

JUSTICE AND HOME AFFAIRS: EUROPEANIZATION OF TURKISH ASYLUM AND IMMIGRATION POLICY IN THE LIGHT OF THE CENTRAL AND EASTERN EUROPEAN EXPERIENCE

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ÖZET

Avrupa Birliđi, göç ve iltica alanlarında kendine özgü bir politika geliştirme aşamasındadır. Orta ve Dođu Avrupa genişlemesi örneğinde olduđu gibi, tam üyeliđin bir koşulu olarak Türkiye'nin de oluşmakta olan bu politikaya uyum sağlaması beklenmektedir. Ancak bu dönüşüm bazı olumsuz dışsallıkları da beraberinde getirecektir. Orta ve Dođu Avrupa ülkeleri ile Türkiye gittikçe daha fazla olarak; yaratılmaya çalışılan bir 'Avrupa Kalesi' nüvesi etrafındaki tampon devletler biçimine dönüşmektedir. Bununla birlikte uyum süreci, özellikle insan hakları bakımından olumlu yönler de barındırmaktadır. Etkili bir uyum için AB'nin teknik ve mali yardımı çok önemlidir. Diđer yandan Türk yetkililerinin de, ileride uygulama aykırılıklarına meydan vermemek için Adalet ve İçişleri müktesebatını benimsemekte hız kazanması gerekmektedir.

Anahtar Kelimeler: Göç, iltica, AB Genişlemesi, Avrupalılařma

ABSTRACT

European Union is on the way to developing a distinctive regime of policy over asylum and immigration. As in the case of Central and Eastern European enlargement, Turkey is expected to adopt this regime fully as a precondition for full EU membership. However, this transformation process has some negative externalities for Turkey.

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CEECs and Turkey gradually are gradually turning out to be buffer states around the core of a 'European Fortress', which is being tried to be shaped. Concomitantly, harmonization process also includes positive aspects, especially over human rights issues. For a successful transformation, EU technical and financial assistance will be crucial. On the other hand, Turkish officials should speed up their efforts to incorporate JHA *acquis* in order to prevent divergences in practice in the future.

Keywords: *Immigration, Asylum, EU Enlargement, Europeanization*

Introduction

Turkey's turbulent adventure with the European Union (EU) dates back to 1963, Ankara Agreement. The course of the relationship has changed dramatically with the Helsinki summit-1999, when Turkey was declared as an official candidate. It was then stated that Turkey had to fulfil the Copenhagen criteria for full membership. Following the declaration by the Brussels European Council -December 2004- that "Turkey sufficiently fulfils the Copenhagen political criteria"; accession negotiations have been formally commenced on 3 October 2005. Consequently, the screening process on each chapter has been initiated since 20 October 2005. It is clear that, once the *actual* accession negotiations start, the adoption of the *acquis communautaire* in Justice and Home Affairs (JHA) area will turn out to be a quite thorny issue, especially over asylum and immigration. EU Member states have gradually developed a distinct regime in these areas since the abolition of internal borders and this is on the way to become one of their core common policies. An important obligation for any candidate state is to take on this emerging policy before full membership as a part of conditionality. In this respect, one can speak of a transformation, i.e. 'Europeanization', of Turkish asylum and immigration policies.

In this paper, Europeanization refers to a process in which the EU exports forms of political organization and penetrates into national administrations so as to "become a part of the logic of the domestic discourse, identities, political structures and public policies"¹. The process is rather top-down and based on asymmetrical power relationship for the candidate states. We observe this in Turkish-EU relationship as in the case of Central and Eastern European countries (CEECs). Comparative inquiry with the last enlargement provides clues on the future course of the Turkish case; bearing in mind the frequent statements of European actors about the fair assessment of Turkish candidacy in comparison with the CEECs.

In the first part, a brief account of the evolution of European cooperation on asylum and immigration policies is provided. The experiences of the CEECs are

¹ C.M. Radaelli, "Europeanization of Public Policy" in K. Featherstone and C.M. Radaelli (eds.) **The Politics of Europeanization**, Oxford, Oxford University Press, 2003, p.30. See also J.P. Olsen, "The Many Faces of Europeanization" **Journal of Common Market Studies**, vol.40, no.5, 2002.

discussed in the second part and finally Turkish law and policies are evaluated within the context of the ultimate goal of EU membership.

The Evolution of European Cooperation

One can define the period from 1950s to early 1970s as a 'liberal phase' of asylum and immigration policies in Europe, coincided with the economic boom and intake of large numbers of labour migrants². From 1970s onwards, this liberal phase has been replaced by a new era with the gradual introduction of restrictive and exclusionary reforms due to economic recession and the subsequent backlash of xenophobia.

The 1980s was the decade of the relaunch of European integration with the aim of establishing of a single market by 1992. Until that day immigration policy was firmly a national prerogative. The creation of a single market and abolition of internal borders urged member states to cooperate in asylum and immigration matters as a necessary compensatory measure to safeguard internal stability and security.

The first initiatives developed outside the Community framework: TREVI³ and Ad Hoc Group Immigration. These initiatives culminated with the adoption of 'Dublin Convention'⁴. Another important outcome was achieved with the adoption of the first Schengen Agreement on the Gradual Abolition of Checks at the Common Borders of 1985. In 1990, the second Schengen Agreement [Convention] was signed. France, Germany and the Benelux countries were the first signatories; then Portugal, Spain, Italy (1991) and Greece (1992) joined to the agreement. All member states, except the UK and Ireland, have participated in the Schengen initiative⁵.

