THE IMPACT OF FOREIGN NATIONALS ON STATE POLICY: REFUGEES AND ASYLUM SEEKERS, EUROPEAN COURT OF HUMAN RIGHTS CASE LAW AND TURKISH ASYLUM LAW

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THE IMPACT OF FOREIGN NATIONALS ON STATE POLICY: REFUGEES AND ASYLUM SEEKERS, EUROPEAN COURT OF HUMAN RIGHTS CASE LAW AND TURKISH ASYLUM LAW

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Thesis Abstract

Gökçen Yılmaz, "The Impact of Foreign Nationals on State Policy:

Refugees and Asylum Seekers, European Court of Human Rights Case Law and

Turkish Asylum Law"

This thesis addresses the question of how an individual who is foreign and in a vulnerable position can affect state policy. Considering recent developments as preparation of a draft asylum law and increasing European Court of Human Rights judgments in refugees' cases against Turkey, this question attracts attention in context of Turkey. In line with this question, the aim of this thesis is to understand how an individual refugee, who is part of the most vulnerable group in the society in economic, political or social terms, can have impact on Turkish state asylum policy.

This thesis is based on the central argument that ECtHR judgments have been effective in shaping the draft asylum law of Turkey. Since ECtHR procedures proceed through individual petition, the thesis also argues that even an individual refugee can have influence on state policy even if this effect is mediated by other actors. At this point, involvement of third parties into relation between individual refugee and state is of utmost significance. Moreover, ECtHR's inclusion of individuals by virtue of right to individual petition is crucial as well. However, refugees' lack of action capacity restrains them from exploiting those legal opportunities. From this perspective; NGOs, activists, and lawyers come to front as mediators not only between state and individual but also between ECtHR and applicant refugee.

Focus on ECtHR judgments as significant effects on draft asylum law brings about questioning refugees' access to the Court. Therefore, this thesis analyzes both the content of the draft law in comparison with judgments of the Court and the actual application process. Accordingly, major contribution of the thesis is analysis of Court judgments' effect on domestic legislation from the lenses of individual level of analysis. In other words, ECtHR judgments' effect is analyzed as a mediated effect of individual on state outcome.

Tez Özeti

Gökçen Yılmaz, "The Impact of Foreign Nationals on State Policy:

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Turkish Asylum Law"

Bu tez, yabancı ve hassas durumda olan bir birey devlet politikasını nasıl etkiler sorusunu sormaktadır. Bu soru Türkiye şartlarında önemlidir çünkü iltica kanunu tasarısının hazırlanması ve mültecilerin davalarında Avrupa İnsan Hakları Mahkemesi'nin Türkiye'ye karşı ihlal kararlarının artması gibi gelişmeler yaşanmaktadır. Bu soru bağlamında, bu tezin amacı; ekonomik, politik ya da sosyal anlamda toplumun en hassas gruplarından birini oluşturan mültecilerin Türkiye devleti iltica politikasını nasıl etkilediğini anlamaktır.

Avrupa İnsan Hakları Mahkemesi içtihatlarının iltica kanunu tasarısında etkili olduğu bu tezin temel argümanını oluşturmaktadır. AİHM bireysel başvuru üzerinden işleyen bir prosedüre sahip olduğu için, bu tez, her ne kadar başka aktörler araya girse de, mültecinin devlet politikası üzerinde etkili olabileceğini de öne sürmektedir. Bu noktada, devlet ve mülteci arasındaki ilişkiye üçüncü tarafların dahil olması büyük önem taşımaktadır. Ayrıca AİHM'in bireysel başvuru gibi bireyleri kapsayan olanaklar sağlaması da çok önemlidir. Ancak, mültecilerin eylem kapasitelerinin olmaması onların bu olanaklardan yararlanmalarını engellemektedir. Bu açıdan, STKlar, aktivistler ve avukatlar sadece devlet ve mülteci arasında değil, başvuran mülteci ve AİHM arasında da aracı olarak öne çıkmaktadır.

AİHM içtihatlarını iltica kanunu tasarısı üzerinde önemli etkenler olarak kabul etmek mültecilerin mahkemeye erişimini de beraberinde sorgulatmaktadır. Bu yüzden, bu tez taslak kanunu mahkeme içtihatları ile karşılaştırmalı olarak analiz edilmesine ek olarak mahkemeye başvuru sürecini de incelemektedir. Buna göre, bu tezin başlıca katkısı, mahkeme içtihatlarının yerel mevzuattaki etkisini bireyin diğer aktörlerin aracılığıyla devlet politikası üzerine yaptığı etki olarak yani bireyi analiz düzeyi alarak incelemesidir.

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CHAPTER I

INTRODUCTION

Recognition of Individual's Impact on State Policy and Behavior

Recognition of individual's impact on state policy and behavior is part of a heated debate in international relations (IR). One of the sources of debate in IR is to establish a linkage between the individual and state behavior. Two different schools can be distinguished: one school of thought focuses on direct effect of individuals on state policy while the other revolves around mediated effect of individuals through other actors. Direct effect of individual on state is precisely related with inclusion in decision-making process. Singer's emphasis on individual level of analysis through "role-fulfilling individuals"[1] or Allison's description of Bureaucratic Politics Model through "principal players"[2] aim to explain state policy and behavior through certain goals, motivations, power and positions of those particular individuals within state apparatuses. Most IR literature which analyzes states' policies or actions from the lenses of individual level of analysis puts emphasis on individuals like political leaders, bureaucrats, high-ranking officials, advisors of the leaders or interest group leaders considering that those people play critical roles in determining state policy.

However, individuals who are not part of decision-making process can also have influence on states. Although an individual may seem to be powerless and ineffective when she/he is not an active part of state apparatuses, involvement of other actors strengthens the position of individual. Argument of mediated effect of

[1] David J. Singer, "The Level of Analysis Problem in International Relations," *World Politics* 17, No. 1 (1961), p. 84.

[2] Graham T. Allison, "Conceptual Models and The Cuban Missile Crisis," *The American Political Science Review* 63, No. 3 (September 1969), p. 709.

individual focuses on strengthening of individuals by NGOs, networks or domestic/international organizations.[3] As it is seen in the case of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention), an individual could have an impact on states' policies. Although the Ottawa Convention is usually mentioned as a success of NGOs in persuading states to ban the usage of mines, there was an individual behind this success story.[4]

Jody Williams, a housewife, became an activist for banning of anti-personal mines and directed NGOs from her house via information technologies. As Friedman points out, her e-mails have been the most important factors that coordinated almost a thousand human rights and arms control groups around the world.[5] Then as the coordinator of the International Campaign to Ban Landmines (ICBL), Williams also played important roles in providing the continuance of communication between the groups.[6] With her individual attempts, the struggle for the ban turned into NGOs' effort in the international arena. Therefore, it would not be wrong to conclude that an individual together with the liaison of the NGOs became central determinants of the convention process.

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[3] For a discussion of these points see Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76, No. 5 (Sep. – Oct. 1997), pp. 183-197.
See also, Robert O. Keohane and Joseph S. Nye Jr., "Power and Interdependence in the Information Age," *Foreign Affairs* 77, No. 5 (Sep. – Oct. 1998), pp. 81-94.

[4] For a detailed discussion see P. J. Simmons, "Learning to live with NGOs," *Foreign Policy* (Fall 1998), pp.82-96.
M. A. Cameron, "Global civil society and the Ottawa process: lessons from the movement to ban anti-personal bans," *Canadian Foreign Policy* 7, Issue. 1 (1999), pp.85-102.

[5] Thomas J. Friedman, *The Lexus and Olive Tree: Understanding Globalization* (New York: Farrar, 1999), pp.12-13.

[6] Kenneth R. Rutherford, "Internet Activism: NGOs and the Mine Ban Treaty," *International Journal on Grey Literature* 1, Issue 3 (2000), p.100.

In such cases, involvement of third parties in relationship between an individual and state benefits individuals in terms of empowerment of individual's position against state. By becoming part of an issue, NGOs, networks and organizations actually "provide weapons for the powerless"[7]. It is important to acknowledge agency of individual in those cases. That is to say, individual manifests her/his agency at the beginning of a matter and then other actors transmit the individual's influence on states. From that moment on, other actors like NGOs or networks become not only mediator between the state and individual but also an active part of that issue. My study proceeds within this framework; advocates for refugee rights mediate individual refugees[8] in Turkey. European Court of Human Rights (ECtHR or the Court hereafter) comes into stage as a platform for expressing advocates for refugee rights' demand for asylum policy reform in Turkey.

[7] Naomi Rosenthal, Meryl Fingrutd, Michele Either, Roberta Karant and David McDonald, "Social Movements and Network Analysis: A Case Study of Nineteenth-Century Women's Reform in New York State," *American Journal of Sociology* 90, No. 5 (1985), p.1022. (1022-1054)

[8] A "refugee" is defined in 1951 Geneva Convention as "a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution."
UNHCR, *The 1951 Convention Relating to the Status of Refugees*, p.6. Available [online]: http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf [12.06.2012]
An "asylum seeker" is defined as an individual "whose application for asylum or refugee status is pending a final decision."
UNHCR, *2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, p.4. Available [online]: http://www.unhcr.org/statistics/STATISTICS/4852366f2.pdf [12.06.2012]

In this thesis, for simplicity, "refugee" is used as an umbrella term.

Research Question

Turkey is about to introduce major changes to its asylum policy. Migration and Asylum Bureau under the Ministry of Interior prepared a draft asylum law; Draft of Foreigners and International Protection Law (Yabancılar ve Uluslararası Koruma Kanunu Tasarısı –YUKK). The draft law promises dramatic changes in Turkish asylum policy such as establishment of a new institution for status determination and recognition of fundamental rights of refugees. Significant increase in ECtHR judgments against Turkey in refugees' cases since 2009 is a very important motivation for this change. I argue that the driving force behind the writing of a new law and reform of policy is related with the increasing ECtHR judgments on violation of certain rights of individual refugees. Although ECtHR is recognized as an important pressure on Turkey for human rights reforms on religious freedom, freedom of expression and party closures,[9] this determinant dimension of the ECtHR decisions on Turkish policy of asylum has gone unnoticed so far. Yet, with a closer look at the details of the cases and the decisions, one can easily see the increasing numbers of violations especially in the last 2-3 years correspond with the attempts to reform the asylum policy.

The crucial point regarding my thesis is the argument that ECtHR rulings represent an individual's –a foreign national and in a vulnerable position- impact on state policy. Although this seems as an indirect effect, individual comes into prominence as the agent that starts whole procedure of application to the Court. In other words, individual petition to ECtHR and access to lawyer reveals the agency of an individual in this process. Yet, it is important not to exaggerate this situation since

[9] Smith, Thomas W. "Leveraging Norms: The ECHR and Turkey's Human Rights Reforms." In *Human Rights in Turkey*, edited by Zehra F. Kabasakal Arat (Philadelphia: University of Philadelphia Press, 2007), pp. 262-274.

the process in which a refugee reaches the ECtHR and the lawyer for instance involves some other important dynamics in itself. Put differently, human and refugee rights associations, activists and NGOs play critical roles in this process in the sense of informing, directing and supporting these people. Additionally cooperation among these NGOs, activists, associations, their activities, their purposes behind application to the Court and even emergence of a Transnational Advocacy Network (TAN hereafter) constitute important cornerstones of the research.

Accordingly, my research question is formed as "How can an individual, who is a foreign national and in a vulnerable position, affect state policy?" The research question includes two complementary questions in itself: how could a refugee access the ECtHR and in what way do the ECtHR judgments shape state policy? Even though the main question embraces the assumption that Court's judgments have been effective on the draft law, questioning this assumption constitutes the first step of my research. Subsequently, answering these two complementary questions will demonstrate how a foreign individual affects state policy making.

This study anwers these questions within the framework of Turkish context. In the last couple of years Turkey has been facing growing pressure to reform its asylum system and Turkey has prepared a new draft law on foreigners and asylum recently. This will be the case study of my thesis. To be able to understand the process behind mediation of individual refugees in Turkey, it is first necessary to comprehend Turkish context in terms of asylum policy and implementation.

Turkish Context

Turkey was one of the drafters and original signatories of 1951 Geneva Convention Relating to the Status of Refugees, which is the primary international legal document for refugees.[10] Turkey is a party of 1967 New York Protocol to the Convention, as well.[11] Significantly, Turkey is one of the last four countries that maintain geographic limitation as defined in Article 1.B (1) (a) of the 1951 Geneva Convention.[12] With 1967 Protocol, time limitation as "before 1 January 1951" was lifted; however Turkey maintained the geographic limitation. Accordingly, asylum seekers coming as a result of events outside Europe are not granted refugee status by the Turkish state. This results in a two-stage procedure of asylum in the country.

"Convention refugees"[13] to whom Turkish state grants refugee status constitute the first stage of Turkish asylum policy. Convention refugees are coming as a result of events in Europe therefore fall under Turkey's responsibility according

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[10] *Resmi Gazete,* 5 September 1961.

[11] *Resmi Gazete,* 5 August 1968.

[12] For the details of "geographic limitation" see UNHCR, *Declarations and Reservations*. Available [online]: http://www.unhcr.org/protect/PROTECTION/3d9abe177.pdf [20 June 2012]
Also, Kirişci, Kemal. "Turkish Asylum Policy and Human Rights." In *Human Rights in Turkey*, edited by Zehra F. Kabasakal Arat (Philadelphia: University of Philadelphia Press, 2007), pp. 170-183.
Other countries that still maintain geographic limitation are Congo, Madagascar and Monaco (As of 1 April 2011). See UNHCR, *States Parties to the 1951 Convention and its 1967 Protocol*. Available [online]: http://www.unhcr.org/3b73b0d63.html [05 June 2012]
Article 1.B (1): Fort he purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either:
(a) "events occurring in Europe before 1 January 1951"; or
(b) "events occurring in Europe or elsewhere before 1 January 1951",
and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purposes its obligations under this Convention.
UNHCR, *Convention and Protocol Relating to the Status Refugees*. Available [online]: http://www.unhcr.org/3b66c2aa10.html [05 June 2012]

[13] Kemal Kirişci, "UNHCR and Turkey: Cooperating for Improved Implementation of the 1951 Convention relating to the Status of Refugees," *International Journal of Refugee Law* 13, No. 1/2 (2001), p.74.

to 1951 Geneva Convention. Those people are granted refugee status; therefore are able to stay in the country. The second stage includes "Non-Convention refugees"[14] who are coming as a result of events outside Europe. In practice, those people are granted temporary asylum and permitted to stay in Turkey until they are resettled to a third country. If United Nations High Commissioner for Refugees (UNHCR hereafter) recognizes asylum seekers as refugees according to 1951 Geneva Convention criteria, these non-Convention refugees belong to UNHCR's mandate. Most of them are settled to "satellite cities" or accommodation centers in Turkey until their resettlement and kept under surveillance of the state.

Although these people meet the conditions of refugee status determined in the Convention, Turkish state does not define them as "refugee" due to the geographic limitation. "The Regulation on the Procedures and the Principles Related to Mass Influx and the Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country" (hereafter 1994 Asylum Regulation)[15] defines non-Convention refugees as "asylum seekers".[16] Consequently,

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[14] Ibid., p.76.

[15] *Resmi Gazete,* 30 November 1994.
For detailed information about 1994 Regulation, see Kemal Kirişci, "UNHCR and Turkey: Cooperation for Improved Implementation of the 1951 Convention relating to the Status of Refugees", *International Journal of Refugee Law,* Vol. 13, No. 1/2, 2001, pp. 71-97.
Bill Frelick, "Barriers to Protection: Turkey's Asylum Regulations," *International Journal of Refugee Law* 9, No. 1 (1997), pp.8-34.

[16] 1994 Regulation Article 3:
Refugee: A foreigner who as a result of events occurring in Europe and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
Asylum seeker: A foreigner who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former

Turkish terminology differs from international terminology. Despite the fact that most ECtHR cases belong to non-Convention refugees/asylum seekers in Turkey, for harmony with international terminology and simplicity, the term "refugee" is used as an umbrella term in this thesis.

Along with the geographic limitation, Turkish state's perception of asylum as a matter of "security" creates problems for refugees. 1994 Asylum Regulation is the first national specific legal document on asylum and emphasis is put on state security rather than human or refugee rights. As Kirişci states main emphasis is "enhancing the control over entries into Turkey and limiting the access to asylum procedures."[17] One striking aspect of this Regulation was that asylum seekers were expected to approach to the authorities and apply for asylum within five days of their entry into Turkey. Moreover, with 1994 Regulation, UNHCR's role became limited by resettlement of non-Convention refugees while state authorities took the responsibility of refugee status determination. Since state officials as well as law enforcement officers were not experts on asylum, problems regarding the implementation of Regulation started.

As Kirişci and Frelick discuss it, 1994 Regulation brought along limited access to asylum procedures, limited protection for non-European asylum seekers, and gaps of practice direction which resulted in arbitrariness and violations of the *non-refoulement* principle.[18] Between 1994 and 2005, Turkey did not take important

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habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
Kemal Kirişci, "Is Turkey lifting the 'Geographical Limitation'? – The November 1994 Regulation on Asylum in Turkey," *International Journal of Refugee Law* 8, No. 3 (1996), pp.311-318 (An English translation of the Regulation supplied by the UNHCR in Ankara).

[17] Kirişci, "Turkish Asylum Policy and Human Rights," p.174.

[18] Kirişci, "Turkish Asylum Policy and Human Rights."
Frelick, "Barriers to Protection: Turkey's Asylum Regulations."

steps in terms of asylum policy. 1994 Regulation was amended in 1999 when the time limit of asylum application was extended from five days to ten days.[19] In 2006, time limit for asylum application was lifted and application was required to be done within reasonable time after arrival in the country.[20]

With the beginning of accession negotiations in 2005, EU came to the front as an important factor on legislative improvements in Turkey. Asylum constitutes a significant branch of conditions and criteria for EU membership. Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration (2005) partly responded to EU conditions in terms of reception centers and readmission agreements.[21] However, problems regarding implementation of 1994 Regulation continued. The goal of adoption of EU *acquis* together with implementation problems resulted in the 2006 Circular No.57.[22] Although Circular No.57 included references to EU Directives on reception conditions for asylum seekers, on qualification for becoming a refugee or a beneficiary of subsidiary protection status, and on asylum procedures; security approach still maintained in the document. This can be deduced from lack of protection of fundamental rights of refugees in the document as well as not having differences from 1994 Regulation except for introduction of subsidiary protection. Moreover, Circular No.57 did not bring about significant changes in implementation as well as in attitudes of law enforcement officers and state officials.

[19] *Resmi Gazete,* 13 January 1999.

[20] *Resmi Gazete,* 27 January 2006.

[21] Kirişci, "Turkish Asylum Policy and Human Rights," p.180.

