Area of Freedom, Security and Justice’,” in *European Asylum and International Law*, (The Netherlands: Martinus Lijhoff Publishers, 2006), 141.

The SEA provided for the transformation of the Common Market into a single market on 1st January 1993. The SEA started the process of political integration which led to an economic and monetary union being established in the Treaty of Maastricht.¹³

On 14th June 1985 the Schengen area, a territory where the free movement of persons is guaranteed, was formed by France, Germany, The Netherlands, Belgium and Luxembourg. The member states who signed this agreement abolished all internal borders. “Here common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls.”¹⁴ It took effect in 1995 and its two main aims were to get rid of border controls for people within the Schengen area and set up a common policy for control of the area’s external borders.¹⁵ Not all member states have signed this agreement as they did not want to eliminate their borders or they did not fulfill the requirements for the application of the Schengen acquis. The Schengen Agreement was incorporated into the Amsterdam Treaty on 1st May 1999 with the Council’s decision 1999/307/EC¹⁶ and it was placed in the EU legal framework.

After the collapse of the Berlin wall on 3rd December 1989, the West and East Germany became united and communism collapsed in Eastern Europe. This was the external event that affected the EC’s political progress. As an internal event, the member states wanted to add other reforms to the progress made by the Single European Act.¹⁷ These events caused changes in the political structure of the EC. As a result of these events the member states decided to build stronger connections.

¹³“The Single European Act”,
http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_singleact_en.htm. (accessed July 10, 2007)

¹⁴“The Shengen Area and Cooperation”,
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm. (accessed August 3, 2009)

¹⁵ Peo Handsen and Sandy Brian Hager, “A Citizens’ Europe for Whom”, in *The Politics of European Citizenship: Deepening Contradictions in Social Rights & Migration Policy*, (USA: Berghahn Books, 2010), 80.

¹⁶ “1999/307/EC: Council Decision of 1 May 1999”,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999D0307:EN:NOT>

Therefore, the European Council gathered during a European Summit to negotiate the drafting of a new Treaty, called the Maastricht Treaty, on 9th and 10th December 1991.¹⁸ I will analyze this Treaty and the next developments in the next section of my thesis because the immigration issue which includes my thesis research area has been institutionalized in the Maastricht Treaty.¹⁹

2.3. EU Immigration Policies

Prior to my analysis of the immigration policies, I want to define the importance of the immigration issue in the EU after WWII. “Post-war migration to Western Europe links between sending and receiving countries and by the development of the European economy that generated demand for migrant workers”.²⁰ Andrew Geddes points out that it is helpful to make distinction between the three periods of migration to Western Europe since WWII: -the primary labor migration was “between the 1950s and the 1973-4 driven in large part by the exigencies of West European economic construction”.²¹ Most of this earlier migration can be attributed to connections between colonial states or labor recruitment agreements between states.²² The UK was an exception within these agreements because people immigrated to the UK mainly from its former colonies. These migrants held UK passports and nationality and thus had the same formal rights as other citizens. I will examine this in detail in the fourth chapter. The migrant workers who were based on bilateral agreements between sending and receiving countries were known as guest workers.²³ When the economic conditions improved it

¹⁷ Roel Duing et.al., “Interdependencies Between European Spatial Policies and Planning Cultures,” in *Planning Cultures in Europe Decoding Cultural Phenomena in Urban and Regional Planning*, ed. Joerg Knieling, Frank Othengrafen, ed. (Great Britain: Ashgate, 2009), 256.

¹⁸ “European Council in Maastricht”,

http://www.europarl.europa.eu/summits/lisbon/li1_en.pdf (accessed May 5, 2002)

¹⁹ Desmond Dinan edit., Trans. Hale Akay, *Avrupa Birliđi Ansiklopedisi*, Encyclopedia of The European Union, (Istanbul: Kitap Yayinevi, 2005), 479.

²⁰ Andrew Geddes, “Analysing the Politics of Migration and Immigration in Europe,” in *The Politics of Migration and Immigration in Europe*, (London: SAGE, 2003), 14.

²¹ Ibid. 17.

²² Ibid. 15.

²³ Norman Ginsburg, “Ideology and Welfare Expenditure The Social Market Consensus,” in *Divisions of Welfare: a critical introduction to comparative social policy*, (California: SAGE, 1992), 80.

was thought that these workers would return to their home countries. However, this temporary migration turned into permanent settlement.

Furthermore, “the secondary family migration accelerated in the mid-1970s”²⁴. Western European countries “put a stop to labor migration around the time of the oil crisis in 1973 as it became clear that world recession was approaching.”²⁵ It was at this point that the Western European countries closed their doors to the large-scale labor migration. In fact, these countries narrowed the labor migration and only allowed highly skilled immigrants to enter. However, migration by the workers’ family members continued. “A key point to bear in mind in relation to the discussion of the secondary migration is that the decision to restrict labour migration did not lead to the end of immigration and to labour migration”.²⁶ “The unplanned nature of this process, in a situation of crisis that mentioned above and racism, leads to marginalization of the migrant populations”.²⁷ This process was “not only the phase of permanent settlement but also the phase of the development of new ethnic minorities.”²⁸ Therefore, in Europe during the 1970s and 1980s, there were political debates about family migrations because of the implications of permanent settlements.

The third wave of migration occurred in the aftermath of the Cold War in 1989 and 1990. From this time, “particularly, there was a noticeable increase in asylum seeking migration and migration defined by state policies as illegal”²⁹.

Furthermore, the settled migrants became more engaged with institutions in their new societies, in particular, the labor market, welfare state and political system.³⁰ Therefore, it can be said that “migrants and migration do not just contribute to economic growth in fact their impact is probably most keenly felt in the social and

²⁴Geddes, *op.cit.*, The Politics of Immigration, 16.

²⁵ Stephen Castles, “The Guest Worker in Western Europe-an obituary”, *International Migration Review*, Vol. 20, No. 4, Special Issue: Temporary Worker Programs: Mechanisms, Conditions, Consequences (Winter, 1986), 770.

²⁶ Geddes, *op.cit.*, The Politics of Immigration, 16.

²⁷ Castles, *op.cit.*, The Guest Worker, 771.

²⁸ *Ibid.*

²⁹ *Ibid.*, 16.

³⁰ *Ibid.*, 15.

cultural spheres of life”³¹. Because of that, immigration became a significant issue and led to increased focus on immigration policy developments.

Especially after the cold war the immigration issue gained importance within the EU member states. Xenophobia and racism increased partially because of the employment pressures by immigrants.³² These pressures led to settle the migrants in Europe and as mentioned above they also are effective in the social and cultural sphere of life. Hence, xenophobia and racism increased. Another aspect of the understanding of the concepts of xenophobia and racism is displayed within the identification of oneself with the “other”. Considering Europe’s grave inexperience in leading a common life together with people from different religions, race and languages, it can be argued that there is a general suspicious view against different and foreign people, especially the ones that have joined the society later on. Moreover, we may say that this perspective still continues even today. This suspicion with a historical background and this othering has increased dramatically and very publically nowadays, especially after 9/11 in the USA and the bombings in London and Madrid.³³ As Muslim migrants are perceived as potentially threatening after 9/11, Islamophobia has increased.³⁴ The increasing Islamophobia has intensified the prejudices and accusations against Muslims having no capacity for integration, and as a result it has become an initiator for xenophobia. Through these issues, immigration not only affects the European integration but also the enlargement process of the EU.³⁵ Thus, this has given way to politicizing immigration issue at national levels within the member states.

The National policies are drawn up according to the EU member’s national interests. These policies and strategies vary from one country to another country depending on the kind of immigration these countries attract and the way in which

³¹ Khalid Koser, *International Migration: a very short introduction*, (UK: Oxford University Press, 2007), 11.

³² Enver Bozkurt et.al., “Adalet İçişlerinde İşbirliği Politikası”, Co-operation Policy in Justice and Home Affairs, in *Avrupa Birliği Hukuku*, (Ankara: Asil Yayınları, 2008), 338.

³³ Erhan Akdemir, “11 Eylül 2001, 11 Mart 2004 ve 7 Temmuz 2005, Terörist Saldırılarından Ardından İslam’ın Avrupa’da Algılanışı”, Perception of Islam in Europe Following the Terrorist Attacks, *Ankara Avrupa Çalışmaları Dergisi*, Cilt:8, No:1, 2009, 4.

³⁴ Ehsan Modood, “Politics,” in *British Muslims Media Guide*, (London: British Council, 2006), 23.

³⁵ Fatma Yılmaz, “Introduction”, in *Avrupa’da Irkçılık ve Yabancı Düşmanlığı*, Racism and Xenophobia in Europe, (Ankara: USAK Yayınları, 2008), 2.

the political-constitutional values see the concept of integrating foreigners.³⁶ These are influenced by the historical; economical and geographical conditions of every state. Gradually, different EU members' migration policies within the EU created a legal problem at the EU level. Owing to the difficulty in having a common strategy to fight against racism and xenophobia as members in general, and the problem becoming gradually more serious, the EU has come to consider the need to develop policies on a unifying level.³⁷

As illustrated above, the immigration issue became a significant one in the EU and attempts have been made to solve problems with policy developments. I will analyze this issue in relation to the treaties in the next chapters. Now, I will identify the development of the EU immigration policies.

After the EEC was established in 1957 with the Treaty of Rome, the areas of immigration and asylum were not included at the EEC level (supranational level). It was an economic cooperation and it was not yet a political cooperation. So, they did not need to include these areas which are immigration and asylum. "By the mid-1980s, however, the vast majority of the Western European countries had shifted to a rigorous closed door policy."³⁸ Even so, "within the EC there was strong opposition from some member states to extended supranational competencies."³⁹ For instance, the British governments supported intergovernmental co-operation in general but "opposed any measures that jeopardize their use of external frontier controls."⁴⁰

Before immigration and asylum issues included the third pillar, justice and home affairs, of the Maastricht Treaty, the Ad Hoc Working Group on Immigration (1986) (ADHWCGI) was established as intergovernmental cooperation by Ministers of the EU member states. This group was made up of top immigration policy

³⁶ Maria Teresa Bia, "Towards an EU Immigration Policy: Between Emerging Supranational Principles and National Concerns", European Diversity and Autonomy Papers, EDAP 2/2004, 5, at http://webfolder.eurac.edu/EURAC/Publications/edap/2004_edap02.pdf

³⁷ Yılmaz, *op.cit.*, Avrupa'da Irkçılık, Racism in Europe, 3.

³⁸ Albert Bauchinger, "EU Policy Regarding Asylum and Immigration: An Assessment of the Post-Amsterdam Period", (Thesis, Webster University, May 2007), 15.

³⁹ Geddes, *op.cit.*, The Politics of Immigration, 132.

⁴⁰ *Ibid.*

officials from the different member states and it took care of asylum, external frontiers, forged papers, admissions, deportations, and the exchange of information.⁴¹ The ECJ, EP and the Commission had no power with the developments⁴² so, these arrangements were outside of the Treaty framework and institutions.⁴³

Until the 1990s, the member states had not desire a closer political cooperation. It was after the collapse of the Soviet Union (1991) and the end of the Cold War (1991), that the European Community felt the need to extend the integration process to political areas in order to meet difficulties and opportunities of a changing world order.⁴⁴ The migration policy of the EU was just mentioned in the Maastricht Treaty as a policy area.⁴⁵ Now, I will analyze this Treaty in relation to this policy.