Confronted with the immigration crisis at home after the opening up of the Eastern bloc in 1989, Germany sought solutions in the European arena and pushed migration and policing on to the agenda for the 1991 IGC⁶. As a solution, the Maastricht Treaty integrated cooperation on asylum, external borders, immigration, drugs, fraud, and judicial, customs and police cooperation in a separate pillar structure. The so-called 'Third Pillar' was exclusively intergovernmentalist, showing the high priority attached to these issues firmly related with national sovereignty. However, new arrangement failed to satisfy the initial aspirations. The obscure nature of instruments available, their

² See S. Lavenex, **Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe**, Budapest, Central European University Press, 1999.

³ For a detailed analysis of TREVI in Turkish, see E. Beşe, "Avrupa Birliği'nin Adalet ve İçişleri Politikası" in M. Kar and H. Arıkan (eds.) **Avrupa Birliği Ortak Politikalar ve Türkiye**, İstanbul, Beta Yayın Dağıtım, 2003.

⁴ Dublin Convention on the State Responsible for Examination of an Asylum Claim of 1990, OJ C254, 19.08.1997.

⁵ The implementation of Schengen was delayed until 1995 and Dublin Convention entered into force only in 1997.

⁶ P. Turnbull and W. Sandholtz, "Policing and Immigration: The Creation of New Policy Spaces" in A.S. Sweet, W. Sandholtz and N. Fligstein (eds.), **The Institutionalization of Europe**, Oxford, Oxford University Press, 2001.

informal and non-binding character, the limited judicial control and the democratic deficit due to the limited involvement of the European Parliament; last but not least, the unanimity requirement at the decision-making all led to the failure and ineffectiveness of the Third Pillar.

“The Treaty of Amsterdam marked a fundamental point in European immigration and asylum policy”⁷. In Article 2(4) of the Treaty, the objective of the Union is stated as “to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. The most significant innovation was the transference of many hitherto Third Pillar policy fields to the supranational first pillar under a new title (IV) called ‘Visas, Asylum, Immigration and other Policies related to the Free Movement of Persons’, hence *communitarization* of asylum and immigration policies⁸. A five-year transitional period was envisaged in which each member state would share the right of initiative with the Commission⁹. The powers of Parliament and Court of Justice were increased, albeit still limited. Another innovation was the incorporation of the Schengen *acquis* into the EU framework with a protocol annexed to the Treaty.

One should also remind of the decisions adopted by the special European Council at Tampere in October 1999. These included cooperation with countries of origin in order to reduce asylum and immigration pressure and a more active EU policy on the integration of third country nationals and measures against racism and xenophobia. “More ambitious proposals aimed at creating a ‘single’ asylum policy with harmonization of basic national rules failed, however”¹⁰. As a result, national practices dominate the field; yet at the EU level, there incrementally emerges a distinct ‘common’ regime that looks like a laboratory yard rising decisively¹¹. The ambitions and priorities of the recent ‘Hague programme’, which has been adopted in November 2004, are testimony to the contentious nature of building a common policy.

The emergent EU regime can be best described as restrictive. The new regime seeks to fight against illegal migration and reduce the number of asylum seekers through limitation of access to the territory, via strengthening of external borders of the

⁷ M. Fletcher, “EU Governance Techniques in the Creation of a Common European Policy on Immigration and Asylum” **European Public Law**, vol.9, no.4, 2003, p.535.

⁸ S. Stetter, “Regulating migration: authority delegation in justice and home affairs” **Journal of European Public Policy**, vol.7, no.1, March 2000, p.93.

⁹ With the Protocol on Article 67 of the Treaty Establishing the European Community annexed to Nice Treaty, from 1 May 2004 onwards, co-decision procedure has been enacted.

¹⁰ J. Monar, “Justice and Home Affairs after Amsterdam: The Treaty Reforms and the Challenge of their Implementation” in J. Monar and W. Wessels (eds.) **The European Union after the Treaty of Amsterdam**, London, Continuum, 2001, p.291.

¹¹ Compare J. Monar, “The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs” **Journal of Common Market Studies**, vol.39, no.4, 2001, pp. 747-764; and E. Tezcan, **Avrupa Birliği Hukuku’nda Birey**, İstanbul, İletişim Yayınları, 2002.

Union and the introduction of extensively strict visa policies. “These changes often included new visa requirements, new practices such as carrier sanctions, and other measures such as curtailed social assistance to asylum seekers, detention, expulsion, and most importantly emergent new norms that included the notions of safe country of origin, safe third country, and manifestly unfounded claims”¹². Restrictive practices are summarized by Sandra Lavenex¹³ as in Table 1:

Table 1: Restrictive elements in the EU asylum acquis

Stage of the Asylum Procedure	Measures
1. Limitation of access to EU territory	<ul style="list-style-type: none"> • Visa policies • Carrier sanctions • ‘Reception in the region’ • Biometrics
2. Limitation of access to asylum procedures	<ul style="list-style-type: none"> • ‘First host country’ rule in the Schengen and Dublin conventions
3. Downgrading of procedural safeguards	<ul style="list-style-type: none"> • Rules on ‘manifestly unfounded’ asylum claims • ‘Safe country of origin’ rule • Accelerated procedures
4. Protection outside the framework of the Geneva Convention	<ul style="list-style-type: none"> • ‘Temporary protection’ • ‘Reception in the region’
5. Enhancement of return facilities	<ul style="list-style-type: none"> • Readmission agreements

