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## Turkey's New Draft Law on Asylum: What to Make of It?

*Kemal Kirişçi*

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Seçil Paçacı Elitok and Thomas Straubhaar

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# Turkey's New Draft Law on Asylum: What to Make of It?

*Kemal Kirişçi*

## Introduction

As Turkey becomes increasingly recognized as an immigration and transit country for irregular migrants,<sup>1</sup> Turkey's asylum policies are receiving growing attention from the public as well as the international community. Recently, two conferences organized by the United Nations High Commissioner for Refugees (UNHCR) in January 2011 and International Organization for Migration (IOM) in May 2011 with local partners attracted a large attendance composed of academics, civil society representatives, diplomats, and most importantly, officials. This interest is partly triggered by the release, in January 2011, of Turkey's first draft asylum law.<sup>2</sup> This draft law is the product of an unusually transparent process of law-making by Turkish standards that started back in late 2008. If the law is indeed adopted by the Parliament, Turkey will finally have a legal framework extending protection to asylum seekers and refugees together with an accompanying physical as well as administrative infrastructure. This will constitute a major break from past practice. This development also occurs at a time when Turkey's accession negotiations are fast approaching a dead end. Yet, 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*. The importance of preparing for accession negotiations on Chapter 24 that covers EU acquis in this area is also cited as a reason for the preparation of the draft law.

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<sup>1</sup> Tolay (forthcoming), Paçacı Elitok/Straubhaar (2011), İçduygu/Kirişçi (2009), Kirişçi (2007 a).

<sup>2</sup> Yabancılar ve Uluslararası Koruma Kanunu Tasarısı Taslağı.

The draft law brings a significant number of improvements to current Turkish practice and would clearly ensure a better-quality protection for asylum seekers in Turkey. However, strikingly the law stops short of lifting the geographical limitation with which Turkey has been a party to the 1951 Geneva Convention Relating to the Status of Refugees. Accordingly, Turkey is not obliged to extend refugee status to asylum seekers coming to Turkey as a result of “events occurring outside Europe”. The lifting of the limitation is one if not the major condition that Turkey has to fulfill for EU membership. The EU has enjoyed considerable influence on the transformation of Turkish policy on a wide range of issues with respect to domestic politics and foreign policy. Turkey introduced dramatic reforms to meet the Copenhagen political criteria and transformed its foreign policy on Cyprus by supporting the United Nations Plan to reunite the island to be able to start accession negotiations. Since then reforms in relation to a range of chapters that are being negotiated and have yet to be opened continues. Hence, against the background of these reforms it becomes puzzling as to why the draft law stops short of meeting a major condition of the EU. The EU, through consecutive *Accession Partnerships*, *Strategy Papers* and *Progress Reports*, has unequivocally made it clear to the Turkish side that for the completion of the harmonization process the geographical limitation would have to be lifted. This paper will argue that as much as the EU has impacted the process of the preparation of the new draft law on asylum, this has been a partial one and that the role of European Court of Human Rights (ECtHR) and the UNHCR need to be taken into account, too. The UNHCR has had a very long-standing relationship with the Turkish government and then also with Turkish civil society. This relationship has contributed to a slow but sure process of socialization of Turkey into the norms and rules of an international refugee regime. Against this background of socialization, the rulings of the ECtHR especially in the course of the last couple of years have played a critical role in creating a climate of urgency to reform Turkey’s asylum policy and practice. The paper is divided into three sections. The first section offers a brief description of the Turkish asylum system and its evolution. The second section discusses the relative roles of the EU, the ECtHR and the UNHCR in this reform process and the adoption of the draft law. The paper concludes by suggesting that, as much as the draft law is welcomed and is especially promising, as it suggests an important transformation in hearts and minds of Turkish officials, the acid test will only come if the draft law is indeed adopted and starts to be implemented. Even then it will be difficult to ascertain the role of the EU, as

the principal demand of the EU, the “lifting of the geographical limitation”, will remain unmet and is likely to stay unmet as long as Turkey's prospects of membership remains grim.

### Turkey's Asylum Policy and Practice

In the West, Turkey is traditionally known as a country of emigration. Yet, Turkey, like its predecessor the Ottoman Empire, has long been a country of immigration especially for Muslim ethnic groups, ranging from Bosnians to Pomaks and Tatars, as well as Turks from the Balkans and to a lesser extent from the Caucasus and Central Asia. Between 1923 and 1997, more than 1.6 million immigrants came and settled in Turkey.<sup>3</sup> Furthermore, after the Nazi takeover in Germany and then during the Second World War, there were many Jews who fled to Turkey and then resettled in Palestine. There were also many who fled the German-occupied Balkans for Turkey and returned to their homelands after the war had ended. Since the collapse of the Soviet Union, Turkey has also become a country receiving an increasing number of irregular workers and immigrants from Balkan countries and former Soviet Republics as well as Iran, Northern Iraq and Africa. These often include people that overstay their visa and work illegally. Turkey has also been a country of asylum, and is among the original signatories of the 1951 Geneva Convention. However, Turkey is today among a very small number of countries that still maintains a geographical limitation to the agreement's applicability as defined in Article 1, b(1)(a) of the Convention.<sup>4</sup> Accordingly, Turkey does not grant refugee status to asylum seekers coming from outside Europe but has to extend temporary protection, and hence maintains a two-tiered asylum policy.