2.4. Treaties: Maastricht and Amsterdam

The Maastricht Treaty was signed on the 7th of February 1992 and entered into force on the 1st of November 1993. This Treaty was the second major amendment to the arrangements made under the Treaty of Rome. The Treaty created a new structure which included three pillars. These were European Communities which are 'European Community; the European Coal and Steel Community (ECSC); EURATOM, Common Foreign and Security Policy (CFSP) and police and judicial cooperation in criminal matters' that concerns cooperation in justice and home affairs (JHA) provided for in Title VI of the Treaty on the European Union.⁴⁶ "This Treaty introduces the concept of European citizenship, reinforces the powers of the European Parliament and launches economic and monetary union (EMU)."⁴⁷ These

⁴¹ Ibid.

⁴² Martin Baldwin-Edwards, "The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe", *Journal of Common Market Studies*, Vol. 35, No. 4, December 1997, p.498.

⁴³ Matthew J. Gibney and Randall Hansen, ed. in *Immigration and Asylum From 1900 to the Present*, (USA: ABC-CLIO, 2005), 220.

⁴⁴ Geddes, *op.cit.*, The Politics of Immigration, 16.

⁴⁵ Sandra Lavenex, "Passing the Buck: European Union Refugee Policies Towards Central and Eastern Europe", *Journal of Refugee Studies* Vol. 11, No. 2, 1998, 134.

⁴⁶ Linda M. Stevenson, *The European Union Encyclopedia and Directory 1999*, (UK: Routledge, 1999), 95.

⁴⁷ "Treaty of Maastricht on European Union",

http://europa.eu/legislation_summaries/economic_and_monetary_affairs/institutional_and_economic_framework/treaties_maastricht_en.htm. (accessed July 10, 2007).

pillars were not only political, but also economical. With the Maastricht Treaty the political aspects of these pillars were placed into the European Union's supranational structure "but did so within an intergovernmental Justice and Home Affairs (JHA) pillar as the third one that was separate from the European Community (EC) decision-making procedures."⁴⁸ In this pillar, the role of the EU institutions such as the European Commission, the European Parliament and European Court of Justice were minimized and unanimity was required in the decision-making process. Thus, immigration policies and nationality was national prerogatives⁴⁹ and therefore this policy was not yet institutionalized.

The Maastricht Treaty was a basic document which contained the stages of the economical and monetary union (EMU), policies that will be applied and institutional changes that will be made.⁵⁰

The free movement of capital, persons, goods, and services between the 12 member states fulfilled the proper sense with the establishment of the Single Market on 1 January 1993. This Act "provided a stronger impetus to cooperate on migration matters, with completion of the internal market, including provisions on the free movement of persons between EU states, to be achieved by 1992."⁵¹ The SEA has more concerns on immigration and asylum issues. "Because of the provisions in the single market program for the free movement of people and fears in Western Europe that the end of the Cold War would trigger a huge influx of migrants from Central and Eastern Europe, issues such as immigration, asylum, and control of cross-border crime were high on the agenda of the conference that produced the Maastricht Treaty."⁵² These issues began to find a place in this Act but at the national level. Joanna Apap noted that the EU migration policy deals with the free movement for

⁴⁸Matthew J.Gibney, *op.cit.*, *Immigration and Asylum*, 221.

⁴⁹Anthony M. Messina, *West European Immigration and Immigration Policy in the New Century*, (USA: Greenwood Publishing Group, 2002) p.113.

⁵⁰ "Avrupa Birliğinin Tarihi", The History of the European Union, <http://www.ikv.org.tr/icerik.asp?konu=abtarihce&baslik=Tarihçe> (December 20, 2010)

⁵¹Christina Boswell, "EU Immigration and Asylum Policy: From Tampere to Laeken and Beyond", The Royal Institute of International Affairs, New Series No.30, London, February 2002, 2.

⁵² Desmond Dinan, "Achieving European Union," in *Europe Recast: A History of European Union*, (Boulder,CO: Lynne Rienner, 2004), 256.

nationals of EU member states and the free movement of workers within the European Union. However, there were difficulties maintaining a clear distinction between the right of free movement for nationals of member states and immigration, asylum policies covering third-country nationals.⁵³ It must be noted that single-market integration changes the nature of borders and border regimes within the EU but does not necessarily imply movement toward common immigration and asylum policies.

The Schengen Agreement which abolished the internal borders of the signatory states was signed in 1985 including the Single European Act's purposes.⁵⁴ In 1995, the governments of ten EU member states finally implemented the Schengen Agreement and "thereby established an area identical with the territory of these states in which uncontrolled border crossing was permitted."⁵⁵

The Treaty of Amsterdam was signed on 2 October 1997 and entered into force on 1 May 1999. This Treaty was the third major amendment to the arrangements made under the Treaty of Rome (1957).⁵⁶ This Treaty was to update and clarify the Maastricht Treaty and also started to prepare for EU enlargement. This Treaty also arranged the loose ends of the Maastricht Treaty. For instance, in the Maastricht Treaty only principles of the democracy and fundamental rights were placed in justice and home affairs areas. However, the Amsterdam Treaty showed that the EU was established on state of law principles between freedom, democracy human rights and basic freedoms.⁵⁷ The Amsterdam Treaty also "announced that the EU would be an area of freedom, security and justice: "Freedom" for EU citizens to move between member states would be accompanied by compensating immigration and asylum measures that would regulate entry by non-EU nationals."⁵⁸ Furthermore, one of the goals of this Treaty was to strengthen the institutional and political

⁵³ Joanna Apap, "Case Law and the Rights of the Third Country Nationals", in *The Rights of Immigrant Workers in The European Union*, (The Netherlands: Kluwer Law International, 2002), 115.

⁵⁴ Dinan, *op.cit.*, Avrupa Birliği Ansiklopedisi, The European Union Encyclopedia, 256.

⁵⁵ Harald Kleinschmidt, "EU Migration Policy", (Institute of Social Science, University of Tsukuba:Japan, 2002), 4.

⁵⁶ "Treaty of Amsterdam",

<http://www.civitas.org.uk/eufacts/FSTREAT/TR4.htm>. (accessed November 10, 2010)

⁵⁷ *Ibid.*

structure of the EU with regard to the enlargement towards the Central and Eastern European Countries.⁵⁹

The Amsterdam Treaty (1999) incorporated the Schengen Agreement into EU law and this obliged the governments of member states “to enforce identical measures of border control, policing and registration methods concerning migration.”⁶⁰ All member states except the Republic of Ireland, the UK, Bulgaria, Cyprus and Romania are now party to the *acquis*. This Treaty also “discusses the changes concerning freedom of movement within the European Union and the inclusion in the EC Treaty of a new Title on visas, asylum, immigration, and other policies linked to the free movement of persons”⁶¹.

This Treaty moved the migration policy and related nationality policies from the third pillar “where unanimity of member states is required in decisions and the decision-making process is inter-governmental”⁶² to the first pillar (supranational pillar) “where the EU institutions play a leading role in the adoption of supranational legislation and under which the measures to be adopted to develop a common approach to immigration and asylum are spelt out”⁶³. “With that move, the Commission gains the capacity to propose directives (binding measures) to the Council, which will have to decide on their acceptability by unanimous vote, unless the Council votes unanimously to shift to Qualified Majority Voting”⁶⁴.

However, the Treaty of Amsterdam transferred some of the fields such as free movement of persons⁶⁵ covered by the third pillar (intergovernmental pillar) to the first pillar but police and judicial cooperation in criminal matters stayed in the third

⁵⁸ Gibney, *op.cit.*, Immigration and Asylum, 219.

⁵⁹ *Ibid.* “Treaty of Amsterdam”.

⁶⁰ Kleinschmidt, *op.cit.*, EU Migration Policy, 4.

⁶¹ *The Amsterdam Treaty: A Comprehensive Guide*, (Office for Official Publications of The European Communities, 1996), 96.

⁶² Teresa, *op.cit.*, “Towards an EU Immigration Policy”, 4.

⁶³ *Ibid.*

⁶⁴ Joanne van Selm, “Immigration and Asylum or Foreign Policy: The EU’s Approach to Migrants and Their Countries of Origin”, in *Migration and the Externalities of European Integration*, ed. Sandra Lavanex, Emek.M Ucarer, (UK: Lexington Books, 2002), 144.

pillar. Therefore, these issues have fully become the Community (EU) responsibility. On the other hand, the move of the Schengen Agreements from the third pillar to the first pillar did not have an effect on the migration and nationality policies of the EU member states and little effect on the attitudes and behaviors of migrants.⁶⁶ Even so, incorporating the Agreement increased the role of the EU in home affairs and “it pushed forward the model of a supranational European Union at the expense of intergovernmental co-operation.”⁶⁷

2.5. The Post-Amsterdam Period: Immigration Policies

A conference held in 2000 by the EU “named as Nice Treaty to tackle the so-called Amsterdam leftovers extension of qualified majority voting, weighting of council votes, and size, and composition of the Commission.”⁶⁸ But this Treaty succeeded “only to a limited extent in preparing the EU institutionally for enlargement”⁶⁹. In 2001 a Convention was held in Laeken which was named the Laeken Declaration. This Convention prepared for the next intergovernmental conference and drew up a draft Treaty establishing a European Constitution. The draft of the constitution was signed on 29th October 2004. “EU Constitutional Treaty was intended to replace all the treaties signed over the last 50 years, with the exception of the Euratom Treaty.”⁷⁰ “This was the first meeting of the European Council ever devoted exclusively to justice and home affairs issues.”⁷¹ However, not all member states ratified this draft. There were some difficulties and “the Heads of State and Government decided, at the European Council meeting on 16th and 17th June 2005, to launch a “period of reflection” on the future of Europe”⁷². “About the

⁶⁵“Pillars of the European Union”,
http://europa.eu/scadplus/glossary/eu_pillars_en.htm. (accessed November 21, 2010)

⁶⁶ Kleinschmidt, *op.cit.*, “EU Migration Policy”, 5.

⁶⁷ *Ibid.* “Treaty of Amsterdam”.

⁶⁸ Dinan, *op.cit.*, *Europe Recast*, 288.

⁶⁹ *Ibid.* 289.

⁷⁰ Heino Fassbender, “Europe’s Lost Decade-‘1992’ and all that,” in *Europe as an Economic Power House:How the old Continent is gaining new strength*, (USA: Heino Fassbender, 2007), 23.

⁷¹ Desmond Dinan, “Internal and External Security,” in *Ever Closer Union*, (Boulder,CO: Lynne Rienner, 2004), 572.

⁷² “Treaty of Nice: A Comprehensive Guide”,

http://europa.eu/legislation_summaries/institutional_affairs/treaties/nice_treaty/nice_treaty_introduction_en.htm. (accessed January 1, 2008).

common immigration policy one noted: “at the same as the EU was premised on the free movement of people within the borders, there is no common policy on migration”⁷³. The Director of FPC in the UK, Stephen Twigg commented that “it might not seem so startling that national governments have reserved to themselves powers of decision in an area affecting social stability and national identity”⁷⁴.

At the European Council meeting on the 21st and 22nd June 2007, European leaders decided to meet in the IGC to finalize and adopt a reform treaty for the European Union. The Treaty of Lisbon was signed on the 13th of December 2007 by the member states and it entered into force on the 1st of October 2009 in accordance with its Article 6. Lisbon Treaty put freedom, justice and security at the centre of its priorities it confirmed the EU commitment to the development of a common immigration policy.⁷⁵

Incorporating the Schengen Agreement in 1999 required all member states to have a common EU policy for protecting the external borders of the EU and to increase cooperation and coordination within the EU. Thus, the European Council (the EU Member States' Heads of States and Governments) held a special meeting on the 15th and 16th of October 1999 in Tampere “to foster the creation of the area of freedom, security and justice as envisaged by Title IV of the Treaty establishing the European Community”⁷⁶. The policy statements of the Presidency conclusions included policy statements on these issues and further developed “the Action Plan of the Council and the Commission (OJ 1999 C 19/1)”⁷⁷. It was indicated that there is a “link between freedom of movement for citizens of the EU and the need to adopt a

⁷³ Geddes, *op.cit.*, *The Politics of Immigration*, 198.

