

INTERNATIONAL CONFERENCE

# INTERNATIONAL COMMUNITY AND REFUGEES:

RESPONSIBILITIES, OPPORTUNITIES,  
HUMAN RIGHTS VIOLATIONS

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**INTERNATIONAL COMMUNITY AND REFUGEES:**  
RESPONSIBILITIES, POSSIBILITIES, HUMAN RIGHTS VIOLATIONS

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# **INTERNATIONAL COMMUNITY AND REFUGEES: RESPONSIBILITIES, POSSIBILITIES, HUMAN RIGHTS VIOLATIONS**

**“Everyone has the right to seek and to enjoy in other countries  
asylum from persecution.”**

*Universal Declaration of Human Rights, Article 14*

## **On this Book:**

This book is a compilation of the papers delivered in the Conference on International “Community and Refugees: Responsibilities, Possibilities, Human Rights Violations” held in Istanbul by Amnesty International Turkey and Rosa Luxemburg Stiftung on May 13 and 14, 2016.

Some of the speakers have transformed their presentations into manuscripts for this conference book. Others’ presentations are included in the book as revised transcriptions. The transcriptions that are not confirmed by their authors are not included in the book.

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## Taner Kılıç Amnesty International Turkey

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*He is also one of the founders of Association for Solidarity with Refugees (Mülteci-Der) and was the President of its Board of Directors between 2008 and 2014. He contributed to training activities of the Bar and the NGOs and published many articles in various newspapers, journals, web sites and books on the law of asylum and migration.*

*He had been a part of the consultation process of the Law on Foreigners and International Protection. He is still an active member of Immigration and Asylum Commission of İzmir Bar Association and Refugee Rights Study Group of the Union of Turkish Bar Associations.*

## Opening Speech

Good morning and I would like to welcome you all. You have come here from abroad and different parts of Turkey to deliver a speech, make a presentation, discuss topics presented during the conference and take stock of discussions. Thank you very much for all of these. We are organizing this conference at a time when serious and wide-scale human rights violations are perpetrated around the world, in our region and in our country. Just a stone's throw away from here, in Syria, in Iraq, in Afghanistan, in the region and in Turkey, we are witnessing wide-scale human rights violations. In our country, bombs blasts hit many places and unfortunately, we are passing through days where we are now almost unable to bear watching evening news.

If we take into consideration the period following the Second World War, we are witnessing the most unprecedented, the most serious human rights violations and the largest mass migration in the world. Both internally displaced people (IDPs) and refugees constitute one of the most important human rights topics of our time. Following the escalation of the

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civil war in Syria in 2011, we have witnessed an extremely large refugee population movement towards first to the neighbouring countries such as Turkey, Lebanon and Jordan; and then, to a lesser extent, to Iraq and Egypt. Yet, shortly after, we have also observed that many countries had erected fences, built walls, dug ditches and laid mines on and around their borders. In order to prevent border crossings, in addition to the Frontex, military forces such as NATO and other security forces had also stepped in. People who attempted to cross the borders to reach a safe place and maintain their dignity faced serious obstacles and oppressions. In some cases, these obstacles had even caused their death or killing. D-8 countries including EU Member States, the United States of America, Russia, China and Japan, had, to a large extent, remained silent in the face of this human tragedy and refrained from sharing responsibility. Arab and Muslim countries in the region had also reacted in the same way.

As I have mentioned, the majority of the refugee population movement have sought their way towards Syria, Turkey and Lebanon. Particularly the southern neighbours of Syria, i.e. Lebanon and Jordan, had to carry a greater responsibility when compared to their size and population and thus encountered many difficulties. However, refugees in these countries are facing serious problems in accessing registration, accommodation, healthcare, education, and the labour market. Moreover, integration efforts were slim. Turkey had also assumed a great responsibility. Notwithstanding our doubts concerning the accuracy of the official figures, Turkey currently hosts over 3 million refugees and 2.7 millions of this population arrived from Syria. That is, these figures make Turkey a country which had taken over a very critical responsibility. However, if we focus on the specific situation prevailing in Turkey, we would realize that the situation is not that smooth. Again according to official figures, in Turkey, only 10% of the Syrian refugee population resides in camps, whereas 90% reside in various cities. In fact, 90% of the Syrian refugee population is left dependant either

on the charity or to the hospitality of the local population, civil society and individuals. This also means that Syrian refugees are exposed to labour exploitation in 'black markets'.

As of 25th of April, we are on the 6th year of Syrian arrivals in Turkey. Strategies and policies for integration are either absent or not serious or effective enough to register their impact. We take pride in the quality of refugee camps. When compared to other camps built for similar mass movements, physical and logistical capacities and quality of these camps are indeed superior. However, a majority of these are tent camps and only a small section of the camps is composed of containers. Let's take our personal experience as a reference point. Who would like to live more than a couple of days in a holiday tent which was built as part of a summer adventure? Who, among us, would be able to live more than a couple of days in such a tent and in that region where the climate is extremely hot during the summer and very cold during the winter? But people live under these conditions for more than five years. In these camps, the climate is the first and foremost problem, and it is followed by the lack of privacy, private life and security. Thus, due to these problems, we can argue that both those who were able to secure a place in camps and those who would like to do so are regretful. In the last few days, you have been watching and reading the news regarding the problems occurring in the camps in Kilis, operating under the control of the Disaster and Emergency Management Authority (AFAD). We witness how serious the security problems, including sexual abuse, could be in these settings.

For Syrian refugees living in various cities, registration as well as access to housing, education, healthcare and labour market remain as serious and ongoing challenges. Although the authorities declared that Turkey had adopted an open door policy from the very outset, we know that the borders were not always open; that even from the first year of the crisis people smuggling networks have emerged and gradually developed in

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the region; that with the border crossings becoming increasingly difficult, smuggling had expanded and transformed into an organised crime; and that many people experienced physical attacks and some were even killed in their attempts to cross the border. Amnesty International as well as other human rights organisations published reports covering these issues. Yet another problem facing refugees in Turkey is the serious obstacles encountered by refugees held in removal centres in accessing their legal rights.

Due to all these problems and with no prospect in the foreseeable future of coming to the end of the war in Syria, starting from the first months of 2015, a new movement was observed among Syrian refugees. We witnessed a massive escape towards Europe via Turkey of which we could describe as the Migration Age. In some days, the number of daily arrivals from Aegean's shores to Greek Islands reached 7000-8000 persons. European countries reacted to that situation by establishing extraordinary physical obstacles before the crossings such as erecting fences, digging ditches on the border areas, and deploying Frontex and NATO forces to intervene in the region. We had also witnessed a shameful and Several months long human tragedy in Idomeni, a village located between Greece and Macedonia, we watched shameful and grim images of human tragedy which took place in Idomeni region between Greece and Macedonia and lasted for months.

Over the course of this period, Turkey's ongoing accession negotiations with the European Union have revived in the summer of 2015. In exchange of (re)opening the chapters, the visa exemption and sharing the overall costs through a financial assistance of 3+3 billion Euros, Turkey was in return asked to sign the readmission agreement and parties reached a deal. This deal, however, has critical legal errors as well as serious breaches. We shall discuss all these issues in the coming two days. Yet, it appears that the deal is now faltering not because of its inherent legal errors and

breaches; but largely due to political reasons.

You may also know that upon UN Secretary General's call, the first World Humanitarian Summit will be held on 23-24th of May and Istanbul shall host the event. Twitter hashtag of the summit is #HumanIstanbul. As Amnesty International Turkey Office, and in collaboration with Rosa Luxemburg Foundation, exactly 10 days before the summit, and in the same host city, on 13-14th of May, we are organising International Community and Refugees Conference. And our hashtag is #HumanRightsIstanbul. We would like to spend the coming two days by adopting an approach and a perspective which brings human rights forward and emphasises that humans are valuable only if they can enjoy their rights. The two-day conference will be recorded and broadcasted online. Four of our friends will also transcribe all discussions and produce their records. After the conference, our friends shall meet to work together on and compare their notes. We shall then compile and summarise issues raised during the Conference and the topic of discussions; and on Tuesday, we plan to share these notes with the press as the outcome of the Conference. We hope and we wish that this outcome and the perspective raised over the course of the conference will be taken into account and given due consideration during the World Humanitarian Summit which will take place 10 days later. For that, we will try our best.

Amnesty International shall also attend to the Summit. Our secretary general Salil Shetty will represent us in the Summit. Along with him, friends from the international movement as well as friends from London and Turkey shall join the summit and do their best in order to make sure that our human rights perspective can have an impact on the Summit.

I would like to thank Rosa Luxemburg Foundation, Ms. Kadriye Karçı, and Ms. Gün Tank for their support to the conference. I also would like to thank our Refugee Rights Coordinator Mr. Volkan Görendağ and Mr. Ersin Tek for the great effort they put to the organisation of this event. I would like to thank the campaigning and activism unit, its director Ms. Ruhat

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Sena Akşener, Ms. Begüm Başdaş and Mr. Fatih Ekinci. I also would like to express my gratitude to our friends Mr. Fırat Doğan and Mr. Bahadır Gültekin working in the area of media and social media, our Director Ms. İdil Eser, our Deputy Director Ms. Emek Eren, our volunteers Mr. Tuğkan Gündoğdu, Ms. Dilan Taşdemir, Ms. Şefika Cabi and our friends, volunteers, activists and members who contributed to the organization of this event. They will be as well working during the conference on a volunteer basis. I would like to thank Egem Tur who shall provide logistical support during the conference. I would like to present my gratitude to Ms. Ayşegül Bahcivan and Ms. Işıl Demirakın who, during the two days, will carry out a though simultaneous interpretation task. I also would like to thank all speakers coming from abroad and from Turkey, all participants and all other people who contributed to the organisation of this event and of whom I have failed to mention their name. I hope that these two days will be spent in the most productive and most effective way and we will be able to carry our human rights perspective to the Summit taking place in the coming ten days.

Thank you very much.





## Gabriele Gün Tank Rosa Luxemburg Foundation

*Gabriele Gün Tank is the Commissioner for Migration and Integration of the borough of Tempelhof-Schöneberg in Berlin. The main tasks of the Commissioner for Migration and Integration is to advise the government of the borough in all matters regarding the migration policies, to identify and analyse the barriers for immigrants and people of colour in the areas of social and economic life and to develop strategies. This includes supporting all forms of immigrant participation and bringing forward initiatives against racism and xenophobia as well as initiatives that promote intercultural understanding and reduce discrimination on the individual as well as on the institutional level. As Commissioner she initiated the Network Inclusion Leaders together with Daniel Gyamerah (Head of Each One Teach One).*

*Gabriel Gün Tank studied at the Faculty of Communication at the Marmara University in Istanbul, where she graduated as a journalist. After working as a freelancer, she served as Policy Advisor for Mechthild Rawert (Member of the German Bundestag). She is currently enrolled in the Executive Master of Public Administration at Hertie School of Governance in Berlin. Mrs. Tank serves as a board member of the Rosa Luxemburg Foundation, the BQN Berlin and the IG Metall Migration Committee Berlin, Brandenburg, Saxony.*

## Opening Speech

Good morning Ladies and Gentlemen, Good morning Friends,

As a board member of the Rosa Luxemburg Foundation, I have the honour to welcome you to the ICR Conference “The International Community and Refugees: Responsibilities, Possibilities and Human Rights Violations”. This conference is held at a time of violated hope. I call it a time of violations – because the conflicts have deepened in so many places, and the civilians are paying the price everywhere. Just imagine; if the earth would just shake once every time when there is a human rights violation, we would probably have no more ground to live on anymore. A state of constant earthquakes.

I call it a time of hope – because internationally people feel and believe in their responsibility to fight for humanity, for human rights. Ten days before the “United Nations World Humanitarian Summit”, a historic number of people full of ambitions and visions are here at the “ICR Conference” to discuss and bring about solutions for humanity. Thank you for bringing this conference to life.

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Europe is facing a humanitarian crisis, with the current migration in the world and the migration to Europe in particular. Europe has to assume its responsibilities. Especially since European policies are up high on the list of reasons why people leave their countries... It is the European countries that sell all kinds of weapons into regions of conflict. It is the European Union that puts pressure on developing countries in order to gain free access to their markets. It is the European companies exploiting natural and other resources of these countries, making a livelihood impossible for more and more people there. It is the Global North's pollution and global warming that affects the Global South disproportionately. It is the authoritarian regimes that Europe and its partners support despite all sorts of human rights violations.

In short, to a large extent it is Europe's colonial past and Europe's neo-colonial present that makes people flee. And building a fortress (Festung) is the only answer that comes to these minds in order to not face the consequences of the Global North's actions!

I ask those, who are building walls and barbed wired fences, who use and incite violence against refugees, who are standing in the way of the rights of refugees: How it would be to stand in the shoes of refugees. Brutal political and military conflicts, breakdowns, economic despairs, environmental reasons and other factors force people to flee their homes. They do not have any other option if they want themselves and their families to survive.

Let me briefly try to describe the current situation in Germany. Germany's policy is like -in German I would say- "Willkommen! Du kommst hier net rein" that means something like "Welcome! You're not getting in here!". The German government flip-flops from 'welcome' to 'close the doors'. This year the German parliament has voted to introduce stricter asylum laws under the so-called Asylum Package II.

The Asylum Package II includes:

- “Special reception camps” for people from “secure” countries of origin, or people who are accused to have destroyed their documents, will be opened. In these camps, the asylum procedure should be completed in three weeks with the aim to deport people faster. There is good reason to believe that even the safest country is not safe for everyone, individually or collectively (Edward Snowden, Roma and Albanians on the Balkans, homosexuals in Serbia etc.)

- People who have the status of ‘Subsidiary Protection’ shall not be allowed to bring their family from abroad during the first two years of their stay. The status “subsidiary protection” is effective to the refugees who were rejected asylum seekers but cannot be deported due to the risk of death or torture in their home country. That is a contradiction in itself – you are not safe where you come from – but you are also not allowed to build up a life for your own and your family in a place where you are safe.

- Deportations of sick people will become easier. Illnesses that people had already before they came to Germany will not be an obstacle for deportations anymore.

Ladies and Gentlemen, Dear Friends,

International media claimed that over a million refugees immigrated to Germany in 2015. It is true that 1.25 million people were living as refugees in Germany at the end of 2015. But only 600.000 people came to stay in 2015. And the number of deportations has increased dramatically in the same period of time. Of course, it is not about the numbers, but it is about policy, which is justified by missing or changing facts. And it is about a media coverage that tends to repeat the anti-immigration rhetoric of the 1990s in which “floods of immigrants” were a constant “argument”.

After fleeing from oppression and death for weeks, after being treated

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as powerless pawns, sent from one border back to another, detained and mistreated refugees face inhumane living conditions in Germany. They are housed in “mass shelters” – some of the shelters with an individual living space of just 4 m<sup>2</sup> and no privacy.

Taking part at the ICR Conference means to stand firm against inhumane acts and ideologies and to promote actively a strong civil society. This includes taking a clear position on the often deeply rooted racism in all its facets in our societies.

According to the German Interior Ministry, there were 1047 attacks on refugee camps last year. In the first quarter of 2016, already 347 attacks were counted. Of course, not all attacks are counted yet. For example, Clausnitz: A racist mob has blocked a bus carrying refugees. The police didn't act against the aggressive crowd, but instead, used direct force against people on the bus.

In Bautzen, a house where refugees were supposed to move in got burned and local residents applauded. Some of you will remember that in the early 1990s similar images circulated in the international press. After a series of attacks on immigrants, refugee camps, synagogues and cemeteries – what happened was this: Germany restricted its asylum law. From the unification to today, about 200 people were killed in racist and right wing extremist attacks.

Also there is the night of New Year's Eve when numerous women got sexually attacked in public spaces in Cologne and other German cities. The public debate over sexual attacks shifted to other factors as race, culture, religion, and even politics, when the criminals were described as refugees and migrants. From the looks of them – or a sentiment that I would call racist – it had become clear that “men of North African decent” were the problem, not patriarchy.

Yes, Europe is facing a crisis. But it is not a refugee crisis that the

continent is facing. The real crisis is the racist and nationalist backlash in many countries if not all and is caused by the political leaders, who announce a “Christian front against the Islamisation of Europe” and who propagate a “refugee crisis” or a “refugee wave”.

Human rights are not negotiable – not in Germany, not here in Turkey, nowhere in the world. Human dignity is violated worldwide on a daily basis, in multiple ways. As Rosa Luxemburg Foundation, we advocate human rights, nationally and internationally with all our strength. We here, in this room, do the same individually, as groups and organizations or as networks.

One of my favourite quotes by Rosa Luxemburg is: “I am at home in the entire world, where there are clouds and birds and human tears.”

As a German foundation that operates internationally, we would love a deeper exchange with Turkey in the future. There is a lot we can learn from each other!

Before I wish us all a good conference, I would like to thank Emek Eren, Ruhat Sena Akşener, Volkan Görendağ and Ersin Tek from Amnesty International and Kadriye Karcı from the Rosa Luxemburg Foundation for their great work.

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**CONFERENCE ON INTERNATIONAL  
COMMUNITY AND REFUGEES:  
RESPONSIBILITIES, OPPORTUNITIES, HUMAN  
RIGHTS VIOLATIONS  
DAY 1 SESSION I**

**STATE OF THE REFUGEES IN THE REGION**

**Moderator:**

Güney Yıldız

**Speakers:**

Faika Deniz Paşa

Kathryn Ramsay

Ayham Dalal

Seda Altuğ

Aitor Zabalgogeaskoa



## Faika Deniz Paşa Cyprus Refugee Rights Association

*Faika Deniz Paşa is an attorney at law. She holds an undergraduate degree in law, a master's degree in European Business Law and a graduate diploma in Economics from the University of Essex. Subsequently, she completed her Bar Association practice on both sides of Cyprus and is registered at the Nicosia District Bar in northern part of Cyprus since 2011. She currently is doing an MA in University of London by distance learning on 'Refugee Protection and Forced Migration'.*

*She has experience in civil society, on both parts of the island, specifically in conducting research and implementing human rights based projects. In 2012, she authored a report for the Human Rights Foundation of Turkey, mapping the current situation in relation to human rights of women. She has also been involved in the projects "Minority Rights: Solution to Cyprus Problem" and in "the Right to Access to Information in Cyprus" carried out on both sides of the island between 2010 and 2012.*

*Faika Deniz Paşa has volunteered as a legal counsellor for Cyprus Refugee Rights Association since 2009, and she is currently working as a project coordinator for this organisation.*

## **Neverland in Europe: Refugee Rights in Northern Cyprus**

We would like to thank Amnesty International's staff and team for extending their invitation and for always supporting our work in the north of Cyprus, a neglected geography in Europe. We also would like to thank Rosa Luxemburg Foundation for organising this conference and helping us to raise our voice in this platform.

Before I start, I believe that a bit of contextual information on Cyprus is necessary, as it shall help us to better understand the situation. Cyprus gained its independence from the United Kingdom in 1959. In 1960, the two communities, namely the Turkish Cypriots and the Greek Cypriots, established the republic based on a power-sharing arrangement. This republic, however, collapsed following the conflicts of 1963 and 1964 between these two communities, and Cyprus has been divided after the 1974 Greek coup and subsequent Turkish military intervention. This division also created ethnic divisions. Currently, the majority of Turkish

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Cypriots live in the north of the island, whereas Greek Cypriots as well as Armenian, Maronite and Latin communities, who were constitutionally recognised as minority groups in the 1960's republic, live in the south.

The government in the south of the island is mainly formed by Greek Cypriots and it has the legal capacity to act. This government is also a member state of the European Union. However, in the north, the acquis is suspended in accordance with the Protocol No. 10 to the Treaty on the Accession of the Republic of Cyprus to the European Union. The reason why I have mentioned all these is that the ongoing tension can also be observed in the attitudes towards refugees arriving Cyprus to seek asylum.

Refugees and human rights defenders have to defend and exercise their rights in an environment where all debates are revolving around the issue of security. Moreover, the psychological effects of recent conflicts can also be seen in perception of refugees. Conflicts, divisions and simultaneous presence of three different legal systems in a small island and an EU member state is probably not very common. Why are there three legal systems? We have already mentioned that the Turkish Cypriots live in the north and the south of the island is subject to sovereignty of the Republic of Cyprus and finally there are British bases –which we call the colonial remnants– finding their legal basis in the founding agreements of the Republic of Cyprus.

If we begin with the Republic of Cyprus (RC), the RC is a state party to the 1951 Geneva Convention and 1967 New York Protocol. However, the implementation of these instruments is interrupted due to the Cyprus issue. As a result of the forced displacement which took place after 1974, UNHCR assumed the responsibility to carry out status determination for asylum claims. Within the context of EU harmonisation process, however, the Republic of Cyprus adopted the Refugee Law in 2000 and the RC authorities have been carrying out status determination since 2002. The Cypriot Turkish administration, on the other hand, has not assumed any

such responsibility so far. AS UNHCR's mandate also covers the north of island, the organisation receives asylum applications and carries out a status determination process with the assistance of Refugee Rights Association, a civil society stakeholder that I represent today. Following a memorandum of understanding signed in 2003, the British Bases, that are the bases which are still subject to British sovereignty in line with the founding agreement, relinquished the authority to assess asylum claims of persons who landed on the island directly from the bases, to the Republic of Cyprus. Yet, despite this relinquishment, the United Kingdom still has the responsibility of these refugees in these bases.

Let us now take a look at the numbers; a total of 53,494 persons applied for asylum in the Republic of Cyprus. The population of Cyprus is, on the other hand, 1.1 million. Out of these applicants, 6,883 were granted protection; of which around 1,300 were granted refugee protection and around 4,800 were granted subsidiary protection. In the northern part of Cyprus, however, the number of persons whose international protection needs had been identified by UNHCR is only 103. Most of these individuals are Syrians and Palestinians. These numbers are very low for an island situated in the Middle East. Yet, at this point, we need to recall that there are also many Syrians living either on a student or work visa in the north of Cyprus. Since these persons have a migrant status, they do not register with UNHCR and this is one of the reasons of low numbers. Another reason is, as we shall explore soon, securing entry to the island. There are also around 90 persons in sovereign British Bases. 67 of these individuals are persons who were rescued in a search & rescue operation in 1998 and landed on the island from the bases. The legal process which aims to establish responsibility for these individuals is still ongoing and therefore these persons are trapped in a limbo since 1998. In addition to these persons, 23 individuals have also landed on the island through British Bases following another search & rescue operation in October 2015 and

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they are still waiting for the finalisation of status determination process of their refugee claims.

In this presentation, we shall primarily focus on the situation in the northern part of the Cyprus. According to the temporary provision No. 4 of the current constitution in the north, the 1951 Convention is a part of the domestic law. Yet, this is not the case for the 1967 Protocol. In addition, the human rights covenants, which provide complementary protection, such as the European Convention on Human Rights, the Convention for the Prevention of Torture, the International Covenant on Civil and Political Rights are also part of the domestic law. Yet, there is no asylum mechanism. It is possible to apply the court for requesting the stay of a deportation order based on these covenants. Yet this is extremely difficult, because an appeal to the Supreme Administrative Court does not have automatic suspensive effect. There is also a similar problem in the south and for this reason, last year, the European Court of Human Rights found a breach of Article 6.

There is also a political dimension of the problem. First, the Cyprus issue dominates the political sphere. The prevailing discourse goes like this: “Everything shall be resolved following the resolution of the Cyprus issue. Currently, we have many agenda items before us and therefore we cannot attend to other persons’ problems.” Despite being widely used as a pretext, there is also a partial truth in it. Let me clarify this point. In November 2014, a boat was rescued within the context of a search & rescue operation. As civil society organisations, we were able to persuade the government that we, as Cypriot Turkish community, bear the responsibility for those rescued Syrian and Iraqi individuals and that we should refrain from sending these persons to their countries of origin without carrying out an assessment of their claims. However, according to the information provided to us, these persons were sent back upon an instruction of a Turkish commander. When we talk about an occupation, we mean that the military enjoys the authority to have a final word over the elected. This is why we keep emphasising that

although we are weary of hearing the Cyprus issue as an excuse, we cannot escape from the reality of it.

Another issue is related to the non-recognition of the government in the north by the international community and thus the problem of international actors' inability to have direct meetings with the authorities. This is unfortunately also valid for UNHCR. Another consequence of non-recognition is the exclusion of the north from international rights monitoring procedures. In other words, the monitoring reports of international actors focusing on human rights usually do not cover the north. I mean, the north is in the blind spot.

In addition, the debates on demographics are still quite heated. Following Turkey's military intervention, there is still a degree of discomfort regarding persons arriving or relocated from Turkey. According to perception of the Cypriot Turkish community, the number of these persons are 3-4 times higher than local population and the increase in this number raises concerns, including the concern that such an increase may perpetuate the already existing stalemate in the Cyprus issue. Also as a consequence of the Cyprus issue, there is a widespread myth in the south that all 'illegal' and 'fugitive' persons are entering from the north. There are also other myths, particularly those spread by nationalists, which include the myth that these persons were sent by Turkey as a part of an Islamisation policy. Over the course of bi-communal meetings, we often hear statements such as 'you cannot control your borders' and 'all persons illegally arriving here are entering from the north'. However, considering that the distance between Mersin and Kyrenia is 70 km and the cost of a boat ticket is 100 TL, this is a geographical and economic option, once the legal channels to the EU are exhausted. We see that when the Turkish Cypriot authorities are faced with the above mentioned type of discourse, they begin to think "We should not be the weak entry point to the island and we should not find ourselves in a position providing a gateway to EU. Thus we should have a rigorous

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border control and send those detected back to where they originate!” What we have as a result is a much more difficult entry to the island. The police enjoy huge discretion at border gates and the following explanation is quite legitimate in the eyes of the administration: “These persons are refugees who shall apply for asylum and therefore they cannot enter to the country”.

With the exception of those possessing student or work visas, the entry of persons coming from the countries where a significant number of forced migrants originate such as Syria and Iraq, are prevented at border gates. Sometimes 50 or 100 people are held in 3-4 square meter rooms at the ports of entry. Children are kept together with adults. We all know that Cyprus is a very hot country. In these places, the access to water and food is not sufficient and the hygiene is also not adequate. In addition, those who attempted to enter from unofficial ports are directly criminalised. These individuals are prosecuted at criminal courts, held in custody for a couple of weeks and then they are deported to places where they originate for being convicted. Due to these reasons, only a limited number of persons in need of international protection can enter the northern part of the island and live there.

The low number of persons, on the other hand, helps us to further enhance their rights. With the certificate issued by UNHCR, these individuals have access to accommodation, health care (which covers all types of operations, HIV treatment, and treatment of chronic diseases), education provided by state institutions, and labour market. Yet, these rights are quite fragile as they are granted by political discretion, without a legal basis. That is to say, we always have a concern that in every government change, these rights and entitlements may simply disappear.

Finally, there is the problem of public perception. I have just mentioned the low number of persons seeking international protection in the island. However, according to the findings of a survey carried out by UNHCR in 2015, 46 % of the Turkish Cypriot community believes that

there are too many refugees in the north. 39 % think that the refugees should return to their countries of origin. Out of this number, a 34 % further believes that wealthy countries should open their doors to refugees since according to the rhetoric built around the Cyprus issue, the most vulnerable persons are always the Cypriots.

Before concluding my presentation, I also believe that in addition to our association's work in the north of Cyprus, it is also important to mention our contribution to the regional activities. The Refugee Rights Association is a civil society organisation run by women and all staff members are women. We therefore believe that the ongoing femicide and enslavement in the Middle East as well as sexist violence inflicted upon individuals in war and conflicts are, at the same time, directed to all women, to us. With this understanding, we have become a part of the Platform for Struggle for Women Held Captive by Force. Our work in this platform focuses on developing solidarity with women who were subjected to sexual violence and enslavement by the IS and raising this issue in the international platform. Over 5,000 women and children, the overwhelming majority of whom are Yazidis, are held captive by the IS. We know that around 1500 of these individuals were able to flee. To date, we offered solidarity to 30 women and children who were able to flee and we helped them to access to health care services and psycho-social support. We are also working to document violence and we fight to bring perpetrators to justice and punishment. Most recently, following the news broadcasted by a German TV, we filed a criminal complaint against the slave trade brokers to the Public Prosecutor in Gaziantep. Unfortunately, our complaint was swiftly declined. We would like to raise this issue in every platform, to support these liberated women who struggled for us and to contribute to awareness raising efforts on enslaved persons in this century.

Thank you.



**Kathryn Ramsay**  
**Amnesty International**

*Kathryn Ramsay has been working with Amnesty International as a Gender Researcher and Policy Advisor since 2012. She has conducted research across a range of issues and countries, most recently the situation of refugee women from Syria who are living in Lebanon. Before joining Amnesty International, she worked for Minority Rights Group International. She has an MA in the Theory and Practice of Human Rights from the University of Essex.*

## The Situation of Refugee Women in Lebanon

The research for the Amnesty report was conducted in the second half of 2015. The report was published in February. It included interviews with 65 Syrian refugee women and 12 Palestinian refugee women from Syria. The interviews were conducted across different parts of Lebanon including Beirut, Mount Lebanon, the Beqaa Valley and southern Lebanon. Amnesty International also spoke to the UN agencies (UNHCR and UNRWA), to international NGOs working to provide humanitarian assistance to refugees, to Lebanese NGOs and to Syrian and Palestinian activists. We sent a letter to the government outlining the findings, asking for some specific additional information on some questions. But, unfortunately we didn't get a response before the report was published.

So to understand the context and the situation of refugee women, you need to know the context of the situation in Lebanon, and as has been already been mentioned, Lebanon is the country that is hosting the highest number of refugees per capita in the world. Almost 25% of the population in Lebanon, at the moment, are refugees. UNHCR figures, from

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when the report was published, said that there were 1.06 million Syrian refugees and 44.000 Palestinian refugees from Syria in addition to, as already mentioned, the Palestinian refugees who were already in Lebanon. Children make up 53% of the refugee population in Lebanon, women 25.9% and men 21%. So, when you read in so many articles that women and children make up with vast majority of refugees; children are already the majority. This sentence would be equally valid to say that men and children make up the majority of the refugees. It's better to look at the exact demographic breakdown, because adding men or adding women to children will give you the majority. The difference in the numbers is small: There are 5% more refugee women than refugee men. Saying women and children make up the vast majority of the refugee population makes it sound like there aren't any refugee men when actually there are a lot. So women head about one fifth of Syrian refugee households, and one third of Palestinian refugee households from Syria. Of the women that Amnesty interviewed who were heads of their households, some were widows, some of their husbands had travelled to another country, some of them had no idea what had happened to their husbands. Previous Amnesty reports on the situation in Syria has included a report last year looking at enforced disappearances and according to the figures 95% of those who have been subject to enforced disappearance are men. So there are a lot of women who have absolutely no idea what has happened to their husband, although they may be fairly sure that he is being held somewhere by the government.

The UN humanitarian response is grossly underfunded. In 2015, the UN only received 57% percent of the money that it required to support refugees in Lebanon. So far in 2016, it has got 22% of the funds and we are almost half way through the year. I'll talk a little bit later about the impact that it has on what they have been able to provide for refugees. The international community has also failed to provide sufficient resettlement. As we've already discussed countries have pledged to take very few

refugees, and UNHCR considers that 10% of any refugee population is in urgent need of resettlement. In 2015, UNHCR submitted applications to resettlement states for just over 13,000 Syrian refugees living in Lebanon. Of those, 7% were in the category that they call as 'women and girls at risk'. UNHCR has a number of resettlement categories, but it does not provide a gender breakdown. So, we don't know how many refugee women were being resettled in other categories. We only know that 7% were resettled under the women and girls at risk category. Given the numbers of refugees that we're talking about and the situation that they're finding themselves in that's totally inadequate for the crisis.

The government of Lebanon has introduced barriers that make it almost impossible for refugees to renew their residence permit. This includes high fees - it costs 200 dollars per person to renew your residence permit and there are a lot of requirements for paperwork that refugees are unable to meet. For example, the paperwork around the lease of the property that you are living in. Many landlords don't want to provide that paperwork because it means that they would have to pay tax. The government of Lebanon introduced restrictions on Palestinian refugees from Syria earlier than it did for Syrian refugees. These restrictions included restrictions on entry into Lebanon and also restrictions on renewal of their residence permit. UNHCR says that there are 20% of Syrian refugee households, where no one has a valid residence permit, and in another 48% percent at least one member of the household doesn't have a residence permit. Because the restrictions applied to Palestinians earlier, the figures are much higher. In March 2015, 86% percent of Palestinian refugee households did not have a valid residence permit. Now that was last year. But the permits expire all the time so the figures will be significantly higher now. Of the refugees that Amnesty interviewed, most of them did not have valid residence permit. Of the Palestinian refugees we met, two of them did have valid residence permit; one was expiring the week after we met her and the other one

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expired in December. The valid resident permits are important because without them refugees are considered to be in breach of Lebanese law. And they fear arrest, detention, and potential deportation. This means that everyone is afraid. They are afraid of going out in case they have to cross a checkpoint and provide their documents. So they don't go out. We met one Palestinian woman who had been in one of the Palestinian refugee camps in Beirut with her family for three years, and her father had left the camp once in three years. That was only because he had to go. Without a valid residence permit, you cannot register a marriage. You cannot register births and refugees are afraid to seek help from the authorities when they are victims of crime. We are going to come back to that later, when talking about the risks that refugee women face of violence and harassment. As already said, the UN response is grossly underfunded, so as a result they have been forced to cut the support that they provide to refugees. Over the course of 2015, the monthly food voucher refugees were receiving reduced from 27 dollars per person per month down to 19, and then at the time that Amnesty was doing its research it was 13.5 per person. The International Conference held at the beginning of the year for pledging support for refugees did receive pledges that meant the U.N. has increased again the amount to 27 dollars, so it is 27 dollars at the moment. But even that works out less than a dollar a day, and the Lebanese national poverty line is 3.84 per day. So it is totally inadequate. The numbers of refugees who receive the payment has also been cut over the course of 2015. UNHCR has had to target the support it gives to the refugees it considers to be most in need. In order to do that, it did need an assessment. Some of the refugee women that we spoke before they came to Lebanon, said they had never been dependent on any government funds and they have never had to receive handouts before. So they found the UN questionnaire, asking all about their financial situation and where they get food from and if they get help from the neighbours, they found that very intrusive and very humiliating. UNHCR has also put a cap on their support so that five members of the

household is the maximum that they will provide any kind of vouchers for. And they used to provide Palestinian refugees with 100 dollars to assist with paying their rent and that was stopped in the middle of 2015. So, it's extremely difficult for the refugees to survive in Lebanon, particularly for the refugee women, who are heads of the household and who are trying to support their families on their own. About a quarter of the refugee women interviewed by Amnesty had stopped receiving payments for food. The UN says that 70% are considered to be living below the poverty line.