The first tier of this policy is centered on Europe and is deeply rooted in Turkey's role as a Western ally neighboring the Soviet Union during the Cold War. During that period, in close cooperation with the UNHCR, Turkey received refugees from the Communist Bloc countries in Europe, including the Soviet Union. Such refugees, during their stay in Turkey, enjoyed all the rights provided for in the 1951 Convention. However, only a very small number were allowed to stay in Turkey, often as a result of marriages with Turkish nationals.

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<sup>3</sup> For details, see Kirişçi (1996 a).

<sup>4</sup> Monaco, Congo and Madagascar are the only remaining countries signatory to the Convention that continue to maintain a “geographical limitation”, Joanne (2005).

Current Turkish legislation limits immigration a full-fledged refugee status with the integration option only to persons of “Turkish descent or culture”. Hence, the overwhelming majority of the refugees were resettled out of Turkey. Although it is very difficult to obtain accurate statistics on their numbers, the Ministry of Interior (MOI) has indicated that some 13,500 asylum seekers benefited from the protection of the 1951 Convention between 1970 and 1996. Statistics for previous years are not available. In addition, approximately 20,000 Bosnians were granted temporary asylum in Turkey during hostilities in the former Yugoslavia between 1992 and 1995. Some of the refugees were housed in a refugee camp near the Bulgarian border, while many went on to stay with relatives in large cities such as Istanbul and Bursa. Since the signing of the Dayton Peace Plan in 1995, many of these refugees have been steadily returning to Bosnia. In 1998 and 1999, approximately 17,000 Kosovars came to Turkey to seek protection from the strife in their ancestral homeland. The majority has returned. There are also an undetermined number of Chechens residing in Turkey in a somewhat a legally grey zone. Most importantly, in 1989 more than 310,000 Bulgarian nationals of Pomak and Turkish origin fled to Turkey en masse. More than 240,000 of them were naturalized. However, the regime change in Bulgaria and membership to the EU culminated with many of the refugees returning or taking up dual nationality. Beyond these major mass movements of refugees Turkey has received only small numbers of applications from individuals coming from Europe. Their numbers from 1995 to 2010 add up only to 289 applications out of which just 30 have received a long-term residence permit (*daimi ikamet*). However, there are a greater number of asylum seekers such as Chechens from the Russian Federation and some Central Asian republics who have been discouraged from formally applying for asylum and instead been allowed to stay on in Turkey sometimes under precarious conditions.

The second tier of Turkey’s asylum policy deals with persons from outside Europe. The new policy emerged in 1980s in the aftermath of the Iranian Revolution, and subsequent instability in the Middle East, Africa and Southeast Asia. Upheaval in these areas led to a steady increase in the number of asylum seekers coming from outside Europe. For a long time, the government allowed the UNHCR considerable leeway to temporarily shelter these asylum seekers with the tacit understanding that they would be resettled out of Turkey if the UNHCR recognized them as refugees, and that those whose claims were rejected would be deported. However, the growth in the number of illegal entries



into Turkey and in the number of rejected asylum seekers stranded in Turkey strained this practice. The situation was also aggravated by the 1988 and 1991 mass influxes of Kurdish refugees amounting to almost half a million. Officials were also concerned that among these asylum seekers were militants of the Kurdistan Workers' Party (Partiya Karkerên Kurdistan – PKK) trying to enter Turkey from Northern Iraq.

It was against such a background that the government introduced a decree, the Asylum Regulation, in November 1994.<sup>5</sup> The Regulation became the first piece of legislation at the national level and ambitiously aimed to bring status determination under the control of the Turkish government. It was primarily drafted with national security concerns and hence introduced strict regulations governing access to asylum procedures with little regard for the rights of asylum seekers and refugees.<sup>6</sup> It is not surprising that the practice that evolved in the first few years of the application of the Regulation attracted serious and concerted criticism from Western governments, as well as major international human rights advocacy groups.<sup>7</sup> Critics argued that Turkey was undermining the rights of asylum seekers and refugees by denying them access to asylum procedures or failing to provide them adequate protection by violating the principle of *non-refoulement*. The Regulation had introduced the requirement that asylum applications be filed within maximum five days of entry into Turkey. The rule was often interpreted strictly and applications were refused on the grounds of being late. Such refusals were often followed by deportations. There were also cases of *bona fide* refugees recognized by the UNHCR being deported on the grounds that these persons had never actually filed applications with Turkish authorities and were in violation of the regulation. This led to frequent conflicts between Turkish authorities and the UNHCR that continued to receive applications and assess them on their merits independently of the provisions of the Asylum Regulation.