⁷⁴ Stephen Twigg, “Turks in Europe: Why are we afraid?”, (USA: ABC-CLIO, 2005), 35.

⁷⁵ “Treaty of Lisbon”,

http://europa.eu/lisbon_treaty/faq/index_en.htm. (accessed November 25, 2010)

⁷⁶ “Tampere Summit”, Migration News, Vol:6, Number 12, December 1999, Center for International and European Law on Immigration Asylum, University of Konstanz at <http://migration.ucdavis.edu/mn/>

⁷⁷ Ryszard Cholweinski, “European Union Policy on Irregular Migration: Human Rights Lost.” In *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*, ed. Barbara Bogusz, Ryszard Cholewinski and Erica Szyszczak. (The Netherlands: Martinus Nijhoff Publisher, 2004), 169.

common framework for managing migration at the European level”⁷⁸. The Tampere Summit was a five-year-agenda and ended in 2004. Thus, the EU Commission presented a “Communication taking stock of the implementation of the Tampere agenda and setting future guidelines for a new justice and home affairs agenda for the years to come”⁷⁹. “Five years after the European Council’s meeting in Tampere, it was time for a new agenda to enable the Union to build on the achievements and to meet effectively the new challenges it will face.”⁸⁰ The agreed approaches in the Council confirmed in 2004 in the Hague Programme “sets the objectives for strengthening freedom, security and justice in the EU for the period 2005-2010”⁸¹. This programme is a five-year programme at the EU level for closer co-operation in justice and home affairs. The objectives are:

In the field of asylum, immigration and border control, the Hague programme includes the following key measures:

- “a common European asylum system with a common procedure and a uniform status for those who are granted asylum or protection by 2009;
- measures for foreigners to legally work in the EU in accordance with labor market requirements;
- a European framework to guarantee the successful integration of migrants into host societies;
- partnerships with third countries to improve their asylum systems, better tackle illegal immigration and implement resettlement programmes;

⁷⁸ Ibid. Tampere Summit.

⁷⁹ “Hague Programme: JHA Programme 2005-2010”, <http://www.euractiv.com/en/security/hague-programme-jha-programme-2005-10/article-130657> (accessed November 26, 2010).

⁸⁰ Steve Peers, “Annexes”, *EU Immigration and Asylum Law: Text and Commentary*, ed. Steve Peers and Nicola Rogers (The Netherlands: Martinus Nijhoff Publishers, 2006), 1010.

⁸¹ “Towards a Common European Union Immigration Policy”, http://ec.europa.eu/home-affairs/policies/immigration/immigration_intro_en.htm. (accessed July 30, 2010).

- a policy to expel and return illegal immigrants to their countries of origin;
- a fund for the management of external borders;
- Schengen information system (SIS II) - a database of people who have been issued with arrest warrants and of stolen objects to be operational in 2007
- Common visa rules (common application centers, introduction of biometrics in the visa information system).⁸² The main focus of this programme was on setting up a common immigration and asylum policy in the EU.

With the Amsterdam Treaty, immigration-related matters became more institutionalized, so the EU council arranged directives. First, the “Council Regulation (EC) 343/2003 established the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Decision 2002/463/EC adopting an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration; Council Directive 2001/55/EC on temporary protection of displaced persons, and Decision 2000/596/EC, establishing the ERF”⁸³. These are the only measures to have been adopted that gave importance to the formal communitarisation of immigration and asylum policies. “Individual responses by member states are not sufficient, as the national responses to the conflict in former Yugoslavia clearly showed. For its part, the European legislative framework for immigration via family reunification and for work purposes is highly fragmented.”⁸⁴

⁸² Ibid.Hague Programme: JHA Programme 2005-2010.

⁸³ Thierry Balzacq and Sergio Carrera, “Asylum,”*Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, (Brussels: Centre for European Policy Studies, 2005), 42.

2.6. Conclusion

The EC was established as an economic cooperation with the Treaty of Rome (1957) but after the Cold War, the EU integrated more than before in political and economic areas especially with the Maastricht Treaty. Here I focused on the development of immigration issues of the EU. I gave a brief history of the EU and then I concentrated on analyzing the immigration phenomena in the EU. It is evident that gradually immigration became a complex issue because it has affected both social and cultural areas. Immigration and asylum became important issues in the 1990s following the Maastricht Treaty (1992), Amsterdam Treaty (1997), and the Treaty of Nice (2000). The immigration and asylum issues were at the national level of the EU members. However, after the end of the cold war, these issues began to be mentioned at the EU level. In the EU, the Maastricht Treaty “formalized” the aspects of immigration and asylum policy, while the Amsterdam Treaty “communitarized” them into the union authority.

Following the Amsterdam Treaty, the Union members agreed to coordinate their approach to asylum and immigration and also they tried to increase cooperation on police and law enforcement. In the Nice Treaty, an EU Constitution draft was discussed and on the Laeken declaration adopted by the European Council, a convention was established for the future of Europe. This Convention was for preparing an institutional and constitutional reform to the EC treaties. However, it could not succeed because it needed unanimity among the EU members. Then, the Head of Ministers in the EU decided to prepare a Treaty, named the Lisbon Treaty (2009), to reform the EU Treaty. In this Treaty the qualified majority voting extended in 40 important policy areas in the EU. These were especially related to asylum, immigration, police co-operation and judicial co-operation in criminal matters. There are developments in this area but it is pointed out that the EU still has difficulties in agreeing a common immigration and asylum policy as the EU lacks

⁸⁴ Teresa, *op.cit.*, “Towards an EU Immigration Policy”, 7.

binding legal instruments in this area. Furthermore, the member states will keep on constructing their own policies based on their national considerations. In the next chapter, I will investigate further the position of the UK in the EU after having analyzed the EU migration policies. I will try to answer the question of how the UK acts towards the EU in relation to the immigration issue.

CHAPTER 3

British Immigration Policies Before and After the EU Membership

3.1. Introduction

The UK was previously an empire and after the WWII, its colonies began to gain their independencies and so the empire collapsed. The country tried to arrange its economy and recruited laborers from outside, especially from her former colonies. But later, the difficulties began as she tried to arrange legal arrangements towards them but it was not enough. The UK also had difficulties in the transition to a nation-state. Thus, to manage the immigration flow, the UK decided to arrange legal Acts on these immigrant workers. I will depict these legal Acts to see if she inflicted from the EU arrangements or not. My purpose is to look through British immigration policies prior to its membership to the EU and afterwards. I endeavour to illustrate if and to what extent the UK has implemented EU immigration laws. Furthermore, in the next chapter I would like to focus on the implementations for Turkish nationals.

Here the immigration acts which came before and after the UK's EU membership will be studied. Furthermore, the UK's position towards the Maastricht Treaty with regards to the immigration issue will be looked at. I argue that the UK gradually followed strict policies towards immigrants and that it remained outside the EU consensus in some important policy areas such as border and immigration controls. I will particularly point out the case of the Turkish immigrants in the next chapter.

3.2. Immigration policies and Implementations of the British Government: Before the EU Membership

Historically, Britain was a huge empire with many colonies but after the WWI, the British Empire fell apart because her colonies gradually began to gain their independence. Thus, “Britain has had to redefine itself as a nation-state and to create for the first time a national citizenship”.⁸⁵ This transition was not so easy because there was an absence of a strong identity as a nation-state and of a well-established national citizenship. This led to bitter politics on immigration and citizenship during the last quarter-century.⁸⁶ Below, I will analyze this situation.

After the WWII, the British economy collapsed and therefore the country tried to repair its economy but this required labor force because a labor deficit emerged.⁸⁷ As a solution for this requirement the Royal Commission on Population was established. This Commission’s 1949 report suggested that foreign workers will contribute to the UK.⁸⁸ According to this report the foreign workers were not just provisional but they were seen as a part of the British life. At the first stage, 91.151 workers were brought from Europe, mainly from Poland, the Ukraine and Italy. Yet they could not benefit from all the rights that all British people benefited from.⁸⁹ In addition, they were seen as reserve workers and were employed in hard works. In short, these immigrant workers were perceived second class citizens and because of this nontolerance many of these workers migrated to the USA.

Britain tended to close the worker’s deficit using former colonies and actual Commonwealth countries.⁹⁰ The Commonwealth is a successor of the British

⁸⁵ William Rogers Brubaker, “Introduction to Immigration and the Politics of Citizenship in Europe and North America”, in *Selected Studies in International Migration and Immigrant Incorporation*, ed. Marco Matiniello & Jan Raths, (Amsterdam: Amsterdam University Press, 2010), 224.

⁸⁶ *Ibid.*

⁸⁷ Stephen Broadberry, “Employment and Unemployment”, in *The Economy History of Britain Since 1700: 1939-1992*, ed. Roderick Floud & Deirdre N. McCloskey, (UK: Cambridge University Press, 1994), 198.

⁸⁸ Andrew Drzemczewski, A Major Overhaul of the European Human Rights Convention Control Mechanism: Protocol No:11, *Collected Courses of European Law*, ed. Patrick Weil, (Kluwer Law International: The Netherlands, 1999), 121.

⁸⁹ Sedat Laciner, *Açık Kapı Politikası’ndan Yabancı Düşmanlığı’na: İngiltere’de Irkçılık, Dış Göç ve Irk İlişkileri*, From Open Door Policy to Xenophobia: Racism, Out- Migration and Race Relations in the UK, (Avrasya Araştırmalar Merkezi: Ankara, 2001), 20.

⁹⁰ The Commonwealth of Nations is a voluntary association of 53 independent sovereign states, most of which are former British colonies, or dependencies of these colonies. The relationship among them is one of an international

Empire, but later it was renamed as the Commonwealth of Nations in 1931. The Commonwealth of Nations is an international coalition of independent sovereign states and mainly included the former British colonies or their dependencies with Britain's leadership. The purpose of this coalition is for economically mutual interaction among these countries. Laborers came from India, Bangladesh and Pakistan while others came from Cyprus, The Caribbean, East and West Africa and Guyana. The UK began to prepare a visa implementation that it was required to control these immigrants who came from Commonwealth countries in the British Nationality Act in 1948.⁹¹

In the following part, I will analyze the Immigration Acts at the national level in the UK. These Acts control immigration in the UK.

3.2.1 UK Immigration Acts

Britain is a former colonial power, whose immigration and citizenship policies reflect an imperial conceptualization. According to the British Nationality Act, which was drawn up in 1948, most of the migrant workers were considered as citizens with equal rights. This Act divided British citizenship into two categories citizenship of independent countries of the Commonwealth and citizenship of the UK and Colonies. Citizens in both categories did not only remain as 'British subjects' but also as 'Commonwealth citizens'. The status as British subject gave the right of free entry into the UK.⁹² According to the UK Border Agency, British subject gained from the fact that almost everyone who had a close connection to the UK was considered a British subject until 1949. "And all citizens of Commonwealth

organization through which countries with diverse social, political, and economic backgrounds are regarded as equal in status, and co-operate within a framework of common values and goals. Current members are: Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, Vanuatu and Zambia.