It's extremely difficult for refugee women to be able to support their families. The payments from the U.N. are inadequate. It's difficult to find work. Most work is informal and the wages are very low as they are unable to negotiate working conditions or wages because of their situation. They told us that if they if they complain about the wage the employer just says, "Well I'll find another Syrian who works for less." There is a great deal of fear about sexual harassment. The power imbalance between employers and refugees is such that refugee women are very fearful of employers taking advantage of their situation and refugee women don't feel safe. They told us this in each part of Lebanon that we went to. In all the different areas women that we spoke to, they all consistently told us about experiences of sexual harassment in public spaces, particularly street harassment. And that they are afraid of reporting any kind of harassment or violence to the authorities, because they don't have a residence permit. And some women heads of households told us that they were targeted by people who knew that they were on their own. There is a lot of fear of harassment, especially when about travelling around. If they had to take a take a taxi, they were afraid that taxi driver was going to harass them, and the same with buses. The impact was that refugee women were very reluctant to let their daughters go out. Refugee woman told Amnesty about receiving offers of help. But these offers were not unconditional, they came with the expectations of sexual activity. Refugee women found these offers extremely disturbing, and were

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upset at the fact that Syrians were being singled out in this way and that people were taking advantage of their situation.

The vast majority of women are afraid to go to the police in cases of violence or harassment. One woman that we spoke to who had gone to the police, didn't get a good response. She had been on a bus with her daughters. It was just her, the bus driver and her daughters on the bus, and the driver showed her that he had a gun with him before harassing her. She managed to talk her way off the bus and went to report it to the police. And the police said they wouldn't take the report. They said, "You're not eligible to present a report, you don't have a valid residence permit." Another woman had to go to the police, because one of her relatives had died. She and her sister had been told that they needed to give their personal details to the police as part of this record which they did. Then three police officers came to their house kept calling them and asking them to go out with them and this happened for about three months until they moved house and changed their phone numbers.

The Amnesty report makes a number of recommendations and I'll just go through the four principle recommendations. Firstly, to the international community to adequately fund the humanitarian response, so that the UN can provide a level of support that doesn't leave people living in abject poverty and at risk of exploitation by employers, landlords, and others claiming to be assisting them. The international refugee regime is based around responsibility sharing. These countries have a responsibility to support countries like Lebanon that are under such pressure through having so many refugees there. They have not provided sufficient support so far. There's also an obligation under human rights law, the economic social and cultural rights, to provide assistance, when countries request it to meet the minimum needs of the people within their jurisdiction. So, the international community must increase the support. And that includes increasing resettlement places, so that all of those who meet UNHCR criteria

for resettlement can be resettled. Now while the situation of Lebanon is extremely difficult given the number of refugees they have and the impact that it has had on their security, their economy and their social services in the country, it is not an adequate response for the government to make it so difficult that refugees cannot renew the residency permit. Those barriers must be removed so that all refugees can renew their residence permit and have security. They should not be afraid of going about their daily lives and risking arrest and deportation. And finally the last point. The government must ensure that all women and girls, no matter their status as refugees or not, can safely report incidents of violence and harassment and that those complaints will be effectively investigated. This is a requirement under international human rights law. Lebanon is a party to the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). They are under an obligation to protect all women and girls from gender based violence and that doesn't matter whether you are a refugee, without a valid residence permit or not. This is a requirement for all.

Thank you.



**Ayham Dalal**  
**Technische Universität Berlin**

*Ayham Dalal is an architect and PhD researcher at the Technische Universität Berlin. He studied architectural engineering in Syria and obtained a master's degree in urban studies from Germany and Egypt. After his master's thesis, in which he mapped the urbanization processes in Zaatari camp, Ayham has been involved in different initiatives, workshops, conferences and consultancy work regarding Syrian refugees in the region.*

*His doctoral research examines Syrian refugee camps in Jordan as contested geopolitical territories and urban laboratories. In particular, it attempts to generate further understanding on the relationship between displacement and urbanization processes within different frameworks and humanitarian settings.*

## **Syrian Refugees in Jordan: Potentials, Challenges and the Right to the City**

I would like to thank Amnesty International and Rosa Luxemburg Stiftung for organizing this conference here in Istanbul at this critical moment.

In this presentation, I will try to explore the situations of Syrian refugees in Jordan from different angles. My interest here is to give a general overview and to put things into a bigger perspective by observing the relationship between the structures of the state and the refugees. Understanding this relationship would not only contribute into giving more depth to the cases of human rights violations, but also creating a framework to improve these situations in a productive manner.

First of all, Jordan is a small country that came into existence during the process that the imperial powers were dividing the region into nation-states. In 1946, it gained independence; but before that, Jordan was not a part of the urban strip in which all important cities grew and

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developed. Therefore, the Sykes-Picot agreement left Jordan with very little resources to start with. Afterwards, it received waves of displaced populations: Palestinians (1948 and 1967), Lebanese (1975), Syrians (1982), Jordanian-Palestinians (1991), Iraqis (2003), Syrians (2011), Libyans (2012), and Yemenis (2016). These had fundamental impacts on Jordan's economic structure which are characterized by UNDP as imbalance in labour market, fluctuating rates of unemployment, low crude rates of participation, imbalance in sectorial distribution, and imbalance in geographical distribution.

Migration has also a deep impact on the socio-political and cultural structures of the kingdom. According to recent statistics, Jordan is inhabited by 9.5 million persons of whom 30% are not Jordanians. Not to mention that 40% of the Jordanian population originates from somewhere else, which is one of the highest ratios worldwide. This puts us against very dynamic demographic structure in a state that strives for stability. Culturally, this fusion promoted inclusion in opposition to the domination of one culture; however, politically, increased the pressure on the government to control accessibility of resources. This is why Jordan is not a signatory of the 1951 Convention, and it has, instead, a MoU with UNHCR.

Regarding the Syrian refugees, Jordan claims to maintain an open door policy. They are welcomed as 'guests' or 'Arab brothers' - a term which has no legal meaning. Therefore, the movement of refugees remains rather ambiguous, unregulated and manipulated. This explains the contradicting numbers between UNHCR -which counts around 600,000 registered refugees-, and the government -which claims to host twice this number according to the recent statistics.

After 2014, the government reduced the number of entry points on the Syrian borders from 45 to only two. With the government's reluctance to let refugees in, due to possible affiliation with ISIS, so far around 60,000 refugees have gathered behind the Jordanian entry point in Rukban,

producing a massive refugee camp that is literally located in the midst of nowhere - with no infrastructure and no access to resources or services. Those who were processed are moved to a fenced area inside Azraq camp.

Control on movement applies also to those already inside Jordan. For instance, refugees who registered in camps are not expected to leave them except for short visits. Some were able to arrange a bailout system to move outside the camp completely -which is not an easy process-, and some left their camps illegally. Moreover, visits of family members in other camps, or family unifications living in different camps can be a daunting task. All these measures limit the movement of refugees from and to camps, adding more psychological pressure on them.

This relationship between the state and the refugees continues to express itself spatially, and on the urban scale through the allocation, the spatial positioning, of refugees and their living conditions. If we take a look at the statistics, it is claimed that 20% of Syrian refugees stay in camps, whereas the highest majority of 80% inhabit the cities, villages or informal tent settlements (ITS). The camps were established in different locations and under different circumstances: King Abdullah Park, Cyber City, Zaatari Camp, Emirati-Jordanian Camp (EJC), and Azraq Camp.

I am not going to talk about every individual case, yet I am interested in the dynamics between the different powers and structures, and how they infiltrate and shape the spatial settings of a camp. More precisely, I am interested in how space becomes a subject for human rights. I think most of us know about the situation in Zaatari Camp, which is one of the biggest and has received lots of attention. What I find interesting here actually is the possibilities that enable the refugees to re-shape and to improve, in other words, to humanize their spatial environment. This was neither planned, nor completely approved by the humanitarian organizations or the Jordanian government. Instead, it took place at the moment that these systems were the weakest. People were able to express themselves spatially,

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to create businesses and to develop habitats and neighbourhoods, so to say, to urbanize the camp.

These kinds of informal practices did not only take place inside the camp, but also outside of it. Reports claim that around 125 informal tent settlements (ITS) were found around the kingdom in 2014 and 70% of them had no accessibility to communal or private sanitation systems. Despite the fact that the inhabitants of these settlements are probably the most vulnerable, they are facing further displacement through evacuation campaigns organized by the state. However, life in cities and urban centres proves to be harder for refugees.

Statistics show that around 40% of families are sharing a flat with another family, so they can afford the rents which have doubled after Syrian refugees. Housing is often overcrowded with an average of 3.5 persons sharing a bedroom compared to an average of 1.3 persons for Jordanians. While this produces a whole new urban dynamic, it also reflects the difficulty to sustain a living in Jordan, one of the most expensive countries in the Middle East and the poorest in resources.

Despite what the refugees might get of humanitarian aid, there is an unquestionable need to gain additional income. But in Jordan, the right to work is strictly reserved to citizens. Moreover, the procedures and conditions required to obtain a working permit for migrant workers are very specific, and rather open for low wage and unskilled works in construction and agriculture. With this pressure to access the labour market, the Syrian refugees found haven in the expanding informal economy.

Statistics show that in 2015, around 90% of the Syrians working in Jordan have no work permits. Despite having access to the market, the informal economy is characterized by instability, insecurity, long working hours, low salaries and inhumane working conditions.

This goes in opposition with the aspirations of the EU to stabilize the

refugee movements and the region, and with the attempts of UNHCR to reduce its budget by shifting towards 'self-reliance'. Therefore, in camps, increasing numbers of refugees are offered actual jobs in NGOs, in opposition to the occasional earnings through cash-for-work. Outside camps, UNHCR is working with the Ministry of Labour to issue work permits for refugees. The Agency expects that 78,000 refugees will benefit from this service; however, refugees have huge doubts regarding the strict law and the types of jobs that are available for migrant workers.

As to education, statistics claims that around 40% of children remain out of school, and 60% are not eligible because they have been out of school for more than three years. This complies with the fact that the majority of Syrian refugees in Jordan come from rural areas, and it requires the prioritization of the efforts on education. Additionally, there is the huge pressure on families to support themselves financially. This would cause a whole generation of refugees to be lost and to have no access to proper education. Even in regard to higher education, which is tightly connected to the dynamics of the Jordanian neo-liberal economy, the tuition fees are extremely expensive. And obtaining a degree from a Jordanian academic institution or university would not mean that refugees will be employed afterwards, especially under the current juridical restrictions on labour market.

Building on the previous, we can say that the Syrian refugees in Jordan are in diverse, dynamic and contextual situations. In this case, both the refugees and the state with its different structures, enter into a competition for survival: While the state strives to protect its own interests and limited resources through different policies, the refugees develop coping mechanisms to negotiate their everyday life. Throughout this process, the pressure on both the individuals and the structures is immense. For successful solutions, this fact should be taken into consideration, and the plans should be made strategically based on this dialectical relationship.

Thank you.

## Aitor Zabalgoeaskoa Médecins Sans Frontières

*Aitor Zabalgoeaskoa has been the Head of Mission of MSF operations in Aleppo, Syria between 2012 and 2014. Since summer 2014, Aitor is acting as Médecins Sans Frontières International Representative in Turkey.*

*Between 2006 and 2012, he was the Executive Director in Spain and member of the International Executive Committee of MSF. From 2003 to 2005 he was the Director of the Emergency Unit in MSF for operations in DRC (Kivus, conflict), Sudan (Darfur, displacement), Iraq (war), Iran (Bam, quake), Zambia (cholera outbreak), Guinea Bissau (measles outbreak), Ethiopia (meningitis vaccination), Sri Lanka (tsunami), Chechnya (war) and Angola (Marburg Haemorrhagic Fever outbreak). From 1993 to 2003 acted as Emergency Coordinator and team leader in epidemics, disasters and conflicts in Occupied Palestinian Territories, Colombia, Iraq, Chechnya, Gambia, Afghanistan, Pakistan, Centro African Republic, Democratic Republic of Congo, Ceuta (Spain), Argentina, Georgia, China, Tanzania, Honduras, Guinea Bissau, Kosovo and Tajikistan. He has background in media management, and TV production and he is the producer of the "Invisibles" documentary in 2005.*

## Humanitarian Challenges for People in the Move

Thank you for the invitation and for giving us the opportunity to explain a bit what we have seen on the ground and to share the experiences what our teams see when they're working around.

This is something that you know already but we cannot lose perspective on the fact that this is not a refugee crisis. I think that we shouldn't be talking about a refugee crisis. In the case of Syria, it is a huge humanitarian crisis provoked by a brutal war, where no rules are respected. A war that is having a massive impact on civilians, a war in which all fighting forces and all army groups on the ground are using indiscriminate and disproportionate force over civilians and over civilian targets such as markets, schools, hospitals... And this is in the making; life is unbearable in Syria, this war it is provoking an indescribable suffering and this is the source of what is happening around Syria. The second point is that we cannot forget either the conflict in Iraq. Iraq is suffering a de facto war that started in 2003 and it didn't finish yet. It is worsening and will worsen further in the coming months. The regular migration flow to the Gulf has



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also stopped. The situation currently happening in Iraq has no perspectives of improving in the short term. Probably the war and the conflict is going to continue for a significant time and it's going to have a significant impact in the population in the centre and in north of Iraq. So, we are just at the doors of another new crisis which will affect also the region, and especially also could affect Turkey.

The region is also full of refugees from other countries, a lot of the people who are now moving around are non-Syrians and non-Iraqis looking for safety or for opportunities. They from of countries that are been suffering wars and conflicts for the last 20, 30 or 40 years like Afghanistan or Somalia. I'm going to give some elements about its consequences over the people and especially on the life, health and dignity of the people who are being a spill over the region. Iraq's situation is forgotten or a little bit shadowed by this Syrian situation.

The medical conditions are mostly the same in the region and for all the communities. There are some differences in between the gender and age and some conditions, but are the same in general. I want to draw attention to the fact that what's happening in Lebanon is not sustainable at all. We are talking about a society where there is a refugee for every 3 or 4 habitants in Lebanon. This means that the structure, education, health system, documentation system... all the systems are completely overstretched. The only advantage for the Syrians in Lebanon are family ties. In Lebanon, Jordan and Iraq the refugees have family ties and also use the same language, which is the only advantage that they are able to exploit. This is not the case for Turkey or other places.

When the people starts to spill over, the first vulnerabilities are starting with the separation of families. Sometimes, especially young people, they don't understand it, but this has a lot of impact in the lack of the capacity and copying mechanisms of the group or the family to answer to medical and non/medical conditions. There is also a dramatic and sudden loss of

resources. A lot of families are either losing everything during the war, or investing a lot to flee the war through smugglers, also to settle somewhere else in the region and this is having a lot of impact in the coping capacity of the families. This, of course, has also again repercussions in the health conditions. Another big event that refugees and families are facing is that virtually all of them had heavy personal, family or community losses. There are a lot of people affected by post-traumatic stress disorder and from mental illnesses that they don't notice or they don't want to report. We see that with a lot of people. They don't want to seek for help, because they see that the war continues in Syria. They feel like they don't want to talk about it, they feel like they are betraying the people who still live in Syria. It is not a closed chapter for most of them. There are also a lot of cultural issues, but also personal and community issues that they are stopping people seeking for help to try to heal mental health. It is much more difficult also to identify the people who are more severely traumatized and those who are much more seriously affected amongst these communities are reluctant to seek help.

Individuals from a lot of the families are getting out from Syria with wounds or disabilities. If we make a rough calculation of how many were wounded in this period in Syria, we see that they should be around a million people. Some more severe or more lightly, each with a different degree of impact, but all with wounds which can or will lead to disabilities. From this estimated million, if you take just one per cent, think how many people are facing severe disabilities that will mark them for all their lives and limit their capacities in a lot of senses. And also because currently, when they are fleeing, they are not able to recover properly, in order to get into a new and a better condition as early as possible.

We have also the crossing factor, with the physical violence that people are encountering when they are jumping over the borders, either by smugglers or security forces. Then, there are also the conditions that

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are created during the journey. The people are facing mortal dangers at sea. I'm not going to get into figures because, a lot of them are going to be exposed here in the next two days. But just a reminder, in 1999, I was working in the Spanish and African city of Melilla, dealing with migration flows between Morocco, Mauritania and Spain. And deaths in the sea were already quantified on tens of thousands. So, only imagine now what's going on in between Turkey and Greece, and in between Libya and Tunisia, and Italy and Malta, etc. The number of people which is lost at sea is just incredible.

There are also a lot of problems when the people are choosing other routes. Land routes are not safer. There is the well-known case of asphyxiation in containers which happened in Europe, but this is also very frequent in areas of Libya, Egypt, especially when people are trying to cross the desert. People are getting wounds from burns during the sea crossing and there are also the cases of frequent intoxications. A lot of violence is happening with border guards or smugglers, and between different communities and groups, in a desperate fight for survival. Then, there are the consequences of systematically sleeping outdoors, somebody was mentioning it before, the issue of sleeping five or six years in a tent, leads to respiratory infections, skin infections effects that are also very frequent. And this is just during the trip itself. We saw that not only during the last autumn, during the big influx in between Turkey and Greece, but also during the summer between Libya and Italy.

The dynamic is that first a lot of people try to cross and there are men, mostly young men, who are going in front trying to check, to assess the situation and later the families come. When the families come, whatever they route the use, from crossing the sea or arriving in to camps or slums in cities, the medical conditions are of a wider spectrum; because they are a lot of other conditions added. A lot of them are affecting women, such as forced prostitution, child prostitution and increase of sexually transmitted

diseases. Gender violence and sexual violence also has a lot of impact in the increase of trauma, sexually transmitted diseases and risky pregnancies. A lot of women are not able to seek adequate medical help because of the overcrowded medical systems.

The overcrowding in the households is also leading directly to domestic violence. It is nice to have your family in your home for some time, but it's not so nice to have 40 people of your family in your small home for four years. There are a lot of cultural and language barriers for the Syrian refugees and Iraqi refugees, especially women.

It is important to mention the interruption of treatments. People who managed to keep serious conditions in a stable situation, such as chronic conditions, begin to have serious health problems, when the treatment is interrupted. We have seen that more and more. For example, diabetes, if not treated for a long time, has a lot of impacts on a person, just like hypertension and other kinds of chronic conditions.

We should not ignore the fact that the people are in forced labour and this also has an impact in their medical conditions among other things; forced labour is making them less able to look for resources and to develop the capacities for dealing with the situation that they're facing. Children do not have access to education and they are disconnected from their own environment, etc. The children are also affected by all the above-mentioned conditions, with no proper vaccination and no proper treatment of their conditions in early stages of childhood. Some of these will have a lot of impact on their future. We are in a relatively narrow geographical environment and there are some resources available. If we do not take the necessary measures, all of these are going to become a problem, but they're not going to be a future problem like they are in other less developed places in the world. If these are not timely treated, some of these conditions will lead to disabilities for life. I want to mention the issue of dignity and the issue of repeated humiliation. The issue here is being treated like a

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problem, like an illegal thing, instead of a person. So basically any medical condition is subject to the deterioration in such daily harsh conditions. The people living in the camps or in the slums have a life a bit more bearable than in Syria, but not much.

I would like to finish with the infamous European Union - Turkey deal. As we see it from our perspective, from the MSF perspective, this deal is a clear attack on the right to seek asylum. This is a clear manipulation of what humanitarian aid is. This deal is making the global displacement crisis worse by pushing the solutions to the places where there is already a humanitarian crisis going on. So the deal is only worsening humanitarian situation of the people who are in the move. This is a battle that we need to fight and we need to win. It is important to be winning in Europe. Not because it is Europe or it is better or because it is nicer or whatever. It is because of the fact that it is creating a precedent. Like the precedent established with the systematic ignoring and violation of international humanitarian law that followed after 9/11. We have been dealing with that already for the last sixteen years and it is going to take probably another decade or two decades to try to compensate this systematic lack of respect to international humanitarian law as seen in 9/11 and the reactions to this event. The situation that we are facing now with the refugee crisis in Syria and its impact on Turkey, the surrounding countries and the Europe are going to affect the right to seek asylum in the refugee law and how the refugees are going to be treated in the world in the coming years. It's important that we need to try, to fight and to win this battle.

Thank you.

**CONFERENCE ON  
INTERNATIONAL COMMUNITY AND REFUGEES:  
RESPONSIBILITIES, OPPORTUNITIES, HUMAN  
RIGHTS VIOLATIONS  
DAY 1 SESSION II**

**STATE OF THE REFUGEES IN TURKEY**

**Moderator:**

Burcu Karakaş

**Speakers:**

Andrew Gardner

Murat Erdoğan

Veysel Eşsiz

Taner Kılıç

İrem Somer

## Murat Erdoğan Hacettepe University

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*He graduated from Faculty of Political Science in Ankara University. During his PhD study, he was While he was studying for his doctorate in Ankara University, he was a research fellow at Freiburg and Bonn Universities in Germany. He was a research fellow at Johns Hopkins University, the Stiftung für Wissenschaft und Politik (SWP), Oxford University, Humboldt University and Duisburg-Essen University.*

*He is the author of many books, reports and articles. His academic interests are voluntary and forced migration, refugees, EU-Turkey relationship, political cartoons, Turkish and German foreign policy, political behaviour, media and cultural dialogue.*

## **Turkey's Challenge on Forced Migration: Syrians in Turkey**

I would like to thank all of you for the invitation, for organizing this panel and also for being here. I will try to present the general framework. I will try to make a presentation on Syrian people living in Turkey, share the situation in the region and also present the demographic structure of this population, as well as the problem areas. This is a title I am using for my recent presentations, and I like using it: "Are we ready to live together?" As you know, five years have passed since the first arrival of Syrians to Turkey, i.e. since 29th of April 2011. Five years went by and we have gained a lot of experience and lived through a lot of things. And we are going to experience a lot more. As academics and the society, where do we stand on this issue, where do we stand bureaucratically and politically? I would like to draw a bit of attention to these. I ask this question with a purpose, because the conclusions of our studies or what I observe from the outside and the experiences that we have, they all clearly indicate that this is a permanent problem. This problem does not seem to be



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something that would be resolved in a short period of time. We can also discuss whether or not this is a problem, but in any case we are facing the same phenomenon. Hacettepe University's Migration and Politics Research Centre (HÜGO), of which I am the director, was established in 2011. At the time of its foundation, we have extensively worked on Turkish people living abroad. Only in Europe, the number of people from Turkish origin has exceeded 5 million. In researches conducted in abroad, we have mainly worked on integration processes, and these researches have been a source of experience for us. We were pretty demanding when it came to Turkish people living abroad; that is, they should have been offered education in the mother tongue, the right to work should have been recognised, the society must not set back, etc. Then we started to study the situation in Turkey. Here in Turkey, we have never talked about integration in terms of internal integration. But, we have serious integration problems in our country too. Problems that we see in the East and the South East of the country are part of this. From 2012 onwards, we have started talking about integration with reference Syrians and we have started working on Syrians in Turkey more extensively starting from 2013.

Our first study was on socialization, social acceptance and integration in Turkey. It was no coincidence that we chose this title. When we were carrying out our research on Turkish people abroad, we used to say that Germans, French and Belgians kept talking about integration; yet this was not a one-directional issue. First, the society has to be ready for this and the people who come in have to adapt to the society. But this is a mutual process! Thus, we have created this concept. What is the level of social acceptance? How accepting is the Turkish society, to what extent does it succeed in including them? It was our first research and it has been a pretty comprehensive study. Later on the research was published by Bilgi University. Another study we had carried out as HÜGO is on the history of immigration in Turkey. Through that research, we tried to understand the

relationship between the Anatolian territory and migration, from the 14th century until the present day. Professor Kemal Karpat wrote the preface of that book. Many persons, people like Nermin Abadan Unat, Kemal Kirişçi and Ayhan Kaya contributed to this work. This book is particularly important, simply because it sets the following principle: If we are going to talk about migration, refugees and migrants in Turkey, firstly we have to see what kind of migratory experience we have had before in Anatolia, in Turkey. First point; Anatolia is used to migration, forced migration and to refugees. However, there is a second point; we are facing a huge phenomenon, a phenomenon that we have never seen in our history before. Therefore, we do not have a lot of experience on this topic, so we have to create somewhat new solutions. I would like to start by giving an example. Over the course of 88 years, from the establishment of the Republic of Turkey in 1923 to 2011, the year during which Syrian refugees started to arrive Turkey, approximately 1.8 million refugees and migrants had come to Turkey. Almost all of them are of Turkish descent and they are Turkish speaking people, coming from the Balkans, the Caucasus, and the Central Asia. And upon their arrival, they were settled to Adana, Bursa, Eskişehir, İzmir and other different places in Turkey. So we can say that there was a migration management during those years and it worked! These migrants contributed a lot to Turkey's present diversity and richness. I am sure there are people among you, who directly arrived Turkey in this way or whose mother, father, grandfather, or relatives did so. Migration is not an issue in and of itself, it is something that must be managed well. Yet, management is more problematic when it comes to forced migration. In one of the latest studies we had carried out, we tried to gather opinions of Turkish businessmen on Syrians. The study focused on labour rights, child labour, and their impact on Turkish economy. You can find all of this on our web page both in Turkish and in English. Currently, we have three on-going studies. As you know, on the 23rd and 24th of this month, the Humanitarian Summit will be held in Istanbul and we will present our report in the summit.

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In camps, there are places named 'child friendly spaces' and we carried out another study on Syrian children and their families in these places. We conducted our research in 25 camps, and we were the first academic institution entering these camps. I don't know if we should be proud or sad about this; but since five years, this was the first time we could enter camps. We were allowed to access the camps, because it was Kızılay's (the Turkish Red Crescent) research project. And we were only able to interview the children; we couldn't go around that much. We are about to finalise this study and I believe it will provide interesting data. Second, we carried out a research on Syrian academics in Turkey. We have lost most of the Syrian academics in Turkey and I put quotation marks around that word "lost". Maybe it was better for them, maybe they have found other areas of academic interest for themselves. Currently, there are around 500-600 academics who used to work at universities in Syria and 95% of these are theologians. Physicists, chemists, mathematicians, they are not here anymore. Nonetheless, we are conducting a study on how we can make use of the remaining people. And our final study, again an on-going research that we shall soon conclude, is on the municipalities and the refugee problem. We are conducting a comprehensive study on this topic. We first started from Istanbul and considered Istanbul as a pilot province for our research. We focused on district municipalities of Istanbul and tried to understand how do municipalities tackle the refugee problem in a metropolitan city. They do not have additional resources; they do not have the capacity to handle this situation, thus how do they manage? This is what we are trying to understand.

There is no need to explain here who is a refugee, you are all quite familiar with this topic and know it very well. This is not the first time that the refugees show up. There are more than 50 million refugees around the world and the mobility we are witnessing in the past years represents around 10% of this number. Refugees cannot easily go far away and reach

prosperous countries. Generally, they flee to a nearby, a slightly better-off country. They flee from Afghanistan to Pakistan, from Pakistan to India, etc. etc. Right now, Turkey is a centre of attraction. If you ask some of the people in Turkey, they themselves want to immigrate to another country. Therefore, the migration issue or people travelling to different countries is not something new. But still it makes a lot of noise because it is the first time Europe so harshly faces this issue. I think a lot more detail on that will be given in the upcoming presentations, but there is a brutal war going on. Over a thousand groups are fighting against each other. It is not just ISIS and neither just Free Syria Army, nor just PYD, there are many other subgroups. And all are engaged in a brutal war among themselves. This war killed almost over 250 thousand people, forced more than 5 million people to leave their country, forced 7-8 million people to leave their homes; and there are people who are fighting to be liberated from the war. We are now used to these pictures, we see them everywhere, but each of them represents a human being, each has a value, each represents a life. And this process continues. Gravely and tragically... We are living in a region that sometimes burns our hand, yet sometimes serves to us. We have a border of 911 km with Syria and 300-something km with Iraq. It is not easy to protect these borders because of the geographical conditions. And there is also a culture of smuggling in the region and recently this culture also has become an active element in human trafficking. Therefore, the geographical and regional characteristics play an important role in all we are going through right now.

Even today, after five years, Turkey does not have an asylum policy. Turkey had a Syria policy. One can find it right or wrong or under-calculated and sometimes over-calculated...but Turkey had a Syria policy. However, Turkey did not have an asylum policy. And upon what have we built this policy? We have built it upon an expectation. The Arab Spring starts, all the countries were collapsing one by one, all the dictators were leaving, and

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finally it was Syria's turn. We expected that the same thing would happen in Syria. And as we are very enthusiastic about building the future there, we immediately started engaging at this front. We love building the future, construction industry is really important for us and more than everything, we love social engineering. Syria is right at our elbow, we can build the future there, how wonderful it is! And as Assad was supposed to leave, we started our preparations. It sounds like a joke, but there is even a poor temporary Syrian government sitting in Gaziantep. We have supported the opposition in Syria, both the unarmed and armed opposition. Because we thought, if the crisis in Syria could be quickly resolved and if we could build the future there, this would have an impact on Turkey's foreign policy and regional politics. Ahmet Davutoğlu expected that Assad would remain in power only for couple of weeks. But today Ahmet Davutoğlu is gone and Assad is still in power. Ahmet Davutoğlu wanted to perform the prayer in Damascus, but he could only do that in Konya. So, this was an expectation that directly affected Turkey's whole policy and the regional politics. We used to believe that we would receive around 50 thousand refugees, and this number could reach maximum to 100 thousand and we could simply say no to more. The number of persons seeking asylum in Turkey exceeded this threshold only within a few weeks after Ahmet Davutoğlu had uttered the above mentioned expectation. As I said, Assad's regime remains in power. This is the picture of a prime minister, the prime minister of temporary government of Syria. Currently he resides in Gaziantep and I did some interviews with him. They are still waiting for Assad to leave so that they can form a government, or rather take over. Based on this expectation, Turkey built a foreign policy for Syria, but we have never been genuinely interested in the people who entered Turkey. For two and a half years, there was almost no registration. This is a picture of me with four Syrian ministers, I am proud of this picture, I have never been together with four ministers. At last I had this opportunity. Of course, people are always confused because we still have an interest for Damascus. Is Assad leaving or not? When is he leaving, how is he leaving,

that's what we are looking for. This is why there is a complete cacophony. While Numan Kurtulmuş states that Syrians in Turkey are permanent, the Minister of the European Union claims there is no such thing and that they will leave. Erdoğan says one thing today and he says another thing for the next day. Erdoğan's principal consultant Burhan Kuzu, may God bless him, recently stated "If the European Union does not do something, we will send these people". As if we are living in 1930s Germany, we will put them on trains and send them. Where do you send these people? This is not acceptable. Yet, whatever this is, we are for sure witnessing an interesting and dramatic event in terms of foreign politics' effect on internal politics in Turkey. You can clearly see the registration process. For two and a half years, there were almost no registrations. Only after the pressure of international organizations, primarily from UNHCR, we realized that these registrations are necessary. UNHCR purchased 25 trucks and donated them to Turkish Government. Computers were installed inside these trucks and registration started using mobile registration systems. You can see the number of registered Syrians in Turkey, the final number here: Around 2 million 748 thousand. This is the number of registered refugees; one can estimate that there are approximately 100 thousand unregistered people. Plus, in Turkey, there are around 300 thousand refugees coming from other countries, more than 170 thousand are Iraqis. So the actual number is now over 3.2 million. It is more than the population of many European countries. It has reached 3.4% of Turkey's population. There is still a risk that these figures may continue to increase. You can imagine how people persecuted in Afghanistan, Pakistan, Indonesia get excited whenever our guys say "we shall open the doors" or something similar. I suppose they do not realize how risky this could be. Opening the door; you are not opening one door to one side only, the other door opens by itself, and this is not a joke. Turkey has become the largest refugee hosting country in the world, and unfortunately this did not spark the world's interest for three years. Everyone was still interested in the regime in Damascus. It did not draw

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Europe's attention, until Syrians started to head towards other countries.

Now the table here is showing the refugee numbers. As you can see, the number of Syrians living in Turkey reached almost 3.5% of Turkey's population. When you look at Lebanon, the situation is dramatic with 24%, and in Jordan, it is 10%. And what about Europe? It is 0.25%. Europe's grumbling is not something understandable. You have the best insight to understand this. In a world where there is that much gap in terms of wealth, prosperity, peace, democracy, you cannot simply prevent people by building walls. Yesterday, Angela Merkel made a dire statement "We are glad that we made this agreement ... prior to the agreement, around 300 people had drowned in the Mediterranean, now only 7 people drowned", and added "we did something good". Well then, do you have any idea on how many people had lost their lives before? How many people died in their countries? People are struggling to survive, and do you see this that simple? The feeling is that there is no problem as long as it does not touch me. And also I shouldn't see it. What was happening with that baby Aylan? There is no problem as long as we do not see them. Everything is fine. There is no such thing. We cannot admit this. The whole world has to change; the mind set regarding refugees has to be revised. Our policy, as I said before, is an open door policy. We did not adopt this to be in line with universal human rights, we all know that. They adopted this policy thinking, "Assad will leave, so let them come, since they will return back two days later". Anyway, the open door policy was maintained to a large extent. However, for the last one and a half year, there is no open door. Principle of non-refoulement, "Amnesty people" know it best, I shouldn't talk about that. They can tell you themselves whether people are sent back or not. But ultimately everything was built on temporariness. By the way, I stole this chart from Volkan. I had seen it during one of Volkan's presentations. I liked it very much and made this myself based on his, but as Volkan is here, I should make a reference to him. This is one of the signs of the confusion

in Turkey, because due to the geographical limitation to 1951 Geneva Convention and 1967 Protocol, we do not call these people refugees. We are trying to find completely different titles for these people. Our aim, as a state, was to stay away from refugee flows. Were we able to achieve this? You see that we failed, and what is missing here is refugee rights. And this process, unfortunately, continues tragically.