The purpose of the main instruments, namely the Schengen and Dublin Convention, is “to ensure that only one Signatory state is responsible for the investigation of an asylum application”¹⁴. This is intended to prevent multiple requests which would represent an abuse of asylum procedures or ‘asylum shopping’. Another accepted practice is the adoption of ‘safe third country’ rule, introduced in 1992 by the London Resolutions. This is “based on the rationale that an asylum claim shall be examined by the first country with which the applicant has had contact”¹⁵. It actually means to transfer the responsibility of granting asylum right to the transit ‘safe’ countries through readmission agreements¹⁶. This has an outright impact on CEECs as well as Turkey, with their unilateral incorporation into the emergent EU regime “as

¹² E.M. Uçarer, “Managing Asylum and European Integration: Expanding Spheres of Exclusion?” *International Studies Perspectives*, vol.2, no.3, 2001, p.293.

¹³ S. Lavenex, “The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies” *Journal of Common Market Studies*, vol.39, no.5, 2001, p.860.

¹⁴ K. Hailbronner and C. Thiery, “Schengen II and Dublin: Responsibility for Asylum Applications in Europe” *Common Market Law Review*, 34, 1997, p.964

¹⁵ Lavenex, *op.cit.*, 1999, p.51.

¹⁶ “... The ‘safe third country’ rule has no foundation in international law. International customary law imposes the obligation on states to take back their *own* citizens, but not third-country nationals ... This lack of a legal basis has been resolved by the conclusion of bilateral readmission agreements”, *Ibid.*, p.78.

gatekeepers for asylum seekers and immigrants heading for Western Europe¹⁷, due to the fact that they have to take back persons who crossed their territories as transit lands.

Exporting The EU *ACQUIS* to the CEECs

The Europeanization of refugee policies in CEECs is caught in between two contradictory trends: one is the transition to democracy and adoption of basic Western liberal, humanitarian values and norms; and the other is the import of increasingly restrictive policies emanating from the EU on a securitarian framework¹⁸. The cooperation among the EU members has been to a large extent inspired by safeguarding of internal security. The fear of vast numbers of immigrants reaching the borders of the core EU members has induced them to demand CEECs to be incorporated into the emerging EU regime which is designed to stem illegal immigration and reduce possible asylum seekers. In exchange for EU membership, CEECs had to accept these policies and implement domestic reforms to meet Western requirements. "The threat of exclusion is actively used to help with the expansion of EU JHA regime to the CEECs which forces them to adopt much more restrictive approaches than they used to have"¹⁹. CEECs did not have a possibility of opting-out or choosing what parts of the rules they considered as suitable for their national interests, even though such an option for derogation exists for the UK, Ireland and Denmark²⁰. This was a highly asymmetrical relationship with no formal contribution to the policy-making process, yet the fulfilment of these conditions was a sine qua non condition for their accession to the Union.

¹⁷ *Ibid.*, p.51.

¹⁸ See S. Lavenex, **The Europeanization of Refugee Policies: Between Human Rights and Internal Security**, Aldershot, Ashgate, 2001; for an excellent account of the inherent contradictions between human rights and internal security. Discursive aspects are analysed in J. Huysmans, "The European Union and the Securitization of Migration" **Journal of Common Market Studies**, vol.38, no.5, December 2000, p.751-777.

¹⁹ J. Monar, "Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion" **ESRC 'One Europe or Several?' Programme Working Paper 07**, 2000, p.27, <www.one-europe.ac.uk/pdf/monarW7.PDF>

²⁰ Compare K. Hailbronner, "European Immigration and Asylum Law under the Amsterdam Treaty" **Common Market Law Review**, vol.35, no.5, October 1998, p.1047-1067 and R. Koslowski, "European migration regimes: emerging, enlarging and deteriorating" **Journal of Ethnic and Migration Studies**, vol.24, no.4, October 1998, p.735-749. Article 8 of the Schengen Protocol annexed to the Amsterdam Treaty is very explicit in its wording: "For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission". On this conditionality see, for instance, L. Borissova, "The Adoption of the Schengen and the Justice and Home Affairs Acquis: The Case of Bulgaria and Romania" **European Foreign Affairs Review**, 8, 2003, p.105-124.

