

THE IMPACT OF THE EU ON TURKISH ASYLUM POLICY

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## ABSTRACT

The Impact of the EU on Turkish Asylum Policy

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For a long time, and before Turkey's candidacy into the EU was on the table, Turkey used out-dated asylum regulations, called 1994 Regulations. As a candidate country for EU membership however, Turkey needs to comply with a set of laws and regulations governing asylum procedures. The objectives of the research is to investigate the impact of 'Europeanization' if any on Turkish asylum policy after the 1999 EU Helsinki Summit. It is worth pointing out that a lot of changes happened between the 1994 Regulations and the 1999 Helsinki Summit onwards. This research will use document analysis method to present the impact of institutional, political, bureaucratic and legal dimensions involved in the process of Europeanizing Turkey's asylum system. In other words, to what extent are the legislators and policy makers of Turkey as candidate country affected by EU Asylum policy under Chapter 24? To explain these changes, I conducted interviews with a staff member in the General Directorate of Migration and a President of an NGO<sup>1</sup> who works on refugee issues. Furthermore, I share my field experience and my notes from conferences I attended on refugee issues.

Keywords: Turkey, the EU, Europeanization, Asylum, Asylum-seekers, Refugees, Accession Partnership, Turkey-EU relations, NGO.

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<sup>1</sup> Association for Solidarity With Refugees.

## ÖZET

Avrupa Birliđi'nin Türk İltica Politikasına Etkisi

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Türkiye AB aday üyeliđi söz konusu olmadan önce uzunca bir süre 1994 Yönetmeliđi denilen artık miladı dolmuş bir iltica yönetmeliđine sahipti. Öte yandan, AB üyeliđi için aday ülke olan Türkiye'nin iltica prosedürlerini yönetmek için uyması gereken bir dizi yasal ve mevzuat hükümlülükleri bulunmaktadır. Bu araştırmanın amacı, 1999 Helsinki zirvesinden 2015 yılına kadar geçen süreç içerisinde Türk iltica sisteminin bugünkü halini almış olmasındaki 'Avrupalılaşıma' sürecinin etkisini araştırmaktır. Bu çalışma ile Türkiye'nin sığınma sisteminin 'Avrupalılaşıması' sürecinde geçirdiđi kurumsal, politik, bürokratik ve yasal boyutlara olan etkilerini incelerken döküman analizleri yaptım. Bir diđer deyişle, aday ülke Türkiye'nin yasa ve politika yapıcıları 24. başlık altında Avrupa sığınma politikalarından ne şekilde etkilenmişleri araştırdım ?

Bu deđişiklikleri anlatmak için Göç İdaresi Genel Müdürlüğü'nde görevli bir kiři ve mülteciler ile ilgili çalışan bir STK'nın( Mülteci-Der) başkanı ile röportajlar yaptım. Bunlara ek olarak, aynı zamanda saha tecrübemi ve mülteciler konusunda katıldığım konferanslardan elde ettiđim bilgileri paylaşacağım.

Anahtar Kelimeler: Türkiye, Avrupa Birliđi, İltica, Sığınmacı, Katılım Ortaklıđı, Türkiye- AB ilişkileri, STK.

**To all asylees seeking shelter...**



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## LIST OF ABBREVIATIONS

APD	= The Accession Partnership Document
CIP	= Circular on International Protection
CF	= Circular on Foreigners
DGMM	= Directorate-General for Migration Management (Turkey)
DG HOME	= European Commission Directorate-General for Home Affairs
ECtHR	= European Court of Human Rights
EUSG	= The Secretariat General for the European Union Affairs
EU	= European Union
EC	= European Economic Community
LFIP	= Law on Foreigners and International Protection
NPAA	= National Program Programme for the Adoption of the Acquis
RMG	= Reform Monitoring Group
RAPD	= Revised Accession Partnership Document

## CHAPTER 1

### INTRODUCTION

An asylum seeker is a potential refugee. Sovereignty of each country grants countries the option of letting a migrant in their territory or keeping him at bay for security reasons. Due to the fact that many migrants do not have official admission into a country, many resort to irregular ways and means to get into a country. Refugees fleeing their countries in their very nature tend to enter a country illegally in order to seek asylum. Unfortunately quite often both irregular migrants and fleeing refugees use the same methods and sometimes the same boat.

The need to seek asylum is as old as humanity. For ages, there are many instances of human movement to fleeing persecution, death or famine. Historically, the geographic region comprising modern-day Turkey and Europe is one of the most affected geographic regions in terms of this mass human movement. Turkey, by virtue of its location, is surrounded by refugee-producing countries located in Middle Asia, Caucasus, Middle East, North Africa and the Balkans. These regions were undergoing many upheavals and some still are. These changes included nation- building, regime changes or even international military interventions. Turkey received the waves of asylum-seekers from these source regions and found itself not only as a passing route for asylum-seekers but also as a target for asylum-seekers especially recently. With the Arab Spring and the ongoing internal war in neighboring Syria, not to forget also the local conflict in Iraq and Afghanistan and repressive regime practices in Iran, all these resulted in a significant increase in the numbers of asylum seekers fleeing either death or persecution in their countries of origin. The conspicuous presence of these asylum seekers not only in bordering areas, but all over Turkey, is undeniable and calls for an allotment procedure between Turkey and the EU.

The argument about Turkey's Europeanness in geographical terms should be considered in conjunction with other developments(Oguz G. , 2012, p. 129) Turkey, by virtue of its geographic proximity and historical affinity with Europe has been particular strategic importance to the old continent. Furthermore, it has been a NATO member since 1952 and was founding member of the Council of Europe (1949) and of the CSCE/OSCE( 1975). Not to forget also, the Ankara Agreement that was signed with European Economic Community (EEC) on 1963, setting the framework for

Turkey-EU relations. This intertwined dealings and treaties emphasize strategic importance to European security. As Akcakoca mentions, the sheer dimension of Turkey (its size, population, and level of economic and social development), its geopolitical location, and its cultural and religious identity can all be seen as strategic assets or structural liabilities. (Akçakoca, 2006, p. 5)

In the last decade of the 20th century, despite the fact that the Union concentrated its attention on the incorporation of Central and Eastern European countries, the developments in the Balkans were also critical for Europe, as the conflicts in Bosnia and Kosovo demonstrated. These Balkan problems showed the need for a mutual interest in coordinating with Turkey to solve European security problems if the EU wants to be a safe heaven. As Eralp states "If Turkey is excluded from the European system of security, ..., (this) may affect the region because of Turkey's pivotal regional role. Such instability has the potential to affect Europe as well because of the increasing erosion of borders between Europe, the Middle East and the Eurasian regions." Owing to its geographical location, Turkey found itself exposed to legal as well as illegal migration, asylum, and mass movements of population. Fisher pointed out that Turkey is located at the crossroads between three crisis-prone regions: the Balkans, the southern Caucasus and the Middle East and at the crossroads of important energy, transportation and communication networks. (Fischer, p. 4) On the other hand, Burgin add that Turkey is one of the most used transit routes by irregular immigrants to the EU. (Burgin, 2011, p. 1)As Kirisci mentioned, from the establishment of Turkey in 1923 to 1997 more than 1.6 million immigrants came and settled in Turkey. (Kirisci, 2001, p. 3) In other words, Turkey's much lauded position as a bridge between East and West is not without its disadvantage; one such drawback is the illegal entry into Europe through Turkey and vice versa.

To stress the urgency of mutual cooperation between Turkey and the EU, the Commission announced its first regular report on Turkey, on November 1998. This particular report, however, for the first time, treated Turkey on an equal footing with other applicants by including Turkey with other applicants rather than designating a special category for it. This way, Turkey was being judged according to the same Copenhagen Criteria as other countries were.

December 1998 marks the date in which the EU agreed to a detailed Action Plan on the implementation of Justice and Home Affairs (JHA) policy, which was ultimately endorsed by the Vienna European Council. It is noteworthy that during the Austrian Presidency of the EU, a vision for Europe based on Austria's experience with the refugees from the Balkans. Consequently, the aim

of the Vienna Action Plan was to bring the EU in line with the securitization on matters of asylum and immigration. According to Lindstrom :

"The Austrian Presidency envisaged an EU migration regime based on a model of concentric circles, whereby the EU represents the inner circle; neighbors (associated states and the Mediterranean area) represent the second circle "gradually being linked into a similar system . . . increasingly in line with the first circle's [migration] standards". Relations with a third circle of states (Commonwealth of Independent States (CIS), Turkey, North Africa) will concentrate "primarily on transit checks and combating facilitator networks", thereby treating these as buffer zones to divert population movements prior to arrival on EU territory." (Lindstrøm, 2005, p. 590)

Aside from other important political developments, on January 1, 1999, the Euro came in to existence and Europe was closer to becoming a monetary union. Along with the enlargement through the inclusion of potential members and also abolition of internal borders for EU citizens, the use of Euro as common currency had an important impact upon developments in the field of JHA. It was mentioned in EUROPEAN COUNCIL LAEKEN, 2001, that "*... when the European Union is introducing its single currency, its enlargement is becoming irreversible and it is initiating an important debate on its future*".<sup>1</sup>

To stress the JHA and need for common security arrangement is also echoed in the EU Action Plan on 1999 which states that:

*"These three notions are closely interlinked. Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. These three inseparable concepts have one common denominator 'people' and one cannot be achieved in full without the other two."*<sup>2</sup>

In 1999, Turkey entered into accession negotiations with the EU in which Turkey undertook the task of harmonizing its legislation with the EU acquis. This research investigates the influence of the EU on Turkey's asylum system starting with the pre-accession period all the way till 2015. In this regard, the main question is to examine to which extent reforms in Turkey's asylum policy are explained by the EU impact. My research does not investigate the effect of Turkey on EU asylum

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<sup>1</sup> European Council Laeken, 14 and 15 December 2001.

<sup>2</sup> Action Plan Of The Council and The Commission On How Best To Implement The Provisions Of The Treaty of Amsterdam On An Area Of Freedom, Security And Justice, (1999/C 19/01)

policies simply because such impact is hardly found since Turkey is not a member that can effectively change legislations in the EU. For that reason, the focus of this research is based on the assumption that as a candidate and neighboring country, Turkey was directly influenced by the increased pace of Europeanization in its asylum policy making. To make my research more vivid, I also draw from my personnel work in the field. I worked voluntarily in an NGO name Mülteci-Der ( Association for Solidarity with Refugees ) to understand what is going on in the field and I also took Summer School classes (on EUROPEAN UNION LAW and POLICY on IMMIGRATION and ASYLUM ) organized by Odysseus Network<sup>3</sup>, to understand and see issues from through of EU scholars. I also added 2 addendum at the end of the research. To better understand latest discussion on Turkish asylum policy, I asked my interviewees about the current situation in the field.



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<sup>3</sup> Academic network for legal studies on immigration and asylum in Europe. 29 June-10 July 2015.

## 1.1. METHODOLOGY AND RESEARCH METHODS

A variety of methods will be used in explaining different sections of the thesis argument. The methodological approach here is based on analyzing bureaucratic and technical documents to show the intergovernmental bargaining process. The primary official legislative and administrative documents as well as secondary sources such as media news or perspectives and reactions of NGO's working in the field of asylum. Official documents from both the EU and Turkish government are used. The aim is both to illustrate the legislative process of the subject as well as the institutionalization of discourse through texts and regulations in the way of political decision-making. In addition to the text analysis of the official documents, the study will also use analysis of the field work. Therefore, the multi-method approach would help to explore the framework of Europeanization from different angles.

## 1.2 THESIS PLAN

**Chapter II** The main focus of this analysis is based on the 'Europeanization' of asylum policy in Turkey through the EU accession process. Hence, in order to create a basis for a conceptual framework this chapter starts with a definition of Europeanization.

**Chapter III** starts with an brief explanation of the efforts towards establishing a new asylum system in both the EU and Turkey. Later on, it deals with the period of time between 1999 till 2005, starting with the Helsinki Summit all the way up to the accession negotiations.

**Chapter IV** focuses on the period between 2005 and 2010, which witnessed fast moving changes.

**Chapter V** covers the period between 2010 all the way to the present day. It focuses on the most recent changes in the Turkish asylum system including the new Foreigners Law.

**Chapter VI** is the concluding part of this thesis. In it, I summarize my findings and suggestions.

## CHAPTER 2

### CONCEPTUAL FRAMEWORK

#### 2.1 EUROPEANIZATION

In the literature, the term Europeanization is defined in a variety of ways and the aim is to show the EU's transformative influence on states. In general term, this concept deals with three different scopes which are Member States, candidate countries in accession and pre-accession period and the EU neighborhood. Bakar says the literature on Europeanization can be categorized across three geographical areas.

"The first group focuses on the Europeanization of member states. These studies scrutinize conditions for the diffusion of the EU policies in member state. Following the start of eastern enlargement, a second group of researchers started to study domestic transition in applicant states in the accession process"(Bakar, 2012, p. 20)

Three main tendencies in the literature can be found. As Celenk argues One group of scholars see Europeanization as a form of governance, while another group explains Europeanization as discourse where policy makers and stakeholders construct Europe through language and discourse. The third is institutionalization. (Celenk, 2015)

In my research as a main point, I discuss the transformative effect of the EU on the Turkish asylum policy as a candidate country. Some academics define this Europeanization process as a "*rule transfer*" so that they focus mostly on the adoption of the EU rules on non-member states through "*institutionalization*" at domestic level while others include "behavioral change" following institutional transformation. As a body of rules, the EU effect the candidate countries through such institutionalization includes the transposition of EU legislation into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards.(Sedelmeier, 2004, p. 670) This transfer, for some, is considered as a top-down process in which attention is exclusively paid to the influence of the EU on the political institutions, policies and political forces. (Hang, 2011, p. 136) Kale mentions that especially for candidate

countries this transformation is evident even in the process of pre-accession when the exposure to the impact of European integration on state sovereignty, authority and rule is relatively limited within the non-member nation-state. (Kale, 2005, p. 31) Noutcheva & Duzgit argue that:

where and when domestic political actors have seized the opportunities arising from the EU's conditional offer of membership in line with the predictions of rational choice institutionalism, democratic institutional change has occurred. (Gergana Noutcheva, 2012, p. 60)

Börzel & Risse mention that Europeanization research can be regarded as a special instance of policy and institutional diffusion. Diffusion is conceived as a process through which ideas, standards, policies and institutions spread across time and space. They explain this in three ways:

- 1- *Instrumental rationality or logic of consequences*: actors are conceived as (mostly self-interested) utility maximisers who select their course of action according to cost–benefit calculations.
2. *Normative rationality or logic of appropriateness*: actors are thought of as rule followers who 'do the right thing' because they want to be part of a particular community and have been socialized into following rules.
3. *Communicative rationality or logic of arguing*: actors deliberate and try to persuade each other about the validity claims inherent in any causal or normative statement (Risse, 2012, p. 6)

Schimmelfennig and Sedelmeier mentions the aspects of the external dimension of governance separating it into 2 parts. The first concerns the export of EU systems of governance as such, and specifically of a particular mode of '*network governance*' that the literature identifies as characteristic of the EU.

Here the focus is on *what* is exported, i.e. the substance of governance modes, and to what extent these affect policy-making processes and relations between actors in external states. The second aspect of EU external governance concerns the governance mode through which the EU transfers given rules. The key question is *how* rule transfer happens, i.e. which form it takes. (Sedelmeier, 2004, p. 669)

OLSEN distinguishes between five possible uses:

- 1) *Changes in external boundaries* the degree to which Europe as a continent becomes a single political space. For example, Europeanization is taking place as the European Union expands through enlargement.
- 2) *Developing institutions at the European level*: providing some degree of co-ordination



and coherence 3) *Central penetration of national systems of governance* : Europeanization, then, implies adapting national and sub-national systems of governance to a European political centre and European-wide norms. 4) *Exporting forms of political organization*: Europeanization as exporting forms of political organization and governance that are typical and distinct for Europe beyond the European territory, focuses on relations with non-European actors and institutions and how Europe finds a place in a larger world order 5) *A political unification project*: Europe is becoming a more unified and stronger political entity is related both to territorial space, centre-building,..., and are impacted by systems of governance and events outside the European continent. (Olsen, 2002, p. 923)

However, Kazamias stresses that 'Europeanization' as a term has been applied across a wide variety of contexts, with a range of different meanings attached to it. This can run the risk of 'stretching' the meaning to far, in which case it may lose its value. However, he further adds that, 'Europeanization' often appears to be used synonymously with 'integration'. (Kazamias, 2000, p. 5)

For candidate countries, in the same way, Featherstone explains that the Europeanization concept as an implementation of the EU acquis. However, in the wider sense, he says, it refers to changes on the national level in European symbols, beliefs, or values. (Featherstone, 2003, p. 3)

For Delanty, on the other hand, Europe goes beyond the cultural identity. It is a consciously fictionalized political identity. (Delanty, 1995, p. 3) He also underlines another point that Europe is more than an idea or identity but it is also a geo-political reality. One of the central characteristics of Europe as a geo-political entity is the process in which the core penetrated into the periphery to produce a powerful system of control and dependency. (Delanty, 1995, p. 7) Graziano, regarding that point mentions that Europeanization shouldn't have been limited to EU member states only because in candidate countries, as is the case with member states, there is a process for domestic adaptation as a response to the EU. Yet it must be recognized that "European integration" in itself covers a wider range of processes and institutions than just the EU. (Graziano, 2007, p. 12) In parallel, Radaelli also defines Europeanization not as a result but as a process. (Radaelli, 2008, p. 125)

## 2.2 Mechanisms of Europeanization

Mainly, the mechanisms of Europeanization are driven by either *top-down* or *bottom-up* dynamics. In the former type, the EU has an asymmetric power against the candidate country. Hence, the EU itself is trigger of the reforms needed. In those circumstances, the candidate country focuses on the transformation of Europeanization and consequently it accepts conditionality principle. In this regard, domestic factor seem as veto players against the reforms suggested. An example of this process is found in the Central and Eastern Europe (CEE) countries. As they were newly independent countries, their starting point was through a transition toward a market economy and democracy. This has led to Europeanization that was strictly one way top-down. According to Denti, this shows a asymmetric power of the EU against these countries and this process is explained better by rational choices approaches based on incentives and conditionality. (Denti, 2014, p. 10) Sedelmeier points out that for the CEE countries, “reinforcement by reward” was strong enough to overcome the resistance of veto players. (Sedelmeier, 2004) In this regard, Europeanization has empowered CEEC's reformists and moderates over nationalist forces to push through domestic reforms. If domestic veto players have mattered, they delayed rather than forestalled compliance with EU requirements. (Tanja A. Börzel, 2012, p. 9) If there is a strong domestic consensus in favor of EU membership in the candidate countries, this allows decision-makers to silence domestic veto players, despite the considerable costs incurred by EU policies. (Tanja A. Börzel, 2012, p. 10) In other words, Europeanization generates changes in domestic policies and institutions as adaptive response to European challenges.(Hang, 2011) In this regard, the Europeanization processes, for Radaelli, consists of three components: construction, diffusion and institutionalization of rules, procedures, policy paradigms, styles, ‘ways of doing things’. (Radaelli, 2008, p. 213)

On the other hand, the second mechanism which is bottom-up describes the how states ‘upload’ or ‘shape’ policies, politics and institutions of the EU. (Hang, 2011, p. 141) Asikoglu&Burgin explains this situation by saying that domestic change is spearheaded by domestic actors whose reform projects fit with the EU demands, and which are thus an anchor for reform. (Asikoglu, 2015, p. 3)

In this regard, the main strategy is to upload or export national policies to the European level, thereby reducing the costs of European policies. However, due to the nature of their candidacy status, non-member cannot upload their domestic policies to the European level.

On the other hand, Dyson & Goetz argue that 'Europeanization' denotes a complex interactive 'top-down' and 'bottom-up' process in which domestic policies, politics and public policies are shaped by European integration and in which domestic actors use European integration to shape the domestic arena. (Klaus Goetz, 2003, p. 20) In the same vein, Bache explains that in trying to understand the impact of the EU on domestic politics as a two-way pressures operate often characterized as 'uploading' to the EU level by domestic actors and 'downloading' from the EU level into the domestic arena. (Ian Bache, 2004, p. 3)

The other distinction to be made is between two logics. One logic is that of consequences which means that rational actors engage in strategic interactions using their resources to maximize their utilities on the basis of the preferences. (Gwiazda, 2002, p. 8) In this regard, mostly governments calculate cost and benefits and approve policies if their benefit outweigh the costs.

According to the *logic of appropriateness*, the process of Europeanization the target country creates a transformation by convincing these countries to use European norms, values, and identities irrespective of the costs and benefits of the first logic.

As Asikoglu & Burgin mention, if these two distinctions are paired, three mechanisms of Europeanization can be identified. (Asikoglu, 2015, p. 3) One of them is *the external incentives model* which is a rationalist bargaining model. According to the external incentives model, EU external governance mainly follows a strategy of conditionality in which the EU sets its rules as conditions. As former Commissioner Rehn underlined "Conditionality only works if the countries can trust the EU's commitment to eventual membership, even if that is many years away".<sup>4</sup> (Sedelmeier, 2004, p. 671) In this regard, CEECs had to fulfill certain conditions and rules set by the EU in order for them to get EU rewards. Basically, in this strategy, the EU pays the reward if the target government complies with the conditions and withholds the reward if it fails to comply. Sedelmeier argues that the interdependence is highly asymmetrical in favor of the EU. In this way, the CEECs were only of marginal importance to the EU economy whereas the CEECs were heavily dependent on the EU market and would benefit much more strongly from accession than the EU member states

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<sup>4</sup>European Parliament Resolution. 15 November 2005. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20051115+ITEM-028+DOC+XML+V0//EN&language=BG> [ 14.02.2016]

would. (Sedelmeier, 2004, p. 673) The existence of multiple veto points in a country's institutional structure can allow actors to avoid constraints and thus effectively hamper domestic adaptation.

The second model is *the social learning* one in which a top-down dynamic is assumed and is an alternative to rationalist explanations of conditionality. The social learning model adopts a logic of appropriateness. According to this logic, the actors involved are motivated by internalized identities, values, and norms. Among alternative courses of action, they choose the (most) appropriate or legitimate one. (Sedelmeier, 2004, p. 676) Asikoglu & Burgin argue that 'the participation in the institutional structures of EU may affect the interests and identities of the state agents'. In this respect, a state is more likely to adopt EU rules if it is convinced that such rules are appropriate of its own rule.