[22] 2006 Circular No.57. (2006 Uygulama Talimatı, 57 No.lu Genelge)

Inadequency of Turkish asylum legislation and implementation is seen in NGOs' reports regarding situation of refugees in Turkey. In Helsinki Citizens Assembly-Turkish Branch's, Human Rights Watch's, and Thomas Hammarberg's reports, it becomes clear that refugees face systematic problems in Turkey.[23] Deportation and violation of principle of *non-refoulement*, unlawful deprivation of liberty as well as detention conditions, and access to asylum procedures were highlighted as some of the most important problems refugees face in Turkey. These problems were seen as a result of both inadequency of asylum legislation and arbitrariness in the implementation. Additionally, Turkish state's lack of emphasis on the humanitarian aspect of issue of asylum has resulted in such problems, which are actually related with protection of fundamental human rights. These problems became persistent and raised the salience of the issue of asylum in Turkey.

In 2010 Turkey tried to solve problems regarding asylum policy with circulars. Separate circulars on particular issues aimed to introduce solutions to refugees' problems mostly about their daily lives. Circular on "Refugees and Asylum Seekers"[24] regulated the residence permit fee issue that had been causing economic and deportation problems regarding refugees' stay in Turkey. Ministry of Education

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[23] Helsinki Citizens Assembly, Refugee Advocacy and Support Program, *Unwelcome Guests: The Detention of Refugees in Turkey's "Foreigners' Guesthouses"*, November 2007. Available [online]: http://www.hyd.org.tr/staticfiles/files/rasp_detention_report.pdf [24 June 2012]

Human Rights Watch, *Stuck in a Revolving Door: Iraqis and other Asylum Seekers and other Migrants at the Greece/Turkey Entrance to the European Union,* November 2008. Available [online]: http://www.hrw.org/sites/default/files/reports/greeceturkey1108_webwcover.pdf [21 June 2012]

Council of Europe: Commissioner for Human Rights, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June - 3 July 2009. Issue reviewed: Human rights of asylum seekers and refugees*, 1 October 2009, CommDH (2009) 31. Available [online]: http://www.unhcr.org/refworld/docid/4ac459e90.html [12 June 2012]

[24] 19.03.2010 tarihli ve 19 sayılı "Mülteciler ve Sığınmacılar" Genelgesi. Available [online]: http://isay.icisleri.gov.tr/ortak_icerik/gib/MÜLTECİ%20VE%20SIĞINMACILAR%20GENELGESİ.pdf [05 June 2012]

issued a circular on "Foreign National Students"[25] which included details about registration of refugees' children to Turkish schools and students' graduation as well as equivalence certificate. Another circular was issued by the Turkish Social Service and Children Protection Institution on "Procedures regarding Asylum Seekers/Refugees"[26]. This circular regulated rules on reception of unaccompanied minors to the Social Service and Children Protection Institution, reception of women to guesthouses, reception of physically handicapped people to nursing and rehabilitation center, and reception of elderly people to old people's home and rehabilitation centers.

In the meantime, on the 15 October 2008, Migration and Asylum Bureau under the Ministry of Interior was established. Establishment of the Bureau is of utmost significance for indicating state's attempt to deal with the issue of asylum with a specific organ. Duties of the Bureau included not only following EU projects on asylum and migration and EU accession process but also carrying out study on necessary judicial and institutional development.[27] In order to comprehend problems concretely regarding asylum in Turkey, Bureau officials carried out field visits and research in accommodation centers and detention centers. Preparation of draft law started in 2009 in a very unusual way compared to other laws. NGOs and academics have been consulted in the process of writing law and exchange their views on articles.

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[25] Milli Eğitim Bakanlığı 16.08.2010 tarihli ve 6544 sayılı "Yabancı Uyruklu Öğrenciler" Genelgesi. Available [online]: http://gib.icisleri.gov.tr/ortak_icerik/gib/yabancı%20uyruklu%20öğrenciler.pdf [05 June 2012]

[26] Başbakanlık Sosyal Hizmetler Çocuk Esirgeme Kurumu 2010/03 sayılı "Sığınmacı/Mültecilere ait İşlemler" Genelgesi. Available [online]: http://isay.icisleri.gov.tr/ortak_icerik/gib/2010-03SayiliGenelge.pdf [05 June 2012]

[27] Duties of the Migration and Asylum Bureau. Available [online]: http://gib.icisleri.gov.tr/default_B0.aspx?content=1002 [05 June 2012]

2009 was a milestone not only due to beginning of the preparation of draft asylum law but also because of ECtHR leading judgment in *Abdolkhani and Karimnia v. Turkey* (September 2009).[28] In this judgment, ECtHR found Turkey in violation of several articles and ordered Turkish state to pay compensation to the victims, for the first time. After Abdolkhani and Karimnia's leading case, applications to the Court as well as Court's violation decisions increased. Many other cases were decided on violation of several articles. This is related with the continual problems of refugees in Turkey, which are deportation, detention, and access to asylum procedures. At this point, it becomes clear that Turkish state could not solve problems via circulars. Lack of specific law and insufficiency of existing legislation resulted in systematic problems regarding Turkish asylum policy. Turkish asylum policy can be summarized as "this policy of asylum maintained, not by law, but by the absence of laws",[29] as Porter stated while describing British asylum policy. Particularly, detention, deportation, and judicial remedy come into prominence as the most serious issues that have not been solved still.

Consequently, in area of asylum serious issues persevere in Turkish context. State's security perspective has left aside humanitarian aspect of asylum. Refugee rights and human rights were not included in state's primary concern. This led to systematic problems, which resulted in ECtHR's judgments on the same articles of European Convention on Human Rights (ECHR) in different cases. Nevertheless, establishment of Migration and Asylum Bureau indicates Turkish state's taking a

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[28] *Abdolkhani and Karimnia v. Turkey* (Application no. 50213/08, September 2009). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871876&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [05 June 2012]

[29] Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), p. 3 cited in Liza Schuster and John Solomos, "Asylum, Refuge and Public Policy: Current Trends and Future Dilemmas," *Sociological Research Online* 6, No. 1 (2001). Available [online]: http://www.socresonline.org.uk/6/1/schuster.html [11 June 2012]

concrete step in this issue area. Preparation of draft law is the most important signal of state's decision to address the issue of asylum in more humanitarian terms. At this point, I argue that ECtHR judgments have affected the preparation and content of the draft law revealing a new kind of relationship between individual refugee and state. This new relation is built through the possibility to affect state policy and behavior. Traditionally, a refugee's relationship with the state used to consist of recognition of legal status and protection of certain rights in the country. However, affecting state policy through ECtHR judgments demonstrate that individual refugees' relationship with the Turkish state has come into a different phase.

Methodology

In order to understand how individual refugees could apply to ECtHR, couple of data sources comes to the fore. Although refugees themselves constitute the most important source of information, it is not possible to interview them. Since these refugees had been resettled to third countries by UNHCR and their contact information is not public due to confidentiality, I have not been able to reach them. Therefore, lawyers and legal representatives of the refugees in the ECtHR cases come into prominence as my primary sources. In addition to the refugees' story of reaching a lawyer and then ECtHR, those lawyers do also have instrumental positions for my thesis as witnesses of the process of ECtHR cases and experts of the domestic law. Besides, certain NGOs are crucial again for understanding the role of NGOs in directing refugees to ECtHR and providing them with the necessary aid and capacity. Reasons behind their support for refugees to apply ECtHR and relations between NGOs and state are very important. It is true that refugees constitute the

most vulnerable group in the society in economic, social, cultural, psychological or political terms. Due to their vulnerability, refugees lack action capacity and consequently mediation by other actors draws attention for access to the Court.

When it comes to Court's effect on draft law; ECtHR judgments are primary sources for understanding the violations and how the Court conceptualize violations in context of Turkey. Wording of decisions as well as basis upon which Turkey is found in violation is of utmost significance in order to understand impacts of ECtHR case law on the making of the Turkish draft asylum law. Perception of Court judgments by writers of the draft law, namely officers of Migration and Asylum Bureau, is of equal significance. In the process of writing draft law, how they considered ECtHR case law and whether they referred to specific issues that the Court has found problematic are crucial for understanding Court's effect. Another important source is the draft law itself. Not only divergences from the existing asylum legislation but also correlate with ECtHR judgments present a concrete answer for Court's effect on draft law.

Consequently, my research is composed of an analysis of textual material on the one hand and of narratives of lawyers, NGO representatives, Migration and Asylum Bureau officials, UNHCR officers and academics on the other. Those sources provided me with not only background of the cases but also the process of access to the Court as well as its aftermath. Analyzing texts and then combining relevant information with narratives present story of an individual refugee affecting state policy through ECtHR judgments. Therefore, qualitative methods are used in my thesis: employing in-depth interviews and analyzing texts and documents.

In-depth interviews are appropriate for my research because I am dealing with those people (lawyers, NGO representatives, UNHCR officers, Migration and

Asylum Bureau officials) due to the fact that they have been part of a phenomenon – being part of application to the ECtHR or of writing draft law- and their experiences during this partnership to the phenomenon are of concern for me. Furthermore, since representatives of NGOs and lawyers are experts on their own topics, elite-interviews were held to get informed about the issue and then taking their comments. Analyzing domestic asylum legislation as well as ECtHR case law in comparison with draft law makes it possible to see the reasons of violations and evolution of law in accordance with ECtHR case law. Since my thesis topic involves judicial processes and legal texts, analysis of those materials is the most convenient way for my purposes.

Organization of the Thesis

The opening chapter of this thesis presents the theoretical framework. This chapter is divided into three main sections. Firstly, place of individual in International Relations is discussed. This section provides how IR literature and theoretical discussions position individual agency in relation with state behavior. Second section focuses on individual application to supranational courts. Additionally ECtHR's inclusion of refugees under ECHR scope is mentioned. In the third section, emergence of transnational advocacy networks together with their organizational characteristics and strategies for affecting state policy and behavior are described.

The second chapter constitutes the first part of my research: analysis of refugees' access to the ECtHR. In this chapter; question whether the Court has really been effective on draft law, refugees' access to lawyers and NGOs, emergence of a TAN (advocates for refugee rights) in area of asylum in Turkey, strategies of this group for influencing state policy are discussed. In the third chapter, after describing

ECtHR institutional characteristics and Turkey's relations with the Court historically, ECtHR judgments against Turkey in refugees' cases and relationship to the draft law's relevant articles are analyzed. With this analysis, Court judgments' effect on draft law is also presented. These two chapters demonstrate the story of asylum policy reform in Turkey with regard to refugees' ECtHR cases and activities of advocates for refugee rights. The final chapter is an overall analysis of the arguments and research findings presented in the thesis.

CHAPTER II

THEORETICAL FRAMEWORK

Introduction

As my research question is "How can an individual, who is a foreign national and in a vulnerable position, affect state policy?", my study proceeds through an analysis of ECtHR cases of refugees against Turkey and through examination of how ECtHR case law's effect on Turkey's draft asylum law. Different dimensions and different theoretical frameworks involve in the issue. Actually two complementary questions are embedded in the original research question in accordance with my case study of Turkey. The first question is "How could a refugee access the ECtHR?" while the second one follows as "In what way do the ECtHR judgments shape state policy?"

I believe that this research question sheds light upon a new kind of relationship between the individual refugee and state. An individual refugee experiences on the one hand a hierarchical and on the other hand a humanitarian relationship with the state. It is a hierarchical relationship since refugee encounters a legal and political authority, which is the state, that decides on whom to let through the borders as well as whom to grant refugee status. It is at the same time a humanitarian relationship since the state provides protection and certain basic rights to individual refugee who is seeking safety outside her/his country of origin, who risks persecution, and who may have experienced traumatic experiences which led her/him to flee therefore in a vulnerable position in a foreign country.

However, refugees' both hierarchical and humanitarian relationship with the Turkish state has been problematic in the case of Turkey. Refugees in Turkey have been facing problems regarding violation of principle of *non-refoulement* in

deportation cases, access to asylum procedures, and deprivation of liberty. Refugees as a result of these problems opened cases against Turkey in the ECtHR. These cases have resulted in violation decisions of ECtHR contributing to the reform process of the Turkish asylum policy. I believe these developments signal a new relationship that has recently emerged between a refugee and the Turkish state. I argue that individual refugees have had an effect on state policy through the case law of a supranational court. Although, this has been an indirect effect, individual comes into prominence as the mere agency behind those cases. In other words, refugee is the person who starts the whole procedure, however other actors involve in the process immediately after the process is started by the refugee. Yet, it is important to acknowledge that it is not so easy for a refugee to reach ECtHR and affect state policy. In other words, other actors like human and refugee rights associations, NGOs, activists and lawyers become critical in this process. This is due to the fact that they contextualize the story of refugee as an application to the Court. This becomes an opportunity for bringing international pressure upon Turkey in a way that the values or rights, which those organizations have been defending, can be strengthened against the state.

Since effect of individual is mediated in this case, this work goes one step further than analysis of "particular individuals" in IR. My research question includes the analysis of different dimensions of an individual's application to ECtHR: third parties involved in the process, and the Court's case law's effect on the writing of draft asylum law. Therefore different theoretical frameworks will be applied during analysis of this question in order to be able to comprehend all those different but also related steps in the individual's effect on state policy.

In order to analyze effect of an individual on state policy in terms of shaping state's behavior in the international arena, the question of relationship between an individual and state policy comes into front at first. Regarding this relationship, there exists a huge literature emphasizing the relation between individual and state through the concepts of "citizenship", "political participation" or "welfare state".[30] In this branch, the relationship is usually conceptualized over the notion of "rights and duties" which implies certain civil, political or social rights guaranteed by the state toward the individual; status of citizenship in accordance with duties toward the state or democratic channels through which individuals can demonstrate themselves in front of the state. Since my subjects are non-citizen and foreign national, this literature does not directly address my thesis except for the literature which puts emphasis on the issue of borders therefore on certain civil, political, economic, and social rights granted for foreigners and the regulation of the entrance into and exit from the country.[31] In this sense, considering the encounter of refugees with the state, relation between the two is perceived to be like the one that an individual waiting to be permitted to enter, to be recognized or to be enabled to seek asylum by an authority.

However, in the purpose of understanding and explaining state policy in relation to individuals, the literature mentioned above fails to address my questions. At this point, from the perspective of the attempt of giving meaning to state

[30] Joshua S. Goldstein (ed.), *International Relations* (Longman, 1999, Third Edition), p. 17. Michael Hill, *The State, Administration and the Individual* (Great Britain, Glasgow: William and Collins Sons and Co. Ltd, 1976).

[31] Office of United Nations High Commissioner for Human Rights. 2006. *The Rights of Non-Citizens*. Available [online]: http://www.ohchr.org/Documents/Publications/noncitizensen.pdf [24 June 2012] Jacqueline Bhabha, "Enforcing the Human Rights of Citizens and Non-Citizens in the Era of Maastricht: Some Refections on the Importance of States," *Development and Change* 29 (1998), pp. 697-724.

action/policy, international relations literature together with the level of analysis problem comes into stage. As "a perspective on IR based on a set of similar actors or processes that suggests possible explanations to 'why' questions",[32] the person seeks answers for the questions in accordance with the level from which she/he looks at the events. In general, rather than treating states as "black boxes" or as unitary actors in the international arena, individual level of analysis bears upon "perceptions, choices, and actions of individual human beings"[33] resulting in analyzing "humans as actors on the world stage".[34]

It was Singer's article in which he mentioned the importance of examining the theoretical implications and consequences of "national sub-systems" including the individuals.[35] According to Singer, stating state/nation as the primary actor in international relations demands questioning the process by which national interests are determined, internal and external conditions that affect this process, and the institutional framework.[36] From the perspective of individuals, Singer states that concrete goals of certain "role-fulfilling individuals" are the most decisive effects on the state policy.[37] As he states, focusing on individuals who take part in decision-making process is crucial for understanding the behavior of states:

> If the nation or state is seen as a group of individuals operating within an institutional framework; then it makes perfect sense to focus on the phenomenal field of those individuals who participate in the policy making process.[38]

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[32] Goldstein, p.16.

[33] Ibid., p.16.

[34] John T. Rourke, *International Politics on the World Stage* (McGraw-Hill/Dushkin, 2001, Eighth Edition), p.109.

[35] Singer, p. 78.

[36] Ibid., p.85.

[37] Ibid., p.84.

[38] Ibid., p.88.

In line with the understanding of significant differentiation among the actors (states) through the examination of national sub-systems, more scholars focused on the internal dynamics together with individuals. For instance, Allison presents the "Bureaucratic Politics Model" as an alternative to Rational Policy Model, which attempts to "understand happenings as the more or less purposive acts of unified national governments".[39] Bureaucratic Politics Model, stated by Allison, enables the analyst to present the perceptions, motivations, positions, power, and maneuvers of principal players who are the main determinants of an action or policy.[40] The "principal players" are the individuals who constitute "the agent for particular government decisions and actions",[41] in other words the individuals actively taking place in the state apparatuses.

Significance of application of individual level of analysis lies in uncovering "individual" as a part of state outcome and international relations. Yet, like Singer and Allison, individuals are thought to be influential only if they are involved in decision-making process. Accordingly, individuals like political leaders, bureaucrats, high-ranking officials, advisors of the leaders or interest group leaders considering that those people play critical roles in determining the state policy have been the focus of interest in most IR literature which analyzes the states' policies or actions from the lenses of individual level of analysis.

Focusing on individuals as the members of the state apparatus is linked with the analysis of decision-making process in which the importance of human agency is recognized. In this branch of the literature, different perspectives are relevant; human

[39] Allison, p.690.

[40] Ibid., p.690.

[41] Ibid., p.709.

nature, "to examine fundamental human characteristics that affect decisions"; organizational behavior, to understand "how humans interact within organized settings"; and idiosyncratic behavior, to explore how "behavior of specific humans affect foreign policy".[42] There exists plenty of academic work on the process of decision-making, but for the purposes of my thesis the significance of this branch of literature is just their usage of individual level of analysis, simply in the sense that individuals are analyzed as units in foreign policy or international relations. The emphasis put on individual is crucial, but analyzing decision-makers does not make sense for my thesis since the subjects whom are of my concern do not belong to the decision-making process; on the contrary they do not belong any specific group of individuals whom are traditionally thought to be effective on the state policy.

Furthermore, the question whether individuals could be that much effective on the state policy brings along the discussion of structure-agency in IR theory, as well. The problem of agency and structure actually constitutes the main ground of many other debates within the IR literature, but I am dealing with the part of this debate in which specific emphasis on the individual and human action is put. The discussion basically goes on the one hand through the criticism of neo-realism and world-system theory, which are claimed to lack the conceptualization of state and therefore the relation between and within the states. But on the other hand, explanation of actions, events, and policies by virtue of locating the states into certain positions in the grand structure of international politics constitute other source of discussion.[43]

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[42] Rourke, p.109.

[43] For the critics of structuralism, see Alexander E. Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization* 41, Issue 3 (2009), pp.335-370. For the structuralist approach, see Kenneth Waltz, *Theory of International Politics* (Reading, Mass.: Addison-Wesley, 1979).