⁹¹Dennis Kavanagh, "The Politics of Immigration, Asylum and Ethnic Diversity," in *British Politics* ed. Dennis Kavanagh, David Richards Andrew Geddes, Martin Smith, (Oxford University Press, USA, June 2006), 584.

⁹²Anca Voicu, "Immigration and Integration Policies in UK", *Romanian Journal of European Affairs*, Vol 9, No:2, June 2009,3.

countries were British subjects until January 1983”.⁹³ Now, since this date “very few categories of people have qualified as British subjects”⁹⁴ and just under certain circumstances one can remain as a British subject.

In the 1950s, on the one hand racial tensions increased, and on the other, the government was under increasing pressure from the Commonwealth countries. As a result, the government faced many challenges. In the 1950s there was a significant increase of Indian and Pakistani people migrating to the UK but a huge percentage of these people were not from the Indian subcontinent but from African countries such as Uganda and Kenya. At one time, these people were brought for work by the British Government or by their own desire but when these countries gained their independence, many problems such as bad live conditions occurred. Thus, they could not return to their motherland so they stayed in England and accepted Britain as their motherland. These people faced many problems in the UK such as xenophobia and discrimination while applying for jobs. Although they may have felt that they wanted to turn to their countries, they could not because of the living conditions of their own countries.

Until 1962, there was no limitation about entry to the UK from colonies of Britain and Commonwealth countries with the inclusion of Cyprus. All of the citizens of the British Empire and Commonwealth countries were at the same time British citizens and this led to an increase of immigration to the UK. In 1950s and 1960s, racial discrimination was targeted at Asian and black immigrants which led to many problems such as stoning cars and, attacking houses of the immigrant etc. As a result, these problems caused polarization among the ethnic groups.

As a solution for these problems, the legal and governmental response was unsatisfactory. Instead of taking measures against racial discrimination, the then Prime Minister Harold Macmillan declared that he hoped that the immigration rate

⁹³ “Who is a British subject?”, <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/britishsubjects/> (accessed November 21, 2010)

⁹⁴ Katrine Fangen, Kirsten Fossan, and Ferdinand Andreas Mohn, *Inclusion and Exclusion of Young Adult Migrants in Europe: Barriers and Bridges*, (UK: Ashgate Publishing, 2010), p.58.

would decrease without need for an Act.⁹⁵ As a solution to these problematic events, the Commonwealth Immigrants Act of 1962 “was introduced to provide a legal framework which would enable the British Government to restrict the settlement of ‘coloured’ colonial and Indian sub-continental British subject for itself”⁹⁶. This Act made a distinction between the UK citizens and Commonwealth citizens. This Act also prevented free and unrestricted entry to the UK for Commonwealth citizens as well as British colonies; its aim was to limit the admissions of “coloured” immigrants, although it did not obviously state this racial discrimination.⁹⁷ “This Act aimed at extending control and denying right of entry except to those who had substantial connection with the UK by birth or descent”.⁹⁸ The racial tensions increased and were encouraged because of the perceptions of the government. Conversely, the immigration increased to the UK, as the families and the relatives of the immigrants had already migrated till this Act was invoked. In addition, the migration issue became a social problem with the limitation of the 1962 Act. Thus, for the first time racist groups had a chance to say that immigrants were a problem for the country.

In 1968, the Commonwealth Immigration Act was passed and it prevented foreigners from entering into the UK with a quota system which permitted just 1500 immigrants from British colonies in a year. The reason for these efforts to limit the immigrants was the fear that the British colonies could invade Britain. In the 1970s, with legal arrangements such as Acts, the quality of the immigrants decreased because there was no permission for a new immigrant to enter UK. So, the new immigration was structured with family unions and this led to providing social funds for them. As a result, this situation did not contribute to the British economy.

The Immigration Act 1971 controlled the labor migration which was introduced in the 1960s and it replaced all previous legislation. This Act “distinguished between citizens of the UK and its colonies who were partial who

⁹⁵Laciner, *op.cit*, Açık Kapı Politikası’ndan Yabancı Düşmanlığı’na, From Open Door Policy to Xenophobia, 23.

⁹⁶Ian R. G. Spencer, *British Immigration Policy Since 1939: The Making of Multi-Racial Britain*, (UK: Routledge, 1997), p.22.

⁹⁷Drzemczewski, *op.cit*, *A Major Overhaul of the European Human Rights*, 122.

⁹⁸Voicu, *op.cit*, “Immigration and Integration Policies”, 2.

could enter the UK and those citizens of independent Commonwealth countries.”⁹⁹ Partial means that “people with close connections with the United Kingdom through birth or descent, who would remain free from all controls”¹⁰⁰. Immigration policy since this time has been based on this distinction. I will mention further Acts in the fifth chapter which analyzes the UK’s post-EU membership process related to her migration policies.

3.3. The UK Immigration Acts After the EU Membership

After the UK’s membership of the EU in 1973, the UK maintained her immigration policies at the national level. In 1981, the British Nationality Act “completed the post-imperial downsizing by bringing partiality into nationality law by distinguishing between full British citizenship, British Dependent Territories’ citizenship and British Overseas citizenship. Family-related migration for reunification or formation remained the main immigration route to the UK through the 1970s, 1980s and into the 1990s.”¹⁰¹

The Immigration Act 1987 contained stricter measures towards people who previously had the right to bring their wives and children. In addition, the Immigration Act 1988 limited the entry of the families of the immigrant workers to the UK and the Immigration and Asylum Act 1996 limited the numbers of asylum seekers. The following Acts were drawn up in the same line; the Immigration and Asylum Acts 1999¹⁰², The Nationality and Asylum Act 2002 and the Immigration Act 2004 The Nationality, Immigration and Asylum Act 2006 “contains several provisions empowering the Home Secretary to deprive a person of British citizenship (or Right of Abode) if it is considered that such deprivation is ‘conducive to the

⁹⁹ Kavanagh, *op.cit.*, “The Politics of immigration and Asylum”, 6.

¹⁰⁰ Zig Layton-Henry, “Britain: From Immigration Control to Migration Management,” in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Conelius, (USA:Stanford University Press, 1994), 285.

¹⁰¹ Kavanagh, *op.cit.*, The Politics of Immigration and Asylum, 6.

¹⁰² Christopher Rudolph, “National Security and Immigration in Great Britain,” in *National Security and Immigration: Policy development in the United States and The Western Europe Since 1945*, (USA: Stanford University Press, 2006), 191.

public good' ".¹⁰³ All these Acts implied that immigration was restricted in such a manner that it became almost impossible.

3.3.1 The UK's Position towards the Maastricht Treaty

Through the second chapter, I have analyzed the Maastricht Treaty in detail. EC members signed this treaty which added duties to the Treaty of Rome. This treaty is known as the Treaty on European Union. It provided new forms of co-operation between the member state governments on areas such as defense, and in the area of "justice and home affairs".

The British Government led by John Major signed the Maastricht Treaty but the UK was opposed to the Maastricht Treaty on some points because the British Government saw some of this Treaty's goals as interventionist and too centralizing.¹⁰⁴ The former Prime Minister Margaret Thatcher denounced this Treaty as "a treaty too far"¹⁰⁵.

The Major government opted out the Maastricht Plan for the Economic and Monetary Union and Britain was offered the right not to join the Euro. It opted out of the Euro. The Community Charter of Fundamental Social Rights was proposed by the Commission in May 1989 and it was adopted by all EU member states in December 1989 apart from Britain. Furthermore, the Protocol on Social Policy was added to the EC Treaty and it was signed again by all EU members apart from Britain. Meanwhile the UK tried to dispose of the Social Chapter from the Maastricht Treaty. This Protocol did not force Britain to accept it. It was mentioned in it that unanimity would be required only when Britain does not use its veto. Finally, the EU Treaty was ratified by the British Government just after the renegotiation of this protocol. "The establishment of Union Citizenship also posed particular problems for

¹⁰³ Voicu, *op.cit*, Immigration and Integration Policies, 5.

¹⁰⁴ *Ibid.* 6.

¹⁰⁵ Kjell M. Torbiörn, "The European Union's Dilemma: Towards a union or not?," in *Destination Europe: The political and economic growth of a continent*, (Great Britain: Manchester University Press, 2003), 136.

the British who saw this as a potential replacement and a threat to national citizenship and national identities.”¹⁰⁶

The UK also opposed to unifying for macroeconomic, defense and foreign policies under a single central authority, EC supranational framework.¹⁰⁷ This was related to the Justice and Home Affairs (JHA) that included areas to combat international crimes, terrorism and third country national immigration.

In 1995, the UK accepted the enlargement process of the EU with pleasure. These countries in this process were Austria, Finland and Sweden. Moreover, the UK supported the enlargement towards Eastern European countries and to their democratization process. The UK has viewed the EU as an instrument for her economical stability and prosperity. Furthermore, the EU membership of the UK is one of the most important factors attracting foreign investors.

In 1997, Tony Blair took Office and he proclaimed that “we must end the isolation of the last twenty years and be a leading partner in Europe”¹⁰⁸. It must be noted that “a federal Europe was very far away from Tony Blair’s intentions but he was expected to play a leading role in the decision-making of a Europe made of independent nation-states”¹⁰⁹. The former Prime Minister John Major proclaimed this idea but he did not succeed. In the Major government, the Social Chapter was not accepted with the right of opting out but the Blair government accepted this Chapter and finally it was included in the Amsterdam Treaty. This Treaty announced the establishment of an area of Freedom, Security and Justice in 1997. In the first pillar of the Maastricht Treaty a Title was included on visas, immigration and other policies related to free movement of persons. A Protocol was attached the EC Treaty on Asylum for Nationals of EU member states but it was again refused because Britain was unwilling to give up its border control. Therefore, two Protocols¹¹⁰ were

¹⁰⁶ Voicu, *op.cit.*, Immigration and Integration Policies in UK, 8.

¹⁰⁷ Damian Chalmers et.al., “European Integration and the Treaty on European Union,” in *European Union Law: text and materials*, (UK: Cambridge University Press, 2007), 29.

¹⁰⁸ Carole Hodge, “New Labour in Power,” in *British and The Balkans:1991 Until The Present*, (Great Britain: Routledge, 2006), 146.

¹⁰⁹ Alvarenga Rodrigues, Daniel Guilherme “Why and with what results, has The UK been an ‘awkward partner in Europe”, School of Social Sciences and Cultural Studies, University of Sussex, 5 December 2003, 6.

¹¹⁰ “The Treaties establishing the European Communities and Related Acts” <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (accessed November 10, 1997)

added to the EC Treaty on the Application of Certain Aspects of Article 14 EC Treaty for the UK and the Republic of Ireland. The second one was the Protocol on the Position of the UK and the Republic of Ireland.

As mentioned before, the UK opted out of the Schengen Agreement in 1995. However, “on March 1999, the United Kingdom asked to cooperate in some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the SIS (Schengen Information System). Thus to approve the request of UK, the EU Council reached a Decision 2000/365/EC and it was adopted on 29 May 2000. “After evaluating the conditions that must precede implementation of the provisions governing police and judicial cooperation, the Council consented with its Decision 2004/926/EC of 22nd December 2004 that this part of the Schengen *acquis* could be implemented by the United Kingdom.”¹¹¹ The Labour government “followed Conservative policy of maintaining national border controls, unlike the countries within the area covered by the Schengen Agreement”¹¹². The UK wishes not to “allow free movement across her borders for non-nationals, particularly non-EC citizens”¹¹³. It wishes to maintain her strict immigration controls. However, Britain has participated in police and justice co-operation. Since 2002 Britain has participated in the immigration and asylum arrangements because of the rise of the asylum seekers and it supposed that a “common European approach needed to control inflows”¹¹⁴.