The third model is the lesson-drawing in which the main issue is that domestic actors and their behavior, *either by logic of consequences or a logic of appropriateness*. According to the lesson-drawing model, non-member states adopt EU rules without EU incentives or persuasion. Lesson-drawing is a response to domestic dissatisfaction with the status quo. (Rose, 1991, p. 10) Policy-makers review policies and rules in operation elsewhere and make a prospective evaluation of their transferability, i.e. whether they could also operate effectively in the domestic context. (Sedelmeier, 2004, p. 676) According to this model, the EU has a minor and indirect role, serving as a role model. (Asikoglu, 2015, p. 4) In this respect, basically, a state is more likely to adopt EU rules if it *expects* these rules to solve domestic policy problems effectively. (Sedelmeier, 2004, p. 676)

To sum up, as we see from the previous discussions on the mechanisms of Europeanization, one major exporting tools of Europeanization is giving candidacy status to potential members as an incentive to implement European style policies. One such mechanism is the external incentive model. If domestic actors and ruling elite in these candidate countries agree on the target of membership, then they accept the conditionality set by the EU. However, in the social learning model, domestic actors choose what fits for them. In this case, the institutional interactions with the EU create common grounds, and candidate countries, in this case, implement changes if they are convinced, or can influence domestic veto players, of the validity of these changes. In the lesson-drawing model, domestic actors may choose to adopt changes, regardless of incentives or rewards, if such changes are convincingly useful, since there may be a domestic dissatisfaction with the status-quo. In other words, the EU serves, for the most part, as an desirable example.

On the other hand, Turkish–EU relations have occupied the Turkish political agenda since the Ankara Agreement was signed in 1963. However, for Orenstein, the main reason for Turkey to remain an applicant for membership in the European Union for such a long time, is in part due to geographical reasons since Turkey owns a small piece of territory that is indisputably European on the Western side of the Bosphorus Strait. However, for him, geography is not the only factor that qualifies a country as European. (Orenstein, 2015, p. 532) In addition to Orenstein, Ruspini argues that the Turkish issue is added to this composite picture, forcing the European Union to rethink itself, its identity and its borders. (Ruspini, 2006, p. 11)

For Kirisci, Turkey seems to be “a textbook example” of the external incentive model developed by Schimmelfennig and Sedelmeier. (Soyaltin, 2012, p. 6) Schimmelfennig argues that EU democratic conditionality generally works through *reinforcement by reward*. The EU offers two kinds of reward to non-member countries: assistance and institutional ties. (Frank Schimmelfennig, 2003, p. 496) As Noutcheva&Duzgit state that the EU incentives played an important role in rule-of-law reform in Turkey. In the Turkish case, the credibility of conditionality was relatively high between 1999 and 2005( Noutcheva & Duzgit 68). Bac, in the same vein, talks about the political conditionality for the Turkish case giving the example of the ten constitutional reform packages introduced by Turkey between 2001 and 2004 to meet the political aspects. This political conditionality with the aim of becoming a member in the EU, in his view, gave Turkey the incentive to adopt major political changes. He adds that without these incentives it would have been hard for Turkey to adopt such changes.(Bac, 2005, p. 29) However, Soyaltin argues that the impact of the EU is shallow and may be patchy but certainly not spurious. According to her, "the EU has influenced domestic change even where its shadow of hierarchy and conditionality is weak or non-existent". (Soyaltin, 2012, p. 7) On the other hand, Schimmelfennig says that in order for conditionality to be credible, it has to meet two points. The first point is that the target states, such as Turkey, need to be assured of membership and the second point is that such states can be excluded in case they don't meet these requirements.(Schimmelfennig, 2008, p. 920) Schimmelfennig further points out that this accession conditionality is not a sufficient condition of EU success. It has to be accompanied by favorable domestic conditions. (Schimmelfennig, 2008, p. 921) Kalaycioglu describes this favorable domestic conditions, citing the example of the AKP using these conditions as a tool for campaigning and attracting voters, particularly focusing on domestic political aspects. (Kalaycioglu, 2011) Saatcioglu also presents the same point regarding AKP and its use of the EU reforms as a means to increase its popularity among the broader Turkish electorate. (Saatcioglu, 2010, p. 7)

In the beginning of the pre-accession period, it was evident that an external incentive model explains Turkey- EU relations. According to Yildiz, the character of the EU-Turkey relationship, after the candidacy negotiations, is more of an inter-governmental nature than it is of a supranational one. It can be briefly explained as Europeanization. During this harmonization process, the EU acquis mostly have a top-down implementation all the way down through domestic legislation. (Yildiz, 2011, p. 94)

Yazgan explains this by saying that if we talk about Europeanization of candidate countries, maybe we can talk about an asymmetric process because candidate countries are not efficiently part of the decision process in EU institutions. Hence, we can say that for candidate countries, the main tools for Europeanization is the conditionality, as is the case with Turkey. (Yazgan, 2012, p. 126)

The mismatch between the EU and the candidate country it is interacting with creates demands for domestic change. According to Soyaltin, there are two necessary steps to be taken by the concerned countries. First, the country needs to establish an apparatus to this mismatch into a domestic change. Secondly, the adoption of EU policies and institutions by the countries concerned is shaped by cost/ benefit calculations of strategic actors, whose interests are at stake. (Soyaltin, 2012, p. 8) In the same line, Börzel&Risse argue that Europeanization only leads to a redistribution of resources and differential empowerment at the domestic level if, there is considerable misfit which provides actors with new opportunities and constraints. (Tanja A.Börzel, 2000, p. 2)

Neo-functionalists claim that the first step is to create an economic integration within a supranational framework. Then political integration could find a possible existence. Neo-functionalists call this automatic process “functional spill-over”.

Macmillan argues that the neo-functionalist theory can provide a framework for understanding enlargement in general and, in particular, for understanding the reasons why Turkey’s bid for EU membership has continued to move forward despite opposition from some Member States.(Macmillan, 2007, p. 789) Furthermore, she points out that neo-functionalism predicts that there are three possible outcomes to Turkey’s bid for full membership: spillback in the form of a failed accession process, encapsulation in the form of a ‘privileged partnership’ or similar arrangement, or spillover in the form of a successful and complete integration of Turkey into the EU.(Macmillan, 2007, p. 806) On the other hand, for Ozen, these integration efforts between Turkey and the EU have become an example which could not be justified by neo-functionalist assumptions.

To support his view, he maintains that the dynamics determining Turkey-EU integration had been bearing a political dimension starting with 1963 Ankara agreement and later on in 1996 they gained an economic integration after the signing of the Custom Union agreement in the second phase. (Ozen, 1998, p. 53) Ozen argues that, the nature of this integration process between the EU and Turkey can be explained with the theory of realism rather than neo-functionalism because the integration is in the field of high politics which is related with defense, strategy and diplomacy.

Diez also takes on a more realistic approach on Turkey- EU relations analyzing them mostly on foreign relation basis. He argues that joint interests start with strategic geography and Turkey's main function, in practice, is to separate other regional security dynamics from each other. (Diez, 1999, p. 47) He further points out that Turkey, for the EU, can provide security insulation from the Middle East, and be a partner in stabilizing the Balkans. For Aydın&Acikmese, in the Turkish case, the EU shows itself in three types of foreign policy conditionalities: first, the conditionality through the CFSP acquis, in which Turkey is required to adopt and implement the acquis including ' . . . joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy. The second conditionality is political, which is one of the most important criteria for membership conditions. Lastly, the EU prescribes change in TFP through its determination on peaceful settlement of disputes between would-be members and their neighbors. (Sinem Acikmese, 2007, p. 268)

Muftuler& Bac (Bac, 2005), Onis (Onis, 2003), McLaren present different arguments regarding Europeanization efforts. They think these efforts fit "liberal inter-governmental" theory. As an example before the George Papandreou government, Greece vehemently opposed Turkish membership. However in 1999, Papandreou started to approach about Turkey's membership differently in the sense that if Turkey was to become closer to EU this would have the effect of reducing Greece's military expenditures. Another explanation comes from Kirisci on Greek-Turkish attempts at reviving the Greek-Turkish protocol concerning combating illegal migration and readmission of illegal migrants. This was the understanding of then Greek and Turkish ministers of foreign affairs, George Papandreou and Ismail Cem, who launched a rapprochement between Greece and Turkey in 1999. (Kirisci, 2009, p. 10) Another argument is related to the change in position on Turkish candidacy as witnessed by the Schroeder government in Germany in 1999. This change as McLaren argues, paved the way for Helsinki. (McLaren, 2003, p. 23) Schimmelfennig also mentions that the core features of the Turkish case confirm the intergovernmental bargaining mechanism and its conditions of success. (Frank Schimmelfennig, 2003, p. 509)

The links between the EU and Turkey as a non-credible '*vincolo esterno*' [external link], and in this respect an incomplete contract between the two side referring to the reluctance of Turkish elites to comply with European norms, particularly as regards to democratization and also in the field of economic liberalization and modernization. (Kazamias, 2000, p. 19)

In some respects, domestic actors such as liberals or minorities view Europeanization as a problem solving actor to domestic problems. Akçakoca argues that the EU would keep using conditionality to influence Turkish domestic and foreign policy, while reform-oriented Turks would keep using the prospect of EU membership as a tool to modernize the country. (Akçakoca, 2006, p. 5) However, in Turkey various domestic actors have a sway on Europeanization process. These actors include nationalist or conservatives.

In this regard Turkey, as Börzel mentions, is different from other CEE's. Turkey's size, economic strength, and self-understanding as a regional power render its relations with the EU far less asymmetrical than in case of the Western Balkan accession candidates and the European Neighborhood Countries. With the membership perspective ever losing credibility, its economic and political power makes Turkey a least likely case for Europeanization among the current candidate countries. (Tanja A. Börzel, 2012, p. 11)

From that time till now, many discussions and much research were made to explain how Turkey was affected by this close relation with the EU. Within the framework of this research, the term Europeanization is to be understood in its narrow meaning, just as Kazamias suggested in terms of not stretching the meaning. It refers here to the domestic impact of the EU on Turkey's asylum system as a candidate country.



## CHAPTER 3

### 3.1 TOWARD A NEW ASYLUM SYSTEM

#### 3.1 The Year 1999 for EU

UNHCR, in 1999, urged the EU to

" ... resolve the considerable differences in procedural legislation and practice amongst Member States". The goal was to ensure that asylum seekers enjoy an equal chance of obtaining protection throughout the Union, which was far from being the case. The UNHCR report goes on to point out that "Procedures for examining individual asylum claims are in crisis in many EU countries. Problems of the capacity of asylum procedures need to be urgently addressed".<sup>5</sup>

UNHCR also called the EU Commission and Member States to develop protection standards which could be a model for other regions.

As seen in the UNHCR report, there was a need to harmonize and developed common strategy for ways to asylees in the EU. ( and not only for EU but also to be model for other regions) To this end, the EU went into a 5 year transitional period after the Amsterdam Treaty went into effect. During this transitional period several legislative measures were adopted to harmonize common standards among EU members. Examples of these efforts can be seen in 1st generation Common European Asylum System (2000-2005), which was intended to provide minimum EU-wide standards on asylum such as the harmonization of asylum reception conditions as well as procedures and status determination across the EU. Another such effort is the Eurodac Regulation, ( December 2000) an EU database for fingerprints of asylum seekers, in the enforcement of the Dublin Regulation. Furthermore, Temporary Protection Directive (July 2001) is an exceptional measure to provide displaced non-EU nationals with immediate and temporary protection when standard asylum

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<sup>5</sup>UNHCR Tool Box. Treaty of Amsterdam. <http://www.unhcr.org/41b6ccc94.pdf>. [ 12.09.2015]

systems are under pressure from mass influxes of displaced persons. On the other hand, Reception Conditions Directive ( January 2003) defines minimum humane reception conditions and Dublin II Regulation (February 2003) establishes the EU state responsible for examining an asylum application. Qualification Directive ( April 2004) lays the grounds for granting international protection, making asylum decisions more robust and Frontex ( 2004).

For Kirisci this is a growing tendency to frame these issues in terms of “*soft security*” and introduce policies that emphasize “*control*” and “*prevention*.” The nature of these policies is leading many to argue that the EU is becoming “Fortress Europe.” (Kirisci, 2003, p. 79)

On the other hand, in Staffans view, the European asylum procedures are not converging, despite all efforts towards harmonization and integration of European asylum procedures and have not melted into one in the manner expected by those who masterminded developments. (Staffans, 2012, p. 3)

On November second 1997, paving the way toward the Treaty of Amsterdam, and Action Plan<sup>6</sup> was prepared laying down the groundwork on how to implement the provisions of the Treaty of Amsterdam. One of the measures to be taken within two years was the combating of illegal immigration (Article 63(3)(b) of the TEC) through, inter alia, information campaigns in transit countries and in the countries of origin. By mentioning “*transit country*”, Turkey was in effect involved, though not specifically mentioned.

The Treaty of Amsterdam on May,1,1999 is the starting point because only at that point, as Peers points out:

“...was it possible for the European Community (EC) to adopt measures dealing with most or all aspects of immigration and asylum law. Before that point, the Community’s power was limited to measures concerning aspects of visa policy (from 1993 to 1999) and matters largely relating to Community nationals and their family members”.(Steve Peers, 2012, p. 1).

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<sup>6</sup> (1999/C 19/01),Official Journal .Text adopted by the Justice and Home Affairs Council on 3 December 1998, “Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on An Area of Freedom, Security and Justice”.

Prior to Amsterdam Treaty, there were two different steps in the development of EU immigration and asylum law. The first step was the Treaty on European Union on November 1993 which mentioned on the adoption of rules on asylum issues at all within the European Communities.

The second phase, refers to the "*Maastricht era*" from 1993 to 1999, the Community started to gain a limited role over visas, but the main powers were still granted to the EU and constituted the "*formal intergovernmental*" system. However, there was still reluctance among Member States on any binding measures. The output of this era, as Peers mentions, "in particular as regards immigration law, consists largely of non-binding measures such as Resolutions and Recommendations". (Steve Peers, 2012, p. 2) However, these instruments suffered from two weaknesses:

"...they are frequently based on 'soft laws` that have no legally binding effect and they do not have adequate monitoring arrangements. The commitment in the Amsterdam Treaty to use European Community instruments in the future provides the opportunity to correct these weaknesses where necessary."<sup>7</sup>

The Amsterdam Treaty granted the Union the competence to make binding rules on the migration of almost all categories of third-country nationals.(Groenendijk, 2014, p. 313)The entry into force of the 1997 Amsterdam Treaty in the European Union in 1999 provided for the establishment of a "[European] Area of Freedom, Security and Justice" and the creation of a Directorate-General for Justice and Home Affairs (CEU 1999 b: Art.2). However, according to the second clause of the 63 article of TEC, the issue of burden-sharing issues was left out the 5-year scope because it was predicted that Members might not be in a position to have a high level of co-operation in that regard.

These intentions to create an area of freedom, security and justice in the European Union were turned into practice at the Tampere Summit on 15 and 16 October, 1999, with an end protocol stating the goal of convergence as a "Common European Asylum System, including a common procedure and a uniform status" for refugees across Europe. (Staffans, 2012, p. 3) EU declares that The European Council is determined to develop the union as an area of freedom, security and

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<sup>7</sup> (1999/C 19/01),Official Journal. Text adopted by the Justice and Home Affairs Council on 3 December 1998, "Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on An Area of Freedom, Security and Justice".

justice by making full use of the possibilities offered by the Treaty of Amsterdam.<sup>8</sup> Hence, Tampere can be said to be a milestone for the creation and setting out of the broad principles in relation to JHA matters. Lindstrom approaches that by saying "its comprehensive nature spans the areas of Justice and Home Affairs, Development and Humanitarian Assistance, as well as the Common Foreign and Security policy". (Lindstrøm, 2005, p. 588)

First of all, the aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity.( *Tampere Presidency Conclusion No 4*) The important point related to Turkey can be seen in article no. 22

" The European Council stresses ... the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings."

Additionally, the European Council continued to emphasize:

" calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings".( No 26)

The outcome of Tampere Summit was twofold: it did not only seek to find a common European asylum system but it also effectively gave the Community the authorization to establish relations with third countries, as " *transit*" countries, such as the case with Turkey to address asylum issues.

Right after the decision taken at both the Amsterdam Treaty in May, 1999, and Tampere in October of that same year the Helsinki Summit in December,1999 draw Turkey closer to the EU by approving Turkey's candidacy status with hope of getting Turkey to exert more serious effort on immigration and asylum issues.

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<sup>8</sup>15-16 October,1999, Tampere European Council, Presidency Conclusions.

### 3.1.1 The year 1999 for Turkey

The general principles applied in the asylum and refugee policy in Turkey are based on the Geneva Convention. A law on refugees is a high priority legislation because it is directly related to human rights. However, this refugee law has not taken an adequate attention from the early times of the Republic of Turkey till 2013. This inadequate attention is evident if we look at the fact that Turkey has only recently put up a whole corpus of legislation calling it the Foreigners' Law although it should be remembered that the right to refuge is one of the most fundamental human rights. Prior to 1994, there was no regulation even dealing with refuge and asylum issues. In the early days of the republic, the laws and regulations focused on Turkic peoples mostly. This lack of a whole corpus of legislation on asylum caused many problems. The main problem was, without clear definitions in the law, how can a person know his rights and responsibilities in the eyes of the law? The 1994 Regulation received much criticism from the international community including the EU in addition to NGO's and human rights groups. The main point raised by critics was the fact that the law focused more on the security concerns of Turkey than it did on human rights considerations. Another point the critic raised was related to the time limitation for the refugee status determination application and the distinction between illegal and legal entry. Despite its deficiencies, the 1994 Regulation was Turkey's first attempt at institutionalizing refugee and asylum policies. In this regard, the UNHCR had also an important role in publishing this regulation.

The year 1999 was of particular importance and a turning point for Turkey in the sense that the asylum issue was put in the context of security. Around that time, Turkey was in a precarious position in the international arena in this particular regard, namely the asylum issue.

As Kirisci argues as a result of the geographical restriction and the disregard toward asylum policies by Turkey, the United Nations High Commissioner for Refugees (UNHCR), has for long been one of the key institutions that managed the refugee reception, status determination and processing in Turkey. Particularly with respect to those recognized as *bona fide* refugees or 'people of concern' to UNHCR, who had either entered the country illegally or had failed to register with the Turkish police. (Kirisci, 1996, p. 298) In this regard, the UNHCR tried to fill the gap and succeeded in developing a temporary arrangement with the Turkish authorities which provided for some degree of protection and status determination. (Kirisci, 2001, p. 72)

In fact, the disputes between UNHCR and the Turkish authorities rose after the end of the Gulf crisis in 1990-91. The main reason for the dispute between the UNHCR and Turkey was the difference on defining who qualifies to be an asylum seeker and who doesn't. This disagreement put their fragile working relationship at risk. In July 1994, the Turkish authorities introduced their own status determination, which was then formalized with the introduction of the Regulation in November.

As Karadag mentions the pressures and the conflict between the UNCHR contributed to the preparation of first national regulation regarding to asylum seekers and refugees by the Turkish authorities who introduced their own status determination under the November 1994 Regulation. (Karadag, 2012, p. 18) Cartwright mentions UNHCR had two significant impacts on Turkey's asylum framework. In 1997 UNHCR made monumental judicial appeals and in 1998 UNHCR implemented training seminars for Turkish Officials working in the field of asylum. (Cartwright, 2013, p. 52) In 1997, as a positive development in the relations between the Turkish government and the UNHCR occurred when the MOI also sent an instruction to officials in border towns requiring them to direct asylum seekers to the UNHCR. Then the UNHCR was permitted to open offices in some of the borders towns such as Ağrı and Van. (Kirisci, 2001, p. 83) After a series of seminars and conferences in 1998<sup>9</sup>, which were organized by the UNHCR, in 1999, Turkey increased the five-day time limit to ten days. This kind of training seminars can be defined UNHCR influential via social learning processes. Odman mentions, Article 125 of the 1982 Turkish constitution says it is possible for all administrative decisions and actions to be appealed judicially, even by foreigners, and indirectly for asylum seekers, who had arbitrary deportation orders. (Odman, 1995, p. 187) The UNHCR saw this as an opportunity to test the appeal system, so refugees and asylum-seekers were encouraged to take their cases to court. (Kirisci, 2001, p. 87) However, Kirisci adds, this arrangement did not always protect asylum seekers from refoulment. (Kirisci, 2001, p. 72) There were also rising voices in the international community which were critical of Turkey's outdated

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<sup>9</sup>TURKISH NATIONAL ACTION PLAN FOR THE ADOPTION OF THE EU ACQUIS IN THE FIELD OF ASYLUM AND MIGRATION. The Ministry of Interior has supported such efforts since 1997 through series of seminars, workshops and working programs jointly organized with UNHCR under the "Project for Developing an Asylum System in Turkey". The topics addressed during the mentioned training activities have focused on international protection of refugees and the principles of refugee status determination. In this context, 527 security personnel and 276 gendarmerie personnel working at both central and provincial organizations of the Ministry of Interior underwent training. In addition, UNHCR has been providing training support for judges, public prosecutors and governors of districts. On the other hand; UNHCR provided technical material as a grant to the central and provincial organization to be employed by units working in the field of asylum.

procedures on asylums that go back to the 1994 regulations. An example of this dissatisfaction during that period of time can be seen in the 1999 *Report* of the U.S. Committee for Refugees:

"It was nearly impossible to estimate accurately the number of refugees and internally displaced persons in Turkey in 1998. Either because they were ineligible to meet procedural requirements, or because they sensed the authorities' hostility, many would-be asylum seekers apparently chose to remain in hiding rather than come forward with refugee claims."<sup>10</sup>

In this regard, Kirisci says that:

"organizations such as Amnesty International, Human Rights Watch, and the US Committee for Refugees,..., have had an impact on Turkish policy in at least an indirect manner. By keeping close track of Turkish performance and mobilizing public opinion on refugee rights and they have compelled Turkish officials to be more sensitive towards asylum seekers and refugees." (Kirisci, 2001, p. 91)

On the other hand, one of the main reasons, according to Kirisci, that Turkey was slow and reluctant in improving its asylum system was the fact that Turkish officials felt Turkey's national security was being endangered. (Kirisci, 2001, p. 6) For Kirisci, obviously, in order for Turkey to catch up with the modern global efforts in terms of migration and asylum, a lot has to be done, such as modernizing state apparatus equipment, providing training to state employees and modifying existing laws or regulations or promulgating new ones. However, Turkey was not ready to carry out these tasks in the administrative or legislative and political arenas. This will not only require a major training program such as the one carried out by the UN when they trained Turkish officials in the field of migration and asylum issues back in to 1997 but would also mean a whole restructuring of the existing asylum process. In fact, these kind of permanent changes have a cost and in those days, 1999 and 2000, Turkey fell into a financial and economic crisis. Kirisci further points out Turkey was far from having the economic base and resources to sustain a support system for asylum seekers and refugees that would meet the requirements of the Convention. (Kirisci, 2001, p. 10) However, Lavenex asserted that UNHCR and IOM "played a complex role in the (external) Europeanization of asylum and immigration policies". (Bayraktar, 2011, p. 12) According to Kirisci, this working relationship is based on a strict understanding that such asylum seekers or refugees will not remain in Turkey permanently. (Latif, 2002, p. 22)

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<sup>10</sup> Canada: Immigration and Refugee Board of Canada, *Iraq/Turkey: Turkey's refugee determination procedure and its application to Iraqi refugees* 6 April 2000. <http://www.refworld.org/docid/3ae6ad4430.html>. [ 23.08.2015]

It would be incorrect to attribute all the improvements in Turkish refugee policy to UNHCR. As Kirisci argues:

"a number of western government did push for changes and improvements, ..., particularly those accepting refugees for resettlement from Turkey. Australia, Canada and Netherlands have played a critical role, particularly providing support for training supports. More recently the EU has become a critical player too, providing modest support for some Turkish NGO's with programs for asylum seekers". (Kirisci, 2001, p. 88)

### **3.2 From Candidate Status 1999 to The Opening of Accession Talks 2005**

Generally accepted, the Helsinki Summit on December,11,1999,marked a new era between Turkey and the EU with the conclusion that:

"Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European Strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms."

