Europeanization of Migration and Asylum Policy:

A Critical analysis of Turkish Case

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CHAPTER 1

1.1 INTRODUCTION

After the end of the Cold War, the growing international migration has increased the concerns in the nation states particularly in the Western countries. The ethnic and political conflicts in all around the world which contributed to an increase in the numbers of refugees and asylum seekers have been seen as a challenge to the national security and stability in the Western European countries. Accordingly, the issues regarding immigration and asylum have become highly debated field. The developments in the immigration and asylum field were taken to the European level by the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1997 which transformed the immigration, asylum visa policies towards integration by making them as a community competence. This increased the influence of the EU on the member states and on the candidate countries throughout the ‘Europeanization’ process.

In this study Europeanization constitutes a turning point in the transformation of the legislative and administrative system during accession process in the case of Turkey. Turkey is the country that has a 2.949 km land border and an 8.330 km sea border in which geographical location of the country enables illegal entry.\(^1\) Secondly, Turkey’s location has strategically importance for the European countries in the case of which it

is an emigration, immigration and also transit country that receives a steady influx of migrants from the Middle East, Asia, Eastern Europe and Africa. As the being transit destination for immigrants who aims to enter the EU countries, the Turkish asylum and immigration policy constitutes a substantial concern for the EU. In 2010, roughly 43,000 migrants tried to pass Turkish border illegally in order to reach Greece. According to the reports of FRONTEX, the detections of illegal crossing have been increased by 45% between Turkey and Greece between the years of 2009 and 2010. Furthermore, the reports state that Turkey is the main transit country for illegal migration which makes the cooperation between the Turkey and the EU as a paramount importance for the Union. In that sense, the harmonization of Turkish migration and asylum policies has become vital in the process of integration.

The Europeanization process of Turkey has gained a momentum with the declaration of Turkish candidacy for membership in 1999 Helsinki Summit. Subsequently, the adoption of the Accession Partnership Document and in 2000 and National Action Program in 2001 have an agenda for the transformation of legislative and administrative policies. Additionally Europeanization is a powerful tool for exporting European level procedures and ideological framework to extra-EU territories. In this context, the transformation of Turkish immigration and asylum policy is the text case in this study in order to critically analyze the impact of Europeanization on candidate countries.

The study with Turkey as case will be based on the theoretical framework of Europeanization within the field of asylum and immigration. The main aim of this study is the critical analysis of Europeanization of immigration and asylum policy in its nature throughout the impacts and reflections of the process within Turkey as a case study. Accordingly, in order to respond this objective, the central question of the thesis is

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2 Düvel (2011) ‘Studying Migration from, to and through Turkey: The Context’ Compass, Turkish Migration Studies Group at Oxford University.
how to what extent the Europeanization of migration and asylum policies impacts the accession process of Turkey. Therefore, two aspects of the study are: (1) to analyze the nature of Europeanization of migration and asylum field at the EU level and (2) to examine its reflections on Turkish migration and asylum policy in the harmonization process.

1.2. METHODOLOGY AND RESEARCH METHODS

The methodological approach here is multi-method qualitative approach which based on the three elements: (a) case study, (b) text analysis and (c) bureaucratic and technical practices. The primary official legislative and administrative documents as well as secondary sources will be used as the textual materials. Official documents both from the EU and Turkish government will be used. By this approach, 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 the bureaucratic and technological practices visa-a-via statistics from international and government sources. Therefore, the multi-method approach would help to explore framework of Europeanization - which is a multi-level and complex process in nature - from different angles including both discursive and non-discursive.
CHAPTER 2

CONCEPTUAL FRAMEWORK

2.1. Defining “Europenization”

As an outcome of the increase in EU Regulation in the mid-1980s, the scholarship in “Europeanization” has become a broad research agenda. The conceptual framework of “Europeanization” contains various definitions. Hix suggests that it is a vague concept mainly symbolizing the European integration process. In that sense, different theoretical approaches with different research interests would contribute to various definitions of Europeanization. Additionally, it changes with respect to the developments in time and also to the different phenomenon in fields of European integration.

The most shared conceptualization of the term would be the ‘changes caused by European integration at the domestic level’. According to Jactenfuchs and Kohler-Koch, within the definition of Europeanization, it needs to test the domestic policy

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5 Hix, S., Discussion and comments at the session ‘national Political parties and European Integration’, ECPR 2nd pan-European Conference, John Hopkins University as cited in Kale, B. p. 37
7 Kale, B. (2005) p. 39
changes with respect to European level of changes. Therefore, the concept of Europeanization has strong correlation with the supranational institutional set up for the sharing of competences as well as the issue of sovereignty.

Börzel argues that Europeanization a two-way process which involves “downloading” EU directives, regulations and structures to the domestic level and at the same time it is a process of “uploading” in which member states upload their policies to the European level. Therefore, only the top-down approach in the conceptualization of Europeanization is inadequate in the sense that member states are also influential in the policy outcomes at the European level. By referencing to the logic of two level games, Putnam argues that it would be achievable for domestic policy-makers to conform the pressures from European level. On the hand, according to Thielemann, while domestic actors import the legitimacy to their policies that face variety of political clashes, they strategically use the European level in order to extend their manoeuvre at home in the case of intra-governmental competition between ministries, institutions and departments.

In that sense, the recent debate on the conceptualization of Europeanization extends the framework of the concept which was usually constrained by the supranational or the intergovernmentalist approaches before. The concept of Europeanization is a more complex phenomenon and the process which cannot be demoted to mere supranational or intergovernmental approaches. Vink argues that “Europeanization is not just EU-ization” in which it should be distinguished from the terms of “communitarization”,

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“Brusselization” or “EU-ization”. Ladrech illustrates the process as an “incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of adaptive processes of organizations to a changed of changing environment of national politics and policy-making.” Accordingly, the changing environment of the European institutional set up in the certain field is strongly influential in the process. Radaelli defines the term in the most inclusive framework:

“the process of construction (a), diffusion (b), and institutionalization (c) of rules, procedures, paradigms, styles, ways of doing and shared beliefs and norms, formal and informal, defines and consolidated first in the decision-making process of the EU and then incorporated in the logic discourses, identities, political structure and policies at the domestic level.”