Considering the significance of human agency and individual in the international politics, the approach of Foreign Policy Analysis puts forward the argument that only human beings can socialize others and produce ideas therefore they are the mere agents in the international politics.[44] In a similar line, shifting the focus away from the state as a unit of analysis to the individual as a level beyond the state, Pettman states "no state has independent status apart from the conduct of individuals who inhabit it and who relate its organizational parts by behaving toward each other in regular and characteristic ways".[45] Thus individuals fulfilling the position of decision-makers should be analyzed for a comprehensive study, according to him. Again, human agency is marked as the mere actor behind state actions, yet humans who are of concern are the members of the decision-making process like Singer or Allison mention.

Dessler encapsulates the issue by stating that the problem of structure and agent in social theory emerges from two facts about social life; first, "human agency is the only moving force behind actions, events, and outcomes of the social world" and second, "human agency can be realized only in concrete historical circumstances that condition the possibilities for action and influence its course".[46] Taking those two points into consideration, my research question can be said to demonstrate the effectiveness of human agency behind the development of a state policy in accordance with the conditions and context of the international arena.

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[44] Valerie H. Hudson, *Foreign Policy Analysis: Classic and Contemporary Theory* (UK: Rowman and Littlefield Publishers, 2007), p.10.

[45] Ralph Pettman, *Human Behaviour and World Politics – A Transdisciplinary Introduction* (UK: The MacMillan Press, 1975), p. 34.

[46] David Dessler, "What's at stake in the agent-structure debate?," *International Organization* 43, Issue 3 (Summer 1989), p.443.

For the purposes of my thesis, I position the refugee as the agency behind actions and state policy. Additionally Turkish domestic law, ECtHR procedures and judgments, UNHCR, NGOs, and lawyers are the constituents of external and international context. Given Wight's argument that "state activity is always the activity of particular individuals acting within particular social contexts",[47] Turkish state activity of asylum policy reform comes to be the reflection of activity of refugees' application to ECtHR. The particular context, in which this change comes, has been constituted as a result of Turkish state's violations of refugee rights, mediation of individual refugees by NGOs and lawyers, positioning of ECtHR as a legal opportunity, and international pressure being put upon Turkey.

Although it seems I have been touching upon literature focusing on certain individuals –politicians, bureaucrats, leaders, etc.- as being effective on the state policy, understanding the logic behind the interest in individuals is crucial for my thesis. I am aware of the fact that an individual like a refugee could not be that much effective on the state policy alone. Yet together with other agents like the involvement of the NGOs, lawyers, UNHCR, and decisions of the ECtHR in line with formation of policy of the state in accordance with those issues, a powerless individual could be the agent behind the reform of a state policy and hence could be an important agent in international politics.

As mentioned earlier, Turkish case presents an instance of mediated individual effect on state outcome. Such effects are considered to be indirect and subtle because in those cases "individual" is not distinctly visible as much as a politician or a leader. This can be related to the involvement of other actors in the issue. From an external perspective, those third actors can be held responsible for the

[47] Colin Wight, "State agency: Social action without human activity?," *Review of International Studies* 30, Issue 2 (2004), p.279.

effect on state. Similar to Jody Williams' case, mediators are seen as the real actors of the issue after a while. For this reason, literature focusing on mediated effect of individuals mostly put emphasis on the mediators like NGOs, networks or organizations.

NGOs come into prominence as the most important mediators both in the Turkish case and general discussion on mediation. NGOs' typical effort of "strengthen[ing] the voice of disadvantaged in decision-making, influencing the media, building public opinion, and lobbying policy makers"[48] makes them the most common mediator for individuals. Madon and Sahay differentiate between five different models of NGO mediation: "partnership with government, partnership with commercial organizations, acting as service providers, advocacy, and accountability".[49] Those models actually present different ways in which NGOs "make the right linkages between their work at micro level and the wider systems or structures of which they form a part."[50]

In addition to linkages between micro and macro levels, mediation is also related with "balance of power" in the relationship between individual and state. As opposed to "totalitarian tendencies of state power",[51] NGO mediation empowers individuals. This argument goes in line with Hadenius and Uggla's definition of

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[48] Jeffrey Haynes, *Democracy and Civil Society in the Third World: Politics and New Political Movements* (Cambridge: Polity Press, 1997) cited in Shirin Madon and Sundeep Sahay, "An Information-Based Model of NGOs Mediation for the Empowerment of Slum Dwellers in Bangalore," *The Information Society* 18 (2002), p.13. (pp 13-19)

[49] Madon and Sahay, "An Information-Based Model of NGOs Mediation for the Empowerment of Slum Dwellers in Bangalore," pp.14-15.

[50] Ibid., p. 14.

[51] Rajesh Tandon, "Civil Society, The State, and Roles of NGOs," *IDR Reports* 8, No. 3 (1991), p.11. Available [online]: http://www.alternativasycapacidades.org/sites/default/files/biblioteca_file/Rajesh%20Tandon,%20Civil%20Society.pdf [17 June 2012]

NGOs' functions.[52] NGOs' function regarding their organization is summarized as "pluralist function": "The *pluralist* function concerns the distribution of power in society and political life. The idea is that by organizing themselves, people obtain power resources."[53] It is actually NGOs' obtaining power resources like information, finance, and expertise that enables them to empower individuals against the state.

In case of Turkey, mediation comes in the format of advocacy in the relationship between individual refugee and state. Moreover, it is also related with empowerment of this vulnerable group of individuals against Turkish state in terms of influencing state policy. Significantly, in the Turkish case, NGOs are not only mediators between state and individual refugee but also between the applicant refugees and the ECtHR, of which judgments bring about change in state policy. Therefore application to the Court as the first step for analyzing this effect and the relation of individuals to supranational courts in reference with states gain importance.

Individual, State, and Supranational Courts

In line with the argument above, ECtHR is conceptualized as a significant actor that constitutes the external and also international context for refugees in the process of influencing state policy. The Court, as a supranational body over the state, provides venue for influencing state policy and behavior. As it can be seen from the case of

[52] Axel Hadenius and Fredrik Uggla, "Making Civil Society Work, Promoting Democratic Development: What Can States and Donors Do?," *World Development* 24, No 10 (1996), pp.1621-1639 cited in Giske C. Lillehammer, *State-NGO Relationships in Transitional Democracies: The Case of CPA-ONG-a Government Centre for Advancement of NGOs in Benin,* UNDP The Democratic Governance Fellowship Programme, April 2003, p.8. Available [online]: http://204.200.211.31/Publications/Governance/Gov_Prac_doc/State-NGO%20relationships%20in%20transitional%20democracies.pdf [17 June 2012]

[53] Lillehammer, *State-NGO Relationships in Transitional Democracies: The Case of CPA-ONG-a Government Centre for Advancement of NGOs in Benin,* p.8.

Turkey, ECtHR decisions become concrete indicators of individual action behind new draft law and thus new state policy. Moreover, again in case of Turkey, ECtHR stands in the middle of the relationship between individuals and state; therefore, focusing on the individual application to the court draws attention at this point.

Many scholars focus on individual application to supranational courts like ECtHR and European Court of Justice (ECJ) in line with the argument of democratic participation and international human rights regime. With the last reform on ECtHR in 1998, by which a permanent ECtHR was founded, right to individual petition has become obligatory which had been optional for member states until then.[54] For ECJ, as well, individuals are granted the right to apply to the court. As individuals are able to apply to a supranational court against a party state, their way for questioning state action and for standing as an equal party is paved. Moravcsik states the distinctiveness of such systems as their "empowerment of individual citizens to bring suit to challenge the domestic activities of their own government".[55] Brilmayer argues in a similar way, international law now addresses "not just 'horizontal' relations between states but also 'vertical' relations between states and people."[56]

According to Koh, uniqueness of transnational litigation lies in its combining of two conventional modes of litigation which have traditionally been seen distinct: In traditional domestic litigation; "private individuals bring private claims against one another based on national law" while in traditional international litigation;

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[54] Bahattin Akkan, "Avrupa İnsan Hakları Mahkemesi Kararlarının Bağlayıcılığı ve Yerine Getirilmesi," *Adalet Dergisi,* Sayı 36 (Ocak 2010). Available [online]: http://www.ankahukuk.com/index.php?option=com_jdownloads&Itemid=276&view=viewdownload&catid=11&cid=80 [10 June 2012]

[55] Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, No. 2 (Spring 2000), p.217.

[56] Lea Brilmayer, "International Law in American Courts: A Modest Proposal," *Yale Law Journal* 100 (1990-91) pp.2277-2314 cited in Harold Hongju Koh, "Transnational Public Law Litigation," *Yale Law Journal* 100 (1990-91), p.2351.

"nation states bring public claims against one another based on treaty or customary international law."[57] Supranational, or "transnational" in Koh's words, litigation merges those two types of litigation which locates private citizens, individuals, government officials, NGOs, or multinational enterprises as rights-holders and responsible actors under international law hence "proper plaintiffs and defendants in transnational actions."[58]

Given the fact that both ECJ and ECtHR allow for individual petition, such authorization of individual brings about a new dimension in international relations. That is to say, relationship between state and individual takes yet another turn other than political participation such as voting or demonstration and granting or protecting citizenship rights. This new phase in this relationship empowers the individual vis-à-vis the state on the one hand internationally and on the other hand domestically. Internationally, individual now has the capacity to challenge state's behaviors by virtue of international conventions and of supranational decisions. Domestically, individual now has different means for participation into decision-making process by virtue of binding or prestigious dimension of court decisions. As Jacobson and Ruffer state such supranational systems and ability of individual to bring suit demonstrate the emphasis put on individual as an agent:

> The expansion of rights, domestically and internationally, however is associated with a partial but significant shift in the mode of political engagement; from democracy, or republicanism, to the principle of individuals as agent.[59]

[57] Koh, p.2348.

[58] Ibid., p.2359.

[59] D. Jacobson and G. B. Ruffer, "Courts across Borders: The Implications of Judicial Agency of Human Rights and Democracy," *Human Rights Quarterly* 25, No. 1 (2003), p.75.

In line with the "enabling" effect of law; individual agency "places a strain upon executive and legislative power" because individuals increasingly use their right to challenge state action outside of national structure by bringing them before supranational courts.[60] In addition to this "enabling" factor of law (and also supranational courts); such systems are also "inclusive" in the sense that ordinary individuals can now participate, although indirectly, in decision-making process by bringing suit to challenge state activities. Conant puts emphasis on this inclusive side of supranational courts as: "Social rights litigation constitutes a form of individual political participation in supranational venues. In case of foreign workers, for example, recourse before courts is often one of the few mechanisms of voice they enjoy at all."[61]

As international human rights law and regime improve, "courts are increasingly given the powers to constrain, shape and dismantle government action and acts."[62] This actually paves the way for "judicial policymaking", in Cichowski's words, which means that litigation provides a potential avenue for change in state behavior or in policy.[63] An important instance for this dynamic of litigation is the case of EU in terms of development of women's rights. This is an outstanding example in the sense that it allows for understanding the effect of a supranational court as well as inclusion of individuals together with advocacy networks (lawyers, NGOs, etc.) into the process.

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[60] Ibid., p.77.

[61] L. Conant, "Individuals, Courts, and the Development of European Social Rights," *Comparative Political Studies* 39, No. 1 (2006), pp.77-78.

[62] Rachel A. Cichowski, "Courts, Rights, and Democratic Participation," *Comparative Political Studies* 39, No. 1 (2006), p.51.

[63] Rachel A. Cichowski "Women's rights, The European Court and Supranational Constitutionalism," *Law & Society Review* 38, Issue 3 (2004), p.491.

Inclusion and expansion of women's rights in EU can be viewed as a success story of individual litigation to ECJ and mobilization of advocacy network in this struggle. This is actually why De Búrca conceptualized ECJ as

> […] a staunch protector and promoter of the individual in the European Union, forging a stronger link between the polity and the person than the political decision-making bodies and the members states themselves had ever managed to do.[64]

It is stated that ECJ and women activists played critical roles in modification of pregnancy and maternity rights into national legal domain and social policy.[65] Women as individual litigants together with legal experts and group activists, which constituted an advocacy network internationally, have become integral parts of development of women's rights in EU. The issue of equal pay for women outstands as an attractive instance, which combines the victories before the ECJ with organizations and political pressure, as Alter summarizes it.[66] Development of women's rights in EU is crucial because it involves not only individual cases before the ECJ (like *Dekker* case ECJ/1990, *Habermann-Beltermann v. Arbeiterwohlfahrt* ECJ/1994 or *Larsson* ECJ/1997) but also organized group litigation strategy (like *Gillespie* ECJ/1996 or *Thibault* ECJ/1998).

It is clear that "international human rights law relocated the individual, as opposed to states, as the object of the law"[67] of which the primary motivation is individual litigation. It is important to note that ratification of European Convention on Human Rights demands that states should protect conventional rights not only of

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[64] De Búrca, Gráinne. "The European Court of Justice and the Evolution of EU Law." In *The State of the European Union Vol. 6: Law, Politics, and Society,* edited by Tanja A. Börzel & Rachel A. Cichowski (New York: Oxford University Press, 2003), p.65.

[65] Cichowski, "Women's rights, The European Court and Supranational Constitutionalism," p.507.

[66] Karen J. Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe* (New York: Oxford University Press, 2001), p.224.

[67] Jacobson and Ruffer, p.81.

their citizens but of all those living within their borders regardless of citizenship status.[68] As Turkey recognized the right to individual petition on the 28 January 1987,[69] not only Turkish citizens but also foreigners including refugees are capable of bringing suit against the government as well. As refugees have no political presentation, no economic means, and no social capital for being able to express themselves against the state; right to individual petition opens the doors for those who are excluded from policy making process. Conant expresses the effect of this inclusive and enabling dimension of the courts on individuals as: "Supranational courts (ECJ and ECtHR) are constructing a safety net that extends well beyond the original intentions of member countries and empowers some of the most vulnerable members of the society."[70]

Refugees can be conceptualized as the most vulnerable group in the society due to not only lack of political, civil, social or economic rights to maintain their lives but also their need for protection in order to avoid persecution. By virtue of individual litigation, ECtHR comes into front as one of the few places they can make themselves heard against the state. Despite recognizing the enabling dimension of supranational courts, Börzel turns more of attention to the ability of exploiting legal opportunities. In other words, she puts forward the questions of "possessing court access and necessary resources to use it" as important elements for the argument of

[68] European Convention on Human Rights, Article 1: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention. Available [online]: http://www.hri.org/docs/ECHR50.html#C.Art1 [15 March 2012]

[69] Kaboğlu, İbrahim Özden. and Koutnatzis, Stylianos-Joannis G. "The Reception Process in Greece and Turkey." In *A Europe of Rights: The Impact of the ECHR on National Legal Systems,* edited by Helen Keller and Alec Stone Sweet (New York: Oxford University Press, 2008), p.457.

[70] Conant, p.76.

individual participation.[71] In contrast with the argument that individual litigation empowers the most vulnerable groups in the society, Börzel states specifically for the EU that "enforcement system is most likely to empower those actors that do already actively participate in domestic and European politics."[72]

The rationale behind this argument is the fact that unless individuals have necessary resources to use legal means, their right to individual petition stays just on paper. Although they do have this right; if they are not able to use this mean, it cannot be argued to empower all the individuals who are granted this right on paper. According to this argument, individuals who apply to court and therefore participate in policymaking process are actually the ones that are already able to possess and use certain rights. Courts open "a set of possibilities for well-resourced and well-advised individual to pursue claims and interests through law" in De Búrca's words.[73] In line with this argument, Galanter analyzes the legal system in different layers –namely rules, courts, lawyers, and parties- and actors' abilities to take part in this system. In terms of actors' usage of legal opportunities, he states that:

> Because of the differences in their size, differences in the state of law, and differences in their resources, some of the actors in the society have many occasions to utilize the courts (in the broad sense) to make (or defend) claims; others do so only rarely.[74]

Accordingly, he distinguishes between two different groups of actors: "one-shotters" (OS) those who have only occasional recourse to courts and "repeat players" (RP)

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[71] Tanja A. Börzel, "Participation through Law Enforcement: The Case of the EU," *Comparative Political Studies* 39, No. 1 (2006), pp.129-130.

[72] Ibid., p.130.

[73] De Búrca, p.65.

[74] Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9, No. 1 (1974), p.3.

those who have engaged in similar litigations over time.[75] As refugees are conceptualized as OS claimants, litigation is unlikely to empower them in conformity with this classification. Yet Galanter does not permanently close the doors for OS claimants in the sense that he importantly adds alternative ways for taking place in the ongoing legal system which includes "reforms" to endow relative advantages to those who have not enjoyed it before.[76] By virtue of improvement of institutional facilities or improvement of legal services or improvement of strategic position of "have-not" parties, legal opportunities could be available for those who lack access to legal system.[77] Although it is not easy for a refugee to apply to the Court due to lack of resources or action capacity, ECtHR case law on this issue as well as increase in refugees' cases are undeniable.

As stated by Harvey and Livingstone, "[w]hile cautious in some areas, the Court has not been afraid of pushing at the boundaries of Convention rights in others."[78] Asylum is one of those areas that the Court has determined its own boundaries.[79] Refugees constitute one of the groups in society whose rights are usually not respected or protected sufficiently. According to Harvey and Livingstone, "the dynamic approach of the Court" can lend assistance on this matter.[80] The fact that right to asylum is not included in the ECHR does not limit the ECtHR due to

[75] Ibid., p.3.

[76] Ibid., p.44.

[77] Ibid., p.44.

[78] Colin Harvey and Stephen Livingston, "Protecting the Marginalized: The Role of European Convention on Human Rights," *Northern Ireland Legal Quarterly* 51, No. 3 (2000), p.446. (pp. 445-465)

[79] Ibid., p.446.

[80] Ibid., p.447.

contracting states' responsibility to protect *everyone*'s rights and freedoms within their jurisprudence.[81]

Anagnostou divides Court rulings, regarding issue of foreigners in general, into three categories:

> (a) the treatment and the integration of immigrants in the social benefits system and the legal system,
> (b) the entry or stay of immigrants (on the basis of right to private and family life, or the principle of *non-refoulement*, and
> (c) issues pertaining asylum seeking procedures, such as the conditions and lawfulness of detention, the review of applications, among others.[82]

From this classification, it becomes clear that marginalized individuals or groups are included under ECtHR's jurisprudence. Refugees belong to marginalized group as well because they are "constrained in voicing and pursuing their claims through the democratic process, and […] are unable to exercise influence on national governments and legislators."[83] ECtHR has been including this marginalized group under its jurisprudence through extending or specifying ECHR articles' scopes. Buchinger and Steinkellner state that Court's inclusion of refugees' cases under various articles was "not foreseen by its [Convention] drafters."[84] Additionally, considering sensitivity of the issue in relation with state sovereignty and security, Court's interpretation of articles in such a way gains much significance.