It is undoubtedly the case that the decision taken at the Helsinki summit has accelerated the momentum of political and economic reforms in the subsequent era. (Onis, 2003, p. 12) In fact, the Helsinki decisions marked a new not only for Turkey but also for the EU. This is manifested in the Göteborg Summit<sup>11</sup> in the sense that "*The decisions in Helsinki have brought Turkey closer to the EU and opened up new prospects for her European aspirations*". Another less obvious, and hardly mentioned yet not less important point to come out of the Helsinki Summit was the announcement of the Millennium Declaration, ushering in a new phase in the enlargement process. It was emphasized that in "... the third millennium, the Union should focus on tasks which are central to its peoples' security and welfare."<sup>12</sup>In order for this to materialize "Steps have also been taken to ensure that

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<sup>11</sup> European Council GÖTEBORG, 15 and 16 June 2001.

<sup>12</sup> HELSINKI European Council. 10 AND 11 DECEMBER 1999. Annex I, The Millennium Declaration.  
[http://www.europarl.europa.eu/summits/hel1\\_en.htm](http://www.europarl.europa.eu/summits/hel1_en.htm). [ 24.07.2015]



the Union itself will have effective, reformed institutions, a strengthened common security and defense policy ..."<sup>13</sup>.

As a neighboring country to EU, or Europe's potential last frontier after attaining full membership, Turkey cannot avoid the security concerns referred to in the Millennium Declaration.

Lindstrom clarifies this by saying:

"The concentric structure is further evident in the European Commission's Country and Regional Strategy Papers, which in effect define three degrees of European engagement pertaining to cooperation on asylum and migration. Countries of transit may be divided into those that enjoy "accession negotiation" status (first degree), i.e. Bulgaria, Croatia, Romania, Turkey and the remaining Western Balkan countries, and those that do not (second degree), e.g. the CIS and North Africa." (Lindstrøm, 2005, p. 590)

In accordance with Helsinki Summit, Turkey as a candidate member in a pre-accession stage needs to adapt EU acquis to its national acquis which are to be regularly reviewed and reported to the Commission. By going through the accession process itself Turkey accepts to share the values and objectives of the European Union as set out in the Treaties detailing political and economic criteria. As a rule, the candidate countries wishing to join the EU have no say over the rules of accession; they merely have to abide by them. (Anastasakis, 2005, p. 82) It came as no surprise that Turkey took steps to improve or upgrade its asylum facilities and staff training to bring them up to EU standards.

As part of their screening duty the Commission reviews the progress of each applicant State towards accession in the light of the accession criteria. They evaluate candidate members' progress based on adopted rather than drafted legislation and measures. Hence, these regular reports serve as the strategic recommendations of the Commission.

The EU's first regular report on Turkey came out in October 1998, along with the regular reports of other candidate countries, with a view to the Vienna European Council, a second report was adopted in October 1999, with a view to the Helsinki European Council.<sup>14</sup> In the first two Progress

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<sup>13</sup> European Parliament. [http://www.europarl.europa.eu/summits/hel1\\_en.htm](http://www.europarl.europa.eu/summits/hel1_en.htm). [ 21.07.2015]

<sup>14</sup>European Commission, Progress Report, 8 November 2000.

Reports on Turkey in 1998 and 1999, the European Commission dealt with administrative reform in Turkey within the context of regional economic differences. (Celenk A. , 2009, p. 53) However, the structure followed in the 2000 Progress Reports on Turkey differed from that used in previous years on three points:

"Firstly, the part of the present report assessing Turkey's ability to assume the obligations of membership has been structured to follow the list of twenty-nine chapters covering the acquis. Secondly, this part has been broadened to cover also Turkey's administrative capacity to apply the acquis under each of the chapters. Thirdly, the report includes, for the first time, a section assessing the progress made by Turkey in translating the acquis into its official language."<sup>15</sup>

It can be said that the 2000 Progress Report, for the first time, dealt with the issue of administrative reform within the context of political criteria. For Celenk, the progress reports had two different impacts over the choices and positions of the major actors of reform. On one hand, they led the major political actors at the central level to re-define their positions with respect to institutional transformation. While the political elite strengthened their hand with the support of the EU, the state elite tried to re-position themselves within the new dynamics of the EU accession process. He added also "on the other hand, the adaptational pressures also required concrete measures and responses in terms of decreasing the misfit between the EU standards and Turkish practice, which could change the institutional setting of power relations.(Celenk A. , 2009, p. 54) Jocsha Fisher approaches this, "...the fact that the prospect of accession to the European Union has greatly fostered the Turkish Government's determination to carry out reforms and strengthened the forces of reform in both state and society." (Fischer)

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<sup>15</sup> European Commission, Progress Report 8 November 2000.

### 3.3 New Era for Asylum Policy: The Accession Partnership Document

In 2000, in line with the Helsinki European conclusions, for the first time an Accession Partnership for Turkey was proposed. In July 2000, the Commission proposed a regulation for a single framework for financial co-operation with Turkey with a legal basis for the Accession Partnership. In parallel to this paper, the Commission made a proposal for the Accession Partnership, setting out short and medium-term priorities which Turkey should implement to progress towards meeting the accession criteria<sup>16</sup>.

Only three months after the 2000 Progress Report, *Accession Partnership Document (APD)* for Turkey, prepared by the EU Commission on November, 8, 2000, by the European Council was accepted on March, 8, 2001 (2001/235/EC) in it the EC set out some of the reforms that Turkey shall adopt as an integral part of the accession process.<sup>17</sup>

The 2000 *APD* document had a significant effect in transform the policy and legislative arena. The first Accession Partnership had short as well as medium term objectives, the letter, i.e, the medium terms objectives were expected to take a little over a year to complete its described priorities. The *APD* was the first official document between Turkey and the EU which mentioned asylum and refugee issues. As Kale mentions, Europeanization is the transfer of policies, instruments, programs and norms in the accession processes. The Accession Partnership provides the guidelines for conditionality starting accession negotiations. (Kale B. , 2005, p. 249)

In Göteborg Council Summit ,on June 2001, it was pointed out that the *acquis*:

" ...must be matched by continued progress in the candidate countries in transposing, implementing and enforcing the *acquis*, which means that the candidate countries should ensure the proper implementation and enforcement of the 'acquis communautaire' the whole

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<sup>16</sup>Enlargement Strategy Paper,2000. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/strat\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/strat_en.pdf). [ 12.02.2015]

<sup>17</sup>Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2001/235/EC) OJ L 85/1324/03/2001.

set of existing EU rules, standards and legislation. This requires in particular further efforts to strengthen administrative structures and to reform judicial systems in these countries"<sup>18</sup>.

The European Council of Madrid highlighted the importance not only of incorporating the *acquis* into national legislation, but also of ensuring its effective application through appropriate administrative and judicial structures.<sup>19</sup> For this purpose, the Commission recommended a few steps as part of an "action plan" to help candidate countries to upgrade their administrative capacity. By using established mechanisms, this action plan provides expert assistance, networking, training, investment plans.

The first APD details procedures related to Turkey's need for adopting and implementing the EU *acquis* and practices on migration such as admission, readmission, expulsion to stem the flow of illegal migration and exercise border control while preparing for full implementation of the Schengen Convention. Another important point, in this regard, is the lifting of the geographical reservation to the 1951 Geneva Convention in the field of asylum and developing accommodation facilities and social support for refugees.

As part of the "action plan" it was necessary to prepare for a national program with the aim of adapting the *acquis* in accordance with the Accession Partnership, which means that candidate countries should revise their 'National Program For The Adoption Of The *Acquis*'(NPAA) to dedicate the human and financial resources, and the timetable needed to meet the accession priorities.<sup>20</sup> From the EU perspective, the NPAA represented significant progress, although the scale of transformation envisaged in the report failed to reach the threshold level set by the Community to open the critical accession negotiations for full membership. (Onis, 2003, p. 13). The NPAA involves the list of *acquis* on many policy areas. The pace of the progress candidate countries make in

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<sup>18</sup> IP/01/1566 Brussels, 13 November 2001 Enlargement well on track – 10 candidates aim to complete negotiations in 2002. *europa.eu/.../press-release\_IP-01-1566\_en.doc*. [ 02.02.2015]

<sup>19</sup> Enlargement Strategy Paper, 2000, page 21, under the heading of 3. "Other obligations of Membership"

<sup>20</sup> Enlargement Strategy Paper, 2000.

closing the chapters depends on their own efforts. As it is mentioned in Santa Maria da Feira European Council on June 2000<sup>21</sup>

"...in addition to finding solutions to the negotiating issues, progress in the negotiations depends on the incorporation by the candidate States of the *acquis* in their national legislation and especially on their capacity to effectively implement and enforce it[sic]."

Senses argues that Turkey is a critical case in tracing the Europeanization of irregular migration as it is an accession country and full adoption of the EU *acquis* constitutes a powerful incentive in achieving the goal of full membership; the '*conditionality*' effect is substantial in the Europeanization of Turkish policies(Nazli Senses, 2011)

An important element of testing Turkey's capacity for embracing European values is, of course, the implementation of the *acquis*(Oguz G. , 2012, p. 131). In this regard, if we want to understand the Turkish government position and intention we can look at the NPAA as an official statement in 2001 made by then Turkish government:

"EU membership as a new step forward, a milestone confirming the founding philosophy of Atatürk's vision for the Republic."<sup>22</sup>

Modernization means Westernization for Turkish élites as closer association with Europe. Kale says that first modernization has aimed to be achieved through various mechanisms, such as reforms in various domestic policies, institution building and policy developments. (Kale B. , 2005, p. 242) For Burgin, governments are ready for policy changes if the perceived benefits of the policy change are higher than the costs. (Burgin, 2011, p. 3)

### **3.4 Post-Helsinki Developments** (The early steps for reforms)

In line with 2001 APD and being aware of her responsibilities, Turkey prepared the first NPAA on March, 19, 2001. By doing so, Turkey responded among other things to the priority set by the EU in its 2000 Progress Report. In the 2000 EU Progress Report the EU Commission asked for two main issues to be resolved. The first plan which was related to the field of asylum pointed out that

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<sup>21</sup> Santa Maria Da Feira European Council 19 and 20 June 2000, [http://www.europarl.europa.eu/summits/fei1\\_en.htm](http://www.europarl.europa.eu/summits/fei1_en.htm). [ 02.17.2015]

<sup>22</sup>National Program for the Adoption Of The *Acquis* 19 March 2001.

efforts have been made in training of staff and fostering co-operation with UNHCR. Secondly, the report mentioned that the equipment and facilities needed in the asylum area had been upgraded in order to improve and expedite the asylum status determination process.<sup>23</sup>

The chapter titled "*CAPACITY TO ASSUME THE OBLIGATIONS FOR MEMBERSHIP*"<sup>24</sup> lists Turkey's obligations within the framework of the association relations with the EU under the JHA. The Turkish government identifies its priority as appears below:

- Existing accommodation facilities and social support mechanisms for refugees will be further developed.
- Lifting the geographical reservation on the 1951 United Nations Convention Relating to the Status of Refugees will be considered in a manner that would not encourage large scale refugee inflows from the East, when the necessary legislative and infra-structural measures are introduced, and in the light of the attitudes of the EU Member States on the issue of burden-sharing.

### **3.4.1 The Refugee Status Determination Process**

Before the acceptance of 1994 Bylaw, there was no specific national legislation dealing with the Refugee Status Determination Process (RSD) procedures. The indirect legal provision regarding the responsible authority for admittance of refugees to Turkey was set by the Passport Law No.5282. It specified the competent authority as the MOI as follows:

“In general the admission in Turkey, with or without passports, of refugees or of aliens who come to settle outside the provisions of the immigration law, is subject to a decision by the Ministry of Interior.”<sup>25</sup>

When a decision was reached, the file of the applicant would then be sent to the MFA for examination. When the file was received by the MFA, it was investigated for the obligations of Turkey under the *1951 Convention*. During the refugee status determination process the Directorate

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<sup>23</sup> Turkey Progress Report ,8 November 2000.

<sup>24</sup> Capacity to Assume the Obligations for Membership, "B. ADOPTION ACQUIS" starting with page 6.

<sup>25</sup> *Passport Law (Pasaport Kanunu)*, Law No.5682, 15.07.1950, Art.4 (4).

of Security would issue an alien's residence permit (*yabancılara mahsus ikamet tezkeresi*) marked "refugee status under consideration" (*ilticası tetkik edilen mülteci*) for the asylum seeker. The UNHCR would later get in contact with various Western governments' embassies based in Ankara for the resettlement of these non-European refugees. During the asylum period, in principle, no measures of removal, in other words return or refoulement, would be taken by the Turkish authorities. Nonetheless, article 19 of the law no. 5683 provides the conditions of extradition:

"Aliens whose sojourn is considered by the Ministry of Interior to be contrary to the national security or political or administrative practice are requested to leave Turkey within a given time. Those who have not left Turkey when the period has elapsed shall be expelled."

Based on 1994 Asylum Regulation, asylum seekers had a period of five to ten days<sup>26</sup> deadline after they enter the country to claim asylum, this was widely criticized and characterized as a short period of time by the international community, European Commission<sup>27</sup> and NGOs. For asylum seekers, the critics argued, who are newly arrived in the country not knowing much about the laws and regulations regarding asylum procedures, ten days is quite a short period of time for the newcomers. Turkey's securitized approach to asylum rendered many otherwise legitimate asylum seeker illegal immigrants without any protective status. During the time the application is pending approval or rejection, accommodations for asylum seekers are crucial. For a long time, the government allowed UNHCR considerable leeway to temporarily shelter these asylum seekers with the tacit understanding that they would be resettled out of Turkey if UNHCR recognized them as refugees, and that those whose claims were rejected would be deported. (Kirisci, 2005, p. 4)

As argued by Kirisci, the distinction created by the geographical limitation led to the evolution of a two-tiered asylum policy.<sup>28</sup> In general non-European asylum seekers without documents approach UNCHR with an asylum claim either in the central office in Ankara or in border area where they are issued a letter saying that they are on their way to lodge their asylum application with the Turkish

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<sup>26</sup> Decision Number 94/6169, that required non-European, undocumented asylum seekers to present themselves to the police within five days of arrival in the province where they entered the country. The regulations instructed local police near the borders to conduct interviews to determine if refugee claimants should be recognized officially as asylum seekers.

<sup>27</sup>Turkey Progress Report 2002. Brussels, 9.10.2002 SEC(2002) 1412. In the area of asylum, time limits imposed on asylum seekers for filling in an application and identification requirements continue to be a problematic issue in the current law.

<sup>28</sup>Kirişçi, K., (1991), "The Legal Status of Asylum Seekers in Turkey: Problems and Prospects", International Journal of Refugee Law, vol. 3, no. 3.

authorities. Rarely are there situations where asylum seekers go to the police first to make their claim before going to UNCHR. Such cases can only be found in the case of Turkomans or Europeans. On the other hand, making an asylum claim to a uniformed policeman is not something that makes asylum seekers comfortable, for this reason many of them tend to prefer to approach UNHCR first. In my encounter with refugees and asylum seekers, while working at an NGO, I came to realize that many asylum seekers, based on their previous experience of running away or fearing their country's authorities, become reluctant to approach uniformed authorities in the country they apply asylum in. It is often hard for them to dissociate between the authorities they ran away from and the authorities they are running to in order to seek asylum. Often asylum seekers are under the impression that the UNCHR can process their claims and decide on the merit of their asylum, even though the actual process of determining the merit of application is usually started upon the asylum seekers' arrival at a police station. After an asylum-seeker lodges an asylum application with the police, he or she is interviewed by the police and then the police transfer the file to the Ministry of Interior ( MoI ) which in turn reviews it and transfers it to the Ministry of Foreign Affairs ( MFA ). Then the MFA asks for UNHCR's opinion on the merit of the claim. During this stage of the application, the UNHCR is neither presented nor shown details of the claim filed. Upon completion of this phase, the MFA makes a recommendation to the MoI. It is worth mentioning here that in this phase, the National Intelligent Service (MIT) may have a look at the file and have their recommendations or reservations in the file claim. If asylum-seekers are granted International Protection Status, they enjoy only temporary residence in Turkey, until the UNHCR office in Turkey places them in a third country. Even though Turkey opts for geographical limitation, non-European asylum seekers eligible for the "refugee" definition incorporated in 1967 Protocol are allowed to reside in Turkey for a reasonable period of time and granted the right to temporary asylum on the basis of 1994 Asylum Regulation until they are admitted as refugees by a third country<sup>29</sup>. This two-track procedure, namely that of the police and the UNHCR, carries the risk of creating a confusion for a lot of asylum seekers who mistakenly think that filing a claim with UNHCR is enough for them to be eligible for international protection. (Sometimes this caused them to miss making an official application to the police in the 10-day deadline). This misconception of the progress is attributed to lack of or insufficient information in the form of brochures or translations into other languages. This deficiency in providing information to asylum seekers properly, along with the authoritarian look of the police station, were some of the points mentioned in regular progress reports by the EU. Içduygu mentions

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<sup>29</sup> Turkish National Action Plan For The Adoption Of The EU Acquis In The Field Of Asylum and Migration, page 12.



that “although based on its ongoing geographical limitation in the *1951 Geneva Convention*, Turkey still does not accept non-European refugees on *de jure* basis, it is a *de facto* situation that almost all asylum applications in the country come from non-Europeans.”

The other drawback is the fact that all the institutions making decision are in Ankara and there is often a backlog which results in a longer period of time to process and therefore asylum seekers have to wait for a long time for a decision on their case.<sup>30</sup> This long waiting adversely affects asylum seekers' physical and psychological well-being in addition to the economic difficulty most asylum seekers usually have. This unfortunately sometimes leads some of them to fall victim to human traffickers with the goal of finding another country. In the 2001 Progress Report, it was stated that there are serious concerns regarding current legislation and practices on asylum.

" This relates mainly to: the fate of non-European asylum seekers, the time limitations attached to the registration of asylum claims, the situation of asylum seekers waiting for the determination of their cases and the deficiencies of the appeal arrangements for rejected asylum applicants. An important step needed is the setting-up of an independent asylum appeal board."<sup>31</sup>

If I have to provide figures:

Within his framework a total of 934,354 aliens were granted residence permits with the right to work in Turkey including:

- 51,542 people during the Iran-Iraq war of 1988,
- 20,000 people during the civil war, the disintegration of former Yugoslavia and the events which took place in Bosnia-Herzegovina between 1992 - 1997,
- A total of 345,000 people including 311,000 people deported from Bulgaria and 34,000 people arriving with visas between May – August 1989
- 7,489 people between 2nd August 1990 and 2nd April 1991 before the Gulf Crisis and War, and 460,000 afterwards,
- 17,746 people after the events which took place in Kosovo in 1999,

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<sup>30</sup> Toplum ve Hukuk Araştırmaları Vakfı Yayınları, " GÖÇ ANALİZ RAPORU 2014 ", published by Berdan Matbaacılık, *Reyhan Toplu.*

<sup>31</sup> Turkey Progress Report Towards Accession, Brussels, 13.11.2001 SEC(2001) 1756.

- 32,577 Ahiska Turks on exile from their countries, who were dispersed to a large geographical area.<sup>32</sup>

It is obvious that Turkey does not want to be subjected to such a heavy burden without knowing for certain that the EU will accept Turkey as a member, even then Turkey wants the EU to place more stress on burden sharing. (Lagrand, 2010) Kirisci explains, in this context that they do recognize that these issues are very important for the EU and that EU membership is dependent on Turkey's cooperation. On the other hand, in light of the controversial nature of the Turkish candidacy, Turkish officials fear a situation where cooperation with the EU will not be accompanied by membership, leaving Turkey exposed and forced to deal alone with difficult problems associated with asylum and irregular migration. (Kirisci, 2003, p. 81)

Consequently, the Turkish government has in turn accepted to lift the "limitation" in both *National Program for the Adaptation of the Acquis* of 2001 and 2003 as long as certain conditions are met.

The Gothenburg European Council of 15 and 16 June 2001 regarded the National Program as a "welcome development" and urged Turkey, at the same time, to take concrete measures to implement the priorities of the Accession Partnership, which is the cornerstone of the pre-accession strategy".

Also, In the Leaken, the EU reflects this 2001 NPAA;

"Turkey has made progress towards complying with the political criteria established for accession, in particular through the recent amendment of its constitution. This has brought forward the prospect of the opening of accession negotiations with Turkey."<sup>33</sup>

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<sup>32</sup>Turkish National Action Plan For The Adoption of the EU Acquis in the Field Of Asylum and Migration, page 49.

<sup>33</sup> European Council Laeken, 14 and 15 December 2001.

A regulation was proposed by the Commission in April 2001 to simplify procedures and to ensure that financial assistance focuses on pre-accession priorities. This regulation is in the process of being adopted. The proposed regulation recalls that: "in the financial perspective 2000 – 2006, the pre-accession financial assistance was doubled for the candidate countries."

On 18 July 2001 the Turkish Government adopted on 18 July 2001 a circular entrusting the tasks of National Aid Coordinator to the Minister of State and Deputy Prime Minister responsible for EU Affairs and that of National Authorizing Officer to the Minister of State responsible for the Economy. To improve financial and technical capacities of candidate states, this assistance is very important. Experts from Turkey participated in seminars organized by TAIEX for all candidate countries. Turkish experts have attended over 30 multi-country workshops.

### **3.4.2 Asylum Strategy Document<sup>34</sup>**

In this document, priority is given to the development and provision of effective training to personnel handling Refugee Status Determination procedures in terms of interviews and information on prevailing conditions in the countries of origin. This document lays down the fundamental principles, strategy and priorities that Turkey will follow in Turkey's adoption of EU Acquis. The goal in this context is to harmonize Turkey's efforts towards the adoption of the EU Acquis and to establish an administrative structure specifying the authorities and the responsibilities of those dealing with asylum issues. A fundamental addition to this document was the discarding of the time limitation for asylum application. Another fundamental addition was the announcement of the establishment of a separate and specialized institution that meets EU and International criteria dealing with asylum and refugee issues. The Asylum Strategy Document further points out that in order to achieve the desired result, financial support of the EU is very crucial. In terms of legal framework, the document shows Turkey's intent to promulgate a new asylum law in line with the relevant EU and international acquis. To achieve this standardization and harmonization, it becomes crucial to take into account the "burden sharing".