However, the situation began somewhat to improve by the late 1990s. Interestingly, a good part of these improvements began to occur before the EU actually engaged Turkey as a candidate country for membership and where primarily encouraged by the UNHCR. There were a number of reforms. Most importantly, in 1997 the way to judicial appeal was opened when two local ad-

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<sup>5</sup> See Official Gazette (1994).

<sup>6</sup> Kirişçi (1996 b), Kirişçi (2007 b, pp. 170–183), Frelick (1997 a), Zieck (2010).

<sup>7</sup> For example, see the U. S. Department of State: Turkey Country Report on Human Rights for 1996 and Frelick (1997 b).

ministrative courts ruled against the deportation orders on two Iranian refugees recognized by the UNHCR. These refugees had originally entered the country illegally and had not filed in their applications with the Turkish authorities in time. The Ministry of Interior (MOI) had ruled for their deportation under the provisions of the 1994 Asylum Regulation. The MOI's appeal to a higher court against the decision of the lower courts was struck out, too. The UNHCR played an important role in encouraging and supporting the asylum seekers to approach the courts and try the judicial appeal process. This was also accompanied by an ECtHR ruling (*Jabari v Turkey*)<sup>8</sup> against the deportation of an asylum seeker on the grounds of the provisions of the 1994 Regulation and that, if this order was carried out, this would constitute a violation of the European Convention on Human Rights. These judicial developments played a central role in getting the government to amend the Regulation in 1999 by initially extending the time limit to ten days.<sup>9</sup>

Another indirect reform of the Turkish asylum policy came through the introduction of training seminars initially for the Foreigners Department of the Police. The first of these took place in September 1998 and involved officials that directly dealt with asylum seekers and refugees. These early seminars organized by the UNHCR were the first of their kind. A steady stream of officials went through these seminars assisting the gradual accumulation of expertise accompanied with a process of socialization. This process significantly improved the officials' understanding of the issues involved and helped them become familiar with international standards. These seminars also contributed to a significant change in the attitudes of many of these officials towards asylum seekers and refugees. The training programs were gradually expanded to include other officials such as judges, prosecutors and gendarmes, as well. Gendarmes are often the very first people that asylum seekers would encounter in border areas. Awareness programs to differentiate between illegal immigrants and asylum seekers were introduced to the training of the Gendarmerie. Programs were also held with the Bar Associations for prosecutors and judges focusing on refugee law. The police and gendarmes normally have to report immigrants or foreigners illegally present in Turkey to the local courts. Hence, prosecutors and judges play a critical role in whether such persons are deported or not. The seminars in these respects were critical in raising

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<sup>8</sup> Council of Europe: European Court of Human Rights (2000).

<sup>9</sup> Official Gazette (1999).

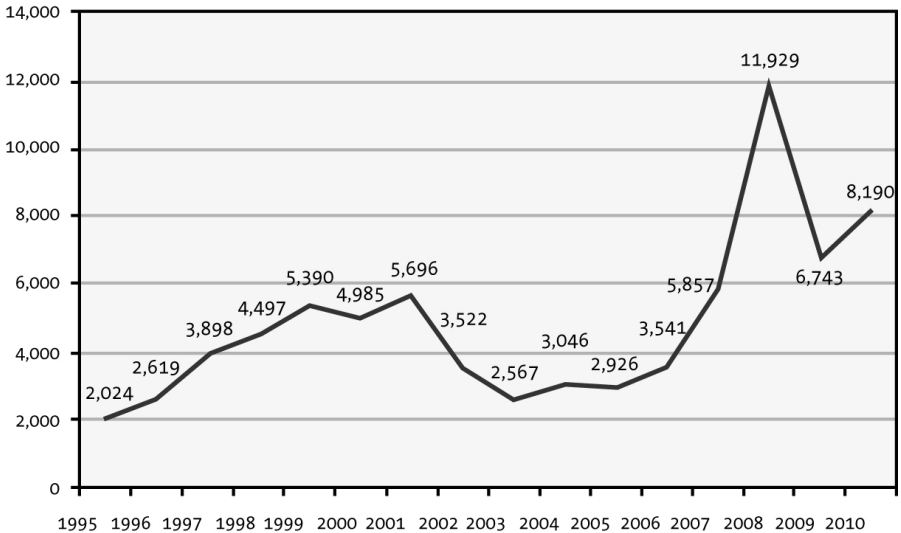
awareness of a body of law and practice to help distinguish between illegal immigrants and asylum seekers and Turkey's legal obligations under international law.