We talk a lot about camps, only around 9% of Syrians are living in the camps. The main question is the situation in the cities. 450 thousand people are living only in Istanbul, I don't know to what extent we are aware of this figure. We have 25 camps in 10 different cities. The infrastructure at these camps is relatively good, especially in the container cities. We receive a lot of praise for that. We even have double containers, they are not used yet. The authorities will start to use them soon. When we compare these camps with others, I mean the camps in other countries including France, the conditions are far better. However, you can live in a camp for a week, for a month, or perhaps for five months. But you do not build camps and force people to live in for five years. In that case, the camp becomes an open prison. Especially if you tightly close these camps to the outside world, you cannot see what is happening in there. I know that many organizations have many complaints on this issue. Yesterday, this issue came up once again, as we were discussing that latest harassment incident. Of course, bureaucrats believe that they are doing something good. They are indeed doing good things too, and we have to give them due credit. Yet, in such a closed up institution, authorities might be accused of hiding all negative issues. Syrians living outside the camps are all around Turkey now. You can see the largest numbers here. With 400 thousand individuals, Şanlıurfa is at the top. When you tell this number to the people of Şanlıurfa, they would beat you and say "we have at least 500 thousand". We have another 400 thousand in Istanbul. People from Istanbul are talking about much higher figures. There are really dramatic places such as Kilis and Reyhanlı. There



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are places hosting more refugees than their local population. So, when you have a closer look and try to understand who these Syrians are, you realize that 20% of the population is between 0-4 years old. This means that there are around 550 thousand children aged between 0-4 years old. But the graver situation is this red area, school-age children. The number of school-age children in our country is over 900 thousand and these children are not going to school since three, four or even five years. A few striking numbers more: on average, 125 Syrian children are born everyday in Turkey. This makes 45 thousand per year. Therefore, this is of utmost importance for the continuity of life, the continuity of the process. But let's get back to education, a subject that, I think all of us are interested in. Our Ministry of National Education said that the number of school-age children in Turkey is 830 thousand. I think the actual number is above 900 thousand, but let's do not break the heart of our Minister. I will assume that it is 830 thousand. Only 75 thousands of these children attend to Turkish schools and have education in Turkish. It's normal, everything is OK. But others are attending to so-called temporary education centres in and outside the camps. These centres raise a lot of suspicion in terms of the level, quality and continuity of education and in terms of many other subjects. A lot of conservative organizations have also taken an interest in these education centres. I do not think that children attending these centres are receiving proper education. They are trying to get education in Arabic. Most of their teachers are not professional teachers. Anyways, but there is a group of more than 500 thousand children, who does not receive any kind of education. I really do not need to tell you what a tragedy this is. You can make a simple calculation here. The student-teacher ratio is 20:1 in Turkey. This means that we need at least 35 thousand teachers to provide appropriate education for these children. We need at least 25 thousand new classrooms.

Unfortunately, we do not have a lot of information on the profile of

Syrians in Turkey. The state is collecting bad quality data, they had already started quite late, and they are not sharing it at all. For example, if you make a request for data on the children at the age of three, the state shall not give me this information since it is considered a state secret. For this reason, I do not know any data on children between the ages of 0 and 4 or between the ages of 5 and 9. We need to develop special procedures for the provision of detailed data. However, the data we have, show that the illiteracy ratio of Syrians in Turkey is almost 55%. In Germany, this ratio is around 5%.

There are different issues that should be taken into consideration. The cost aspect might not be very important, but only the cost of outpatient clinics services provided during the past five years is over 12 million dollars. The number of prescriptions written monthly is above 500 thousand and so far more than 350 thousand surgical operations were carried out. But as I said, that's alright, these are human beings and we must provide these services. But at that point, we have a huge transparency problem. What is going on, where the money comes from and how is it spent? We do not know. The ratio of people who have a job, people who declare having a vocation is 3.9%. They say "I am a taxi driver", "I am a baker" or "I am a cleaner." According to the state statistics, the occupations of 80% of the Syrian population are unknown. The reliability of this data is another problem. There is also the security issue encountered under different headings. I don't want to go into the details, but just take a look at the Ministry of Interior's official data. In a short period of time, over 40 thousand foreign fighters were apprehended in Turkey, and they were deported. We don't know how many of them infiltrated, not only into Turkey but into other places. Process management, we also have very serious problems in this area. Because we still do not see this phenomenon a permanent one. We are still looking at Assad, and we are not interested in what is going on in Turkey. This is why we have a pretty messy structure. And we are in urgent

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need of a new regulation. We have a central structure in Turkey, therefore we have to establish either an under-secretariat or a ministry, there is no other solution.

A couple of sentences on labour rights... Currently there are at least, at the very least, 400 thousand Syrians working in Turkey and almost 50% are children. There is a new regulation, but it is impossible to implement this regulation, simply because these people are used as cheap labourers in small and mid-scale companies. There are other problems as well. I will not touch on these any longer since we are running out of time and I will say just a few sentences on Europe and conclude.

We think that the level of social acceptance is very high in Turkey. I have some ideas on this. In 5 years, over 3 million refugees arrived Turkey and nothing happened. I mean, this should be praised. We should not overlook the state's and the society's capacity and efforts. But sometimes some abnormal things happen too. For example, the official unemployment rate in Turkey is 10.8% and the unofficial rate is around 17 or 18%. In general, 3.2 million people have applied for a job and they are waiting for it. Then you provide refugees the right to work, which I support. But nobody says a word. There are no discussions, no one says anything. This is not normal, and this gives us some clues on the level of social acceptance in Turkey. OK, the level of social acceptance is high, but also there are not many areas in which people can express their criticism. When you talk to people one-on-one on this topic, you can clearly see the hatred, the anger in people. Besides, this is a very risky area.

One final thing, the relation between Turkey and the European Union. I have already said it on many different occasions and I shall say it once more: I see this as a relationship between two losers. The European Union has no hope left and Turkey has no friends left. Thus, they decided to cooperate. This was one of the strategies of Ahmet Davutoğlu. As a matter of fact, it has been one of the strategies that made him lose his position.

He was hoping to get some support from Europe against Erdoğan. But this is not sustainable. Neither Turkey-European Union relations nor the refugees benefit such a deal. This can only be a short term and self-serving relationship. It completely ignores human rights. The number of people trying to reach Europe may have decreased for a while, but this flow will continue in the future. I have already told you what Angele Merkel said, this is unacceptable. She is saying the people are not dying anymore. Is that true? They are not dying in the Mediterranean, but where do they go, where do they die now? What is worse is that the modality of Turkey-European Union relations has changed and the priorities have changed. For the European Union, democracy, human rights, freedom of the press, etc. have become secondary issues. Only the European Parliament is showing some resistance now, and I don't know how long they will keep that. This is really a dire situation. At the end of the day and one way or another, we are going to live together with these people. The person responsible of that situation might be anyone and that is another issue which needs to be discussed separately. We are now faced with a social reality. You may engage in social engineering as much as you want. Yet, these are people that we are talking about. There is a famous saying about the Turkish people in Germany: "We asked for workers, but in the end human beings came". You can make your own plans, but the life operates at a different level. I believe that we have to concentrate on how we can build a more pluralistic, more democratic, more peaceful Turkey that facilitates living together. Thank you for your attention.

## Veysel Eşsiz Refugee Rights Turkey

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*Veysel Eşsiz is interested in and publishing on the internal displacement, the protection of refugees under the ECHR, and the human rights monitoring mechanisms.*

## Overview of Turkey's Policies and Practices pertaining to Protection of Refugees

Thank you very much. As the rabbit coming out of the hat, I am here with you. My friend Oktay Durukan was supposed to make a presentation here. This task has been appointed to me due to his illness. He sends his regards and sympathies. I would like to thank to this respectable assembly, Amnesty International and Rosa Luxemburg Foundation for their invitation and for organizing this gathering, and also thank you for your participation. In my presentation, I will try to stick to the framework provided in the program which is, thankfully, sufficiently broad. I also would like to thank Andrew because although we did not have the time to talk before, yet he passed all critical issues to me in a quite nice way. My speech will therefore and somewhat complementary. I would like to start with providing a general summary of the way that the refugee protection has evolved, both at legislative and institutional level, in the past five years in Turkey. I shall indicate existing problem areas by raising red flags. However, I must emphasise this from the outset; that this red flag is not the same as the one in football, meaning a definite penalty kick or foul. I am just using this red flag analogy to identify a problem area or an area of concern.

Now, as Murat Erdoğan stated, we are in a new era in Turkey in terms of asylum and migration. We have new legislation or institutions, but

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also new facts. Indeed, in a matter of few years, Turkey has become the largest refugee hosting country in the world. When we look at it in terms of legislation; thankfully, Turkey's regulations on international protection are not anymore at the level secondary legislation.

The protection provided in Turkey is based on the Law No. 6458, the Law on Foreigners and international Protection. Actually this law was a mid-term goal for Turkey. How do we know that this was a mid-term goal? From the National Action Plan on Asylum and Migration of 2005. Following the Accession Partnership document dated 2003, the National Action Plan on Asylum and Migration was developed under a twinning project. The Action Plan envisaged two draft laws, one on foreigners and one on asylum. Within this context, the goal was to solve issues such as the accelerated procedure and the unrestricted right of residence -all now included in the new law- by amending the 1994 Regulation, and other issues including the removal proceedings, the grounds of deportation and the protection of vulnerable groups were all to be resolved in these draft laws. But, sometimes life does not care about any of your plans, and this is a good thing. For the first time in 2000, the European Court of Human Rights (ECtHR) heavily criticized the provision requiring asylum seekers to lodge their asylum application within five days, a requirement which was interpreted and applied as a statutory limitation in its decision in the case of *Jabari v. Turkey*. The Court found a violation. This case was also important as it confirmed a well-established ECtHR case-law within the context of Turkey that a legal remedy concerning a deportation order or an extradition request must fully confer an automatic suspensive effect, and thus, must suspend the proceedings. However, in my opinion, what had really accelerated the process was the case *Abdolkhani and Karimnia v. Turkey*, dated 2009. Because in retrospect, as we name a group of judgments concerning the right to assembly and peaceful demonstrations in Turkey as *Oya Ataman* group cases, we can similarly consider another

set of judgments for the refugee cases as Abdolkhani and Karimnia group. Indeed, in many of its subsequent judgements, the Court has repeatedly made reference to issues that it established in the case of Abdolkhani and Karimnia, especially with regard to Article 5 of the Convention regulating the right to liberty and security. If I have to summarize, in this case, the Court has clearly established that the legislation in Turkey, particularly the legislation on the detention of foreigners, was arbitrary and did not comply with safeguards set forth by Article 5 of the Convention.

Of course, the increase in the number of asylum applications, the need to manage this area in a more professional way, the EU negotiations and the accession process have cumulatively led us to the new law.

We, the rights-based organizations, in particular Coordination for Refugee Rights in Turkey, have meticulously followed the preliminary stages of the new law. We participated in all commission meetings in the parliament and, within our power, we have achieved some improvements in the draft. For instance, issues like the stay of deportation within the judicial appeal period, a lawyer's full access to the applicant's dossier, the duty of taking the person's language and his/her special conditions into consideration in notifications were all important issues that we defended at the commission and achieved their inclusion in the final text.

When we look at the new law, we see that it does include many important safeguards established by the case law of the ECtHR. These safeguards were not previously part of the national legislation. The automatic suspensive effect of judicial appeals, administrative appeal mechanisms, a concrete legal basis for the administrative detention and possibility to request the review of the legality of detention are among important procedural safeguards introduced by the law. However, not only good examples, but also bad examples travel across the globe. In other words, many problematic concepts of the European asylum system that raise concerns as to their compatibility with the international refugee law



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and human rights law, were all incorporated into Turkish legislation. These include the accelerated procedure, the safe third country and the first country of asylum, and the implicit withdrawal of application among others. We know that the law was published in the Official Gazette in 2013, but it went into full effect in April 2014. And now it has been two years, and therefore there is a need to take stock of the development. While doing so, it is very critical to take the context into account. As Andrew also pointed out, all issues are interrelated and we should not forget about the context. When the law entered into full effect, already two years passed from the start of the Syria crisis and Turkey's de facto implementation of the temporary protection regime. This regime has acquired a legal basis with the adoption of the Temporary Protection Regulation that was published and came into force in September 2014.

When taking stock of development, let us take a look at what has changed at the institutional level. The first change is the establishment of a civilian authority, the Directorate General of Migration Management (DGMM). Upon the publication of the law, the DGMM started to operate and carry out its activities. Within this context, we see that the management of regular and irregular migration with all aspects were transferred to the DGMM. Another important institutional step is the adoption of plans for establishing large-scale removal centres and reception and accommodation centres. Initially, the plan was to build reception and accommodation centres in seven provinces and removal centres in six provinces, each with a capacity of 750 people. In practice, however, it was the removal centres, which first became operational in Edirne, Van, and Aydın, respectively. There are already 18 removal centres with a total capacity of 5870 people. In the coming months, two more removal centres each with a capacity of 750 people will be operational. The surprising thing is that these removal centres, which will be operational in the near future, were supposed to be reception and accommodation centres. However, within the scope

of EU-Turkey agreement, upon Turkey's request, these reception and accommodation centres have been converted to removal centres. Again, in the coming two years, Turkish authorities are planning to build a total of 18 new removal centres, 12 of which shall be funded from the local budget and the remaining 6 to be financed by the EU. So, the picture is going to be like this: If we assume that the existing ones will remain open, within two years, there will be a total of 38 removal centres -i.e. detention centres- with a total capacity to hold 14,590 persons at any given moment in Turkey.

Then, where do we stand on the issue of reception and accommodation centres, which are specified as a minimum requirement under EU directives, especially under the Reception Directive, and which will provide accommodation support not only to Syrians, but to other refugees, especially to the vulnerable groups? For many years, there has been only one guesthouse in Yozgat, the Yozgat Guesthouse, with a capacity of 100 people. The Erzurum reception centre with a capacity of 750 people is still under construction, which will be followed by another one in Konya with a capacity of 76 people. At the expense of repeating myself, I would like to emphasise these numbers to make sure that you can see the asymmetry. On the one hand, we will have removal centres with total a capacity of 14 thousand, and on the other hand, we will have reception and accommodation centres with a total capacity of 926. This very asymmetry gives us very clear messages.

So, what is the current asylum situation in Turkey? We have already discussed about it, and Murat Erdoğan also touched on this topic. As of May 5th, there are 2 million 748 thousand persons and 270 thousand of these persons are in camps. There were 30 thousand new applications in 2013 and 34 thousand in 2014. These are the figures provided by the Directorate General of Migration Management. We have already stated that we should not forget about the context. This dramatic increase in the

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numbers is important, as it paved the way for the EU-Turkey deal. Indeed, when you look at the numbers provided by the EU numbers, between September and December, in four months only, the number of persons, who had reportedly crossed to Greece from Turkey is 621 thousand. The number of apprehensions in 2015 in Turkey, not just in the Aegean but in the entire country, was 145 thousand. This figure is three times higher than the previous year. I mean, just these numbers show us that we are witnessing a mobility covering a total of 750 thousand people. As Taner pointed out in the morning, we can almost name it as The Migration Period. This is one of the issues that I wanted to emphasise when I said that we have new facts.

Now, let's keep that topic for tomorrow's discussion, because one of the topics that will be covered tomorrow is whether Turkey can be considered a safe third country or not. Also, let's start to raise those red flags that I have mentioned. The first flag is related to tomorrow's agenda, since it is directly related to the safe third country concept. Yet, it is not me who raised this flag, but it was the Constitutional Court of Turkey. In its decision, dated November 2015, concerning the case of K.A, the Constitutional Court established several critical points and reiterated these in its another decision, dated 20 January 2016. I guess, facing the audience, I can say "as you know". So as you know, the judicial review of detention, which is dubbed 'administrative detention' under the new law, is carried out by criminal judgeships of the peace. Upon the application of the individual or their legal representative, or their attorney, the criminal judgeship of the peace is under the obligation to give a decision within five days and this decision is final. If something new comes up, there is nothing preventing persons from applying to the judgeship for a second time. So, in a decision concerning detention of a Syrian national, the Constitutional Court identified a highly critical issue. The Court examined the case in its merit and found a violation. First, the Court made a direct reference

to the case law of the European Court of Human Rights and cited several decisions of the ECtHR including *A and others v. United Kingdom*. In its finding, the Court stated that due diligence should be observed over the course of removal proceedings. More importantly, the Court identified that the judicial review mechanism in the law provides a legal remedy which enables the criminal judgeships of the peace to review only the legality of detention; yet the law fails to provide a review mechanism on the conditions of detention. Let's think by analogy. I say this, because the Court identified a very critical gap. For instance, with respect to material conditions in prisons, we all know that there is the Law on Enforcement Judges and within the meaning of this law, prisons, including the material conditions in the prisons, are subject to judicial scrutiny. What is the situation in the case of administrative detention facilities? There is no such monitoring mechanism. Thus, in its decision, the Constitutional Court found a violation of Article 40 in conjunction with Article 17 of the Constitution.

The importance of this article lies here: Every person whose constitutional rights and freedoms have been violated has the right to request a prompt access to the competent authorities. Thus, there is a right enshrined in here. Moreover, the second paragraph of this article imposes an obligation on the State. The State is obliged to indicate in its proceedings, the legal remedies and authorities the persons concerned should apply and time limits of the applications. At this point, I would like to make a bridge to my second red flag. If I have to repeat, the point made by the Constitutional Court was that there is indeed a judicial review mechanism for the legality of detention; yet no such mechanism is in place for the material conditions of detention. Now, we learnt from the progress reports published within the framework of EU-Turkey Deal that a container type removal centre with a capacity of 1200 persons, quite a large number, will be built in Istanbul. It was said that this centre will be built in Çatalca. I am not aware of any changes in this plan, and I will be therefore glad to

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be updated. The containers are problematic, since they are not ideal places for habitation and the air circulation is a real issue in the containers. Let's keep these in mind.

My second red flag comes from the EU progress reports that I have just mentioned. In one of the reports, it is stated that as of March 2016, the number of files pending review before the DGMM, or in other words 'backlog', is around 141 thousand. Only in a couple of months, in April 2016, however, it was announced that the number of pending files was brought down to 100 thousand. That is, 40 thousand decisions were issued in a single month! We can therefore legitimately question how effective those decisions could be or to what extent they complied with procedural requirements. The second issue in this regard is that the authorities declared their intention to finalize all pending cases by the end of this year! This means that on average, 12 or 13 thousand decisions will be issued on a monthly basis. According to statistics of the Union of Bar Associations, the total number of lawyers in Turkey is around 95 thousand. Issuing 12 thousand or 13 thousand decisions per month is still a very ambitious target. I would like to emphasize our concern that these decisions should be lawful and fair. We also do not know whether the executive body is simply handing these files off to the courts. They might be thinking, "We should just make a decision. Administrative and judicial appeal procedures are already in place, and let them take care of it".

Again in the progress report, it was stated that administrative courts have finalized a total of 28 cases against the DGMM since 2014. 19 of these challenged negative international protection decision. We can safely assume that the remaining 9 were challenging deportation orders. Only in one case, the decision of the court was in favour of the applicant. Let us also take a look at the language of the EU progress report, and I am quoting from the report, "in all of the 27 cases, the DGMM won".

From the permissive perspective of the EU, this means that the

appeal mechanism is effectively functioning in Turkey. Yet not everyone agrees with this conclusion. You will have the opportunity to hear from Bertan Tokuzlu tomorrow. Only three days ago, the ECtHR delivered a new decision for a case against Turkey and the lawyer of this case is sitting at the back. He is Lawyer Halim Yılmaz from Mazlum-der and he is one of my secret heroes. In the case of Babajanov v. Turkey, the Court asked Turkey to provide decisions of Turkish courts and the government of Turkey sent three decisions as examples. However, as the ECtHR had clearly pointed out, none of these decisions were given after the new law has come into full effect. Thus, questions like how efficient the courts can be, to what extent they can provide a remedy, the sufficiency of their capacity need to be addressed by the human rights defenders in the coming days.

The third and the final red flag, now. I have already stated that the DGMM has 141 thousand pending applications and 40 thousand of those were finalized. However, when we look at UNHCR figures, there are 265 thousand people registered with UNHCR in Turkey as of March 31th, 2016. There is a discrepancy between the records of the DGMM and those of UNHCR is larger than 100 thousand. Who are these people? We can make some speculation with the information in hand. First, these might be the persons who are registered with UNHCR, but not yet registered with the DGMM. Second, they could be the persons who have registered with the DGMM, but whose applications were considered implicitly withdrawn because they left their satellite cities. Third and finally, they could be Iraqis. Iraqis are the largest group of asylum seekers in Turkey after Syrians and a significant number of Iraqis were granted a one-year, renewable humanitarian residence permit. All of these lie in front of us as future problem areas, especially the issue of applications considered implicitly withdrawn, the issue of humanitarian residence and the issue of how everything will evolve in time.

Thank you very much for bearing with me.

## Taner Kılıç Amnesty International Turkey

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*He had been a part of the consultation process of the Law on Foreigners and International Protection. He is still an active member of Immigration and Asylum Commission of İzmir Bar Association and Refugee Rights Study Group of the Union of Turkish Bar Associations.*

## **Refugee Law Practices in Turkey: Problems in Refugees' Access to Justice in the Case of Readmission Process**

Throughout the history, asylum has always been a cross-cutting issue with its multiple dimensions and relations. Varying degrees of historical, commercial, political, military, economic, intelligence-based and other relations may exist between a person's country of origin, from which she had to escape due to a threat of persecution, and a country in which that person seeks asylum. Countries also tend to "use" asylum seekers implicitly, if not overtly, in these relations. This tendency may always tempt a country to seek to use "legal excuses" such as "public security," "public health," and "public safety" that are part of many international texts for its own ends. Law is the only tool to articulate that asylum seekers are subjects who are entitled to rights instead of objects of exchange between countries, and



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to prevent countries from acting otherwise. Undoubtedly, one of the key criterion of a country's respect to the rule of law is its respect to the right to seek asylum. An indication of such respect is whether the right to seek asylum is properly regulated and handled by professionals in a fair fashion, and whether all these practices are subject to effective, just and prompt administrative and judicial scrutiny. As is the case with other fields, both the executive and the authorities may be in a tendency to engage in acts or practices against law due to a variety of reasons and people's lives may be a matter of negotiation or indifference. This picture can only be prevented by rights organisations and civil society, most particularly by lawyers, and by an efficient judicial review mechanism.

Notwithstanding my doubts concerning the accuracy of official figures, Turkey faces many challenges elaborated in below, and the country hosts over 3 million people, that is about 2,7 million from Syria and 0,4 million from other countries, in need of international protection. Thus, Turkey assumes an important responsibility in this area. Moreover, and notwithstanding a similar concern on the reliability of the official statements on the expenditures made so far, it is also a fact that a considerable amount of resources has been spent for asylum seekers. Despite several worrying incidents, the attacks against asylum seekers and migrants are relatively less frequent and less violent, when compared to those taking place in European countries in recent years. This area is almost being managed without any serious social tension. In the grand scheme of things, it would, therefore, be fair to recognize this situation as a "success."

Nevertheless, it is equally clear that at micro level and under each subheading, Turkey has many problems in its legal framework and practices, and does not (or cannot) offer a "durable solution" to persons seeking asylum. Thus, while Turkey is striving to host a significant number of asylum seekers, and yet failing to provide rights and protection as required by the refugee law, the efforts to send asylum seekers, who have managed to cross

to Europe, back to Turkey openly contradict with universal standards, with the criteria expressed as “the founding values of Europe,” with the EU acquis, with the refugee law, and finally with ethical rules. Our primary objective in assessing the inadequacies in Turkey in this area is to criticize irresponsible, hypocritical, and unlawful nature of the European efforts to send refugees to a country in such a state via “readmission agreements.”

### **The Recent Process of Readmission between the EU and Turkey and Its Legal Evaluation**

The mass influx of civilian population to many countries, especially to the neighbouring ones, following the conflicts in Syria starting from April 2011 on, has entered a new phase in the summer of 2015. This new phase is almost reminiscent of the Migration Period. With actors in Syria taking the war to new heights, it became clear that a safe environment will not be possible in the country. There was also no realistic hope of improvement in the conditions of asylum seekers in neighbouring countries neither in the short nor midterm. All these factors triggered a new, yet stronger, wave towards EU countries. When statistics reflected that on an average basis, around 7000 people per day have made it to the Greek islands through the Aegean Sea, alarm bells had started to ring even louder within the EU. In addition to the physical measures such as fences, walls, and minefields as well as the armed forces deployed along sea and land borders, the need to improve relations with Turkey became a more pressing issue, just to ensure that this population remains in Turkey. While the readmission agreement signed between the EU and Turkey took many years of preparatory work and involved stricter mechanisms when compared to other readmission agreements, a certain need and political will appeared to avoid a waiting period required for the agreement to come into effect. Within this context, parties have decided that regulations, which were considered urgent and demanding immediate implementation in the Joint Action Plan agreed on November 29th 2015, were not sufficient and thus met again on March

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18th 2016 to make an agreement that would have effective outcomes in the short run.

This text is dubbed as ‘statement’ in the original English; yet in interviews held in Turkish, it has been named a ‘memorandum of understanding’ or a ‘deal’. In any case, the legal nature and the binding force of this text is a matter of controversy from the outset. While Turkish authorities gave many interviews on this issue, they never made the official text public. It was the EU Council who had officially released the text. When this nine-article text is subjected to careful scrutiny, it appears that instead of offering any novelty, the text is more like an “accord” which includes “opinions” or “recommendations” for the implementation of several provisions that had been hitherto neglected or partially implemented for a set of reasons. Despite its frequent misrepresentations in the media, the deal was about the implementation of the 2000 and 2001 dated readmission agreements and its protocol between Greece and Turkey as of March 20th 2016, and not about the readmission agreement between the EU and Turkey. Since the text appeared to solely make references to existing legal provisions that had already been enacted by the Parliaments of both parties, this new and “urgent” agreement was not considered a “treaty” under the international law and it was assumed to be binding and “instantly” applicable without any substantial debate taking place in the parliaments of any of the parties.

A quick glance at this text shows that the following issues are tackled in the text: 1) Migration routes and paths shall be blocked & crossings shall be taken into control; 2) Upon blocking of crossing and reaching a “sustainable” level, an “admission scheme” shall be formed on a voluntary basis by the EU; 3) Starting from late June, “visa exemption” process shall be further accelerated; 4) An action shall be taken for the allocation of a 3 plus 3 billion Euro fund; 5) A more positive and active approach shall be taken for the improvement of Customs Union; 6) The resolution to

invigorate the process of EU accession shall be reinstated; the 17th and 33rd chapters shall be opened; 7) A collaborative approach to form safe zones close to Turkey on the Syrian border shall be developed with Turkey.

In addition to these statements of “political” will, there are also the topics of “legal” consensus which draw our attention and make the date of March 18, 2016 significant for the refugees: 8) Starting from March 20th 2016, “every foreigner” who arrived on Greek islands through Turkey, and who did not seek asylum or whose asylum requests were denied, shall be sent back to Turkey; and 9) for every Syrian returned to Turkey, another Syrian under temporary protection in Turkey who either did not escape or did not attempt to escape from Turkey in the past shall be resettled in an EU country. Since it was not possible to foresee the possible extent that the figures might reach to, the number of individuals “subject to exchange” is capped at 72.000. In order to identify whether individuals who shall be subjected to readmission had crossed to the islands after March 20 or not and to register these individuals, the General Directorate for Migration Management’s (DGMM) staff went to the islands and undertook the registration and other procedures on behalf of Turkey. Another important change was that foreigners who crossed to islands from that date onwards were not granted unrestricted freedom of movement and thus were subjected to administrative detention.

On the other hand, while we should, of course, not deny the possibility that the relations between Turkey and the EU might take unforeseeable turns, what is important for us here and will apparently be at the centre of “legal debates” on the matter in the near future is Article 8. The status of individuals in the scope of this article requires an in-depth analysis.

According to this Article, of the foreigners arriving on Greek islands,

- a) those who did not apply for asylum,
- b) those whose applications are found “ill-founded,”

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c) those whose applications were declared “inadmissible”

shall be subjected to readmission.

In this connection, it is necessary to underline that for many years, individuals who crossed to Greece never made any requests for asylum from the Greek authorities. Greece has also long been one of the countries with the worst asylum mechanism due to the physical conditions and the rights it offers foreigners seeking asylum, and more importantly, due to its extremely ill-functioning procedure. A glance over the admission rates alone would alone be a concrete indicator of the absence of a refugee law based on equity in the country. The fact that obligations delegated to Greece by the Dublin II Regulation and the implementation of this regulation contradict the principle of equity has been previously indicated in the decisions of the ECtHR, including in the case of *M.S.S v. Belgium and Greece* and in many other cases. It is also a well-known fact that many European countries do not implement the Dublin Regulation with respect to Greece. Thus, individuals who managed to enter into Europe had a tendency to avoid making an asylum application in Greece or in another country with a similar procedure; but instead register their claims in countries where the asylum system functions relatively well. This tendency can neither be considered unreasonable nor unjust. Due to this situation, individuals who did not apply for asylum in Greece were subjected to the first wave of returns, which started on April 5th. Once this was achieved by rights organizations, the foreigners began to register their asylum applications with the Greek authorities starting from April 5.

While neither Greece nor the EU possesses sufficient capacity to process asylum claims by such high numbers of persons in the islands, it has been observed that the asylum claims of individuals were assessed on the basis of an individual’s country of origin, and copy-paste decisions were often given under the so-called “super-accelerated procedure,” a procedure replacing the previous “accelerated procedure.” It is a basic

rule in refugee law, however, that applications cannot be assessed on a country basis and each individual's "unique" story should be evaluated with its particular details. A decision finding an application "ill-founded" may be justified as long as this decision is made on the basis of applicable legislation and there shall be therefore no worrying or complex legal matter open to discussion. However, when the overwhelming majority of decisions find asylum applications "ill-founded", this situation itself compels a more in-depth analysis.

The "inadmissible application" decision, which is regulated in Article 38 of the EU Asylum Procedures Directive and discussed at length in Article 72 of the Law on Foreigners and International Protection (LFIP), is mainly given to following categories of individuals:

1. Applicants arriving from the FIRST COUNTRY OF ASYLUM, in cases where it is established that the applicant has arrived from a country in which he or she has previously been recognized as a refugee and can still avail himself or herself of that protection (Article 73 of the LFIP);
2. Applicants arriving from a SAFE THIRD COUNTRY, in cases where it is established that the applicant has arrived from a safe third country in which he or she has lodged an international protection application or in which it would have been possible to lodge an international protection claim that could have resulted in the granting of appropriate protection in compliance with the 1951 Convention (Article 74 of the LFIP).

At this point, the issue of how to define a SAFE THIRD COUNTRY is critical. "Safe Third Country" is defined in Article 74/2 of the LFIP in our legal system. According to this,

*"In a safe third country, the lives or freedoms of persons are not under threat on account of their race, religion, nationality, membership of*

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*a particular social group or political opinion.” In other words, the country should provide a protection suitable for refugee status (Article 61 of LFIP).*

*“A safe third country implements the principle of non-refoulement with regard to countries where persons may be subjected to torture, inhuman or degrading punishment or treatment.” While death penalty and international or nationwide armed conflicts and indiscriminate acts of terror are not mentioned explicitly, it can be said in the light of subsequent articles that this article implies a protection that fits the definition of secondary protection (Article 63 of the LFIP).*

*“A safe third country provides the opportunity to apply for refugee status, and when the person is granted refugee status, the possibility to provide appropriate protection in compliance with the Convention.” This can be interpreted as the requirement that the 1951 Convention be implemented in a holistic manner and with real effect.*

*“A safe third country ensures that there is no risk of being subject to serious harm.” While “serious harm” is not defined in explicit terms, this can be interpreted as the requirement that the principle of non-refoulement be actually and meticulously implemented (Article 33 of the Convention, Article 4 of the LFIP).*

It should also be recalled that whether a country is a safe third country or not cannot be assessed on a general basis, but has to be discussed separately for each individual (Article 74/3 of the LFIP, Article 38/2 of the EU Asylum Procedures Directive).

In fact, concepts such as “first country of asylum” and “safe third country” did not exist in the 1951 Geneva Convention. They were “developed” by European countries, and in our opinion, they only work to erode the content of the refugee law. In addition to the anti-asylum strategies and policies that are increasingly on the rise in Europe over the years and the physical walls built around the “Fortress Europe,” these

types of concepts were coined to build “legal walls,” and they are being used effectively against asylum seekers. The new concept accepted on March 18, 2016 is yet another open indication that these concepts are intended to be used for such purposes where necessary. A clearer proof is that while Turkey was not previously considered a “safe third country” by Greece and the EU, it was declared as such by the Greek Government two days into March 18. There was, however, almost a consensus that Turkey could not be considered a safe third country, particularly following the ECtHR’s decisions in the cases of *Jabari v. Turkey* and *Karimnia v. Turkey*. Adoption of the Law on Foreigners and International Protection and the establishment of the DGMM cannot make Turkey a “safe third country” with a magic touch. However, this was ignored and returns began as of April 5. Individuals whose international protection applications were found inadmissible have also been subjected to return.

Several persons whose asylum applications were found inadmissible appealed against these decisions with the support provided by Greek lawyers and NGOs, and in its ground-breaking judgment in a case concerning a Syrian individual on May 20, 2016, the Greek Regional Court of Appeals ruled that the return procedure fails to comply with the refugee law. Thus, the highly critical process of readmission is now at an important turning point, and both Greek and EU governments as well as refugees and rights organizations have turned their eyes to the Greek Supreme Court. At this point, it seems that the final word belongs to this court regarding the implementation of the deal of March 18 .