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<sup>34</sup>Turkey's Strategy Document on Work Envisaged to be Completed in the field of Asylum during Pre-accession Process to European Union, [http://www.goc.gov.tr/icerik3/asylum-strategy-document\\_913\\_991\\_999](http://www.goc.gov.tr/icerik3/asylum-strategy-document_913_991_999). [ 23.03.2015]

By saying "burden sharing", Turkey emphasizes that:

" Turkey should build a dialogue with EU and the Member States with regard to establishing mechanisms for sharing the financial burden that will result from removing the geographical restrictions and implementing the EU Acquis. Sharing the burden should include financial and technical assistance for maintaining settlement of the refugees partially into other European countries, in addition to establishing administrative structures and guesthouses defined above."

Shortly after the Asylum Strategy Document and after the adoption of the *NPAA*, the impact of Europeanization became immediately visible in the implementation phase. (Kale B. , 2005, p. 259) Turkey formed a special task force where different state agencies were in charge of border control, migration and asylum. The goal of these was to comply with the EU legislation on JHA in the field of migration and asylum. This special task force consisted of three different working groups in their respective fields to develop an overall strategy. They became operational on June, 18, 2002.

The sub-working groups under the Asylum, Immigration and External Borders Task force proved to be efficient because for the first time different experts from relevant public institutions and organizations came together and made semi-annual meetings, paid visits and conducted legislative screening activities on these three topics. Another positive outcome of these groups was the mapping out of Turkey's refugee protection system with its European counterpart.

As a result of the activities carried out by the Special Task Force, the following papers have been produced;

- "Strategy Paper on the Protection of External Borders in Turkey" in April 2003,
- "Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey's Accession to the European Union (Asylum Strategy Paper)" in October 2003,
- "Strategy Paper to Contribute Migration Management Action Plan in Turkey (Migration Strategy Paper)" in October 2003.

Another major step in 2002, aside from the task force, was taken by the Ministry of Interior which issued a circular to governors to provide green cards for medical coverage to asylum seekers. These cards cover expenses such as diagnosis, treatment and medicine.

On the other hand, in practice, based on my field work and my interviews with some refugees, I have seen cases where asylum seekers mostly paid for their medicine expenditures until mid 2015. In fact the coverage situation was so confusing to some asylum seekers that some of them chose to pay for expenses rather than to go through the confusing bureaucracy. There are sometimes cases where medical institutions were not fully aware of how the coverage system works. As for covering the cost of medicine by pharmacies nationwide, the situation depends on the experience and knowledge of these pharmacies based on the frequency of their contacts with asylum seekers. In border areas for example, both public and private health services sectors are knowledgeable and constantly updated on asylum seekers' health coverage issues. However, in other areas, both the public and private health services sectors are not very knowledgeable about these issues because they do not come in contact with asylum seekers very often. For example, at some point, AFAD<sup>35</sup> extended its medical coverage to Syrians to include Syrians living outside of the satellite cities. In Izmir, however, only a few private sector pharmacies were part of this coverage and there was a list circulated among Syrians regarding which pharmacy provides free medicine. Later on AFAD issued instructions that all Izmir 's pharmacies will cover cost for medicine to Syrians. However, not many pharmacies in Izmir are aware of this or have come in contact with Syrians in order to learn about the process of this coverage.

After Turkey's initial attempts to upgrade its immigration and asylum system, in the 2002 Progress Report, EU commission declares that "The government is encouraged to create a professional body, and the necessary institutional and technical capacity, to carry out refugee status determination."<sup>36</sup> In the 2003 Progress Report, the Commission announced that "in the area of migration and asylum, the adoption of the Migration and Asylum Strategies for alignment with the EU acquis is another significant step."<sup>37</sup>

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<sup>35</sup> Republic of Turkey Prime Ministry Disaster and Emergency Management Authority.

<sup>36</sup>Turkey Progress Report 2002.

<sup>37</sup>Turkey Progress Report 2003.

### 3.4.3 Revised Accession Partnership Document ( RAPD)<sup>38</sup>

Accession Partnership triggered a reform and democratization process in the Turkish legislative, administrative and political system. The goal to meet the Copenhagen political criteria made Turkey take a number of steps to address EU concerns. (Kale B. , 2005, p. 260) Since the aim is to set out a single framework to the priority areas for further work with Turkey towards accession, RAPD stated that it is necessary to make "..., the financial means available to help Turkey implement these priorities and the conditions which will apply to that assistance."

The revised document involved a readjustment of priority areas on Turkey's road map towards accession. One major issue which was high on the list of the priorities regarding Turkey's harmonization with EU Acquis was the area of asylum.

In the 2001 *APD*, a strong emphasis was given with the statement: "Lift the geographical reservation to the 1951 Geneva Convention in the field of asylum." On the other side, after some dialog through the sub-committee meetings between the years 2001-2003, the 2003 Revised *AP* mentions that in order to lift the geographical limitation, Turkey should first "start with the alignment of the *acquis* in the field of the asylum. It envisages that the harmonization with the EU *acquis* will bring certain procedural and administrative changes to this policy (Kale B. , 2005, p. 263). The document also urges for a systematic change to "strengthen the system for hearing and determining applications for asylum; develop accommodation facilities and social support for asylum seekers and refugees". In addition to that in the medium-term plan it is very clear that EU pushes Turkey to "Strengthen efforts to develop sustainable training programs on the *acquis* and its implementation in the fields of JHA also with a view to increasing administrative capacity and improving inter-agency cooperation."

In this regard, the Turkish Cabinet's Decree of 19 May 2003 sets out the following objectives:

- Training on the EU Acquis and the implementation thereof in the field of Justice and Home Affairs,
- Strengthening the system as to admission and assessment of asylum claims.

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<sup>38</sup>Published on 19 May 2003.

### 3.4.4 The 2003 Turkish National Program for the Adoption of the EU Acquis<sup>39</sup>

With the aim of responding to the *Revised AP* document, Turkey prepared a Revised NPAA and put it into force following its publication in the Official Journal No 25178 of 24 July 2003. Turkish National Program on the Adoption of EU *Acquis* Communautaire identifies the priorities of improving administrative and technical capacity in the field of asylum. These changes involve the operational capacity building of the authorities in terms of coordination, human resources, materials and institutionalization.

Article 24.1 entitled “Initiation of Harmonization Process with the EU Legislation and Capacity Building in the Field of Asylum”. Turkish National Program of 2003 undertook the following:

“Initiation of harmonization process with the EU legislation in the field of asylum has been identified as a priority in the Accession Partnership Document of 2003 and it is foreseen that administrative and technical capacity be improved particularly through the maintenance of works in developing accommodation and social support mechanisms for refugees. Following the enactment of the Draft Bill on Asylum, administrative arrangements shall be put into force and the harmonization process with the EU legislation shall continue.”

Due to the increased demands on the asylum issue in RAPD, the newly elected Turkish government at that time made it a point in their campaign to work towards becoming an EU member and to harmonize its efforts to show its determination to achieve the reforms and harmonization of the *acquis*. The following are the articles mentioned in RNPA :

- Identifying training needs of personnel and developing training programs,
- Organizing seminars on Refugee Law,
- Developing an asylum strategy and strengthening institutions involved in the strategy,
- Improving refugee-asylum seeker country of origin information database.

One of the major issues raised in the RNPA is found in article 6 which calls for the establishment of a central specialization authority to be exclusively responsible for refugee status

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<sup>39</sup>Official Journal (2003), *Turkish National Program on the Adoption of EU AcquisCommunautaire*, No.25178, 24.07.2003.

determination under the body of MOI and the satisfaction of legislative, organization, administrative set-up and infrastructural needs for building its operational capacity. The administrative changes reflected in the RNPAAs call for an Asylum and Migration Specialization Unit, a Training Academy (Institute) training of existing and prospective personnel, language training courses for refugees, asylum seeker reception and accommodation centers and refugee guesthouses, return centers, transforming employment procedures of personnel working in asylum field (selection, appointment, and career development), electronic storage of information with the Country of Origin and Asylum Information System, and also gathering, analyzing, and disseminating reliable statistical information.

### **Reform Monitoring Group**

To make sure that the process of adopting the *acquis* is going according to the plan, "REFORM MONITORING GROUP" was established in September 2003. Their objectives were to address the developments in the EU accession process, review shortcomings, and evaluate the timetable and work to be undertaken in the forthcoming period.

#### **3.4.5 Project on Supporting Turkish Authorities Responsible for Migration in the Field of Asylum**

To achieve the goal of bringing Turkey's asylum system closer to the EU *acquis*, a number of activities such as workshops and seminars were jointly conducted by EU member states and Turkey. One such project was jointly undertaken by the Turkish Ministry of Interior and German Ministry of Interior on 7 April 2003, coded "**2001/HLWG/115**", entitled "Supporting Turkish Authorities Responsible for Migration in the Field of Asylum". It was financed by the EU High Level Working Group (HLWG) Iraqi Action Plan. Its goal was to align Turkey's legal, institutional and personal capacity with the EU *Acquis* to support institutions working in the field of migration, contributing to effective controls on migration flows, developing an efficient and balanced migration management in all fields, establishing a functional system aligned with the EU in Turkey and strengthening the combat against illegal migration. Under this project, was 10 seminars and 2 conferences in addition to 1 working program were organized in both Turkey and Germany. These seminars were critical in the words of a UNHCR official in helping to develop a "common language" between Turkish officials and their EU counterparts. (Kirisci, 2012, p. 73)



Another project coded **TR02-JH-03** titled Asylum-Migration Twinning Project<sup>40</sup> was conducted in cooperation with Danish – UK Consortium on 8 March 2004. Kirisci mentions that this project not only enabled Turkish officials for the first time in their careers to work for months on a daily basis with their EU counterparts but also helped Turkish authorities to prepare the *Action Plan on Asylum and Migration* that was subsequently adopted by the government in March 2005. (Kirisci, 2007, p. 14) The aim of the project was to:

"Prepare an action plan, to be supported in part through the provision of EU funds, to implement Turkey's asylum and migration strategy with a view to aligning its asylum and migration policies with the EU legislation and to improving the operational capacity (coordination, human resources, equipment) of the agencies responsible for asylum and migration management."

The outcome of these two projects was analyzed and compiled as a set of recommendations for Turkey. Another major project to train central and provincial personnel of MOI was the project "for Increasing Police Capacity in the Fields Pertaining to Refugees/Asylum Seekers" on 26 July 2004. The overall long-term objective of the mentioned project was to increase the capacity of MOI, GD Security personnel working under Turkish legislation in the fields pertaining to refugees/asylum seekers in line with the international standards. The EU was particularly interested in ascertaining that Turkey should carry out the reforms by using "twinning projects"<sup>41</sup> as tools. In the period 2003–2004, no less than eight twinning projects were initiated on issues such as strengthening institutions in the fight against human trafficking and other project were focused on visa issues, asylums and borders. Furthermore, Turkey followed through with the training activities on asylum issues with UNCHR. There were many seminars for Turkish officials held by UNHCR between 2003-2004. For

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<sup>40</sup> In the IPA budget, 28% of the share was allocated for Turkey was to be spent on Justice and Home affairs. Germany was the first country among Member States to make an offer of 63 twinning projects with Turkey. This was followed by the Netherlands and England with 37 projects. Turkey first preference for the implementation of 42 projects was with Germany. This was followed by the Netherlands 20 projects and England with 18 projects. (2002-2010) "Twinning Mekanizması ve Türkiye" ,2011.

Ankara, [http://www.ab.gov.tr/files/ardb/evt/3\\_ab\\_bakanligi\\_yayinlari/twinning\\_mekanizmasi.pdf](http://www.ab.gov.tr/files/ardb/evt/3_ab_bakanligi_yayinlari/twinning_mekanizmasi.pdf). [ 04.12.2015]

<sup>41</sup> For 2002 till June 2015, 144 Twinning projects materialized.

example, 527 police officers were trained in international and national law on asylum and migration, and international best practice.<sup>42</sup>

Turkey established a “Task Force for Asylum-Migration Action Plan” in order to formulate such recommendations as an Action Plan. The Task Force became operational on November 2, 2004 upon initiating the preparatory process of the Action Plan. The process was completed by the end of December 2004 producing a Asylum Migration National Action Plan. Thanks to 5 TOT (training of trainers) seminars to be organized for the dissemination of Asylum and Migration National Action Plan and the Strategy to all the agencies practicing in the field, 100 personnel working in central and provincial organizations of MOI and other relevant Ministries and agencies will have the opportunity to be trained on the National Action Plan. Having participated in the said seminars 100 people will further train a total of 150 people working in the same agency or unit with them and finally a total of 250 people will have received training about the National Action Plan and Strategy by the end of 2004.<sup>43</sup>

Briefly, as Asikoglu&Burgin mention twinning projects have been considered as an important enabling tool for learning and socialization processes due to two main favorable scope conditions. First, candidate countries, such as Turkey in this case, had the choice between different proposals from different member countries according to their own needs. Second, the twinning projects has the desirable effect of creating a long-term relationship of at least two years, between candidate and member states in a less politicized atmosphere, with the possibility of targeted follow-up. (Asikoglu, 2015, p. 6)

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<sup>42</sup>Progress Report 2004, 06.10.2004.

<sup>43</sup> Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration.

\*NPAA Financing Requirements and Source of Financing 24.1.3, 2003.

## SUMMARY

This chapter covers the pre-accession period 1999-2005. In this period, the aim was to reduce the mismatch between the EU and Turkey, particularly in the asylum issue. The main incentive for Turkey to initiate legislative and changes was the clear target of jumpstarting the accession negotiations. For Turkey, the most significant reward for the conditionality to work effectively was the expectation of membership. In this regard, Turkey's attempts at harmonizing issues legislatively and institutionally with the EU, especially in the field of asylum, reached their highest degree. By creating new units, such as the Task Force, Reform Monitoring Group, etc. Turkey has attained a certain level of its field research and institutional research. This shows clearly the explaining power of the external incentive model in the sense that Turkey accepted all the conditionalities set by the EU regarding asylum policies.

In this period, we see effects of UNHCR on Turkey through training officers. In fact, UNHCR's efforts in this regard, can be explained via social learning model discussed in Chapter II. In other words, being a member of the UN and the signatory to the Geneva Convention, Turkey had a stake in internalizing the values and norms set by the UNHCR. Nonetheless, UNHCR contributions pale in comparison to EU's impact on Turkey in this regard. The reason for this was that the UNHCR did not offer Turkey the incentive of membership like EU does. On the other hand, another impact of the EU on Turkey was through by twinning projects, funds and bilateral agreements. Hence, for the first time Turkey published its Asylum Strategy Document.

Consequently, between 1999 and 2005 Chapter 24 and the subtopic titled "asylum" dominated the agendas of both the EU and Turkey. Particularly in 2001 National Program, revised in 2003, and in the Asylum Strategy Document, it becomes evident that the Turkish Government tried to Europeanize its asylum system along the lines of EU asylum system provisions and this is another indicator of the EU's conditionality. In order to make wide-ranging changes in its asylum system, Turkey, between 1999-2005 focused on changing its legal system and bureaucracy and tried to take steps toward diversifying its human resources with the aim of achieving the adaptation of its old-fashioned asylum system to the EU acquis. These efforts were meant to accommodate the improvements in response not only to the international criticism but also to the recommendations put forth in the successive progress report after the Helsinki Summit.

## CHAPTER 4

### Adjustments Period 2005 - 2010

#### Accession Negotiations

According to the historic decision of the European Council on 17 December 2004, on 3 October 2005 accession negotiations were opened with Turkey. While opening the negotiations the EU asserted that:

*“The advancement of the negotiations will be guided by Turkey’s progress in preparing for accession, within a framework of economic and social convergence.”*

Following the completion of the screening phase in October 2006, actual negotiations were initiated on certain acquis chapters.<sup>44</sup>The Accession marked an important and encouraging step for Turkish elites, those in Turkey supporting EU membership, and for the Turkish government.

#### 4.1 National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Immigration

Right after the accession negotiations started an important step in 2005 was the creation of the "Action Plan for Asylum and Immigration", marking a major change in Turkey's asylum system. Between 2004-2005 the Consortium of England and Denmark, there was a twinning project titled "Support for the development of an Action Plan to implement Turkey’s asylum and migration strategy" and in accordance with 2003 "National Programme for the Adoption of the Acquis", all these culminated in the creation of a national " Action Plan" put into effect on March,25,2005.

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<sup>44</sup> The European Council suspended negotiations on Chapter 1 on the Free Movement of Goods, Chapter 3 on the Right of Establishment and Freedom to Provide Services, Chapter 9 on Financial Services, Chapter 11 on Agriculture and Rural Development, Chapter 13 on Fisheries, Chapter 14 on Transport Policy, Chapter 29 on Customs Union, and Chapter 30 on External Relations in connection with the Cyprus issue in December 2006. Nevertheless, negotiations came back on track in January 2007 on chapters that were not suspended such as Chapter 6 on Company Law, Chapter 7 on Intellectual Property Law, Chapter 18 on Statistics, Chapter 20 on Enterprise and Industrial Policy, Chapter 21 on Trans European Networks, Chapter 28 on Consumer and Health Protection and Chapter 32 on Financial Control.

In the context of the Action Plan for the alignment with the *acquis* on migration and asylum, Turkey should adopt a detailed road map for legislative alignment and institutional enhancement (including recruitment and training of specialized staff) with a clear priority-setting covering the short, medium and long term and including a realistic plan (with budgetary calculations) to considerably upgrade the infrastructure required to accommodate asylum seekers, refugees and illegal migrants waiting for their return.

Through the Action Plan Turkey tries to harmonize its asylum system with some of the most important and fundamental EU asylum Regulations such as:

- 1) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
- 2) Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status.
- 3) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers EU Council Directive on Reception Conditions.

Buz mentions that through the EU accession process, Turkey tried to add a social dimension to its asylum system through the Council Directive on Reception Conditions. During the asylum process, the social aspect should be taken into consideration as it relates, to the security and the legal dimension. (Buz, 2008, p. 128) The Turkish Asylum authorities express the intent to cooperate with civil society for the first time. To achieve the desirable level of understanding major EU regulations and the newly made action plan on Asylum and Migration, Turkey, in its effort to disseminate these important EU and Turkish Regulations to its asylum apparatus, published a book titled "Legislation on Asylum and Migration" with the financial backing of the EU Commission. It was made available on the National Turkish Police website. On the one hand, in the 2005 Progress Report, the EU expressed its satisfaction with the efforts undertaken by Turkey in its attempts at upgrading its asylum system by saying " the Turkish legislation is aligned to a certain extent with the EU *acquis* " on the other hand, the EU, in the same report pointed out that" progress is needed in a number of important areas, such as implementation of the National Action Plan for alignment with the *acquis* on migration and asylum." To stress its point even further the EU in the Enlargement

Strategy Paper reiterated that "further progress is necessary in a number of areas such as the National Action Plan on Migration and Asylum, lifting the geographic limitation to the Geneva Convention and developing inter-agency co-operation." At that point, Tolay points out that:

"...there are different levels of "Europeanization", with some reflecting an instrumental adoption of policies to gain particular advantages, while others denoting a deeper transformation and internalization of norms, characterizing a more genuine "Europeanization". From a European perspective, it is extremely important to understand how transformative and genuine Turkey's reforms in the field of asylum and migration are". (Tolay, 2012, p. 40)

To ensure that personnel working in the area of asylum and migration have the necessary up-to-date skills and information, Turkey planned to open a training academy with the financial backing of the EU Twinning project. This step was surely positive for many NGO's working in the field.<sup>45</sup> At least, now, they deal with more knowledgeable officers and staff members. Between 2006 and 2010 and with EU financial support, Turkey planned to establish refugee reception centers, guesthouses in seven different cities. Each camp has a capacity of about 750 people. The 2005 Progress Report mentions that in 2004 only 3,026 people applied for asylum and that in the first five months of 2005 only 1,054 people did that. Based on these figures, Turkey was expecting around 5.000 on yearly basis. Hence, the capacity of these accommodation centers was based on these or similar figures.

## **4.2 Project for Country of Origin and Asylum Information System**

Another effort on the part of Turkey to align its asylum system with the EU Acquis was to establish and utilize a Country of Origin information system and to have complete knowledge on Refugee Status Determination (RSD) procedure and develops a training program of its own for the personnel of the future Asylum Authority. For that purpose, Turkey prepared a twinning and investment project fiche on "Project for Supporting the Development of an Asylum and Country of Origin Information System and the Training of Personnel for the Future Asylum Authority" and submitted it to the Representation of EU Commission to Turkey on 2 April 2004 under the contract of TR02-JH-03, Asylum-Twinning Project.

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<sup>45</sup>Adv.Taner Kılıc 'Türk hukuk mevzuatında mültecilerle ilgili düzenlemeler', 05August2010

[http://multeci.net/index.php?option=com\\_content&view=article&id=61%3Atuerk-hukuk-mevzuatnda-mueltecilerle-ilgili-duezenlemeler-&catid=36%3Aturkiyenin-iltica-sistemi&Itemid=16&lang=tr](http://multeci.net/index.php?option=com_content&view=article&id=61%3Atuerk-hukuk-mevzuatnda-mueltecilerle-ilgili-duezenlemeler-&catid=36%3Aturkiyenin-iltica-sistemi&Itemid=16&lang=tr). [ 04.05.2015]

### 4.3 A Change in the Regulation no2006 –9938 on January, 27, 2006

The regulations which were put in force in 2005 were supported with the Directive of 2006 aimed at solving problems in the practical area. In other words, the first direct result of the publication of these strategic documents was the relaxing of some restrictive articles of 1994 Bylaw. (Ozer, 2010, p. 136). Although this may sound like a small directive, it did open the possibility of making changes in the law. As foreseen in the Asylum and Migration Action Plan, first changes on 1994 Bylaw were put in force after being published in official gazette on 01,27, 2006 with the 9938. Then these changes in the regulations were published on the Turkish National Police website. The critical changes made in the article 4 of 1994 Bylaw were in the application timeline. This means that in a prospective asylum law, the time limitation may state based on this directive that asylum application needs to be submitted within a "*reasonable period of time*" or "*without delay*"<sup>46</sup>. This new flexible time limit for asylum application is what NGO's and EU expected from Turkish authorities long time ago. Another change was in item number 5 regarding authorization on decision and interview.<sup>47</sup> The personnel who take responsibility on making decision or interview were chosen from educated and trained people in the field. Also, the decision making process and interview were transferred to the governorship, something that NGO's did not find appropriate. One more change was made in item number 7 regarding cooperation with UNHCR on the social conditions of asylum seekers. Kirisci points out that "close reading of the Regulation reveals that the authors of the Regulation benefitted closely from the EU's "Qualifications" Directive, betraying one of the most conspicuous manifestations of "*rule adoption*" thus far." (Kirisci, 2012, p. 76) Erguven points out a negative effect of the 2006 regulation. This effect is related to the ability of the Mol to shorten the 15-day period often set for appeal in rejected asylum applications. (Sarp ERGÜVEN, 2013, p. 1027) For Kirisci, this regulation did not bring a major improvement in the situation of asylum seekers in Turkey. One of the reasons that played a role in this outcome was the enthusiasm to reform and adapt Turkish practice and policy to EU norms reflected in the NAAP. The *Action Plan* fizzled out as EU-Turkish relations began to deteriorate from late 2006 onwards. (Kirisci, 2012, p. 76)

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<sup>46</sup>Regulation 2006 article 1.