A parallel development was the growing cooperation between non-governmental organizations and the government. An increasing number of non-governmental organizations ranging from the Turkish branch of Amnesty International to the International Catholic Migration Commission (ICMC) began to cooperate with the government in organizing and running some of the above training programs for officials but also seminars for lawyers and human rights activists. The UNHCR branch office in Ankara actually took the initiative to encourage the establishment of the first Turkish Non-Governmental Organization (NGO), the Association of Solidarity with Asylum Seekers and Migrants, in 1995 dealing solely with refugee-related issues. The UNHCR also instituted the practice of organizing seminars with first human-rights associations and then began to include also NGOs focusing on social issues such as women's and children's rights as well as local NGOs extending humanitarian assistance to asylum seekers and refugees. Bar Associations in big cities such as Ankara, Istanbul and İzmir, as well as some border towns, also developed various support programs geared to providing legal assistance for asylum seekers as well as training programs on asylum law and human rights of asylum seekers to their members. More recently, a group of NGOs interested especially in the human-rights dimension of asylum formed the Platform of Refugee Rights (Mülteci Hakları Koordinasyonu). In due course, some of these NGOs also developed an expertise in filing complaints with local courts as well as the ECtHR. Actually, they did not hesitate to instrumentalize the ECtHR to put pressure on the government for reform.

More importantly and in a most fascinating manner the close cooperation between the UNHCR and the Turkish authorities culminated in a situation where the UNHCR came to perform *de facto* refugee status determination on behalf of Turkey. Even though the Asylum Regulation identified the MOI as the body responsible for status determination, MOI officials came to rely increasingly on the judgment of the UNHCR. They were quite content to go along with UNHCR decisions as long as the asylum seekers were also registered with them and eventually those who were recognized as refugees did get resettled out of Turkey. The occasional differences were usually sorted out through informal consultations. Training seminars and close cooperation also enabled the UNHCR to gain access to groups of irregular migrants that got appre-

hended by the Turkish authorities, particularly in border regions of Turkey. According to Turkish government statistics there were approximately 3,500 to 4,000 asylum applicants filed a year between 1995 and December 2008 while for the last three years the average has gone up to about 9,000 (Figure 1).

Figure 1: Asylum Application in Turkey (1995–2010)



The figures include asylum seekers from Europe \* and outside Europe \*\*.

\* Includes Albania, Belgium, Bosnia, Bulgaria, Germany, Georgia, Greece, Italy, Macedonia, Romania, Switzerland, Ukraine and Yugoslavia.

\*\* Includes Algeria, Bangladesh, Birmania (Myanmar), Burma, Burundi, China, Congo, Egypt, Eritrea, Ethiopia, Ghana, Guinea, India, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Mauritania, Morocco, Nigeria, Pakistan, Palestine, Philippines, Rwanda, Sierra Leone, Sri Lanka, Somalia, Sudan, Syria, Tunisia, Tajikistan, Turkmenistan, Uganda, United States of America, Yemen and Zaire.

Source: Data obtained from the Foreigners Department of MOI. Data current as of 10.1.2011.

An overwhelming majority of the asylum seekers are from Iran and Iraq. During this period there were a total of more than almost 77,400 asylum applications and just above 39,000 of them were recognized as refugees (see Table 1).

Table 1: Applications under 1994 Regulation in Turkey (1995–2010)

Country	Applications	Accepted	Rejected	Pending	Undetermined Status
		cases	cases	cases	
Iraq	30,342	15,647	5,368	6,720	2,607
Iran	35,468	21,784	3,723	7,434	2,527
Russia	99	15	52	14	18
Afghanistan	5,947	571	368	4,912	96
Uzbekistan	402	96	75	189	42
Azerbaijan	55	3	25	16	11
Other*	144	58	64	11	11
Other**	4,973	994	477	3,248	254
<b>Total</b>	<b>77,430</b>	<b>39,168</b>	<b>10,152</b>	<b>22,544</b>	<b>5,566</b>

\* Includes Albania, Armenia, Belgium, Bosnia, Bulgaria, Germany, Georgia, Greece, Italy, Macedonia, Moldova, Romania, Switzerland, Ukraine and Yugoslavia.

\*\* Includes Angola, Algeria, Bangladesh, Belarus, Birmania (Myanmar), Burma, Burundi, Cameroon, Central African Republic, China, Congo, Cuba, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, India, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Mali, Mongolia, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Palestine, Philippines, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Sierra Leone, Sri Lanka, Somalia, Stateless, Sudan, Syria, Tanzania, Togo, Tunisia, Tajikistan, Turkmenistan, Uganda, United States of America, West Sahara, Yemen and Zaire.