2.2. Europeanization of Migration and Asylum Policies

There is broad literature on the Europeanization process of immigration and asylum policy in the context of European integration history. European Union migration policies concerning the immigration and asylum have become incorporated into the EU’s structure by the Treaty on European Union (Maastricht) in 1992 and have become partially communitarized by the Amsterdam Treaty in 1997. The nature of intergovernmental cooperation under the international law from 1957 to 1992 has been restructured by introduction of Justice and Home Affairs as a pillar. The cooperation remained intergovernmental in nature, but immigration and asylum was introduced as a ‘matter of common interest’ at the EU level. In 1997, the Amsterdam Treaty introduced a new objective which is to build an “area of freedom, security and justice” in which immigration and asylum policies were transformed to the first, Community pillar. The

The gradual Europeanization of the immigration and asylum policies has been explained by different approaches and models such as liberal intergovernmentalism, spill-over effects or migratory pressure.

From liberal intergovernmentalist perspective argued by Moravcsik, the convergence of national preferences is the precondition for the cooperation in which national representatives seek to maximize domestically aggregated interests in interstate bargaining and thereby the outcomes reflect the relative weight of the member states. By providing a set of transaction-cost reducing rules at the EU level, Member States develop an international cooperation that have similar problems caused by a massive influx of asylum-seekers. Similarly, another argument suggests that increased migratory pressures since the end of Cold War constructed the attempts of member states in order to erect ‘Fortress Europe’ against those exogenous events. However, according to Guiraudon, both the liberal intergovernmentalist logic and idea of migration pressure miscalculate the timing of the attempts for cooperation and the migration flows. International forums on immigration and asylum emerged in the early 1980s before the end of Cold War and the emergence of East-West pendulum migration. The functions TREVI which was one of the working groups that was responsible for the drugs and terrorism until the second half of the 1970s have been extended by inclusion of immigration issues in the early 1980s.

Additionally, Schengen Agreement in 1985 introduced issue-specific “ad hoc group on migration” in 1986 by the initiation of harmonization in visa policies and Schengen Information System (SIS) which is the common internal security database. These events in that sense, took place before the rise of migration flows. Secondly, the hypothesis constructed by Moravcsik with respect to the involvement of the domestic actors in the international bargaining table is not validate to the EU immigration policy where certain

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17 Guiraudon, p. 254
18 Ibid
domestic actors bypass the process of interest aggregation by excluding domestic adversaries and constraints as Guiraudon points out.\textsuperscript{19}

Another dominant explanation for the Europeanization of the immigration and asylum policies is spill-over effect of neo-functionalism which argues that pressures stemming from the objectives of the free movement of persons contributed required certain measures to be taken in the areas of the external border control and immigration order to compensate for the elimination of the intra-EU borders.\textsuperscript{20} Because of this functional link between internal and external borders, the common immigration and asylum policy was necessary, as otherwise the restrictive efforts in one state would be undermined by liberal policies of another state.\textsuperscript{21} In turn, since the abolition of border controls allows EU citizens and illegal immigrants to cross internal borders unchecked, this spill-over logic creates the necessity for harmonization.\textsuperscript{22} Furthermore, a common visa policy and requirement for asylum was necessary due to the prevention of inconsistencies between member states and due to the prevention of applications by asylum-seekers who had been denied in the first country and looking for another.\textsuperscript{23} Niemann explains the contribution of the Amsterdam Treaty from the neofunctionalist logic in which he suggests that considerable weakness of the third pillar became a stumbling block towards an effective cooperation and a consensus has been achieved to increase the coherence under the supranational realm.\textsuperscript{24} However, according to Majone, neo-functionalist logic does not provide satisfactory explanation for the selective nature of the expansion of supranational competences.\textsuperscript{25} This selective nature becomes obvious in the case of immigration and asylum policy in which rather than earlier efforts, yet “it did not stem from the past application of the free movement of labor provisions, but rather from the concomitant future planning of the single market” as Guiraudon

\textsuperscript{19} Ibid p. 268
\textsuperscript{20} Niemann, A. “Dynamics and Countervailing Pressures of Visa, Asylum and Immigration Policy Treaty Revision. Explaining Change and Stagnation from the Amsterdam IGC to the IGC of 2003-04” JCMS, 46:3 p. 569
\textsuperscript{21} Ibid
\textsuperscript{22} Stetter, p. 81
\textsuperscript{23} Niemann, p. 570
\textsuperscript{24} Niemann, p. 571
argues. Additionally, the inevitable or automatic link between single market and the common immigration and asylum policy is undermined by the opt-outs such as the UK which pushed the single market but not for the common migration policy.

From the neo-functionalist perspective, the supranational actors particularly the Commission is the key due to its competence-maximizing outlook and agenda-setting function; however, the evolution of the harmonization until the Amsterdam Treaty was based on exclusion of supranational institutions such as Commission and European Parliament. By the Amsterdam Treaty on the other hand, rather than the community method, unanimity was adopted. The “minimum standards” in the different areas of migration policies were adopted by the Council by the legislative procedure, which guarantees the weakest influence of the Commission and the EP under the First Pillar. Secondly, European Commission shared its power to initiate with member states; EP was only given a consultative role and ECJ was only allowed to consider preliminary references from the national court of tribunal of final instance rather than any national court of tribunal. National vetoes continued to be exist which brought flexibility clauses and opt-outs. As a consequence, unlike the neo-functionalist suggestions, the Council of Ministers had the decision making monopoly by the Amsterdam Treaty.