<sup>47</sup>Regulation 2006 article. 2,3.

#### 4.4 The Instructions on The Implementation of The Directive on June,22,2006 ( Circular no 57)

Directives, undoubtedly, are the most important law text for the law-enforcement officers in the field because the directives are a kind of guide for direct implementation.<sup>48</sup> Another important amendment in the domestic law regarding asylum was Circular no 57 related to the Turkish National Police. The aim of the instructions was to inform police officers to expedite and facilitate the tasks specified in the *Action Plan*. In the introductory part it states that the regulation aims to meet the standards mentioned in the 1951 Geneva Convention and the EU *acquis*. An important point in this directive is the one related to identification documents of asylum seekers. For the first time in Turkish law, asylum seekers are allowed to enter the country without any identification and this cannot be held against them. Additionally, not just people entering the country without identification have the right to asylum, but also people who enter the country illegally, those whose residence permit expired and those staying in Turkey illegally. As part of the harmonization process, the Directive incorporates elements such as country of origin information, provision of translation facilities and a positive interview environment. For the first time also it defines and lays out the procedures of asylum application and the process of decision making for "temporary protection", which were not mentioned in the 1994 bylaw. Accordingly, the determination process of refugee status is now jointly shared between the MoI and the Foreigners Department. This means that, from that point on, the police can determine the merit of an asylum application.<sup>49</sup>

A few more important reforms that were made in the following years were the revision of the Law on Settlement in 2006, the adoption of a new Passport Law in 2007 and the Land Registry Law in 2008 providing easier access to property to foreigners.

These changes in the Turkish asylum system were evaluated by the EU's 2006 Progress Report which said that:

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<sup>48</sup>Adv. Taner Kılıç 'Türk hukuk mevzuatında mültecilerle ilgili düzenlemeler', 05 Ağustos 2010.

[http://multeci.net/index.php?option=com\\_content&view=article&id=61%3Atuerk-hukuk-mevzuatnda-mueltecilerle-iltica-sistemi&Itemid=16&lang=tr](http://multeci.net/index.php?option=com_content&view=article&id=61%3Atuerk-hukuk-mevzuatnda-mueltecilerle-iltica-sistemi&Itemid=16&lang=tr). [ 04.05.2015]

<sup>49</sup>Kemal Mustafa Serbes,3.Degree Branch Director / Expert on the EU Migration and Asylum.Decision making process on the asylum.



Some progress has been achieved in the area of asylum, with the introduction of amendments to the main legislation. The 10-daytime limit for lodging an asylum claim was lifted. The possibility to empower selected Governorates to decide on asylum application was introduced, whereas before only the Ministry of Interior held this authority. The capacity at the reception centers for asylum seekers needs to be increased and facilities need upgrading. Institutional responsibility for the management of these centers is not clear. Preparations for alignment and the required administrative capacity is at a very early stage.<sup>50</sup>

Subsequently the 2007 Progress Report emphasizes that:

"a new law on asylum, lifting the geographical limitation to the 1951 Geneva Convention and the creation of an asylum authority, with specialized staff employed exclusively for asylum issues and capable to screen asylum applications independently remain key issues for alignment in this field".<sup>51</sup>

As we see in the aforementioned progress report, in some respects Turkey was trying to improve its asylum system by creating new directives, regulations, instructions or forming task force, yet in some ways, we see some reluctance on Turkey's part to increase the capacity of reception centers or facilities needed to accommodate asylum seekers. The reluctance or even slow progress as Kirisci points out has nothing to do with EU's financial support as much as it has to do with Turkey's feeling in that period of time that its chances of full EU membership were slim. One of the main reasons of this perception in Turkey was the blocking of the asylum-related chapter due to the vetoes of a number of EU member states such as France and South Cyprus<sup>52</sup>. Kirisci explains this as a stark reminder of the limits of the EU "conditionality". (Kirisci, 2012, p. 80) These developments made Turkish policy makers question EU's credibility, leading them to do their own calculations and considerations regarding issues such as lifting the geographical limitations, a point that was emphasized from the early stages of the pre-access period. However, regarding the "burden-

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<sup>50</sup>Turkey Progress Report 2006, 08.11.2006.

<sup>51</sup> Turkey Progress Report 2007, 06.11.2007.

<sup>52</sup>In December 2006, the Council decided not to open negotiations on eight chapters of the acquis and not to provisionally close any of the chapters until Turkey opened its seaports and airspace to Greek Cyprus as required by Turkey's customs union with the EU. South Cyprus blocking of 6 chapters including chapter 24 on December, 8, 2009.

sharing" part in the negotiation between Turkey and the EU, Turkey did not feel sure as Malta, Latvia or Hungary<sup>53</sup> did.

For the EU side, the discussion started on "absorption capacity" after the inclusion of ten Central and Eastern European countries in 2004 and, Bulgaria and Romania in 2007 simultaneously with a discussion of "enlargement fatigue" in the EU. (Oguz, 2013, p. 124) On the other hand, France, being a major decisive power in the Union, voted "No" for the new EU Constitution on 29 May 2005 a referendum on new membership<sup>54</sup>. In this referendum Turkey's membership for the EU was used by France as a domestic tool to push the voters to vote " No".<sup>55</sup>Mr. Sarkozy made no secret of his opposition to full EU membership for Turkey unlike his predecessor Jacques Chirac.<sup>56</sup> In addition to that, Angela Merkel, who is the Chancellor of Germany, another major power in the Union, unlike her predecessor Gerhard Schroder, suggested giving the title of "privileged partnership" to Turkey rather than a full membership status. In the Europeanization theory part of the research, an example on liberal-intergovernmental theory was discussed in relevance to the positive contribution of Schroder and Papandreu governments on paving the way for Turkey toward the Helsinki Summit. However, unlike the previously mentioned positive contributions of Greece and Germany in 1999, France, the Netherlands, Germany and Cyprus governments between 2005-2007 played the role of hampering Turkey's membership.

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<sup>53</sup> These previous candidate countries had to go through a similar "rule adoption" process. They had to lift their geographical limitations and the first two did before accession negotiations started. The dilemma for Turkey is, for Kirisci, EU's credibility in respect to the ultimate "reward" of membership.

<sup>54</sup> *EU constitution: Where member states stand*, 25 March 2007. <http://news.bbc.co.uk/2/hi/europe/3954327.stm>. [15.01.2016]

<sup>55</sup> Lionel Beehne, June 1, 2005, *European Union: The French & Dutch Referendums*, <http://www.cfr.org/france/european-union-french-dutch-referendums/p8148>. [15.01.2016]

<sup>56</sup> *EU reins in Sarkozy 'wise men' plan*, December 5, 2007. <http://www.ft.com/cms/s/0/862384c0-a367-11dc-b229-0000779fd2ac.html#axzz3xSAqLvb5> [15.01.2016]

These European attitudes created suspicions on Turkish ruling elites.<sup>57</sup> as was expressed by the Turkish Government leader Erdogan:

"Turkey should be accepted into the European Union. If not, we'll change the name of the Copenhagen criteria to the Ankara criteria and continue with the reforms"<sup>58</sup>

In some points, the domestic politics became a determining factor for Turkey- EU relationships, particularly in the first Turkish domestic election. The AKP government wanted to project itself as centralist party embracing all component of Turkish society. Hence, the party paid more attention to the relationship with the EU with the hopes of gaining liberal votes. This focus continued till 2007-8.

On the other hand, the AKP, in its foreign relations, wanted to present an image of the leader of the Muslim world while at the same time after becoming the dominant party in the second election of 2007 (won 46.6% of the votes) it started to lean toward the conservative right which forms the core of their supporters.(Brannen, 2008) Therefore, the AKP government chose to follow a more independent foreign policy in the region and tried to play an active role in regional affairs. During those times ( 2007-2010) we see that both sides, Turkey and the EU had more self- serving interests, policies and approaches. In this regard, Kirisci suggested that rather than waiting for a consensus to come out of Brussels, Germany and Turkey should cooperate bilaterally, while encouraging the formation of a "coalition of the willing".(Kirisci, 2016, p. 3) On the other hand, another point as Kazamias mentions the mode of reaction of the different states highlights not only the importance they attach to Europe, but also their understanding of what 'Europe' is. (Kazamias, 2000, p. 1)

Burgin argues that as a result of the ongoing opposition to Turkey's EU membership, it is therefore no surprise that the Turkish side was rather reluctant to negotiate a deal on illegal immigrants and that the negotiations were interrupted in December 2006. (Burgin, 2011, p. 2) For that reason, Parlak defends the position that for Turkey to continue to use the geographical

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<sup>57</sup> European Union Center of North Carolina EU Briefings, March 2008. <http://europe.unc.edu/wp-content/uploads/2013/08/Brief4-0803-turkeys-quest.pdf> [13.01.2016]

<sup>58</sup> *Erdogan: Copenhagen criteria would become Ankara criteria* ,July 1, 2005. <http://www.turkishweekly.net/2005/07/01/news/erdogan-copenhagen-criteria-would-become-ankara-criteria/> [ 14.12.2015]

limitations giving rights from outside Europe, hampers its status as "safe third country". (Parlak, 2015, p. 77) Acer says that if this uncertain membership process falls apart, then Turkey will not be totally relieved from this burden of asylum, but will have to shoulder its responsibility on humanitarian grounds. He goes on to say that Turkey should find its own strategy. To harmonize Turkey's asylum system with the EU common policies is not an end and objective by itself but it can be a principle to help Turkey attain modern international standards. (Acer, 2010, p. 130)

#### **4.5 2006 Accession Partnership Document**

The renewed *Accession Partnership*<sup>59</sup> adopted in January 2006 subsequent to the beginning of accession talks with Turkey in October 2005 set a medium- period (the end of 2009) as the deadline for the completion of the "rule adoption" exercise and the lifting of the geographical limitation. In 2006 APD a short-term to-do list requires Turkey to continue efforts to implement the National Action Plan on Migration and Asylum, to combat illegal migration and to conclude urgently a readmission agreement with the EU". As for the medium- term expectations Turkey is required to continue with alignment on the *acquis* in the field of asylum, through the lifting of the geographical limitation to the Geneva Convention, in addition to strengthening the system for hearing and determining applications for asylum and developing social support and integration measures for refugees. In the area of asylum, the APD demanded making a visible progress in establishing reception centers for asylum seekers and also a very important point, namely introducing national asylum legislation. To implement this national asylum legislation in the field requires setting up a new specialized civil administrative unit to deal with asylum and status determination.

On 17 July 2006, the Council adopted Regulation (EC) No 1085/2006 establishing an instrument for Pre-Accession Assistance (IPA), which sets out a new framework for financial assistance to pre-accession countries. As one of the beneficiaries, Turkey used this financial and

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<sup>59</sup>Accession Partnership Document, L 22/34, 26.1.2006.

technical assistance to make political and economic reforms and to upgrade its capacity while establishing reception, accommodation or removal centers.<sup>60</sup>

For some academics such as Lindstrom, these significant funds are granted for Turkey to set up an asylum system that would, to all intents and purposes, make Turkey the last stop for many asylum-seekers intending to enter EU territory. (Lindstrøm, 2005, p. 590)

#### 4.6 The Ninth Development Plan (2007-2013)

To respond to the requirements mentioned in the 2006 APD, Turkey introduced its Ninth Development Plan (2007-2013) under the heading *Improving the Justice System*. In the short-term of the Plan, Turkey announced that an independent Immigration and Asylum Organization would be established with the aim of fighting, in an effective way, against illegal immigration and the legal and institutional regulations related to the construction of shelters and removal centers on the borders would be made. In the medium-term (2011-2013) of the plan Turkey asserted that while fighting against illegal migrants and human trafficking, a balance needs to be maintained between freedom and security in order not to put asylum seekers in the same category as illegal immigrants.<sup>61</sup> In light of this plan, Turkey pointed out that:

"our international protection system and practices to that effect should be in parallel with EU Acquis, and institutional organization should be completed in the field of migration, until Turkey is granted full EU membership."

Another event in 2007 was the new Twinning project titled "Establishment of a Reception, screening and Accommodation System (Centers) for asylum seekers and refugees".<sup>62</sup> Its goal was

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<sup>60</sup>Financial assistance under IPA I between 2007-2013, the EU financed 4,79 billion Euros to Turkey. Between the period 2007-2010 373,46 million Euros for Justice and Home Affairs and Fundamental Rights related projects. 2011-2013 this amount increase to 439.77 million Euros. Spending of this fund will continue until end of 2017. [http://ec.europa.eu/enlargement/pdf/mipd\\_turkey\\_2011\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/mipd_turkey_2011_2013_en.pdf). [ 11.01.2015]

<sup>61</sup> Directorate General of Migration.[http://www.goc.gov.tr/icerik3/overall-rationale\\_913\\_975\\_977](http://www.goc.gov.tr/icerik3/overall-rationale_913_975_977), [ 19.11.2015]

<sup>62</sup> Project number: TR 07 02 17, TWINNING NO: TR 07 IB JH 03.

to strengthen the institutional capacity for dealing with refugees and asylum seekers and to introduce standards for legislative and administrative alignment with EU acquis and best practices. The Netherlands- UK Consortium IPA financed project made € 47,100,000 in overall cost € 62,400,000.

#### **4.7 2008 Accession Partnership Document**

In the 2008 APD<sup>63</sup>, the EU stressed the necessity for Turkey to continue the efforts to implement the National Action Plan on Asylum and Migration. Another issue that was expected from Turkey was the increase in its capacity to fight illegal migration in line with international standards and to urgently conclude a readmission agreement with the EU.

In addition, the EU noted that Turkey had made progress in the preparations for the adoption of a comprehensive asylum law in line with the acquis including the establishment of an asylum authority.

#### **4.8 2008 National Programme of Adaption of Acquis** (*Launch of comprehensive reforms*)

In response to the requirement of APD in December 2008, Turkey initiated the national program for the adoption of the *acquis*. Turkey expressed its willingness to continue the effort to implement Turkish National Action Plan on Asylum and Migration. In that national program Turkey set out to establish a new civil unit on Asylum and Migration under the MoI authority. Furthermore, Turkey declared its intention of harmonizing Asylum, Migration and Foreigners legislations with those of the EU. Nevertheless, it continued to have its reservation against the Geographical Limitations. What sets the 2008 NPAA apart from previous NPAA's is the fact that it focused mostly on issues related to Border Control and implementations of this in the field.

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<sup>63</sup>Accession Partnership Document, L 51/4, 26.2.2008.

Approximately 80 percent of the resources in the 2008 NPAA<sup>64</sup> were allocated to border management such as upgrading technological and human resources capacity through training new professional police and personnel. (Ozer, 2010, p. 145)

Ozer argues that it is because of this focus on border management that the asylum reforms were postponed till later. Hence, issues like establishing a refugee and asylum admission mechanism providing expert translation services and distributing instructions on how to implement asylum legislations, all to be in line with the EU reception conditions directive were postponed till 2011. Many of NGO's during the years 2008-2009 were skeptical of the standards set forth in the harmonization process. Some of these NGO's went as far as to suggest that Turkey only needs to follow the 1951 Geneva Convention rather than go along with the EU setting the time for Turkey to make reforms. (Ozer, 2010, p. 147)



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<sup>64</sup>the 2008 NPAA covered expenses on building administrative and technological capacity in fighting illegal migration, data management, repatriation, detention, deportation and strengthening border management and security through building border reception, detention and deportation centers, technological innovation in the sphere of custom monitoring.

<b>Table 1: Summary of the 2008 Turkey's Harmonization Program to the EU Acquis, Chapter 24</b>					
2009		2010		2011	
Subject	EU meets *	Subject	EU meets	Subject	EU meets
Conditions to be evaluated upon the membership perspective		Constituting a Council for Evaluation of Appeals to the 1st instance asylum decisions	%100	Fingerprint Data basis for enabling Dublin to work in Turkey	%80
Building authority for protection of the personal data, biometric data etc.	%81	Building Immigration and Asylum Unit	%70	Preventing discrimination in the public services	
EU Legislation Implementation Education Project		Acceptance of Comprehensive Asylum Law		Custom monitoring, cooperation, information technological innovation.	
Administrative capacity building for mass refugee influx situations	%95				
Reform of the armed forces task and international cooperation	%80	Law for Foreigners under the Schengen Criteria for combating Illegal & economic Migration		Operational cooperation with Europol in the areas of information privacy and security	
Building Centers for fighting Illegal Migration, Repatriation and Deportation	%75	Border Security Unit and Border Security High School	%75		
Building Criminal laboratories and fight against terrorism, combating cyber crimes	%75	Asylum Competent Translation Team	%80	National Schengen System N-SIS and connection to Central SIS infrastructure	
Establishing Country of Origin and Asylum System	%85	2005 EU Council Procedure Directive, establishment of Asylum Education Institute	%85		
Opening of Asylum Reception centers, Detention centers and Guesthouses	%75			Entering Regulation for Implementation of the Asylum Law: under the EU principles and papers on safe 3rd countries, countries without well-founded risk of persecution, ill-grounded asylum applications, minimum standards for asylum procedures, Amsterdam Treaty Protocol for asylum for EU citizens, 2004 Charter/Directive	

\*(Baklacioglu, 2009, p. 6)

#### 4.9 Bureau for Improving and Implementing the Asylum and Migration Legislation and Administrative Capacity

In October 15, 2008 Turkey set up 'Bureau for Improving and Implementing the Asylum and Migration Legislation and Administrative Capacity'<sup>65</sup> under MoI. Baklacioglu assesses this establishment of the bureau by saying that Europeanization led to observable legal and institutional initiations after 2009. The assignment of two new senior officials to the Asylum and Migration

<sup>65</sup>Aforementioned Bureau changed its name as Directorate General of Migration after publishing Law on Foreigners and International Protection.



Bureau intensified the institutional and legislative reforms in asylum and migration. (Baklacioglu, 2009, p. 3)

The increase in the number of deportations in 2007-2008 which made Turkey the target of criticism by NGO's and human rights group, in addition to the slow pace of harmonization process with Europe which were the main reasons why this bureau was set up.

The aim of this bureau is to coordinate the works of Asylum and Migration Task Force and provide the implementation of 2008 NPAA. Another task of this bureau was to conduct field survey in order to pin down deficiencies and develop new projects with the purpose of alignment with the EU harmonization process. Another important consequence of this bureau was its work on the first draft of Turkey's Asylum Law. In this context, the nucleus "Legislation Working Groups"<sup>66</sup> were set up within the body of the Ministry of Interior and law making preparations were started. In this regard, as a positive step Turkey not only conducted interviews with NGO's working in the field but it also established a "Consultative Board" comprised of academics in the field of asylum and migration.<sup>67</sup> For Tolay, the process of reforms of Turkey's migration policies is extremely important for two reasons: first, it engages in the creation of a new comprehensive migration policy for Turkey, and second, it demonstrates a change in approach and mindset within Turkish bureaucracy regarding issues of asylum and migration. (Tolay, 2012, p. 45)

In the 2009 Progress report, the EU commented that this bureau had bigger tasks than its resources could handle; these tasks included working on projects and assessing needs for legislative and administrative structures for Integrated Border Management ( IBM ) in accordance with the national action plan on asylum and migration and with the national action plan on adoption of the *acquis* (NPAA). The reports pointed out that 'The Task Force for Asylum and Migration' plays a key role in ensuring uniform implementation of existing legislation. On the other hand, even though it provides asylum-seekers and refugees with access to the Social Solidarity Fund with the newly adopted Law on Social Insurance and General Health Insurance, this access is somewhat limited. For the first time, the EU admits that high migration inflows are putting Turkey's asylum and

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<sup>66</sup> (Baklacioglu, 2009) , p.3. After 2008 Turkey initiated extensive utilization of the EU funds in education and training of asylum and country of origin specialists in the border security and reception offices, 25 legislation specialists, 50 interviewers at the satellite city foreigners' department offices, 25 educators in asylum and migration at the police academy.

<sup>67</sup> The Publication of General Directorate of Migration No: 4, December 2013. [http://www.goc.gov.tr/files/\\_dokuman19.pdf](http://www.goc.gov.tr/files/_dokuman19.pdf) [ 03.03.2015]

migration system under strain. Because of this influx, the EU suggested that Turkey should have two priorities. One was to make a conclusion of readmission agreement with source countries, the other was to conclude a similar agreement with European Community. In that period of time, it was expected from Turkey to remain fair, equal and to give consistent access to asylum procedures, access to legal aid and to UNHCR staff, reduction of the waiting time for asylum procedures and access to judicial review of decisions. An additional deficiency pointed out in the 2009 Report was the lack of mechanism to keep the trained staff and specific training curricula for asylum and migration staff. In this regard, Kirisci mentions that the EU and Turkey need each other with regard to the management of migration. Turkey must show goodwill and recognize the importance of adopting the EU *acquis* on migration, not just for the sake of EU membership but also in order to become a truly twenty-first century modern state. (Kirisci, 2009, p. 10)

Another effort in January 2009, for the first time since the beginning of accession negotiations, the government appointed a full-time EU Chief Negotiator, with the status of State Minister. He streamlined preparations and improved inter-ministerial coordination as regards accession negotiations. For instance, in 2009, the EU funded two projects. One with ASAM, called "Suspended Lives, Perceived Lives", aimed at raising awareness and training public authorities and civil society officers on asylum seekers. The second one was with the Human Rights Foundation of Turkey on the effective protection of the rights of refugees, asylum seekers and other persons in need of international protection. Baklacioglu mentions that there is vivid success in the EU-drafted training and education projects for higher awareness of the rights of asylum seekers among the police staff and local authorities. (Baklacioglu, 2009, p. 3)

## **SUMMARY:**

This period of Europeanization started with a signing a accession agreement in 2005. Nevertheless, internal domestic actors in both Turkey and the EU, because of changes in the political atmosphere, caused a slowdown in the relations. In this regard, Turkey found itself in a precarious position of trying to garner public support to implement them.