Source: Data obtained from the Foreigners Department of MOI. Data current as of 10.1.2011.

The overwhelming majority of the recognized refugees were resettled out of Turkey mostly to the United States and Canada but also a number of EU countries (Table 2).<sup>10</sup>

<sup>10</sup> The figure of refugees and resettled refugees has to be interpreted cautiously, as the grand figures included refugees with applications pre-dating 1995.

Table 2: Resettlement out of Turkey by Country of Origin and Country of Settlement

Country of Origin	Country of Settlement						
	Canada	USA	Oceania	Other Europe	Scandinavia	Others	Total
Afghanistan	192	258	3	17	89		559
Iran	4,841	10,061	2,921	269	3,667	12	21,771
Iraq	1,043	10,335	1,788	689	1,732	33	15,620
Africa	436	326	1	7	55		825
North Africa	15				1		16
Asia		34			13		145
Middle East	74	4	10	7	6	1	102
Bosnia Herzegovina		45		1			46
<b>Total</b>	<b>6,699</b>	<b>21,063</b>	<b>4,723</b>	<b>990</b>	<b>5,563</b>	<b>46</b>	<b>39,084</b>

Africa:	Angola, Burundi, Congo, Eritrea, Ethiopia, Ivory Coast, Pakistan, Rwanda, Sierra Leone, Somalia, Sudan
North Africa:	Guinea, Mauritania, Morocco, Libya, Tunisia
Asia:	Burma, China, India, Uzbekistan, Tajikistan, Turkmenistan, Kyrgyzstan, Sri Lanka
Middle East:	Jordan, Palestine, Syria, Egypt, Yemen
Oceania:	Australia, New Zealand
Other Europe:	Austria, Britain, France, Germany, Hungary, Ireland, Italy, Luxemburg, Netherlands, Spain, Switzerland, Ukraine, Greece, Poland, Czech Republic, Belgium
Scandinavia:	Denmark, Finland, Norway, Sweden
Others:	Azerbaijan, Bosnia Herzegovina, Dubai, Indonesia, Israel, Saudi Arabia, Syria, United Arab Emirates

Source: Data obtained from the Foreigners Department of MOI. Data current as of 10.1.2011.

## EU Rule Adoption and Transforming the Turkish Asylum System

It is extremely difficult to judge the impact and the timing of the EU's role in this process of transformation. This is the case because the EU came on to the scene at a time when a "paradigmatic shift" was occurring among Turkish officials, primarily a product of the UNHCR's long and patient engagement of Tur-

key. This was a shift from a paradigm that framed the issue of asylum policy from a primarily “national security” perspective to one that increasingly emphasized human rights and international refugee law. 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. In this respect, the consecutive *Accession Partnership* documents of 2001 and subsequent ones clearly induced Turkish officials to recognize that at some point the lifting of the geographical limitation would have to take place and that Turkey would have to adopt structural and institutional as well as legislative reforms. In 2002 the government formed a Task Force that brought together officials from various agencies, possibly for the first time in their history, to actually discuss what needed to be done to meet the conditions set by these documents. These documents also broadened the scope of the ongoing informal debate between officials directly dealing with asylum on the one hand and academics and experts as well as representatives of non-governmental organizations and the UNHCR on the other.

The EU's High Level Working Group (HLWG) on Turkey did also make funds and experts available for training seminars specifically on asylum.<sup>11</sup> 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.<sup>12</sup> Furthermore, the adoption of the NAAP was also critical given its acceptance to lift the geographical limitation despite the conditions it set. However, more important in this respect was the “twinning project” that the British and Danish governments supported. This project not only enabled Turkish officials possibly for the first time in their careers to work for months on a daily basis with their EU counterparts but the exercise also helped Turkish authorities to prepare the *Action Plan on Asylum and Migration* that was subsequently adopted by the government in March 2005.<sup>13</sup> This document in great detail identified both national legislation and the EU *acquis* on asylum and migration. It also laid out in broad outlines the tasks and time-table that Turkey intended to follow to prepare Turkey for the development of a fully fledged national status-determination system, lift the geographical limitation and adopt EU directives on asylum and migration in general.

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<sup>11</sup> For a detailed analysis of the HLWG of the EU, see Selm (2002).

<sup>12</sup> Exchange of email messages with a UNHCR official in Ankara.

<sup>13</sup> The Turkish National Action Plan for the Adoption of the EU *Acquis* in the Field of Asylum and Migration was officially adopted by the Turkish government on March 25, 2005.