Table 2: Ratification of the Geneva Convention by the CEECs²¹

State	Date of entry into force of the Geneva Convention	Date of entry into force of the 1967 Protocol
Hungary	12 June 1989	14 March 1989
Poland	26 December 1991	27 September 1991
Slovenia	25 June 1991	25 June 1991
Romania	5 November 1991	7 August 1991
Slovak Republic	1 January 1993	1 January 1993
Czech Republic	1 January 1993	1 January 1993
Bulgaria	10 August 1993	12 May 1993
Lithuania	27 July 1997	28 April 1997
Estonia	9 July 1997	10 April 1997
Latvia	29 October 1997	31 July 1997

As shown in Table 2, all the CEECs ratified the basic international texts, i.e. UN Geneva Convention relating to the Status of Refugees of 1951 and New York Protocol of 1967, so the right of *non-refoulement*²² is transposed into their national laws. This happened immediately after the transition, but in Baltic States ratification occurred relatively late. Hungary insisted to hold a geographical limitation, which was intended to cover only 'refugees coming from Europe', but had to lift it in 1998 under the pressure from the EU and NGOs. This coupled with creation or unification of central administrative bodies for asylum checks. Judiciary was reorganized in order to enhance more precise and faster procedures to treat appealed asylum cases. The Commission demanded more transparent procedures, as in the example of 1999 Progress Report for Bulgaria, which criticized the new law on refugees for giving the police too significant role in the process of examining requests for asylum. The Commission also assisted in the establishment of new reception centers and upgrading facilities for refugees. It was carried out under the PHARE programme and "from 1997 to 2001, a total of 541 million euros were allocated under the PHARE programme to various programs in the JHA domain"²³.

Another high priority of the EU was its firm stand on the conclusion of readmission agreements with the CEECs. It is a strategy to extend the redistributive system established with the Schengen and Dublin Conventions. Given the fact that the CEECs are countries of origin and transit for migration, these agreements clearly signify

²¹ In K. Hailbronner, *Immigration and Asylum Law and Policy of the European Union*, The Hague, Kluwer Law International, 2000, p.29.

²² *Non-refoulement* norm is the obligation of states not to return people demanding protection to countries where they would risk serious human right violations and it is regulated by the Article 33 of the Geneva Convention.

²³ J. Monar, "Justice and Home Affairs after the 2004 Enlargement" *The International Spectator*, vol.38, no.1, 2003, p.11.

the driving away the burden of unwanted migrants back to the CEECs²⁴. The first of such agreements was the multilateral readmission agreement between Poland and Schengen countries, signed in 1991. It was followed by bilateral agreements between EU member states and the CEECs²⁵. Such agreements were accompanied by financial transfers; for instance, Germany transferred 150 million DM in exchange for bilateral agreement with Poland²⁶. At the same time, the CEECs concluded similar agreements with their eastern neighbours, therefore further spread the responsibility to the East. This move is highly criticized by human rights organizations as it diminishes refugee protection and the chain conclusion of such agreements might result deportation to countries where persons fear execution threat.

The common visa policy consists of the introduction of a common list of those countries whose nationals require a visa to enter the Schengen territory, a common visa format and common rules for the issuing of these visas. There is a common list of third countries whose nationals need visas: "negative list"²⁷. The CEECs had to positively align the visa legislation with the EU. However as Elena Jileva noted, the EU exported its visa arrangements "as a matter of technical adjustment, without justifying its own visa policy to reflect the sensitivities of the CEECs"²⁸. Most of the CEECs had reciprocal visa-free regimes with their eastern neighbours. All of them were reluctant to impose visa obligation to Russian, Ukrainian, and Belarusian citizens. Slovakia introduced visa for Ukrainian citizens in June 2000 as part of the implementation of the Schengen acquis and it has been followed by a significant drop in border crossings from 1.7 million persons in 1998 to 0.3 million in 2001 and implementation of the 1997 Polish Aliens Act had similar effects²⁹. Poland had a vested interest in maintaining ties with Ukraine and its unwillingness to impose visa requirement lasted until 2003. For Hungary, situation is similar as there are large ethnic Magyars outside its borders and introduction of visas has a deteriorating effect on socioeconomic and cultural ties of these minorities with their homeland³⁰. On the other hand, because of insufficient control on immigration and control at external borders, the EU maintained visa

²⁴ K. Pollet, "The European Union and Migratory Pressure from the Mediterranean and Central and Eastern Europe" in M. Maresceau and E. Lannon (eds.), *The EU's Enlargement and Mediterranean Strategies: A Comparative Analysis*, New York, Palgrave, 2001.

²⁵ Council issued a recommendation on 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country; OJ C274/20, 19.09.1996

²⁶ Lavenex, *op.cit*, 1999, p.145.

²⁷ Council Regulation no.539/2001 of 15.03.2001, listing all third countries whose nationals must be in possession of visas (OJ L81, 2001) and amended by Regulation no.2414/2001 (OJ L327, 2001).

²⁸ E. Jileva, "Larger than the European Union: The Emerging EU Migration Regime and Enlargement" in S. Lavenex and E.M. Uçarer (eds.), *Migration and the Externalities of European Integration*, Oxford, Lexington Books, 2002, p.78.

²⁹ I. Piorko and M.S.D. Ho, "Integrating Poland in the Area of Freedom, Security and Justice" *European Journal of Migration and Law*, 5, 2003, p.194-5.

³⁰ See J. Toth, "The Consequences of Accepting EU Identity: The Case of Hungary and Ethnic Minorities" in K. Groenendijk, E. Guild and P. Minderhoud (eds.), *In Search of Europe's Borders*, The Hague, Kluwer Law International, 2003.

requirement for Bulgaria and Romania up until April 2001 and January 2002 respectively.