Until these developments it was difficult for the EU to make a European migration policy, because the institutional framework didn't include the communitarization yet. Immigration is still a matter that touches the very heart of State sovereignty and therefore it remains a member state prerogative. One noted that

¹¹¹Ibid. “The Shengen Area and Cooperation”.

¹¹² Iain McLean, “The National Question,” in *The Blair Effect:2001-5*, ed. Anthony Seldon&Dennis Kavangh, (UK: Cambridge University Press, 2005), 355.

¹¹³ Henry, *op.cit*, *Controlling Immigration*, 297.

¹¹⁴ McLain, *The Blair Effect:2001-5*, 356.

“EU member states especially the UK have jealously guarded their prerogatives in immigration regulation.”¹¹⁵

The distinctiveness of the UK’s geographic condition related to the migration, Frank Düvell has noted that: “The main focus on the immigration controls has traditionally at the point of entry. These controls match both the geography and the traditions of the country and have ensured a high degree of personal freedom within the UK. This approach is different from the practice in mainland Europe where, because of the difficulty of policing long land frontiers there is much greater dependence in internal controls such as identity checks.”¹¹⁶

Furthermore, in 1999 the European Council met at the Tampere Summit and during the Summit, the UK Prime Minister Tony Blair was “urged not to use the UK’s 'opt-out' over asylum and immigration to undermine Europe’s new era of cross-border co-operation”¹¹⁷. So, at that time, the President of the European Council Jan-Peter Balkenende said “there had to be "one reality" in Europe on asylum and immigration policy. We are stressing the importance of following the same line. That is the message to the UK”¹¹⁸. The UK and the Republic of Ireland decided on their involvement depending on a case-by-case basis and so, show that there is a possibility of an 'opt-in. Tony Blair’s government’s opinion towards the migration issue was confusing. He said that “we need migrants to ensure continued economic growth”¹¹⁹, while at the same time he insisted on stricter control on asylum seekers.

The Blair government again had not entered the EMU.¹²⁰ The UK decided to have a referendum about the new EU constitution and later changed its mind and

¹¹⁵ Mark J. Miller, “The prevention of unauthorized migration,” in *Migration and Refugee Policies: an overview*, ed. Ann Bernstein & Myron Weiner, (South Africa: Continuum International Publishing Group: 1999), 41.

¹¹⁶ Frank Düvell, “Report from the United Kingdom.” In *Modes of Migration Regulation and Control in Europe*, ed. Jeroen Doomernik & Michael Jandl, 187-199. Amsterdam: Amsterdam University Press, 2008, 191.

¹¹⁷ *op.cit* “Towards a Common European Union Immigration Policy”.

¹¹⁸ *Ibid*.

¹¹⁹ Twigg, *op.cit*, “Turks in Europe”, 37.

¹²⁰ Amy Verdun, “Economic and Monetary Union”, in *European Union Politics*, ed. Michelle Cini, (Oxford University Press: New York, 2007), 335.

decided to reject it without a referendum.¹²¹ Not only did the UK reject the constitution but also France and Holland rejected it. The EU constitution had to be accepted with a unanimous vote. Along with these rejections and latter ones the time was up. It had to be accepted by 1 November 2006 but they did not accept it.

In 2007, Blair conveyed the government to Gordon Brown and Brown came to power on 27th June 2007. Following the rejection of the constitution, the EU agreed to a “period of reflection” on the future of Europe which was launched to reconnect the citizens with the European project and to decide on the fate of the Constitution”.¹²² So, a Treaty was signed on 13 December 2007¹²³, known as the Lisbon Treaty, and later it was ratified by all the EU members. It entered into force in December 2009.

The UK’s position was positive and this could be understood with the speech made by the UK’s European Minister Geoff Hoon. He said: “Let me make clear: we must make progress...the status quo is not an option.” He added: “To do nothing on improving the EU's decision-making could jeopardize the liberalization of our markets, the benefits to consumers, tackling climate change and the enlargement process.”¹²⁴

The Lisbon Treaty was ratified by the UK and was invoked on December 2009. However, again there was an exception made about applying new opt-in/out provisions for the UK to some new policy provisions such as immigration as an important policy area.

¹²¹ Max Haller, *European Integration As an Elite Process The Failure of a Dream*, (Routledge: UK, 2008), 355.

¹²² “Constitutional Treaty: The Reflection Period”, <http://www.euractiv.com/en/future-eu/constitutional-treaty-reflection-period-archived/article-155739> (accessed November 10, 2010)

¹²³ “Treaty of Lisbon”, http://europa.eu/abc/treaties/index_en.htm (accessed, May 20, 2010).

¹²⁴ *Ibid.*

Now, I will concentrate on the current Government in relation to its migration policies. This Government came to power in 2010 and it is made up of a coalition of the Conservative and Liberal Democrat parties. They believe that “immigration has enriched our culture and strengthened our economy, but that it must be controlled so that people have confidence in the system”¹²⁵. Therefore, the coalition will introduce a cap on immigration and reduce the number of the non-EU immigrants.¹²⁶ This emerged in the 11-point Coalition Agreement of 11th May 2010.

The new government agreed with the EU that if a need emerges in relation to transferring the authority on immigration issues does not affect asylum, then they will have a referendum in the UK. The cap on the immigration issue was an absolute non-negotiable, red-line issue.¹²⁷

3.4. Conclusion

After the collapse of the British Empire, the UK began to receive laborers from her former colonies to develop her economy. This gave way to immigration flows and so the UK began to arrange legal Acts to manage this flow. Above, I have discussed the UK immigration acts before and after the country’s EU membership. At first, the Commonwealth countries which included the UK’s former colonies had a right to enter the UK freely. In the 1950s racial tensions increased which led to more social problems in the UK. However, the Governments’ response was not enough to solve them. Especially after the 1962 Immigration Act, the UK limited the entry of the immigrants to the UK. After EU membership the UK put stricter measures on immigrants with the 1987, 1988, 1996 Immigration Acts. The new government supports immigrants from non-EU citizens but it mentioned that it will put cap on immigration. It can be noted that the UK gradually arranged stricter Immigration Acts for immigrants

¹²⁵ “Conservatives”,
http://www.conservatives.com/Policy/Where_we_stand/Immigration.aspx (accessed November 11, 2010).

¹²⁶ Ibid. “Conservatives”

¹²⁷ Taffy Nyawanza, “Immigration Under New UK Government”,
<http://www.newzimbabwe.com/blog/index.php/2010/05/nyawanza/immigration-under-new-uk-government/> (accessed May 17, 2010).

CHAPTER 4

Turkish Immigration to the UK & the Ankara Agreement

4.1. Introduction

This chapter analyzes the Turkish migration to the UK and its occurrence through three waves. The first wave was Turks from Cyprus as a Commonwealth country, the second was Turks from Turkey who migrated for economic and political reasons and the third wave was Kurds from Turkey after the 1990's because of the Kurdish problem in Turkey and Kurds came to the UK as refugees.

This chapter also puts forward how the UK applied her immigration policies towards Turkish immigrants its membership. This chapter focuses on the Ankara Agreement, an association agreement between Turkey and the EU. In this chapter the Ankara Agreement and the UK's implementations to Turkish immigrants in the Agreement's framework will be analyzed. After the UK became an EU member After the UK became an EU member it also signed this Agreement. The importance of this Agreement is that it provides free movement of Turkish businessmen and service providers with the exclusion of workers. However, the UK has not applied the rules of this Agreement completely and the discrepancies were solved with cases not at the national level but at the supranational level.

Here, it will be argued that the UK did not easily apply these Agreement rules and this will be demonstrated with the Savas, Tum and Dari cases as examples to define these difficulties. It will be argued that there is a contradiction between the support of the UK for Turkey's EU accession and the UK's implementations of the EU law to Turkish immigrants in the scope of Ankara Agreement.

4.2. Turkish Immigration to the UK

It is appropriate to discuss the Turkish migration to Europe before discussing the immigration to the UK. In the late 1950s and early 1960s, a large-scale migration started from Turkey to Western Europe and it occurred predominantly for economic reasons.¹²⁸ The organized labor migration began in October 1961 when Turkey and Germany signed a bilateral agreement for the recruitment of Turkish workers in Germany. “Before 1961, participation of Turkish workers in post-war labor migration to Western Europe had, at least officially, not taken place.”¹²⁹ This labor migration from Turkey did not just occur to Germany but also to several other West European countries such as France, the Netherlands, Belgium, Sweden and Britain that received Turkish labor migrants. France, Britain and the Netherlands received significant numbers of migrant workers from their former colonies. “However, Turkey had no direct colonial relationship with any of the receiving countries.”¹³⁰

I will now focus on the migration to the UK. At the beginning of the 20th century, Turks migrated to the UK. The Turkish community in Britain constitutes three main groups namely the Turkish Cypriots, Kurds and mainland Turks.¹³¹ “Due to the nature of data sources available in Britain, it is not possible to verify the estimates precisely because the census data seem to have failed to measure the Turkish population in Britain accurately.”¹³² It is predicted that there is approximately 300.000 Turkish migrants in the UK and most of them are Turkish Cypriots.¹³³

¹²⁸ Nermin Abadan-Unat, “Turkish Migration to Europe”, in *The Cambridge Survey of World Migration*, ed. Robin Cohen, (Great Britain: Cambridge University Press, 1995), 279.

¹²⁹ Talip Kucukcan, “The Making of Turkish-Muslim Diaspora in Britain: Religious Collective Identity in a Multicultural Public Sphere”, *Journal of Muslim Minority Affairs*, Vol.24, No.2, October 2004, p.246.

¹³⁰ Ibid.

¹³¹ Communities and Local Government, *The Turkish and Turkish Cypriot Turkish Community in England*, (UK: Queen’s Printer and Controller of Her Majesty’s Stationery office, 2009), 5.

¹³² Ihsan Yilmaz, “Marriage Solemnization among Turks in Britain: The Emergence of a Hybrid Anglo-Muslim Turkish Law”, *Journal of Muslim Affairs*, Vol. 24, No. 1, April 2004, 57-66, p. 58.

¹³³ Talip Kucukcan, “Turks in Britain: Religion and Identity”, *Turks in Europe*, Turkevi Research Centre, 2005, 78.

The main origin of the Turks in the UK is from Cyprus which was part of the British Empire in 1914. Hence, Cypriots remained as British subjects and this led them to gain the right to enter the UK freely.¹³⁴

When Cyprus gained its independence from the British Empire, it became a member of the Commonwealth countries. In 1917, right after the Cypriots gained British citizenship; Turkish Cypriots began to migrate to the UK. In the 1920s many people from Cyprus migrated and a huge percentage was Greek Cypriots, the rest of them were Turkish Cypriots. Turkish Cypriots are the most settled and the well-integrated to the society of the various groups and approximately two-thirds of Young Cypriots now in Britain were born here.¹³⁵

The first big wave of Turks' movement began following the WWII, after the 1940s and the immigration continued in the 1960s. Greek Cypriots and the Cypriot Turks migrated until the 1962 Immigration Act which limited the migration to the UK.¹³⁶ There were several reasons for this such as economic reasons, the conflicts between ethnic groups and the political uncertainties.

The second big wave of movement was in 1974 when the violence and the pressure increased in Cyprus.¹³⁷ The reason for this violence was her separation into two regions, a Turkish Cypriot region and a Greek Cypriots. After the intervention in 1974 migration increased to the UK.¹³⁸ Compared to the Indian and Pakistani people, Cypriot Turks were not as much of a problem in the UK because of their skin color and their ability to integration into British society.