Undoubtedly, the most important matter in our legal debate on readmissions is whether Turkey is a “safe third country.” In this regard, many studies, both within and outside Turkey, dealing with this question have already been made, and some statements and reports have already been released. Undeniably, the legal legitimacy and feasibility of these readmission efforts depend on whether Turkey can be considered a “safe



third country,” due to the legal chain and bond of causality which we try to explain above.

### **Can Turkey be a “safe third country?”**

While the country currently spends generously to host millions of asylum seekers and does an extraordinary job in this regard, our conviction is that Turkey, paradoxically, is not a “safe third country” for the reasons outlined below:

#### **A. The absence of “durable solution” due to geographical restriction**

The fact that Turkey has ratified the 1951 Geneva Convention with a “geographical limitation” and continued to maintain this limitation even after becoming a State Party to the 1967 New York Protocol is the most basic factor shaping the way international protection functions in the country. Turkey is one of the four countries in the world and the only European Council member country maintaining the geographical limitation. It is due to this limitation that Turkey assumes only a “temporary” obligation towards those coming from outside Europe (Europe with its political rather than territorial borders) and does not offer these persons a “durable solution.” Obviously, the country may choose, owing to its sovereign rights, to grant any individual a refugee status and provide a durable solution at any time; however, the geographical limitation to the 1951 Convention has since been interpreted as an open declaration that a durable solution is out of question. Therefore, Turkey has provided a ‘temporary’ status not only to those falling under the “temporary protection” regime, but also for those coming from outside the borders of the European Council both before and since the outbreak of the war in Syria. The 1994 Regulation and the Law No 6458 on Foreigners and International Protection are both built on this principle of geographical limitation, and moreover, fundamental statuses such as refugee, asylum seeker, conditional refugee and applicant are defined in domestic law differently than in those adopted under international law.

Due to geographical limitation and the absence of a durable solution in the country, UNHCR assumes an important role in Turkey on behalf of the international community. UNHCR has long undertaken and continues to carry out “resettling” individuals who were granted protection under the 1951 Convention into third countries, which have no obligation but are willing to admit refugees from Turkey. For this reason, we do not see any second- or third-generation refugees around us in our cities. In other words, Turkey allows refugees seeking asylum in its territory to remain “temporarily” until UNHCR resettles them in a third country, and only “tolerates” these individuals. There is therefore no durable solution and no option of living in Turkey for these individuals. Even during this temporary period, the most fundamental rights for a decent human life are either absent or limited. It is also our conviction that contrary to what may be expected, the asylum seekers from the Council of Europe member countries, who are believed to have a certain advantage, are all the more disadvantaged and have more serious problems than commonly thought. However, this is an important issue that needs to be discussed in a separate article. Another problem is the role played by UNHCR in Turkey has become blurred even though the country still maintains the geographical limitation. I take this to be a negative development for those in need of international protection in Turkey.

The reasons that I try to depict and elaborate below are all personal assessments. While I interpret some of these situations as “bad” or “scandalous,” they might seem “very good” or even “excellent” to another person, especially to a person working for the DGMM. On the other hand, I believe that nobody has anything different to say about the “geographical limitation” of which we aim to elaborate in this article. That is, there is a theoretical and practical impossibility due to Turkey’s legal structure. Unless Turkey lifts its geographical limitation to the 1951 Convention, there is undeniably no chance for a durable solution for refugees in Turkey.

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Turkey is the largest refugee hosting country despite this geographical limitation, and many European countries with no geographical limitation build walls after walls to get rid of refugees. Thus, this situation leads to a paradoxical picture and compels us to question everything we know in this area. Nevertheless, it is not possible to argue that those who are under temporary protection in Turkey are offered any durable solution. In our opinion, the legal legitimacy of the temporary protection regime is controversial from the perspective of refugee law and the Constitution, and its future depends on political rather than a legal decision to be made by the Council of Ministers. The entire protection mechanism may collapse for Syrians, who make up the majority of the population of asylum seekers in the country, with a single decision by the Council of Ministers once a government change takes place. Thus, there is no status, solution or model in place that may have definitive or durable outcomes. The fact that a durable solution in line with the 1951 Convention is not offered in a country means that that country is not a safe third country.

### **B. Structural problems that have long existed in the field of judicial review of Refugee Law**

It is a curious fact that the field of immigration and refugee law has almost never been popular with lawmakers in our country. There might be many reasons for this. Except for some elective courses offered by a few private institutions in the recent years, refugee law is not covered in the curriculum at the undergraduate level in our law schools. Law practitioners including judges, prosecutors and lawyers in our country are therefore not familiar with refugee law unless they take a personal interest. Since this field of law is neither studied nor practiced, no relevant case law has accumulated in Turkey, the decisions are dramatically low and most are bad decisions. Following its *Jabari v. Turkey* decision identifying a breach of Article 13 of the European Convention on Human Rights, the ECtHR has made a repeated reference to that decision in other applications from

Turkey. The Court has also carried out an effective and substantial review of applications and interim measure requests without assessing whether domestic remedies were exhausted. This means that there is no effective judicial review mechanism in Turkey in this field. Lawyers, for sure, can play a critical role in the functioning of the judicial review mechanism. Unless lawyers bring individuals' claims before the courts, judges and prosecutors cannot work effectively in this field. For the reasons we scrutinize below, however, our lawyers also lack adequate training and there are still relatively few of them working in this field.

Another interesting issue is that the General Directorate of Migration Management does not share even the most basic data including the number of persons granted international protection status and the number of pending claims. Even requests lodged under the Right to Information Act remain unanswered and appeals were denied. Amnesty International's Turkey Branch, for instance, had to file a lawsuit to this end. We suspect that this type of behaviour is aimed at hiding the extremely cautious and reluctant attitude in status recognition. Since statistical data is not public, it is not possible to know whether persons are granted a status only right before being resettled to a third country, a common administrative practice adopted at the time of the Police Department of Foreigners. It is clear that the practices of hiding data and not sharing statistical information contradict transparency and are not the types of practices that should be allowed in a "safe third country."

### **C. A new Legislation, a new General Directorate, and a new practice**

Until recently, there was no legal regulation in Turkey in this field. Prior to the adoption of the 1994 Regulation, even a single regulation was seen as a luxury and the field was managed with "administrative discretion." It was not even clear which case had to be taken to which court until the adoption of the new law, and the courts generally did not serve any review function. While preparatory work for the Law began in 2008, the

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Law on Foreigners and International Protection was only published in the Official Gazette on April 11, 2013, and its substantial provisions became effective on April 11, 2014. The law established the General Directorate of Migration Management, the first civilian organization to work exclusively in this field. The agency became operational by April 11, 2013 but could not take over its duties and responsibilities for another year. The DGMM's provincial offices started to take over fieldwork only on May 18, 2015 and partially in collaboration with Department of Foreigners' staff. The appeal commissions were formed with a long delay, and the councils specified in the law are yet to be established. The regulation of the Law has only very recently been adopted, and the secondary legislation is still in the making.

While the DGMM has swiftly carried out recruitment and training, it is not possible to argue that a sufficiently sophisticated human capacity -either in quality or in scale- has been achieved. If we consider that 85 % of the staff are young college graduates in their first jobs, they are inexperienced not only in this field but also in work life. In addition, since numbers has risen at an unprecedented rate, it can be said that there is already an incredibly high "workload." Therefore, the inability of the newly-established Directorate to demonstrate a full performance can be considered "understandable." We cannot expect the new law and the new directorate to make all practices perfect overnight. However, the General Directorate of Migration Management should admit to this fact itself and shape all its work accordingly. This is the only way to produce and maintain work that is honest, responsible and in touch with reality.

In this connection, we also would like to add that breaches found by the 1st Administrative Court of Ankara, the only competent court in the country concerning the denial of international protection claims of the General Directorate of Migration Management, and by other administrative courts and penal courts of peace are only remedied in their particular

cases and not taken as precedents. Our conviction is that this point is very important to understand why the General Directorate of Migration Management continues to repeat its breaches.

#### **D. Insufficient capacities of other actors in the field**

The system of checks and balances, which is indispensable to the functioning of any legal structure and which was often discussed over the preparatory works of the Law on Foreigners and International Protection, is still not in place in Turkey. And it will not be formed easily, either. There is no judicial mechanism, administrative review mechanism, civil society organization, media, academia, parliamentary scrutiny, bar association or lawyers competently working to monitor, to observe, and where necessary, to intervene the work of the executive body. The Ombudsman Institution and the Turkish Institution of Human Rights and Equality have not demonstrated sufficient performances in this regard. On the other hand, I consider lawyers and therefore bar associations the most important actors in this field. Only a widespread and effective presence of lawyers in this field shall ensure that bad practices will be challenged before review mechanisms. Due to current weakness, we believe that it would be a realistic assumption to argue that only 0.1 % of those in need of legal assistance can in fact enjoy an access to a lawyer's assistance. The number of cases also confirms this assumption. Although theoretically and legally possible, it is not possible to mention a functioning judicial review mechanism with such low number of cases. The number of asylum seekers whose cases are followed by the few existing rights and refugee organizations are dramatically low when compared to the overall size of the refugee population. Considering that these civil society structures have no legal representative power and the bar associations to which they refer individuals have weak legal aid mechanisms, it will become clearer how a tiny minority can actually benefit from the legal aid.

### **E. Problems in the functioning of legal aid mechanisms of bar associations**

It would not be unjust to say that bar associations in Turkey have long remained indifferent to field of refugee law and migration. Perhaps for this reason, in the preparation of the Law on Foreigners and International Protection No. 6458, the lawmakers made explicit references to the Law on Attorneys No. 1136, to the provisions on legal aid and thus to the bar associations in Articles 57/7 and 81/2, even though they generally see no need to make such open references to the provisions on legal aid in other legislative texts and regulations. This had practically laid a positive duty on bar associations in the establishment of a checks and balances system in Turkey, a system which was often mentioned during the preparation phase of the law and which was articulated as desirable in the field of migration. With these articles, for the first time in the history of Turkey, there is a possibility that administrative and judicial review mechanisms shall not remain on paper; but an effective monitoring of a new law and its new practices can be achieved through bar associations.

I hold the conviction that the question of just how effective the monitoring shall be carried out by bar associations will be is one of the most important issues of human and legal responsibility facing the bar associations in our country today. However, it is not possible to claim that all bar associations have developed a keen awareness on this fact. In addition to the fact that the responsibility placed upon the bar associations by the new law has not been fully understood, we also observe that due to a variety of reasons, there is a reluctance to channel legal aid budget and to extend services to “foreign” individuals. Currently, the practice varies greatly for each province. It will therefore not be an unjust assessment to argue that a certain degree of bias is present in some bar associations. For this reason, even in provinces where asylum seekers are estimated to be in hundreds of thousands, lawyer appointments may not exceed two digits

for refugee law related cases and sometimes in family and business law as well. The legal aid mechanism operates at a dramatically low level in this field. In addition, the few lawyer appointments that could actually been made unfortunately often lack quality and real effect.

Needless to say, there are big structural, financial and human resources issues in making legal aid provided by bar associations functional for asylum seekers. What is worse it that even today, where the relevant law has finally come into effect and there is a great need for bar associations, these issues have not fully been understood and remedied. I suspect that Turkey is still going through a primitive phase in migration and refugee law. Significant barriers exist before the development of a relevant case law. Unless our fellow attorneys and bar associations are encouraged to assume an extensive and effective involvement, this field of law is destined to remain underdeveloped and thus subject to the practice of the administrative body controlling the entire practice without any judicial scrutiny. I therefore would like to express my belief that Turkey is at a historical threshold in this field. In addition to the criteria of population size of province and number of attorneys that are used in calculating a bar association's legal aid budget, the number of asylum seekers in the province should definitely be taken into account as a third factor. Otherwise, this may provoke local population against asylum seekers in their province. This third factor is very important to prevent such things from happening.

In this regard, there is a need to implement Article 5 of the Legal Aid Regulation of the Union of Turkish Bar Associations, regulating the functioning of the legal aid mechanism, with a keen awareness of the many disadvantages of foreigners as individuals who are not familiar with the law or do not speak the language of their host country and who may not be able to present any documents about their financial assets. Thus, instead of demanding numerous documents for the needs test, there is a definitive need for certain presumptions in this regard. Due to time limitations, it



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is also essential to follow an accelerated procedure in appointing lawyers under the legal aid scheme. Since we are aware that the Union of Turkish Bars Associations has already initiated a process to end different practices among bar associations and to amend the Legal Aid Regulation with a view to address disadvantages of asylum seekers, we are optimistic that the problems arising from the Legal Aid Regulation shall be resolved in the near future. Yet, bar associations also need to establish a swift and functional mechanism that can adapt to changes in the Legal Aid Regulation and extremely critical time limitations in the law. Unless such a mechanism is founded, the rights entitled by individuals shall only remain on paper and will not translate into reality.

It is necessary to realize that when compared to ordinary citizens, asylum seekers in Turkey, especially those under administrative detention in Removal Centres, experience serious challenges in accessing legal aid services of bar associations. There is also a need to restructure the practice to address these challenges. It is therefore important to understand that these are individuals who are in need to be approached by the Front Desks of Legal Aid mechanism and not vice versa. Moreover, it must be noted that these individuals may not know the role of a bar association or an attorney even in their countries of origin or may lack educational background to make sense of these issues and even may be completely illiterate in their native language. While the Law on Foreigners and International Protection has many provisions requiring that individuals detained in removal centres be informed about their legal rights, it is still necessary for the legal aid mechanisms of bar associations to come up with measures which foresee the possibility that these safeguards might not be implemented in actual practice. There is an equal need to certain proactive measures as well. Thus, it is critical to make fixed public notices that can easily be seen & read to enable asylum seekers, migrants and other foreigners becoming aware of their rights and the ways to access legal aid mechanisms (especially via phone or fax).

Similarly, notifications provided to individuals should also include information on legal aid services provided by bar associations and this should be explained in a language which can be easily understood. It is not possible to argue, however, that this point is given due attention in practice, especially in the removal centres. Serious issues and grave breaches exist in notifications. At a minimum level, the provision of legal aid services in languages such as Arabic and Persian over the phone and during certain hours on certain days of the week is highly critical. Similarly, reports communicated by NGOs working in the field of asylum and migrations concerning individuals who were not able to reach bar associations by themselves should be taken with utmost care.

There is currently a pressing need for “certified refugee law trainings” so that bar associations can manage their legal aid services in this field with sufficient quality and efficiency. Similarly, it is extremely important to assist the appointed attorneys to access “interpreters” to ensure that lawyers are able to work objectively and independently both in their visits to removal centres and during office hours. Thus, attorneys and their clients shall be able to have a smooth communication.

The issue of “power of attorney” is so critical that it deserves to be discussed in a separate article. To put it in a nutshell, if foreigners in Turkey do not have a passport or an official ID card, notaries cannot issue a power of attorney. In recent years, general instructions issued by the Union of Notaries and the Circular No. 2016/3 have enabled individuals who accessed asylum procedure to obtain a power of attorney at a notary once they receive their ID cards upon registering with the General Directorate of Migration Management. Yet, detained persons without a passport, particularly apprehended irregular migrants or persons returned from Greece under the readmission agreement, do not have the opportunity to give a power of attorney. Without a notarized power of attorney, it is not possible to claim that persons who do not benefit from legal assistance can

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enjoy the right to fair trial. Our conviction is that this factor alone is an open indicator that individuals who are returned to Turkey cannot access justice and thus that the country is not a “safe third country.”

### **F. Problems that have long existed in access to asylum procedure and in deportation processes**

Border Crossings: Crossing the border and accessing asylum procedure has long been a serious challenge in Turkey. The ever-present “security issues” in our eastern and southern borders, which are the major routes of which asylum seekers use to reach Turkey, have always been used as an excuse to block their entry. Many of whom were “taken for terrorists” or “suspected to be smugglers” were shot, injured, killed, beaten or pushed back or had their valuables confiscated over the course of their attempts to cross the border. Gross violations of human rights, which are widespread on the borders of many other countries, unfortunately occur on our borders as well and these incidents are not subject to any significant investigation. It is true that even at the time when Turkey declared to pursue an “open door” policy following the outbreak of the civil war in Syria, the doors and the routes of access to asylum procedures were not really open. The level of such hardship, however, varies from time to time. In the last few years it is a well-known fact that those without a passport cannot cross the border and it is only possible to do so with the help of a “smuggler.”

Even at a time when the “open door” policy was officially declared to be in place, there were many studies and reports documenting serious rights violations suffered by individuals while crossing the border and the lack of investigations on such incidents. It is sometimes observed that individuals can only register their asylum claims with authorities within the country after several attempts to cross the border and enduring many rights violations. If individuals are arrested before finding a chance to register with the authorities, the general practice in Turkey is to consider this very act of crossing as an irregular movement or an illegal crossing, and to

place these persons under administrative detention with the purpose of deportation. In such cases, although there is a theoretical possibility to lodge an asylum application under Article 79 of the Law on Foreigners and International Protection, the likelihood of receiving a positive decision under “accelerated procedure” is very low.

Similarly, it is a fact that access to asylum procedure is still a serious challenge in transit zones in airports. Despite decisions of the ECtHR and the regular calls by rights organizations, it is still a frequently encountered fact that asylum claims are not processed in transit zones and rights organizations and independent attorneys experience difficulties in accessing transit zones. This practice also results in the deprivation of liberty.

Deportations: While access to asylum procedure is extremely hard, deportation is equally easy and quick. Particularly, the deportation of individuals coming from countries of which Turkey has land borders is quite easy. On the other hand, the same land borders are also known to be used unofficially to deport individuals who are not citizens of such countries. If individuals cannot be deported for long periods due to pending cases before the courts, they often have to undergo persuasion sessions for a “voluntary return” by officials. While it is not legally possible to deport Syrians since they are under the temporary protection regime, the option of “voluntary return,” the only exception in the Temporary Protection Regulation, is used as a short-cut. Many individuals view “voluntary” deportation as an opportunity for release and re-enter the country by the help of a smuggler the next day rather than being stuck in a deportation centre, since many removal centres like Erzurum-Aşkale and Osmaniye-Düziçi practically function as penitentiaries. Yet, in an environment where the control of border gates by different groups changes almost every day, it is clear that this involves serious risks. While some border gates currently do not pose a threat to some Syrians, it should be remembered

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that the same border gates might imply fatal risks for others due to the ethnic, sectarian or ideological divisions. Therefore, neither deportations to neighbouring countries of which Turkey has a land border nor deportations to other countries usually fail to pass legal and judicial review and it is not possible to argue that individuals had the opportunity to exercise their legal rights in full. Only a few individuals who enjoy the exceptional luxury of receiving a lawyer's assistance are able to appeal against deportation orders and prevent deportation with the decisions issued by courts and mostly recently by the Constitutional Court of Turkey.

### **G. General problems concerning a decent human life in the area of “economic, social and cultural rights”**

Serious problems have been reported recently in the areas of registration, housing (in and outside camps), education, healthcare, employment, and integration, and it seems that each above mentioned area deserves a separate article. What is worse is that no strategies or policies have been developed to address any of the issues which refugees encounter during their considerably long stay. Even if they exist at all, they are either weak or non-assuring. Since asylum seekers are not expected “to stay long” due to the geographical limitation to the 1951 Convention, their living conditions and standards have intentionally not been improved. The idea of many bureaucrats in the practice, and perhaps the unwritten “official policy,” is not to become an “encouraging country” in the eyes of asylum seekers. Thus, even when asylum seekers can access to asylum procedure, these low standards and inhumane conditions in Turkey force these individuals to pursue dangerous and illegal journeys to Europe at the hands of smugglers. In other words, material conditions violating human dignity have a greater share of responsibility in the lives that are lost through irregular migration routes at seas, rivers, trucks and borders than smugglers.

Of course, many important steps were taken to grant Syrians the

right to healthcare, and more recently, the right to employment; but all these are tentative steps that are far from the ideal. Despite the flexibility in giving Syrians work permits and recent positive regulations, the number of persons who could actually obtain work permits is about 5000. Even during the registration procedure, which became only partially possible years into their arrival, individuals' biometric data was collected; but they were neither asked about their professions nor were there any studies or social policies developed to this end. Camps were built to accommodate only 10 % of the Syrians, while the rest spread to whichever towns they liked randomly without any instruction or planning. In these provinces, notwithstanding the exception of healthcare services, no automatically functioning public aid mechanisms were available and individuals were left at the mercy of humanitarian aid organizations, philanthropic citizens and their neighbours. Many had therefore tried to make a living by working in informal jobs in an exploitative labour market. Only 1/3 of school age children were schooled, many of whom dropped out in time.

Even if strategies, policies or practices are available that aim to include the local population, to assess and balance existing tensions and thus to provide "harmonization," rather than integration, they are not known to us. The primary criterion for a country to be successful and safe in the field of migration, however, is its ability to manage migration, not its fight against it.

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## Possible Procedures Applied to Those Readmitted under the EU-Turkey Deal

Thank you and especially Amnesty International and Rosa Luxemburg Foundation. I also would like to underline that Taner is the person who thought me about the asylum law, and I am, therefore, particularly happy to be on the same panel with him. Expanding on Taner's points, I will talk about what happened to the people who were readmitted, especially after the deal of March 18.

First, I should briefly talk about Mülteci-Der. Mülteci-Der is a rights based organization founded in Izmir. There were always refugee crossings through the Aegean, from Izmir to the Greek Islands. Especially last summer, this was really intense. Mülteci-Der is an association founded by people who want to keep track of these crossings, find out what happens to those apprehended & pushed back, and who realize that something is wrong with these practices. This is the perspective of Mülteci-Der. We are still monitoring what happens particularly on Turkey-Europe border. We try



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to understand how European policies affect irregular migration and mixed migration.

Let me start with a picture. This is a picture of a boat that was sent to Dikili on April 4, 2016. Here, you can see that a readmission is taking place. As you see, there is a tent and it is a readmission point. People are returned with boats hired from a private company. On that day, a total of 202 persons were returned from the islands of Lesbos and Chios. Accompanied by five Frontex officers per person, these individuals were taken off the boat one by one, handed over to the migration authority and to the police, processed and put on busses for their transfer to the removal centre in Kırklareli. But these readmissions did not start on April 4, or as Taner said, they did not start with the deal of March 18. They started after the signing the Protocol between Greece and Turkey. This protocol was signed in 2001 and entered into force in 2002. It is a protocol on the fight against crime, terror, organized crime, drug trafficking, and irregular migration. This protocol further shows the perspectives of both countries on migration, and that both criminalize migration. The protocol is within the framework of the above-mentioned deal. Readmissions were taking place since 2002 within this framework, i.e. within this protocol. However, as you can see, there have been only a few readmissions, especially in the last few years. For instance, in 2015, the number of people that Greece requested to be readmitted by Turkey was around 8 thousand, and the number of people that Turkey accepted was around 2 thousand. Yet, the number of people who were eventually returned was only 8. That is to say, last year, a total of 8 persons were returned to Turkey within the scope of this protocol. Even though Turkey has accepted readmission requests for more, only 8 people were returned.

What happened in 2016? In fact, the readmissions within the scope of this readmission agreement were taking place since January 1. I mean on April 4, 8, and 26, there were direct readmissions from the islands

and all of these were carried out within the scope of the deal of March 18. A total of 374 persons were sent back. But the number of people who were readmitted in 2016 within the scope of this protocol is actually 1292. Most of these readmissions took place in Evros, in other words in the Thrace region. It is expected that this protocol shall remain in effect within the framework of EU-Turkey Readmission Agreement, entering into force on June 1, 2016. So, where do we stand when we talk about the deal of March 18? It is known that EU's policy is signing readmission agreements with source or transit countries of refugees or migrants, and in exchange, initiating a visa liberalization process. This also happened with the Balkan countries, and with Georgia as well. Moreover, this approach is adopted in the cases of several other countries as well including the case of Turkey, and in 2013, parties signed a readmission agreement. We can say that the visa liberalization process also started on that same day. This readmission agreement was expected to enter into force by the end of 2016. However, last summer, when over 800 thousand people crossed from Turkey to the Greek Islands and to Europe, the EU found itself in a position where it felt compelled to make an agreement with Turkey simply because the EU perceived this flow as a crisis. EU also believed that the situation was out of control, thus wanted to take the control back. Consequently, the negotiations started on October 15. The parties talked about the joint action plan on October 15 and reached to an agreement in principle. The plan was accepted on November 29, and at that time, what parties concluded was to implement the readmission protocol between Turkey and Greece. So, already there was a protocol, but the mechanism was not working. "In 2015, you have received only 8 people, make it work better, and cooperate with Greece to this end". This is what Turkey has been told. This is what I can say about joint action plan of October 15.

On March 8, 2016, the prime ministers of Greece and Turkey met in Izmir and made statements on renewing this protocol and making sure

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that it should work better. Then, there was the March 18 process, of which I referred as the joint action plan. But as Taner said, that was actually a memorandum of understanding. Upon Turkey's proposal, parties signed an unethical text. What does this text say? Turkey agreed to readmit all irregular migrants crossing to Greece and readmit Syrians; but in exchange, EU agreed to resettle one Syrian to an EU country for each readmitted Syrian national. This was the deal and as Taner said, issues including the binding force, the basis of the text and it's the compliance with law are all controversial. At the same time, we see that international standards are respected. In other words, the parties have emphasized several times their commitment to fully comply with the international standards. But what will happen in practice? And we see that the text is very conducive to lead the practice of collective expulsions. We gradually see such practice is taking place, but I will come to that point soon. Of course, neither Turkey's nor Greece's legal infrastructures were suitable for a quick start for readmissions, therefore both have started to make quick changes in their legislations. EU member states, Frontex and other EU units have also started to send support to Greece. Thus, we have entered into a new period and everything happened so fast.

Let me also briefly talk about this: Who are these readmitted people? In other words, who are these persons who were readmitted especially from the islands and what does the framework of the deal of March 18 say about this? The first group is persons who have requested to be returned. Previously, when persons crossed to Greek Islands, Syrians were given a 6-month valid paper and they were able to go to the mainland with that paper, from there to Macedonia, Serbia, and so on. They made a tough journey to whichever country they wanted. Those who are not Syrians, on the other hand, were given a 30-day valid paper, and they were able to go to the mainland. Now, Greece stopped issuing these papers. They said, "We will review every person's asylum application in the islands",

and thus people got stuck in the islands. This, in practice, means that individuals on the islands are living in inadequate conditions and some of these individuals prefer to be returned to Turkey, instead of living a prisoner's life in these camps, i.e. in places called hot spots. Some people even tried to swim back to Turkey. This was on the press last week, and you might have seen it. So, there is a group like this and they have been readmitted. They are referred to as persons who did not lodge an asylum application. But I will talk about it soon. We also know that there are many persons who wanted to seek asylum in Greece, but who were unable to do so. They have also been sent back to Turkey. This shows us that the promise of the deal of March 18 on respect to international standards is just an empty one. There are gross violations in practice, and how are we going to identify these? Regarding persons whose asylum applications were adjudicated and rejected...I mean these persons apply for asylum in Greece and Greek asylum authority reviews these applications. As I have said before, there have been some legislative changes in Greece. The whole review process, including the appeal procedure, lasts two weeks. Listening to a person's reasons for seeking asylum, assessing this narrative, reaching a decision and in cases where you reject the application, doing it within the appeal period and the court promptly responding in a similar period of time... And all of these are supposed to be over in two weeks. I mean that they have squeezed such a long process into two weeks. This is a process that cannot be completed in two weeks, particularly when you consider the high number of asylum applications and the lack of infrastructure in Greece. They also have a huge backlog. Thus far, we could not identify any readmitted person whose asylum application was reviewed and rejected; but we believe that this will happen in the future, in fact very soon.

In addition, there are also persons whose asylum applications were found inadmissible. Who are these persons? In my opinion, and as far as I understand, this category is invented for Syrians. As Taner mentioned,

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Turkey is signatory to the Geneva Convention with a geographical limitation. Therefore, EU cannot argue that Turkey is a safe country under international protection standards. However, the standards for temporary protection are not established in the international conventions. Thus, they can argue that Turkey is indeed a safe country when it comes to temporary protection, and the Syrians are safe in Turkey because there is a system already in place for the Syrians. EU therefore argues that if a Syrian individual makes an asylum application, this should be considered inadmissible. I highly recommend the article of Professor Cavidan Soykan from Ankara University for those who are interested in the topic. So, there is a process like this, and actually the rejections issued for Syrians, or the inadmissibility decisions concerning the asylum applications of some Syrians which were given on the grounds of their previous presence in Turkey, that is a safe third country, have already started to come up. As Taner mentioned, lawyers in Greece are appealing against these decisions but we do not know what will come out of these appeals.

Another question, in this respect, is what will happen to the readmitted individuals? As we said, people from these four main groups will be sent back, but they shall be grouped in accordance with their countries of origin, but there is already a distinction between Syrian and non-Syrian refugees in Turkey. This is also the same for readmission. The violations about which all the speakers here have been talking about, all these practices, will be exactly the same. I would like to talk about the Syrians who are under temporary protection. But first, I must tell you the source of information: We obtained it from a press conference held by the Governor of Izmir in Dikili on April 4, 2016. There was a great interest from the press on that day. There were journalists from many countries including Japan, USA, Canada, and South Africa. And of course, the governor felt compelled to deliver a statement. This is how we were able to obtain the information, but we do not know whether it will be possible for us to access such information

in the future. The governor stated that the Syrians shall initially be put on direct flights from Greece to Adana, and once they arrive at the referral centre in Adana, authorities shall decide what to do, and all necessary procedures are expected to be completed at the referral centre. These individuals shall be transferred to camps in the South East as necessary. Should they have family members living in Turkey and outside the camps, they shall be released, and so on.

Turkey recently amended its temporary protection legislation on April 5: People who were granted temporary protection in Turkey, but who left the country shall be subjected to a second assessment, should they decide to come back. Syrian nationals who came to Turkey after April 28, 2011 and who crossed to Greece via the Aegean Sea after March 20, 2011 may be granted temporary protection, if they are readmitted. You may already know that the temporary protection is not exclusively for Syrian citizens. In other words, Syrian nationals as well as refugees and stateless people coming from Syria can benefit from the temporary protection in Turkey. But the amendment is only for Syrian nationals. It is further emphasised that the temporary protection may be granted. So, the European Union can tick another box, and say that the necessary legislative change has been made. But this amendment is not sufficient. However, we observe that in progress reports, it is reported that required legal changes were made.

I also would like to mention a new report. Volkan had suggested a title for this presentation which was something like “the procedures for readmitted persons in Turkey within the scope of EU-Turkey deal”. My response was that it would be better to use the phrase “possible procedures”, since it is really difficult to monitor these returns and provide clear information. As I was working on this presentation, something fortunate happened. The European United Left and the Nordic Green Left alliance from the European Parliament had inspected detention centres where readmitted people were held, and prepared an in-depth report. They

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gathered wonderful statistical data and official information. The report is in English and not too long. I strongly suggest you to read it. The report mentions that on April 27 (and this information did not appear in the media at all), 12 people were sent by plane directly from Greece to Adana. These persons were Syrians and they were transferred to the camp in Osmaniye Düziçi. This camp is officially dubbed as an accommodation centre; yet it is basically a detention centre, a closed facility. Persons who are suspected of engaging in criminal activities, persons deemed as posing a threat and persons who were apprehended while begging in streets are held in this facility, and it is really very hard to get out of that camp. Particularly from the end of last summer onwards, these persons can simply enter, there but cannot exit. Moreover, since there is not any administrative decision or administrative detention decision issued, the lawyers are not able to do anything simply because there is not any decision to appeal against! When you analyse the practice, you see that the decision taken is on referrals of these individuals to an accommodation centre. That makes one ask: What should the lawyer appeal against and where? To which mechanism? According the report of European MPs and the information provided by the authorities to them, these 12 Syrian nationals who were sent back to Turkey are currently in the Osmaniye Düziçi camp.

And then there is another issue of non-Syrians. I mean by non-Syrians, those who did not seek asylum in Greece, or whose asylum request was rejected or found inadmissible. Before reading the report, I had a few scenarios in my mind with respect to these individuals, which I will share now. But this report tells us that the worst scenario is taking place. What we thought was that once persons are transferred there, if they have an asylum application, this shall be taken and these individuals will either have the opportunity to access to the international protection procedure or will be deported. I mean these were the two possible outcomes. What we feared most, on the other hand, was that international protection applications

of these readmitted persons could be found inadmissible. Why did we have a concern like this? Because we knew that in the previous years, there were several individuals among those readmitted to Turkey under the readmission protocol between Greece and Turkey, who sought asylum and they were already recognised refugees by UNHCR. Thus, if something like that comes up again, what shall happen to these individuals? Will they be able to access to international protection? Or will the authorities find these applications inadmissible under Article 72 of the law? We therefore wondered whether the authorities would interpret the situation with the following line of reasoning: “You are coming from Greece and Greece is a safe third country. But you did not lodge an application there. Why? I shall therefore find your application inadmissible and initiate deportation proceedings”. And it seems that the authorities will process applications with such reasoning. The authors of the report visited two centres: the first is Edirne Removal Centre with 400-person capacity, and the latter is the Kırklareli Pehlivanköy Removal Centre. Pehlivanköy Removal Centre was initially built as an accommodation centre with EU funds, but later redesignated as a removal centre. Persons detained in Edirne centre are those who were readmitted via the land route, whereas the majority of detainees in Kırklareli are those coming from the islands and were readmitted under the agreement.

According to the report, the number of returnees is 374 and among these, there are persons who should be considered vulnerable and therefore should not have been readmitted from Greece. These persons include transsexual Iranians, a single Afghan woman whose husband has legal residence in Belgium, and etc. Only 8 of these 374 people were able to access to international protection, and, again according to the report, the removal centre authorities in Kırklareli have not registered any person’s asylum request on the grounds that they do not require international protection. But the interviews demonstrate the opposite; that these



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individuals do have asylum claims. We also know this from our interviews. There are persons who decided to return Turkey from Greece with a belief that they could seek asylum here. But their asylum claims were found inadmissible as they had been sent back from Greece. There are different scenarios and different situations. If returnees want to seek asylum, their asylum request shall not be received and instead, authorities shall initiate deportation proceedings. We already know that some of the returnees from Afghanistan and Iran were deported to their countries of origin.