Stetter argues that the willingness of the national principals to transfer regulatory powers to the Commission and other supranational agents can be explained by the inherent threat of international regulatory failure of intergovernmental cooperation in which problems of credibility and coordination would occur under the circumstances of instability. But he also states that the member states tried to overcome this dilemma by delegating authority to the EU level while at the same time ensuring that among the community institutions, only the Council was at the heart of the decision-making

26 Guiraudon, p. 255
27 Stetter, p. 86
28 Ibid p. 95
29 Ibid
31 Stetter, p. 83
process which created a balance between national sovereignty and supranational governance.\(^{32}\)

Considering the timing, shape and the character of the cooperation of immigration and asylum policy; the dominant models are inadequate to explain the selective nature of Europeanization in this area. The flexible/hybrid arrangement and balanced distribution of powers between supranational authorities and national sovereignty under the First Pillar and also continuity of intergovernmental cooperation in the area of police cooperation and management of external borders are the indicators of this selective nature in the area of immigration and asylum. Lavenex answers this nature with reference to the security-oriented and restrictive framework of the EU immigration policy.\(^{33}\) Rather than a humanitarian perspective taking the human rights as a central concern; the Europeanization of immigration policies has continued and even furthered the realist frame of internal security by undermining liberal freedoms and fundamental human rights.

The question of the immigration and asylum policies have been interpreted as a security issue during the Europeanization is answered by different scholars under the logic of securitization. According to the securitization theory in general, the issue does not need to be an existential threat to become a security issue rather it is enough for it to be presented as such.\(^{34}\) This process of securitization is used for the justifying the usage of extraordinary measures as a means of self-defense.\(^{35}\) As remarked by Huysmans, immigration and asylum issues do not need to be defined as an existential threat by itself, their securitization may progress by being included in wider policy developments that interconnect a range of policy issues.\(^{36}\) Both Maastricht Treaty and Amsterdam Treaty strengthened the security discourse which incorporates the issues of immigration

\(^{32}\) Ibid p. 90  
\(^{34}\) Buzan, Waever, de Wilde, p. 23  
\(^{35}\) Ibid  
and asylum with the fight against organized crime and terrorism.\textsuperscript{37} The amalgamation makes illegal immigration and criminal behavior as equivalent threats which in return contribute the creation of security continuum.\textsuperscript{38} Paradoxically, the “communitarization” of the policy by the Amsterdam Treaty deepened the security discourse instead of guaranteeing rights of migrants.\textsuperscript{39} As a result of power distribution among the Community institutions and continuation of certain areas under the intergovernmental cooperation contributed the repetition of security discourse used by the Member States before. The continued absence of democratic and judicial control for the rights of immigrants together with the limited role of EP and the ECJ allowed the continuation of this security discourse rather than more liberal one.

In that sense, as argued by Talani, the Europeanization process particularly its specific structure in decision-making paved the way for the transfer of the same discourse used by the intergovernmental cooperation before the harmonization and even made this discourse more stable and legitimized.\textsuperscript{40} The reflection of member states discourses on the EU level might well be interpreted as an endeavor to gain legitimacy as a way of illustrating their concerns are taken into consideration in the EU level at the expense of imitating the politics of “protective state”.\textsuperscript{41} Bounfino points out that the nature of the decision-making mechanism allows this outcome. Likewise, Kostakopoluo asserts that without an active intervention of the Commission and the ECJ the member states feel free to adopt restrictive approach to migration in the EU level. Guiraudon remarks that security agencies aim power maximization and avoiding parliamentary scrutiny and judicial accountability. They choose the European level as the most appropriate arena whereupon they escape from the requirement of public legitimization for more restrictive measures. He conceptualizes the process of preferring European level to the national level as the “venue-shopping”.\textsuperscript{42}

\textsuperscript{37} Ibid
\textsuperscript{38} Huysmans, p. 760
\textsuperscript{39} Ibid
\textsuperscript{40} Talani, p. 71
\textsuperscript{41} Bounfino, p. 23
\textsuperscript{42} Guiraudon, p. 261
Consequently, according to the scholars who argue the securitization process regarding the form of Europeanization on the immigration and asylum policy, the dominant explanatory models such as liberal intergovernmentalism and neo-functionalism are unsatisfactory in illustrating the timing, shape and the character of the process. A multitude of flexible arrangements, semi-intergovernmentalist structure within the First Pillar; distribution of power among community institutions and finally continuity of certain areas under the intergovernmental cooperation makes the system biased towards non-binding decisions.
CHAPTER 3

TURKISH MIGRATION AND ASYLUM POLICY

The first official text in the early years of the Republic was the Law of Settlement regulating the voluntary immigration of Turkish politics. According to the Article 2, individuals who do not belong to the Turkish culture could not be admitted to Turkey. Baskın Oran suggests that this legislation clearly indicates the official state preference of ethnic origins of the immigrants to the Republic.

A new Law on Settlement was adopted in 1934 in which settlement of persons only with “Turkish descent and culture” was permitted. Accordingly, the settlement of Muslim origins was promoted by emphasizing the cultural and ethnic homogeneity. Similarly, Turkish speaking people in the Balkans and Caucasus also were benefited from the Law. According to Kirişçi, with framework of this Law, the definition of Turkish

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44 Ibid
46 Kale, B. (2005) p. 197
national identity has been constructed through ethnically homogeneous nation-state both in the discursive and legislative level.\textsuperscript{48}