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[81] ECHR, Article 1: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention. (emphasis added)

[82] Dia Anagnostou, "Does European Human Rights Law Matter? Implementation and Domestic Impact of Strasbourg Court Judgments on Minority-Related Policies," *The International Journal of Human Rights* 14, No. 5 (September 2010), p.732. (pp. 721-743)

[83] Dia Anagnostou and Susan Millns, "Individuals from Minority and Marginalized Groups before the Strasbourg Court: Legal Norms and State Responses from a Comparative Perspective," *European Public Law* 16, No. 3 (2010), p.395-396. (pp. 393-400)

[84] Kerstin Buchinger and Astrid Steinkellner, "Litigation before the European Court of Human Rights and Domestic Implementation: Does the European Convention Promote the Rights of Immigrants and Asylum Seekers?," *European Public Law* 16, No. 3 (2010), p.434. (pp. 419-435)

For instance, regarding deportation, the Court has developed case law under Article 3 of ECHR if there is serious risk of mistreatment in the deported country. In *Cruz Varas and Others v. Sweden* (March 1991)[85] judgment, the Court for the first time extended the scope of Article 3 to expulsion cases. *Chahal v. The United Kingdom* (November 1996)[86] is a very symbolic case in which ECtHR decided on violation of Article 3 although deportation of Mr. Chahal did not take place during the review of the case. Court's reasoning behind assessment of risk under Article 3 is outstanding:

> […] as far as the applicant's complaint under Article 3 (art. 3) is concerned, the crucial question is whether it has been substantiated that there is a real risk that Mr. Chahal, if expelled, would be subjected to treatment prohibited by that Article (art. 3). Since he has not yet been deported, the material point in time must be that of the Court's consideration of the case. It follows that, although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive.[87]

Accordingly, the Court decided that Article 3 of ECHR would be violated if the decision of deportation is implemented.[88] This became a leading judgment since from this case on, physical implementation of deportation decisions lost relevance if the risk of mistreatment in deported country is real and serious.

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[85] *Cruz Varas and Others v. Sweden* (Application No. 15576/89, March 1991) Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=cruz%20%7C%20varas&sessionid=100544116&skin=hudoc-en [18 June 2012]

[86] *Chahal v. The United Kingdom* (Application No. 22414/93, November 1996) Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=chahal&sessionid=100544116&skin=hudoc-en [18 June 2012]

[87] Ibid.

[88] Ibid.

ECtHR under Article 5 is focusing on detention, another important problem for refugees. Through analysis of *Amuur v. France* (June 1996)[89] judgment, Harvey and Livingstone mention implications of Court's position:

> The Court attached particular significance to the plight of asylum seekers. It took their particular problems into account, both in its assessment of the applicability of Article 5(1), and its substantive judgment on compatibility. This is reflected in its focus on the right to effective access to a determination process. The right is a vital aspect of refugee protection and one which the Court recognized as significant.[90]

Hereunder Court's rulings, ECtHR case law on refugee cases has been shaped by the motivation of protection rights of those individuals, which have been disregarded by national policies. Harvey and Livingstone summarize Court's position as: "[T]he Court has no intention of becoming a surrogate for the failures of national asylum systems."[91] Relatedly, from the mid-1990s applications of refugees to the ECtHR have increased considerably.[92] Asylum procedures, detention conditions as well as deportation issues have been significant sources of claims of refugees in ECtHR cases since then.[93]

However, it is very important to acknowledge that such marginalized individuals' application process to the ECtHR is not very easy. Ultimately, using legal opportunities requires certain resources and certain action capacity. At this point involvement of other actors in the litigation process gains significance. In case of Turkey, refugees' ability to exploit ECtHR as a legal opportunity proceeds in line

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[89] *Amuur v. France* (Application No. 19776/92, June 1996) Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=amuur&sessionid=100544116&skin=hudoc-en [18 June 2012]

[90] Harvey and Livingstone, p.459-460.

[91] Ibid., p.465.

[92] Anagnostou, p.722.

[93] Ibid., p.734.

with this argumentation. That is to say, in most cases refugees are not capable to use legal opportunities on their own.

The Dutch case presents an instance of involvement of third actors in ECtHR applications process. In this case, legal aid groups "sought to use international law as a resource"[94] for the improvement of aliens' rights in the country. In Guiraudon's words, their activism "has been instrumental in insuring that foreigners benefited from provisions of international law."[95] By filing suits against the government, those non-state actors were trying to "create case law".[96] Here, mediation of individual comes to the front in two different senses: mediation between the individuals and the Court and mediation between the individual and the state. In the Turkish case, NGOs mediation proceeds within a similar context where refugees are enabled to file suits against Turkish state and at the same time to express their demands for reform from the state.

All in all, individual litigation to supranational courts comes into the picture as the first step on individuals' way of affecting state policy. Since individuals are re-positioned as the objects of law, right to challenge government's actions in supranational courts opens the possibility to express themselves against states. As ratification of ECHR automatically brings protection of conventional rights of all those living within borders of a party state, all individuals theoretically have the right to bring suit against state. It is worth noting that ability to use individual petition right depends on not only obligatory recognition of this right but also individual's resources such as information, money, expertise, person power etc. That being the

[94] Virginie Guiraudon, "European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion," *International Migration Review* 34, No. 4 (Winter 2000), p.1104.

[95] Ibid., p.1105.

[96] Ibid., p.1105.

case, court access comes into prominence as an important concern for refugees in case of Turkey. At this point, intermediary actors as well as factors such as reforms on legal system as Galanter describes or NGOs, activists, experts as Cichowski states gain significance.[97] Therefore mediating third parties and advocacy networks they build take crucial place in this process.

Transnational Advocacy Networks

When one considers individual access to ECtHR, it becomes clear that people who are otherwise excluded from policymaking can be enabled to express themselves. Yet, at this point, the question of ability of exploiting legal opportunities comes to the stage, as mentioned above. Involvement of third parties in the process of accession to the Court, i.e. providing individuals with resources for utilizing the court, gains significance in two different dimensions. First, it is crucial for understanding how individuals like refugees who constitute one of the most vulnerable group of people in the society are enabled to litigate in the Court. Secondly, third parties are also important for observing as well as analyzing the effect of Court's rulings on state policy.

Concerning individual access to the Court; as it is seen in the case of development of women's rights in EU, women activists and lawyers have become integral parts of the process together with individual litigants. In the case of Turkey, as individual litigants enjoy none of necessary resources, such as money, expertise, information or social capital, for court application, NGOs, lawyers or activists come into scene as the suppliers of those resources. Since NGOs and lawyers operating in

[97] Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." Cichowski "Women's rights, The European Court and Supranational Constitutionalism."

this issue area generate and share expertise and information to individuals, additional to their international networks, they actually exploit legal opportunities on behalf of refugees.

In case of refugees in Turkey, NGOs providing free legal assistance such as Turkish Branches of Helsinki Citizens Assembly and Amnesty International and individual lawyers who specialize on asylum, constitute a transnational advocacy network (TAN hereafter), which includes linkages with other international NGOs operating outside Turkey. As Keck and Sikkink mention, "in such issue areas such as environment and human rights, they [transnational advocacy networks] also make international resources available to new actors in domestic political and social struggles."[98] TANs can simply be described as networks of activists whose distinguishable characteristic is "the centrality of principled ideas or values in motivating their formation".[99] TANs can include international and domestic NGOs, media, foundations, local social movements, even part of legislative or executive branches of governments.

Keck and Sikkink characterize issues around which TANs appear most: Issues where relations between domestic groups and government are severed; issues where activists see networking as an opportunity for promoting their missions; and issues where grounds for forming networks are built by international forms of contact such as conferences.[100] What is striking regarding TANs is the generation and sharing of information as well as improvement of expertise on the issue area. Once TANs emerge, those networks participate in domestic as well as international

[98] Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (New York: Cornell University Press, 1998), p.1.

[99] Ibid., p.1.

[100] Ibid., p.12.

politics by making use of variety of resources, which are used strategically to have an effect on world or state politics. Tarrow puts emphasis on strategic use of resources as resembling members of TANs to "political entrepreneurs":

> Organizations and individuals within advocacy networks are political entrepreneurs, mobilize resources like information and membership, and show a sophisticated awareness of the political opportunity structures within which they operate.[101]

In the Turkish case, NGOs' and lawyers' mediation of refugees in ECtHR applications signals their awareness of political gridlock for domestic resolutions. Moreover, they are aware of the Turkish state's vulnerability to the Court's binding decisions on issue of asylum, which is highly valued by the EU and other international actors like Human Rights Watch, Amnesty International or Council of Europe.

TANs' strategic use of resources is also linked with the concept of "power". TANs do not have power in traditional sense of the word, therefore they must use the power of expertise, information, ideas, and values.[102] In terms of having influence on politics, especially in human rights issues, TANs mostly set into motion the "boomerang" pattern. This pattern of influence is realized usually around issues where governments violate or are not keen to recognize rights and where domestic groups have no participation in domestic political or judicial platforms. Under those circumstances, domestic NGOs may directly pursue international allies in order to bring pressure on the state from outside. Keck and Sikkink state that the main goal of

[101] Sidney Tarrow, *Power in Movement: Social Movements, Collective Action, and Mass Politics in the Modern State* (Cambridge: Cambridge University Press, 1994) cited in Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics,* p. 31.

[102] Keck and Sikkink, p. 16.

this activity is to change behavior of the state.[103] TANs usually use boomerang pattern when there is a "combination of a closed domestic opportunity structure and an open international opportunity structure" and when there is a "lack of responsiveness" in the sense that state is not receptive to their demands.[104]

Considering the case of Turkey, domestic conditions are sufficient for NGOs making international allies. As mentioned in the Introduction, Turkish asylum policy is problematic in terms of detention and deportation processes as well as refugees' access to asylum procedures and asylum legislation is inadequate. Moreover, until very recently state was not inclined to make significant changes in its asylum policy. Although there have been some attempts of regulation like ministerial circulars, problems regarding Turkish asylum policy persisted. Apart from these, ECtHR presents an open international opportunity by virtue of right to individual petition and binding decisions on member states.

TANs' ultimate aim, domestic change, naturally, does not happen very easily or all of a sudden following TANs activities. Risse and Sikkink state that there should be some necessary conditions for domestic change to emerge in human rights area:[105] TANs move the target state's violation of rights or international norms to international arena for the purposes of "moral consciousness-raising". Moreover, they encourage as well as legitimate domestic oppositions' views against norm/right

[103] Ibid., p.12.

[104] Khagram, Sanjeev., Riker, James V., and Sikkink, Kathryn. "From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics." In *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* edited by Sanjeev Khagram, James V. Riker, and Kathryn Sikkink (USA: University of Minnesota Press, 2002), p.19.

[105] Risse, Thomas. and Sikkink, Kathryn. "The Socialization of International Human Rights Norms into Domestic Practises: Introduction." In *The Power of Human Rights: International Norms and Domestic Change* edited by Thoman Risse, Stephen C. Ropp, and Kathryn Sikkink (United Kingdom: Cambridge University Press, 1999), p.5.

violating state. Finally, transnational networking comes into scene as international pressure.

Those three purposes actually constitute the grounds for domestic change according to Risse and Sikkink. Alison Brysk puts emphasis on the second and third purposes mentioned above in a way that those two actually drive the state into a corner in the sense that domestic activists' challenge to the government from *below* is being "informed, sustained, and amplified" by the international pressure from *above*.[106]

In case of Turkey, ECtHR judgments definitely put pressure on the state from above. International pressure on the state is relatively more visible. Besides, international pressure has various sources; ECtHR, EU, as well as NGOs like Amnesty International or HRW. However, pressure on the government from below is not so diversified. That is to say, in Turkey, domestic opposition is performed merely by NGOs and activists, which are already cooperating and operating in the area of asylum. In other words, domestically, there is lack of public opinion and consciousness on asylum policy. Nevertheless, since international pressure includes the Court's power of sanction and relatedly domestic opposition is amplified legally, conditions for domestic change are getting mature in Turkey.

Generally, TANs employ certain tactics for affecting or changing state behavior. Keck and Sikkink distinguish between four different kinds of tactics:

> a) *information politics*, or the ability to move politically usable information quickly and credibly to where it will have the most effect
> b) *symbolic politics*, or the ability to call upon symbols, actions, or stories that make sense of a situation or claim for an audience that is frequently away
> c) *leverage politics*, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence

[106] Alison Brysk, "From Above and Below: Social Movements, the International System, and Human Rights in Argentina," *Comparative Political Studies* 26, No. 3 (1993), p.262.

d) *accountability politics*, or the effort to oblige more powerful actors to act on vaguer policies or principles they formally endorsed.[107]

TANs can use one or combination of those tactics. One essential point for TANs is the linkage of testimonial information with technical and statistical information. Individual cases pave the way for TANs to persuade people to look for policy change.[108] Moreover, for policy change, networks need not only to persuade but also to pressurize more powerful actors. By virtue of leveraging over those powerful actors, weak groups may be influential far beyond their capacity. In terms of leverage, either material –involving money or goods- or moral –"mobilization of shame"- leverage, sometime both of them play role on the target state.[109]

Manners of application of those tactics are significant as well. Regarding the Turkish case, if mediators, namely NGOs, lawyers and activists, between individual refugees and state and the ECtHR can be conceptualized as a TAN, questioning of how those tactics are applied would actually provide answers for how international and domestic pressure is being put on the Turkish government. These tactics therefore are the ways of setting conditions for domestic change.

After application of one or more of those tactics, there also exist certain stages of influence of TANs. Keck and Sikkink list five stages of influence:

(1) issue creation and attention/agenda setting,
(2) influence on discursive positions of states and regional and international organizations,
(3) influence on institutional procedures,
(4) influence on policy change in 'target actors' which may be states, international or regional organizations, or private actors like Nestlé corporation,

[107] Keck and Sikkink, p.16.

[108] Ibid., p.16.

[109] Ibid., p.23.

(5) influence on state behavior.[110]

Although influence of a TAN in any stage of those changes can be seen as the success of those networks, from my point of view, the real success comes in the stages of policy change and accordingly behavior change. However, in the case of ECtHR judgments' effects on Turkish draft asylum law, state behavior cannot be analyzed because the draft law has not passed through the parliament yet. Evaluating the stages of influences within specific characteristic of the Turkish case (impossibility of observing state behavior, namely), influencing state policy appears to be the ultimate success for now. Nonetheless, questions of whether those stages have been realized one by one or whether the effect directly occurred as the stage of policy change are still of importance.

In terms of construction of legal rules, TANs can have different roles during the process. Sikkink states "networks often call attention to an issue by re-interpreting it in such a way that it becomes amenable to legal action."[111] Besides, networks often generate information which would otherwise be unavailable in public debates and which is used for persuading policy-makers to write a new rule or to amend the existing ones. Additionally and importantly, members of a network can take part in the process of drafting a new law. This dimension demonstrates that specific individuals or organizations in networks not only try to influence the policy or behavior but also can take responsibility in the construction of a rule concretely.

Sikkink continues with another way of TANs in order to influence state policy and behavior with reference to international law. As Darren Hawkins

[110] Ibid., p.25.

[111] Kathryn Sikkink, "A Typology of Relations between Social Movements and International Institutions," *Proceedings of the Annual Meeting – American Society of International Law* 97 (April 2-5 2003), p.302.

mentions, pre-existing international norms and rules create new possibilities for networks.[112] Thompson entitles those possibilities as establishment of conditions for holding states accountable in the mere existence of a legal framework.[113] Finally, Sikkink exemplifies certain actions of TANs in terms of those possibilities. In her own words:

> In some cases networks facilitate international litigation by providing legal assistance to victims and by contacting and transporting witnesses, bringing essential information to judges. Networks may also convince more powerful actors to impose bilateral sanctions to enforce international law, either through state-based mechanisms or through international organizations line World Bank. Finally networks of NGOs also help to bring international law at home […][114]

Reconsidering my research question, international law and litigation play central roles in the process of individual effect on state policy. At this point, TANs exploiting new opportunities by virtue of international law attracts attention. Holding state accountable is very crucial; however boomerang pattern and also symbolic testimonial information is critical as much as accountability. Regarding characteristic tactics of TANs and strategic use of resources, refugees' case in Turkey take on a new significance. This significance lies in the perception of ECtHR litigation as a new opportunity for influencing state policy. Domestic conditions in Turkish state for sure have made the advocacy network, which has been built around the issue of asylum and which includes not only domestic and international NGOs but also lawyers as experts on the issue area, notice this opportunity.

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[112] Hawkins, Darren. "Human Rights Norms and Networks in Authoritarian Chile." In *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* edited by Sanjeev Khagram, James V. Riker, and Kathryn Sikkink (USA: University of Minnesota Press, 2002), p.54.

[113] Thompson, Karen Brown. "Women's Rights are Human Rights." In *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* edited by Sanjeev Khagram, James V. Riker, and Kathryn Sikkink (USA: University of Minnesota Press, 2002), p.113.

[114] Sikkink, p.303.

Accordingly, thinking about individual accession to the Court and involvement of third parties into process, advocacy networks may have critical roles. Hence in Turkey NGOs have already built linkages with international NGOs outside Turkey, there is a transnational dimension as well. Regarding the question of resources as Börzel points out, TAN in Turkey around the issue of asylum is very critical as the provider of necessary resources to refugees for their individual application to ECtHR. As Turkish Branches of Helsinki Citizens Assembly (HCA) and Amnesty International (AI) as well as Mazlum-Der present free legal aid for refugees or private lawyers encourage refugees for litigation to the Court, not only NGOs but also individuals generate and share information, international NGOs trying to put this issue on the agenda, specific individual cases are being used as testimonies; operations of a TAN are already being experienced, which is about to succeed to reach domestic change in terms of drafting a new asylum law.

Conclusion

For the purpose of understanding how an individual can affect state policy, conceptualization of the relation between individual and state comes into prominence. As subjects who are of concern for my thesis constitute the most vulnerable group of people in the society, I cannot focus on an ordinary relation between the state and individual. Application of individual level of analysis in IR is crucial since in this way one can recognize the agency of individual behind state policies and behavior. There are many channels to do this. In my thesis I focus on the agency of refugees through litigation to ECtHR which is mediated by NGOs, lawyers, experts, etc.

Litigation offers a new kind of relationship between a refugee and state since by virtue of individual application to a supranational court refugees can now express themselves before the state; even have an effect on formation of the policy. Because of the fact that ECtHR not only deals with the violations in the past but also follows states' practices on the same manner after the judgment, litigation to the Court presents a unique opportunity for taking part in policymaking. Tulkens puts this dimension of the Courts in words as: "A judgment of the European Court of Human Rights is not an end in itself, but a promise of future change, the starting point of a process which should enable rights and freedoms to be made effective."[115]

Moreover, ECtHR's critical role in the case of Turkey in terms of shaping state policy can also be interpreted from the assumption of responsibility. Lambert-Abdelgawad differentiates between three obligations for states in accordance with ECtHR case law. The assumption of responsibility gives rise to three obligations: "the obligation to put an end to the violation, the obligation to make reparation (to eliminate the past consequences of the act contravening international law), and finally the obligation to avoid similar violations (the obligation not to repeat the violation).[116]

Consequently, individual refugee access to the Court as well as Court's ruling on the cases constitutes one step of the effect on state policy. The next step includes perception of the case law that is reflected on the draft asylum law. Nonetheless, TAN has a central role in both steps either as the promoter of individual refugee's agency through supranational litigation or as the participant as well as pressurizing

[115] Tulkens, F. "Execution and Effects of Judgements of the European Court of Human Rights: The Role of The Judiciary." In *Dialogue between Judges* (Council of Europe, Strasbourg, 2006), p.12. Available [online]: http://www.echr.coe.int/NR/rdonlyres/368D4336-5150-4F83-86A1-18957F0F778E/0/Dialogue_between_judges_2006.pdf [13 March 2012]

[116] Elisabeth Lambert-Abdelgawad, *The Execution of Judgments of the European Court of Human Rights* (Strasbourg: Council of Europe Publishing, Human Rights Files No. 19, Second Edition January 2008), p.10.

network before the state in writing of draft asylum law. The grand picture will be drawn starting from individuals' violation of rights therefore litigation to ECtHR, which brings together involvement of TAN into the process, carrying on with the Court's decisions on the cases, and ending up in drafting of new asylum law; that at the end will demonstrate how can an individual refugee change state's policy in international arena.