What are the challenges? What kind of challenges should we expect in the future? The first challenge is being aware of readmissions. We all know readmissions that took place, for instance, on April 4, April 8 and April 26, but before these dates, I mean until March, 600 people were already readmitted within the framework of this protocol. Could we identify these returns? Was there any interest for that? No, there was not. These readmissions received attention only because they took place right after the deal and we were able to learn about the transfer of these individuals to Kirklareli Removal Centre from the governor's statement. The question is where will the authorities transfer individuals in the next readmission? It will be very hard to identify that. Let's assume that we could track readmissions; but how are we going to establish where these persons have been transferred to? As all speakers mentioned, it is very hard to access individuals held in the removal centres. Lawyers and families cannot reach these persons. Detainees do not have any information on procedures and have no idea what the officials are doing. They are also not aware of their rights to demand a lawyer, that is, the right to seek legal assistance. Their access to outside world from is a challenges as these are closed centres. Again, you can read it in the report, that detainees can go outside only for 15 minutes after meals. Other than that, all families are locked in a room during the day. As Taner mentioned, there is a lack of legal assistance, and there is a lack of infrastructure. In order to address this issue, we

submitted an application to Kırklareli Bar Association's Legal Aid Bureau and communicated the situation and legal assistance needs of these individuals. In fact, following this communication, my colleague Ayşegül visited the bar association. Officials in the bar informed my colleague that they had already visited the removal centre; but they could not provide any kind of assistance, as authorities of the centre told that there was not any person willing to seek international protection. The official response we received from the Legal Aid Bureau, was: "We have spoken to individuals and they did not seek legal aid". Even a bar association could claim that these persons do not have any demand for legal assistance, without visiting and talking to individuals. Another Legal Aid Bureau representative told us that Kırklareli Bar Association is a small one and the removal centre has a 750 capacity. The bar association believed that should they start providing legal aid, every single detained individual shall request it, and they have neither human or financial capacity to meet such requests. Thus, they have decided not only provide any legal assistance at all. Thus, people shall struggle to register their asylum claims in these centres, and most shall be deported. As stated before, these places are not easily accessible for civil society. I have been personally trying to access to this centre since 2013. Only for once I secured an access and it was in Izmir. We could have an access to the centre because there was an incident and police used pepper spray. They allowed us in because they wanted to show us that everything was in order. Other than this, the access is a real challenge, and even lawyers experience difficulties to meet their clients. Frankly, I would not be able to give you this information, if it was not for the report of these persons from the European Parliament. Instead, I would have just spoken about a couple of scenarios.

Thank you very much for listening.

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**CONFERENCE ON  
INTERNATIONAL COMMUNITY AND REFUGEES:  
RESPONSIBILITIES, OPPORTUNITIES, HUMAN  
RIGHTS VIOLATIONS  
DAY 2 SESSION I**

**INTERNATIONAL COMMUNITY AND REFUGEES**

**Moderator:**

Rengin Aslan

**Speakers:**

Simona Gatti

Martina Michels

Giorgos Kosmopoulos

Nuray Ekşi

Lami Bertan Tokuzlu

**Simona Gatti**  
**Delegation of the European Union to Turkey**

*Simona Gatti is the Minister Counsellor and works as the Head of Cooperation at the Delegation of the European Union to Turkey.*

## EU - Turkey Cooperation on Migration

Good morning and welcome to everybody.

My name is Simona Gatti, the Minister Counsellor and Head of Cooperation in the EU Delegation in Ankara. And I would like to say a few words about the state of the EU - Turkey cooperation on migration and on the refugee crisis from Syria. Let me start by summarizing and outlining the EU - Turkey statement which was agreed on March 18 and that has not only very important aspects on agreement with Greece on the returnees who then in Turkey will follow several routes depending on if they are eligible for returns to third countries or if they're eligible for reregistration. But also let me start by outlining the other strands of the EU - Turkey agreement, which has to do with -it's a package as we call it- the visa liberalisation roadmap that has been very much in the news these days. It has to do also with the support from the EU on helping in financial terms the efforts of Turkey in facing the refugee crisis. These, you may have heard, are normally referred to as the 3-billion-euro package, but it's actually the facility for Turkey on refugees and the remaining aspects are to do with increasing

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and broadening economic cooperation mainly also through revision of the customs union agreement. It is also reviving some aspects of the accession process, in particular on some of the chapters that are key to the accession path of Turkey. So, let us just say that it is a broad package. This morning, I will focus on the state of play on the implementation of the EU - Turkey statement on migration and say on a few words on the asylum part of the benchmarks linked to visa liberalization. And the third point will be a few words on the financial assistances from the EU on the facility or the 3 billion euros as they are normally referred to in the press.

Let me start with the implementation of the EU - Turkey statement of March 18, which has started to deliver results from an objective point of view. The agreement between Greece and Turkey on returnees from the Greek islands has started to be implemented on April 4. The agreement has started to deliver results, but a lot more remains to be done. Probably, the main challenge that we are collectively facing is the daily running of returns and resettlement operation in line with the EU law and the international law. So while there are some positive results, there is certainly no scope for complacency, and that is very much on top of the EU agenda as well. I would start by short outline of what has been achieved so far. In particular, because it may not be so obvious, because it is step by step and maybe slower than we would like. But there has been some important legislation and agreements adopted by Turkey which have helped in this initial positive results on the implementation of the EU - Turkey statement. The daily statistics of the Frontex European Agency show that between April 4 and May 10, 386 irregular migrants arriving to Greece via Turkey had been returned to Turkey. And in terms of the border crossings during the first week of May, the average daily crossing is about 55 crossings per day. This has to be looked into retrospectively to the date of a few months ago, which as you know at some point was close to 2.000 per day.

There has been a number of legal and administrative changes to

ensure respect of international law and to make the EU - Turkey deal. Turkey has amended the legislation on temporary protection to ensure that Syrians who are returned from Greece can benefit from temporary protection in Turkey. There has been also set of additional individual assurances for non-Syrians, including the swift treatment of their application for protection. There is also the important step taken by Turkey to grant to non-Syrians access to the labour market that was adopted at the end of April. So, all of these are indeed quite important steps. They have been taken in providing some assurances in accordance with the international and EU law, and such assurances are so high on the EU agenda. The implementation of the EU - Turkey deal is what is ahead of us, and what I was mentioning as the most challenging parts that remain to be implemented include how to make the EU - Turkey deal operational and how to make it fully implemented - and that is the most challenging part. The daily running of return and resettlement operations are in line with the EU law and the international law. So, these are very much around the possibility for Syrians or non-Syrian refugees to have legal information on their rights. That is one of the fundamental issues, and the second one is to improve the amount and access of interpreters in removal centres or the other centres. That is certainly a big challenge. It is linked to the practical implementation of those individual assurances and on that we share some of the concerns of UNHCR that the returnees arriving in Turkey are not provided, not only the possibility to understand in their own languages what their rights are but also information on what is going to happen or is happening to them on their return to Turkey. So, it's really about the practical implementation of the EU - Turkey deal, which is still an open challenge. Then finally, when it comes to the resettlement schemes, there are some issues that remain to be addressed on family reunification. If you have family members who are legally residing in the EU and you are returned to Turkey, this has to be taken into consideration while processing your application. So, I would say in one word that the main challenges remaining ahead of us are huge.



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We are not in any way considering that the deal is satisfactory implemented, but we are also positively assessing the results that we have seen. We will continue working with the Turkish authorities to make sure that all of this is taking place in line with the EU and international standards.

Now, let me briefly move to the other part of the -as I said- “package” at the very beginning. The other part of the package that may be also of interest for the participants in today’s event is the part of the benchmarks on the visa liberalization or road map, which are directly related to protection issues and are mainly in the area of asylum. As you know, there is still a backlog of asylum requests that are pending an assessment. The registration of new asylum applications is also happening, but from the EU perspective we are looking for assurances that this processing will take place within a reasonable time. That means, you can say the process is ongoing, but if it takes too long, then we also have to establish some measure of what reasonable time is. Because these are people who need to have some type of certainty about what the process is going to be and how long it will take. So, this is very much linked to my first point about the provision of information on the legal rights of foreigners. This is all part of how you treat and how you share the information in terms of the process, which makes a big difference. Also in the area of asylum, we still need to clarify the application of the safe third country concept and to continue working on facilitation of the access of beneficiaries to international protection, social services, decent housing, and vocational and linguistic training. So to say, any initiatives contributing to their social inclusion and economic self-reliance within Turkey.

I think this is quite a good transition to the third pillar of the EU - Turkey statement and that has to do with the commitments from the EU and its member states to provide financial support to Turkey in the implementation of the agreement mainly on providing support for refugees,

and on providing support to access to social services, training, education, if children are part of the family, in case of the effective access of the beneficiaries of international protection. This is very much in line with the priorities of the facility of the 3 billion euros that we are currently working on with the Turkish authorities, and education and health are at the moment the biggest sectors that are considered for funding. Projects have started already mainly on education since March. We are paying the salaries of Syrian teachers, we are providing funds to Turkey to build the temporary education centres and to meet the objective of having 450.000 Syrian children in school by the next academic year. So, these are probably the priorities at the moment in terms of emergency, in terms of humanitarian and development priorities. Certainly in line with this priority on visa liberalisation, in terms of social inclusion for the refugees who are under international protection or temporary protection as it's called in Turkey is the livelihoods aspect. Within the scope of the livelihoods and self-reliance, we will be giving, for instance, higher education scholarships for teenagers who will be interested to continue university studies in Turkey. We have already provided over 2000 scholarships just in this past few months for higher education attendance which includes, of course, Turkish language education, because without that social inclusion becomes a little bit more difficult. But also we are looking ahead too, when speaking about livelihoods and resilience, and we are working on developing microcredit schemes for Syrians under temporary protection and looking at vocational education, training, public - private partnerships.

All of this is just to give you a little bit of a flavour of what the priorities are for now and, in the very near future, in the next few months what we are working on in terms of the 3-billion-euro facility in Turkey. So, I think at this stage I should move to my concluding remarks.

The first and foremost, it is important to recognize the generosity and incredible efforts that have been undertaken so far by Turkey in the

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contribution to the social inclusion and also welcoming of over 2.7 million Syrian refugees that are currently in Turkey. But at the same time, we would also like to praise the role of the Turkish host communities and the host municipalities like Kilis, where you have a sizeable refugee population, double amount of the local residents. I would like to also praise the contribution of the civil society and the international and local NGOs that have really been sharing a huge amount of the burden since the beginning of the conflict in 2011 to help out this very critical situation, which was recognized only too late by the international community. So, I think it's important to give credit to the hundreds of municipalities, simple citizens, NGOs, civil society who have really made this incredible effort to welcoming Syrian refugees and Syrian nationals under temporary protection in Turkey.

Let me go back to the points made on the implementation of the EU - Turkey statement or deal of March 18, and repeat that it has started to deliver results and we have data available to show that. It is not perfect as was outlined before, and a lot remains to be done. For the sake of our discussion today, I will be looking forward to hear also questions and comments from you. Perhaps, I can end my speech with a provocative question and say that is there is no complacency and there are a lot of issues that remain to be addressed in order to make EU - Turkey deal operational, but also in line with the UN and international law. However, if deal was to fail or if it was called off for different reasons -this is completely speculative as I've said that it is a provocative question- what is the plan B? Do we have a plan B? Do we have an alternative solution, given the current situation both inside Syria, but also in terms of a migratory flows that we are witnessing from many other countries? So I would just like to hear from you and to hear your views on this. Because it is also important to look at the broader framework and to see if there is an alternative of a credible solution as far as we see it today. We are confident that by continuing to work with Turkey and together with the NGOs and the agencies dealing with

international protection, in particular UNHCR, and that EU - Turkey deal may be the best option we have on the table so far.

Thank you very much.

## Martina Michels European Parliament, GUE/NGL

*Martina Michels is a member of the Confederal Group of the European United Left - Nordic Green Left (GUE/NGL) at the European Parliament. She serves as a member of the Committee on Regional Development, the Delegation for Relations with Israel, the Committee on Culture and Education and the Parliamentary Working Group Anti-Semitism.*

*She holds a Diploma in philosophy at Humboldt University Berlin. She, then, worked as an assistant of the presidium of URANIA scientific society in Berlin (1985) and as a research assistant in the Ministry of Health of the GDR. Between 1988 and 1990, she was the Head of Department for international health agreements with socialist countries. Then she subsequently became a member of the City Council Berlin (1989 – 1990), a member of the House of Representatives of Berlin (1991 –2013), a member of the presidium (1999 –2013) and Vice-President (2001-2005). She also served as a Member of European Committee of Regions (2003-2013).*

## **The EU-Turkey Agreement, the EU Progress Report on Turkey 2015 and the Safe Third Country Concept**

Dear Colleagues, dear Activists,

Thank for your invitation. We need an open space to exchange information on chances to build a fair relationship between the EU and Turkey. I would like to speak about the responsibility of the European Union in current developments and to discuss two simple questions:

1. Why did 27 countries force Greece to recognise Turkey as a safe third country?

2. Why does the Commission and the Council remain silent on the situation of the Kurds, on the situation of refugees on both sides of the borders, on the situation of press freedom, of academics, of political opposition and on the ambitions of AKP to create a presidential system in Turkey?

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The debate in the European Parliament on the Commission's progress report 2015 on Turkey was clear and critical towards political developments in Turkey. The internal struggle for a presidential system in Turkey has entered a new round. As questionable as the EU-Turkey agreement on the refugee issue is, it demanded to commit and bind anti-terror legislation in Turkey to human rights. Criminalising the opposition by, for example, threatening parliamentarians to lift their immunity or by court proceedings like those against Can Dander might be excluded by the application of the agreement. Now the EU-Turkey deal is at risk because of the Prime Minister's resignation and a new interpretation of the mutual commitments is made.

In order to speak about a fair relationship between the EU and Turkey, I would like to take you on a small journey back in time.

Let me start 13 years ago. Don't worry, we will soon be back to the present. In 2003, Angela Merkel led the conservative opposition to the social democrat-green-government coalition in Germany. Turkey's ambitions for EU accession were not given any space in her political agenda. In her European election campaign in 2004, she fought for a reference to Christianity in the EU Constitution. Already during the 1990s, but at least after the terrorist attacks of 9/11, intellectual debates about a supposed "clash of civilizations" gained ground. Later they culminated in a reinvigoration of the proclamation the "decline of the West" in certain intellectual circles. But today, such figures of thought are a commonplace in right-wing populist parties and movements in Europe. But at that time, in the early and mid 2000s, the large conservative parties were the major opponents of fair relations with Turkey. Perhaps it is not so much different today. However, 11 years ago, common sense prevailed and the argument was accepted that accession negotiations would be contribute to strengthening democratic forces in Turkey in all political camps. The first accession negotiations were finally opened in October 2005. Exactly at the

same time, Orhan Pamuk replied to Angela Merkel's idea of a reference to the Christian God in the EU constitution. At that time, he was awarded the Peace Prize of the German Book Traders. In his acceptance speech at the awarding ceremony, he said:

“The great novelists I read as a child and a young man did not define Europe by its Christian faith but by its individualism. It was because they described Europe through heroes who were struggling to free themselves, express their creativity and make their dreams come true, that their novels spoke to my heart.

Europe has gained the respect of the non-western world for the ideals it has done so much to nurture: liberty, equality, and fraternity. If Europe's soul is enlightenment, equality and democracy, if it is to be a union predicated on peace, then Turkey has a place in it. A Europe defining itself on narrow Christian terms will, like a Turkey that tries to derive its strength only from its religion, be an inward-looking place divorced from reality, and more bound to the past than to the future.”

Pamuk spoke of freedom, equality and solidarity, and that those values will only have the quality of fundamental values if they are global and universal. But, what is the EU doing today? Instead of working for solutions for a common human asylum policy, the EU close borders, exacerbates regional conflicts and produces new problems. The victims are refugees and are also the political and social opposition in Turkey.

The winners of the EU-Turkey deal, in my mind, are the supporters of a presidential system in Turkey. The winners are racists and right-wing extremists within Europe. The EU has adopted a policy, where only figures are discussed and not the interests and needs of people.

Today, European leaders quarrel over refugee thresholds, quotas and absorption capacities This is a caricature of a political Europe, which itself had initiated so many wars. Let us have a look at the recent past:



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Europe rescued banks but could not resolve the Euro crisis. The Euro group has imposed loans on Greece, but achieved nothing except damaging democracy. All democratic debates about a social and peaceful future that that did not take place in Europe, in my mind, created space for racists. Right-wing populists dictate the tone when it comes to discussing integration and diversity: against Muslim, against women, against gays and lesbians, against various minorities, including people in need. The pointless austerity and competition policies by the EU Commission and its trade policy, all this has been blocking Europe's veins of social and environmental innovation already since years. And the very least what a democratic Europe needs is the support of Turkish politics by a useless deal. In order to keep the deal, last week the EU Commission even proposed to lift the visa requirements for Turkish citizens,

Dear colleagues, dear activists,

Finally, I shall cite a few points that make me believe that this deal is in case to bring in front of the European Court of Human Rights (ECHR). This conference has compiled a large amount of information on the situation of refugees yesterday and I hope today too. The pressure to act is growing every day that passes leaving people unprotected from bullets, held back by fences from safe protection and individual asylum procedures. I refer to the EU-Council Statement before the EU Summit in March 2016, which activated the EU-Turkey Action Plan of November 2015.

1. The EU-Turkey statement of the Council(practically) denounces international obligations to the protection of refugees and the individual rights of asylum. The notion of "irregular refugees" lacks any human rights substance. In my mind, there are no irregular refugees. Nor can such a denomination be defined by agreement.

2. Many conservatives in Europe believe that this agreement would deprive human smugglers and traffickers of their business model. However,

their business model is the refugees and not the specific migration routes. There will be new migration routes 42:00. Even the EU knows that and is planning for a similar agreement with Libya using the, in my mind, EU-Turkey deal as a model.

3. By this agreement, Turkey is allowed to refuse entry to Syrian refugees and to displace them outside of its territory in so-called 'safe areas'. This is, in my mind, illegal under international law. The recognition of the Turkish approach of 'safe zones', is supporting Turkey's foreign policy, which can also be directed against Kurdish combatants.

4. By this agreement, Turkey is considered as a "safe third country", therefore the individual right to seek asylum before expulsion is not guaranteed. Turkey has signed the Geneva Convention only with reservations and does not recognise many of the internally displaced people as refugees. Treating Turkey as a safe third country and refusing a case by case assessment is against international law.

5. The managing director of Pro Asyl in Germany, Mr Burkhardt, warned against playing off refugees from Afghanistan or Iraq against victims of the Syrian civil war. It is also for this reason that "expulsions to Turkey ... would be a blatant violation of the European Convention on Human Rights".

6. The statement of the EU Council reads that "The EU Heads of State or Government also discussed with the Turkish Prime Minister the situation of the media in Turkey". It did not state that the situation is critical. It did not state. But the real situation does not justify a treatment of Turkey as a "safe third country".

7. The statement reinforces the fortress Europe policies that are linked to the FRONTEX agency and EUROSUR, which results as fighting refugees instead of fighting the root causes of migration.

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We cannot let that happen. Every day 27 governments demand Greece to treat Turkey as a safe third country. 27 Heads of State or Government look the other way when people in Idomeni are hit by rubber bullets in front of the closed down Balkan route. Many Greeks and activists from across Europe are helping refugees, report from the hotspots that resemble prisons.

Despite the aid on the ground, the ECJ found the situation of refugees in Greece violates Art. 3 of the European Convention on Human Rights; the Commission and the Council must put an end to these failed policies, instead of making Europe losing its soul, its history and future. Europe must finally bear its responsibility for the global situation of refugees. The EU-Turkey agreement is not a solution, but part of the problem. It intensifies the Syria conflict, destroys hopes of the Kurds and of the political opposition for a peaceful life and participation in a Turkey that once sought to come closer to Europe.

Thank you.



**Giorgos Kosmopoulos**  
**Amnesty International**

*Giorgos Kosmopoulos is Amnesty International's researcher on migration in Europe and former Director of Amnesty International Greece and has extensive research and campaigning experience regarding refugees and migrants' rights issues in Greece and in Europe. He has studied International Law and holds a Master's Degree in Human Rights.*

## **People on the Move, Lives on Hold: Rights and Lives of Refugees in Greece after the EU-Turkey Deal**

Good morning everyone.

Thank you for the invitation first of all, the organizers. [A short movie is watched] We made this video some four - five years ago, and unfortunately it's becoming even more pertinent and also a reminder for Europe and for Europeans to see how the situation could be the other way around and quite a few people in Europe and not a very long time ago and how to go through the same refugee trail Syrians, Afghans and others how to during on their way to Europe right now. So, it's a good reminder for Europeans and for Europe as a whole. The basic message of the movie was that it could have been the other way around. And this is something we should always keep in mind before making the decisions or say things that can hurt people's lives and livelihoods.

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I will speak a bit about the situation which currently, especially after the EU Turkey deal. I'll focus on the situation in Greece, but of course I'll catch up on other angles. Other colleagues are in much better positions to answer the questions on the situation in Turkey that but obviously there will be some discussion about the deal itself, the future. I'll try to reply the provocative question posed earlier by the European colleague here. It's pretty straightforward to us.

First of all, I will make a very short overview of how the current crisis evolves in Greece. We had 850.000 people arriving in Greece alone in 2015. Now, there's no question about it, it's a big number if you compare it to the figure of 2014 which was only 43.000 people. Now, saying it's a big number doesn't mean that, by no means actually, this was a number that was a trigger of a crisis, a refugee crisis that we're seeing now in Europe. This crisis is completely policy made. That, it's made by wrong decisions, it's made by fear, it's made by, decisions and rhetoric taking place in Europe.

We see that the refugee and migrant route is changed in 2015. During 2014 and previously, we had -what we used to call- mixed flows. People who had refugee profile, but there will be also lots of people who were probably migrating for other reasons, and that was a different mix. But during 2015, we see that these refugee populations are constantly travelling within Greece. That of course changes certain things but not the fundamentals as both of these categories still have certain the entitlements to rights. But of course, for refugees there's also a different set of criteria and rules. The situation in 2016, until May 10 if I'm not mistaken, was the same with the situation in 2015. We have 155.000 people who went to Greece during 2016 from the beginning of the year until May 10. The numbers have gone down a lot after March 20, after actually the implementation of the EU Turkey deal. What we see also during 2016 is a change in the composition of the moving population itself. Almost 60%

of the people coming through Greece are women and families. That is a considerable change from last year when we had almost 60% of single male travelling. What is the reason behind this? One of the main reasons is, what we see very often, the fact that these families, these women and children, are following another member of the family; a father, a brother, an uncle, a cousin who made the same trip a few months earlier while the borders were open and they could travel all the way to some other European country, usually in the centre of Europe or north Europe. And now, these are the families who are following these people, hoping desperately to reconnect with their families.

That is an important aspect and it should be also part of the solution that I'm going to discuss a bit later. So, as I said, in 2015, we had a case where for a long while the border was open. Through the Balkan routes, there were a small stream of people flowing from Greece through the Balkan route all the way to central Europe. It was never an easy journey to make. They had to fight with danger, smugglers, death and all that. But at least people had some hope. They kept moving and that changed a lot, also. In the beginning, we had happy songs, people were singing "refugees welcome" all across Europe, but this changed gradually and was first realized at the border with Macedonia. It was like a gradual close down also in central Europe, after that the central European governments – the European Union, probably, as a whole - decided to close down that route. They decided to do that at all costs, including rubber bullets and tear gas at the border of Macedonia and putting a lot of resources in which there is no money. To put it in other words, not striking the right balance of resources allocated. Instead of providing more resources to welcome refugees and providing for their basic needs, they provided more resources in control and border patrols. Czech Republic, Austria and other countries sent patrolling dogs and military equipment and all that ended the border with freedom. So, at end of the day that border was shut down for good. This photo is



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the result of that closure, this is egomania, shot a couple of months ago. Sometimes it looks better, sometimes it looks worse. This place was only meant to be a transit centre for people, you would stay only for a day or two for catching your breath and continuing your journey. But, now it's turned into a black hole and something that is going to haunt us forever I'm afraid. The situation there is terrible. Today as we speak, there are almost 10.000 people stranded there. In the past we've seen up to almost 15.000 people. I think this picture doesn't even cover the whole thing, because there are more people there. In this little tent you see, which is like summer tents we use for free camping, families have to live under extreme weather conditions and the summer is coming. This is one of the consequences of the closing down of the border, leaving almost 50.000 people stranded in Greece. These people are in fear. They are upset about their future and the future of their children. Of course, I don't mean to say that everything is all bad, in the sense that the EU did decide on a temporary relocation scheme, promising to take 60.000 people out of Greece in the end. But, this is a little bit of a fairy tale. I'll discuss that a bit later. There was a lot of desperation. And there were times when the tension was very high and I have to say that if it were not for the volunteers and the NGOs, things would have gone really bad. But there was also solidarity, a lot of solidarity shown by the Greek citizens, by the internationals who came to Greece to support these people and the NGOs, of course, and thanks to them these refugees managed to get even the most basic needs. It was in stark contrast of the absence of the Greek state and the whole European Union which were in never ending meetings in Brussels discussing time and again the same issues without any outcome. The civil society, the people strived very hard to provide for the basics for these refugees. I still remember people trying to give things into refugees and shedding tears for not having more to give, it was quite touching. I think that is something to remain in the collective memory of the Greek society and of the European society; something we should use and keep as a model.

What is the situation right now? Let's see. This picture was taken in Sintagma square, the main square in Greece, on a demonstration day organised by the NGOs and the formal and informal networks to collect items for the refugees. There were thousands of people who brought a lot of supplies, lots of things. There are international donations and there is a constant supply but these are by no means enough, because these people have also very specific needs.

I often remember something I saw when I was driving by my old school. My uncles, my aunts and other people I knew were cooking in front of it and giving food to the refugees. My old school had turned into an ad hoc refugee provision centre. So, this is the situation now in Greece.

This is an episode of the situation right now, different than before May 10. As you can see, we have actually two categories of people. If you add them, it makes more than 54.000 - 55.000 people -some people say it's a bit more- but this is the official figure and I think it is pretty accurate. You also see that these people are dispersed from the central Greece up the north. There are some people still sleeping rough in the port of Piraeus. Most of the reception facilities are really bad. They are lacking basic supplies, medical supplies and proper medical attention. Proper medical attention is important because it's not enough that a doctor sees you and says "you will be sick, if you don't get the treatment you need". That's extremely important for both the mainland and the islands. We have people with very little children; we have people who have severe trauma stress from the war; we have people injured during the war; we have people with heavy disabilities and all of these people need proper attention. We cannot just give them a pill or aspirin, tap them in the back and say "you're fine". So, this has also to be taken into consideration. Now they are trying to disperse them all across the mainland. Some reception facilities are better than others, some are barely OK but in general there is a big problem.

And this is a view, highlighted a lot. The processing of the asylum

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applications in Greece is very important. According to the statistics between the beginning of the year and up until April 4, there were 6605 applications for international protection in Greece. Until May 8 -and that's until last week- 89 of them were found inadmissible. Now, that's the first procedure, but there is also an appeals procedure. We haven't seen any decisions from the appeals committee yet. We are expecting to hear about them very soon. Like I said earlier, there are two categories of people in Greece: Those who are actually in the mainland and those who are trapped in the islands, called the hotspots. These are the people who potentially could fall under the EU - Turkey deal and may or may not be returned to Turkey. The provision is as follows: If you arrive after March 20, you are within the scope of the deal. You have the right apply for asylum but you fall into these new expedited, very speedy procedure for examining your application. I have to add that vulnerable groups like minors, people with severe disabilities are exempted from this deal, and they cannot be sent back to Turkey. Obviously, that's good thing. The Greek authorities were quite slow at the beginning in identifying the people in this category but we see that they're speeding up already. However, there is the group of people who fall under the agreement. Now, the new Greek legislation does not qualify Turkey as a safe country. So it's up to the individual caseworkers to decide depending on individualized assessment on a case by case basis whether Turkey can be a safe country for the applicant in question. We have the EASO supporting these decisions and so far we've seen that Turkey is usually deemed as a safe country for these people.

There's also a second level of appeal. For this, your application must be admissible, if not your case will be considered within the scope of the EU deal. If you're deemed admissible, then you have the right to go to the second level. If your case is considered inadmissible at this second level, your case is not examined based on its merits in Greece and you risk being sent back to Turkey. This appeal level keeps you off the boat to Turkey for

a while. We haven't seen any decisions on that, so I'll wait until we have an actual decision before us as it is very speculative at the moment. What matters here is this: Like Amnesty International, we also think that Turkey is not a safe country. Yet we are also aware that there are a lot of problems in the Greek asylum system.

First of all, the time frame for the examination is very short. It's impossible to examine the merits of such important cases within 15 days. There is also a major lack of legal aid, which is a very crucial thing. These people have almost no access to legal aid. Even if you can find a lawyer and can pay for the service, you can never be sure that the lawyer has experience in the asylum procedures. So Turkey is not a safe country, but Greece is by no means ready to keep these people.

Here, you can see two boats taking people to Turkey. I wish they were used to carry the tourists only, but they are idle right now. I already listed the big problems with the Greek asylum system. Let's try to make an asylum application in Greece. First, you have to apply through Skype. I made an application a few weeks ago and they still haven't replied to me. You have to get an appointment through Skype and it takes forever or you get no answer. People who are outside this EU - Turkey deal and who are in the mainland have to go through this procedure, but this procedure is not working. Of course, the Greek asylum system is overstretched, there is no question about that, but it should have been ready. Now, they say that it will be ready by June, but by June we may have an entirely different situation.

Member states complain that Greece is to blame for not preparing proper administrative files. Greece is complaining that other member states ask for almost racist profiling, I don't know if that is true, but the main issue here is a lack of political will. Administrative problems will always exist, yet had there been a concrete political will, they would have been solved. From the Greek side, there are many challenges. We see that the whole political

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establishment has accepted the deal as necessary. Politically, there's not very much debate. There were some complaints here or there, but not very much. Obviously, on the side of the NGOs, the locals and the civil society there is a lot of resistance and there's a lot we can do.

We have tried to effectively stop this deal by making a research to prove that this deal is a legally and morally a fraud. Because we think that this logic of exchanging refugees one for one is immoral and it is giving a wrong message that can spill over outside Europe as well. This is the kind of legal arrangement and logic that you can get a good bargain with the European Union. Selling the refugees or using them as bargaining power can corrupt the whole system of protection internationally. Europe used to be very proud of itself, with good reason, for the protection of the refugees and there used to be a system of protection. Yet, now, it's in mortal peril.

Lastly, I'll try to answer the provocative question asked earlier. We think that the solution currently adopted is not a solution at all as I have explained already. I talked about the legal and moral problems with that. And I think it's important that we break this deal. We should break it not only legally, but also we should break the whole concept of a deal based on exchange. We do not want this to become an example for the EU or globally.

Now, I'm now going to go in the solutions very quickly. Earlier, we said that this crisis in Europe is a self-inflicted one. Obviously we admit that the challenges of admitting such huge numbers of people are big. Yet I cannot accept and we cannot accept that one of the largest political and economic blocs in the world cannot deal with these people. We are a rich bloc of 500 million people. If the political will is there, there will be a solution. The problem with smugglers is that there are no safe and legal routes for these people to enter Europe. Unless there are safe routes, there will always be smugglers and they will always be unfortunately people trying to cross to Europe.

Lastly, I would like to say that the NGOs in the EU are usually working at an individual level. But if we take it as a responsibility for our future, we should make sure that the politicians get our message loud and clear.

Thank you very much.

## Nuray Ekşi Yeditepe University

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# Readmission Agreement Between the European Union and Turkey: A Chain of Mistakes<sup>1</sup>

## I. The Notion of Readmission Agreement and the Objective of Readmission Agreements

Migration can be divided into two categories: “regular migration” and “irregular migration”. The terms “legal migration” and “illegal migration” are also used to refer “regular migration” and “irregular migration” respectively. Foreigners whose entry, residence, travel or employment in a country fail to comply with a country’s legislation are considered illegal migrants. In other words, foreigners who entered Turkey without a passport or an equivalent document, or a visa; foreigners who had violated borders; foreigners who remained or worked in Turkey without a residence or a work

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**1** The article is from the book “Turkey-European Union Readmission Agreement, Istanbul 2016” by Nuray EKSİ. That being said, sections of the article reflecting the developments after the publication of the book in March 2016 are original.



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permit or who remained in Turkey without extending their expired residence permits, and foreigners whose international protection applications are rejected are illegal migrants<sup>2</sup>.

Readmission agreements (RAs) are used as a tool in fight against illegal migration. Readmission agreements are used to remove irregular migrants from one contracting party to another in accordance with the procedures and principles set out in therein. There are two types of readmission agreements: readmission agreements with a narrow objective and readmission agreements with a broad objective. Readmission agreements with a narrow objective stipulate contracting states' obligations to receive their own citizens. It is possible to broaden the scope of the readmission agreements by including the readmission of third country nationals and stateless persons<sup>3</sup>.

Readmission agreements are concluded to fight irregular migration as well as human trafficking and migrant smuggling. The purpose of a readmission agreement is usually stated in its preamble. For instance, in the preamble of the readmission agreement between the European Union and Turkey, it is stipulated that the purpose of the agreement is "to strengthen cooperation in order to combat illegal migration more effectively". In some readmission agreements, as in the readmission agreement between Turkey and Belarus, the purpose of the agreement may be written out in more detail. In the preamble of the readmission agreement between Turkey and Belarus, the purpose of the agreement is explained as improving cooperation in fight against illegal migration and cross-border organized crime; ensuring safe and regular return, admission and transportation of persons who do not fulfil the requirements to enter into, presence in and residence on countries of contracting states; facilitating transit pass of

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**2** Nuray EKSI, *Foreigners and International Protection Law*, 3<sup>rd</sup> edition, Istanbul, 2015, p. 1

**3** EKSI, *Turkey - European Union Readmission Agreement*, 15.

aforementioned persons in a spirit of cooperation; and using the agreement as an instrument in the fight against migrant smuggling and organized crime. The readmission agreement between Turkey and Kyrgyzstan, on the other hand, is only confined to the readmission of citizens of contracting states. That is, the scope of the readmission agreement with Kyrgyzstan is narrow. In parallel with this scope, it is stated in the preamble that the agreement is made with the purpose of “taking necessary measures to fight against illegal migration and readmitting contracting states’ own citizens who do not have residence permit in the country of the other contracting state”. Readmission agreements assist receiving countries to remove irregular migrants in their countries to their countries of origin, and these agreements also encourage transit countries to take measures against illegal migration<sup>4</sup>.