The \textit{Law on Settlement} was the only official document with respect to the procedures concerning the migrants and refugees for many years. In the early years of the Cold War, Turkey signed the 1951 \textit{Convention} which provided the grounds of the current asylum policies.\textsuperscript{49} Article 1 B (1) of the 1951 \textit{Convention} provides a choice for the signatory countries to approbate the scope of the application with geographical limitations within Europe.\textsuperscript{50} Additionally, it contained a time limitation in the description of the refugee status. Turkey was among the countries that pushed for the initiation of a geographical and time limitation to the Convention under the Article 1 B (1) (a).\textsuperscript{51} Besides Turkey, three European countries which had limitation on the 1951 \textit{Convention} until 1999 were Monaco, Hungary and Malta. After the accession process of Hungary and Malta to the EU, Turkey and Monaco became the only “persistent objectors” in Europe today.\textsuperscript{52} Turkey continues geographical limitation under which “it applies the Convention only to persons who have become refugees as a result of events occurring in Europe”.\textsuperscript{53} Therefore, Turkey does not accept de jure refugees coming from non-European countries.\textsuperscript{54}

\begin{itemize}
\item \textsuperscript{50} UN (1951), Convention, Preamble as cited in Kale, B. p. 206.
\item \textsuperscript{51} Ivor C. Jackson, \textit{The Refugee Concept in Group Situations} (The Hague: Martinus Nijhoff Publishers, 1999), p. 68.
\item \textsuperscript{53} Declaration made by Turkey. See UNHCR. \url{www.unhcr.org} as cited in Kaya, I. (2008) “Legal Aspects of Irregular migration in Turkey”, Robert Schuman Centre for Advanced Studies, p. 3.
\item \textsuperscript{54} Kaya, I. (2008) ) “Legal Aspects of Irregular migration in Turkey”, Robert Schuman Centre for Advanced Studies, p. 3.
\end{itemize}
The 1967 UN Protocol overruled the time limitation for the application of the Convention for the signatory countries. Turkey signed the 1967 Protocol by lifting time limitation, but geographical limitation maintained. This situation which has been reserved until today contributes a distinction between ‘European asylum seekers’ and ‘non-European asylum seekers’.\textsuperscript{55} According to Kirişçi, this practice demonstrates a Cold War mentality in which Turkey provide refugee status only to people under the persecution of communist regimes in the Eastern countries.\textsuperscript{56} As argued by Kirişçi, the distinction created by the geographical limitation led to the evolution of a two-tiered asylum policy.\textsuperscript{57} The first tier covered refugees fleeing persecution in Europe including especially USSR and Eastern European Countries as mentioned above. Turkey provided the right to seek asylum to Turkey for those individuals and granted refugee status by permitting them to stay in Turkey.\textsuperscript{58} The second tier ‘non-European’ refugees covers the persons fleeing persecution outside Europe who are obliged to a more complex situation regulated by both international and national actors. Turkey cooperates with the UNHCR in resettlement of refugees in a third safe country rather than giving them asylum herself. In the cooperation with the international organizations, they provided shelter and resettling costs for refugees in third countries as well as process of asylum applications. Article 35 of the 1951 Convention regulates this cooperation between the national authorities and the UNCHR. UNCHR has power to supervise the applications of the provisions of the 1951 Convention.\textsuperscript{59} The signatory states have to “provide UNCHR with the appropriate form of the information and statistical data requested concerning: (a) the condition of refugees, (b) the implementation of the 1951 Convention, (c) laws, Regulations and decrees which are, or may hereafter be, in force relating to refugees”.\textsuperscript{60}


\textsuperscript{58} Ibid p. 13

\textsuperscript{59} Kale, (2005) p. 213

\textsuperscript{60} UN (1951), Convention, Article 35.
İçduygu mentions 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.”61 According to Baklacıoğlu the asylum system in Turkey is shaped by a security concern by drawing a clear distinction between European and non-European refugees.62 This security oriented approach portrays the asylum seekers from the Middle East as a potential threat to the national security in Turkey.63 As mentioned by Biehl, “even the mere fact that all dealings with asylum seekers and refugees in Turkey, as such social and economic rights, are left in the hands of police forces should speak for itself.” Baklacıoğlu adds that nationalist ideological formation and general attitude at the Ministry of the Interior (Mol) together with the non-informed officials at the local level invigorate this security oriented approach.64

The changing political circumstances directly affected Turkey’s neighborhood policy with respect to the immigration and asylum policies. During the Cold War years, Turkey functioned as “a buffer and safety zone” for Western countries under the Soviet threat which worked effectively for many years.65 By the end of the Cold War the composition of the international politics has changed and responsively Turkish immigration policies have changed as well. As a result of intra-state conflicts in the post-Cold War period rather than the previous inter-state conflicts, mass influx of civilians occurred due to the ethnic, religious and civilian conflicts within the states.66 In the late 1980s and early 1990s, Turkey faced a sudden and dramatic increase in the numbers of refugees and migrants coming from both European and non-European

The Romanian Journal of European Studies, 7-8
64 Ibid p. 4
65 Kale, 202
66 Ibid p. 202
countries. Large numbers of Iraqi refugees started entering Turkey especially during the 1980-1988 Iran-Iraq war and the Gulf War of 1990-1991. Additionally, according to statistics, in 1989, Turkey received approximately 310,000 Bulgarian Turks fleeing from Zhivkov’s regime; in 1992, around 25,000 Bosnians and in 1999 nearly 20,000 Albanians from Kosovo sought refuge in Turkey in which most of them entered illegally without any documents. The economic problems in the post-Soviet States led to increase in irregular migrant labor in Turkey by favoring the liberal visa regime towards those countries. Simultaneously, Turkey was dealing with the fight in its south-eastern regions against Kurdish separatist group, PKK. The huge influx of refugees in the post-Cold War period together with its Kurdish issue, the security concerns of Turkey were intensified in the 1990s. Turkish security forces began to deport many people as they are illegal/economic migrant in which international community together with UNCHR consider them as asylum seekers or refugees. Consequently, the controversy occurred how to define “asylum seeker” between Turkey and UNHCR in which Turkey’s deportations triggered by the security concerns was criticized by many human rights advocacy groups due to the principle of non-refoulement for “non-Convention” refugees.