CHAPTER III

REFUGEES' ACCESS TO EUROPEAN COURT OF HUMAN RIGHTS: TURKISH CASE

Introduction

My research question that "How can an individual, who is a foreign national and in a vulnerable position, affect state policy?" actually embraces two separate but at the same time mutually complementary questions: how could a refugee access the ECtHR and in what ways do the ECtHR decisions shape state policy? Although the main question includes in itself assumption that court decisions are effective on the Turkish draft asylum law, my research in Turkish case actually starts with the questioning of this assumption.

In order to understand the process in which refugees apply to the Court and perception of Court decisions by the writers of the law; I have interviewed officers from Migration and Asylum Bureau under Ministry of Interior, NGO representatives who deal with the issue of asylum, lawyers who are either experts on asylum law or have represented refugees before the ECtHR, former UNHCR officers, and academics who have been active in the preparation of the draft law as well as who have been studying the issue of asylum in Turkey. The interviews were held face to face in Ankara and İstanbul except for those who were abroad. Their interviews were held via e-mail.

It is worth noting that refugees themselves are actually the most important sources of information especially for the court accession part. Yet since Turkey has resettled almost all of the refugees to third countries, it is not possible to reach them. In addition, in line with the confidentiality principle, refugees' lawyers are not able

to share their contact information. Therefore, my research had to be limited to the lawyers of refugees as first witnesses of the process.

The criterion for the sample was not certain therefore my interviews continued as a snowball effect. As I talked to the people who deal with this issue in Turkey, I learnt about more people in international/domestic NGOs or independent lawyers, which were included among my interviewees. Lawyers' and NGO representatives' interviews were mostly respondents to the question of refugees' accession to the ECtHR. On the other hand, UNHCR and Migration and Asylum Bureau officers' and academics' interviews shed light upon the way court decisions have shaped the draft law. Nonetheless, all of the interviewees were asked their opinion on whether they thought the Court really had an impact on the acts of drafters of the draft law, which was the starting point of my research.

Three main arguments came into prominence. According to the interviews, attempt to write a law on the issue of asylum is related with:

i. state officials' emphasis on "values" such as human rights of foreigners
ii. the EU process in which Turkish domestic legislation is being reformed in the light of EU *acquis*
iii. increasing decisions of violations against Turkey by ECtHR

The answers of the interviewees were not surprising in the sense that they were exactly as I expected in accordance with their positions and institutions. Migration and Asylum Bureau personnel strongly argued that the most important motivation behind the new asylum law is the interest of the country; i.e. the fact that Turkey had always needed reforms in this humanitarian and also critical issue. Specific emphasis has been put on awareness and willingness of the Turkish state as recognizing

asylum as a matter that is too important to be dealt with archaic and insufficient regulation.[117]

The role of the EU came to be mentioned as an impact on preparation of a new asylum law by an ex-lawyer of UNHCR[118] and NGO representative[119] in the sense that Turkish state focuses on the issue of asylum law as a part of Chapter 24 Justice, Freedom and Security in membership process. This can lead to view the issue of asylum law as a political step that needs to be taken for the purposes of adopting EU legislation. Those interviewees stated that ECtHR could only be an "additional" factor for Turkish state because it is actually EU accession process that has started reforms on human rights and focused on the lack of an adequate law on asylum, which means that EU has become the main motivation behind draft law. Yet it is worth noting that Oktay Durukan –representative of Helsinki Citizens Assembly Turkish Branch, one of the most effective NGOs in Turkey on the issue of asylum- defines ECtHR as a crucial tool for themselves in their struggle of protecting rights and liberties of refugees against the state.

On the other side of the coin, Salih Efe, a volunteer of Amnesty International and a lawyer who has represented refugees in ECtHR many times, strongly supports the idea that ECtHR became very effective in the process of new asylum law since the state now knows that an international institution keeps a close eye on state's actions and makes it pay for violations when complaints are filed.[120] Volkan Görendağ, director of Amnesty International Refugee Coordinatorship, emphasized

[117] Migration and Asylum Bureau official, interview by author, field notes, Ankara, Turkey, 18 March 2011.
Onur Arıner, interview by author, tape recording, Ankara, Turkey, 26 April 2011.

[118] Nedim Yüca, interview by author, filed notes, Ankara, Turkey, 17 March 2011.

[119] Oktay Durukan, interview by author, field notes, İstanbul, Turkey, 07 March 2011.

[120] Salih Efe, interview by author, tape recording, Ankara, Turkey, 19 March 2011.

sanction power of ECtHR while describing Court as an official pressure over the state.[121] Similarly Salih Efe explained the difference between ECtHR and EU as ECtHR's ability to carry authority to impose sanctions. In other words, ECtHR is argued to be the most important and basic reason behind preparation of draft law since Turkey is a party to the ECHR and the Court has the right to follow whether Turkey abides by its decisions. But on the other hand, Turkey does not have to adopt EU legislation because it is not obligatory, which means EU is not able to apply sanctions on Turkey for not making reforms or passing laws. Therefore as Salih Efe, Volkan Görendağ and Onur Arıner mention, Turkey being party to ECHR and ECtHR following post-decision situation in the country position the Court as a powerful factor shaping the preparation of draft law.[122]

Importantly, Bertan Tokuzlu differentiates between EU's and ECtHR's effects historically. According to him, the EU came to stage as the main factor behind state's interest in issue of asylum especially in the beginning of 2000s. Due to the efforts of adoption of EU *acquis*, EU became as a source of pressure over state in those years. Yet, especially after 2005, ECtHR came to be an important actor. Along with diminish of EU's credibility, increase of court cases can be seen as reasons for rise in importance of ECtHR. Since refugees' cases and the Court's decisions are continual, now ECtHR emerges as a more important source of pressure over state. Particularly concerning *content* of the legislation in Turkey, Bertan Tokuzlu states that the Court is definitely more effective than the EU.[123]

[121] Volkan Görendağ, interview by author, tape recording, Ankara, Turkey, 09 April 2012.

[122] Salih Efe and Onur Arıner, interview by author.

[123] Lami Bertan Tokuzlu, interview by author, tape recording, İstanbul, Turkey, 29 April 2011.

Looking from another perspective, Mahmut Kaçan, a former UNHCR officer and lawyer, put emphasis on the significance of articles of which the Court has found Turkey in violation.[124] According to him, Council of Europe member states are dissatisfied with violations of relatively serious articles of ECHR. Since refugees' cases involve violation of articles like prohibition of torture, right to liberty or effective remedy –which can be considered as core articles of the Convention- Turkish state feels uncomfortable with ECtHR judgments. According to him, this is why the Court has been influential on writing of draft law.

Questioning whether the Court's decisions on compensation for pecuniary and non-pecuniary damage or costs for application constitute additional impact on Turkish state; it would not be wrong to state that compensation decisions do not have any significance in preparation of asylum law. Since the compensation do not constitute a huge amount for the Turkish state (in comparison with the other compensation amounts decided for Turkey in other areas of human rights), the question whether compensation decisions create an economic burden inducing preparation of the law loses its relevance.[125] It became clear that those amounts do not constitute a serious concern for Turkish state, besides the state has got used to pay compensation and also has accepted the reality that Turkey is one of the states that are sentenced most by the Court.[126] Rather than economic dimension, Turkey's

[124] Mahmut Kaçan, interview by author, tape recording, İstanbul, Turkey, 22 April 2012.

[125] Volkan Görendağ, Lami Bertan Tokuzlu, Onur Arıner, and Mahmut Kaçan, interview by author.
Taner Kılıç, interview by author, e-mail, 08 April 2012.
Veysi Roger Turgut, interview by author, tape recording, İstanbul, Turkey, 22 April 2012.
As of June 2012, total amount of compensation in all refugee cases against Turkey is 304,108€ while the compensation for merely *Louizidou v. Turkey* (40/1993/435/514) case just for Article 50 of the ECHR costs 457,087 Cypriot Pounds (around 240,571 US Dollar in 1998), for instance.

[126] "Paramız var çok şükür ödüyoruz onları." Migration and Asylum Bureau official, interview by author.

prestige in international arena especially on human rights issues comes into stage as a more important factor for the state.[127]

It is significant to note that Migration and Asylum Bureau, the institution of which officers have prepared draft asylum law, accepts that ECtHR came into the stage in Turkish context as a crucial indicator of the *necessity* of legal reforms in the area of asylum.[128] Moreover, this bureau has been in contact with and visited the Court in Strasbourg to consult with the Court on draft asylum law; especially on the part dealing with deportations. As Salih Efe strongly emphasized; continual violation decisions on the same articles of ECHR (Article 3, 5, and 13 mostly) in different cases became effective in preparation of the law. On the one hand, the Bureau perceives ECtHR as a tool for strengthening their position in state bureaucracy for supporting draft law's getting through the parliament. In other words, ECtHR is claimed to be an additional motivation behind the law by the Bureau. On the other hand, independent lawyers or NGO representatives view ECtHR as an effective factor shaping the draft law.

At this point, one comes across a very important conceptualization of ECtHR in the sense that the Court is perceived as a tool for both sides; namely Migration and Asylum Bureau on the one hand and refugee rights NGOs or independent lawyers - "advocates for refugee rights"[129] as they call themselves- on the other hand. Migration and Asylum Bureau officers state that ECtHR has become an effective tool for strengthening the argument behind draft law "Turkey really needs to take

[127] Migration and Asylum Bureau official, Onur Arıner, Volkan Görendağ, and Mahmut Kaçan, interview by author.

[128] Migration and Asylum Bureau officials, interview by author.

[129] Oktay Durukan, interview by author.
"Hak savunucuları: Çeşitli STKlar ve avukatlardan oluşan mülteci hakları konusunda çalışan bir grup insan. Mülteci hakları konusunun vücuda gelmesi de denebilir."

action on the issue of asylum" and for constituting a basis for improvement of human rights on especially problematic areas such as detention or deportation.[130] Since Turkish state has always focused on asylum as a matter of security, introduction of a human rights based law is promoted by violation decisions of the Court. Turkish state is now aware of the seriousness of the issue and ECtHR becomes the indicator of the need for taking urgent action. Moreover, ECtHR decisions on Turkey are viewed as important elements that contribute to the recently emergent asylum system in Turkey.[131]

On the other side, ECtHR is seen as a tool for "advocates for refugee rights" for making continual problems or violations which refugees have been experiencing for many years visible both to state and international arena.[132] Salih Efe clearly pointed out that Turkish state has understood the importance of asylum and human rights of refugees by virtue of the persistence of ECtHR violation decisions. While explaining the process of ECtHR applications, he stated that Turkish state did not seek friendly solution domestically so they –as advocates for refugee rights- were solely left with an international solution that is ECtHR. Veysi Roger Turgut, a volunteer of Amnesty International and lawyer of refugees, also stated that since problems could not be resolved within Turkish domestic legal system, they had to apply to the ECtHR.[133] Therefore the Court is instrumentalized for the group called "advocates for refugee rights" –NGOs and individual lawyers- for enabling the group to highlight refugees' problems, to drive state to address the issue in legal and more humanitarian terms and to get involved in the policy formation process.

[130] Onur Arıner, interview by author.

[131] Migration and Asylum Bureau official, interview by author.

[132] Oktay Durukan, Salih Efe, and Veysi Roger Turgut, interview by author.

[133] Veysi Roger Turgut, interview by author.

This instrumentalization of the Court by "advocates for refugee rights" actually brings back my question "How can an individual, who is a foreign national and non-citizen, affect state policy?" into the scene in terms both of understanding the relationship between individual and state and of the process of application to the ECtHR, which will be addressed in the next section of the chapter.

Refugees Access to the Court and Exploiting Legal Opportunities

Given that it is an individual that has to apply directly to the ECtHR; I argue that, in Turkey, individual refugees affect state policy through the rulings of ECtHR cases. Although many authors stress individual activity in process of litigation to supranational courts[134], in case of refugees' application to ECtHR the situation changes. For refugees' applications, "individual" does not have the position of being directly effective on state. This is due to their vulnerable situation as well as lack of relevant information and action capacity. It is true that the possibility of litigation to ECtHR for all living within a party country's borders allows individuals to create "a new space to advance their interests".[135] However, refugees are unable to make use of this opportunity themselves without the intervention of third parties as they simply do not have necessary resources for applying to the Court.

From the interviews, it can be deduced that refugees do not reach lawyers directly for the purposes of applying to the ECtHR. NGOs and independent lawyers –who already represent refugees in UNHCR refugee status determination process-

[134] Börzel 2006, Cichowski 2004 and 2006, Conant 2006, Jacobson and Ruffer 2003, Moravcsik 2000.

[135] Conant, p.78.

provide legal advice and at the end refugees are directed to the Court.[136] Increasing numbers of ECtHR applications, or using ECtHR against Turkish state in better terms, does not come together with refugees' developing consciousness on this issue. It is rather related with the improvement of civil society and with the building of expertise as well as action capacity of NGOs operating in area of asylum in Turkey.[137]

According to Kirişci, "diversified and complex" immigration into Turkey as well as EU membership process have been crucial for non-governmental organizations' involvement in the issue.[138] Similarly, Kale states in her study, NGOs became increasingly involved in the issue of asylum especially in the process of "pre-accession" to the EU.[139] Additionally, in UNHCR's Global Report of 2008, different NGOs' operations on different manners like "community services and legal assistance" are mentioned as activities and assistance in Turkey.[140] Most of my interviewees stated that refugees in Turkey are not aware of their rights therefore they cannot have an aim of applying to courts either domestically or internationally.

[136] Salih Efe, Oktay Durukan, Mahmut Kaçan, Veysi Roger Turgut, and Nedim Yüca, interview by author.

[137] Oktay Durukan and Salih Efe, interview by author.

[138] Kemal Kirişci, "Asylum, Immigration, Irregular Migration and Internally Displacement in Turkey: Institutions and Policies," CARIM Analytic & Synthetic Notes – Political and Social Module (CARIM-AS 2004/03), p.4. Available [online]: http://cadmus.eui.eu/handle/1814/11679 [16 June 2012]

[139] Başak Kale, The Impact of Europeanization on Domestic Policy Structures: Asylum and Refugee Policies in Turkey's Accession Process to the European Union (Ph.D diss., Middle East Technical University, 2005), pp.2-3. Available [online]: http://etd.lib.metu.edu.tr/upload/3/12606927/index.pdf [16 June 2012]

[140] UNHCR. June 2009. *UNHCR Global Report 2008, Turkey,* p.264. Available [online]: http://www.unhcr.org/refworld/docid/4bd800b5b.html [16 June 2012]

It is strongly emphasized that NGOs and lawyers in Turkey have organized the refugees' cases as applications to the ECtHR.[141]

Regarding evolution of NGOs in Turkey, UNHCR's role should also be noted. As Volkan Görendağ stated, before emergence of NGOs operating in area of asylum, UNHCR was the sole institution dealing with the issue.[142] Many NGO representatives have mentioned its efforts for improvement of civil society in this area. UNHCR had been conducting seminars, trainings, and workshops especially in late 1990s, which resulted in interest and development of capacity of different actors in the area.[143] While the first training conference and seminar in 1998 included officials who were in direct contact with asylum seekers and refugees, following training programs included Bar Associations as well.[144] This resulted in interest of different actors in asylum, as mentioned above.

From the beginning of 2000s, NGOs have been involved in the issue more deeply. Taner Kılıç stated that Turkish Branches of Helsinki Citizens Assembly and Amnesty International have also been very effective on the improvement of civil society with their awareness raising works, trainings of lawyers, and sharing of knowledge and experience.[145] Particularly, HCA has been very active in this sense. "[D]eveloping the capacity of local NGOs"[146] has always been one of HCA's Refugee Advocacy and Support Program (RASP)'s aims. Starting with UNHCR's

[141] Volkan Görendağ, Mahmut Kaçan, Veysi Roger Turgut, and Salih Efe, interview by author.

[142] Volkan Görendağ, interview by author.

[143] Ibid.

[144] Kirişci, "UNHCR and Turkey: Cooperating for Improved Implementation of the 1951 Convention relating to the Status of Refugees," p.85.

[145] Taner Kılıç, interview by author.

[146] Helsinki Citizens Assembly. September 2007. *An Evaluation of UNHCR Turkey's Compliance with UNHCR's RSD Procedural Standards.* Available [online]: http://www.hyd.org.tr/?pid=554 [16 June 2012]

efforts in late 1990s and developing by certain NGOs attempts in early 2000s, NGOs dealing with the issue of asylum in Turkey become more active especially in the last 4-5 years. Salih Efe mentioned significance of improving consciousness among both NGOs and lawyers as a result of this dynamism.[147]

It is argued by Oktay Durukan that it was not possible to build capacity before since asylum was not recognized as an "issue". When the state perceived asylum as an important "issue" –by the process of membership to the EU[148]- as well as UNHCR's efforts to raise awareness and improve civil society[149], a field of expertise and capacity developed. This field has been improved by NGOs and lawyers gaining concrete experiences and legal specialization which in time turned into empowerment of those actors in area of asylum.

The representatives[150] of refugees in ECtHR told that they have prepared the cases for the Court, in the sense that when refugees reached them, they did not have such a purpose of applying to the ECtHR. All of those people, who have relations with international as well as domestic NGOs like Turkish Branch of Helsinki Citizens Assembly, Turkish Branch of Amnesty International, and Mazlum-Der; turned the legal aid, which refugees were asking from them, into applications to ECtHR. It can still be argued that "Supranational courts (ECJ and ECHR) are constructing a safety net that extends well beyond the original intentions of member countries and empowers some of the most vulnerable members of society.",[151] but in

[147] Salih Efe, interview by author.

[148] Nedim Yüca and Oktay Durukan, interview by author.

[149] Volkan Görendağ and Taner Kılıç, interview by author.

[150] Lawyers of HCA (Anıt Baba, Sinem Uludağ), Salih Efe, and Veysi Roger Turgut, interview by author.