## **II. Scope of the Readmission Agreement between Turkey and the European Union and the Readmission Procedure**

### **A. Scope of the Readmission Agreement between Turkey and the European Union**

Negotiations on the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, also known as “the readmission agreement between Turkey and the European Union”, began in 2005. The agreement was initialized in 2012 and ratified in 2014<sup>5</sup>.

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<sup>4</sup> Esin KUCUK, Readmission Agreements to which Turkey is a party, 7(2008)2 İKÜHFD, p. 102.

<sup>5</sup> Law on Approval of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, Law No. 6547, Date of Ratification: 25.6.2014, Official Gazette Dated 29.6.2014 No. 29044. Article 1- (1) Ratification of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, which was signed in Ankara on December 16th, 2013, was approved.

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The scope of this agreement is laid down in Article 2 of the agreement. As per this Article, the provisions of this Agreement shall apply to persons who do not or who no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Turkey or one of the Member States of the Union. In other words, the agreement shall apply to illegal (irregular) migrants. The agreement further regulates readmission of illegal migrants crossing to European Union countries over Turkey and vice versa. However, since there will not be many migrants coming to Turkey from the European Union, it would not be factually incorrect to say that the agreement mainly regulates Turkey's readmission obligations.

Both Turkey and European Union member states are under the obligation to readmit third country nationals and stateless persons, as well as their own citizens. In this form, the agreement regulates readmission with the widest scope possible. Some readmission agreements have narrower scopes and under these agreements, states are only required to readmit their own citizens. These type of agreements therefore leave the readmission of third country nationals and stateless persons out of scope. For instance, in the readmission agreement between Turkey and Kyrgyz Republic, readmission obligations of contracting states are limited to their own citizens<sup>6</sup>.

As per the readmission agreement between Turkey and the European Union, Turkey is under the obligation to readmit its own citizens who are in

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Article 2- (1) This Law shall enter into force on the date of its publication.  
Article 3- (1) Provisions of this Law shall be enforced by the Council of Ministers.  
Decree No: 2014/6652: Approval of the attached "Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization", which was signed in Ankara on December 16th, 2013 and approved by the Law No. 6547 dated 25/6/2014, was decided by the Council of Ministers on 21/7/2014, pursuant to Article 3 of the Law No. 244 dated 31/5/1963, upon the letter no 6702424 dated 16/7/2014 by the Ministry of External Affairs.

**6** EKSI, Turkey - European Union Readmission Agreement, 69.

European Union countries and who are in an illegal status. However, the term “their own citizens” in the agreement is not limited to Turkish citizens. The scope of Turkey’s obligation to readmit its own citizens is further expanded by paragraphs (2) and (3) of Article 3 of the agreement. As per paragraph (2) of Article 3 of the agreement, minor children and spouse of a Turkish citizen who hold another country’s citizenship shall also be readmitted by Turkey<sup>7</sup>.

According to paragraph (2) of Article 3 of the agreement, readmission of a Turkish citizen’s child by Turkey is tied to several specific conditions. These are: (1) The child or other parent must not have independent right of residence in the requesting state. (2) The place of birth or the nationality shall not be taken into account. (3) The child must be a minor<sup>8</sup>.

Conditions required for the readmission of a Turkish citizen’s spouse and who is a citizen of another country are, on the other hand, as follows: (1) They should not have independent right of residence in the requesting state. (2) The marriage must be recognized by Turkish regulations. For example, Turkey is not obligated to readmit second, third, or fourth spouses. (3) There must not be any legal barriers before the stay or residence of Turkish citizen’s spouse, who is a citizen of another country, in Turkey<sup>9</sup>.

In addition, Turkey is also under the obligation to readmit persons who have lost their Turkish citizenship and thus become a foreigner after entering to the territory of one of the member states. According to paragraph (3) of Article 3 of the agreement, Turkey shall readmit persons who have renounced, the nationality of Turkey since entering the territory of a Member State, unless such persons have at least been promised naturalization by that Member State<sup>10</sup>.

**7** EKSI, Turkey-European Union Readmission Agreement, 81.

**8** EKSI, Turkey-European Union Readmission Agreement, 81.

**9** EKSI, Turkey-European Union Readmission Agreement, 81-82.

**10** EKSI, Turkey-European Union Readmission Agreement, 82.

## **B. Procedure for the Readmission of Citizens of Third Countries and Stateless Persons**

### 1. Readmission Procedures: “Regular Procedure”, “Accelerated Procedure” and “Transit Operations”

Pursuant to the agreement between Turkey and the European Union, there are three different procedures for readmission: “regular procedure”, “accelerated procedure” and “transit operations”. Except in cases where accelerated procedure is applied, the principal is to readmit irregular migrants under the regular procedure<sup>11</sup>.

An accelerated procedure is included in the readmission agreement between Turkey and the European Union. The accelerated procedure is defined in paragraph (4) of Article 7 of the agreement.

According to this paragraph, if a person is apprehended in the border region of the requesting state after having crossed the border illegally and directly from the territory of the requested state, the requesting state may submit a readmission application under the accelerated procedure within three work days following the person’s apprehension. It must be noted that key elements of the accelerated procedure are that crossing the border region illegally and apprehension of the person in the border region. Border crossing point and requesting state’s borderland are defined in paragraphs (o) and (p) of Article 1 of the Agreement:

(o) “Border Crossing Point” means any point designated for the purpose of crossing their respective borders by the Member States or Turkey.

(p) “Border region” of the Requesting State means an area within its territory extending inwards up to 20 kilometres from the external border of the Requesting State, whether or not the border is shared between the Requesting State and the Requested State as well as the sea ports including

<sup>11</sup> EKSI, Turkey-European Union Readmission Agreement, 92-93.

customs zones and international airports of the Requesting State.

Thus, irregular migrants apprehended at airports, seaports, land borders, or in an area which extends inwards up to 20 kilometres from the land borders of a European Union member state may be subject to the accelerated procedure. The difference between the accelerated procedure and the regular procedure is that both the readmission application and reply to this application shall be adjudicated in a shorter period than the normally stipulated. The readmission application should be submitted within 3 working days following the apprehension of a person who will be sent back under the accelerated procedure. This period is, however, 6 months in the regular procedure (Article 11). Moreover, the time limit for the requested state is shorter in the accelerated procedure. As per Article 11(2) of the Agreement, if the application is submitted under the accelerated procedure, the reply to this application must be provided within 5 working days. The time limit for reply under the regular procedure is, on the other hand, 25 days<sup>12</sup>.

The transit procedure is regulated by Article 14 and Article 15 of the Agreement. This procedure is not about the readmission by Turkey or by any European Union member state. Transit procedure is related to the transit passage of persons that will be readmitted by states other than Turkey and European Union member states, over Turkey or a European Union member state. This procedure shall be applicable if it is not possible to transport the person to the other country if there are no direct flights to that country. However, the transit procedure shall not be applicable on the grounds that the direct flight is expensive. As per paragraph (3) of Article 14 of the readmission agreement between Turkey and the European Union, transit passage may be refused by Turkey or any member state under three conditions. These conditions are as follows:

**12** EKSI, Turkey-European Union Readmission Agreement, 93-94.

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(1) If the third-country national or the stateless person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit; or

(2) If the third-country national or the stateless person shall be subject to criminal sanctions in the Requested State or in another State of transit; or

(3) On grounds of public health, domestic security, public order or other national interests of the Requested State.

### **C. Readmission Process**

(1) Readmission application shall be submitted in writing and with the form enclosed to the agreement as Annex 5. The application shall contain the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and –where possible– place of birth, and the last place of residence) and, where applicable, the particulars of minor unmarried children and/or spouses; in case of third country nationals and stateless persons, indication of the means with which proof or prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons; photograph of the person to be readmitted (Article 8/1). The readmission application shall also contain a statement indicating that the person to be transferred may need help or care; any other protection, security measure or information concerning the health of the person, which may be necessary in the individual transfer case (Article 8/2).

(2) A readmission application may be submitted by any means of communication including electronic ones e.g. facsimiles, e-mails etc. (Article 8/4).

(3) There are no time limitations for readmission of citizens of

European Union member states or Turkey. However, there is a time limitation for the readmission of third country nationals and stateless persons. The application for the readmission of a third-country national or a stateless person must be submitted within 6 months. The commencement of this six-month period is set out in Article 11(1). The application for readmission must be submitted to the competent authority of the Requested State within a maximum of six months after the Requesting State's competent authority has gained knowledge that a third-country national or a stateless person who does not or who no longer, fulfil the conditions in force for entry, presence or residence. It must be noted that the six-month period does not begin to run at the time of illegal entry or illegal residence, or when a person no longer fulfils requirements for a legal residence; but at the time of discovery of this status of such person. If a third-country national or a stateless person entered into the territory of the Requesting state before Article 4 enters into force, the six-month time limit shall begin to run at the effective date of Article 4. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request by the Requesting State, be extended but only until the obstacles have ceased to exist. Although the application period is specified as 6 months in the readmission agreement between Turkey and the European Union, a degree of flexibility is provided in several provisions of the agreement.

(3) Turkey shall reply to the readmission request in writing upon receiving the application (Article 8/5). There is also a time limit for a reply to a readmission application. If an application is submitted under the accelerated procedure, the reply time is 5 working days. In other cases, however, the reply shall be provided in writing within 25 calendar days. Where there are legal or factual obstacles to the application being replied to in time, the time limit may, upon request and giving reasons, be extended up to 60 calendar days, except if the maximum detention period in the national legislation of the Requesting State is less than, or equal to, 60



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days. (a. 11/2). This time limit begins to run with the date of receipt of the readmission request. Sanctions for not replying within this time limit are regulated in Article 11(2). According to this clause, if there is no reply within this time limit, the transfer shall be deemed to have been agreed to.

We have to note that the flexible approach regarding time limits in readmission applications is lost when it comes to providing a reply to readmission requests. It goes so far that not replying to a readmission application within the set out time limit will construe the acceptance of transfer of the irregular migrant. Undoubtedly, this statement contradicts with one of the fundamental tenets of law: i.e. silence cannot be construed as acceptance. Reply to a readmission application may be submitted by any means of communication including electronic ones e.g. facsimiles, e-mails etc. (Article 11/2). Reasons shall be given in writing for the refusal of a readmission request (Article 11/4).

(4) After the agreement between the Requesting European Union member state and Turkish authorities has been reached, the person concerned shall be transferred within 3 months. Should there be a legal or practical obstacle, this this time limit may be extended upon the request of the Requesting State.

(5) Following Turkey's positive reply to a readmission application, the competent consular office of Turkey shall, within three working days, issue the travel document required for the return of the person to be readmitted with a period of validity of three months. In case there is no consulate of Turkey in a Member State or if Turkey has failed to issue the travel document within three working days, use of standard deportation travel document of the European Union shall be deemed agreed to. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of "emergency travel document for foreigners", Turkish authorities shall, within three working days, extend the period of the "emergency travel document for foreigners", or when necessary, issue a

new “emergency travel document for foreigners” with a period of validity of the same duration. In case there is no consular office of Turkey in a Member State or if Turkey has not, within three working days, issued the travel document, use of standard deportation travel documents of the European Union shall be deemed accepted.

(6) Before returning a person, the competent authorities of the state shall notify in writing at least 48 hours in advance, regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer (Article 12/1). Transportation may take place by air, land or sea. Return by air shall not be restricted to the use of the national carriers of Turkey or the Member States and may take place by using scheduled or charter flights. In the event of escorted returns, such escorts shall not be restricted to authorized persons of the Requesting State, provided that they are authorized persons by Turkey or any Member State (Article 12/2).

#### **D. Readmission Costs**

Readmission costs are regulated in Article 16. As per this Article, all transport costs incurred in connection with readmission and transit operations as far as the border crossing point of the Requested State, or for transit applications as far as the border of the State of final destination, shall be borne by the Requesting State.

#### **E. Cases in Which Turkey May Decline Readmission of Third-Country Nationals and Stateless Persons**

Turkey is not under the obligation to accept third-country nationals and stateless persons should reasons set out in paragraph (2) of Article 4 are present. As per paragraph (2) of Article 4 of the Agreement, readmission obligation shall not apply if:

(a) the third country national or stateless person has only been in airside transit via an international airport of Turkey; or

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(b) the requesting Member State has issued to the third country national or stateless person a visa which was used by the person for the entry on the requesting Member State's territory or residence permit before or after entering its territory unless that person is in possession of a visa or residence permit issued by Turkey, which has a longer period of validity; or

(c) the third country national or stateless person enjoys a visa free access to the territory of the requesting Member State.

Cases where Turkey shall decline readmission of third-country nationals and stateless persons are exhaustively listed in Article 4. It is therefore not possible to decline a readmission request for any other reasons except the aforementioned set of reasons. In addition, the Requested State will not be able to decline a readmission application by citing its legislation or public order and public security concerns<sup>13</sup>.

### **III. Administrative Structure and Technical Assistance under the Readmission Agreement Between Turkey and the European Union**

#### **A. Joint Readmission Committee**

The Joint Readmission Committee is regulated by Article 19 of the readmission agreement between Turkey and the European Union. According to paragraph (1) of this Article, Turkey and the European Union shall provide mutual assistance in the application and interpretation of the readmission agreement. However, since it would be hard for Turkey and the European Union to directly supervise the implementation of the agreement, they shall set up a Joint Readmission Committee to this end. The Joint Readmission Committee shall be comprised of representatives of the European Union and Turkey; the Union shall be represented by the European Commission, which is supported by the experts of member states. Tasks of the Joint Readmission Committee are:

**13** EKSI, Turkey-European Union Readmission Agreement, 90.

- (1) to monitor the application of the Agreement;
- (2) to decide on implementing arrangements necessary for the uniform application of the Agreement;
- (3) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Turkey;
- (4) to recommend amendments to this Agreement and its Annexes.

The decisions of the committee shall be binding on the Contracting Parties following any necessary internal procedures required by the law of the Contracting Parties. The Committee shall meet where necessary at the request of one of the Contracting Parties. The Committee shall establish its rules of procedures.

### **B. Technical Assistance**

As per Article 23 entitled “technical assistance” of the readmission agreement between Turkey and the European Union, both parties agree to implement the Agreement based on the principles of joint responsibility, solidarity, and an equal partnership to manage the migratory flows between Turkey and the European Union. In this context, the European Union is committed to making available financial resources in order to support Turkey in the implementation of this agreement in accordance with the attached joint declaration on technical assistance. In doing so, attention will be devoted in particular to institution and capacity building. Financial support is to be provided in the context of the existing and future priorities jointly agreed by the European Union and Turkey.

### **C. The Readmission Agreement between Turkey and the European Union and Visa Liberalization**

The readmission agreement between Turkey and the European Union was initialized on 21 June 2012. Following the signature of the agreement on 16 December 2013, meetings for allowing Turkish citizens

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to travel without a visa for short stays has begun. These meetings were held within the framework of the roadmap towards the visa-free regime with Turkey. During these meetings on visa-free regime, the European Commission has analysed Turkey's legislative regulations and administrative practices regarding visa. Conditions for visa liberation were listed under five titles in the Roadmap:

- (1) Document security,
- (2) Migration management,
- (3) Public order and security,
- (4) Fundamental rights,
- (5) Readmission of irregular migrants.

For a Turkish citizen to be able to travel to European Union countries without a visa, all of the 72 criteria listed under these five titles by the EU Commission have to be met.

### **IV. The Reasons Why This Readmission Agreement with the European Union Made an Impact Even Though Turkey Has Made Readmission Agreements with Other States**

Turkey has readmission agreements with some states; procedures and principles regarding transfer of illegal migrants going to related states over Turkey, or coming to Turkey from these states were set out in these agreements. Turkey concluded readmission agreements with Greece in 2001<sup>14</sup>, with Syria in 2007<sup>15</sup>, with Vietnam in 2008<sup>16</sup>, with Ukraine in

**14** Official Gazette Dated 12.4.2007 No. 26491.

**15** Official Gazette Dated 12.4.2007 No. 26491.

**16** Official Gazette Dated 23.3.2008 No. 26825.

2008<sup>17</sup>, with Kyrgyz Republic in 2009,<sup>18</sup> with Romania in 2009<sup>19</sup>, with Russia in 2011<sup>20</sup>, with Belarus in 2014<sup>21</sup>, with Moldova in 2014<sup>22</sup>, and with Pakistan in 2016<sup>23</sup>. The readmission agreement between Turkey and the European Union was published in the Official Gazette in the year 2014. As per the readmission agreements concluded between Turkey and Vietnam and Turkey and Kyrgyz Republic, parties are obligated to readmit their own citizens only. However, within the scope of readmission agreements with Greece, Syria, Russia, Ukraine, Moldova, Romania, Belarus, Pakistan, and the European Union, not only citizens of the party states, but also third-country nationals with illegal migrant status and stateless persons are included.

Even though the readmission agreement between Turkey and the European Union is not the first agreement on this matter, the public became familiar with readmission agreements for the first time with this agreement. Among all other readmission agreements concluded by Turkey, the readmission agreement with the European Union has made the most impact. Since this agreement is on the readmission of irregular migrants who shall be sent from 26 countries, excluding Ireland and Denmark, to Turkey, it sparked strong repercussions in the public. Furthermore, when the readmission agreement was initialized in 2012, the number of Syrians was relatively low in Turkey. Yet, this number had already dramatically increased by the time the Agreement was ratified and this has led to a

**17** Official Gazette Dated 26.9.2008 No. 27009.

**18** Official Gazette Dated 18.10.2009 No. 27380.

**19** Official Gazette Dated 24.11.2009 No. 27416.

**20** Official Gazette Dated 15.3.2011 No. 27875.

**21** Official Gazette Dated 15.3.2014 No. 28942.

**22** Official Gazette Dated 25.4.2014 No. 28982.

**23** Official Gazette Dated 14.5.2016 No. 29712.

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serious concern in public<sup>24</sup>. Another reason as to why this readmission agreement between Turkey and the European Union led to high degree of public interest is the visa liberalization for Turkish citizens is subject to this Agreement. Associating the readmission agreement between Turkey and the European Union readmission agreement with the visa liberalization process has created public excitement and other readmission agreements which had been hitherto overlooked were recalled. Negotiations on the readmission agreement between Turkey and the European Union started in 2005. This process was rough and Turkey demanded visa liberalization as a response to European Union's insistence on including third-country nationals and stateless persons within the scope of the readmission agreement. On the other hand, although the exact amount remains unknown, financial assistance to Turkey always has been a subject that was mutually agreed from the very outset of negotiations<sup>25</sup>.

### **V. Conditions Required for Implementing the Readmission Agreement between Turkey and the European Union**

#### **A. Making the Readmission Agreement with the European Union, An International Organization**

The European Union is an international organization. The European Union has concluded readmission agreements with states other than Turkey and these include readmission agreements finalized with Albania, Hong Kong Special Administrative Region, Macau, Russian Federation, and Sri Lanka. However, what is different in the readmission agreement between Turkey and the European Union is that this agreement is made with an international legal entity. Turkey did not enter into a readmission agreement with the member states, but with the European Union and the European Union is an international organization. We must not forget that

<sup>24</sup> EKSI, Turkey-European Union Readmission Agreement, 32.

<sup>25</sup> EKSI, Turkey-European Union Readmission Agreement, III.

readmission agreements concluded by the European Union are not binding for Denmark. Furthermore, these agreements are also not binding for the United Kingdom and Ireland unless otherwise stated. United Kingdom has entered into the readmission agreement between Turkey and the European Union. This means, by entering into a readmission agreement with the European Union, Turkey has agreed to readmit all irregular migrants who have travelled to member states, except Ireland and Denmark, over their territories.

However, for Turkey to be able to readmit illegal migrants from a European Union member state, Turkey and the relevant member state have to make an implementation protocol. As per Article 20 of the readmission agreement between Turkey and the European Union, there has to be an implementation protocol. According to Article 20 of this Agreement, these protocols shall be made with member states. The readmission agreement between Turkey and the European Union includes all member states, except Denmark and Ireland. A protocol shall be made between Turkey and each of the member states in order for Turkey to readmit illegal migrants from each country. An implementation protocol drawn up between Turkey and a member state may be accepted by other member states in whole. Since the readmission agreement and related implementation protocols are international agreements, ratification and enforcement processes for these protocols are subject to Article 90 of the Constitution and the Law no. 244. In other words, there must be legislation approving the ratification of these implementation protocols by the TBMM (Grand National Assembly of Turkey)<sup>26</sup>.

### **B. Conditions Required for the Agreement to Enter into Effect**

Entry into force, duration, and termination of the readmission agreement between Turkey and the European Union is regulated by Article

<sup>26</sup> EKSI, 5.



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24. Article 24 provides that the Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that their own ratification procedures have been completed. However, a different effective date is specified with respect to Article 4 and Article 6. In other words, a transitional period is provided with respect to the readmission of third-country nationals and stateless persons in the readmission agreement between Turkey and the European Union (transition clauses). A different effective date is set for Article 4, which regulates the readmission of third-country nationals and stateless persons from the European Union to Turkey, and for Article 6, which regulates the readmission of third-country nationals and stateless persons from to the European Union. Both Articles will enter into force three years after the effective date of the Agreement. During this three-year period, Article 4 and Article 6 will only be applicable to stateless persons and nationals of third-countries with which Turkey has concluded bilateral treaties or arrangements on readmission. Over the course of this three-year period, existing bilateral readmission agreements between individual Member States and Turkey shall continue to apply in their relevant parts (Article 24/3). Among European Union member states, only Romania and Greece have readmission agreements with Turkey<sup>27</sup>.

As per the readmission agreement, the agreement will be applicable with respect to third-country citizens and stateless persons three years after it is ratified. However, parties decided to reschedule the effective date of the readmission agreement between Turkey and the European Union with respect to third-country nationals and stateless persons to June 1<sup>st</sup>, 2016.

The readmission agreement was published in the Official Gazette of August 2<sup>nd</sup>, 2014. The European Union's and Turkey's obligations to readmit its own citizens has entered into force as of the first day of the second month following the publication of the agreement in the Official

<sup>27</sup> ECSI, 122.

Gazette. However, a three year transition period is envisioned for the readmission of third-country nationals and stateless persons. This period will be completed in the year 2017. However, there have been many negotiations in March 2016 for rescheduling effective date of Turkey's and European Union's obligations with respect to third-country citizens and stateless persons to June 1<sup>st</sup>, 2016. Following these negotiations, parties have come to a mutual agreement on enforcing the readmission agreement with respect to third-country citizens and stateless persons as of June 1<sup>st</sup>, 2016. Pursuant to aforementioned mutual agreement, the European Commission has introduced a draft resolution on the enforcement of Article 4 and Article 6 of the readmission agreement with respect to third-country nationals and stateless persons as of June 1<sup>st</sup>, 2016<sup>28</sup>. This resolution has come into effect with Joint Readmission Committee's decision dated 2/2016. The Joint Readmission Committee, which was formed with the

**28** European Commission Brussels, 10.2.2016 COM(2016) 72 final Annex to the Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization as of 1 June 2016. The Commission has also prepared a recommendation related to the text that will be an attachment to the decision, which will be made by the Council, to enforce the readmission agreement with regard to third-country citizens and stateless persons on June 1<sup>st</sup>, 2016. In this decision recommendation, it is stated that Ireland and Denmark do not enter; England enters into the agreement (see European Commission Brussels, 10.2.2016 COM(2016) 72 final Annex to the Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization as of 1 June 2016).

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readmission agreement between the European Union and the Republic of Turkey made a decision dated 2/2016. The following is the text of the decision made by the Joint Readmission Committee:

Article 1- The obligations set out in Articles 4 and 6 of the Agreement, referring to the readmission of third country nationals and stateless persons, will be applicable as of 1 June 2016

Article 2- This Decision shall enter into force upon completing all mandatory internal procedures required by law.

With this decision of Joint Readmission Committee, the effective date of the readmission agreement with respect to third-country nationals and stateless persons is rescheduled from 1 November 2017 to 1 June 2016. The decision shall be transposed into national law as per Article 19(2) of the readmission agreement between Turkey and the European Union and thus will become binding. Indeed, the decision 2/2016 by European Union Joint Readmission Committee was ratified by the Council Resolution 2016/551 on 23 March 2016, and this resolution was published in the Official Gazette of the European Union<sup>29</sup>. Turkey has ratified the 2/2016 decision by Joint Readmission Committee in TBMM with Law no. 6714<sup>30</sup>.

**29** Council Decision (EU) 2016/551 of 23 March 2016 establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization from 1 June 2016, OJ L95 9.4.2016 p. 9-11.

**30** Law on Approval of the decision 2/2016 by the Joint Readmission Committee formed pursuant to the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, Law No. 6714, Date of Ratification: 3.5.2016, Official Gazette Dated 20.5.2016 No. 29717.

However, it should be noted that ratification of “decision 2/2016 by the Joint Readmission Committee” by TBMM is not sufficient from the perspective of Turkey. For rescheduling effective date of the readmission agreement between Turkey and the European Union with respect to third-country nationals and stateless persons, either a new agreement or a protocol related to the agreement has to be made. It is not possible to change the effective date of the agreement with respect to third-country citizens and stateless persons with an administrative decision. Furthermore, since the agreement is concluded with the European Union, the protocol also must be concluded with the European Union. Moreover, the change in the date of the agreement has to be forwarded to the Assembly. Implementation protocols of this agreement shall be made with member states. However, it is not sufficient to include records on rescheduling effective date of the readmission agreement with respect to third-country nationals and stateless persons in protocols that will be made with member states.

### **C. The Fact that the Joint Readmission Committee is not Authorized to Change the Effective Date of the Agreement with Respect to Third-Country Nationals**

The Joint Readmission Committee is established under Article 19 of the readmission agreement. Duties of the Joint Readmission Committee are also stipulated in this Article. An analysis of Article 19 clearly implies that the Committee does not have authority to make amendments to the agreement. Article 19 of the Agreement lists duties of the Joint Readmission Committee as follows:

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Article 1- (1) “Decision 2/2016 by the Joint Readmission Committee, which was formed with the agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization”, was approved for ratification.  
Article 2- (1) This Law shall enter into force on the date of its publication.  
Article 3- (1) Provisions of this Law shall be enforced by the Council of Ministers.

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### Article 19- Joint Readmission Committee

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a joint readmission committee (hereinafter referred to as 'the committee') which will, in particular, have the task:

(a) to monitor the application of this Agreement;

(b) to decide on implementing arrangements necessary for the uniform application of this Agreement;

(c) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Turkey pursuant to Article 20;

(d) to recommend amendments to this Agreement and its Annexes.

Duties of the Joint Readmission Committee are "to monitor" the application of the agreement, "to make arrangements" necessary for uniform application of the agreement, "to recommend" amendments to the agreement and its annexes, and to "exchange information" on implementing protocols. None of the provisions of Article 19 of the readmission agreement mentions the Joint Readmission Committee's power to introduce amendments to the agreement.

### **D. The Problem of Unconstitutionality of the Law No. 6714 Ratifying the Joint Readmission Committee Decision 1/2016 on the Enforcement of the Readmission Agreement between Turkey and the European Union with Respect to Third-Country Nationals as of 1 June 2016**

In Joint Readmission Committee decision 2/2016 on rescheduling the effective date with respect to third-country nationals to 1 June 2016, it is stated that this decision is made on the basis of Article 19 (1) (b). The said Article is on "deciding on implementing arrangements necessary for the uniform application of the Agreement". The statement "ensuring

uniform application of the agreement” is, however, different from the statement “making amendments to the agreement”. Article 19(1)(d) of the readmission agreement also states that the Joint Readmission Committee may “recommend” amendments to the agreement and its annexes. Introducing amendments to the agreement and its annexes is not included in the Article 19(1)(d). In addition, since the agreement is finalized between Turkey and the European Union, it is not possible to add such a statement to the Article 19(1)(d). Only the parties have the competence to this end. Article 19(1)(d) does not mention the Joint Readmission Committee’s ability to “introduce amendments” to the agreement, but only “to recommend amendments”.

Since the Joint Readmission Committee is not entrusted with the authority to introduce amendments to the agreement, its decision is null and void. Thus, ratification of a decision made in reference to the non-existent authority of the Joint Readmission Committee in TGNA with Law no. 6714 is unconstitutional. As per Article 19(2) of the agreement, decisions of the Joint Readmission Committee are binding only after all mandatory internal procedures are completed. There are no legislative regulations concerning transposition of decisions by Joint Readmission Committee in Turkish law. However, there is no doubt that decisions made by the Joint Readmission Committee are not international agreements. Ratifying decisions of the Joint Readmission Committee as an international agreement within the scope of the Article 90 of the Constitution and Law no. 244 shall also not be possible.

#### **E. Impossibility of Implementing the Agreement without Implementation Protocols**

Article 20 of the readmission agreement between Turkey and the European Union envisages implementation protocols. These protocols will not be drawn up with the European Union, but between individual European Union member states and Turkey. For an implementation protocol to be

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drawn up, either Turkey or a European Union member state has to make a request. The said Article further provides a list of issues that could be regulated under these protocols. As per Article 20(1) of the Agreement, Protocols shall cover rules on: designation of the competent authorities, border crossing points and exchange of contact points; conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort; means and documents additional to those listed in the Annexes 1 to 4 to the agreement; the modalities for readmission under the accelerated procedure; the procedure for interviews. Turkey may apply any provision of an implementing Protocol drawn up and agreed upon with one Member State also in its relations with any other Member State upon request of the latter. Member States may also apply any provision of an implementing Protocol drawn up between Turkey and any other Member State also in their relations with Turkey upon request of Turkey<sup>31</sup>.

### **F. There cannot be any readmission without implementation protocols**

It is not possible to reschedule the effective date of the agreement with respect to third-country nationals from 1 November 2017 to 1 June 2016 with a protocol between European Union member states and Turkey. In order for the readmission agreement to enter into force on 1 November 2017 with respect to third-country nationals, protocols must be drawn up between member states and Turkey. This is stated in Article 20 of the agreement. The readmission agreement between Turkey and the European Union is not binding for Denmark and Ireland. Thus, the agreement will be implemented only with regard to 26 European Union member states. As per Article 20 of the agreement, protocols must be drawn up between each of these individual 26 member states and Turkey. According to Article 20 of the agreement, protocols shall cover rules on: designation of the competent authorities, border crossing points and exchange of contact points; conditions for escorted returns, including

**31** EKSI, Turkey-European Union Readmission Agreement, 124-125.

the transit of third-country nationals and stateless persons under escort; means and documents on persons to be readmitted; the modalities for readmission under the accelerated procedure; the procedure for interviews. Implementation protocols made with each member state and Turkey shall be notified to the Joint Readmission Committee. According to Article 20 of the agreement, implementing Protocols shall enter into force only after the readmission committee has been notified. Even though Article 20 does not include any information on the completion of transposition procedures, since implementation protocols are undoubtedly international agreements, they have to be ratified by the TGNA with a law and published in the Official Gazette in the Council of Ministers' ratification decree attachment.

### **G. Legal Basis of Readmission from Greek Islands to Turkey**

The requirements of implementation of the readmission agreement between Turkey and the European Union are yet to be fulfilled. First, the process required to change the date of effect of the agreement with respect to third-country nationals to June 1 2016 has not been completed. Second, implementation protocols need to be drawn up between member states and Turkey.

Thus, the question is “how were third-country nationals readmitted to Turkey from Greek Islands as of 4 April 2016?” After negotiations between Turkey and the European Union, parties have agreed upon the following issues on 18 March 2016<sup>32</sup>:

1) All new irregular migrants, even if they apply for asylum, crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey;

**32** European Commission - Fact Sheet Implementing the EU-Turkey Agreement- Questions and Answers Brussels, 4 April 2016: [http://europa.eu/rapid/press-release\\_MEMO-16-1221\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1221_en.htm) (24.5.2016).



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2) For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU from Turkey directly;

3) Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU;

4) Once irregular crossings between Turkey and the EU are ending or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated;

5) The fulfilment criteria of the roadmap for visa liberalization for Turkish citizens will be accelerated by the end of June 2016.

6) The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially allocated €3 billion and an additional €3 billion to the end of 2018, under the Facility for Refugees in Turkey.

7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.

8) The accession process will be re-energized, with Chapter 33 to be opened and preparatory work to continue at an accelerated pace;

9) The EU and Turkey will work to improve humanitarian conditions inside Syria.

There is a 2001 dated readmission agreement between Greece and Turkey. On the date of entry into force of the readmission agreement between Turkey and the European Union, the readmission agreement with Greece shall no longer be applied. This is also stated in Article 21 of the readmission agreement between Turkey and the European Union. As per the said Article, this Agreement shall take precedence over readmission agreements concluded with member states. However, according to Article 24(3) of the readmission agreement between Turkey and the European Union, until 1 November 2017, bilateral readmission agreements with member states shall continue to apply. Thus, readmissions until 1 June 2016 must be

carried out in accordance with the provisions of the readmission agreement between Turkey and Greece. In 4 April 2016 dated press release of the European Commission, it was therefore stated that persons who crossed to Greek islands from Turkey and who have not sought asylum or whose applications have been declared inadmissible were readmitted by Turkey under the readmission agreement between Turkey and Greece. It was also stated that on 1 June 2016, Turkey-European Readmission Agreement's provisions on readmission of third-country nationals will enter into force and they will be applied from that date onwards<sup>33</sup>.