Tightening of external borders is seen as vital for the survival of internal freedom of movement. The suppression of internal border controls corresponds with the enforcement of external border controls: "Extending Schengen eastwards thus implies a bargain: freer movement westwards at the price of not allowing free movement from the east"³¹. The EU demands the modernization and effective surveillance of the borders. In Agenda 2000, the Commission was particularly concerned with the problem of organizing tight border controls³². Again, in all Accession Partnerships, emphasis was laid down on improving border management. PHARE funds were channelled to modernize border posts and provide additional training. It encouraged aggravated punishments for illegal frontier crossings, too. Strict borders and visas have significant negative externalities on disruption of bilateral relationships and economic ties. When Leonid Kuchma, President of Ukraine, spoke of "the EU is replacing the Iron Curtain with a paper curtain" in 1999, it was not too far-away from the reality³³.

For the applicant countries, the mere formal transposition of EU legislation is not enough. The CEECs face important implementation problems coupled with financial burdens, lack of adequate staff and their training. In order to cope with these hurdles, the Commission launched an overarching cooperation programme called ODYSSEUS to promote the exchange of public officials who are working in the fields of asylum, immigration and border enforcement. Twinning projects, in particular, were implemented for horizontal policy transfer, both in technical know-how and cultural terms.

As to the consequences of this overall transformation, the CEECs are rapidly being converted from emigration and transit countries into receiving countries. This point has been stressed in various Progress Reports, too. The number of asylum seekers began to rise. "Hungary, for instance, has seen its asylum applications 'explode' from 1998 onwards, which has led to administrative overburdening, inadequate legal procedures and a huge backlog in the treatment of asylum applications"³⁴. It can be concluded that the CEECs are becoming a new form of buffer zone for the EU. For instance, a recent

³¹ H. Grabbe, "The sharp edges of Europe: extending Schengen eastwards" *International Affairs*, vol.76, no.3, 2000, p.527.

³² Nevertheless, the EU did not hesitate to include Baltic States whose borders are not demarcated legally. "It would be politically difficult to justify such a precedent, of allowing a state into the European Union without full and legitimate recognition of all of its borders" D. Brown "The New Hurdle: The Prospects for Polish and Estonian Accession to 'Pillar III' in the Post-Tampere European Union" *Perspectives on European Politics and Society*, vol.1, no.1, p.161. Such inconsistency originated because of the EU's decided position not to allow Russia to impede Baltic States' integration to the Union.

³³ Grabbe, *op.cit.*,

³⁴ J. Monar, "EU Justice and Home Affairs in the Eastward Enlargement: The Challenge of Diversity and EU Instruments and Strategies" *ZEI Discussion Paper C91*, 2001

UNHCR report reveals the fact that asylum seekers during 2004 in Poland and the Slovak Republic were the highest on record, alongside with Cyprus, Finland and Malta. Despite a 21% drop of asylum requests in 15 old EU member countries, the 10 new EU countries recorded a 4% increase in asylum-seekers³⁵.

Meanwhile, much exaggerated fears of immigration *from* the CEECs were not realized. "Fears of EU countries being flooded with workers from the East have however resulted in the imposition of a transitional period lasting up to seven years after accession during which free movement of CEE citizens in the current EU member states will be limited"³⁶.

Turkish Asylum And Immigration Policies

The main source of refugee law is the UN Geneva Convention relating to the Status of Refugees of 1951, of which Turkey, among other Western European states, ratified in 1961. The scope of the Convention was initially limited to the political events occurring as a result of ideological confrontation between the Eastern and Western blocs in Europe before 1951. Yet the time limit was removed with the ratification of the New York Protocol of 1967. Turkey has chosen to hold on the option of geographical limitation until now, which means that Turkey grants the right of asylum only to the persons with European origins. "This geographical limitation has been a central characteristic of Turkey's asylum policies and has traditionally drawn criticism from western governments as well as refugee advocacy and human rights groups"³⁷.

Table 3: Asylum Applications to Turkey 1995-2005³⁸

Asylum status recognized	20.545
Application rejected	6.869
Ongoing processes	11.732
Abandoned process	1.761
Total number of Asylum Applications	40.898

³⁵ UNHCR, *Asylum Levels and Trends in Industrialized Countries*, <www.unhcr.ch/statistics>, 2004, p.4.

³⁶ V. Mitsilegas, "The Implementation of the EU *acquis* on illegal immigration by the candidate countries of Central and Eastern Europe: challenges and contradictions" *Journal of Ethnic and Migration Studies*, vol.28, no.4, 2002, p.670. "The EU adopted a 2+3+2 formula which states that the situation will be reviewed after 2 years and then again after 3" A. Geddes, *The Politics of Migration and Immigration in Europe*, London, Sage Publications, 2003, p.180.

³⁷ K. Kirişçi, "The Question of Asylum and Illegal Immigration in European Union-Turkish Relations" *Turkish Studies*, vol.4, no.1, 2003, p.83.

³⁸ Numbers given in the screening meeting presentation available at <www.abgs.gov.tr> 13.02.2006. 95% of these asylum seekers have arrived from Iraq and Iran.

Accordingly, there have been two categories in Turkish asylum policy. First group is under the scope of the Geneva Convention. It largely consisted of asylum seekers fleeing the Soviet bloc during the Cold War. Their numbers were relatively insignificant and they were resettled in third countries. With the end of Cold War, the flow of asylum seekers from Eastern Europe came to a halt, but the emergence of ethnic tensions in the region caused further displacement of populations. "Turkish authorities in general have refrained from granting refugee status to Azeris, Ahiska Turks, Chechens and Uzbeks"³⁹. Similarly, Turkey refrained from applying the provisions of the Geneva Convention to Bosnian Muslims and refugees from Kosovo. Rather, they were granted 'temporary protection', as Europeans also did.