This coolness in the relation between EU and Turkey affected the pace of policy changes in asylum issues. This affected the prioritizing of asylum cases because of the unclear nature of the ongoing accession negotiations. This illustrates the explaining power of the external incentive model in the sense that less credible membership prospects leads to less interest in implementing those

changes compliance. This caused the postponement of creating organizations or institutions that had been mentioned in the 2001 and 2003 NPAA and Action Plan.

However, the Turkish government adopted an Action Plan for Asylum and Migration in 2005 that integrated some procedures from the EU asylum laws, such as “subsidiary protection”, “tolerated aliens” and “residence permits based on humanitarian grounds” the principle of *non-refoulement* became an issue of concern in the asylum procedure in the country. The Plan on Asylum and Migration was a demonstration of Turkey's willingness and intentions of harmonizing asylum issues with those of the EU and was a result of a twinning project .In this regard, unlike the impact of international organizations working in the asylum, EU funded twinning projects had evident impact on Turkey's policies.

As another expression of the impact of EU conditionality, there were two APD's published , and Turkey with its NPAA tried to answer the requirements of these APD's. In this respect, the chapter on asylum, unlike other chapters, somehow continued despite the slowdown. This may be due to the fact that Turkish officers have realized, through EU- funded programs, projects, and meetings, the significance of changes in the asylum policy.

On the other hand, the EU funds and political supports as an external ally to NGO's working in asylum , put Turkey under pressure in the sense that did not follow the procedures as set by the EU, NGO's resorted to either raising domestic awareness or by referring Turkey to the ECHR (European Court of Human Rights). Furthermore, as we see from the establishment of the Bureau for Improving and Implementing the Asylum and Migration Legislation and Administrative Capacity, NGO's in Turkey started to be part of asylum discussion on the state level.

In sum, despite being slow or little, as Asikoglu&Burgin pointed out, Turkey's asylum policy improvements were acknowledged as an EU impact on the reform process for the time between 1999 and 2009. (Asikoglu, 2015, p. 2)

## Chapter 5

### Major Legislative Changes 2010-2015

Despite all of Turkey's reforms to try to meet the Copenhagen political criteria and efforts towards harmonization with the EU through implementing and enforcing new directives and regulations in asylum issues that had started in 2005, and despite its attempt at aligning its foreign policy on Cyprus supporting the United Nations Plan to reunite the island for starting accession negotiation, the block on Chapter 24 was disappointing to Turkey.<sup>68</sup>

Kirisci argues that the EU has exercised a considerable influence on the transformation of Turkey's policy on a wide range of issues with respect to domestic politics and foreign policy. (Kirisci, 2012, p. 64) However, the Turkish reluctance after the block resulted in a noticeable halt on the accession negotiations.<sup>69</sup> In this regard, Noutcheva & Duzgit point out that:

"the EU credibility on the "*conditionality*" towards Turkey has been considerably weakened. On the other hand, from the EU side the rejection of the proposed Constitutional Treaty in France and the Netherlands caused a new debate on the EU's '*absorption capacity*' which was a key element in the debate on Turkey's accession." (Gergana Noutcheva, 2012, p. 68)

During that time Turkey, pending the adoption of the Law on Foreigners and International Protection, had made slow progress in asylum issues. This insufficient progress reflected negatively on Turkey and made it a target of NGO and human rights groups' criticism on issues such as minimum living standards at removal centers and the lack of human and financial resources hampered the improvement of physical conditions in the removal centers. In addition to that, the rising tension in Iraq and Somalia made Turkey even more vulnerable to criticism. Due to the low-

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<sup>68</sup> Turkey Progress Report 2015. Brussels, 10.11.2015. 14 chapters have been opened so far and one of these was provisionally closed. Preparations started for the opening of chapter 17- economic and monetary policy.

<sup>69</sup> Aslıhan P. TURAN, 31 Mart 2013, '*Türkiye-AB İlişkilerinde Hollanda'ile Yeni Bir Dönem mi Başlıyor?*'. <http://www.bilgesam.org/incele/69/-turkiye-ab-iliskilerinde-hollande%E2%80%99la-yeni-bir-donem-mi-basliyor-/#.VnRZ9uKOynk> [ 17.04.2015]

level of relations between the EU and Turkey after the setbacks in the accession negotiations, we find international organizations such as IOM, UN or ECHR<sup>70</sup> pushing Turkey to change its asylum system by issuing numerous successive decisions. Kirisci explains this situation saying ECHR rulings were “raining on Turkey” and that “the current situation is becoming untenable” for Turkish officials and did not have any other choice but to reform its asylum policies. (Kirisci, 2012, p. 78) The first effect of this pressure on Turkey was two additional regulations introduced by the Social Services<sup>71</sup> and Child Protection Agency as well as the Ministry of Education extending their services to asylum seekers and refugees in 2008. As Kirisci argues Organizations such as Amnesty International, Human Rights Watch, and the US Committee for Refugees,..., have had an impact on Turkish policy in at least an indirect manner. By keeping close track of Turkish performance and mobilizing public opinion on refugee rights, they have compelled Turkish officials to be more sensitive towards asylum seekers and refugees. (Kirisci, 2001, p. 91)

### **5.1 The Circulars of March 2010**

The two circulars<sup>72</sup> in March 2010 give us a clue on what to expect in the upcoming asylum law in Turkey. These circulars had a significant role in Turkish asylum system in the sense that they exempted asylum seekers from paying residence permit fees. Before the circulars asylum seekers or those asking for international protection had to pay a fee for residence permits every six months for each family member, which was highly criticized by the EU reports and NGO's. However, in the 2011 Progress Report, the EU criticized Turkey for not applying this exemption equally all over Turkey. One of the reasons for this discrepancy in the implementation, it seems, was the lack of a single legislation. Another criticized point was that people who applied for protection were not included in the civil registry because of problems related to issuing serial numbers to foreigners.

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<sup>70</sup> On April 2010, the ECtHR ruled four more judgments on violation of the Article 5 and 13. The physical conditions of the removal centers are found to violate the Article 3 of the Convention.

<sup>71</sup> On November, 2008, Changed in law no: 5510, Asylum seekers and Stateless persons started to benefit from General Health Insurance ( Genel Sağlık Sigortası -GSS) which gives them to use state hospital without charge.

<sup>72</sup>The Circular on Illegal Migration, The Circular on Refugees and Asylum Seekers. The Circular on Illegal Migration issued in March 2010 enables access to the asylum procedures but persons caught by the security forces for illegal presence in the territory or illegal passage of the borders were foreigners' guesthouses, recently renamed as “removal centers” .

Not having a registered number caused many asylees to have problems accessing education, health and other social services. However, thanks to the March Circulars after May,1, 2010 anyone staying in Turkey for six months or longer, as they apply for their residence permit, they are assigned a foreigner number.

In 2011 Progress Report, the EU pointed out that the Turkey's circulars

" improved the practices of law enforcement forces. In particular, the circular issued by the Turkish National Police (TNP) in September 2010 gave the instruction to systematically inform in writing irregular migrants held in removal centers of the reason for being held in the centre, the duration of stay, their right to have access to a lawyer, and the right of appeal against the decision to be held in a removal centre or deportation order, amongst others. Following the issuance of the circular, posters and brochures setting out these rights have been disseminated to all removal centers."<sup>73</sup>

In this regard, Oguz mentions that Turkey's progress report in 2011 showed that Turkey has taken concrete steps in areas of common interest with EU. (Oguz G. , 2012, p. 130) At the same time, the UNHCR 2011 report remarked that the Turkish asylum condition were getting better and 90 percent of all illegal migrants in detention centers were given the right to apply for asylum. (Kartal, 2014, p. 284)

## **5.2 First Turkish Asylum Draft Law ( 2011)**

All these circulars and steps taken by Turkey starting with 2005 culminated in Turkey's first draft asylum law in 2011. The adoption of this law for EU is key to providing a single, coherent legislative framework governing Turkey's relations with foreigners and safeguarding the rights of migrants and refugees in line with EU and international standards.<sup>74</sup> To prepare this draft throughout 2010 and to ensure the asylum and migration department operate more efficiently, Turkey continued to educate and train its personnel both with national and EU financed projects.

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<sup>73</sup>Turkey Progress Report 2011, Brussels, 12.10.2011.

<sup>74</sup> Turkey Progress Report 2012.

Particularly, starting with the year 2002, Turkey took advantage of TAIEX<sup>75</sup> mechanism such as Workshops, Expert missions and Study visits as did other candidate and potential candidate countries.<sup>76</sup> In 2011 Progress Report, the EU emphasized that 'trained and experienced staff in the area of asylum and migration should be considered as a professional category' and continue to work in the area.<sup>77</sup> In 2011, Turkey established the "Result Oriented Monitoring System" ( ROM). The aim of the system is to assist the Turkish Authorities, and in particular the Ministry for European Union Affairs (MEU) and the Central Finance and Contracts Unit (CFCU), in applying the monitoring of EU funded projects in Turkey falling under IPA Component II.

Aside from Turkey's internal training program, there were two conferences organized by the United Nations High Commissioner for Refugees (UNHCR) in January 2011 and International Organization for Migration (IOM) in May 2011.

The EU assessed these several rounds of consultations with UNHCR and IOM as well as European Commission and arrived at its conclusion in its 2011 Progress Report and pointed that "... the effort being made by the Turkish authorities to ensure a more open and transparent process"<sup>78</sup>. The way this draft law was being prepared shows us a shift in the mentality of Turkish asylum apparatus from security perspective to one where the focus would be on human rights. Kirisci ,at that point, argues that the head of the team that prepared the draft law acknowledges the role of the European Union (EU) and especially notes that the law is a step in the direction of meeting Turkey's promises in its *National Programme for the Adoption of the Acquis* (NAAP) as well as the *Action Plan on Asylum and Migration*. (Kirisci, 2012, p. 63)It is undeniable that the EU had a considerable influence on the transformation of Turkish asylum policy. Kirisci explains this influence by saying that the role of the EU has been more visible in respect to the setting of a formal agenda and a time-table for eventual "rule adoption" for Turkish policy. (Kirisci, 2012, p. 73) However,

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<sup>75</sup>TAIEX is the Technical Assistance and Information Exchange instrument managed by the Directorate-General Neighborhood and Enlargement negotiations of the European Commission. TAIEX supports public administrations with regard to the approximation, application and enforcement of EU legislation as well as facilitating the sharing of EU best practices.

<sup>76</sup> In line with the trend registered since 2005, in 2012, TAIEX assistance with almost 5000 Turkish participants. In 2013-2014 the former Yugoslav republic of Macedonia and Serbia started to become more beneficiary country.

<sup>77</sup> Turkey Progress Report 2011.

<sup>78</sup> Turkey Progress Report 2011.

despite all the praise Turkey was receiving, it did not lift the geographical limitation. Another step during this time was the increase in the number of satellite cities (from 31 to a total of 51) for migrants recognized as being in need of international protection. Another positive step was to grant UNHCR access to visit refugee camps and to allow refugees to apply for asylum to UNHCR at airports. (Kartal, 2014, p. 284)

The process of drafting the law was very unusual by Turkish standards, since it was a transparent process that involved different actors. During the drafting, we can see the role of bureaucracy and how a new institution dealing with migration has brought a new era for immigration policy-making in Turkey. (Eroğlu, 2015, p. 25)

### **5.3 Foreigners and International Protection Law and the New Migration System**

Despite Turkey's being an immigrant country for many years, and despite its legislative and institutional deficiencies, most of the regulations related with foreigners were out-dated and go back to 1950's. An example of that is the date of the passport law number 5682 and the law on Residence and Travel of Foreigners which date back to the 1950's, governing entry, exit, stay or removal of foreigners from Turkey<sup>79</sup>. These archaic laws and regulations were inadequate to deal with modern problems.<sup>80</sup> Tolay mentions that prior to April 2013, Turkey's asylum policy was composed of layers of piecemeal regulations (the 1934 Settlement Law – renewed in 2006, the 1951 Geneva Convention relating to the Status of Refugees, the 1994 Asylum regulation, and recently an increasing number of executive directives and circulars). (Tolay, 2014, p. 3) Eroglu, furthermore, points out that these piecemeal legislations, and this lack of primary legislation, which covers both rights and responsibilities has been indicated as one of the reasons for decreasing the level of protection given to refugees and asylum seekers (Eroğlu, 2015, p. 25) Moreover, "no basic act is in place in the international protection field, and the implementations are executed as per

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<sup>79</sup>Turkish National Police Assistant Director of Foreigners Department Halit Turgut Yıldız, sub-commission meeting on 26 November 2008. 'In 2008, 660 applicants were given exit permit to go to other countries on humanitarian grounds while 10.018 were rejected .3.170 asylum candidates withdraw their asylum requests. By 2008, 11.936 asylum seekers were resettled in the United States ,5.628 resettled in Canada,3.959 resettled in Australia,5.280 to Scandinavian countries and 1.012 asylees were distributed around 24 different European Countries.'

<sup>80</sup> General Directorate of Migration.[http://www.goc.gov.tr/icerik3/overall-rationale\\_913\\_975\\_977](http://www.goc.gov.tr/icerik3/overall-rationale_913_975_977) [ 25.11.2015]



administrative regulation".<sup>81</sup> Çelik says until the Law On Foreigners and International Protection (LFIP) came into force, there was no fundamental code in Turkish law regulating the relevant issues regarding international protection. (Çelik, 2015, p. 67)

The outbreak of the Syrian crisis in 2011 presented a challenging situation for Turkey and was different from other challenges in terms of asylum issues from places such as Somalia and Iraq. Tolay argues that unlike the EU's de facto closed-door policy for many Syrian refugees, Turkey has applied so far an open-door policy towards Syrian citizens seeking refuge at its southern borders, welcoming more than 600,000<sup>82</sup> since June 2011<sup>83</sup>. (Tolay, 2014, p. 2)

Slowly a mass population migration was taking place in Turkey's bordering area with Syria. In October 2011, with its open door policy, Syrian asylum seekers were designated a "temporary protection" status, under the international protection. This means that there is non-refoulement principle and no time limitation on their stay, in addition to the humanitarian aid given to people in reception centers. This dramatic events let Turkey to put into force new national asylum and foreigners law.

2013 marks an equally important phase in asylum issues similar to what had happened in 1999. In the first half of 2013, both Turkey and the European Union (EU) witnessed important legislative developments<sup>84</sup> in the field of asylum. All the efforts on Turkey's part that had been

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<sup>81</sup>General Directorate of Migration. [http://www.goc.gov.tr/icerik3/overall-rationale\\_913\\_975\\_977](http://www.goc.gov.tr/icerik3/overall-rationale_913_975_977) ( 25.11.2015)

<sup>82</sup> UNHCR Global Trends, 2014, page 10. Europe hosted some 3.1 million refugees (22%), particularly from the Syrian Arab Republic (1.7 million), Ukraine (234,600), and Iraq (132,200), with Turkey alone hosting 1.6 million ( this number does not include those who are not registered. (51%)..

<sup>83</sup> UNHCR Global Trends, 2014. In 2014, Turkey also witnessed an unprecedented increase in asylum applications from Afghans, Iraqis and Iranians. The number of refugees and asylum-seekers in Turkey in 2015 is expected to rise to nearly 1.9 million, including 1.7 million Syrian refugees.

<sup>84</sup>The European Parliament endorsed the "Common European Asylum System" (CEAS). Both legislations are now in the process of being implemented, with the expectation that the Turkish Law on Foreigners came into effect in April 2014, while the CEAS be implemented by fall 2015.

2nd generation CEAS ( 2011-2013) The Common EU-wide standards on asylum improved to better harmonise asylum procedures. EASO ( February 2011), Amended long-term Residents Directive ( may 2011), Revised Qualification Directive ( December 2011), Joint EU Resettlement Programme ( march 2012) A financial scheme that supports EU states in showing solidarity with non-EU countries in resettling refugees on a voluntary basis, Revised Reception Conditions Directive ( June 2013), Dublin III Regulation ( June 2013) , Revised Asylum Procedures Directive ( June 2013), Revised Eurodac Regulation ( June 2013) , Asylum, Migration and Integration Fund ( 2014-2020) April 2014 a total of 3.137 billion euro of which a part is for strengthening and developing CEAS. By June 2014 it included around 50 directives and regulations, dealing with almost all categories of migrants and

exerted to try and align with EU *acquis* and also with International standards, regardless how late they were, now started to yield their fruits. Turkey adopted the “Law on Foreigners and International Protection,” in June 2013. The 2013 was hailed by both UNCHR<sup>85</sup> and the EU<sup>86</sup> as an important step forward by Turkey. Tolay points out that Turkey had more humanitarian approach, while the EU was paralyzed by its security approach. Paradoxically, these contrasting approaches create unique issues in the traditional framework of the Turkey-EU relationship. (Tolay, 2014). The reason why Tolay says that was because while the EU was reluctant<sup>87</sup> towards asylum seekers, Turkey received very little international support and shouldered the cost amounting to some US \$2 billion by September 2013. Kartal mentions that the EU countries asylum policies mostly aimed at stopping migration and for that reason, at some point, the rights to asylum were ignored and the European community<sup>88</sup> asylum system became more conservative. This conservative attitude toward irregular migrants started to be more selective, in some cases and more restrictive, on the other hand, the number of crisis-hit areas started to go up, and Turkey being at the cross-roads, found itself in a precarious position to resolve social, economic, political and legislative challenges<sup>89</sup>.(Kartal, 2014, p. 279)

To overcome the legislative challenges, Turkey with the new law aimed at regulating the principles and procedures with regard to foreigners’ entry into, stay in and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners who seek protection from

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all central issues of migration law: 6 on asylum, 12 on legal migration (entry, admission and residence), 14 on borders and visa and 16 on irregular migration, immigration detention or expulsion. (Groenendijk, 2014, p. 315)

<sup>85</sup> UNHCR welcomes Turkey's new law on asylum, Briefing Notes, 12 April 2013, <http://www.unhcr.org/5167e7d09.html>. [ 23.11.2015]

<sup>86</sup> Joint statement by Commissioners Štefan Füle and Cecilia Malmström on the adoption by the Turkish Parliament of the law on foreigners and international protection.05.April.2013. [http://europa.eu/rapid/press-release\\_MEMO-13-297\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-297_en.htm) .[ 02.12.2015]

<sup>87</sup> Amnesty International briefing, 13 December 2013. ' An International Failure: The Syrian Refugee Crisis. the EU, whose nearest capital is only 200 miles from Damascus, has pledged a total of 12,340. 10,000 places - were offered by Germany, Eighteen EU Member States, including the UK and Italy, have not made any resettlement or humanitarian admission pledges. The UK have not offered to take any refugees France offered to take 500 refugees'.

<sup>88</sup> In 2014, Germany reported 202 645 applicants, or more than double the number registered in Sweden, which, with 81 180 applicants, became the second main receiving country, ahead of Italy and France.

<sup>89</sup> 92,364 illegal migrants in 2001, 51,983 in 2006, 64,290 illegal migrants were apprehended in 2007, 58 000 people were intercepted in 2014.

Turkey<sup>90</sup>, and the establishment, duties, mandate and responsibilities of the Directorate General of Migration Management under the Ministry of Interior. The Law consists of three main parts: Foreigners, International Protection, Establishment and Duties of Directorate General of Migration Management (GDMM). An important aspect of this law was its recognition of the principle of "non-refoulement" and its formalization of the status of "subsidiary protection" (also referred to as "secondary protection" or "conditional refugee status"). In the 1994 Regulation, the main aim was to stop mass influx on the border and to keep asylum seekers from entering Turkey. In addition to its creation of agency for (the General Directorate on Migration Management, under the Ministry of the Interior) centralizing asylum applications.

The EU commented on this law saying the new law introduces a comprehensive legal and institutional framework on the legal status of migrants, procedures and safeguards to bring Turkey into line with EU and international standards.<sup>91</sup> In addition to that, for the EU, the establishment of a civil institution dealing with foreigners, marks a shift away from the security-oriented approach practice in this field until 2013.<sup>92</sup>

Foreigners and International Protection law went into effect, with all of their provisions in April 2014. In 2014, a protocol was signed between the GDMM and the Turkish National Police (TNP), to ensure a smooth transfer of tasks and responsibilities. However, this positive step in Turkey's asylum system was not without its deficiencies. For instance, in the 2014 Progress Report, the EU argued that "The Turkish law introduces further types of protection status such as 'subsidiary

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<sup>90</sup> UNHCR, Global Trends, 2014, page 30. In 2014, UNHCR's offices registered 234,500 new individual applications for refugee status and 11,200 on appeal or for review. The office in Turkey received the largest number of new requests (87,800), followed by Jordan (29,100), Malaysia (25,700), Lebanon (14,500), and Kenya (12,100). Iraqis were the third-largest group of asylum seekers, with a total of 100,000 new applications registered during 2014, most of them in Turkey (50,500), Jordan (20,500), Lebanon (6,300), Germany (5,300), and Sweden (1,700). Afghan asylum-seekers filed the fourth-highest number of new applications (73,500), notably in Turkey (15,700), Germany (9,100), Hungary (8,500), Pakistan (5,700), Austria (5,100), and Indonesia (3,600). UNHCR, Global Trends, 2014, page 30.

<sup>91</sup> Turkey Progress Report 2013, 16.10.2013.

<sup>92</sup> 'ARTICLE 103 – (1) The Directorate General for Migration Management has been established under the Ministry of Interior with a view to implement policies and strategies related to migration; ensure coordination between the related agencies and organizations in these matters; carry out the tasks and procedures related to foreigners' entry into, stay in, exit and removal from Turkey, international protection, temporary protection and protection of victims of human trafficking.'

protection' and 'temporary protection', but without adequate definitions. Most of the issues covered in the 2005 Action Plan were materialized in this new law." (Bekir Parlak, 2015, p. 72)

#### **5.4 Turkey's European Union Strategy Document**

In the document<sup>93</sup>, Turkey emphasized again its primary objectives for ensuring full enjoyment of fundamental rights and freedoms and the implementation of legal arrangements in areas such as organized crime, migration and asylum. With regard to asylum, the new Law on Foreigners and International Protection introduces significant safeguards, including the respect of the principle of non-refoulement, and the access to refugee status determination procedures for any person in need of international protection. In its '*Communication 'Enlargement Strategy and Main Challenges 2014-15'*' paper<sup>94</sup>, the EU Commission mentions that the Turkish authorities have made significant efforts to cope with the Syrian refugee crisis. Turkey has also taken important steps in key areas under chapter 24, in particular as regards migration and asylum policy, in spite of the very considerable burden represented by the continuous refugee crisis.

#### **5.5 The Readmission Agreement**

The EU considered that Turkey was one of the most elusive readmission countries after Algeria and China. Thanks to the pre-accession period, an opportunity to align immigration and asylum policy with Turkey presented itself for EU. The EU stated that they would like to negotiate a Readmission Agreement with Turkey in March 2004. However, Turkey had some objection<sup>95</sup> to this agreement because the EU had not concluded such an agreement with any other candidate country such as Bulgaria and Romania. The EU Commission's counter-argument was that there were relevant differences between Bulgaria and Rumania which precluded equal treatment because

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<sup>93</sup> Turkey's European Union Strategy Determination in the Political Reform Process Continuity in Socio-Economic Transformation Effectiveness in Communication, Ankara, September 2014.