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

68 Ibid p. 3
71 Biehl, p. 4
The 1994 “Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country” was accepted. According to the 1994 Bylaw, there is a clear distinction between European refugees defined by 1951 Convention and non-European refugees who are defined as the asylum seekers outside Europe within the scope of geographic limitation. Accordingly, the definitions of and a “refugee” and an “asylum seeker” were distinguished in the sense that the former was defined according to the 1951 Convention as ‘a foreigner/alien fleeing persecution with geographic reference within the scope of Europe; whereas the later one was defined by the Bylaw as a foreigner/alien seeking asylum while fleeing persecution from regions outside Europe.” All non-European refugees who came to Turkey and applied to UNCHR in order to be resettled in a third country had to file a separate “temporary asylum” which created a dual procedure between Turkey and the UNCHR.

The 1994 Bylaw also introduced a variety of restrictions due to the timing and the location of asylum applications. Article 4 states that: ‘Individual aliens who are either seeking asylum from Turkey or requesting residence permission in order to seek asylum from as third country shall apply within five days to any local governorate of they entered the country legally; and if they entered illegally, shall apply within five days to the governorate of the province where they entered the country.’ 5-day restriction was criticized due to concerns about the rejection and deportation of the asylum seekers for their delay without examination of their claims.

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73 Kirişçi, (2002) p. 6
74 Biehl, p. 4
75 Kale, p. 225
76 The Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country, Official Gazette, 30.11.1994, No: 22217, Art. 3 as cited in Kale, B. p. 225
77 Biehl, p. 4
78 Ibid
79 Ibid
The differentiation between the status “refugee” and the “asylum seeker” and also between legal and illegal migration procedures led to major criticisms from human rights advocacy groups with respect to its security oriented and restrictive approach. As Kirişçi notes that 1994 Bylaw represented “an effort on the part of the Turkish authorities to replace the previous practice, which they have come to consider as too liberal and life threatening to Turkish security, with one that they believe will enhance their control over asylum in Turkey”\textsuperscript{80}. According to Biehl, 1994 Bylaw would be considered as the first marker of the ‘migration securitization’ approach in Turkey.\textsuperscript{81}

The serious criticisms from international human rights advocacy groups and also from Western governments managed to soften the procedure to some extent. The Turkish government increased the time limit from five days to ten days in addition to the appeal of negative decisions in the administrative courts.\textsuperscript{82} Kirişçi argues that in addition to those criticisms, a critical ruling of the European Human Rights Court forced Turkish government to be more sensitive about the enforcement of the time limit rule as well as principle of non-refoulement within a more cooperative relation with the UNCHR.\textsuperscript{83}

3.1. Harmonizing Asylum and Refugee Policies in the EU Process

By the December 1999 decision of Helsinki Summit Turkey was officially declared as candidate country which opened the period of ‘Europeanization’ as an influential process in transformation of Turkish asylum policy and practice. One year after the Helsinki decision, the EU Commission prepared the Accession Partnership Document (APD) for Turkey on 8\textsuperscript{th} November 2000 and the document was accepted on the 8\textsuperscript{th} March 2001 by the European Council which set out some of the reforms that Turkey

\textsuperscript{81} Biehl, p. 4
\textsuperscript{82} Ibid
\textsuperscript{83} Kirişçi, K. (1996) p. 7
shall adopt as an integral part of the accession process. İçduygū argues that the major changes in Turkey due to the immigration and asylum policies would be categorized under three periods. In this context, the pre-1994 period was a ‘time of ignorance’; the transition to international norms from 1994 to 2001 and finally the post-2001 period is EU-ization type of changes. Accordingly the year 2001 illustrates a crucial turning point due to the major changes in the fields of legislation together with the administrative and institutional infrastructure.

As APD states that Turkey should:

- “Align visa policies with that of the EU
- Adopt and implement EU practices on migration, including admission, readmission and expulsion in order to prevent illegal migration
- Strengthen border management and prepare for implementation of the Schengen system.
- Lift the geographical limitation to the 1951 Convention and develop accommodation facilities and support refugees.”

The conditions drawn by the APD clearly demonstrates that Turkey is expected to adopt EU’s restrictive migration policies due to the prevention of illegal migration and

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86 Ibid
87 Ibid p. 210
selective visa policies on the one hand; on the other hand, Turkey shall meet the international humanitarian standards with respect to the refugee protection.  

In response to the APD, the Turkish Parliament adopted the *National Program of Action for the Adoption of the EU Acquis* (NPAA) on 19 March 2011 in which Turkey agreed on taking measures due to the border control, visa regulations and asylum system. Additionally, in January 2005, Turkey adopted a *National Action Plan for Asylum and Migration* (NAP) by confirming the measures regarding EU standards in asylum policy and practices containing the administrative and technological capacity. However, the most critical issue for Turkish side was the lifting of the geographical limitation.

In the NPAA under Justice and Home Affairs heading, Article 4.25.2 states that:

“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.”

“The issue of removing the geographical limitation must be solved in a manner that will not hurt the economic, social and cultural conditions of Turkey. Because Turkey is a country, which has been especially impacted by the mass population movements that have been steadily increasing across the world since the 1980s.”

As mentioned by those official statements, Turkey continues to consider possible refugee movements as a direct effect to the national security. Kirişçi mentions that Turkish authorities see asylum as a ‘security problem’ by arguing that there is no

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91 Ibid
92 See Art. 4.25.2 in Justice and Home Affairs Section, National Program for the Adoption of the EU Acquis as cited in Kale, p. 258
capacity to manage the status determination and refugee integration bureaucratically and socio-economically.\textsuperscript{94}

İçduygu argues that in addition to the mass influx of people to Turkey in the post-Cold War period, a new form of migration is also emerged in Turkey together with Mediterranean and Eastern European countries which are the ‘transit migration’.\textsuperscript{95} He says that; “One can analytically argue that the term ‘transit migration’ is used for the phenomenon where migrants come to a country of destination with the intention of going and staying, in another country. What makes the position of these migrants so unique is their own intention-based, so-called ‘temporary’ character, in the country of transit, together with the largely ‘irregular’ or ‘illegality’ based nature of their movement.”\textsuperscript{96} Therefore, due to its irregular nature, EU states strongly underline the priority of stopping transit migration.