The renewed *Accession Partnership* 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. The document also expected Turkey, in the area of asylum, to make visible progress in setting up reception centers for asylum seekers, to develop a country of origin information system, to introduce national asylum legislation and to set up a specialized administrative unit to deal with asylum and status determination. In the meantime, the screening process concerning Chapter 24 dealing with asylum was completed in 2007. The report of the Commission concerning the outcome of the screening process highlighted the gaps in the area of asylum and considers Turkey not to be compliant with the EU *acquis*.<sup>14</sup> However, the report to this day has still not been formally adopted as Cyprus and France continue to block the opening of accession negotiations on Chapter 24. Naturally, these developments aggravate doubts about the EU’s credibility and deeply influence Turkish public policy makers’ cost calculation.

Turkish decision-makers have been fully aware that previous candidate countries had to go through a similar “rule-adoption” process. They are also aware that there were a number of countries that had to lift their geographical limitations such as Hungary, Latvia and Malta and that the first two countries did so well before their accession negotiations started.<sup>15</sup> They also realize that they have to follow suit. However, they have faced a major dilemma provoked by their mistrust of the EU’s credibility in respect to the ultimate “reward” of membership. The greatest nightmare scenario for them is one in which they would find themselves lifting the geographical limitation without Turkey’s membership being taken seriously by the EU. Turkish officials are also conscious and deeply affected by the European public resistance to Turkish membership. They also have firsthand knowledge of the experience of their counterparts in some of the new member countries against which they can compare their own dilemmas and “cost-benefit” calculation matrices. They are deeply aware that their counterparts, when making a critical decision, were pretty much confident that eventually membership would take place. A high-level MOI official involved in asylum issues for almost a decade and an advocate of the reform of the Turkish asylum system put his deep concerns pretty

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<sup>14</sup> European Commission Enlargement (2010).

<sup>15</sup> These countries maintained their “geographical limitation” until 1998, 1997 and 2002 respectively.



bluntly. This official during a visit to Hungary to learn about the Hungarian experience of lifting their geographical limitation and putting into place a fully fledged asylum system had actually asked his Hungarian counterpart how they were able to take on financially and politically very costly decisions. The Turkish official reflected on how “his heart sank” when his Hungarian counterpart simply said that this was never a major concern for them because they were always sure that they would become a member of the EU at the end.<sup>16</sup>

Another issue that marks the cost calculation of Turkish officials is burden-sharing. Owing to its geographical location, Turkish officials are conscious that Turkey risks becoming a buffer zone or a dumping ground for the EU's unwanted asylum seekers and refugees. The adoption of the current *acquis* would make Turkey a typical “first country of asylum” responsible for status determination with membership and a “safe third country of first asylum” before then.<sup>17</sup> This raises considerable concerns among officials in terms of the economic, social and political implications. Turkish officials will expect to see burden-sharing mechanisms that would go beyond what the current Refugee Fund can offer.<sup>18</sup> Traditionally, refugees have been resettled out of Turkey. Turkish officials want to see an arrangement that would allow this practice to continue for some transitional period. However, the current *acquis* does not allow for such a practice.<sup>19</sup> This fear of becoming a buffer zone is also aggravated by Turkish officials' perception of a growing EU tendency to externalize its asylum policies and its efforts to create a “fortress Europe”. Ironically, these officials learn about the details of these policies from the very experts and representatives of non-governmental organizations that they encounter during training seminars and conferences. In other words, a Europe that tries to complicate if not deny access to asylum seekers to reach the EU is not setting a good example for Turkey in terms of harmonization and credibility.

Nevertheless, the impact of the transformation that has been going on in the area of asylum over the last decade had been nudging Turkey towards a position that is closer to the one that is more in parallel with EU demands. In June

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<sup>16</sup> The visit took place between May 22–26, 2006 as a part of a project supported by the British government and the International Catholic Migration Commission.

<sup>17</sup> Council of the European Union (2003).

<sup>18</sup> Commission of the European Communities Commission (1999), Council of the European Union (2000).

<sup>19</sup> The issue of burden-sharing has been one of the difficult challenges that member states faced in developing a common asylum policy; see Thielemann (2003, pp. 253–273), Thielemann (2005, pp. 807–824). This challenge has been greater in the case of candidate countries; see Byrne (2003, pp. 336–358).

2006 the Department, responsible for asylum matters, circulated an internal regulation<sup>20</sup> (Genelge) that, according to a high-ranking UNHCR official, “pleasantly surprised them”.<sup>21</sup> The document basically sends instructions to the police in general to speed and facilitate the implementation of tasks laid out in the *Action Plan*. In its introduction, it recognizes that the regulation aims to meet the standards mentioned in the 1951 Geneva Convention and the EU *acquis*. It introduces very specific measures that aim to improve access to the asylum system and ensure continuity for the trained personnel in their current position rather than to risk being moved to other irrelevant tasks as part of the standard rotation system. It lays out for the first time rules concerning the process of identity-determination of asylum seekers as well as clearly states that asylum seekers may well enter the country without identity and that this cannot be held against them.<sup>22</sup> Furthermore, this internal regulation also identifies the procedures to be followed to determine the outcome of an asylum application and appeal procedures for rejected cases. It also incorporates elements from current EU directives concerning country of origin information, provision of translation facilities and a positive interview environment. Lastly, it also underlines that refugees and asylum seekers having a valid residence permit would be entitled to a work permit, too, and it provides for the granting of “secondary” or “subsidiary” protection short of full refugee status. A 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.