[151] Conant, p.76.

case of refugees this empowerment is actually utilized by lawyers as well as NGOs. If those lawyers or NGOs representatives were the ones who decided to use refugees' cases as applications to the Court, then the question is re-shaped as "how did refugees manage to reach legal aid/lawyers?"

How refugees reached their legal representatives?

This question of access to lawyers or NGOs has been asked to all of my interviewees. Not surprisingly, state officials do not have information about the process of application to the ECtHR, they solely deal with the post-application developments.[152] On the other side, all of the legal representatives of the refugees gave similar answers and pointed to concrete experiences. Refugees approach to legal representatives through four channels:[153]

i. through an organization or lawyer operating abroad, with the help of relatives or friends of refugees who are already resettled in third countries: the lawyer or organization contacts an NGO in Turkey asking it to deal with the case (for instance cooperation with Iranian Refugee Alliance in New York and Collectif de la Communauté Tunisienne en Europe in Paris).

ii. through human rights associations which operate in Turkey and UNHCR branch and field offices of Turkey: the refugees reach other organizations operating in their location of application for asylum such as Mülteci-Der, Amnesty International, and Human

[152] Migration and Asylum Bureau officials, interview by author.

[153] Oktay Durukan and Salih Efe, interview by author.

Rights Association (HRA) and those organizations direct the case or the refugee to the lawyer, Helsinki Citizens Assembly or Amnesty International. Sometimes, UNHCR directs refugees to NGOs if the refugee is solely in contact with UNHCR.

iii. through friends or relatives of refugees in Turkey: if a friend or relative has heard about HCA and AI or an independent lawyer who works on this issue, she/he advises the refugee to contact them in order to get aid.

iv. through familiarity of the NGO or lawyer within the refugee community: refugee could have seen the logo/name of the NGO and reached them individually or the lawyer could have been the representative of the refugee for refugee status determination (RSD) process in UNHCR before.

It is important to note that in most cases access to legal aid takes place through NGOs. According to Veysi Roger Turgut, there are two reasons for this: first, refugees feel insecure in the society therefore an institution seems more secure for them and secondly, often their economic situation is not good enough to hire an independent lawyer.[154] Under those conditions, NGOs, particularly HCA and AI, which offer free legal aid, become more appropriate for refugees rather than independent lawyers.

As it is mentioned above, all of the representatives of refugees in ECtHR are active members or volunteers of NGOs. Throughout the interviews, I have observed that all of those people know each other and cooperate during the application to the Court. They even see themselves as a group of people who together struggle for the

[154] Veysi Roger Turgut, interview by author.

refugees.[155] Oktay Durukan from HCA named the group of NGOs operating in this field as "advocates for refugee rights".[156] Yet as lawyers also constitute a part of this struggle and participate in cooperation, I will add them into the group and re-conceptualize Oktay Durukan's term "advocates for refugees" as "the group of people, including NGO representatives, refugee rights activists as well as lawyers, which consciously organizes applications to the ECtHR".

Questioning UNHCR's role in organization of applications to the Court, it became clear that as an official international institution UNHCR is not directly involved in this process. Bertan Tokuzlu described the reasons for UNHCR's non-involvement with reference to its position in Turkey. According to him, UNHCR's activity in Turkey is directly linked with its relations with the state. Yet, involvement in ECtHR applications comes to mean taking action against the host or Turkish state. On that account, UNHCR would not want to damage its relations with the state in order to maintain its activities in the country effectively.[157]

From another perspective, Veysi Roger Turgut put emphasis on situations in which UNHCR has taken part in ECtHR cases: only if the case is about a person who has been recognized as a "refugee" by UNHCR but rejected by Turkish authorities, UNHCR involves in the case as the "expert institution".[158] In other words, if the applicant is UNHCR's mandate refugee, UNHCR gets involved in the case. Mahmut Kaçan, as a former UNHCR officer who had contacted *Abdolkhani and Karimnia* in the first instance during detention, stated that UNHCR would not directly involve in

[155] Taner Kılıç, interview by author.
"'Bizim' dediğim, benim de içinde bulunduğumu övünerek düşündüğüm bu alanda çalışan insan hakları örgütleri, avukatlar ve aktivistlerin oluşturduğu bir grubu kastediyorum."

[156] Oktay Durukan, interview by author.

[157] Lami Bertan Tokuzlu interview by author.

[158] Veysi Roger Turgut, interview by author.

applications; however it can direct refugees to NGOs if refugee directly reports a problem merely to UNHCR.[159] Consequently, one can see that UNHCR is not actively involved in refugees' cases in ECtHR unless there is an official or urgent request.

Regarding organization of applications, although number of refugees who manage to reach legal aid constitutes a small number of people, advocates for refugees became successful in turning this small number of cases into an important factor on writing of the draft asylum law. Their success and organization of applications also answer the question "why application to ECtHR increased in the last 2-3 years, but not before?" in the following section.

Why application to ECtHR increased in the last 2-3 years?

While analyzing the Court's decisions, one will see that most violations stem from Turkey's insufficient and problematic tradition of asylum. In other words, violations are actually not specific to cases, but rather point to systematic problems regarding asylum policy of the Turkish state. But then, why refugees' applications to the Court have increased merely in the last 2-3 years while general problems about the issue of asylum in Turkey had been continuing for many years. Emergence of the group of people "advocates fore refugees" indeed signals reasons behind increase in the Court applications.

As it has been mentioned before, a field of expertise, capacity, and information was founded in which NGOs continued to develop on issue of asylum. Although NGOs have become more active in the field of asylum in Turkey, their

[159] Mahmut Kaçan, interview by author.

numbers are still not many. Yet, in time, their efficiency increased disproportionately to their number. There are some well-known NGOs operating in this area: Turkish Branch of HCA, Turkish Branch of AI, Mazlum-Der (İnsan Hakları ve Mazlumlar için Dayanışma Derneği – Association of Human Rights and Solidarity for Oppressed People), Mülteci-Der (Mültecilerle Dayanışma Derneği – Association for Solidarity with Refugees), SGDD (Sığınmacı ve Göçmenlerle Dayanışma Derneği – Association for Solidarity with Asylum Seekers and Migrants, ASAM), İKGV (İnsan Kaynağını Geliştirme Vakfı – Human Resource Development Foundation), İHAD (İnsan Hakları Araştırmaları Derneği – Human Rights Research Association), İHOP (İnsan Hakları Ortak Platformu – Human Rights Joint Platform), etc. There are also charity organizations whose small branches focus on refugees like Kimse Yok Mu? and İHH (İnsan Hak ve Hürriyetleri İnsani Yardım Vakfı – The Foundation for Human Rights and Freedoms and Humanitarian Relief). Additionally, UNHCR and IOM come into prominence as important international institutions, which cooperate with as well as encourage those NGOs. On UNHCR's official website, under specific page of Turkey, it is stated that in 2012

> UNHCR will also seek to encourage more active involvement by NGOs by providing them with training and playing a catalytic role in helping national partners develop projects, while linking them to funding opportunities.[160]

Moreover, IOM Turkey's activities for migrants and refugees is summarized as

> IOM Turkey supports NGOs, other international humanitarian organizations and the Government of Turkey in seeking to establish and maintain a sustainable system for enabling the voluntary return of stranded and irregular migrants and rejected asylum seekers.[161]

[160] UNHCR website, country page of Turkey: http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48e0fa7f&submit=GO [01 April 2012]

[161] IOM website, country page of Turkey: http://www.iom.int/jahia/Jahia/turkey [01 April 2012]

As it is seen, NGOs dealing with the issue of asylum in Turkey is actually less than a dozen. Throughout my study, it became clear that employees in those NGOs know each other and work in cooperation. Those NGOs are informally divided into categories according to their spheres of specialization. One can apparently see that different NGOs operate in peculiar areas with collaboration and guidance of refugees if necessary. For instance, HCA mostly deals with provision of legal aid while ASAM and İKGV are mostly active in satellite cities where they are engaged in daily needs of refugees such as health care, accommodation, education, and employment. Volkan Görendağ stated that there has to be cooperation and division of workload between organizations for successfully dealing with the issue.[162] Accordingly, Ayşegül Balta argues in her thesis that there is an unofficial division of labor among NGOs in Turkey.[163]

From this unofficial division of labor, one can deduce that NGOs, along with having comprehensive knowledge of asylum in general, focus on different aspects of the issue. This results not only in all-inclusive care of asylum but also in emergence of specialized agencies on distinct matters. Actually, this specialization corresponds with the increase of ECtHR applications. As mentioned before, HCA comes to the forefront as the organization, which mostly deals with applications to the Court.[164] Oktay Durukan, Volkan Görendağ, Mahmut Kaçan, and Taner Kılıç explained reasons behind timing of the applications to ECtHR as the result of organizations building capacities on country of origin information (coi), international asylum law,

[162] Volkan Görendağ, interview by author.

[163] Ayşegül Balta, The role of NGOs in the asylum system in Turkey: beyond intermediation (master's thesis, Sabancı University, 2010).

[164] Oktay Durukan, interview by author.

domestic asylum legislation and implementation, refugee rights, and translation.[165] Since it is not easy to develop expertise and capacity on those manners, ECtHR was not seen as a way of exploiting legal opportunities in the past.

During my research, I realized a chain of events in the sense that each development in the area of asylum brings about new situations. UNHCR's efforts in especially 1990s and EU related international funds[166] came up with the result of growth of civil society operating in the field. NGOs cooperation and specialization on different matters led in time to build capacity and expertise. All of those developments constituted rings of a chain, which ends up with the emergence of a group of people called "advocates for refugee rights". Since advocates for refugee rights have become empowered by their expertise as well as by their networking, ECtHR has recently been an instrument for them.

This explains the reason why ECtHR applications increased in the last 2-3 years. Time was needed in order to build capacity and expertise and domestic conditions in Turkey were mature for emergence of such a group. When I question the process of application to the Court, I merely come across with the activities of this group, advocates for refugee rights. When one gets into the details of emergence of advocates for refugee rights and their instrumentalization of ECtHR, it becomes clear that this is a group which operates consciously both in domestic and in international arena. I conceptualize advocates for refugee rights as a "transnational advocacy network (TAN)" as a result of the analysis of their activity and ways of their self-organization. In the next section, I will explain why advocates for refugee rights are conceptualized as a TAN and how they operate as a TAN.

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[165] Ibid.

[166] Lami Bertan Tokuzlu, interview by author.

"Advocates for Refugee Rights"
as a Transnational Advocacy Network

From the moment that refugees reach "advocates for refugee rights", individual's relationship with the state goes one step further in the sense that advocates for refugee rights carry the refugees' cases to the ECtHR. At this point, as mentioned above, advocates for refugee rights become the mediator not only between the state and refugee but also between the Court and the refugee. Although supranational courts are discussed to pave the way for participation of social groups or individuals into policymaking process, access to the Court is of utmost significance as the first step for exploiting legal opportunities.

As I have emphasized in the previous sections, possessing court access comes into prominence as the main issue. This is because of the fact that my subjects are non-citizens/foreigners in Turkey and as refugees constitute the most vulnerable and weakest group in the society. As Börzel points out "possessing court access and necessary resources to use it" is a significant point for the argument of individual participation in politics, in policy reform etc. According to Börzel's argument, two criteria play role in the ability to exploit legal opportunities: first is the court access and second is the action capacity.[167]

The first criterion is already fulfilled for refugees in terms of individual application to the ECtHR as a Convention right. As ratification of ECHR demands that states protect convention rights of all those living within their borders regardless of citizenship status,[168] refugees become capable of litigation against Turkey in the

[167] Börzel, pp.129-130.

[168] ECHR, ARTICLE 1
"Obligation to respect human rights

Court. Although "how they manage this" remains as an important point, there is no inhibiting factor for individual application to the Court at least on paper. As I have discussed earlier, refugees have court access through advocates for refugee rights. In any case, individual refugee still reveals his/her agency in the process of reaching advocates for refugee rights.

Regarding Börzel's second criterion, refugees certainly have difficulties in gaining action capacity. At this point "advocates for refugee rights" comes into the stage as the group of people who provide legal assistance, information, expertise and even financial facilities for refugees to exploit legal opportunities. One can also see different examples of such interventions into Court application processes in different countries. Buchinger and Steinkellner state that "in some country cases a litigation strategy for the promotion and protection of fundamental rights of this specific vulnerable group [immigrants and asylum seekers] appears much more evident than in others."[169]

For instance, very similar to the case in Turkey, Austria presents a better well-grounded example of litigation:

> [Netzwerk Asylanwalt] is network of NGOs and individual legal experts and lawyers offering free legal aid to asylum seekers in individual proceedings, and aims at eliciting leading decisions that improve the situation for a larger group of affected people. It tries to regularly take asylum-related cases to the ECtHR and create a certain level of strategic litigation in this area.[170]

In the Turkish case, ECtHR is recognized as an effective tool for "advocates for refugee rights" –who actually enable refugees to exploit legal opportunities and then use this opportunity to demand and influence policy reform. Individual litigants, i.e.

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

[169] Buchinger and Steinkellner, p.429.

[170] Ibid., pp.430-31.

refugees, stay as the ones who start the whole process of application to ECtHR, yet "advocates for refugee rights" are actually the ones who exploit the legal opportunities in the name of refugees. As in the case of Austria, there exists a strategic litigation in Turkey, which is led by advocates for refugee rights as a network of NGOs, lawyers, and activists.

At this point, the actor changes in my thesis. At first, refugee comes into scene as the agent who reached advocates for refugee rights and started the procedure of application to the Court. Yet from the moment an individual reaches this group on, their agency disappears because of the lack of action capacity. Thus advocates for refugee rights come to the front as the community that produces information, legal assistance, and expertise on this issue. In other words, advocates for refugee rights become the new actor who represent the refugees and instrumentalize the Court for being able to be included in the policy reform. One should acknowledge that advocates for refugee rights prepare refugees' cases with a certain purpose, involve in "strategic litigation" in Buchinger and Steinkellner's words[171], and also operate within a transnational network composed of both domestic and international NGOs as well as of lawyers, experts, activists.

Domestically, establishment of MHK (Mülteci Hakları Koordinasyonu – Refugee Rights Coordination) in 2010 with five members[172] is a clear and concrete example of cooperation among NGOs dealing with asylum. Internationally, as HCA representative Oktay Durukan stated, "Iranian Refugee Alliance" (IRA) in New York and "Collectif de la Communauté Tunisienne en Europe" (CCTE) in Paris are the

[171] Ibid., p.429.

[172] Refugee Rights Coordination, http://www.multecihaklari.org/index.php?option=com_content&view=frontpage&Itemid=100 Members are: Turkish Branch of HCA, HRA –İnsan Hakları Derneği/Human Rights Association, HRAA –İnsan Hakları Gündemi Derneği/Human Rights Agenda Association, Mülteci-Der, and AI Turkish Branch.

two most important international NGOs with which domestic NGOs cooperate.[173] Those organizations not only share information but also have been involved in ECtHR process as the representatives of applicant refugees in crucial cases.[174] Advocates for refugee rights constitute transnational linkages not only in the process of application to the Court, but also in terms of generation and sharing of information. Human Rights Watch, Amnesty International and European Council on Refugees and Exiles (ECRE) for instance are important transnational institutions for advocates for refugee rights for generation of information. Not only domestic information on refugees' situation in Turkey but also information on recent developments and different country studies in international arena are shared reciprocally. For instance, Mülteci-Der is involved in providing relevant data for ECRE for international reports on refugees. Significantly, members of advocates for refugee rights share common values, ideas, and objectives, which can shortly be defined as improvement of refugees' rights and situation.[175] From this perspective, in Turkey, advocates fore refugee rights set a good example of a transnational advocacy network.

Keck and Sikkink simply define TANs as networks composed of activists whose distinctiveness stem from "the centrality of principled ideas or values in motivating their formation".[176] NGOs, foundations, media and social movements can be members of those networks. Advocates for refugee rights, constituted of NGOs,

[173] Oktay Durukan, interview by author.

[174] IRA was representative in *Abdolkhani and Karimnia v. Turkey* (Application No. 30471/08**,** September 2009), *Tehrani and Others v. Turkey* (Application No. 32940/08, 41626/08, 4316/08**,** April 2010), and *Moghaddas v. Turkey* (Application No. 46134/08, May 2011).
CCTE was representative in *Dbouba v. Turkey* (Application No. 15916/09, July 2010).

[175] Oktay Durukan, Salih Efe, and Taner Kılıç, interview by author.

[176] Keck and Sikkink, p.1.

activists, and lawyers, exactly form a TAN in this sense that they have shared values and purposes. If one remembers characteristics of issues around which TANs appear most, it becomes clear that issue of asylum in Turkey is more than convenient for emergence of a TAN. Activists perceive the issue of asylum in Turkey as an area where they can advance their ideas or values via networking. According to my interviews, shared ideas and values in this case completely point to refugees' rights and amelioration of their conditions in the country. Networking is also crucial for advocates for refugee rights since they not only raise awareness but also get into contact with refugees through their both domestic and international networks.

Since the ultimate goal of TANs is to change state behavior,[177] they strategically resort to variety of resources to participate in and to have an influence on national and international politics. When one considers advocates for refugee rights, ECtHR comes into stage as a legal and supranational source, which enables this TAN to effect state policy of Turkey. Moreover, as advocates for refugee rights organize applications to the Court in the name of refugees, one can see the strategic use of those cases in order to reach their ultimate goal.

Actually, application to ECtHR by advocates for refugee rights is an outstanding example for "boomerang pattern", which is a characteristic tool of TANs. TANs resort to this pattern when governments are not likely to recognize rights or stop violations and when domestic infrastructure does not let those groups to give voice to their ideas, values or demands.[178] In those cases, international allies are found in order to pressurize state from outside. Advocates for refugee rights' application to the Court clearly shows that they aim to bring international pressure on

[177] Ibid., p.2.

[178] Ibid., p.12.

the Turkish state. Salih Efe and Veysi Roger Turgut stated that since the state had not taken them seriously before and could not find resolution for the conflicts, they had to use ECHR and ECtHR against Turkish state because of ECtHR's sanction power.[179] Oktay Durukan added that now state gets reactions from international arena about its own behavior.[180] Those claims result in the perception of ECtHR as an international ally that puts pressure on Turkey to take measures against violations, which is totally in line with the purpose of advocates for refugee rights.

As a result of instrumentalization of the Court by the advocates for refugee rights, the story of asylum policy reform in the case of Turkey involves different actors and different layers. Individual refugee is still the agent who has started the whole procedure; however advocates for refugee rights become the actor of application process. Moreover, as layers, there is the Turkish state on the one hand and ECtHR as a supranational court over the state on the other. Since Turkish state did not provide domestic resolution to the problems that refugees face in Turkey, such as deportation, detention, and remedy, advocates for refugee rights have taken ECtHR as an international ally. Refugees' cases, which are opened in the Court by advocates for refugee rights, transmit the issue of asylum and problems of Turkish asylum system, to the international arena. ECtHR judgments become the source of international pressure that is being put upon the Turkish state. Significantly, this pressure has been effective on preparation and content of draft asylum law. The figure below demonstrates actors and layers of asylum policy reform in Turkey:

[179] Salih Efe and Veysi Roger Turgut, interview by author.