<sup>94</sup>COM(2014)700 final of 8.10.2014

<sup>95</sup> Council Doc. 12289/04, 9 September, 2004

during the early nineties, these countries concluded readmission agreements with several Member States. (Coleman, 2009, p. 180) The document "*Criteria For The Identification of Third Countries With Which New Readmission Agreements Need To Be Negotiated*"<sup>96</sup> mentions that:

"given the European Union's forthcoming enlargement, countries with which it is negotiating accession agreements should not be included". However, third countries with which the European Community has concluded Association or Cooperation Agreements containing a readmission clause should be included"<sup>97</sup>.

However, Turkey's final objection was that it was not an acceding Member State in April 2002, nor when it received an invitation to enter into a readmission agreement in March 2003. (Coleman, 2009, p. 180) As mentioned in the document, at this stage "Turkey committed itself, to conclude readmission agreements with its neighboring countries and the countries of origin and to strengthen the border control and develop better institutional and technical capacity at the border."<sup>98</sup>

The goal of the regulation which was called "*AENAS*"<sup>99</sup> was to provide a specific additional response to the needs of third countries in their efforts to manage more effectively all aspects of migratory flows, and in particular to stimulate third countries' readiness to conclude readmission agreements, and to assist them in coping with the consequences of such agreements. As mentioned in Article 2 of this Regulation, the program promotes cooperation between the Community and third countries by contributing to the third countries concerned, and working in partnership with those countries. To achieve these objectives, the Community supported third countries at least in 12 different actions as mentioned in Article 2-2. In fact, on the one hand, the "*AENAS*" Regulation appears as "*carrots*", to Coleman however it contains a "*stick*" as well. Coleman says, it provides a basis for Council decisions taking action against third countries unwilling to cooperate with the EU's wishes in countering unauthorized migration, including readmission. (Coleman, 2009, p. 131)

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<sup>96</sup> Council Doc. 7990/02, 16 April 2002

<sup>97</sup> Council Doc. 7990/02, para. 2 ( ii)

<sup>98</sup> Council Doc. 12289/04, 9 September, 2004

<sup>99</sup> Regulation (EC) No 491/2004, L 80/1, 18.3.2004, establishing a program for financial and technical assistance to third countries in the areas of migration and asylum.

In addition, other punitive measures were announced under the heading "Integration of immigration policy into the Union's relations with third countries" in Seville<sup>100</sup>;

34. The European Council highlights the importance of ensuring the cooperation of countries of origin and transit in joint management and in border control as well as on readmission. Such readmission by third countries should include that of their own nationals unlawfully present in a Member State and, under the same conditions, that of other countries' nationals who can be shown to have passed through the country in question. Cooperation should bring results in the short and medium term. The Union is prepared to provide the necessary technical and financial assistance for the purpose, in which case the European Community will have to be allocated the appropriate resources, within the limits of the financial perspective.

35. The European Council considers it necessary to carry out a systematic assessment of relations with third countries which do not cooperate in combating illegal immigration. That assessment will be taken into account in relations between the European Union and its Member States and the countries concerned, in all relevant areas. Inadequate cooperation by a country could hamper the establishment of closer relations between that country and the Union.

36. After full use has been made of existing Community mechanisms without success, the Council may unanimously find that a third country has shown an unjustified lack of cooperation in joint management of migration flows. In that event the Council may, in accordance with the rules laid down in the treaties, adopt measures or positions under the Common Foreign and Security Policy and other European Union policies, while honoring the Union's contractual commitments and not jeopardizing development cooperation objectives.

As it is seen, The EU has adopted as a policy priority in its foreign relations to sign "readmission agreements" with '*bridge*' and '*origin*' countries in terms of irregular migration movements.<sup>101</sup> After all discussions between Turkey and EU on the readmission agreement, Turkey accepted to sign in concert with the EU objectives. Some people view the Visa Liberalization Dialogue as a "*carrot*" to sign readmission agreement with the EU, signed on 16 December 2013. The goal of this agreement was to eliminate the visa obstacles to Turkish citizens and bring Turkey closer to the EU Member States. Visa Liberalization discussions along with the readmission agreement, in a way, show us the

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<sup>100</sup> European Council, SEVILLE, 21 and 22 June 2002.

<sup>101</sup> "A total of 12,872 migrants trying to cross into Greece from Turkey over the Aegean Sea were captured by Turkish Coast Guard Command teams in 524 separate incidents in 2014, while 74 people were also arrested on charges of smuggling migrants, The number of migrants who were captured in 2013 was 8,047, including 6,937 on the Aegean Sea. The total number of migrants captured by authorities across Turkey in 2012 was 2,531. The official number in 2011 was 546. <http://migrantsatsea.org/2015/01/05/turkish-coast-guard-reports-intercepting-12872-migrants-in-aegean-sea-in-2014-some-migrants-pushed-back-into-turkish-territorial-waters/> , <http://aa.com.tr/tr/turkiye/kurtarilan-kacak-sayisi-24-kat-artti/87831>.

uniqueness of EU- Turkey accession relations in terms the "conditionality" effect.<sup>102</sup> The EU and Turkey completed the ratification of the agreement in May and consecutively the agreement came into force on 1 October 2014. However, it was a cause for serious concerns for many NGO's and academics in Turkey. The neighboring countries such as Bulgaria, Greece were irregular entry points into Europe which start from Turkey. These countries do not establish fundamental procedures and guarantees to ensure refugees access to legal mechanisms and classification in regard to their actual status. For example, during my experience in the field while voluntarily working in an NGO<sup>103</sup>, I received many statements and complaints from migrants and refugees who suffered maltreatment<sup>104</sup> in Greece and Bulgaria and refugees were immediately "pushed back"<sup>105</sup> to Turkey without taking their asylum requests. In fact, this is a familiar phenomenon often talked about in many newspapers<sup>106</sup> and pointed out in UNHCR reports.<sup>107</sup>

The readmission agreement further allows for "*accelerated*" return to Turkey without bureaucratic formalities when irregular migrants get apprehended in "*border zones*". The Refugee

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<sup>102</sup> Adv. Taner Kılıç, 18.12.2013. Usually, the visa liberalization and the readmission discussed separately in interstate discussions. Adv. Taner Kılıç, 18.12.2013.

<sup>103</sup> Mülteci-Der ( Association for Solidarity With Refugees ).

<sup>104</sup> "Afghan refugee shot dead by Bulgarian police near border with Turkey", 16 October 2015, <http://www.independent.co.uk/news/world/europe/refugee-shot-dead-by-bulgarian-police-near-border-with-turkey-a6696241.html>. "Bulgaria: Troops for Turkish border 'unacceptable' ", 06.01.2015, <http://aa.com.tr/en/politics/bulgaria-troops-for-turkish-border-unacceptable/86557>. "Asylum: Fixing a broken system", 08/05/13, <http://www.euronews.com/2013/05/08/asylum-fixing-a-broken-system/>. [ 07.01.2016]

<sup>105</sup> UNHCR, Bureau for Europe, July 2014. The accounts received by UNHCR of push-backs on the Bulgaria-Turkey border include Syrians and in some cases such measures resulted in family separation. Many asylum-seekers have reported being mistreated, beaten and abused while attempting to enter Bulgaria. According to UNHCR, 1,514 irregular arrivals ( 65% of them were Syrians) were recorded on the Turkey-Bulgaria border from January to June 2014. In Greece, in 2013 and early 2014 several allegations of such pushed back came to UNHCR's attention. In 2014, at least 70 have died while attempting to reach Greece. Survivors from this pushed back tragedy accused the Greek Coast Guards of ill treatment and carrying out a pushback operation when the boat capsized. " Syrian Refugees In Europe".

<sup>106</sup> "Yunan teknesi mülteci botunu batırdı", 14 August 2015, <http://www.aljazeera.com.tr/haber/yunan-teknese-multeci-botunu-batirdi>. "Yunan sahil güvenlik mülteci botunu böyle patlattı", 20 December 2015, <http://www.hurriyet.com.tr/yunan-sahil-guvenlik-multeci-botunu-boyle-patlatti-40016425>. [ 08.01.2016]

<sup>107</sup> Adrian Edwards, 15 November 2013. ' *Denied entry and pushed back: Syrian refugees trying to reach the EU* ', <http://www.unhcr.org/528618159.html>. [ 07.01.2016] Lloyd-Roberts, 05.09.2013 ' *Syrians accuse Greece of 'pushing back' migrant boats* ', <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=522972b95>. [ 07.01.2016]

Rights Coordination<sup>108</sup> Position paper mentions that there were some "refugee" status eligible people who were returned to Turkey without their asylum requests having been considered by Greek authorities<sup>109</sup>. However later on, some of those returned from Greece were confirmed as "refugees" by UNHCR-Turkey upon their applications for asylum procedure in Turkey.<sup>110</sup>

The question to be posited here is these asylum seekers who do not even manage to reach EU border because of these push-backs and maltreatment by border patrol or arrested by Turkish security apparatus how can they file a proper application for asylum in Europe? Some pushed-back Syrian refugees even reported that there were masked people<sup>111</sup> with sometimes pirate insignia, who do not represent any official agency were behind some of these pushed-backs. This is another area which merits research on its own. In this kind of atmosphere of tough border control exercise by Europe how can this accelerated procedure differentiate between a bogus claim from a legitimate one? Lindstrom argues that this readmission texts have repeatedly failed to guarantee the fundamental principle of refugee protection, that of *non-refoulement*, which grants everyone the right not to be returned back to a country where they may face persecution. This systematic and generalized readmission policy has led to an expanded "buffer zone" around the EU<sup>112</sup>(Lindström, 2005, p. 592) This practice in some ways raises concerns in that Europe tries to shift the burdens outside the jurisdiction of liberal states in Western Europe.

A document released by Amnesty International titled "Guardian of Europe" on December 16, 2015<sup>113</sup> states that Turkish officials, after agreement with EU, arrested asylum seekers<sup>114</sup>, mostly

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<sup>108</sup> Amnesty International- Turkish Branch, Kaos-GL.6 civil society organizations actively work on the field : Helsinki Citizens Assembly, Human Rights Association, Human Rights Agenda Association, Association for Solidarity with Refugee,

<sup>109</sup> UNHCR, Global Trends,2014,page 30.Total recognition rates were above 75 per cent in Turkey, Indonesia, Italy, and Sweden but below the 25 per cent mark in Bulgaria, Hungary, and Greece.

<sup>110</sup> Position Paper on the Readmission Agreement Signed by Turkey and EU,page 5.

<sup>111</sup>Banu Şen, 20 Temmuz 2015. 'Ege Denizi 'nde kurtarılan göçmenler: Maskeli kişiler motorlarımızı denize attı.' <http://www.hurriyet.com.tr/ege-denizi-nde-kurtarilan-gocmenler-maskeli-kisiler-motorlarimizi-denize-atti-29595530>, [20.07.2015] . Gökhan Karakaş, 23.08.2015.' Ege'de dehşet saçan korsanlar', <http://www.milliyet.com.tr/ege-de-dehset-sacan-korsanlar--gundem-2106326/>. [23.08.2015]

<sup>112</sup> It is mentioned at the Chapter 1999-2005 "the concentric circles of the EU migration and internal security regimes"

<sup>113</sup> Amnesty International. December 2015. 'Avrupa'nın Bekçisi' Türkiye'deki mültecilerin hukuka aykırı olarak alıkonulmaları ve sınır dışı edilmeleri' <http://amnesty.org.tr/uploads/Docs/multeturkce929.pdf>. [ 14.12.2015]



Syrians, detained them and in some cases pushed them back to their war-torn country. John Dalhuisen<sup>115</sup>, Director of Amnesty International in Europe and Middle East states that the EU use Turkey as a border guard and encouraging Turkey to stop the flow of migrants, while at the same time ignoring human rights violations. He goes on to say: "The EU is an accomplice in those violations against refugees and asylum seekers".

If those detention centers cannot accommodate current numbers of illegal migrants, how can the capacity of these centers accommodate more of these migrants which are expected to be higher in numbers after Turkey takes full responsibility of these migrants? Being aware of this problems, the EU tried to alleviate Turkey's burden and called EU leaders for a reinforced dialogue with Turkey at all levels on September,23,2015. The EU prepared an Action Plan of 2 parts containing both short-term and medium term measures, trying to address the current crisis situation in two ways: (a) by supporting the refugees and their host communities in Turkey (Part I) and (b) by strengthening cooperation to prevent irregular migration flows to the EU".<sup>116</sup> However, for Corabatir, this migrant loop continues in the same way because of Turkey's other readmission agreements with other source countries, then asylum seekers will end up in their countries because of this loop.<sup>117</sup> The cost of these repatriations including accommodations and transportation is another burden Turkey has to shoulder. In many cases, asylum seekers have no documentations proving their citizenship and in some cases the country of origin refuses to confirm if they are citizens of that country or in some cases the asylum seekers give intentionally give a different country of citizenship to Turkish authorities especially countries with no consular representation in Turkey. Turkey was the fifth largest recipient of applications among the 44 industrialized countries, with 44,800 new asylum requests registered during 2013. This is a 69% increase compared to 2012 (26,500claims).<sup>118</sup> If we look at recent figures even before readmission agreement goes into effect, we find the numbers

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<sup>114</sup> *AB ile anlaşmadan bir gün sonra 1300 mülteci gözetim altına alındı*, 01/12/2015. <http://www.radikal.com.tr/turkiye/ab-ile-anlasmadan-bir-gun-sonra-1300-multeci-gozaltina-alindi-1483520/>. [01.12.2015]

<sup>115</sup> Amnesty International.16.12.2015. <http://amnesty.org.tr/icerik/2/1771/turkiye>. [ 18.01.2016]

<sup>116</sup> *Draft Action Plan: Stepping up EU-Turkey cooperation on support of refugees and migration management in view of the situation in Syria and Iraq*, 06 October 2015.[http://europa.eu/rapid/press-release\\_MEMO-15-5777\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5777_en.htm). [ 08.11.2015]

<sup>117</sup> Metin Çorabatır, 19 Aralık 2014,UİK Academy, Conference notes.

<sup>118</sup> Asylum Trends 2013,<http://www.unhcr.org/5329b15a9.html>. [ 20.09.2015]

already high for Turkey to shoulder by itself. Bahadır argues that the EU engaged in limiting access of asylum seekers to protection being motivated by externalizing and restricting approach of Member States(Bahadır, 2004). This means that, preventing asylum seekers from ever reaching the EU territory<sup>119</sup>, will relieve the EU from responsibility toward them. Amnesty International criticized this and reported in its paper that the main focus of the EU was to minimize potential pull factors and avoid secondary movements of asylum seekers and refugees in the European asylum space. Instead, the EU wants to stop this asylum flow before it reaches its territories.<sup>120</sup> Burgin also had the same similar concern and indicated that Turkish officials feared that the EU wanted to use Turkey as a buffer zone and dumping ground for irregular migrants. (Burgin, 2011, p. 2)

As Ozer mentions, one of the main problems faced by the EU is that to secure and stabilize its borders without giving any promise for enlargement and the main security problem is to control its east and southeast Schengen borders from the entry of irregular migrants and asylum seekers. (Ozer, 2010, p. 186)

## **5.6 The National Action Plan For The EU Accession ( 2014-2019)**

With all the ups-downs of the EU accession process, Turkey, somehow, tried to get through the process. To this end, two phases showing Turkey's new EU Strategy. This roadmap has clear priority settings covering the short, medium and long terms. The first phase, between November 2014-June 2015 was announced by Ambassador Volkan Bozkır on 30 October 2014 in Ankara. It aimed to show the continuity of political reforms. Turkey announced its action plan because the previous 2008 APD was not up-to-date and also the action plan prepared for 2010-2011 also needed an update.

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<sup>119</sup> Servet Çetin, Dernekler ve Sivil Toplum, no 29, Winter 2014-2015, '*Bir İnsan Hakları Sorunu Olarak Mülteciler*'. Amnesty International, 2014. '*Kale Avrupası'nın Bedeli, Avrupa Sınırlarında Göçmen ve Mültecilerin Karşılaştıkları İnsan Hakları İhlalleri*'.

<sup>120</sup> Amnesty International, 'Response to the European Commission's Green Paper on the future of the Common European Asylum System, 2007, page 39. '*There is no concept so much called for and yet so absent in the European Union's asylum policy than solidarity and burden sharing between the Member States*'.

The aforementioned Plan outlines the laws and secondary legislation to be enacted in each negotiation chapter for EU *acquis*. The second phase of the document covering the years between 2015- 2019 lists the following priorities;

- Laying down procedures and principles regarding physical structure and functioning of removal centers rights and responsibilities of those who are accommodated in removal centers.
- Increasing the capacity of Turkish Coast Guard Command regarding the fight against irregular seaborne migration
- Determining the procedures and principles to fully and timely fulfill the obligations referred to in the Readmission Agreement signed between Turkey and the EU.

Turkey decided to prepare an Action Plan as a roadmap for the objectives laid down within the framework of the updated Asylum Strategy Document in 2016. The strategy aimed at identifying the problems encountered by the asylum seekers and refugees during harmonization process. Another noteworthy issue is Syrians lack of knowledge of Turkish language and the problems associated with that issue. In this regard, Turkey, in order to facilitate the harmonization process by foreigners within Turkey introduced Turkish language classes for foreigners.

On the other hand, the 123rd meeting of the Turkey-EU Association Committee was held in Brussels on April 30, 2015. The agenda that was prepared included items such as: 'Justice and Home Affairs' as well as 'Political and Economic Criteria' and 'follow-up negotiations'. These items are intended to show Turkey's attention to these important issues. Besides, in the period of 62nd Government with the approval of the Council of Ministers, the "Reform Monitoring Group" was renamed as the "Reform Action Group" to better represent the active role assumed by this body. The RAG will no longer just monitor the political reforms, but it will also take on an active role in the whole cycle of reform agenda contributing in the preparation, adoption and implementation phases.<sup>121</sup> First RAG meeting was held on 8 November 2014. One of the discussion issues in these

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<sup>121</sup> Turkey-EU relations in 62nd government period.

RAG meetings is on migration, organized crime and border management which were related to Chapter 24 in the EU Acquis.

## **SUMMARY**

Up to this point, the main points of criticisms of asylum policies of Turkey was the of a corpus of legislations as well as the lack of a civil authorities dealing with asylum issues. Turkey tried to address this deficiencies by publishing a new law on foreigners and international protection, in addition to establishing a civil apparatus dealing with asylum issue under the name the General Directorate of Migration.

This period is characterized by a continuation of the slowdown in relations. Despite the slowdown, the EU insisted that Turkey sign a readmission agreement. However, Turkey lost its incentive of membership in the EU, this resulted in a reluctance on Turkey's part not to sign the readmission agreement. However, the EU wanted to present a different incentive to Turkey via the visa liberalization process to Turkish citizens in the hopes of enticing Turkey into compliance with EU conditionalities on asylum. NGO's, in fact, were oppose to the readmission agreements because of humanitarian considerations. On the other hand, geographical limitations leave Turkey outside the definition of a third safe country. However, the readmission agreement and the publishing as a third country and as a first country of origin. This triggered a new discussion inside Turkey among those working in the field of asylum.

The Syrian crisis, which started in 2011, provided reason for both sides Turkey and the EU to refresh their cooperation. This crises directly effects both sides security concerns. Hence both sides found themselves accelerating with the pace of this crises. As an example of this reinvigoration of cooperation can be found in The National Action Plan For The EU Accession ( 2014-2019) and Turkey's European Union Strategy Document.

## CHAPTER 6

### CONCLUSION

Turkey has three roles when it comes to migration. It is an emigrant, transit and host country. However, Turkey's geographical limitation does not allow asylum seekers to be settled permanently in the country because they get temporary protection status. This makes the asylum seekers seek other destinations in Europe. Nevertheless, Europe, after the abolition of internal borders, has been trying to protect itself against those passing through Turkey to its territories. The Eastern European and the Western Balkan states became members on the periphery of Europe, the EU expanded its natural borders. As a matter of fact, after this gradual abolition of internal borders and the addition of new members, EU found itself focusing on border security. So in order to protect its internal security, the EU had to create new security arrangements with other non-EU neighboring countries. One important issue here, related directly to security is the asylum and migration issue.

The purpose of this research is to examine this interaction specifically in the domain of asylum policies. Particularly, in the last ten years or so, the most discussed and debated issues between the two sides were and still are asylum issues along with related issues such as border control and migration which are subsumed under Chapter 24 of the EU acquis.

For a long time, Turkey and the EU have been engaged in a cultural, political and economic interaction. In 1999, Turkey entered into accession negotiations with the EU in which Turkey undertook the task of harmonizing its legislation with the EU acquis. This incentive had noticeable consequences on Turkish asylum system structure and tradition. This influence can be most generally defined as the Europeanization process for candidate countries. Turkey benefitted greatly from its efforts toward harmonizing its asylum policies with the EU under the impression that one day it would become a member. The membership was the main incentive behind such positive

changes. On the other hand, after signing the APD, Turkey found itself involved in the EU security paradigms. This undoubtedly has had an impact on Turkey asylum policies.

The main focus of this analysis looks at the impact of the process of Europeanization on Turkish asylum tradition. Hence, in this research, my main point is to find what impact the EU had on Turkey's asylum policy reforms.

The word "impact" implies three possible consequences. Positive, negative or neutral. The neutral impact is non-existent because the nature of the accession negotiations themselves dismisses neutrality.

One of the main points is to show that Turkey, as a candidate country that signed an accession agreement with the EU, found itself in a position of a follower to the EU asylum policies. How can Turkey as a follower of these policies chart its own asylum and refugee issue? To explain the developments in Turkish asylum tradition, I chose to present a chronological account starting with the turn of the century all the way to the present.

In Turkey-EU relations on the asylum issue, it is undeniable that we see tangible positive instances on Turkish asylum system. The accession negotiations saw a period of accelerated improvements in Turkey's institutions, staff and services regarding asylum issues. We see a clear transformation effort on part of Turkey. The EU put a road map and timeline in front of Turkey and most gaps and deficiencies were pointed out by the EU's Progress Reports, while funds were allocated to address those deficiencies. To implement these changes, a time frame was set by the EU and this pushed Turkey to do all efforts in a timely manner. It can be said that these changes and transformations were an obvious example for the external incentive model, particularly for the years between 1999-2009.

One of the impacts of the EU on Turkey manifests itself in the administrative transformation in the asylum field. These transformations included upgrades such as the creation of Asylum and Migration Specialization Unit and a Training Academy, training of existing and prospective personnel, in addition to language training courses for officers dealing with refugees, not to forget setting the criteria for reception and accommodation centers for asylum seekers and refugee guesthouses, removal centers. They also included transforming employment procedures of personnel working in the asylum field and Asylum Information System.