However, this Regulation did not bring a major improvement in the situation of asylum seekers in Turkey. At least two reasons played a role in this outcome. Firstly, the enthusiasm to reform and adapt Turkish practice and policy to EU norms reflected in the NAAP and the *Action Plan* fizzled out as EU-Turkish relations began to deteriorate from late 2006 onwards.

The mood to resist “conditionality” and “rule adoption” was captured in a very telling manner by a high-ranking Turkish diplomat at a meeting in September 2007 with UNHCR officials. He made references to the Negotiation Framework and noted that “if the EU aims to keep the negotiations open-

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<sup>20</sup> İçişleri Bakanlığı (2006).

<sup>21</sup> Interview with a high-ranking UNHCR official.

<sup>22</sup> This is extremely fascinating because the principle that asylum seekers cannot be denied access to asylum procedures on the ground of false papers or no identity papers was a point that would come up regularly in the context of the discussion of the 1951 Geneva Convention.

ended so we shall also keep developments open-ended". He added the importance that Turkey attributes to "reciprocity" and noted that during the pre-accession period Turkey would adopt those rules and regulations that are deemed to benefit Turkey. Turkey on the other hand would keep an "open-ended" approach to the adoption of policies that do not offer mutual benefit. He gave the lifting of the geographical limitation as an example of an area where Turkey would be reluctant to adopt EU *acquis* as long as uncertainty over Turkish membership prevails.<sup>23</sup>

A second reason stemmed from the situation deteriorating in Iraq and also in Somali resulting in a sudden and significant increase in the number of asylum seekers coming to Turkey. This led to the security-oriented approach in Turkey to make itself felt again. One important consequence of this was an increase in cases of *refoulement* as well as a growth in complaints about access to asylum procedures. A growing number of non-governmental organizations, including the Turkish branch of Helsinki Citizens' Assembly, as well as the Human Rights Watch (HRW), became critical of government policies and published reports that attracted considerable public attention.<sup>24</sup> This was also followed in 2009 by a Council of Europe report prepared by Thomas Hammerberg raising very specific criticisms ranging from the practice of obliging asylum seekers to pay residence permit fees to inhumane conditions in detention centers. Most importantly, in 2009 the ECtHR in its decision *Abdolkhani and Karimnia* found Turkey in violation of a number of articles of European Human Rights Convention (EHRC) resulting from attempts to deport two Iranian refugees to Iran and for denying them access to contest deportation decisions. The ECtHR also sentenced Turkey to pay a substantial sum of reparations to the complainants. Furthermore, the Court concluded that Turkey failed to provide effective remedy opening the way for accepting applications without seeing the exhaustion of domestic paths to remedy. This decision became a turning point. During the period from 1991 to 2008 there had been 13 cases that were taken to the Court and only one had led to a conviction against Turkey. However, the case of *Abdolkhani and Karimnia* was followed by twelve additional cases culminating in rulings of convictions and most accompanied with demands for compensation to be paid to the complainants.

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<sup>23</sup> Information obtained from the diplomat and third parties present at the meeting.

<sup>24</sup> Helsinki Yurttaşlar Derneği (2007), Human Rights Watch (2008).

The growing criticisms and the rulings of the ECtHR had very visible effects. Firstly, the Minister of the Interior, Beşir Atalay, soon after the appearance of the HRW report, appointed in November 2008 two special inspectors to investigate the allegations in this report and also why commitments made to the EU in the context of the harmonization process were not being met. The investigation culminated in a major personnel change in the Department of Foreigners within the police while a new office, the Migration Unit tasked to prepare a draft law on asylum, was set up within the MOI. The office in an effort to address some of the more immediate practical complaints and criticisms initiated the adoption of a series of new regulations. The first of these regulations introduced the possibility to waive resident permit fees for asylum seekers and refugees as well as measures to improve access to asylum procedures and social services.<sup>25</sup> This was followed by two additional regulations introduced by the Social Services and Child Protection Agency as well as the Ministry of Education extending their services to asylum seekers and refugees.<sup>26</sup> Officials also recognized that ECtHR rulings were “raining on Turkey” and that “the current situation is becoming untenable”.<sup>27</sup> Turkey did not have any other choice but to reform its asylum policies.