[180] Oktay Durukan, interview by author.

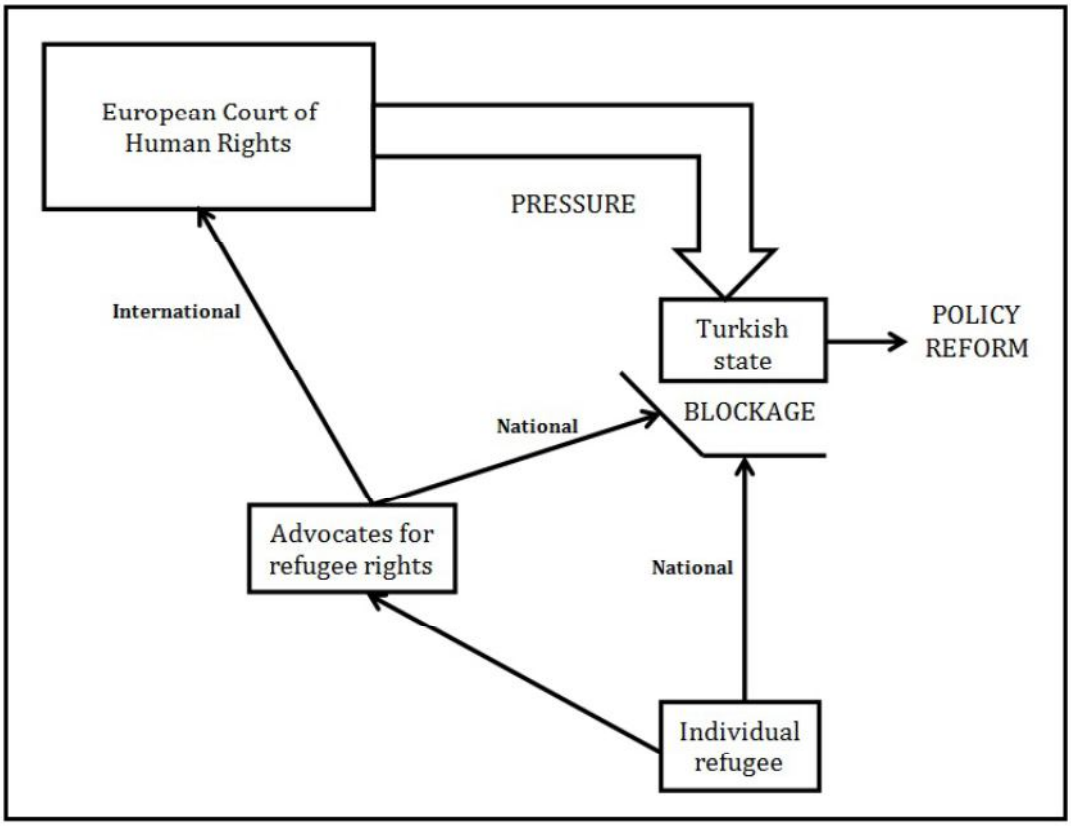

Figure: Actors and layers of asylum policy reform in Turkey.

In accordance with Risse and Sikkink's argument that domestic change would not come naturally unless there are certain conditions,[181] advocates for refugee rights also try to actualize those conditions for change. Rise and Sikkink count those conditions as raising moral consciousness and international pressure through transnational networking as well as encouraging other domestic oppositions against the state on the same issue.[182] Although there is no domestic opposition similar to advocates for refugee rights in Turkey, they move Turkey's violations of refugee rights to the international arena through cooperating with other international

[181] Risse and Sikkink p.5.

[182] Ibid., p.5.

institutions like UNHCR, HRW, ECRE, and Amnesty International.[183] In this way, the ground for domestic change in Turkey is being prepared.

When it comes to the tactics of TANs to influence state policy, one can see that advocates for refugee rights mainly use three of the four tactics that Keck and Sikkink list: "information politics, symbolic politics, leverage politics, accountability politics".[184] Out of those four tactics, advocates for refugee rights in Turkey exercise *information politics* and *leverage politics* in a widespread manner. In terms of *symbolic politics,* two symbolic events, namely death of Festus Okey and deportation of Uzbek refugees, can be regarded as instances. *Accountability politics* has become possible only recently with Migration and Asylum Bureau's developing discourse on human rights. I will exemplify their activities under each tactic by deducing from the interviews as well as by keeping up with their activities via media:

i. information politics: As generation and distribution of information is very crucial for advocacy networks, advocates for refugee rights, as well, take advantage of having expertise on the issue of asylum and information about current lives of refugees in Turkey. Information politics is simply about bringing information about the issue into view where it would politically be effective.[185] Provision of information "that would not otherwise be available, from the sources that might not otherwise be heard"[186] is actually TANs particularity.

Transnationally, advocates for refugee rights provide information for institutions such as HRW and ECRE. By virtue of sharing domestic information with

[183] Volkan Görendağ and Taner Kılıç, interview by author.

[184] Keck and Sikkink, p.16.

[185] Ibid., p.18.

[186] Ibid., p.18.

international organizations and NGOs, advocates for refugee rights make situation of refugee in Turkey visible in the international arena. For instance, in a very recent report of ECRE and ELENA, information on application to ECtHR by refugees against Turkey for interim measures to prevent deportation is provided by Mülteci-Der.[187]

Domestically, advocates for refugee rights draw attention to violations that refugees face in Turkey through media channels. Although one cannot come across news or publications about refugees in the mainstream media frequently, NGOs in this network usually post news or information on their own websites as well as on other alternative news agencies in Turkey.[188] World Refugee Day, 20 June, seems as an important date on which attention is drawn on the situation of refugees.[189] Each year on the 20 June advocates for refugee rights issue a press statement not only about World Refugee Day's activities but also about recent situation of refugees in Turkey.[190]

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[187] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Research on ECHR Rule 39 Interim Measure,* April 2012. Available [online]: http://www.ecre.org/component/content/article/56-ecre-actions/272-ecre-research-on-rule-39-interim-measures.html [05 June 2012]

[188] See for example, Bianet. 19 May 2010. *Türkiye'deki Sığınmacı İranlı Gazeteciler ve Aktivistler Zor Durumda*. Available [online]: http://bianet.org/bianet/toplum/122117-turkiyedeki-siginmaci-iranli-gazeteciler-ve-aktivistler-zor-durumda [10 June 2012]
Ömer Faruk Gergerlioğlu, "Sığınmacı Mahnaz Fooladchang'ı Ölüme Terk Etmemeliyiz." Available [online]: http://omerfarukgergerlioglu.blogcu.com/siginmaci-mahnaz-fooladchang-i-olume-terk-etmemeliyiz/5052966 or http://www.mazlumder.org/haber_detay.asp?haberID=4900 [22 June 2012]

[189] Radikal. 15 June 2010. *Mülteciler kendilerine adanan güne sorunları çözülmemiş olarak giriyor*. Available [online]: http://www.radikal.com.tr/Radikal.aspx?aType=HaberYazdir&ArticleID=1002563 [20 May 2012]
Sivil Toplum Akademisi. *Mülteciyim, Yüreğimden Başka Sığınacak Yerim Yok*. Available [online]: http://www.siviltoplumakademisi.org.tr/index.php?option=com_content&view=article&id=804:multeciyim-siginacak-yer-yok-&catid=44:son-haberler&Itemid=118 [20 May 2012]

[190] Helsinki Yurttaşlar Derneği. 22 June 2010. *20 Haziran Mülteci Günü-Mülteci Hakları Koordinasyonu Basın Açıklaması.* Available [online]: http://www.hyd.org.tr/?pid=810 [20 May 2012]
Mülteci Hakları Koordinasyonu. 18 June 2011. *20 Haziran Dünya Mülteciler Günü Basın Açıklaması*. Available [online]: http://www.multecihaklari.org/index.php?option=com_content&view=article&id=173:20-hazran-duenya-mueltecler-guenue-basin-aciklamasi&catid=47:basn-acklamalar&Itemid=150 [20 May 2012]

Concerning information politics, NGOs in advocacy network play the main role. In addition to their informative and critical reports; speeches and seminars in which their representatives participate as well as interviews contribute to development of information and awareness.[191] Significantly, as one can see from those information flows, not only facts are given but also testimonies are provided. In this way, "stories told by people whose lives have been affected"[192] attract attention in the purpose of informing and persuading people.

> For information politics to be remarkable, Keck and Sikkink state that
>
> An effective frame must show that a given state of affairs is neither natural nor accidental, identify the responsible party or parties and propose credible solutions. These aims require clear, powerful messages that appeal to shared principles […][193]

In line with their argument, activities of advocates for refugee rights can be evaluated as functional since in each report, interview or post, state, together with its apparatuses, is being identified as the responsible party for violations that refugees face in Turkey. Moreover, advocates for refugee rights clarify reasons behind those violations or state actions as the result of state's security based approach on asylum as well as insufficiency of Turkish asylum policy in both legal and practical terms.

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[191] Mazlum-Der. *UAÖ: Türkiye'de Mülteci Olmak Haklarından Mahrum Kalmak Demek.* Available [online]: http://www.mazlumder.org/haber_detay.asp?haberID=5658 [20 May 2012]
Mülteci.tv. 27 January 2012. *2011'de Sığınma Hakkı 429 Olayda İhlal Edildi.* Available [online]: http://www.multeci.tv/Article.aspx?PageID=595 [20 May 2012]
Uluslararası Af Örgütü. 8 November 2010. *Volkan Görendağ ile Türkiye'de Mültecilerin Durumu Üzerine Söyleşi.* Available [online]: http://www.amnesty.org.tr/ai/node/1537 [20 May 2012]
Multeci.net. 06 April 2008. *Helsinki Yurttaşlar Derneği ile Röportaj*. Available [online]: http://www.multeci.net/index.php?option=com_content&view=article&id=102%3Ahelsinki-yurttalar-dernei-ile-roeportaj-i&catid=41%3Aroportaj&Itemid=50 [20 May 2012]
Multeci.net. *Mülteci-Der ile Röportaj*. Available [online]: http://www.multeci.net/index.php?option=com_content&view=article&id=105%3Amuelteci-der-ile-roeportaj&catid=41%3Aroportaj&Itemid=29 [20 May 2012]

[192] Keck and Sikkink, p.19.

[193] Ibid., p.19.

By providing incognita information, advocates for refugee rights consciously try to raise awareness and reach a broader audience. At the same time they aim to point to Turkish state as the main responsible party for the problems of refugees as well as violation of their human rights.

ii. symbolic politics: As I have mentioned above, two important events had symbolic significance for both advocates for refugee rights and refugees in Turkey. Those events were the death of Festus Okey in Beyoğlu Police Department and deportation of Uzbek asylum seekers from Turkey twice.[194] Symbolic events can sometimes be more effective both on the target state and on the society. Keck and Sikkink describe the logic behind symbolic politics as:

> Activists frame issues by identifying and providing convincing explanations for powerful symbolic events, which in turn become catalysts for the growth of networks. Symbolic interpretation is part of the process of persuasion by which networks create awareness and expand their constituencies.[195]

Death of Festus Okey, actually, had become a symbol for treatment of refugees in Turkey and state's attitudes toward the issue in case of violations or such crisis. On 20 August 2007, Festus Okey was taken to Beyoğlu Police Department due to lack of his identity card with his friend. On the same day, during custody, Festus Okey was shot by a police officer in the Department, but the Police announced that to be an accident. Festus Okey died in Taksim Eğitim Hastanesi on the same day during surgery.

The case of Festus Okey lasted for many years, one of the reasons of which was the identity problem. Although Festus Okey had applied for asylum in Turkey,

[194] Salih Efe and Volkan Görendağ, interview by author.

[195] Keck and Sikkink, p.22.

the Court wanted from Nigeria to confirm his identity. On 13 December 2011, the police officer was sentenced to prison for reckless homicide for 4 years 2 months.[196] In the meantime, not only advocates for refugee rights but also international NGOs and institutions became engaged in the case. Göçmen Dayanışma Ağı (Migration Solidarity Network) has been the most visible actor among the others dealing with the issue. Actually, identity problem was resolved by NGOs' considerable efforts for bringing Festus' relatives to Turkey for confirming Festus' identity.

Death of Festus Okey and after the police's statements as well as course of the lawsuit became the "catalyst", in Keck and Sikkink's words. Advocates for refugee rights continued to issue press statements frequently while mainstream media also dealt with the case.[197] In the press statement of HCA immediately after Festus Okey's death, one can directly see the symbolic significance of the case:

> Türkiye Cumhuriyeti devleti, toprakları üzerinde bulunan herkesin can güvenliğini sağlamakla yükümlüyken, kendi ülkesinden tam da bu nedenle kaçmış bir sığınmacının, bir devlet kurumu binasında, bir devlet görevlisi tarafından öldürülmüş olmasını, bırakın Türkiye'nin taraf olduğu anlaşmaları, Türkiye Cumhuriyeti devleti açısından oldukça vahim olarak görüyoruz. Bu duruma bir de bir sığınmacının, görevi güvenliği sağlamak olan bir emniyet

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[196] CNNTürk. 13 December 2011. *Festus Okey Davasında Karar Çıktı.* Available [online]: http://www.cnnturk.com/2011/turkiye/12/13/festus.okey.davasinda.karar.cikti/640317.0/index.html [05 May 2012]

[197] See for instance; Helsinki Yurttaşlar Derneği. 29 August 2007. *HYD Basın Açıklaması.* Available [online]: http://www.hyd.org.tr/?pid=514 [05 May 2012]
Radikal. 14 October 2007. *Mültecinin Sesi Duyuluyor Mu?*. Available [online]: http://www.radikal.com.tr/Radikal.aspx?aType=HaberYazdir&ArticleID=875488 [05 May 2012]
Mülteci.tv. 14 December 2011. *Avukatlar Festus Okey Davası için Toplandı*. Available [online]: http://www.multeci.tv/Article.aspx?PageID=243 [05 May 2012]
Ntvmsnbc. 23 December 2011. *Festus Okey Böyle Vuruldu.* Available [online]: http://www.ntvmsnbc.com/id/25308604/ [05 May 2012]
Milliyet. 22 December 2011. *Ölüme Giden 19 Dakika*. Available [online]: http://gundem.milliyet.com.tr/olume-giden-19-dakika/gundem/gundemdetay/22.12.2011/1478885/default.htm [05 May 2012]
Bianet. 14 February 2008. *Sanık Polisin Avukatı 'Festus Okey Belki Terörist' Dedi, Dava Ertelendi*. Available [online]: http://bianet.org/bianet/siyaset/104888-sanik-polisin-avukati-festus-okey-belki-terorist-dedi-dava-ertelendi [05 May 2012]
Uluslararası Af Örgütü. 22 July 2011. *Festus Okey Kim?*. Available [online]: http://www.amnesty.org.tr/ai/node/1723 [05 May 2012]
Göçmen Dayanışma Ağı. 27 January 2011. *Basın Açıklaması*. Available [online]: http://gocmendayanisma.org/blog/ [05 May 2012]

> yetkilisi tarafından, emniyet binasında öldürülmesi eklenince ciddi endişe duyuyoruz.[198]

Moreover, İHOP (Human Rights Joint Platform)'s report on the case of Festus Okey includes judicial criticisms on lawsuit. By analyzing the defense of the police, report reifies the attitudes of officers toward Festus Okey from which İHOP makes general conclusions regarding police's treatment of refugees:

> Festus Okey davası, kamu görevlilerinin önyargılı ve ayrımcı yaklaşımlarına ilişkin kanıtları da bünyesinde barındıran bir davadır. 'Siyah', 'zenci' ve 'doğulular'ın bazı polislerce nasıl potansiyel suçlu olarak görüldüğünü göstermektedir. 1951 tarihli Sığınanların Statüsüne İlişkin Cenevre Sözleşmelerindeki ayrımcılık yasağına karşın teninin rengi nedeniyle bazı insanların nasıl ayrımcı muameleye maruz kaldığını da göstermektedir.[199]

Since a state officer whose duty is to ensure safety killed an asylum seeker who seeks protection from Turkish state, this incident became the figure for criticizing the state with respect to the treatment of refugees as well as on Turkey's honoring international conventions. Thomas Hammarberg stresses the issue of impunity in the instance of Festus Okey case while questioning justice in Turkey.[200] Human Rights

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[198] Helsinki Yurttaşlar Derneği. 29 August 2007. *Basın Açıklaması*. Available [online]: http://www.hyd.org.tr/?pid=514 [06 May 2012]
"While Turkish Republic is responsible for protection security of live of everyone within its territory, an asylum seeker, who has escaped from country of origin due to lack of security of life, being killed in a state institution by a state officer is a desperate situation not only from the perspective of international conventions of which Turkey is a party but also for the Turkish Republic itself. Additionally, we are seriously concerned about the situation that an asylum seeker being killed by a law enforcement authority, whose duty is to ensure safety, in a police building." (Author's translation)

[199] İnsan Hakları Ortak Platformu. 05 May 2011. *Festus Okey Davası Gözlem Raporu.* p. 11-12. Available [online]: http://www.amnesty.org.tr/ai/system/files/Festus_Okey_Dava_Gozlem_Raporu_IHOP.pdf [06 May 2012]
"The case of Festus Okey includes evidence of prejudices and discriminative attitudes of public officials. It demonstrates how "black", "negro" and "eastern" people are seen as potential criminals by some police officers. It also shows how people are being discriminated due to their skin color despite prohibition of discrimination in 1951 Geneva Convention Relating to the Status of Refugees." (Author's translation)

[200] Council of Europe, Report by Thomas Hammarberg-Commissioner for Human Rights, *Administration of Justice and Protection of Human Rights in Turkey*, 10.01.2012, p.14.

Watch in its report "Closing Ranks against Accountability" criticizes the issue from the perspective of accountability in terms of covering police violence. Putting emphasis on Festus Okey's lost shirt as well as on lack of camera footage HRW states that

> Violence by law enforcement officials in Turkey and the conduct of seriously flawed investigations of such allegations are long standing problems and apparently remain entrenched. In general, cases of police violence—ranging from ill-treatment and torture to shootings—still result in a low rate of criminal prosecution.[201]

As one can see, death of Festus Okey has been a very significant figure in terms of demonstrating the police's treatment towards refugees as well as state's passivity for taking measures against such treatments. Advocates for refugee rights, actually, became successful in informing society on this incident and more importantly in drawing attention of other international actors, which also criticized Turkey. Advocates for refugee rights tried to create awareness that unpleasant treatments toward refugees had been continuing and death of Festus Okey had been the final straw.