However, while EU countries encourage for the lifting of geographical limitation, at the same time they are pursuing increasingly exclusive immigration policies. While they criticize Turkey regarding the refugee protection, the recognition rates in the Turkey is dramatically higher than many other European countries.\textsuperscript{97} According to the UNCHR statistics, “during the 1990s, granting of refugee status or some form of stay for asylum seekers fluctuated between 15 and 23 percent of the asylum applications filed in the European Union member states.”\textsuperscript{98} However, in Turkey the recognition rate is more than 60 percent between 1995 and 2001.\textsuperscript{99} Additionally, due to the EU’s ‘zero immigration policy’ with certain countries, the borders get more difficult to cross which contributes to finding new peripheral zones such as Turkey. Besides transit migrants,
Turkey zero immigration policies also led to increase in refugee resettlement rates.\textsuperscript{100} Each year fewer European countries accept refugees from Turkey and their quota is decreasing every year.\textsuperscript{101} Therefore, the refugees who have no intention to go back where they come from, or who have no chance to move to Europe legally, become permanent rather than being transit migrant.\textsuperscript{102} Therefore those realities invigorates the Turkey’s reluctance regarding the lifting the geographical limitation.

Despite the deadlock in the issue of geographical limitation, Turkey has furthered the harmonization process and transformation of legislative and administrative structure at the same time. By the adoption of NAP followed by the Implementation Direction of 2006, the asylum policy and practices were regulated linked to the Law No 2510 on Settlement, the Law No. 5683 on Residence and Travel of Foreigners in Turkey, the Passport Law No. 5682, and the Law No. 4817 on Work Permit of Aliens.\textsuperscript{103}

\subsection*{3.1.1. Immigration-related harmonization efforts}

The Schengen \textit{acquis} is the central concern with respect to the visa and admission legislation in which the alignment of the visa regime with the \textit{acquis} and establishment of the border regime are crucial.\textsuperscript{104} In this context, Turkey introduced visa requirements in 1 September 2002 for six Gulf countries (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia and United Arab Emirates) which have the same visa requirements in the EU.\textsuperscript{105} Secondly, in 2003 13 countries were included to the list of countries subjected to the visa requirements. (Indonesia, Republic of South Africa, Kenya, Bahamas, Maldives, Barbados, Seychelles, Jamaica, Belize, Fiji, Mauritius, Grenada and Saint Lucia)\textsuperscript{106}

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\textsuperscript{100} Biehl. P. 6
\textsuperscript{101} Ibid
\textsuperscript{103} Baklacioglu p. 1
\textsuperscript{105} Icduyu, (2007), p. 211
\textsuperscript{106} Ibid
\end{flushleft}
Furthermore, Turkey introduced a visa requirement for the citizens of Azerbaijan in 2003 which is among the EU negative visa list.

İçduyu proposes that four legislative changes demonstrate the Turkey’s strong will to tackle align with the EU acquis in the sense of tackling illegal migration and human trafficking.\textsuperscript{107}

\textbf{Amendment of Turkish Penal Code}

Firstly, Turkey adopted amendment to the \textit{Law on Combating Benefits-Oriented Criminal Organizations} comprehended with additional articles to the Penal Code on 3 August 2002 by aiming to fulfill the provisions of the \textit{UN Conventions against Transnational Organized Crime}.\textsuperscript{108} In this context, Palermo Protocol against Trafficking in Persons has been confirmed by the entrance of the definition into the Turkish legal system. The Law prescribes five to ten years imprisonment for traffickers.\textsuperscript{109} An additional provision accepted by the parliament with respect to the migrant smuggling in 2002 under the Penal Code.

Secondly, two additional protocols, “\textit{The Protocol to Prevent, Suppress and Punish Trafficking, Especially Women and Children}” and “\textit{The Protocol against the Smuggling of Migrants by Land, Sea and Air}” were introduced regarding to the UN Convention against Transnational Organized Crime in 4 February 2003.\textsuperscript{110} These protocols were the second step in legal arrangements targeting the trafficking, smuggling and illegal migration.

\textsuperscript{107} Ibid
\textsuperscript{108} Ibid p. 212
\textsuperscript{109} Ibid
\textsuperscript{110} Ibid
Amendment of Law on Work Permits

Thirdly, the Law on Work Permits for Foreigners has become effective on 6 September 2003 which provides the administration of permits in one authority and aims to increase work opportunities in Turkey for foreigners by meeting international standards, particularly those of the EU.\textsuperscript{111} The Law targeted the illegal employment by issuing fines and at the same time allowed foreign workers to practice all professions which was not the case for the domestic sector before. Under the new Law, the procedure for work permit has been simplified under a central authority. Accordingly, the Law requires that ‘independently working foreigners are obliged to inform the Ministry of the situation within at most fifteen days, from the date they have started working and from the end of the work’, and similarly ‘employers that employ foreigners are obliged to inform the Ministry within at most fifteen days from the end of the said date and from the date when the service contract was terminated for any reason, in the case that the foreign employee does not start working within thirty days from the date when the work permit was given’.\textsuperscript{112} The Regulations also introduce the strict penalties for foreigners who work without permits. “An independently working foreigner and the employer employing the foreigners, who do not fulfill their obligation of notification according to Article 18 within due time, are fined with an administrative penalty of two hundred and fifty million liras for each foreigner.”\textsuperscript{113}

Amendment of Citizenship Law

Fourthly, an amendment to the Citizenship Law in 4 June 2003 changed situation for foreigners for obtaining citizenship through marriage. The new legislation gives the opportunity of having Turkish citizenship three years after the marriage which was much harder before. This amendment especially intended foreign women who are involved in prostitution in Turkey. As proposed by amended Law, “naturalization procedures for foreign spouse would begin only 3 years after registration of the

\textsuperscript{111} Ibid
\textsuperscript{112} Article 18 of the Regulation for the application of the Law on Work Permits for Foreigners as cited in İçduyg, A. (2007) p. 213
\textsuperscript{113} Ibid
In that sense, foreign spouse would be naturalized under the circumstances of a *bona fide* marriage. This amendment introduced the marriage of convenience to the Turkish legal system by aiming illegal migration and human trafficking again.