It must be noted that as per the readmission agreement between Turkey and Greece, readmission of third-country nationals, i.e. persons who are neither EU nor Turkish citizens, may only be carried out within the framework of this bilateral agreement. An individual file should be opened for each person, their asylum applications lodged in Greece should have been assessed in accordance with universal human rights standards. Otherwise, it is not possible to just send migrants on ship from Greek islands to Turkey without opening an individual file for each illegal migrant.

In order to prevent criticisms, both Greece and Turkey have taken some measures. Greece is currently considering Turkey a safe country following a recent change in its legislation. Third-country nationals who realized that they shall be sent back to Turkey have also applied for asylum in order to be able to stay in Greece. Greece received personnel assistance from member states for interviews; initiated an accelerated procedure for asylum requests and began to reject asylum applications on the grounds that they came from Turkey, which is considered a first country of asylum or safe third country. Those whose cases rejected by Greece can now be

**33** European Commission-Fact Sheet Implementing the EU-Turkey Agreement-Questions and Answers Brussels, 4 April 2016: [http://europa.eu/rapid/press-release\\_MEMO-16-1221\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1221_en.htm) (24.5.2016).

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sent back to Turkey as illegal migrants. On 20 March 2016, Turkey added a special provision on Syrians readmitted under the readmission agreements to its Temporary Protection Regulation. The sixth paragraph of Article 1 of the Temporary Protection Regulation reads as follows:

“Citizens of Syrian Arab Republic who arrived Turkey due to the events in the Syrian Arab Republic since 28 April 2011, and who crossed to Aegean Islands via irregular means from 20 March 2016 on, may be given temporary protection status within the scope of this Regulation, upon their request, after they are readmitted to our country”.

Thus, with this provision regulating the possibility of providing temporary protection to Syrians readmitted from Greece, Turkey was able to avert critiques made from the perspective of “non-refoulement”.

### **VI. Problems of the Readmission Agreement between Turkey and the European Union from the Law of Treaties, Human Rights Law and Refugee Law Perspective**

#### **A. Problems of the Readmission Agreement between Turkey and the European Union from the Law of Treaties Perspective**

The readmission agreement is concluded with the European Union, an international organization. The agreement was ratified by the European Union and Turkey in 2014 upon completion of internal procedures. As per Article 24(2) of the agreement, obligation of Turkey and European Union member states to readmit their own citizens is effective as of 1 November 2014. As per Article 24(3) of the agreement, the date of effect of the agreement with respect to third-country nationals, i.e. citizens of states other than Turkey and European Union member states, is 1 November 2017. However, on 18 March 2016, parties agreed to change the effective date of the readmission agreement between Turkey and the European Union with respect to third-country nationals to 1 June 2016. In order to do so, a protocol between Turkey and the European Union making amendment to

the agreement should have been drawn up; a law, approving the ratification of this protocol by the Parliament in due form should have been adopted, and the protocol should have been approved by the Council of Ministers.

However, a protocol stipulating an amendment to the readmission agreement between Turkey and the European Union for rescheduling the readmission date for third-country nationals to 1 June 2016 is yet to be made. Instead, the Joint Readmission Committee made a decision 2/2016 to initiate the agreement with respect to third-country nationals on 1 June 2016. However, the Joint Readmission Committee, which is established under Article 19 of the agreement concluded between Turkey and the European Union, does not have power to introduce amendments to the agreement. The Joint Readmission Committee may only recommend, but cannot make amendments to the agreement. In any case, according to the principle of the parallelism of competence, it is not even possible to entrust the Joint Readmission Committee a power to introduce amendments to the agreement as this principle implies that only parties have the authority to introduce amendments to an agreement. The Joint Readmission Committee has exceeded its authorities specified in Article 19 of the readmission agreement and it has changed the date of the agreement with respect to third-country nationals as 1 June 2016 with its decision 2/2016. This decision is null and void. Nevertheless, both the European Union and Turkey have started proceedings to transpose this decision made by the Joint Readmission Committee. The European Union ratified the Joint Readmission Committee's 2/2016 decision with a Council resolution. Turkey approved the Joint Readmission Committee decision 2/2016 with the Law no. 6714, which was accepted on 3 May 2016 and published in the Official Gazette on 20 May 2016. However, following the approval law, i.e. Law no. 6714, the decision 2/2016 must be published in the Official Gazette, along with the decision of the Council of Ministers. However, it is hard to guess exactly when this process will be finalized.

## **B. Problems of Turkey - European Union Readmission Agreement from Human Rights and Asylum Perspective**

Readmission agreements are instruments to combat irregular migration. However, these agreements create problems including human rights violations and hindering access to the asylum. Reserving agreements on human rights and asylum in readmission agreements is not sufficient to solve these problems. Furthermore, readmission agreements prevent international burden sharing; shift the burden completely on the origin or transit country of irregular migration. When readmission agreements are made between two equal states, burden sharing might be realized to a certain degree. However, among readmission agreements concluded by the European Union, there is only one state against all the member states, except Denmark. Therefore, readmission agreements concluded by the European Union are asymmetrical and burden sharing is completely left out of the equation<sup>34</sup>.

Since people who have refugee status and other international protection status are regular migrants, the readmission agreement between Turkey and the European Union shall not apply to these individuals. Nevertheless, a person applying for international protection in a European Union member state will become an irregular migrant following the rejection of his application and thus will be eligible for readmission within the meaning of the readmission agreement. If a person who has been issued a removal decision for being illegally present in the territory of a member state challenges this decision, will she be able to remain in the member state until the legal procedures are finalized? There is no answer to this question neither in the readmission agreement between Turkey and the European Union nor in any other readmission agreement. Clarifying this issue is particularly important for cases where an individual who is illegally present in a member state lodges an asylum application, but denied access and forcibly removed to Turkey. There has to be some provisions clarifying this issue in implementation protocols of

**34** EKSI, Turkey-European Union Readmission Agreement, 133.

readmission agreements<sup>35</sup>.

The proposition to send a Syrian under international protection from Turkey to the European Union for each illegal migrant readmitted is a solution that might cause rights violations with regard to Syrians, who have been living in Turkey for five years, have created a living space for themselves in Turkey, and are almost integrated into Turkey. Moreover, it is possible that any person sent to the European Union can be sent back to Turkey within the scope of the readmission agreement if their asylum application is rejected.

As *Küçük* has noted, there is no information neither on the number of persons who shall be sent to Turkey under the readmission agreement nor on the amount of financial burden that shall incur<sup>36</sup>. Access to such information depends on each of the European Union member states making the number of existing irregular migrants and asylum seekers in their country publicly available. Let alone providing such information, the European Union is not even willing to allow Turkey to use EURODAC<sup>37</sup>, an information network used for comparing fingerprints of asylum seekers and irregular migrants. This means that Turkey is taking a step into the unknown, without any information on the number of irregular migrants who shall be received over the course of the readmission process, and whether it will be able to cope with this number<sup>38</sup>.

The readmission agreement reserves the 1951 Geneva Convention and related 1967 Protocol, as well as provisions of the European Convention on Human Rights and jurisprudence of the ECTHR. European Union member states are party to the European Convention on Human Rights. Thus,

**35** EKSI, Turkey-European Union Readmission Agreement, 135.

**36** KUCUK, 116.

**37** Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the Dublin Convention, OJ 15.12.200 L316 p. 1-10.

**38** EKSI, Turkey - European Union Readmission Agreement, 136-137.

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each member state must comply with the Convention in the readmission process. Member states' obligations to comply with the Convention arise from the fact that they are state parties to the Convention, and also that their obligation under the Convention prevails over the those under the readmission agreement.

Effective implementation of the readmission agreement and increasing number of irregular migrants coming from the European Union carry the risk of turning Turkey into an unsafe country. In that case, European Union member states will be forced to re-evaluate whether or not Turkey is a safe country under many criteria including the principle of non-refoulement, provisions of the European Convention on Human Rights, and ECtHR judgements. Member states shall also have to assess whether persons removed under the readmission agreement will be able to enjoy access to asylum system in Turkey, since the principle of non-refoulement requires member states not to send persons to a receiving country where they shall be under the risk of torture, persecution, ill-treatment, inhuman or degrading treatment. Moreover, as per the agreement, the requesting state is also under the obligation to prevent the receiving state from sending people to an unsafe country of origin.<sup>39</sup>

All EU member states are also state parties to the 1951 Geneva Convention. 1951 Geneva Convention regulates rights of persons whose asylum requests are accepted, not their access to asylum<sup>40</sup>. Thus, asylum is not regulated as a right in 1951 Geneva Convention. Yet, the right to seek asylum is recognized as a fundamental right by the European Union. The Charter of Fundamental Rights of the European Union<sup>41</sup>, which was ratified in 2010, lists the right to seek asylum among fundamental rights

**39** GILLADE, 83-84.

**40** OZBEK, 74.

**41** Charter of Fundamental Rights of the European Union, OJ C83 30.3.2010 s. 389-403.

and freedoms. The title of Article 18 of the Charter is the “right to seek asylum” and the said Article guarantees this right. When the Lisbon Treaty entered into force, the Charter of Fundamental Rights of the European Union became binding both for the institutions of the Union and for its member states. However, access to asylum can easily be prevented by subjecting people to the accelerated procedure. Furthermore, the European Union member states can reject asylum applications of persons coming from Turkey without admitting them in the asylum system on the grounds that they could seek protection in the first country of asylum and then send these people, who are now irregular migrants, back to Turkey. These individuals may be removed to the origin or transit country, again without being able to access to asylum<sup>42</sup>. The most important argument of receiving states while sending readmitted people to origin or transit countries is the irregular status of these persons. Thus, if a person is sent to Turkey for being an irregular migrant under the readmission agreement, Turkey can also send them to origin or transit countries on the grounds that they are irregular migrants.

If readmitted persons are not integrated in the readmission country and their access to rights, in particular to the right to work, are hindered, and root causes of illegal migration remain unresolved, these individuals will likely resort to illegal migration again<sup>43</sup>. Thus, irregular migrants sent to Turkey from EU member states will take another chance to enter EU member states when they do not find what they were hoping for in Turkey, or when they are sent back to origin or transit countries by Turkey. This vicious cycle will continue as long as the number of migrants readmitted to Turkey increases. In that case, costs of readmission and workload will continue to increase. This means that we have to give up trying to use readmission agreements as a remedy for irregular migration. Today, the

**42** GILLADE, 83.

**43** KUCUK, 109.



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sheer numbers of irregular migration render readmission agreements non-functional. The solution to irregular migration is addressing the root causes. Yet, it is not an easy task to address these issues in a world where political turbulence, civil wars, terror attacks, and climate change are deteriorating at an alarming level.

It has been argued that the readmission agreement between Turkey and the European Union will affect Turkey's geographical limitation to 1951 Geneva Convention and Turkey could possibly be forced to lift the geographical limitation due to pressures of the European Union. Lifting geographical limitation is an issue in the Visa Roadmap which was unilaterally drafted by the European Union. Both in Article 18 and in the preamble of the readmission agreement between Turkey and the European Union, 1951 Geneva Convention and 1967 Protocol are reserved. This means, these texts shall prevail over the readmission agreement. Turkey has not made a commitment either in the readmission agreement or in joint statements to lift the geographical limitation. Article 18 reserving international agreements on asylum also does not include any provision which requires Turkey to take steps towards lifting the geographical limitation. In our opinion, in light of Article 18 and the preamble of the agreement, reaching a conclusion that Turkey shall have to lift the geographical limitation with the readmission agreement is to give the agreement a higher value than it deserves. It is a fact that the readmission agreement is far away from deserving this kind of value.

As also stated by *Yilmaz*,<sup>44</sup> whether the readmission agreement between Turkey and the European Union will cause human rights violations, as is the case with other readmission agreements concluded by the EU, remains to be seen. According to Article 60(1) of the Vienna Convention on the Law of Treaties<sup>45</sup>, a material breach of a bilateral treaty by one of the

**44** YILMAZ, 47.

**45** Vienna Convention on the law of treaties (with annex) Concluded at Vienna on 23

parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. Turkey is not party to the Vienna Convention on the Law of Treaties. Yet, this convention is the codification of existing customary international law. Thus, Turkey shall be able to invoke these rules where necessary. Within this context, if any European Union member state (1) fails to receive asylum applications of persons seeking asylum, (2) fails to carry out a substantive assessment of their asylum applications, (3) refers persons to readmission procedure while their appeals are pending, or (4) violates human rights during readmission process; Turkey may completely terminate the agreement, or suspend it with respect to readmission request originating from the breaching member states by using its right stipulated in Article 60(1) of the Vienna Convention.

It is not at all easy to find solutions to problems arising from readmission agreements with respect to persons seeking asylum. States parties to 1951 Geneva Convention may send asylum seekers back without admitting these persons into asylum procedure on the grounds that they have arrived from a safe third country. There is not a need for a readmission agreement to this end. However, a readmission agreement will accelerate this process. Furthermore, as *Abell* have stated, readmission agreements encourage rejection of asylum applications of persons who have travelled through countries that are considered safe and these persons are sent back as irregular migrants without an assessment of their asylum applications<sup>46</sup>. Readmission agreement between Turkey and the European Union also runs such risk. As per the readmission agreement between Turkey and the European Union, assessment of a person's status shall be carried out in accordance with the laws of the Requesting State. Persons whose asylum applications are rejected on the grounds that they have arrived from a safe

May 1969: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (7.2.2016).

**46** ABELL, 65.

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third country can be considered irregular migrants. From the perspective of EU member states, when Turkey is considered a safe third country, asylum applications of persons entering the EU from Turkey will be rejected on the grounds that these individuals are coming from a safe third country and thus will be eligible for removal within the scope of the readmission agreement. Implementation protocols of the readmission agreement should therefore include provisions to prevent member states from sending people back to Turkey without reviewing their applications on the grounds that they are coming from a safe third country.

Readmission agreements are seen as in breach of the non-refoulement principle, which is included in several international treaties and is also a principle in the customary international law. In particular, if a person is removed by the receiving country to his country of origin where there is a risk of ill-treatment and persecution, the non-refoulement principle shall be violated. While removing individuals, the Requesting state has an obligation to ensure that persons in question shall not be subjected to persecution or ill-treatment both in the receiving country and in the country of origin. In fact, in the case of *Hirsi Jamaa and Others v. Italy*, ECtHR has decided that Italy had violated Article 3 of the Convention on two counts when Italy, referring to its readmission agreement with Libya, sent almost 200 Eritrea and Somalia citizens to Libya, where they had a risk of being subjected to ill-treatment and torture, and when Libya in turn sent these applicants to Somalia and Eritrea. In the case of *Hirsi Jamaa and Others v. Italy*<sup>47</sup>, ECtHR applicants are almost 200 people who have left Libya for Italy in 2009 on three ships. On 6 May 2009, while the ships were under Malta's jurisdiction, they were stopped by the Italian coast guard. People on these three ships were taken onto Italian military ships and taken to

<sup>47</sup> European Court of Human Rights Grand Chamber Case of *Hirsi Jamaa and Others v. Italy* (Application no. 27765/09) Judgment Strasbourg 23 February 2012.

Tripoli Port of Italy<sup>48</sup>. The Applicants stated that during that voyage the Italian authorities did not inform them of their destination and took no steps to identify them. On arrival in the Port of Tripoli the migrants were handed over to the Libyan authorities. The Applicants objected to being handed over to the Libyan authorities but were forced to leave the Italian ships. At a press conference held on the following day, the Italian Minister of the Interior stated that the operations to intercept vessels on the high seas and to push migrants back to Libya were the consequence of the entry into force, in February 2009, of bilateral agreements concluded with Libya, and represented an important turning point in the fight against irregular immigration. Two of the Applicants died in unknown circumstances after the abovementioned events. Fourteen of the Applicants were granted refugee status by the Office of UNHCR in Tripoli between June and October 2009. ECtHR has found that the Applicants were within the jurisdiction of Italy for the purposes of Article 1 of the Convention; according to international law a vessel sailing on the high seas was subject to the exclusive jurisdiction of the State of the flag it was flying; Accordingly, the events giving rise to the alleged violations fell within Italy's jurisdiction within the meaning of Article 1 of the Convention; in Libya, irregular migrants were systematically arrested and detained and tortured under inhuman conditions without any distinction between irregular migrants and asylum-seekers; irregular migrants were at risk of being returned to their countries of origin at any time; the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment; Italy could not evade its own responsibility under the Convention by relying on its subsequent obligations arising out of bilateral agreements with Libya; Since the situation in Libya was well-known and easy to verify at the material time, the Italian authorities had or should have known; the fact

**48** EKSI, Turkey-European Union Readmission Agreement, 104-105.

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that the Applicants had failed to expressly request asylum did not exempt Italy from fulfilling its obligations; States had obligations arising out of international refugee law, including the “principle of non-refoulement”; the Italian authorities had or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their respective countries of origin; the removal of the Applicants by Italy had been of a collective nature, in breach of Article 4 of Protocol No. 4; Italian Government must take all possible steps to obtain assurances from the Libyan authorities that the Applicants will not be subjected to treatment incompatible with Article 3 of the Convention or arbitrarily repatriated; there had been two violations of Article 3 of the Convention because the Applicants had been exposed to the risk of ill-treatment in Libya and of repatriation to Somalia or Eritrea; The removal of the Applicants had been of a collective nature, in breach of Article 4 of Protocol No. 4; There had been a violation of Article 13 taken in conjunction with Article 3 and with Article 4 of Protocol No. 4. The ECtHR awarded each Applicant 15,000 Euros in respect of non-pecuniary damage.

According to European Commission, Communication from the Commission to the European Parliament and the Council in 2011<sup>49</sup>, including third-country citizens in readmission agreements cause forced returns, human rights violations and tragedies<sup>50</sup>. In summary, readmission agreements are no longer a solution to illegal migration; they have become instruments causing human rights violations and impairing asylum systems.

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**49** European Commission, Communication from the Commission to the European Parliament and the Council-Evaluation of EU Readmission Agreements, Brussels, 23.2.2011 COM(2011) 76 final, p. 9 [http://ec.europa.eu/home-affairs/news/intro/docs/COMM\\_PDF\\_COM\\_2011\\_0076\\_F\\_EN\\_COMMUNICATION\(26.5.2016\).pdf](http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION(26.5.2016).pdf) (12.5.2016).

**50** EKSI, Turkey-European Union Readmission Agreement, 57.



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## **“Safe Country” Approach of the EU and Its Reflections on Turkish Judiciary**

The concept of ‘safe country’ is indeed a central issue. These mechanisms complement readmission agreements, which have been already explained by Prof. Ekşi. I think seeing the bigger picture is very critical, since together with other legal mechanisms, the very concept of the ‘safe country’ serves to support a particular strategic approach in an area regulated by highly complex normative values. In my presentation, I shall therefore analyse the concept of the ‘safe country’ in three phases. I will start with explaining the evolution of the EU Acquis in the field of asylum and migration and contextualise how the concept of the ‘safe country’ functions within this framework. Second, I shall point out the impact of this concept to EU-Turkey relations, with a particular focus on responsibility sharing. And finally, I shall elaborate various challenges posed by this concept, a concept which was inspired by the EU Acquis and incorporated into domestic legal framework when Turkey revised its legislation.



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In this connection, the first question is: Where does the concept of the 'safe country' sit within the EU's asylum and migration policy? When the Amsterdam Treaty went into effect in 1999, the European Union substantially revised its Acquis in the field of asylum and migration. Currently, there are many directives in this field. I believe that these directives had created an effect and this very effect helped EU to deflect its responsibility to provide protection. This effect can also be observed in the statistics. Most recently, particularly transit countries like Turkey, Lebanon and Jordan- that are also geographically proximate to crisis zones- have assumed a substantially higher responsibility. A similar observation could also be made for African countries. The EU has achieved to deflect its responsibility through two major set of measures that were adopted under its Acquis in the field of asylum and migration. The first set of measures was about making the European Union a difficult place to reach for persons seeking asylum. For example, the establishment of FRONTEX can be cited among this first set. Although FRONTEX may seem as a monitoring system aiming to prevent irregular migrants at the external borders of the European Union, it also, in effect, prevents asylum seekers' from reaching to the borders of the EU via sea or land routes. Tightened visa policies are also among measures which aim to make it more difficult for persons seeking international protection to gain entry to EU countries through regular channels. Yet another example is the carrier liabilities, which introduced a number of duties as well as sanctions on carriers. Perhaps some of you might have already noticed it, previously, airline companies did not carry out inspections on the validity of travel documents. But now, they have directly assumed this role, simply because they face heavy sanctions should they enable the access of a person with fraudulent travel documents to EU countries.

The second set of measures, on the other hand, consists of the mechanisms to reduce the possibility of successful asylum applications lodged by persons who managed to reach EU countries. The very concept

of the 'safe third country' and the key issue of this presentation, is one of the most important measures under this second set. Because the asylum seekers who had risked their lives in perilous journeys, had overcome a number of risks and had finally made it to EU countries may be denied international protection due to the 'safe third country' approach. I also need to emphasise another issue. While the EU member states are creating mechanisms which help them to deflect or delegate the responsibility to protect (As a side note, in the past, we used to use the term 'burden shifting'; but for the purposes of conceptualisation in the context of asylum seekers and refugees 'burden' is not appropriate. So we no longer use this old terminology and instead we prefer 'shifting responsibility'), they are also trying to share the responsibility within member states as much as they can. Within this context, the EU established European Refugee Fund and European Asylum Support Office. Moreover, we have the recent relocation schemes within member states. Thus, EU is trying to initiate a number of novel responsibility sharing mechanisms for member states. Of course whether these mechanisms shall work or not is open to debate; but one can still need to admit this new approach.

Yet, despite being a candidate country, Turkey has not been included in these responsibility sharing mechanisms. On the contrary, Turkey was asked to assume more responsibility just as any other third country. The concept of the 'safe country' therefore constitutes one of the most important elements of this policy. Furthermore, this concept embodies a number of important notions of the EU legislation.

The first important notion is the 'safe country of origin'. With the introduction of this notion, asylum application of a person arriving from a country which is considered as a safe country of origin may not be examined on its merits or the applicant is required to carry a much heavier burden of proof.

Another important notion which is relevant to the concept of the

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'safe country' is the 'safe third country'. As Turkey is -recently- considered among safe third countries by the European Commission, perhaps 'safe third country' constitutes the most important dimension of the safe country concept in the case of Turkey. Let me explain what safe third country means: If a person seeking asylum arrives EU after transiting from a country which is considered a safe third country by EU without requesting a protection in that country over the course of his transit, a Member State may either find her asylum application manifestly unfounded or apply an accelerated procedure. In brief, the EU Member State may return that person to the safe third country without carrying out a substantial examination of her asylum claim.

Yet another important concept in EU's Acquis on asylum is the notion of 'first country of asylum'. Here is the difference: If an asylum seeker does not merely transit from a safe third country, but also is able to receive a protection in that country and if he continues to pursue his quest for seeking protection in an EU Member State, the concept of the first country of asylum enters the scene. In such cases, the EU Member State may return this individual to the first country of asylum, again without carrying out a substantial examination of his asylum claim. The logic underlying these three mechanisms is not very different because they all reduce the responsibility of the EU towards persons seeking asylum. Now, we can further elaborate technical dimensions of this issue.

One of the key problems with these concepts is the issue of their compliance with the 1951 Convention Relating to the Status of Refugees, i.e. the backbone of the refugee law. 1951 Convention does not include any safe country concept. Moreover, when we analyse obligations of State Parties under the Convention, it appears that these obligations are envisioned as independent and individual obligations for each State Party. In other words, all State Parties are under the obligation to carry out a risk assessment upon receiving an asylum claim. Yet, let remember the

implication of the safe country concept. The country which received the asylum claim could return the foreigner to another country that is considered safe without carrying a substantial examination. In this connection, we also need to understand the relationship between the safe country concept and the readmission agreement. The readmission agreement is important for several reasons. International law does not envisage any obligation for states to readmit third country nationals transiting from their territories. There is indeed an obligation with respect to citizens; but not with respect to third country nationals. Thus, even if a Member State declares a country a safe one, that particular state is not under the obligation to readmit a non-national. Here is the gist of the matter; that, the key function of the readmission agreements is to establish obligations for transit countries with a view to materialise the safe country concept. Because should states refuse to readmit a returned person, the concerned EU Member State has to examine the application. This is how this matter is regulated under the Asylum Procedures Directive.

The concept of safe country of origin, on the other hand, is regulated under Article 36 and Article 37 of the Asylum Procedures Directive. In general, if it is possible to clearly show that there is no risk of persecution, torture and inhuman or degrading treatment or punishment and no situation of an indiscriminate violence arising from an international armed conflict in a specific country, that country could be considered a safe country of origin. What is relevant and important for Turkey is that Turkey is not merely a country of transit; but also a refugee producing country. Thus, this point still debated within the EU. When we look at the list of safe countries of origin as proposed by the European Commission on September 2015, we see that Turkey is also in the list. This issue is a highly controversial one in the literature. For instance, the State Watch provides a detailed discussion in its report entitled 'Why Turkey is not a safe country?' and which was published in February 2016. An important finding of this report is as

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follows: 'Turkey cannot be considered a safe country of origin as asylum applications from Turkey enjoy a 23 % success rate. Thus, Turkey is still an important country of origin and cannot be considered a safe country.' In this connection, perhaps one of the other pressing issue enters the scene when we consider how the concept of the safe third country is connected with the 1951 Convention, simple because it appears that Article 31 of the 1951 Convention is being used to justify this concept. This article, however, regulates that asylum seekers shall not be punished for illegal entry should they arrive from a country where they are at risk of their lives and liberties. That is, the said article does not regulate the concept of the safe third country. Instead, it deals with not punishing persons crossing a border for a particular reason. In other words, it does not have anything to do with the refugee status determination. Yet, EU countries rely on this provision in their attempt to develop the concept of safe third country. It is without doubt that the 1951 Convention has introduced an obligation to carry out a risk assessment to the State Parties. But this interpretation is simply removing one of the fundamental obligations of the Convention, the obligation to protect, of State Parties, at least for a group of asylum seekers. Thus, it would not be an exaggeration to argue that such interpretation is against the purpose of the Convention.

Another striking issue is the role of UNHCR. United Nations High Commission for Refugees is the supervisory body of the Convention. When you look at how 'an organisation entrusted with the mandate to supervise the implementation of the Convention', we see that at initial stage, UNHCR had published some cautionary notes about the safe third country approach. For instance, UNHCR warned that EU's Asylum Procedures Directive may be inconsistent with the 1951 Geneva Convention. But recently, we observe an interesting development; that particularly within the context of the readmission agreement between Turkey and EU as well as EU-Turkey Deal, UNHCR appears to accept the safe third country concept and seems

to be rather concerned with its implications. That is, UNHCR is interested in conditions facing asylum seekers once they are returned Turkey. Yet the very concept is inconsistent with the 1951 Convention. It appears that the opposition to this concept is not pursued with vigour. And this is very critical.

Now, let's also analyse the definition of the safe third country under EU's Asylum Procedures Directive and then discuss some technical details that are relevant to Turkey. The first condition under the definition of the safe third country is that the life and liberty of the person should not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. The second condition is that the foreigner should not face a risk of serious harm. The third condition is that the concerned state should respect the principle of non-refoulement and thus commits not to return an individual to another country where he/she shall be at risk. The fourth condition, and which is particularly important for Turkey, that there should be a possibility to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention. Particularly this final condition should be discussed at length for Turkey. It is also very critical to underline that all these conditions do not guarantee that a country where asylum seekers are considered to be safe shall be able to benefit from a fair and effective asylum procedure. These merely focus on the possibility of lodging an asylum claim. Moreover, when we analyse the Commission's most recent interpretation of the last condition, there are several question marks regarding the very possibility of lodging an asylum claim.

The second issue which I would like to analyse is the impact of the safe third country approach to Turkey-EU relations and how Turkey is effected due to the readmission agreement. In this connection, we observe a very interesting finding. In 2001 dated Accession Partnership Document produced by the EU, there is a roadmap for Turkey. Initially,

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Turkey had positively responded to this roadmap which included issues such as 'developing an asylum legislation', 'developing a reception system' and 'negotiating readmission agreement'. If you look at the 2003 dated National Plan for the Adoption of the EU Acquis, the plan envisions that legislation concerning the adoption of migration and asylum shall be finalised by 2006. Yet, it appears that in 2005, Turkey took a step back from its previous positive attitude. For instance, 2005 dated National Action Plan on Asylum and Migration suggest that all these aforementioned commitments are postponed to 2012 and tied to the measures and steps taken by the EU to share responsibility. That is, an element of conditionality enters the scene. The 2008 dated National Program also maintains this new approach. Thus, it appears that at the initial phase, Turkey had responded positively in the issue of reviewing its asylum legislation. Yet, right at a time where the Asylum Procedures Directive had introduced the concept of safe third country in 2005, there is a step back. Why? Because should Turkey had adopted all measures requested by the European Union, it could had been considered a safe country. And Turkey was considered as such, she would have likely encountered a quite challenging situation. These developments provide us an interesting picture. In general, EU is regarded an encouraging organisation for taking steps in the field of asylum and migration. But as we see, EU's safe third country approach prevents Turkey to take steps. As Turkey estimated that the country would face a heavy burden, it became reluctant to review its legal infrastructure and felt the need to postpone its obligations and commitments.

There is equally an interesting picture if you look at the impact of the safe country approach to Turkey's own practices. For instance, unlike Europe, Turkey started to use this concept even without incorporating it into its legislation. When you analyse judgments delivered between 2006 and 2008, you can see that despite the very absence of the concept under the domestic legislation, there were many instances where domestic courts

have given a green light to the utilisation of the safe country concept and have not found a violation concerning deportation to countries such as Turkmenistan and Iran on the grounds that these countries are 'safe'. Thus, at this period, the utilisation of the safe country approach in Turkish practice is much more dangerous than the EU. The key reason is that Turkey applied this concept without any legal ground.

Yet, nowadays, both concepts -the safe third country and the first country of asylum- gained a legal ground with the Law on Foreigners and International Protection. The Law, however, does not include the safe country of origin concept. Turkey shall continue to apply both concepts under the new Law. But! Only four days ago, the European Court of Human Rights delivered its decision in the case of Babajanov v. Turkey. When we analyse the judgment, we can clearly see how the implementation of the safe third country approach could be problematic. In its reply to the Court, the government of Turkey argued that in a similar case, the European Court of Human Rights have considered Iran a safe third country for persons arriving from Uzbekistan. Yet, the Court had firmly rejected this argument and emphasised that it had never considered Iran a safe third country in any of its judgments. Thus, you can even see how dubious it could be when it comes to the assessment of the safe third country. In other words, even before the European Court of Human Rights, Turkey relied on the safe third country approach in its attempt to justify return of asylum seekers to country where they shall not be able to benefit from protection and where they shall be at risk. Needless to say, the Court rejected such reasoning.

Finally, I think I need to raise some additional thoughts as a response to Simona Gatti's provocative question. What is at stake is the principle of fair responsibility sharing. I mean, from the perspective of the 1951 Convention, the responsibility to provide international protection is equally valid for each and every single state. This is why there should be a balance in the responsibility assumed by State Parties for the effective protection



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of refugees. I would like to propose a solution. For instance, the European Union could implement the Temporary Protection Directive of which it adopted in 2001, but never applied. While doing so, it could establish a set of practices within the framework of its own relocation mechanism. I think it is possible for every Member State to assume a responsibility that shall be proportionate with its population size. Such an assessment shall also show the extent of the responsibility that Turkey has to carry. Every state should meet its obligation to provide international protection and this should be proportionate with its population size and wealth.

**CONFERENCE ON  
INTERNATIONAL COMMUNITY AND REFUGEES:  
RESPONSIBILITIES, OPPORTUNITIES, HUMAN  
RIGHTS VIOLATIONS  
DAY 2 SESSION II**

**TURKEY: A “SAFE COUNTRY”?**

**Moderator:**

Latife Akyüz

**Speakers:**

Andrew Gardner

Kerem Altıparmak

Öztürk Türkdöğän

Şebnem Korur Fincancı

**Kerem Altıparmak**  
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## **Human Rights Crisis of Turkey in the New Authoritarian Era**

I would like to present a framework which relates both to law and political science rather than providing a legal framework. In fact, my presentation has two parts but we may not have enough time to present the second part. In any case, I hope that the first part of my presentation shall suffice. Should we have more time, I would be happy to deliver the second part.

We are going through a period of a grave constitutional crisis. What I mean by the constitutional crisis is not whether the current president shall be a president affiliated to a political party or the system shall be a Turkish style presidency. Because this is momentary issue. The current president has already been exercising virtually all powers without being a president affiliated to a political party. Yet, there are still two fundamental issues at stake. My analysis may sound a bit pessimistic; but I believe that this crisis is likely to deepen and further increase the gross human rights violations, which have already reached an alarming level.

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Since the establishment of the Republic, there have been two breaking points or two constitutional issues. The first one is a problem that we are accustomed to observe in the relation of large minority groups with the state. These groups with very strong identity codes are Kurds and Alevites. I will be focusing on Kurds, but without dismissing the fact that the latter is also simmering as a potential issue. The second breaking point, on the other hand, is the relationship between the state and religion. Both of these issues are highly critical as they are inherently related to the constitution of the state and its relations with the citizens.

Without addressing these two critical constitutional issues, it is not possible to identify human rights issues and potential risks in Turkey. Undoubtedly, even in a society where these tensions are low, it is possible to see breaches of the right to fair trial or the freedom of expression. However, we can argue that these breaches do not have the potential to transform into what we call serious human rights violations and into crimes against humanity. When I use the term constitutional problems, I am not talking about something that is written or could be written in the constitution. I am rather talking about the basis of these problems. In other words, I am referring to the relationship between the state and human rights and to state's relation with human rights. This is why, I see the demonstrations during the Gezi Park events as a constitutional crisis emerging to the surface. When they claimed that the protestors' problem was "not the Gezi Park or green areas, but something else", they were right. We were facing a constitutional crisis during the Gezi Event. You can postpone such a problem by employing security measures, but you cannot solve the crisis. The crisis still remains and it is not possible to foresee when it shall re-emerge with a similar force. Or the issue of insulting the religion, which is on the rise again, is in my opinion also a constitutional problem. Even if the relationship between the state and the religion as well as the freedom of religion of citizens are all regulated by laws, it is still a

constitutional problem. Similarly, the definition of terror that we encounter frequently in recent days seems to be an issue pertaining to the criminal law. In a peaceful society, it can be defined under these terms. Yet, since the definition of terror in Turkey is right at the core of the Kurdish issue, it is a constitutional problem. Therefore, we are not only talking about the text of the constitution or a possible new constitution.