It is against such a background that a draft law was prepared and sent to the Prime Minister’s Office in January 2011. This is a law that addresses practically all the issues raised in the most recent *Accession Partnership* of 2008<sup>28</sup> as well as the “informal” screening report mentioned above short of lifting the geographical limitation. It incorporates the current EU *acquis* and foresees the setting up of a separate authority to deal with asylum and other migration-related issues including provisions to improve the integration of refugees. Nevertheless, there is a consensus shared by academics, experts and UNHCR officials that the draft law and the manner in which this draft has been prepared signify a major transformation in Turkey’s asylum policy. It is not surprising that the

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<sup>25</sup> İçişleri Bakanlığı (2010).

<sup>26</sup> Sosyal Hizmetler ve Çocuk Esirgeme Kurumu (2010).

<sup>27</sup> Remarks shared with the author on a number of occasions, in particular during the MiReKoç conference on “Critical Reflections in Migration Research: Views from the South and the East”, October 7–9, 2009, Koç University, Istanbul.

<sup>28</sup> The Accession Partnership calls for making “progress in the preparations for the adoption of a comprehensive asylum law in line with the *acquis* including the establishment of an asylum authority” (Council of the European Union [2008, p. 13]) under “short term priorities” and for continuing “with alignment with the *acquis* in the field of asylum, in particular through the lifting of the geographical limitation to the Geneva Convention and through strengthening protection, social support and integration measures for refugees” (Ibid, [p. 17]), under “Medium Term Priorities”.

United Nations High Commissioner for Refugees Antonio Guterres became the first ever High Commissioner to visit Turkey in November 2010. He used the occasion both to praise the government for an open consultation process it adopted in preparing the law and for drafting a law that enlarges the protection space for asylum seekers.<sup>29</sup> The UNHCR representative in Ankara stressed the similar remarks during the opening of a conference on the "Tradition of Asylum in Turkey". Furthermore, the draft law offers provisions to prevent the danger of deportation of any person to countries where their life may be in danger or where they risk being tortured as well as provisions that aim to ensure the improvement of detention conditions and access to judicial review.

Hence, the adoption of this draft law needs to be seen as a function of as much the socialization effect of the UNHCR and ECtHR on Turkey as harmonization with EU *acquis*. This was strikingly evident when the head of the Migration Unit but also the permanent secretary of the MOI during a UNHCR organized local conference in Ankara in January 2011 emphasized in their speeches the importance in addressing the human rights of asylum seekers. Both officials argued that the draft law represented a shift in mentality away from a purely security- (asayiş) driven approach to one where the focus would be on human rights. They also added that the law also reflected a desire "to do things for ourselves (kendimiz için yaptık) because that it is only such a law that would live up (yakışır) to a Turkey that has become the 16<sup>th</sup> largest economy in the world". Undoubtedly, these are words that do represent political considerations and a desire to curry favor with the public and international community. The conference was after all organized by the UNHCR, was attended by the diplomatic corps in Ankara and was held just before the first-ever visit of a United Nations High Commissioner for Refugees to Turkey. However, this kind of language was absent in the discourse of high-level officials previously and it is also highly unusual that Turkish bureaucrats will speak, even implicitly, critically of a previous practice in front of a public audience attended by foreign officials. For someone who has observed the asylum scene in Turkey since 1989, I believe this transformation in language can at least partly be attributed to a greater sense of associating oneself with the broader international community dealing with asylum issues.

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<sup>29</sup> Today's Zaman (2010).

## Conclusion

This paper focused on the adoption of a draft law on asylum that aims to reform Turkey's asylum policy and practice. The law would open the way to Turkey meeting most of the requirements set by the EU short of the lifting of the geographical limitation to the 1951 Geneva Convention. This is a stark reminder of the limits of EU "conditionality". Otherwise a strong inducer of reform, in the case of Turkey it is problematic. EU-Turkish relations have reached a point where on the Turkish side the expectation of eventual membership occurring is low. Asylum actually belongs to a chapter that is currently blocked from being opened by the vetoes of a number of member states. Hence, the paper argued that at least part of the explanation for reform lies in the influence that the UNHCR and the ECtHR have enjoyed. In the case of the UNHCR, this influence has been spread across almost two decades during which the UNHCR contributed to the socialization of Turkish officials and civil-society representations to the norms of international refugee law. In the case of ECtHR, the influence is much more recent and more of a direct one. The authors of the draft law openly acknowledge this influence by referring to the rulings of the Court against Turkey and the need to respond to it. It will actually be interesting to follow the fate of this draft law and see what happens when the legislative process starts. The ultimate test of where the balance among these three institutions as inducers of reform lie will surely become much clearer once the law becomes operational and starts to be implemented. The ultimate test, however, will still depend on the lifting of the geographical limitation and that seems unlikely to happen unless the prospects of EU membership for Turkey become credible.

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