For the second group, Turkey had a flexible and pragmatic policy towards 'non-Convention' refugees who came from geographical regions outside of Europe. Although authorities frequently stated that they have no obligations to recognize such refugees, they granted temporary residence permits to them unless they became a national security matter. During the 1980s, more than one million Iranian regime opponents fled to Turkey. It was made easier due to absence of visa requirement for Iranian nationals. These Iranians were granted residence permits until they were resettled in other third countries through the Office of UNHCR. This humanitarian approach changed when Turkey was faced with a mass refugee crisis in April 1991 from northern Iraq. Turkey was reluctant to apply asylum procedure for half a million Kurdish refugees. Instead it tried to create a 'safe haven' for refugees in northern Iraq with the help of the United Nations. This crisis led to the introduction of the November 1994 Regulation on Asylum⁴⁰. The regulation was prepared with a highly state-centric logic which led to "the a priori codification of asylum seekers as security threats"⁴¹. Status determination was brought under the control of Ministry of Interior and strict rules were laid down concerning time limit, places to apply and illegal entries. There was a five day time limit for filing an application. Stringent observance of the rule by the Ministry drew criticism from organizations including European Court of Human Rights. In one of its judgments, the Court stated that "automatic and mechanical application of such a short time-limit for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention [European Convention on Human Rights]"⁴². Subsequently, the time limit for filing an asylum

³⁹ K. Kirişçi, *Justice and Home Affairs Issues in Turkish-EU Relations: Assessing Turkish Asylum and Immigration Policy and Practice*, İstanbul, TESEV, 2001, p.4.

⁴⁰ "Regulation 1994/6169 on the Procedures and Principles Applicable to Possible Population Movements and to Foreigners Reaching Turkish Borders with the Purpose of Seeking Asylum from Turkey or Requesting Residence Permits with a View to Seeking Asylum from Third Country, either as Individuals or in Groups" Official Gazette no.22127, 30.11.1994. It has been amended by Regulation 2006/9938, Official Gazette no.26062, 27.01.2006.

⁴¹ A. İçduygu and F. Keyman, "Globalization, Security and Immigration: The Case of Turkey" *Global Governance*, vol.6, no.3, 2000, p.384.

⁴² ECHR Case of Jabari vs. Turkey (40035/98) 11.07.2000. Compare also K. Kirişçi, "UNHCR and Turkey: Cooperating for Improved Implementation of the 1951 Convention relating to the Status of Refugees" *International Journal of Refugee Law*, vol.13, no.1/2, 2001, pp.71-97.

application was increased from five to ten days in 1999. Turkish officials gradually extended their willingness to collaborate closely with UNHCR and other NGOs. Refugee-receiving governments also influenced Turkish policies through diplomatic channels.

After the Helsinki summit declaration of Turkish official candidacy, the EU gained an unprecedented leverage over Turkish asylum policy and practice. Accession Partnership Document (APD) is clear-cut on its medium-term priority about the lifting of geographical reservation. Additionally, in every annual Progress Report, this point has been continuously stressed. National Programme⁴³ in turn declares that

“lifting the geographical reservation ... will be considered in a manner that would not encourage large-scale refugee inflows from the East, when the necessary legislative and infrastructural measures are introduced, and in the light of the attitudes of the EU Member States on the issue of burden-sharing”.

Though bound by conditions, Kemal Kirişçi views it as “a revolutionary departure from previous practice”⁴⁴. Turkish government is currently drafting a comprehensive Asylum and Aliens Law, but the draft law has not been publicized yet. A National Action Plan on Asylum and Immigration Issues has been adopted on 25 March 2005⁴⁵. Plan has been the culminated result of a EU twinning project⁴⁶. It embraces the year 2012 as the target for lifting of ‘geographical reservation’. It also envisages the establishment of a separate civilian unit which will solely be responsible with these issues. Besides, as Turkey will gradually be a country of first asylum, non-inclusive practices for asylum seeker will have to be revised. This will be achieved with the revision of the Law on Settlement (no.2510) dating from 1934 and restricting the possibility of settlement and integration only to people of ‘Turkish descent and culture’.

Turkey is also under obligation to build refugee guesthouses and reception centers. Social and welfare rights provided for refugees should be harmonized with that of the – though diminishing- EU standards. “In theory asylum seekers and refugees are entitled to work and receive social assistance in Turkey. However, in practice acquiring a work permit is next to impossible”⁴⁷. Turkey will face problems with financing the transformation and it is critical that the EU should share some of the burden with its

⁴³ National Programme for the Adoption of the Acquis, Republic of Turkey, Official Gazette, no.25178, 24.07.2003.

⁴⁴ Kirişçi, *op.cit.*, Justice and Home ... 2001, p.9

⁴⁵ The Action Plan, together with all relevant legislation can be found in **Asylum and Migration Legislation**, Ankara, UNHCR Turkey and Turkish Ministry of Interior, 2005, <www.unhcr.org.tr>.

⁴⁶ Twinning project TR02-JH-03: Support for the Development of an Action Plan to Implement Turkey’s Asylum and Migration Strategy’, with the partners Denmark and the UK.