Another EU impact manifests itself on a cognitive level. Throughout this research, we come across different ways the EU tried to subsidize this upgrade with different instruments such as TAIEX, IPA, TWINNING. This helps bring Turkish officers, as is mentioned in the social learning theory, closer to their European counterparts, and to benefit from their administrative and technical experience. The perception and understanding of Turkish officials working in the field started to change from more securitized than humanitarian point. An example of that is the creation of the General Directorate of Migration Management (GDMM). Hence, this research cannot ignore the important contribution EU made to the current establishment of Turkey's asylum system and providing a road map for its current system and future improvements.

On the other hand, since there is no European unified stand on the asylum issue, this makes Turkey's cooperation with the EU desirable but less attainable. In addition to that, the EU lacks a unified stand on this asylum over-flowing their border, it finds itself unable to deal with it within its borders. The EU, in this regard, wants to deal with the problem before it reaches its borders, in other words, in contiguous countries such as Turkey. This effectively makes Turkey shoulder more than its share of the burden even it were a full EU member. This was also criticized by the international organizations including UNHCR<sup>122</sup> and Amnesty International.

The slowdown in the pace of their relations had a negative impact on Turkey's asylum system. Some critical laws that needed to be changed were delayed because the EU lost the initiative to define the asylum agenda in Turkey. Turkey, on the other hand, and due to internal arguments<sup>123</sup>, did not manage to implement necessary reforms on time.

However, with the beginning of 2011 which marks the outbreak of the Syrian crisis, both sides were dumbfounded by the population movement. It can be said that the Syrian crisis put to the test both sides' asylum system and policies. Before the Syrian crisis, both used to deal with manageable numbers such as four or five thousands a year. However, after 2011, deficiencies in both sides' systems were exposed.

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<sup>122</sup> *UN and rights groups criticise EU-Turkey 'one in, one out' migrant deal*. 08.03.2016 <http://www.euronews.com/2016/03/08/draft-deal-on-migration-crisis-would-see-turkey-and-eu-in-one-in-one-out/>. [09.03.2016]

<sup>123</sup> The Ergenekon trials are a series high-profile trials which have taken place in Turkey.

In the beginning of the outbreak of the Syrian crisis, Turkey adopted an open-door policy welcoming over a hundred thousand Syrians in 2011 alone. At that time, most of them were received on temporary basis and were expected to return home in a short period of time. However, as the conflict dragged on, and those pouring into Turkey amounted to millions, the burden on Turkey became a lot heavier to shoulder. Any country will find this influx of immigrants in large numbers hard to manage. Turkey, however, thought that it found its excuse to present itself as a big brother of Muslims around the world using the Syrian crisis.

For its part, the EU resumed its self-serving approach as it did in slow-paced periods. Nonetheless, as the number of Syrian asylum seekers started to climb higher than Turkey had anticipated, it was difficult for it to manage and accommodate all these numbers. This heavy burden started to have direct impact on EU internal security. Even though the EU had less to deal with in comparison with Turkey it found itself unable to deal with the influx. In my field research, I found some instances of the so-called 'Fortress Europe' in the behavior of agencies such as Frontex, in the building of walls in member states such as Bulgaria, Greece, Hungary and in the push-backs of boats trying to land on Greek islands. These instances create problems for asylum seekers to make their applications in Europe. On the other hand, it can be said that this crisis somehow directly or indirectly refreshed rapprochement between Turkey and EU and their leaning toward inter-governmental relations.

What is next for Turkey and EU in terms of cooperation in asylum issues? Despite recent political fluctuations between Turkey and the EU, and despite the European discord among EU members themselves and between them and Turkey, cooperation and coordination should continue. There are geopolitical as well as geostrategic reasons for this cooperation. In other words, inasmuch as Turkey needs the EU, the latter also needs Turkey.

For example, under the title of "Shared Interests and Common Challenges" from European Parliament report, we see that the intent to continue a close cooperation with Turkey is still on the table:

"Recalls Turkey's strategic position as a partner of the EU and a member of NATO, and therefore its crucial geopolitical importance and its relevance for a comprehensive strategy seeking to address security and stability in its eastern and southern neighborhoods, with particular reference to Syria and Iraq; points to the fact that the very serious developments in the region and the attacks carried out on



European soil make it crucial that dialogue and cooperation with the EU on foreign policy issues is increased within the framework of EU-Turkey political dialogue"<sup>124</sup>

Other examples come from Commissioner for European Neighborhood Policy and Enlargement Negotiations, **Johannes Hahn** and High Representative/Vice President **Federica Mogherini**.

Johannes Hahn says that: *"our most pressing challenge is the stabilization of our neighborhood...., we will refocus relations with our partners where necessary on our genuinely shared common interests."*

In the same vein, Federica Mogherini mentions that: *"A stronger partnership with our neighbors is key for the European Union, while we face many challenges within our borders and beyond."*<sup>125</sup>

Hence, the EU and Turkey, by virtue of sharing geographic proximity, share the same security concerns. This geographic proximity makes it inevitable for both sides to cooperate on border and security issues, particularly on the asylum issue. The Syrian crisis shows that in order to avoid any "domino effect", as is witnessed in the daily news reports<sup>126</sup>, both Turkey and the EU need each other. This mutual need, no matter what happens among governments, always creates a strong tie on security and human rights issues. It's worth mentioning that the high numbers of population movements around the border of EU and Turkey has occupied a high level policy status. In this regard, Turkey with its closeness to conflict areas and flash-points becomes one of the most problematic countries bordering the EU. For that reason, the EU gave incentives to Turkey which are not an alternative to full membership. However, throughout the research, we see that the EU has many carrots and incentives which it extends to Turkey and this proves my point that the impact of

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<sup>124</sup> European Parliament resolution of 10 June 2015 on the 2014 Commission Progress Report on Turkey, P8\_TA-PROV(2015)0228.

<sup>125</sup> "Review of the European Neighborhood Policy (ENP): stronger partnerships for a stronger neighborhood", Brussels, 18 November 2015.

[http://europa.eu/rapid/press-release\\_IP-15-6121\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6121_en.htm). [ 01.02.2016]

<sup>126</sup> *Austrian restrictions trigger domino effect across Balkan refugee route*, 22.02.2016, <https://www.euractiv.com/section/justice-home-affairs/news/austrian-restrictions-trigger-domino-effect-across-balkan-refugee-route/>, [22.02.2016]. *EU Refugee Crisis: Sweden-Denmark Uneven Asylum Numbers Highlighted By European Border Checks*, 01.04.2016, <http://www.ibtimes.com/eu-refugee-crisis-sweden-denmark-uneven-asylum-numbers-highlighted-european-border-2247805>, [02.04.2016]. *Refugee crisis: latest news from across Europe*, 22.02.2016, <http://statewatch.org/news/2016/feb/eu-med-crisis-news-22-02-16.htm>. [ 23.02.2016]

EU is still relevant as ever on Turkey. These incentives included visa liberalization or financial support just for Turkey to control its borders.

In this regard, if any discussions propose that the EU lost its leverage on Turkey's asylum policy since Turkey lost its incentive of membership, then my research findings challenge those claims. My findings suggest that the EU is still relevant on Turkey even though the impact might be slower than before. I base my argument, in this regard, on the fact that, aside from signed agreements or protocols or other-non asylum related chapters, Turkey and the EU have strong ties which need to be maintained for the benefit for both sides. There are geographical, security, and also economic realities that play a no less important role in defining this relationship. What this means is that when crises continue in such large numbers, like current refugee situation on Turkey-EU borders, both sides have a stake in addressing these issues. What is interesting is that the impact even in those times of crises is still one-directional. In other words, Turkey is impacted by EU policies rather than Turkey impacting EU. This is due to the fact that Turkey is one country compared to 28 countries represented by the other side.

As mentioned in the BBC news, Turkey is key to resolving Europe's current migration chaos. BBC says that's where most refugees and others jump on board people smugglers' dinghies, risking their lives to enter Europe via the Greek islands. But trust between Turkey and the EU is not strong.<sup>127</sup>

This has the undesirable effect of leaving international organizations unable to effect changes on Turkey as much as the EU was. Since these type of population movement becomes an inter-state rather than an international organization concern. In this respect, the role of international organizations was restricted to the field activities such as refugee status determination (RSD), and other tasks, rather than to effectively have impact on legislations. I illustrate this limited role in an interview with included in the addendum exhibit II.

This research highlights the point why Europe's influence on Turkey's asylum system is still relevant, shaping the asylum policies and border security issues. On the other hand, this European attitude of letting Turkey deal with the asylum issue before it reaches European territories, put

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<sup>127</sup> *Desperation fuels Europe's zeal for migration deal*, 08.03.2016'. <http://www.bbc.com/news/world-europe-35755331>, [08.03.2016].

Turkey in a precarious position of not being a candidate country but of being a country in the forefront of the problem as a neighboring country.

Furthermore, despite Turkey being a candidate country, The EU did not offer enough financial support during the Syrian refugee crisis. In the interview I conducted in my NGO (addendum, exhibit I), it was pointed out that Europe gave inadequate support to Turkey, and that Europe, throughout the crisis was trying to turn Turkey into a buffer zone and a third safe country.

In fact, the burden-sharing issue is a hot topic of discussion between the EU and Turkey. It is also an issue that is discussed among EU member states themselves. Going back to the accession phase between EU and Turkey, one of the issues at that time was the discussion on lifting the geographic limitation by Turkey. However, Turkey presented its concerns in the NPAA's.

From a technical point of view Turkey does not have adequate numbers of experienced staff. This deficiency is both Turkey's and the EU's responsibility. The reason why it is the responsibility of both is because the EU technical assistance to train staff had started with the new millennium and every year the EU published a progress report for that particular year, so the EU was in a position to push Turkey to implement changes faster. Nevertheless, the European veto on Chapter 24 slowed Turkish reforms considerably.

Had it not been the case with the slowing of reforms in Turkey, things could have been better. For example, if the Directorate of Migration had been established earlier, and the new Foreigner's law had been put into effect earlier, the situation could have been different for Turkey. Most of the current deficiencies in Turkey's system could have been detected earlier. For example, Syrians who arrived in 2011 got their legal rights only in 2014, with the passing of the new law. Most of the Syrian asylum seekers, for example, could not register because of the inadequate staff and were not asked about their profession or other important questions upon entering the country. The lack of clarity on their status and lack of prospect in Turkey pushed many of these asylum seekers to seek Europe as an alternative.

Overall, if we look at Turkey's position during this crisis, we find that Turkey is doing better than many other countries including Europe. At least, Turkey opened its borders to an influx of asylum seekers unlike other countries. This does not mean that Europe did not accept these asylum seekers. However, the asylum seekers who made it to Europe had gone through perilous journeys and Europe had to accommodate them, yet that does not mean, at the same time, that Europe has made it easy for asylum seekers to apply for asylum outside European territories.

Unfortunately, the issue of asylum is always raised in conjunction with border control issues, sovereignty, and security concerns of countries. However, the issue is about an individual's right to life. In this regard, a refugee is more than an object whose burden is to be shared or discussed among states. A refugee is the subject and the victim of inter-state policies.

For Turkey, Europeanization, particularly on the asylum issue, means to reach Europe's higher standards for asylum. I mean, this alignment with EU's higher standards have also a perception to attaining international standards. However, the question that posits itself is if these European standards prove deficient in comparison with universal values, then how does Turkey go about it? In other words, both the EU and Turkey have a hard task ahead. Turkey needs to bring its policies to meet universal human rights standards. Part of the answers on how Turkey goes about it if European policies do not uphold universal human standards is for Turkey to try find its way satisfying higher universal human rights standards. Based my observation in the field of asylum, when asylum seekers' numbers rocketed, then both sides started to treat the issue from a security perspective rather than a humanitarian angle. In this regard, in an interview I conducted with a head of NGO( addendum-part I), it was pointed out that the EU had allocated more money for Turkey to increase capacity in detention than the money that goes to reception facilities. The EU at the same time turned a blind eye to Turkey's so-called 'voluntary return' which were actually not so 'voluntary' only for the purpose of bring down the number of asylum seekers coming to its borders.

Academically speaking, I think more theories should be put forth on issues at the crossroads of state sovereignty and rights and freedoms of asylum. Most of the terminology used in the field of migration and asylum was coined by economic theoreticians. Hence, most of the terms used are of economic connotations. However, in these days, the issue of asylum has become more interdisciplinary than it used to be in the past. This calls for new theories by international relations experts, and sociologists, in addition to economists.

During my research I was hoping to conduct interviews with the European DG officer and UNHCR officer; however, it was not easy to do so with the time framework I had for the research. I am hoping my future research in the field will contain more field work with more actors.

## **ADDENDUM**

### **Views From the Field**

As we see during the research and in the progress reports, the EU encouraged Turkey to establish a civil authority dealing with asylum issues. For the first time in Turkish asylum history, a law on foreigners was put force which contains asylum rights and practices. Since it is the biggest achievement of the EU encouragement towards Europeanization, were there any deficiencies in implementing it ?

As we see in the successive progress reports, there was emphasize on the detention and reception centers and well qualified professionals on asylum issues and rights, taking precedence in Turkey harmonization process with the EU.

This field work consists of two interviews. I conducted with people working in the field with migrants in Turkey. The first interview was with Eda Bekci working as an advocate and is currently head of a Turkish NGO in Izmir called the Association for Solidarity with Refugees ( Multeci-Der).

The second interview was with an officer in Directorate of Migration. Because he was on duty during the interview, he opted to remain anonymous so that his statement are not to be taken as official statement on behalf of the Directorate of Migration. Nevertheless, he was a high-ranking officer with good knowledge of international protection issues.

## **ADDENDUM Part-I**

### **The interview with Eda Bekci head of the Association for Solidarity with Refugees, Konak, Izmir.**

I asked her to explain briefly how the new asylum system works in Turkey after the new foreigner law was put in force and the impact of EU on Turkey.

Below is a summary of the interview:

In the new foreigners law, there is an arrangement for a removal center's conditions. However, the physical conditions for the removal centers do not meet the demands because a large number of detainees are kept inside and there was inadequate number of personnel handling those centers. The step that is taken by the Turkish state is to increase the number of detention centers. On the one hand, the government planned to turn public buildings into detention centers. On the other hand, accommodation and reception facilities were transformed into detention centers. In Turkey, there is a total of seven reception centers with a capacity of 750 people each. The important thing to note here is that all of these reception centers, including the one in Izmir, located in Harmandali, are being transformed gradually into "Detention Centers". After the exchange of documents between Turkey and EU delegation, this transformation into removal centers was getting accepted by the EU and new staff personnel were already appointed. This means, these "reception centers" started to disappear, something which is not good for asylum seekers from a human rights perspective because all those in detention centers were treated as illegal migrants to be held until they can be repatriated. If all those detained were treated as illegal migrants how can genuine asylum seekers be distinguished from those ineligible to apply. Even though the new law allows NGO's to visit and monitor the centers, it is not always easy for NGO's to have this access. When they do get access, they are allowed to enter the parts of the facility where the police operates but not where the detainees stay. At one occasion a man from Cameroon detained for over 3 months whom she met by a coincidence while on a visit to one of the centers talked to her and asked her if based on his sexual orientation he was eligible to seek asylum in Turkey. This raises another important issue, namely that people in detention centers have no information about their rights or procedures.

Another no less important issue is about the detentions in Airport transit zones. There is a campaign held by Amnesty International on an asylum seeker who was arrested and has been detained for over 9 months now while in transit zone in Istanbul Ataturk Airport. This kind of

detention in airport transit zone with or without administrative detention order violates asylum seekers rights.

Another issue is that most of the staff members of the Directorate of Migration were former national police members who view most of these issues from a security standpoint. On the other hand, new personnel working in these institutions were people who took and passed the state exam, were new entry-level officers with no prior field experience with refugee issues and they are operating under command of those former police officers. Another example of the security oriented mentality inside the Directorate of Migration is the recent arrests made by police officers of three children and their aunt who were begging in the streets. They were minors placed in detention facility along with their aunt without their parents. While in detention, they were forced into signing documents for their voluntary return to their country of origin. The issue here is how can these children return to a country without their parents? A recent family court ruling, luckily stipulated that children should not be separated from their parents. These cases reveal the arbitrary decisions sometimes by officers based on their own interpretation of the new Foreigners Law.

Another issue, referred to above, is the question of voluntary return. In most cases, many local and international NGO's criticized the way the Turkish state was carrying out its policy of voluntary returns. In this regard, there is a booklet by UNHCR detailing the principles of these "voluntary return" and how they should be done safely and with honor. However, in some cases detainees had two options. The first was to sign a voluntary return document and be released from detention, and the second option was to stay in detention indefinitely. In some cases, detainees did not even know what they were signing because it was presented to them in Turkish. In one case in Cesme, across from the Greek island of Chios, 46 people were arrested when they were in a bus, and all of them agreed and signed to their voluntary return. The EU in this case and similar cases did not have any objection to Turkey's deportation. The EU views and supports these practices by Turkey because it relieves them from the burden of dealing with these people if they make it to EU territory. This shows that sovereignty for Turkey and the EU is placed higher than other human rights considerations. Yet, according to both the 1951 Geneva Convention and article 14 of the Universal Declaration of Human Rights, the right to asylum is a fundamental one. In fact, the practice of deporting people back to their countries benefits human traffickers. Most of these people, nonetheless, will seek other routes to get to Europe. This benefits human traffickers and causes more fatalities and tragedies at sea. The EU decided to send to support Turkey financially with 3 billion Euros. However, this money, unfortunately, will not be used to improve migrant children education or provide job opportunities for migrant. A large part of this will, undoubtedly, go to improve and upgrade the security apparatus and

detention centers in Turkey. This will make security measures even tougher and will impact negatively against the human rights condition of asylum seekers in Turkey.

Upon my question regarding the role of UNHCR, she pointed out that another issue to be raised here is the role of UNHCR which had more active role in the refugee status determination process before this law. However, recently we see some cases which were approved as valid refugee claims but were dismissed by the General Directorate of Migration. Ms. Eda Bekci, also pointed out that UNHCR had problems of its own.

Another crucial point is the way the law defines "child". According to the law a child a person who is under the age of 18 and has not yet attained majority. The problematic part in this definition is the majority. Universally, consensual sexual relations with children aged 16 or below is prohibited. However, according to this definition, if a child married he or she attains majority, or if she or she has a child, then he/she has attained majority. In this case, this majority-attaining child loses its rights and state protection as a minor according to this law. The law also does not treat them as unaccompanied children, but as adults who can be detained in detention facilities.

Under normal circumstances in Turkey, a child aged 16 in a delivery room in a hospital will prompt an investigation by the local police. However, in the case of refugees, such an incident normally does not warrant any investigation because the argument the police raise is that this child comes from a culture which allows this to happen. Nevertheless, the child is a child everywhere and the Turkish police should treat this child in the same way Turkish children are treated.



## **ADDENDUM Part-II**

### **The interview with a high-ranking officer at the Directorate of Migration**

Below is the summary of the interview:

I asked him to explain briefly how the new asylum system works in Turkey after the new foreigner laws put in force and the impact of EU.

When I asked him about Turkey's newly adopted foreigners law and his thoughts about it, he pointed out a few positive points but did not neglect to speak about negative aspects as well. On the positive side, he mentioned that ever since the Department of Foreigners in the Turkish National Police put on civilian clothes and adopted a civil structure in almost every aspect of the department, it became easier for asylum seekers to access. In this regard my interviewee pointed out that increasing the numbers of staff in the department for efficient and timely. Another positive step was to give jurisdiction to branches to decide on some matters without having to refer cases to the central head-quarters in Ankara, which is also another reason why it was not only easier for asylum seekers to access but it took shorter time to decide on their cases. Overall , the process of applying for international protection became easier and more understandable by asylum. After the Law also many removal centers were upgraded in terms of physical conditions to overcome problems of accommodation for asylum seekers.

As for my question in regards to any problems he was aware of in the implementation of the new law, my interviewee mentioned that there are many problems encountered. These problems, in his opinion, can be attributed to the fact that many of the newly established branches are staffed by inexperienced personnel who were not fully knowledgeable about the new legislation. Most of these new members which comprise about 85% of the total staff members, were entry-level employees who just graduated and had no exposure to a job environment. Their lack of knowledge of the field of asylum had negative impact sometimes on decisions or implementations.

In fact, the trainers themselves, who are mostly in the central head-quarters and are supposed to train staff members in provincial branches are also new staff members who lack of expertise and work as expert assistant. That is to say most of the staff members had theoretical but not practical knowledge. This caused a slowing down in some services such as dealing with the numbers in the camps and trying to reduce the density in facilities such as camps, detention and removal centers.

Another challenging issue for the newly born institution is to find translators for less common languages or dialects such as Urdu, Pashtu or some languages or dialects spoken in Africa. Another deficiency my interviewee pointed out regarding removal centers is the shortage in specialized, doctor, psychologist, pedagogues for children, social services staff, expert interviewers.

Some of the instructions that were released to regulate the implementation related to the new law are contradictory and not easy to understand. I asked him what could be done to improve the efficiency of the implementation, he pointed out that first of all staff members at headquarters should be chosen from those who have had prior field experience. Another thing he pointed was that staff members working at the Directorate originally came from Turkish National Police's Foreign Department and were at the Directorate on temporary basis. He suggested that these experienced staff members should be given the option to stay at the Directorate permanently.

His reasoning was that if the central office in Ankara is strengthened with knowledgeable, experienced and well-trained staff, then this reflects positively on the provincial branches. Otherwise, this Directorate may have been born a premature baby whose organs have not been developed enough to survive on its own.

Another issue he suggested was to make branches decide on issues quickly and without having to get approval from the central office in Ankara because the centralized decision making process at the Directorate slows things down considerably.

Other improvements he recommended were related to centers and camps which in his opinion should be upgraded to EU standards, with separate accommodations for single woman, single man and unaccompanied children. He also suggested that in staffing more staff members be hired in the branches in the removal centers to address the shortage in staffing.

Another issue he pointed out was that Turkey, being adjacent to Europe, became a reception center for those fleeing to Europe. Because of Turkey's geographic location bordering Europe, the country has become a meeting point of all migrants planning on continuing to Europe. This gave Turkey more responsibility in terms of sorting out illegal migrants from asylum seekers. This made Turkey assume the role of gendarmerie of Europe. On the other hand, the EU broke its promise and did not contribute adequate funds for supporting Turkey's asylum system. This lack of financial support had its negative impact on Turkish economy.

In terms of humanity, he pointed out that Turkey has proven to be better than the EU in that Turkey knows how to sink a ship loaded with migrants like Greece does, but chooses not to do so, and that unlike which tends to choose among qualified migrants, Turkey did not exclude disabled and disadvantaged people from its protector mentality.



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