Currently, we can mention three key groups of actors in Turkey, around whom both of these issues revolve, the issue of the relationship between the state and religion and the determination of the status of minorities. I shall simplify and argue that these group of actors are in fact represented in three political parties. These political parties are AKP, HDP, and CHP. This statement, however, does not mean they are represented only by these parties. It also does not mean that these parties include all segments of the society. For instance, we can see Alawites or nationalists as transitive, left-out groups that join in from time to time. However, we also know that this is a constitutional crisis that continually changes as the roles of these main actors evolve. This is why, for instance, neither arguing that AKP's Kurdish policy is the continuation of the state policy nor the counter argument which dubs the two sides as AKPKK implying that they are connected sounds logical to me. No, there is no such thing. A change in these roles also requires a fundamental change in policy.

When does this tension begin to provide a breeding ground for serious human rights violations? For this, at least four conditions must be co-exist and all of these conditions have, unfortunately, already been satisfied in Turkey. We have already talked about the first condition rendering the other three possible: A dependent and partial judiciary. I will not go into much detail but I must emphasise one point. The final move of the AKP government was overtaking the judiciary. Because, 1982 Constitution envisions a checks and balances system. This system had identified universities, media, and the judiciary system, along with the special role of

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the president, as a mechanism for overseeing the executive. The media and universities were already rendered ineffective. 2010 referendum and the subsequent restructuring of the Supreme Board of Judges and Prosecutors have further eroded this mechanism and transformed the whole system into a truck with failed breaks.

But what is worse is that, currently we do not have a constitution, in its true sense, with an elected and heavily politicized president. This is because one cannot simply talk about the existence of a constitution, if it does not have checks and balances system. Therefore, we need to emphasize that the Criminal Judgeships of the Peace, the Criminal Courts with Special Powers, and even the Constitutional Court are not independent and impartial. The lack of independence and impartiality is critical when it comes to serious violations of human rights. I also counted the Constitutional Court within the same group, because we are talking about a Constitutional Court which failed to annul the Law on National Intelligence Agency, the Criminal Judgeships of Peace, and the critical provisions of Law #5651 on the Internet. We are also talking about a Constitutional Court which, with the exception of a few decisions issued for unknown reasons, failed to deliver critical rulings in individual applications. Yes, we know the ruling concerning the case of Can Dündar; but at the same time, we know the ruling on Roboski. We see that the Court has consistently failed to finalise the applications on many systematic violations. Thus, we have to say that there is no safeguard in that regard as well.

The second issue is that the press is also dependent and partial; and the truth and different interpretations are completely hindered. I will give two quick examples. In any case, you cannot see anything about a serious violation of human rights in the mainstream media. However, until recently, there was at least a difference between the mainstream media and the alternative media and Kurdish media: As long as the mainstream media is blocked, the circulation of the information through other media channels

was not a problem. As soon as the war and the armed conflict started, however, this has changed. There were already many lawsuits against dissident newspapers, journalists; but following the beginning of the armed conflict, access to DİHA was blocked for 30 times and to sendika.org for 10 times. In 2015, Article 8a was added to the Law #5651. This article stipulates the following: "the Prime Ministry or the relevant ministry may block access to an online address in order to protect public order or to prevent crimes". The decision of the Prime Ministry or the relevant ministry is sent to the Telecommunications Communication Presidency (TİB). TİB implements the decision and submits it to the approval of Criminal Judgeship of Peace within 24 hours. More than 3000 online addresses were blocked with this method by the prime ministry. TİB approved all of these requests without exception. Again, without a single exception, the Gölbaşı Criminal Judgeship of Peace, I mean a single judge, has blocked 3000 online addresses in a year and of course without any opportunity to review. Yaman Akdeniz and I have appealed against almost all of these decisions. And in our appeals, we explained why these decisions are against the law with details. All our appeals, again without a single exception, were rejected by the Criminal Judgeships of Peace in Ankara on the grounds that these decisions were taken in accordance with the law and procedures. Currently, our appeals are pending before the Constitutional Court. In these set of appeals before the Constitutional Court, we argued that this is a systemic problem and there is therefore an urgent need for a pilot decision. It shall probably take years until we receive such a decision.

Hindering the truth and the comments makes it impossible to see even a tiny bit of the reality. For instance, we flag up the fact that there is an increase of 500% in the number of the legal cases initiated against persons for insulting the President. In fact, the number is much higher. The available figure, 1845, is not accurate as it only covers those initiated during his presidency. In addition, if you recall that on average, three cases



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are initiated against individuals per day, the total figure must be higher than 2000. There were also many cases initiated during his term as the prime minister, including those initiated by his family members, etc. We observe a similar increase in cases initiated under Anti-Terrorism Act. This is not a mere obfuscation of truth; but also obstruction of any interpretation about the truth. For instance, remember the debates around the statement “Give me 400 MPs”. The whole debate had turned into whether the president has said it. I have the liberty to make an interpretation and claim that he did. This is an interpretation and it is directly related to the autonomy of the individual.

The third condition requires a holy leader and a holy state. I would like to quickly quote from an indictment. The indictment reads “including insult within the scope of the freedom of expression is inconsistent with the essence and the spirit of this freedom; that personal rights and reputation play an important role for the development of human rights; that concepts of honour and dignity encompass all values attributed to an individual by the society; that Article 299 of the Turkish Criminal Code intends to provide protection to the reputability of the state that is embodied in the personality of the President who represents the state and who is the head of the executive; that with this provision, legislators aim to maintain a high and firm level of respect for the President; that as such the morality, constitutional institutions and legal personality of the state is protected; that as the head of state, the President represents the Republic of Turkey and the unity of Turkish nation; that what is protected by this provision is the personality of the state, since unlike other constitutional institutions, the person and the institution has become one in the case of the President; and that it is not required that the material elements of the offense be related to his duties or arising from his duties.”

You would notice that in a king’s state, the state is sanctified to such an extent that even if you say something about his personal life, or his

public duty, you shall be deemed as directly criticizing the state. A similar situation also appears in terrorism related charges. It was mentioned a moment ago; I shall not talk about the case initiated against the academics due to time limitation. This type of reasoning leads us to the notion of rendering someone ineffective; a crime against humanity becomes potentially possible when the victim is not anymore perceived as a human being.

This is something that you can identify in all crimes against humanity. According to an official statement from the Turkish Armed Forces that was released two days ago, since July 22nd, 6 thousand 623 PKK members were rendered ineffective. It was declared that 4 thousand 574 of those were killed. We do not know the name, age, or gender of these 6 thousand 623 people. Similarly, we do not know under which conditions they died or were deprived of their freedom or whether they were actively taking part in the conflict. When you try to ask these kind of questions, due to reasons that I have mentioned earlier -i.e. the issue of truth and the partiality of the judiciary- you are automatically considered as spreading terrorist propaganda. Thus, you are not only excluding some human beings outside of the category of humanity, but you are also creating such a blurry area where you can easily include any one of us within. Because as soon as you are assigned to that category, you are in a place which cannot be questioned. You cannot investigate that place, you cannot pass any judgement, you cannot call anyone to account about that area. If you allow me, I will cite another quote from a decision again. My apologies go to interpreters, because in Turkey, prosecutors and judges do not finish the sentence they have started. This is one of these sentences, a sentence without full-stop: "that the fight against PKK is carried out by legitimate armed security forces; that soldiers, law enforcement officers and temporary village guards who lost their lives during armed conflicts that occurred either over the course of defensive operations or in internal security operations conducted

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to this end are designated as martyrs; that as there are legal rights and consequences attached to the term martyr, usage of this term is, first and foremost, a legal necessity and requirement; that while referring to the members of organisations who lost their lives in armed conflict, captured dead or injured, or in short, who are no longer able to use weapons, the term 'rendered ineffective' is used without giving any names..." I shall not continue to read, as this sentence does not have an end.

You may have noticed that the indictment says "you cannot use the term that I use for the members of the organization while you are referring to security officers". The university student who wrote this, was first made a target as result of a provocation campaign, he was later arrested and prosecuted because he had used the term "rendered ineffective" while referring to a security officer. According to his statement -and we do not have any reason to assume the contrary- his aim was to exactly show how horrible it is to dehumanize persons. People live and people die, and if you are using another term instead of "dead", you can use this for anybody. When you stop using the term 'dead', you are converted into a bare human. 'Rendering ineffective' is, by the way, not an isolated terminological choice. A rising star journalist of these days whose surname is Küçük uses the term "civil death". Regarding academics, Cem Küçük states the following: "I have always said that I am against the police raiding houses of academics. In any case, two of the prosecutors who ordered these raids were identified to be members of the Fetullah organization. The purpose of these two Fetullah-follower prosecutors was to make our country look like Russia, China or Iran." He claims that this is not the case and adds, "I will write about that later" and I don't know whether or not he did so. Yet, he further states "On the other hand, the academics, who signed a disgusting statement supporting terrorism..." -he is talking about you here- "...would be subjected to civil death in civilized countries. The Republic of Turkey is also a civilized country and from now on, the academics who signed this petition are null and void in this country from now on."

I want to point out a final and very concerning issue. People who are interested in political sciences or in human rights might know Agamben's bare life and camp metaphor. Sur and Cizre, Nusaybin and İdil... Many examples can be cited. I wonder if this could be understood with the camp metaphor? What exactly is a camp? According to Agamben, the camp is where the borders between zoe and bios are drawn. With a reference to Schmitt, Agamben explains us that the sovereign is the one who decides the state of exception. We also recall that in these camps, persons cannot be sacrificed, but abandoning them to death is something legitimate. I think Öztürk is going to talk about deaths in the basement in greater detail. However, we see that this particular act of abandoning individuals to death closely matches with a modern camp metaphor. We also see that as in the case of 'rendering ineffective', calling living people civil deaths is exactly about deciding the state of exception. In cases where this is possible, I mean where creating a camp is possible, one can neither talk about human rights, nor about the right to have rights, as Arendt puts it. We can also claim that a country where this takes places cannot be considered a safe third country. It is only a country where there is a ground for perpetrating crimes against humanity and these acts are justifiable and unaccounted for.

Thus, the relationship between the European Union and Turkey should not only be interpreted as merely about turning a blind eye to a simple issue due to negotiations on refugees, but also as something legitimizing and approving such ground. Unfortunately, in its decisions concerning interim measure requests, the European Court of Human Rights, a Court that we criticize as much as we approve, has repeated this attitude. We shall regret these decisions in five or six years when we see the future decisions relating to gross human rights violations. The refugee issue as well as the European Union-Turkey relationships have to be reinterpreted in a way that does not support this camp metaphor, but to get rid of it.

Thank you.

## Öztürk Türkdöđan Human Rights Association

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*Türkdöđan is the spokesperson of the Turkey Coalition of the International Criminal Court since 2006. He was a member of the Wise People Committee established during the peace process.*

## **Violation of rights in Turkey during the EU-Turkey Deal**

I salute you all on behalf of the Human Rights Association. When we released our report on Human Rights Violations in 2015, we opted for the title of ‘The Regression of Democratic State, Rebirth of the Nation-State and Authoritarianism’. These words actually mean a lot. Turkey used to be in an adventure towards democratisation and this adventure had several external dynamics. Turkey could become more democratic with the European Union process or with the resolution of Kurdish issue. Yet, once again, we have started to regress back to the nation-state. In his attempt, Kerem Altıparmak explained this through making a reference to this phenomenon both as a constitutional and as a structural crisis. I believe that there are also second, third, fourth and fifth parts of that topic, and we can even extend the number of chapters to six or seven. He did not mention these, but I believe that this is the case. For instance, we can also add gender inequality, tutelage system, lack of freedom of expression and many other issues to this account. However, dear friends, we are in the

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21st century. There are many countries in the world which were initially founded as a nation-state in the 20th century. These countries however have changed, evolved, achieved democratisation and found resolutions to their own conflicts. But the Republic of Turkey does not appear to have a conflict resolution process. Turkey rather seems to maintain an updated version of that old type nation-state model. Nowadays, there is a trendy term for this model and it is known as unitary presidential model. In other words, under the guise of “unitary presidential” model, Turkey simply wants to keep that classical model of nation-state alive. This is the root cause of all problems. Because this nation-state is based on Turkish ethnicity, and employs a statist version of Sunni-Muslim approach when it comes to the religion. This is why we see the Kurdish issue and the issue of the relation between the state and religion as emerging problems. All conflicts arise from this. It is therefore highly critical to have a good grasp and good analysis. Otherwise, we will simply continue to occupy ourselves with secondary issues. This is the root cause. There are many different ethnic, linguistic and religious groups in this country, and we can resolve this problem collectively by relying on fundamental rights enshrined in the key conventions that we all know about. But someone who exercises and keeps hold of the political power, continues to refuse to do this, and instead, throws out many concepts such as the sublime state, the holy father, monism, or you name it. They are always in an effort to manipulate the masses and make up excuses. It cannot be like that. In fact, we can solve our problems. Just like other 40 countries, we can also resolve the conflict; we can comfortably resolve the Kurdish issue with democratic and peaceful methods. We can recognise the rights emerging from the freedom of religion and conscience for all religious groups. We can do all that. Prescriptions are available and there is no need to reinvent the wheel. This is possible. Yet, the real problem is that the group in power, also called by some as a group of oligarchs or a certain class, does not want to lose power.

How did we end up here? The dialogue between the state and PKK is not something new. It started back in March 1993. We have entered into a new phase in 2013 with the 8th seize-fire. We changed its name and called it peace process. During that period, I was one of those traveling the country. The society was ready; ready for the peace process. This is what we have observed and we presented it in our reports to the government. The nation is ready, Turkish society is ready; yet, the government in power was not ready. Should they have duly followed recommendations in the reports, I mean those in the reports of Wise Persons Committee, perhaps we could have avoided witnessing this conflict. I can confidently assert this argument. The most important reason why ethnic groups in living in Turkey are not fighting with each other is that their will to live together is much stronger than those exercising political power. They are way ahead of political parties in Turkey. Perhaps our colleagues who are experts on political sciences can better explain this situation in sociological terms.

Why did the clashes resume in Turkey? In order to resolve a conflict, you need to make peace with whoever you were fighting against. There were a few simple steps that should have been taken following the Dolmabahçe Declaration dated February 28, 2015. One was the establishment of an independent delegation, which was called monitoring board. The other was the establishment of a truth commission because all the malice was imputed to Kurds in Turkey. The state was always the good one, the whiter than white. It has not done anything. It had not carried out the Armenian Genocide, it had not carried out the Dersim Genocide. It had not perpetrated any crimes against humanity or staged any military coups. It had neither committed systematic and gross human rights violations during the coup periods nor unsolved murders. It had not perpetrated enforced disappearances in custody or extrajudicial killings. This is how they perceive themselves. Can you imagine that? How could you possibly achieve a conflict resolution with such perception?



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Professor Altıparmak has already explained. As a legal professional, I am also closely following these developments. Turkey had never carried out an effective investigation or prosecution in cases in which the Court had found a violation. Is this possible? I mean, you perpetrate all these cruelties, the state becomes a gang-state throughout the 1990s, this gang rules the state and commits all types of crimes, no criminal justice is served; but you do not even consent to reparative justice or to a truth commission. This is not possible and of course there is politics involved. They do not want to share the power. There is a political party which sticks to the government and does not want to give it up. I am referring to the results of June 7, 2015 elections. The results of June 7, 2015 elections were important as they revealed that the Turkish society stands for peace and democracy. They could have acted according to the results of the election; but they did not. And in July 2015, armed clashes started once again. This time, however, the clashes are very different. Cities have become zones of conflict. Naturally, the state has already started to find different names to hide these armed clashes from the international community and from the Turkish society. The new name is cities where a curfew is declared. There are mostly young people with us today. According to Articles 13 and 15 of the Turkish Constitution, such a dire situation limiting fundamental rights and freedoms can be authorized only if it is explicitly stipulated by law. Provincial administration act does not give governors the right to declare a curfew. It is not explicitly stipulated in that act; you cannot find such a notion in it. Therefore, the curfew is completely illegal and unlawful. We have to put a particular emphasis on this. You can only resort to curfews under the state of emergency and under martial law. And in order to make this decision, you need a Cabinet of Ministers' Decision. This is also not enough. You also need a resolution from Turkish Grand National Assembly. I mean, imagine a state waging a war and doing so on the basis of a governor's decision! The state is trying to hide this fact from the whole society and from the international community. This is cheating.

Currently, Nusaybin is under blockade and none of us know what is going on there. Every day, tens of people lose their lives there; soldiers, police officers, armed militia, civilians, all the same. Every day, tens of people lose their lives. And this does not have a name. This is why we use the term war. Currently, we are facing a situation which exceeds the level of internal armed conflict. We are now beyond the stage of internal armed conflict, dear colleagues. I will share with you just a few figures that we were able to collect. The number of civilians who lost their lives during the first three and a half months of 2016 is 353, the number of injured civilians is 245, the number of armed militia who lost their lives is -as far as we were able to identify- 169, the number of the injured is 6. Of state security personnel, the number of those who lost their lives is 249, and the number of the injured is 374. This is the balance sheet of a miniscule civil war. According to a statement by the Ministry of Health, the number of people who were forced to migrate was 355 thousand. Currently, this number is well over 500 thousand. There are 500 thousand displaced people in Turkey. Upon their return to their towns, there are no houses left to live. For example, there were 10 neighbourhoods in Cizre. 4 neighbourhoods were deleted from the map, most of the houses in the remaining 6 neighbourhoods are looted. All the furniture was damaged, and these people are still struggling to survive. We have also told this to the Delegation of the European Union to Turkey and the MPs of the EU. They are signing agreements that are violating all fundamental rights in order to prevent 2 million Syrians from coming to their countries. But on the other hand, they are doing nothing about these 500 thousand Kurdish people displaced in Turkey. This is what we told to the EU. We asked them what kind of a solution they propose and why they did not take any steps to end this war? Because this war has to be over. It is really hard for us to predict what might happen unless it is stopped. The conflict is spreading; the attacks are becoming widespread; the number of casualties is increasing. This is why this is the most important issue. If there is war in a country and if war crimes and crimes against humanity

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are perpetrated due to this war, it is impossible for the other categories of right to not be violated too. These rights are already being violated. The freedom of expression is already limited and under pressure, the freedom of association, the right to assembly and the right to organize a demonstration are all obstructed, because the state has mobilized all of its institutions. Under these circumstances, we are forced to talk about this war, because there are severe breaches of the right to life. Unfortunately, we are not able to talk about other rights violations without talking about breaches of the right to life. I believe that this is our duty to talk about that, and we have to frame the general situation.

I would like to touch upon a few points in this regard. We have said that this ongoing war does not have a name, and the state is persistently hiding this war. However, the international criminal law is now well-established. I am also interested in this subject as a lawyer and I have been the spokesman for the Turkey Coalition for International Criminal Court for many years. We, as the coalition, are closely following the ongoing investigations and cases around the world. The events that are currently unfolding in Turkey, this state of internal conflict, perfectly fit to the common Article 3 of the Geneva Conventions. Turkey has repeatedly violated the common Article 3 of the Geneva Conventions on the protection of civilians. This fact demonstrates that flagrant war crimes are committed. By the way, none are currently investigated; but this does not mean that there shall be no investigations in the future as well. I want to specifically highlight this point. We have regularly called upon the international community to take an action regarding this matter. We want to draw attention to what is happening in Turkey. The most recent statement of UNHCR on Cizre is very important in this regard. Because the events that had taken place in Cizre, especially those between January 21 and February 12 including the massacre of the civilians in the three basements, constitute a grave crime against humanity, and it is also a serious war crime. People lost

their lives because they shelled and dropped bombs on these buildings. There are already pending cases before the ECtHR about the basements of these three buildings. I agree with everything Kerem said about the Constitutional Court and the case of Can Dündar and Erdem Gül.

Currently, the right to individual application on curfews is simply not working. Our lawyer friends brought cases directly before the ECtHR. Like Kerem said, the Constitutional Court system runs the risk of becoming non-functional. The Constitutional Court of Turkey is yet to become a Human Rights Tribunal that could protect fundamental rights and freedoms. We, as lawyers and rights defenders, speak from our experiences and observations. In times of peace, they have invited human rights defenders to take part in joint projects; but in times of war, they have even denied to appointments to human rights defenders. Thus, in these difficult times, one grasps the true character and qualities of all institutions. Most recently, in April, the UN Committee Against Torture held sessions and yesterday, the Committee published its concluding observations on Turkey on its website. Those who speak English should take a look at it. There are very serious warnings about Turkey, and in fact there are serious warnings from many international organizations. But the problem here is the following: Now, on one hand, the country is at war, on the other hand, there is an on-going EU accession process. As accession negotiations are being held, as the chapters are being opened... what is at stake at the end of this process is the full accession to the EU. But as of present, we are passing through the most challenging times. This is a great paradox, isn't it? The accession process did not move on in better times, and new chapters were not opened. Now, we are in the worst period and there are grave human rights violations. In addition, we hear that there might be some developments because of the refugee crisis. Nothing happened, why? Because it could not happen, while we have this Anti-Terrorism Law. Is there a chance for it to happen in a country where an “enemy criminal law” is in place? When the enemy criminal law is

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implemented, anyone or any group can be declared as a terrorist and all state institutions are reshaped and take their decisions in line with that law. What is happening to the movement branded as the parallel structure is a typical example of this. Similarly, Kurdish politicians who had been rounded up, placed in the same basket and subjected to the same treatment over the course of trials coined as KCK trials in another example. Recently, Kamuran Yüksek, a politician and the co-chair of a political party, was arrested just because of his political opinions. We are therefore already facing a problem in terms of the right to liberty and security. When there are no legal guarantees of one's right to liberty and security, one cannot speak of a safe country or even guess what will happen tomorrow. You have already seen what happened to the Prime Minister of this country. Even he could not estimate what was about to happen to him, and he had to leave his seat. The Prime Minister of a country is forced to resign and you call that country a safe one. Could somebody please explain this to me? We are passing through a critical authoritarian era. Mr. President is ruling the country as a de facto president. The 1982 Constitution has been simply put aside. The same goes for many other laws. Under such circumstances, one cannot be sure about who will act against whom. We could face all kinds of cruelty. Because no one is safe, both in terms of physical safety and legal safety. There is a political uncertainty, and the parliament is unable to show the will to debate on the political issues that they are expected to discuss. As you may know, the Commission for the Constitutional Harmonization is dissolved. Thus, we do not have any data that could provide us a perspective as to how we are going to be able to solve this in the short term. In this type of authoritarian periods, I really do not know how to put it, but do not think in normal terms. These are hard times, there are serious uncertainties in politics, and we do not know what they will bring. Therefore, we should approach the issue by asking what the fundamental issues are and how they should be resolved. The most fundamental problem of this country is the Kurdish issue. And the

Kurdish issue is closely linked to what is going on in Syrian Rojava. Without knowing the future of the region between Cerablus and Azez, which is called the northern Syria and controlled mainly by ISIS and Al Nusra, it is very hard to tell whether the Kurdish problem will evolve into something positive or negative. We are unable to make a guess in this regard. But we are at point where the Kurdish issue in Turkey, the Kurdish issue in Syria, and the developments in Iraq are all interlinked. This is why especially the EU has to take more responsibility and closely engaged with the Kurdish issue. Again, the international community also has to take a clearer stance with regard to resolution of the Kurdish issue in order to end war. Because, unfortunately, Turkish domestic politics missed an opportunity between 2013 and 2015. That was an important opportunity. Should they have taken the advantage of it, perhaps we would not be making these speeches today. However, at this point we are facing a Kurdish issue that had been internationalized, and therefore its solutions now have to be found together with the international community. I cannot guess where authoritarianism might take us either, so I am unable to say anything on that matter.

Thank you.

## Şebnem Korur Fincancı Human Rights Foundation of Turkey

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*She has devoted her career to fight against torture and has become a pioneer of the field in Turkey. She is known for her efforts to establish objective forensic medicine and for exposing the effects of torture. These activities resulted in her being repeatedly suspended from her professorship for forensic medicine. She returned, however, time and again when courts ruled in her favour. In 1996, she took part in post-mortems from mass graves in the Kalesija region of Bosnia as member of the PHR team on behalf of the United Nations International Criminal Tribunal. She is a founding member of the Association of Forensic Medicine Specialists and the Human Rights Foundation of Turkey, and has played a major role in the development of a UN reference standard for exposing the cases of torture, the Istanbul Protocol in 1999. She gave trainings on the implementation of the Protocol. In 2000, she contributed to the international activities of the Physicians for Human Rights in South Africa, and in 2002, to the WHO study and hand book on sexual violence against women.*

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## What is “not” a safe country?

First, I would like to thank Amnesty International and Rosa Luxemburg Foundation for choosing the question of whether Turkey is a safe country for this session. Frankly, I was not sure whether I should laugh or cry when I first saw this title, as a person who has been witnessing how safe our country is for many years.

Last week, Evrensel newspaper interviewed dear Esra and Latife, other terrorists like us, and they talked about something called “intervening witness”. I really liked that term. Last week, I wrote on the subject of intervening witnessing. Because I am also, humbly, an expert witness. In my field, I am a witness of human rights violations. I am considered as an expert of this field on a global scale. I am one of the 35 people all around the world. However, I am not only acting as an expert witness. We were in Paris yesterday for a meeting. They were talking about Turkey and the term “impartiality” was constantly repeated. Frankly, I do not think that it is realistic. Nobody, including expert witnesses, can be impartial. It is impossible. Thus, you can be expert and an intervening witness; but you



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intervene in the name of humanity. In Turkey, we need interventions for both the refugees and the citizens of Turkey.

For years, as dear Öztürk said, we have not seen a day of peace. I look at your beautiful and young faces. We were facing the same violations, the same problems when we had the same young faces as yours. We are still facing them today. Moreover, it is growing at an immense scale. What are we going to do with the Syrians, where are we going to put them while we are facing such an unbelievable and reckless attack? Every day, we hear yet another report of violation regarding Syrian refugees. We hear that children were raped at AFAD camps, we read reports explaining how children are harassed and women sold as sex workers after they got pregnant. These are all terrible and each of them have to be investigated. There are also people from Cizre among people on the boats, trying to escape from this country. It seems like we would all flee without looking back if we had the chance. We shall see together what the future will bring.

From January until the end of December 31, 2015, there was a serious number of deaths by firearms. When we use the term “death by firearms”, we are talking about the people who were killed by the security forces. 222 people died, and 217 of these 222 people were killed after the adoption of the Internal Security Law. Isn't it striking? It appears that the political will in Turkey has given an order to “Shoot!” to the security forces. We and the refugees are living under such circumstances. I think this explains how safe they are. The increase in the numbers of unsolved murders, extrajudicial executions, deaths under custody or in prison is clear in the statistics, and these are also directly related to the Internal Security Law. Although there was a dramatic decrease in the numbers after the improvements in 2005, the picture suddenly changed. Of course we were hopeful at that time, but that it seems that it was a false one. The numbers regarding violations of the right to life in 2015 are also clear. Actually young people are dying in this country, and the figure reaches thousands

in 2015. But what is more striking is that, just as dear Öztürk said, this rapid increase corresponds to the period following the elections in June. It would be good to see how these numbers have been changing since 2002, the year when AKP came to power. Only in 2015, a total of 843 people died. Over the course of the first five months of 2016, the deaths are increasing as well. Öztürk told us that the numbers reached over 500. And of course, another aspect that has changed is that the conflict used to be between the armed militia and the police or the military. Those who lost their lives were among these groups, all young people 20s from both sides. We are losing people who could be the future of this country. But now, the civilians are also dying. The number of deaths have reached higher levels, and the civilians are dying in their living spaces, rooms of their homes, on the street, or while providing healthcare. Even though they are allegedly terrorist, just like what Latife and I are being called.

There are also major issues about the deprivation of liberty. You know that Erdoğan has dreams about the years 2023 and 2071. We all heard that capacities of prisons shall be scaled up. There are already 'campuses' and our terrorist friends have already seen the quality of the Silivri campus. We wanted to see Bakırköy but we could not, they did not let us in. We had to make do with what Esra and Meral told us, but this is the general picture.

The arrests of Kurdish people, on its own, present us similar picture. We have been faced with a dramatic increase in breaches since June, when they developed the fear that they were "losing". With their fear of losing power, over 10 thousand people were detained, and all were Kurdish. In addition, other dissidents, those who were not members of the PKK but considered to support PKK were also detained. And what about the applications made to the Human Rights Foundation? There are of course significant increases. Look, the figures are revealing; applications made to us are indicative of the crisis periods in Turkey. This period is in fact is the period of protest against F-type prisons. During these protests, there were

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hunger strikes and our foundation had to deal with their consequences. There were young people who became permanently disabled after these hunger strikes. This is why a lot of applications were received during that period. Also, there are people who reach us because they were subjected to torture. During the Gezi protests of 2013, our applications, which were around 300, tripled and reached almost to 900. For the year 2015, the figure appears to be 597, but in fact it is over 1000. As you know, there was the explosion in Suruç in July 2015 and afterwards Suruç Psychosocial Solidarity Network was established. Shortly after, in October, there was the Ankara explosion and we have extended this psychosocial solidarity network across the country. Under the coordination of Human Rights Foundation of Turkey, a whole bunch of organizations such as the Psychiatric Association of Turkey, Turkish Psychological Association, TODAP, Social Service Experts Association and their employees and members have all participated to the activities of the network. In total, the number of the people who applied to the network exceeded 1000.

And of course, there are the curfews. What is a curfew? Legally there is no clear definition. But we know that only last year, 355 thousand people have been displaced. Today, we heard that some of these people are taking the boats; of course, yes, a safe environment. Of course these are not only taking place in the Kurdish cities of the country or in the region we call.

What about other regions? Take, for example, Syria. Syrians are being exploited as cheap workforce. The picture is dire; each day we wake up hearing about a workplace homicide, we go to bed with another one. Just the other day we commemorated Soma; but has anything came out of it? No. Has anybody paid the price? No. Impunity, once again.

Impunity is not only confined to state crimes. Institutions working hand in hand with the state and financing the state are also benefiting from it. This is what we are facing. For example, when there is a case of sexual harassment of a child in a certain foundation, in an instant that

foundation become very precious. After a so-called “mining accident”, and we begin to see all the good things they are doing. As a matter of fact, the Republic of Turkey, starting from its foundation, is a male state just like the others. Even their weapons have very masculine appearances just like their practices. They disregard the human body and they expose it with all their sexist approach. Hence, no male state can be a safe country. This can only change, if the peoples of that country rise up and stop exposing these weapons like that.

I will briefly talk about two very clear incidents I have witnessed, and then I will finish. People living in Turkey will remember Hacı Lokman Birlik. He was killed on the allegation of carrying a bomb and then dragged behind a vehicle. They said it was the normal procedure for control purposes. In fact, Hacı Lokman Birlik was not dead when he was tied to the vehicle, because there were scratches on his face that were made while he was alive. I apologize, I know these are disturbing images but I have to show them because we have to know this. We need not only my testimony, but everyone’s. They shot him with heavy weapons such as howitzers and dragged him behind a vehicle while alive. In this way, they took vengeance on him. So this is also a hate crime, let alone a war crime. How one can take vengeance on a human being like that! We do not know. Thus we shall not be a party to this crime. We, academics, said that we shall not be a party to this crime. And very surprisingly, and oddly enough, we had a huge reaction. I would like to thank again our President for his attention to this incident. But there was another important thing; almost all major universities in Turkey signed this petition. The Academics for Peace is established in 2012, and also, at that time, they released many statements. But nobody had taken us so seriously until now. Back then, we were in what we called a peace process, whereas, now we are in another process.

This is the environment we are going to welcome Syrians and other refugees. So it is impossible to say that it is a safe one. The doors are shot

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by guns; the houses become ruins. Look here, the door was blown up by a sabot; and people are living there, ordinary, civilians. The walls of houses are bullet-riddled. So we said, we will not be party to this crime. But of course, including our chair here, we were all subjected to suspensions, to legal inquiries, to university inquiries. They could not even stand mothers who were looking for their children and shot fires on them. Health care providers made a great effort so that people would not die in those basements. Twice, they rented an ambulance to go and take them, twice they were stopped. Then the whole building was demolished. A nurse providing health care to a woman shot in her leg, was attacked and slaughtered on the street. And their filthy media publicized her as a terrorist. So we said, let's go and see for ourselves, thanks to dear Öztürk. The curfew was lifted in Cizre on March 2, and he said "Let's go". We went together to this basement and we saw that everything they said was a lie. These are all burned bones, and here is a jawbone. And next to this jawbone, there is an eyeglass frame, twice its size. What does that mean? It means that the jawbone belongs to a child aged 10 or 12. In that basement where they said there were terrorists, there were children. So this is a clear proof that this is a war crime. There were also other findings; if you like, you can read the report. This is a sabot found in the same basement. What is a sabot doing in the basement of a house? As you know, the 1990s have passed with extrajudicial executions. Saturday Mothers are still looking for their children. They cannot find their children as the impunity prevails; and new mothers are joining them in new sit-in protests.

If we consider Turkey a safe country, soon we will also have Syrian mothers in these sit-in protests. Of course today's situation is very different from the 1990s, we have a lot tools. Now we are not so silent! We have visual materials, we can broadcast these through the social media. However, how this helps is a question mark. There was an article in the periodical Birikim this week, citing Steve Biko's Black Consciousness. And it is about

the fact that not only not doing anything, but also seeing what is done and not speaking against it is also being complicit in the crime. And the Blacks think that they are right in their accusation. If we consider Turkey as a safe country and the Syrians are brought back here, they will also think that they are right in accusing us. The Kurds are already right in accusing us, Armenians have been accusing us for a very long time already. Perhaps, we can only continue by embracing all of them, including the Syrians, once again.

Thank you very much.

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