⁴⁷ Kirişçi, *op.cit.*, Justice and Home ... 2001, p.10. Elizabeth Frantz provides an insightful account of the problems of refugees in Turkey: **Report on the Situation of Refugees in Turkey**, 2003, <www.aucegypt/academic/fmrs/Reports/TurkeyReport.pdf>.

financial contributions. Part of this assistance available now goes to personnel training and organizational restructuring in Turkey.

Another aspect of Turkish-EU relationship is Turkish refugees in Europe. Especially during the 1990s, large number of Turks -particularly Kurds- sought asylum in European countries. Between 1990 and 1999, 335.900 Turkish nationals sought asylum in Western Europe, ranking as the third country after the Former Yugoslavia and Romania⁴⁸. Once Turkey enters the EU, it is going to be considered as a 'safe country of origin' and asylum applications will be refused by the EU member states, except Belgium⁴⁹.

Labour immigration from Turkey to Europe began in the early 1960s. It continued with family unifications in the 1980s and the volume of immigration decreased as Europeans have overturned their policies. However, the phenomenon of illegal immigration gained importance as well as transit migration via Turkey⁵⁰. Turkey's geographical location makes it an important transit zone for reaching affluent West from the undeveloped and conflict-ridden East. Many migrants from Asia, Africa and the Middle East use peripheral zones as transits on their way to Western Europe. There are frequent media reports about migrants apprehended in Turkey or landed on the coasts of Greece and Italy using Turkey as stepping stone. According to the figures of Turkish security forces, between 1995 and 2005, a total of 580.000 irregular migrants were apprehended in Turkey. Due to the self-evident difficulties in the observation of illegal migration flows and the incompatibility of comparative sources, we can at least heuristically infer that this figure represents a significant migratory pressure to Europe via Turkey⁵¹.

Turkey is under heavy pressure from the EU to combat and control irregular immigration and human trafficking⁵². Article 36 of the Passport Law (no.5682) foresees imprisonment of one to two years for human trafficking. As a part of legal reform package, Turkish Parliament added articles 201/a and 201/b to Turkish Penal Code in August 2002. These new amendments directly deal with trafficking and smuggling of

⁴⁸ I. Boccardi, **Europe and Refugees: Towards an EU Asylum Policy**, The Hague, Kluwer Law International, 2002, p.219.

⁴⁹ "... a heavily disputed innovation was the successful Spanish proposal to exclude EU citizens from the right of asylum in the EU ... the underlying intention being to prevent, among other things, members of separatist Basque organisation ETA from being granted asylum in another member state as had been the case in France and Belgium" Lavenex, **op.cit.**, 1999, p.47.

⁵⁰ A. İcduygu, "The politics of international migratory regimes: transit migration flows in Turkey" **International Social Science Journal**, vol.52, issue 165, 2000, p.357-367.

⁵¹ The figures can be accessed at the screening process data, <www.abgs.gov.tr>.

⁵² Twinning project TR03-JH-03: Strengthening Institutions in the Fight against Trafficking in Human Beings, with Germany.

human beings and impose heavier penalties. Turkey also signed the 2000 UN Convention against Transnational Organized Crime and its two Protocols in December 2000⁵³.

One of the short-term priorities of APD is to “reinforce the fight against illegal immigration, negotiate and conclude as soon as possible a readmission agreement with the European Community”. No such agreement with the EU has been concluded yet; but as it is declared in the National Programme, Turkey aims to conclude readmission agreements first with the bordering countries to the East, to be followed by similar agreements with countries located beyond these countries and finally bordering countries to the West. Readmission agreements have been signed with Greece (2002), Syria (2003), Kyrgyzstan (2004), Romania (2004) and Ukraine (2005). Negotiations continue with Bulgaria, Uzbekistan, Libya, Russia and Belarus. Draft agreements are proposed to a total of 21 countries⁵⁴.

Another means to prevent illegal immigration is to strengthen external borders. In the future, Turkey’s eastern and southern borders will become the common external borders of the EU. Turkey has land borders with Armenia (328 km), Azerbaijan (18 km), Georgia (276 km), Iran (560 km), Iraq (384 km) and Syria (911 km). These borders are long and porous to control. In order to be a part of Schengenland, the EU encourages and helps to strengthen effective border management. The basic element has been the use of twinning instruments⁵⁵. Candidate states have to apply Schengen *acquis* in its entirety before becoming full members. It means tighter border surveillance, the unification of border control under a single civilian institution and harmonization of visas. As for the last part, Turkey initially had a more liberal visa policy towards its neighbours. Ministry of Foreign Affairs currently works to align the visa lists and a common visa format with the EU⁵⁶. Thus far, a great extent of the negative list is harmonized, with the significant exceptions of Iran, Bosnia, Georgia and Turkic republics.

As in the case of the CEECs, tight border controls and visa policies have certain negative externalities. Cross-border trade (which is especially important for border regions, like Van province) and regional bilateral relations might be harmed. Also ‘suitcase trade’ might decrease in volume. Tourism can be affected negatively if entries are made harder. Also minorities across the borders might find their movements and contacts restricted. For this purpose, special local visas valid for multiple crossings

⁵³ It is ratified by the Law no.4800 (30.01.2003) and published in Official Gazette no.25014, 04.02.2003.