Many people migrated from Turkey to the UK predominantly for economic reasons but unlike Germany this migration was not as extensive. Germany had a special agreement with Turkey which was to get workers and this was not the same

¹³⁴ Voicu, *op.cit*, Immigration and Integration Policies, 73.

¹³⁵ Twigg, *op.cit*, "Turks in Europe", 26.

¹³⁶ Tozun Issa, *Talking Turkey: The Language, Culture and Identity of Turkish-speaking Children in Britain*, (USA: Trentham Books, 2005), 5.

¹³⁷ Ihsan Yilmaz, "Post-Modern Muslim Legality and Its Consequences", in *Muslim Law Politics and Society in Modern Nation States*, (England: Ashgate Publishing Company, 2005), 154.

as the situation with the UK. The labor deficit was filled much more with the Pakistani, Bangladeshi and Indian people as UK's former colonies in the UK. Tozun Issa noted that there is little information about the migration patterns to the UK¹³⁹. "The mostly legal worker population arrived during the 1970s, followed by their families during the late 1970s and 1980s"¹⁴⁰. As the chain migration was in the other ethnic groups, Turks also applied on this way, and so in the 1970s the Turkish population increased. There were two important factors in the reasons for migration. One was the coup in Turkey which was held in 1980 and the other was the terror which began in the southeast.¹⁴¹

The third big wave of Turks' movement was in 1990s. Kurdish people migrated to the UK from Turkey because of the disputes and the PKK terrorism in addition to the harsh treatment of some state officials towards the people coupled with the socio-economic underdevelopment and high rate of unemployment in the Southeastern part of Turkey.¹⁴² Thus, the Kurdish people migrated to more secure and more prosperous places within Turkey or abroad as refugees. One of the countries in which many Kurds sought refugee status was the UK.¹⁴³

4.3. The Ankara Agreement: Turkey and the UK

In this part, I will focus on the Turkish immigration to the UK within its EU accession process through the Ankara Agreement because this agreement provided the freedom of movement for businessmen, professionals and service providers.

The right of "free movement of the persons has formed an integral part, both of the EC Treaty itself and the various association agreements, pre-accession

¹³⁸ Laciner, *op.cit. Bir Başka Açından İngiltere*, Another Point of the UK, 61.

¹³⁹ Issa, *op.cit.*, Post- Modern Muslim Legality, 8.

¹⁴⁰ Ibid.

¹⁴¹ İhsan Yılmaz, "Londra'daki Türkiye ve Türk Diasporası", Turkish Diaspora and the Turkey in London, in *Bir Başka Açından İngiltere*, ed. Sedat Laciner, (Ankara:ASAM yayınları:27, 2001), 144.

¹⁴² Vally Lytra & Taskın Barac, "Multilingual Practices and Identity Negotiations Among Turkish-speaking Young People in a Diasporic Context," in *Youngspeak in a Multilingual Perspective*, ed. Anna-Brita Senström et al. (The Netherlands: John Benjamins Publishing Company,2009), 60.

¹⁴³ Tayfun Atay, Türkler, "Kürtler, Kıbrıslılar İngiltere'de Türkçe Yaşamak," Kurds and Cypriots, Living Turkish in the UK, , (Ankara: Dipnot Yayınları, 2006), İssa, a.g.e., pp. 8-9.

agreements and accession agreements signed between the European Economic Community (and later the EC and later the EU) and various third countries bordering (or embedded in) the continental European landmass”¹⁴⁴. For Turkey, this right was recognized with the Ankara Agreement which provide an association between Turkey and the EU.

The partnership relations between the EU and Turkey began with the Ankara Agreement.¹⁴⁵ The EEC signed the Ankara Agreement on 12th September 1963 to establish an association with the Republic of Turkey. According to the Council Decision 64/732/EEC of 23rd December 1963 this Agreement was concluded, approved and confirmed on behalf of the Community. Article 2(1) of the Association Agreement states that the aim of the Agreement is “to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, which includes, in relation to the workforce, the progressive securing of freedom of movement for workers (Article 12) and the abolition of restrictions on freedom of establishment (Article 13) and the freedom to provide services (Article 14), with a view to improving the standard of living of the Turkish people and facilitating the accession of Turkey to the Community at a later date (see the fourth recital in the preamble and Article 28)”¹⁴⁶.

This Agreement would be achieved in three stages: a preparatory stage, a transitional stage and a final stage (Article 2 (3), Ankara Agreement).¹⁴⁷ The preparatory stage was to last for 5 years and intended to strengthen Turkey’s economy. It introduced tariff quotas on Turkish agricultural products and it offered 175 million ECU loans to develop the Turkish economy under the Financial Protocol (article 2).¹⁴⁸ The Europeans did not believe that Turkey was ready for membership.

¹⁴⁴ Mark Hoskins & William Robinson ed., Eleanor Sharpston QC, *A True European: Essays for Judge Edward*, (USA: Hart Publishing, 2004), p.234.

¹⁴⁵ Yilmaz, *op.cit*, Londra’daki Türkiye, The Turkey in London, 147.

¹⁴⁶ “Court of Justice of The European Communities”, <http://www.bailii.org/>(11 May 2000).

¹⁴⁷ Bozkurt, *op.cit*, Avrupa Birliği Hukuku, The EU Law, 371.

¹⁴⁸ Harun Arıkan, *Turkey and EU: an awkward candidate for EU membership?*, (Great Britain: Ashgate Publishing, 2006), 61.

“Therefore, they started for negotiations of the Additional Protocol for the passage to the transitional stage of Turkey in March 1969”¹⁴⁹.

On 23 November 1970, an Additional Protocol to arrange the transitional period, as the beginning of this period, of Turkey’s association and the second financial protocol were signed in Brussels.¹⁵⁰ In addition, it was approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 on 19 December 1972.¹⁵¹ Furthermore, based on the migration issue Article 41 of the Additional Protocol, which is in Chapter II of Title II, provides that “the Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services”¹⁵².

Later, in January 1973 the “Additional Protocol entered into force, comprehensively setting out how the customs union would be established”¹⁵³ between Turkey and the EC by the 31st of December 1995.¹⁵⁴ During this stage “both sides would prepare for a full Customs Union and Turkey would progress towards the adoption of the Common External Tariff (CET)”¹⁵⁵. It included the reduction of tariffs on textiles, the broadening of internal Community status to some agricultural and industrial products, monetary assistance and it allowed workers to move freely.¹⁵⁶

It is clear that the principle of free movement was one of the cornerstones of the association in “view of the tasks which Turkey had to carry out during the

¹⁴⁹ Ali Aybey, “Turkey and The European Union Relations: A Historical Assesment”, Ankara Avrupa Çalışmalar Dergisi, Cilt:4, No:1, (Güz:2004), 23.

¹⁵⁰ “Court of Justice of The European Communities”,
<http://www.bailii.org/eu/cases/EUECJ/2006/C1605.html> (12 september 2006).

¹⁵¹ Ibid.

¹⁵² Ibid. “Court of Justice of The European Communities”,(11 May 2000).

¹⁵³ “EU-Turkey Relations”,
<http://www.euractiv.com/en/enlargement/eu-turkey-relations-links dossier-188294> (accessed October 20, 2010)

¹⁵⁴ Ibid.

¹⁵⁵ Meltem Muftuler-Bac, *Europe in Change: Turkey’s relations with a changing Europe*,(UK: Manchester University Press, 1997), 57.

¹⁵⁶ Ibid.

transnational stage”¹⁵⁷. Article 36 of the Additional Protocol stipulated that free movement of workers between Turkey and the Community during the period between 1st December 1976 and 1st December 1986 was to be achieved on a progressive basis.¹⁵⁸ In addition, according to this Article, an Association Council was authorized to decide on rules about this issue. This Council was established by the Ankara Agreement as the decision making body.

Article 38 of the Additional Protocol, mentioned that “while freedom of movement for workers between Member States of the Community and Turkey is being brought about by progressive stages, the Council of Association may review all questions arising in connection with the geographical and occupational mobility of workers of Turkish nationality, in particular the extension of work and residence permits, in order to facilitate the employment of those workers in each Member State”¹⁵⁹. As mentioned above, the progressive stage would have begun in 1976 but the Community had suffered an economic crisis and so it was delayed.

After 12th September 1980 coup in Turkey, the Turkey-EC relations were frozen and so the Association Council meeting which was to take place on 1 June 1983 was delayed. In this meeting, criterias about freedom of movement for workers since 1986 as the third and final stage would have been modified but the meeting was not held. As a result, the relations between Turkey and the EU were not developed as had been previously expected in the transitional period.

On 17 April 1987, Turkey applied for full membership to the EU. The EU Commission responded to her application in December 1989 and declared that Turkey is not ready to become a member.¹⁶⁰ After the 1990s, relations regenerated.

¹⁵⁷Berdal Aral, “The Case of Free Movement of Workers Between Turkey and The European Union”, The Turkish Yearbook of International Relations, Vol. 27, No. 1, Apr. 1997, 2.

¹⁵⁸ Ibid.,3.

¹⁵⁹Official Journal of the European Communities, No L 361/15, accessed at http://www.abgs.gov.tr/files/AB_Iliskileri/tur_en_realitons/protocol_1977.pdf

¹⁶⁰ Ahmet Sozen, Turkey-EU Enlargement at a Crossroads: Turkey’s Democratization in Light of its EU Candidate Status, North Cyprus: Eastern Mediterranean University, 2005, 4, accessed at <http://ir.emu.edu.tr/staff/asozen/pub/sozen%20chapter1.pdf>

As mentioned above, “the first three Protocols entered into force between 1973 and 1980, but the Fourth Protocol was blocked in 1981 for political reasons and was not approved until 1990”¹⁶¹.

The Turkey-EU Association Council finalized the agreement on the Customs Union, which was agreed on the 1st of January 1996. The Decision No 1/95¹⁶² of the Turkey-EC Association Council of 31st December completed the final phase of the Customs Union¹⁶³. Turkey was approved to become a candidate by the EU Council in the Helsinki Summit which was held in 1999. “The Commission's 1999 Regular Report on Turkey's progress towards accession, the European Commission recognized Turkey's status as an applicant country.”¹⁶⁴ The European Council decided to hold negotiations for Turkey on 17th December 2004, and on 3rd October 2005 Turkey became a candidate of the EU.

After the UK became a member of the EEC in 1973, she signed this Agreement with Turkey and it provided advantages for applications to establish a business for the Turks. In 1973, the foreigners could get indefinite residence permit without establishing their own work. However in the 1980s, the “current Immigration Rules (Rules 200 to 204) set out the conditions that have to be met at the present time where a person wishes to establish themselves in business in the United Kingdom. The requirements were restrictive and they require prior entry clearance and the satisfaction of certain financial criteria, including having not less than £200,000 of the applicant's own money under his control and disposable in the United Kingdom.”¹⁶⁵ At this time, the UK became “bound by the Ankara Agreement on 1st January 1973 the conditions were markedly less stringent and were contained in the

¹⁶¹ Muftular, *op.cit*, *Europe in Change*, p.59.

¹⁶² “Turkey's Pre-accession Strategy”,
http://europa.eu/legislation_summaries/enlargement/ongoing_enlargement/e40113_en.htm (01.06.2005)

¹⁶³ “EU Association Council Decision”,
<http://www.mfa.gov.tr/data/AB/EUAssociationCouncilDecision195CustomsUnionDecision.pdf> (accessed December 10, 2010)

¹⁶⁴ *op.cit*, “Turkey's Pre-accession Strategy”.