### 3.1.2. Asylum-related Harmonization efforts

The huge debate on the lifting geographical limitation is still on the top of the hot topics with no sign of change in near future. Other positive changes with respect to the asylum policy were taken by 2005 NPAA which aimed the incorporation of EU procedures into the Turkish asylum system such as “subsidiary protection”, “tolerated aliens” and “residence permits based on humanitarian grounds”.

In the case of the principle of *non-refoulement*; constitutional provision ensures that; “all actions and measures taken by the administration can be appealed before justice” which gives an opportunity for all aliens in Turkey to appeal the justice against deportation.

Other reforms included social policy measures which were adopted especially in 2006 because of an increase in the deportation and violation of human rights of immigrants in the process of 2007-2008. By adopting and Asylum law, the Ministry of Interior introduced administrative regulations on employment, residence problems and combating human trafficking.

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114 Ibid p. 53
115 Ibid
116 Ibid p. 215
117 Bayraktar, D. p. 10
118 Özgür and Özer 2010, p. 135-140 as well as Bayraktar, D. p. 10
CHAPTER 4

SECURITIZATION OF TURKISH MIGRATION POLICY: TOWARDS ‘FORTRESS TURKEY’?

This chapter aims to evaluate the balance between human rights-based approach and the security-oriented approach in the case of Turkey due to the transformation of immigration and asylum policies. The process has brought several major changes in the institution building, certain rules and procedures, international cooperation and also influence of NGOs in a ‘positive’ way in the sense of being more human rights-oriented. However, in general, the changes in legislations and also implementation directives together with the physical and technological practices, the process in Turkey draws a more security-oriented approach rather the humanitarian one. In this context, Turkey is caught between two contradictory trends: on the one hand, Turkey is expected to adopt Western humanitarian values and norms together with the international humanitarian standards; on the other hand, she has to adopt EU’s restrictive and security-oriented policies in order to combat illegal immigration. As a result, Baklacioğlu suggests that in the clash of those two contradictory trends, the security-
oriented one is predominant compared to the humanitarian approach. According to her, since the beginning of the harmonization process, the prior targets directed by the EU and adopted by the Turkish government have been the ones regarding border management and tackling illegal migration.

Since the implementation of APD in 2003, two central pathways shaped the Turkish asylum policies which are: the strengthening of the external borders and building the internal ones by fighting against irregular migration which created ‘Fortress Turkey’ as similar to ‘Fortress Europe.’

4.1. Strengthening external borders

According to the Baklacioğlu, the priority of the asylum harmonization process is building high technology border control and migration management systems funded by the EU in order to take preventive pre-frontier measures. Accession negotiations documents by giving priority to the control of the external border indicate this concern. According to the reports of Ministry of the Interior, border control and Schengen Information System are the priority areas of the EU funds in which the EU funds %75 of the border security implementation projects in order to build Centers for combating illegal migration, Repatriation and deportation, Border Security Unit including Border Police, Border Management Education and Administrative capacity.

As İçduygu states that Turkey has launched a project due to the physical security on borders and border gates since 2003 by installing equipments such as projectors, binoculars, thermal cameras, barbed wires and also watchtowers on borders starting

120 Ibid
121 Ibid
from the Iranian border. Additionally, the program includes patrolling airspace and territorial waters. In that sense, according to Baklaçioğlu, “the introduction of ‘Europeanized’ security, control and inspection facilities, information and biometric technology and training of border guards and liaison officers is the major priority in the MOI’s planning of the EU funds.” She furthers that “one the first concrete initiations in compliance with the EU acquis was the introduction of a Special Task Force, three working groups and three strategy papers in the fields of protection of external borders of Turkey.” The protection of external borders and migration management constitute the prior parts of both 2005 NAP and 2008 National Harmonization Program.

Despite its security oriented selective criteria in immigration and asylum policies, Turkey has had relatively liberal visa regime before the harmonization period. The conditions were determined under the Turkish Passport Law in 1950. As given by İçduygü, until recently there were more than 40 countries whose citizens were not subjected to the visa requirement. The serious steps have taken only recently in order to adopt the EU negative visa list. By the force of Amsterdam Treaty together with the Schengen Agreements, the EU determined the world in four categories:

1. Member States of the Union; 2. countries with a privileged relationship with the EU, whose nationals enjoy the equivalent rights; 3. favored countries who appear on the white list of the EU visa regulation, whose nationals do not require visas to enter the Union; 4. countries who appear on the regulations’ black list, whose nationals must always have a visa obtained before arriving at the borders of the Union.

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123 İçduygü, Irregular Migration in Turkey, International Organization for Migration no. 12 February 2003 p. 11
124 Tez, p. 57
125 Baklaçioğlu (2009) p. 7
126 Ibid
127 Ibid
128 İçduygü (2007) p. 206
Bigo & Guild discuss that the EU’s restrictive and selective visa policy is the main example of the border control technologies. In that sense, due to the alignment with the Schengen acquis, Turkey has introduced uniform visa policy with EU countries, an alignment with the EU’s positive and negative visa list comprehended with the improvement of security features of visas and biometric identifiers in travel documents.\textsuperscript{130}

In that sense, while EU gives priority to border security, combating illegal immigration, organized crime and trafficking; Turkey at the same time prioritizes the Chapter 24 of the accession negotiations which covers the administrative and technological capacity for tackling illegal immigration, technological innovations in data management and information exchange, deportation and detention as well as training of the police forces.\textsuperscript{131} However, the matters concerning the human rights and freedom of migration and asylum reforms have been postponed after 2012.