⁵⁴ **AB’nin Adalet ve İçişleri Alanındaki Müktesebatı ve Türkiye’nin Uyumunu**, İstanbul, İKV Yayınları, 2002.

⁵⁵ Twinning project TR02-JH-02: Support for the Development of an Action Plan to Implement Turkey’s Integrated Border Management, with the partners France and the UK. Twinning project TR04-IB-JH-05: Development of a Training System for Border Police, with Spain and Hungary.

⁵⁶ Twinning project TR03-JH-05: Visa Policy and Practice, with the partners Denmark and the Netherlands.

could be introduced. Nevertheless, one can think that these negative consequences, as well as trade diversion, are “relatively little price to pay for EU membership”⁵⁷. Furthermore when Turkey enters the EU, it will find the possibility to influence decision-making and thus pass its own priorities to the EU agenda. In the meantime, Turkey should demand easing of EU visa requirements against Turkish nationals as in the case of other candidate countries.

Conclusion

As described above, the EU is on the way to create a *common* asylum and immigration policy. However two contradictory tendencies work in the process: one ‘liberal’ and inclusive thinking based on universal human rights and the other, ‘realist’, sovereignty-based thinking that stresses the security aspects and threats of migratory pressures. Minas Samatas underlines that “securitization prevails in Schengenland over human rights and civil liberties”⁵⁸. The EU exports this increasingly exclusive regime (especially after September 11 attacks) to the acceding countries as a precondition for membership. It creates a ‘Fortress Europe’⁵⁹ by transforming the CEECs and Turkey into buffer states around its borders⁶⁰:

“After having served as the bastion of Western Europe’s defense during the Cold War against the Soviet Union thanks to its important geostrategic location, this time Turkey would serve yet another security objective by becoming a buffer zone for keeping the unwanted and/or uncontrolled movement of people out of the EU”⁶¹.

On the one hand the EU demands a fair, effective and efficient system for the treatment of asylum applications, especially with regards to the safeguards necessary to respect full the principle of *non-refoulement*; on the other hand it urges Turkey to prop up its borders. The lifting of geographical reservation, once a taboo subject, will be

⁵⁷ M.A. Tuğtan, “Possible impacts of Turkish application of Schengen visa standards” *Journal of Southern Europe and the Balkans*, vol.6, no.1, April 2004, p.33.

⁵⁸ M. Samatas, “The Primacy of Security versus Freedom and Democracy in the EU” **paper presented at the Third METU Conference on International Relations**, 24-26 May 2004.

⁵⁹ “Non-governmental organizations concerned with refugees and immigrants have contended that the underlying purpose of EU integration in JHA has been to create a ‘Fortress Europe’, with a well-defended border to divide insiders from outsiders, the privileged and rich from the excluded and poor”. M. den Boer and W. Wallace, *Justice and Home Affairs: Integration through Incrementalism* in H. Wallace and W. Wallace (eds.) *Policy-Making in the European Union*, fourth edition, Oxford, Oxford University Press, 2000, p.497.

⁶⁰ See also B. Kale “Turkey and the Process of EU Integration: The Asylum and Immigration Policies” <www.avsam.org>. European Commission openly acknowledges the utilitarian calculus behind the process: “The accession of Turkey thus be likely to reduce the number of asylum applications dealt with by the current EU member states” European Commission, *Issues Arising from Turkey’s Membership Perspective*, Brussels, SEC (2004) 1202.

⁶¹ K. Kirişçi, “Immigration and Asylum Issues in EU-Turkish Relations: Assessing EU’s Impact on Turkish Policy and Practice” in S. Lavenex and E.M. Uçarer (eds.) *Migration and the Externalities of European Integration*, Oxford, Lexington Books, 2002, p.139.

welcomed; yet Turkey needs to develop organizational capacity to differentiate genuine asylum seekers from illegal migrants. Here the EU financial and technical aid is crucial. "Turkish authorities are advocating the need for burden-sharing instead of what is being seen as a case of burden-shifting"⁶². The twinning projects are insufficient and narrow *per se* for a smooth functioning and institutionalisation of a truly healthy domestic administrative system of migration management. What is needed is a more global perspective including the goal of ideational and organisational culture transformation.

Up until nowadays, Europeanisation process in JHA meant to be a rather technical/technological process for Turkey, concerning largely the mere transposition of the EU legislation. Acculturation and social learning effects have remained significantly at a low ebb. This might be an expected outcome, since the concerned security administrations have traditionally been the most inward-looking, closed, inner bastions of national bureaucracy. It might be argued that the Europeanisation of these administrative structures and policies will further re-enforce the already heavy securitarian mentalities there. However, as we argued, Europeanisation also includes a deeper underlying respect for human (migrant/refugee) rights and their social welfare. The contradictions and tension of the whole project is open-ended and is being shaped according to the conflicting societal demands and power configurations at the national and transnational levels. In this regard, the process can be evaluated as a positive progress, if only if, a cultural sense and organisational structure of distinguishing between genuine asylum seekers and irregular migrants could be developed in Turkey. Although the deteriorating EU regime implies rather bleak prospects for the Turkish case, overall the process should be viewed as a practice of 'catch-up' for Turkey.

⁶² İçduygu, *op.cit*, 2003, p.56.