¹⁶⁵ “England and Wales Court of Appeals Decisions”,
<http://www.bailii.org/>, (24 May 2004).

Statement of Immigration Rules for Control on Entry (HC509) and in the Statement of Immigration Rules after Entry (HC510).”¹⁶⁶

4.3.1. Case Laws

As mentioned above, the Ankara Agreement also provided the freedom of movement for businessmen and professionals. The rules concerning the freedom of movement for workers introduced in the Agreement were improved with the ECJ decisions. It could not be solved at the national level and so it was solved at the EU level with the cases of the Turkish immigrants. The ECJ decisions provided legal arrangements for the Ankara Agreement. “The case law of the ECJ provides that the agreements and acts adopted for their implementation are, so far as the Community law is concerned, an act of one of its institutions within the context of Article 177 (1) (b) of the Treaty (now Article 234) and that their provisions form an integral part of the Community law from their coming into force.”¹⁶⁷ The Turkish immigrants who worked in the Community and their family members’ cases were accepted through the comments of the Turkey-EC Association Council’s articles. However, one case, the Demirel Case ended unsuccessfully. This case involved to comment on the articles about freedom of movement of workers of the Ankara Agreement and Additional Protocol.¹⁶⁸ In the next section I will analyze the Demirel Case.

4.3.1.1. Demirel Case

This was the first case (Meryem Demirel v Stadt Schwäbisch Gmünd (Case C-12/86) [1987] ECR 3719)¹⁶⁹ concerning the free movement of Turkish nationals and the first decision that the ECJ took about this issue. Mrs. Meryem Demirel, a

¹⁶⁶ Ibid.

¹⁶⁷ Bulent Cicekli, “Legal Integration of Turkish Immigrants under the Turkish-Association Law”, Ankara: The Journal of Turkish Weekly, 2004, at

<http://www.turkishweekly.net/article/22/legal-integration-of-turkish-immigrants-under-the-turkish-eu-association-law.html>

¹⁶⁸ M.Refik Korkusuz, “AB Hukukunda; Üye Ülkelerin ve Türk İşçilerinin Serbest Dolaşım Hakkı”, Free Movement Rights of the Members and the Turkish Workers in the EU Law, at http://www.akader.info/KHUKA/2004_eylul/6.htm

Turkish national, came to Germany to be with her husband on a tourist visa valid for three months and which was not issued for family reunification. However, after three months she declared that she would like to stay in Germany because she was pregnant and that she had no other means of livelihood. Family reunification, “appears from the order of the Verwaltungsgericht that the conditions for family reunification in the case of nationals of non-member countries who have themselves entered the Federal Republic of Germany for the purposes of family reunification were tightened in 1982 and 1984 by amendments to a circular issued for the land of Baden-Wuerttemberg by the minister for the interior of that land pursuant to the Auslaendergesetz (aliens law); those amendments raised from three to eight years the period during which the foreign national was required to have resided continuously and lawfully on German territory”¹⁷⁰.

Mrs. Demirel’s husband came to Germany in 1979 and he had to wait till 1987 for family reunification and he had not fulfilled the conditions of family reunification. The German authorities made a decision to deport Mrs.Demirel.¹⁷¹ Thus, she applied to the Administrative Court of Stuttgart to appeal the deportation decision. This court transferred this issue to the ECJ for interpretation of the Ankara Agreement. The Administrative Court transferred it according to the EC Treaty Article 177.¹⁷² The issue was suspended to wait for the preliminary rulings of the Court under Article 177 of the EEC Treaty regarding two questions concerning the interpretation of Articles 7 and 12 of the Ankara Agreement. The questions to the ECJ were:

“1) Do Article 12 of the Association Agreement between the EEC and Turkey and Article 36 of the Additional Protocol thereto, in conjunction with Article 7 of the

¹⁶⁹ Prakash Shah, “Activism in The European Court of Justice and Changing Options for Turkish Citizen Migrants in the United Kingdom”, UK: Queen Mary University of London, School of Law Legal Studies Research Paper No. 25/2009, 6.

¹⁷⁰ Zeynep Sengul, “The Issue of Family Reunification and The Symbiotic Relationship Between Secondary Law and Jurisprudence of The Court s: Specific Cases Analyses of”, Ankara: The Journal of Turkish Weekly, 24 Jul 2006, <http://www.turkishweekly.net/print.asp?type=2&id=141>.

¹⁷¹ Murat Ugur Aksoy, “Avrupa Hukuku Açısından Türk Vatandaşlarına Uygulanan Vize Alma Mecburiyetinin Değerlendirilmesi Raporu”, The evaluation report of the obligatory Visa obtainment applied on Turkish Nationals in terms of EU Law, Düsseldorf, 2007, p.5. <http://www.ikv.org.tr/pdfs/murataksoy-15kasim07.pdf>

Agreement already lay down a prohibition that under community law is directly applicable in the member states on the introduction of the further restrictions on freedom of movement applicable to Turkish workers lawfully residing in a members state in the form of a modification of an existing administrative practice?
2) Is the expression "Freedom of Movement" in the Association Agreement to be understood as giving Turkish workers residing in a members state the right to bring children under the age of majority and spouses to live with them?"¹⁷³

The ECJ consequently adopted a decision on 30th September 1987 and “gave answer for the first question that Article 12 of the Agreement and Article 36 of the Protocol, read in conjunction with Article 7 of the Agreement, do not constitute rules of Community law which are directly applicable in the internal legal order of the member states. For the second question she answered that the national Court wishes to establish whether the conditions subject to which the spouse and minor children of a Turkish worker established within the Community may join him are covered by the concept of “Freedom of Movement” within in the meaning of the Agreement”. The Court denied the direct effect of the free movement provisions in the Association Agreement because “in the Court’s view the Article 12 of the Ankara Agreement and Article 36 of the Additional Protocol were in the nature of a ‘plan in action’ and were not sufficiently precise and unconditional to be directly effective”¹⁷⁴ Directly effective “meant that they could be relied upon by Turkish migrants workers before national courts in Germany or elsewhere in the Community.”¹⁷⁵ The Association Agreement is seen as inseparable from the Community law.¹⁷⁶ Consequently, Mrs. Demirel’s case was unsuccessful.

¹⁷² Korkusuz, *op.cit.*, *AB Hukukunda.*, In the EU Law.

¹⁷³“Court of Justice of the European Communities(including Court of First Instance Decisions)”

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/EUECJ/1987/R1286.html&query=demirel+and+ankara+and+agreement&method=boolean>(accessed September 30, 1987)

¹⁷⁴ Aral, *op.cit.*4.

¹⁷⁵ Ibid.

¹⁷⁶ Aksoy, *op.cit.*, *Avrupa Hukuku Açısından*, In Terms of EU Law, 5.

4.3.1.2. Sevince Case

Mr. Sevince is a Turkish national who was married with a Turkish woman in Holland but when he divorced, he wanted to extend his residence permit which had been granted on 22nd February 1979. Although he had his own business and was working, the Netherlands authorities refused his claim about the extension of his residence permit on 11th September 1980. He put in court to appeal by Raad van State against the Netherlands authorities. The case took 6 years and during this time he continued to work. On 13th April 1987 he applied for a residence permit. “In support of his application, he relied on Article 2(1)(b) of Decision No 2/76, according to which a Turkish worker who has been in legal employment for five years in a member state of the Community is to enjoy free access in that Member State to any paid employment of his choice, and on the third indent of Article 6(1) of Decision No 1/80, according to which a Turkish worker duly registered as belonging to the labor force of a member state is to enjoy free access in that Member State to any paid employment of his choice after four years' legal employment”¹⁷⁷. This was rejected by the authorities.

Finally, they referred to the Court for a “preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of certain provisions of Decisions Nos 2/76 of 20th December 1976 and 1/80 of 19 September 1980 of the Council of Association established by the Agreement”¹⁷⁸. The Ankara Agreement was not the only an integral part of the Community law that had direct effect, but also the Association Council decisions were an integral part which had direct effect. “However, this decision does not touch upon the rights that are indispensable for freedom of movement (entry residence, right to remain, etc.) which means that it is not relevant to the discussion in question”¹⁷⁹.

¹⁷⁷ Court of Justice of the European Communities(including Court of First Instance Decisions) [1990] EUECJ C-192/89 (20 September 2007)

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/EUECJ/1990/C19289.html&query=sevince+and+ankara+and+agreement&method=boolean>

¹⁷⁸ Ibid.

¹⁷⁹ Aral, *op.cit.*, 7.

4.3.1.3. Kus Case

Mr. Kus, a Turkish national man was married to a German woman and worked for two and half years but after he divorced, the German authorities made a decision to deport him from Germany. He applied to a court to appeal the decision and the case was transferred to the ECJ. The ECJ made a decision on 16 December 1992(C-237/91 Kazim Kus v. Landeshauptstadt Wiesbaden [1992] ECR-6781). The Court adopted “for a preliminary ruling under Article 177/1 on the EEC three questions on the interpretation of Article 6 of Decision 1/80 of 19 September 1980 of the Council of Association established by the Agreement establishing an indents of Article 6(1) of Decision 1/80 may rely directly on those provisions in order to obtain the extension of his residence permit as well as that of his work permit”¹⁸⁰. “However, the Court again declined to make any reference to the principle of freedom of movement”.¹⁸¹ The court behaved in the same way in the Eroglu Case which I will analyze below.

4.3.1.4. Eroglu Case

In 1980, Mrs. Eroglu went to Germany for education to stay with her family who were working there. After she finished her education she obtained work permit and began to work. In 1992 she applied to have a residence permit but it was rejected, so she appealed to the courts and this was later transferred to the ECJ. The ECJ adopted the C-355/93 on 5th October 1994 according to the 1/80 decision of the Council of Association. Eroglu was justified and her work permit was accepted.¹⁸² Furthermore, her residence permit was justified related to the work permit. “Turkish migrant workers were recognized as related to the work having priority over non-EU workers in matters covered by the Association council decisions.”¹⁸³

¹⁸⁰ Nicola Rogers, *A Practitioner’s Guide to The EC-Turkey Association Agreement*, (The Netherlands: Kluwer Law International), 2000, 227.

¹⁸¹ *Ibid.* p.8.

¹⁸² Korkusuz, *op.cit.*, *AB Hukukunda*. In the EU Law.

¹⁸³ *Ibid.*

On 6 March the Association Council made a decision to establish a Customs union by the end of 1995. “However, under this arrangement, the EU has undertaken no binding obligations in the field of freedom of movement for workers.”¹⁸⁴ The decision on this issue only deal with establishing a dialogue and solving the integration problems of Turkish migrants in the EU.

It is important to now look at the cases of Turkish nationals within the UK because the UK made problems for the entrance of Turkish nationals in the Ankara Agreement framework. The Ankara Agreement came to the agenda and gained importance with the decision of the European Court of Justice in the Savas Case (Case C-37/98 2000 ECR I-2927)¹⁸⁵. The following section will examine the Savas case in detail.

4.3.1.5. Savas Case

Mr. and Mrs. Savas obtained tourist visas on 22 December 1984 to enter the UK for one month. This visa had conditions that prohibited them from engaging in any business or profession. Their visa’s expiry date was 21 January 1985 but they remained in the UK. According to the Secretary of State they contravened the immigration Law of the UK. In November 1989 Mr. Savas established a shirt factory without seeking authorization. “However, by a letter of 31st January 1991, they sought, through their solicitors, to regularize their stay by applying, under the relevant provisions of national legislation, to the Immigration and Nationality Department of the Home Office for leave to remain in the United Kingdom”¹⁸⁶.