### 4.2 Combating illegal migration through building internal borders

The post-entry measures for the control and the management of illegal migration and asylum aim building the internal borders in Turkey “through detention, accelerated procedures, repatriation, and deportation, restrictions on mobility, employment, accommodation and social services”.\textsuperscript{132} Additionally, the geographical limitation still indicates the selective and discriminatory approach of Turkey who illustrates the “non-European” as the “other”.\textsuperscript{133}

\textsuperscript{130} Ibid p. 37
\textsuperscript{131} Baklacıoğlu, (2009) p. 4
\textsuperscript{132} Ibid p. 8
\textsuperscript{133} Ibid p. 8
According to the reports of U.S. Committee for Refugees and Immigrants (USCRI) the policies of many EU countries and Turkey due to the combating immigration through “otherisation” process indicates parallels in the sense of increased practices of refoulement and deportations, low recognition rates and detention and settlement conditions.¹³⁴

Additionally, approximately one hundred EU-funded projects sponsored the implementation of reception centers in Istanbul, Ankara, Izmir, Kayseri, Gaziantep and Van.¹³⁵ Rather than improvement of the legal and social rights of the refugees; the projects prioritize “the collection and share of biometric information about the refugees through close observation, prosecution and seizure of the refugees”.¹³⁶

In June 2006, the MOI introduced the Implementation Directive which gives instructions for the ‘General Directorate of Security personnel on the implementation of the 1994 Regulation’ particularly by defining the procedures for temporary asylum, specific rights and obligations for temporary asylum seekers.¹³⁷ According to Biehl, this directive illustrates the securitization concerns of Turkey which shapes the asylum policy and practice.¹³⁸

Article 17 of the Law on the Residence and Travel of Foreigners in Turkey proposes that the primary obligation of all asylum seekers in order to reach other rights is to reside in places designated by the MOI which are called “satellite cities”.¹³⁹ They are chosen in particular places far from the sea and the European borders where they can be easily manageable by the Turkish authorities. Biehl argues that the ghettoization of the

¹³⁵ Baklacoğlu, p. 8
¹³⁶ Ibid
¹³⁷ Biehl p. 7
¹³⁸ Ibid
¹³⁹ Ibid
foreign people in certain locations leads to “otherisation” of them in everyday experiences.\textsuperscript{140}

In the Implementation Directive, while the part regarding the temporary asylum procedures including applications, procedures, fingerprints and penalties cover approximately twelve pages of the Directive, the section on social and economic rights is limited to two pages with unclear criteria and guidance for the rights.\textsuperscript{141}

In the context of general assistance; the Directive states that ‘assistance is provided to applicants, asylum-seekers and refugees by local administrations and NGOs within the framework of their own legislations and practices’ and also ‘the assistance is temporary until the applicants, refugees and asylum seekers become self-sustaining’ which also depends on the appropriateness of the resources of local organizations.\textsuperscript{142} In that sense, the Directive does not stipulates explicitly that the assistance including accommodation and health costs will be provided.

The Social Assistance and Solidarity Fund (SASF) that is founded in 1986 which provide services (health, education, shelter, food and clothes) for citizens and non-citizens under the authority of governorships.\textsuperscript{143} However, 2006 Implementation Directive proposes that ‘all matters of social and medical assistance to refugees and asylum seekers will be carried out in cooperation with the SASF if their funds permit.’\textsuperscript{144} In that sense, there no binding statement in the Directive which leads to informal budget allocation.

\textsuperscript{140} Ibid
\textsuperscript{141} Ibid p. 8
\textsuperscript{142} Ibid p. 8
\textsuperscript{143} Ibid p. 9
\textsuperscript{144} Ibid
Additionally the Directive states that:

“Applicants who request an examination or treatment, and are not in need of emergency health assistance, shall lodge his/her request to the Foreigner’s Branch whom have the most information about the situation of the applicant. This request shall be evaluated by the Foreigner’s Branch and shall be reported in writing to the relevant Social Assistance and Solidarity Foundation.”

In this context, police officers have the responsibility for all medical and social assistance referrals. Biehl argues that the appropriateness of the applicants for social assistance is determined by the police officers who have been trained in security matters.
As a result of Europeanization process, Turkey has given priority to border security, combating illegal migration, organized crime, smuggling and trafficking. This has been clearly situated in the *National Action Plan of 2005* and *National Harmonization Program of 2008-2011* which predominantly cover the expenses of building technological and administrative capacity for tackling illegal migration, high technologies for information exchange and data management, deportation and detention, border management and training of police services.\(^{145}\)

The two contradictory trends that Turkey has been facing in the Europeanization process are the humanitarian approach on the hand and the security-oriented approach on the other. The concentration of legislative changes and official documents as well as the bureaucratic and technical practices indicate the predominance of security-oriented approach over the liberal one. As Baklacioğlu suggests, these two contradictory trends

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\(^{145}\) Baklacioğlu, (2009) p. 4
has created institutionalization and legislation of migration-asylum nexus in Turkey which refers to the blurring of distinction between illegal migration and asylum.\textsuperscript{146}

The central assumption of this study is that the ongoing security-oriented approach in Turkey is reflection of the major dynamics and the nature of immigration policy at the EU level. As a result, the Europeanization process in Turkey did not weaken the perspective of previous Turkish migration and asylum policies which were strongly security-oriented and selective. On the contrary, the process fit well with the previous logic of Turkish state and strengthens the policies of the state. Since the EU itself gives the priority and more funding to the border management and fighting against illegal migration, the Europeanization process in Turkey would be explained via the nature of the EU in itself. Guild suggests that it is the result of externalization of the EU’s internal security project in which it exports this logic to the candidate countries as well.\textsuperscript{147}

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