The Secretary of State rejected that Mr. Savas “sought to rely on the ‘standstill’ provision contained in the Ankara Agreement and Article 41 of the

¹⁸⁴ Ibid.

¹⁸⁵ Ibid. <http://www.bailii.org/>, (24 May 2004).

¹⁸⁶ *op.cit.*, <http://www.bailii.org/>, (11 May 2000).

Protocol, thereby asserting that the correct rules to be applied in consideration of his case were the 1973 Rules”¹⁸⁷. The Secretary of State informed Mr. and Mrs. Savas of their deportation order. “The Secretary of State, in the exercise of his discretion, considered the application of Mr. and Mrs. Savas under the 'long residence concession, whereby a person who has ten years' continuous and lawful residence in the United Kingdom, or 14 years' continuous residence, whether lawful or not, may qualify for the grant of indefinite leave to remain”¹⁸⁸. However, according to the Secretary of State, these people did not justify these criteria. On 29 March 1994, Mr. and Mrs. Savas prepared a case to show that they were against the decision to make a deportation order. A deportation order was served on them on the 31st of August 1995. Until 30 October 1995, all of the Mr. and Mrs. Savas's applications had been made according to British national law.

“On 30 October 1995, Mr. and Mrs. Savas 's representatives contended for the first time that Article 41(1) of the Additional Protocol prevented the United Kingdom from imposing restrictions on the right of Turkish nationals to establish themselves on its territory beyond those which existed on the date of the accession of the United Kingdom to the Community”¹⁸⁹. The Secretary of State should “therefore have confined himself to assessing the position of Mr. and Mrs. Savas under the Immigration Rules in force on that date, 1st January 1973, namely HC 510, and in particular Paragraph 21 of HC 510 which started: “People admitted as visitors may apply for the consent of the Secretary of State to their establishing themselves here for the purpose of setting up in business, whether on their own account or as partners in a new or existing business. Any such application is to be considered on its merits. Where the application is granted the applicant's stay may be extended for a period of up to 12 months, on a condition restricting his freedom to take employment”¹⁹⁰. However, the Secretary of State rejected this argument and pointed out that “on the date on which Mr. Savas submitted his application for regularization of his stay in

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ *op.cit.*,baili. (24 May 2004).

¹⁹⁰ Ibid.

the United Kingdom, he no longer had leave to remain there and therefore could not in any event benefit from HC 510 as the then current Immigration Rules”¹⁹¹.

The Savas case brought Article 41 of the Additional Protocol to the agenda. According to the barrister’s speech, of all Turkish citizens, only Turkish employees were required to have a visa, but Turkish businessmen, tourists or students could enter the United Kingdom with their passports and do business in the country without a requirement for a visa in 1973. They could start business and stay in the United Kingdom only if they are not employees. Moreover, according to that current law, they did not need to have capital stock or capital goods. The only condition to stay in the country without a requirement of a visa was for the person and his/her family (if together) to earn money from his/her business without demanding any benefits from the state.¹⁹²

Finally, the Secretary ultimately referred this case in the ECJ to solve and the Court solved this problem according to the Article 41(1) of the Additional Protocol which was attached to the Agreement. “The Court found that that provision was sufficiently precise and unconditional to have a direct effect”¹⁹³. So, the ECJ reached a decision in Savas on 23 May 2000(Case C-37/98 2000 ECR I-2927). The most positive aspect of this decision is that this article has a direct effect on the members. It is considered that interpretation of the article, number 41(1), by the Council, is significant in respect that it is the very first verdict related to starting and doing one’s own business independently, after a series of verdicts related to working as a “worker” (in general terms, with “employee” status). In addition, in case the Council reviews the other articles of the Protocol in this scope in the future, it is considered to be a very useful reference in terms of forming an example and a comparison.¹⁹⁴

¹⁹¹ Ibid.

¹⁹² Adem Yavuz Arslan, “Vize Yoksa Anlaşma Var”, Sayı:515, 18.10.2004, <http://www.aksiyon.com.tr/aksiyon/haber-15005-32-vize-yoksa-anlasma-var.html>

¹⁹³ Rass Holdgaard, *External Relations Law of The European Community*, (The Netherlands: Kluwer Law International, 2008), p.291.

¹⁹⁴ “Abdulnasir Savas Kararı”, http://www.csgeb.gov.tr/csgebPortal/ShowDoc/WLP+Repository/diyih/disiliskiler/ata_d_kararlari/abdulnasir_savas(accessed December 25, 2010).

4.3.1.6. Tum and Dari Case

The Tum and Dari cases were “such applicants that had to wait a number of years before further clarification was given by the ECJ”¹⁹⁵. I will analyze two of these cases together because they are similar to each other. Unlike Savas, Mr. Tum and Mr. Dari went to the UK by ship. Mr. Tum went in November 2001 from Germany and Mr. Dari in October 1998 from France. They applied for asylum but it was refused by the Secretary of State and their removal was ordered pursuant to the Convention which was signed in Dublin on 15th June 1990 (OJ 1997 C 254, p.1). This Convention determines “the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities”¹⁹⁶. However, this was not put into effect because these persons were still in the United Kingdom territory.

Mr. Tum and Mr. Dari concerned that they relied on the Association Agreement, under Article 41(1) of the Additional Protocol. They claimed that “their applications for leave to enter the host Member State should be assessed on the basis of the national Immigration Rules applicable at the date of the entry into force of that protocol with regard to the United Kingdom, namely the rules in force on 1 January 1973”.¹⁹⁷ Then, the Secretary of State left the appeal to the House of Lords. The British Home Office authorities took the decision that was not giving work permit for these people. The authorities acted according to the current national immigration acts.¹⁹⁸ The House of Lords referred this appeal to the ECJ and the ECJ reached to a decision on 20 September 2007 that these people have certain rights under the EUECJ C-16/05.¹⁹⁹ It must be note that “there was, meanwhile, continued use of the

¹⁹⁵ Shah, *op.cit.*, “Activism in The European Court of Justice”, 12.

¹⁹⁶ *op.cit.*, www.baili.org.(20 September 2007).

¹⁹⁷ *Ibid.*

¹⁹⁸ Harun Gumrukcu, “Vizesiz Avrupa Vizyonunun Dayanakları”, Predicates of the Vision of Visa Free Europe, TSİK-İşveren Dergisi, Nisan 2008, at http://www.tisk.org.tr/isveren_sayfa.asp?yazi_id=2031&id=98

¹⁹⁹ *op.cit.*, www.baili.org.(20 September 2007).

so-called ‘fraud and abuse exception’ to refuse applications by those who had claimed asylum after presence in another European country, where there was clandestine entry, where there were discrepancies in the evidence, or where there was irregular presence in the UK.”²⁰⁰ Therefore the domestic case law continued to show that Turkish citizen applicants could legitimately qualify under the standstill provisions was actually quite narrow.²⁰¹ This is obvious in the cases that mentioned above.

4.3.2 The ECAA Visa

As a result of the Savas case, the UK Border Agency had to introduce a visa route for Turkish nationals applying to establish business under the European Community Association Agreement (ECAA). This visa is named as ECAA and is a special visa for Turks to establish their own business in the UK.²⁰² The rules based on this Agreement were easier than the current immigration rules of the UK. The route, which was opened on the 7th September 2009, will provide Turkish nationals who are outside the United Kingdom to enter the country in the Turkish ECAA business category.²⁰³ “Until this date an application could only be made where a Turkish National was already in the United Kingdom.”²⁰⁴ There is no limitation about the types of working areas.

In November 2009, the au pair programme was abolished in the UK and instead of this programme a babysitter programme has also been prepared for Turks who can enter the UK with an ECAA visa. This programme has advantages for applicants. One of them is that if one works successfully in the UK, one will have residence permission. Furthermore, after a while one can bring one’s family to the UK.

²⁰⁰ Shah, *op.cit.*, “Activism in The European Court of Justice”, 13.

²⁰¹ *Ibid.*

²⁰² “Turkish Citizens”,

<http://www.ukba.homeoffice.gov.uk/workingintheuk/turkish/>(accessed December 21, 2010).

²⁰³“UK in Turkey”,

<http://ukinturkey.fco.gov.uk/en/visiting-uk/visas/association-agreement> (10.09.2009)

²⁰⁴ “Turkish ECAA Deadline Approaching”,

<http://commonwealthcontractors.com/news.php?id=125> (accessed November 18, 2010).

4.4. Conclusion

As it is depicted above, Cyprus was a Commonwealth country, so it was dealt with differently from the Turks and Kurds from Turkey. Here, I have examined Turkish and Kurdish immigration to the UK.

Furthermore, I have mentioned how the UK acted towards Turkish immigrants within the Ankara Agreement, an association agreement between the EU and Turkey and later within this framework the participation of UK. It is obvious that the UK did not abide by the rules of the Ankara Agreement as the Savas, Tum and Dari cases show. The UK was forced to give the rights to these people.

Even though the UK has a positive attitude towards Turkey's the EU accession but it has not applied all the Ankara Agreements' rules about immigration for Turkish immigrants. Thus, I have reached the argument of my thesis that there is a contradiction between the UK's support for Turkey's accession to the EU but she did not completely comply with the Ankara Agreement which allowed Turkish immigrants to enter the country.

CHAPTER 5

CONCLUSION

Turkish immigrants in the UK have not been researched enough and this led me to do my research in this area. The UK supports Turkey's accession into the EU and also assists Turkey to achieve this goal. For a long time the UK has strongly supported Turkey's EU membership for different reasons. Firstly, the UK is a supporter for EU's widening process instead of the deepening process with common policies. Secondly, Turkey is a significant member of the NATO. Lastly, Turkey is geographically located on the transition of energy sources from the Middle East and Central Asia to Europe.

This gave way to thinking about whether Britain applied immigration policies towards the Turkish migrants or not. Thus, this thesis tries to seek an answer to the question whether the UK's immigration policies towards Turkish immigrants have any connection to the UK's support for Turkey's EU accession.

After the introduction in this thesis, the EU migration policies are discussed in addition to the Maastricht; the Amsterdam Treaty and the post-Amsterdam period. However, before this I focused on immigration issues in the EU and understood that this issue is very important and difficult for her. The migrant workers in general did not return and stayed in their adopted countries. Later they brought their families and this led to integration problems. Also, the right of free movement of persons gave way to tightening the borders. It is understood that the EU lacks binding legal instruments in immigration areas as the EU member states keep on constructing their own policies based on their national considerations.

The third chapter concentrated on the UK's immigration policies before its membership to the EU and post-EU membership is analyzed separately. I found that UK's policies did not originate from EU migration legal arrangements. This study

demonstrated that the UK gradually implemented stricter Immigration Acts. Furthermore, it shows that the UK remained outside the EU consensus in some important policy areas such as border and immigration controls

In the fourth chapter, I concentrated on Turkish immigration to the UK related to her EU accession process with the implementation on Turkish immigrants. Turkey signed the Ankara Agreement with the EU and when the UK became an EU member, the country also signed this Agreement but it did not implement the rules completely about the Turkish immigrants' entry into the UK. I have shown this situation with the cases of Turkish immigrants such as the Savas, Dari and Tum cases based on this Agreement. I thought that it would be useful to mention cases about the free movement of workers such as Demirel, Sevince, Kazim Kus and Eroglu cases. These cases illustrate the development of the articles of the Agreement and Protocol.

The UK was forced to apply the Articles of this Agreement. There is a clear contradiction between the UK's support for Turkey's accession and the UK's implementation of EU law favorable to the Turkish immigrants, stemming from the Ankara Agreement. In this framework I hope this study would be a source for further research on Turkish immigrants in the UK.

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