Another symbolic event for advocates for refugee rights is deportation of 22 Uzbek refugees twice in a one-month recess.[202] This group of refugees was composed of 25 people from different families, including women and children. Out of those 25 people, 22 were recognized as "refugee" by UNHCR and cases of two

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Available [online]: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2005423&SecMode=1&DocId=1842380&Usage=2 [30 April 2012]

[201] Human Rights Watch, *Turkey, Closing Ranks against Accountability: Barriers to Tackling Police Violence in Turkey* (December 2008), pp.9-10. Available [online]: http://www.hrw.org/sites/default/files/reports/turkey1208webwcover.pdf

[202] Salih Efe and Volkan Görendağ, interview by author.

were pending at the time.[203] First deportation took place on 12 September 2008 when 22 refugees were taken to Police Department in Van by claiming to be provided stationery and food aid. Yet they were deported to the mountain region that separates Turkey from Iran.[204] After 10 days, refugees managed to arrive in Turkey illegally.

On 11 October 2008, same refugees were taken from their home by force by the police in Van. Although NGOs tried to reach those people, they could not find their place and on 13 October 2008, UNHCR announced that these refugees had been deported to Iran once more.[205] Advocates for refugee rights issued press statements claiming that deportation was unlawful and Turkey violated principle of *non-refoulement.*[206] This incident became the symbol for drawing attention to continual deportation of refugees from Turkey as well as violation of the principle of *non-refoulement*. As it is the case with death of Festus Okey, deportation of Uzbek refugees twice signaled the limits of deportation in Turkey. Advocates for refugee rights also used testimonies of refugees while trying to inform and create awareness

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[203] Ortak Basın Açıklaması; Uluslararası Af Örgütü Türkiye Şubesi (UAÖ), Helsinki Yurttaşlar Derneği (HYD), İnsan Haklari ve Mazlumlar için Dayanışma Derneği (Mazlum-Der), İnsan Hakları Derneği (İHD), Mültecilerle Dayanışma Derneği (Mülteci-Der), İnsani Yardım Vakfı (İHH), İnsan Hakları Gündemi Derneği (İHGD). 16 October 2008. *22 Özbek Mülteci Van Emniyeti Tarafından Hukuka Aykırı Bir Şekilde İran'a Sınırdışı Edildi*. p. 2. Available [online]: http://www.rightsagenda.org/index.php?view=article&catid=35%3Atakma2008basacik&id=53%3Atakma22-oezbek-muelteci-van-emniyeti-tarafndan-hukuka-aykr-bir-ekilde-rana-snrd-edildi&format=pdf&option=com_content&Itemid=53 [30 April 2012]

[204]Ibid., p.2.

[205] Mülteci-Der. 08 February 2009. *Özbek Mülteciler Olayı*. Available [online]: http://www.multeci.org.tr/?p=268 [25 April 2012]

[206] İnsan Hakları Araştırmaları Derneği. February 2009. *Türkiye, İltica ve Sığınma Hakkı, 2008 İzleme Raporu*. Available [online]: http://www.ihad.org.tr/rapor-08.php [25 April 2012]
Mazlum-Der, İstanbul Şubesi. 16 October 2008. *Mültecilerin Haklarına Saygı Gösterilmelidir*. Available [online]: http://www.mazlumderistanbul.org/default.asp?sayfa=faaliyet_detay&faaliyet=93 [25 April 2012]

in society.[207] In this way, the event was materialized and society was enabled to hear the story from people who experienced it, which is an effective tool of TANs.

Deportation of Uzbek refugees attracted attention of international organizations as well. Thomas Hammarberg mentioned this incident as an example of increasing forcible returns from Turkey with a risk of human rights violations in countries of origin.[208] U.S. Committee for Refugees and Migrants also put emphasis on deportation of those people in World Refugee Survey 2009.[209] Turkey is criticized for deporting Uzbeks despite of UNHCR's request for temporary asylum due to likelihood of *refoulement* if they returned to Iran.[210] Moreover, Refugee Council cites HCA's reports on forcibly returns of refugees while at the same time refers to deportation of Uzbek refugees in spite of risk of *refoulement.* Regarding reports of *refoulement,* the Council concludes that "Those refugees who are allowed to remain in Turkey are not necessarily safe."[211]

Safety of refugees and Turkish state's deportation of refugees frequently are two significant issues to which advocates for refugee rights point. Uzbek refugees'

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[207] İnsan Hakları Derneği/MazlumDer. 28 September 2008. *Sınırdışı Edilen Özbek Mülteciler Raporu*. Available [online]: http://www.madde14.org/index.php?title=%C4%B0HD/MazlumDer_-_S%C4%B1n%C4%B1rd%C4%B1%C5%9F%C4%B1_Edilen_%C3%96zbek_M%C3%BClteciler_Raporu
[25 April 2012]

[208] Council of Europe: Commissioner for Human Rights, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June - 3 July 2009. Issue reviewed: Human rights of asylum seekers and refugees*, 1 October 2009, CommDH (2009) 31, p.9. Available [online]: http://www.unhcr.org/refworld/docid/4ac459e90.html [12 June 2012]

[209] United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 - Turkey*, 17 June 2009. Available [online]: http://www.unhcr.org/refworld/docid/4a40d2b480.html [22 March 2012]

[210] Ibid.

[211] Refugee Council Online. 2008. *Turkey Refugees*. Available [online]: http://www.refugeecouncil.org.uk/policy/position/2008/remotecontrols/turkey_images [22 March 2012]

case presents that even they have refugee status recognized by UNHCR and some of them filed deportation stay with the ECtHR, state could still deport them without considering principle of *non-refoulement.* Advocates for refugee rights symbolize this incident as an indicator of Turkish state's insufficient governance of the issue as well as a call for public to be involved in such instances by stating that:

> Oysa burada söz konusu olan 'insan'dır. Tabiiyeti, dili, dini, ırkı, cinsiyeti önemsenmeden sırf insan oldukları için sığınmacı, mülteci ya da kaçak yollarla geçmeye çalışan insanların asgari insani imkânlardan yararlandırılması gerekmektedir. Maalesef ülkemizin bu konuda yaptıkları yetersizdir. [...] Duyarlı kamuoyu bundan sonra bu sığınmacıların durumu ile ilgili olarak takipçi olmalıdır. Çünkü işbu raporun açıklanmasından sonra sığınmacıların durumu daha bir kritik hal alacaktır. Özellikle tekrar sınır dışı edilme riskine karşı sahiplenici bir tutum takınılmalıdır.[212]

Although in Turkey one can find different instances of issues such as police's treatment or deportation, those two events had become symbols for demonstrating the level of seriousness and severeness. Advocates for refugee rights together with international organizations or NGOs issued press statements in which they successfully identified responsible party as Turkish state and criticized insufficient policy in Turkey. Moreover, by symbolization of those two incidents, not only the mainstream media but also society built awareness on the issue, at least to some extent.

[212] İnsan Hakları Derneği/MazlumDer. *Sınırdışı Edilen Özbek Mülteciler Raporu.*
"However it is 'human being' in question here. Regardless of their nationality, language, religion, race, gender; asylum seekers, refugees or people who are trying to arrive in the country illegally, should be able to benefit from minimum humanistic opportunities for the reason of being a human alone. Unfortunately, our country's activities are insufficient on this matter. [...] Responsive public should be follower of asylum seekers' situation from now on because asylum seekers' situation will be more critique after announcement of this report. Particularly, against the risk of being deported again there must be an appropriative approach." (Author's translation)

iii. leverage politics: For analyzing ECtHR's decisions' effect on draft asylum law in Turkey, advocates for refugee rights' usage of leverage politics is of utmost significance. Leverage politics is directly linked with TANs concern for policy change:

> In order to bring about policy change, networks need to pressure and persuade more powerful actors. To gain influence the networks seek leverage over more powerful actors. By leveraging more powerful institutions, weak groups gain influence far beyond their ability to influence state practices directly.[213]

In case of Turkey, powerful actor over which advocates for refugee rights seek leverage appears as the ECtHR. As Anagnostou states TANs can be composed of NGOs, which mobilize ECHR norms "as a part of their political strategy" and transmit "relevant legal expertise, political skills, and advocacy work".[214] Salih Efe describes, sanction power of the Court makes it much more powerful than other actors such as the EU.[215] Moreover, since Turkish state did not lend itself to reform asylum policy or to solve problems in domestic legal system, advocates for refugee rights had to resort to the Court as a more powerful actor over the state.[216] Advocates for refugee rights' attempt to bring leverage over the state for domestic change is evident in their joint press statement issued immediately after ECtHR *Abdolkhani and Karimnia v. Turkey* (September 2009) judgment. In this press release, NGOs refer to the case as an indicator of the radical need to change asylum legislation and implementation in Turkey.[217] Moreover, Ministry of Interior is directly called to take

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[213] Keck and Sikkink, p.23.

[214] Anagnostou, p.736.

[215] Salih Efe, interview by author.

[216] Salih Efe, Veysi Roger Turgut, Taner Kılıç, Mahmut Kaçan, and Oktay Durukan, interview by author.

[217] Ortak Basın Açıklaması (Joint Press Statement); Helsinki Citizens Assembly, İHD, İHGD, Mazlum-Der, Mülteci-Der, and Amnesty International Turkish Branch. 23 September 2009. *AİHM*

action on this issue: "İçişleri Bakanlığı'nın AİHM'in bu kararına cevaben, mevzuat ve uygulama ile ilgili çeşitli iyileştirmelere gitmesinin kaçınılmaz olduğuna inanıyoruz."[218]

All in all, increasing cooperation and organized applications to the Court, relatedly increasing violation decisions, turn the Court into a continual power or pressure over the state. Therefore ECtHR comes into scene as the source of leverage over target state, Turkey in this case. What is crucial about the ECtHR is its combination of "material" and "moral" leverage, which ends up in gaining strength of advocates for refugee rights as well as in success in pressurizing the state.

Keck and Sikkink distinguish between "material" and "moral" leverage both of which are significant strategic elements for networks. *Material leverage* is relating the issue with goods or money.[219] In case of draft asylum law, peculiar or non-peculiar compensation decisions of the ECtHR constitute the material side of pressure. Although compensation does not seem as an important factor on state for my interviewees from Migration and Asylum Bureau,[220] Court's decision for compensation for just satisfaction makes state bureaucracy to reconsider the issue.[221]

This goes in line with TANs efforts to change state's understanding of national interest. In other words, TANs seek to modify state's calculations of cost and benefit of particular policies.[222] In case of Turkey, ECtHR's compensation

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Kararı Türkiye İltica Sisteminin İyileştirilmesi için Fırsat Olmalıdır. Available [online]: http://www.hyd.org.tr/?pid=760 [15 June 2012]

[218] Ibid.
"We believe that it is inevitable for Ministry of Interior to take amendatory actions on legislation and implementation as a response to ECtHR's judgment." (Author's translation)

[219] Keck and Sikkink, p.23.

[220] Migration and Asylum Bureau officials, interview by author.

[221] Lami Bertan Tokuzlu, Nedim Yüca, and Volkan Görendağ, interview by author.

[222] Keck and Sikkink, p.203.

decisions alter state's calculations of cost and benefit regarding asylum policy. It becomes clear that costs increase as state continue with existing policy and behavior. Thus, the issue becomes a part of state's agenda by virtue of material leverage. As Keck and Sikkink state, relating the issue with something of value strengthens TANs' information and symbolic politics.[223] Similarly, in case of Turkey, material leverage reinforced activities of advocates for refugee rights in terms of attracting attention of the main media in the country.[224]

As the Court decided on compensation, on the one side, state came to understand that a supranational body follows its actions and make it pay for just satisfaction of applicants. On the other side, advocates for refugee rights understood that they acquired a powerful international ally in their struggle to affect state asylum policy in Turkey. Therefore, it can be concluded that material leverage constituted a secondary effect on state by making the issue negotiable, but a reinforcing one on advocates for refugee rights.

Moral leverage is described as "'mobilization of shame' where the behavior of target actors is held up to the light of international scrutiny".[225] According to Keck and Sikkink, assumption that positive opinions of other actors are significant for governments is the reason behind TANs' utilization of moral leverage.[226] In case of Turkey, advocates for refugee rights gaining ECtHR as an international and more

[223] Ibid., p.23.

[224] See for instance Ntvmsnbc. 22 September 2009. *AİHM'den Türkiye'ye İranlı Mülteci Cezası.* Available [online]: http://www.ntvmsnbc.com/id/25002668/ [10 June 2012]
Sabah. 21 January 2010. *AİHM'den 20 bin Euro Tazminat Cezası*. Available [online]: http://www.sabah.com.tr/Gundem/2010/01/21/aihmden_20_bin_euro_tazminat_cezasi [10 June 2012]
Milliyet. 23 September 2009. *AİHM'den Türkiye'ye İranlı iki sığınmacı için 40 bin euro ceza*. Available [online]: http://gundem.milliyet.com.tr/aihm-den-turkiye-ye-iranli-iki-siginmaci-icin----bin-euro-ceza/guncel/gundemdetay/23.09.2009/1142093/default.htm [10 June 2012]

[225] Keck and Sikkink, p.23.

[226] Ibid., p.23.

powerful ally applies an epitomic kind of leverage politics. Since they are aware of the fact that applications to the Court will result in violation decisions especially after leading case of *Abdolkhani and Karimnia* (September 2009),[227] advocates for refugee rights' usage of the Court comes into stage as strategic mobilization of shame. For Court's decisions are binding for Turkey, one can think of mobilization in legal terms as well.

Literally, in this case not only mobilization but also revealing of shame attracts attention. As ECtHR is a supranational body over many member parties and both domestic and international NGOs, institutions, etc. are interested in violation decisions of the Court, shame is also revealed to international arena. In other words, application to Court directly brings about mobilization of shame and this is automatically moved to the international arena. Becoming celebrated with violations in international arena gives rise concerns about *prestige*. As an official from Migration and Asylum Bureau states, Turkish state cares about its prestige about human rights in country more than amount of compensation decisions.[228] Onur Arıner, Volkan Görendağ, Salih Efe, and Mahmut Kaçan also emphasized that ECtHR judgments cause loss of prestige for Turkey since the state holds a criminal record of violation of ECHR articles.[229] Prestige of a state is additionally related with raising status in the international system. Therefore, Turkey's concern with prestige discloses an important feature of the state in terms of application of leverage politics, which is vulnerability.

[227] *Abdolkhani and Karimnia v. Turkey* (Application n. 30471/08, September 2009).

[228] Migration and Asylum Bureau official, interview by author.

[229] Onur Arıner, Volkan Görendağ, Salih Efe, and Mahmut Kaçan, interview by author.

Vulnerability comes into prominence as an important characteristic of the target state in order leverage politics to be successful. Target actor should be vulnerable to material inducement or sanctions as well as sensitive to pressure from outside. According to Keck and Sikkink vulnerability has two roots: "availability of leverage and target's sensitivity to leverage".[230] In case of Turkey, in addition to concerns about prestige, sensitivity to leverage comes into prominence since source of leverage is supranational and has sanction power on state. Looking from another perspective, advocates for refugee rights have made an ally so strategic that Turkey has inevitably and automatically become vulnerable to leverage. In other words, Turkey is vulnerable to the ECtHR due to its membership to the Council of Europe.

Consequently, concerning actor characteristics, Turkey is seen as a target actor which is available for leverage politics. Turkey's vulnerability arises from its sensitivity to prestige in the international arena and to binding decisions of the Court. At this point, one should acknowledge achievement of advocates for refugee rights since their instrumentalization of ECtHR as an application of leverage politics directly corresponds with vulnerable points of Turkey.

iv. accountability politics: TANs seek to create opportunities from public statements of target actors to make them accountable for their discourse. In other words, if state's actions and statements do not correspond with each other, TANs make use of this contrast for purposes of holding state accountable. Keck and Sikkink describe accountability politics as:

> Once a government has publicly committed itself to a principle –for example, in favor of human rights or democracy- networks can use those positions, and their command of information, to expose the distance between discourse and

[230] Keck and Sikkink, p.29.

> practice. This is embarrassing to many governments, which may try to save face by closing that distance.[231]

In case of Turkey, regarding the gap between discourse and practice, accountability politics is less effective than other tactics of TANs since Turkish state has only recently started to construct discourse on issue of asylum. In other words, discourse of state on asylum has recently been built on human rights therefore has recently become a tool of accountability politics for advocates for refugee rights. Establishment of Migration and Asylum Bureau under Ministry of Interior in 2008 is of utmost significant in this sense since officers from the Bureau refer to human rights aspect of issue of asylum and motivation to raise values for the sake of country very frequently.[232]

One important aspect of accountability politics for advocates for refugee rights is 1951 Convention Relating the Status of Refugees and 1967 New York Protocol. Being a drafter and a party to those conventions, especially principle of *non-refoulement,* presents an area where Turkey could be held accountable. As it was the case with deportation of Uzbek refugees, advocates for refugee rights try to make deportation issue heard not only by the society but also through the international arena. *Non-refoulement* is the most problematic principle for Turkey since refugees frequently face forcibly returns or deportations. Advocates for refugee rights issue press statements and international NGOs issue announcements or letters to the government criticizing deportation or forcibly return which could violate *non-refoulement* as well as Article 3 of ECHR.[233] Regarding *non-refoulement*,

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[231] Ibid., p.24.

[232] Migration and Asylum Bureau officials and Onur Arıner, interview by author.

[233] See for example:

government actually creates distance between discourse and practice itself which enables activists to use this distance as an opportunity.

However, deportation has been the mere area of accountability until very recently. As mentioned above, other areas for accountability politics such as fundamental rights of refugees or human rights-based policy reforms has recently been available. Discourse of Migration and Asylum Bureau is totally in line with improving conditions of refugees in light of human rights and Turkey has got into a reform process with this Bureau. Therefore, accountability politics seems to be an important tactic in future as state discourse on issue of asylum improves.

Conclusion

Although my research question "How can an individual, who is a foreign national and in a vulnerable position, affect state policy?" includes in itself the assumption that ECtHR decisions have effect on draft asylum law, the first step in my research has been questioning whether Court decisions concretely do have impact on law. All of my interviewees agreed upon the Court having influence on writing of the draft asylum law, yet on different layers: While officers from Migration and Asylum Bureau referred to the Court decisions as an additional motivation for writing law,

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Joint Press Statement; Amnesty International-Turkey and Helsinki Citizens Assembly. 24 March 2010. *Illegal Deportation Of Asylum Seekers In Turkey Must Stop*. Available [online]: http://www.hyd.org.tr/?pid=510 [30 May 2012]
World Bulletin. 24 March 2010. *Turkey to build "deportation centers" for refugees*. Available [online]: http://www.worldbulletin.net/?aType=haberYazdir&ArticleID=55930&tip= [30 May 2012]
Amnesty International. 14 October 2008. *Turkey expels refugees for second time*. Available [online]: http://www.amnesty.org/en/news-and-updates/news/turkey-expels-refugees-second-time-20081014 [30 May 2012]
Today's Zaman. 18 April 2010. *Between Asylum and Protection Refugees in Turkey*. Available [online]: http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=207715 [30 May 2012]
Mazlum-Der. 13 August 2008. *Filistinli Mülteci İslam H.M. Asayla'nın sınır dışı işlemleri durdurulmalıdır.* Available [online]: http://www.mazlumder.org/yazdir.asp?haber=6932 [30 May 2012]

lawyers of refugees strongly claimed that ECtHR violation decisions made state to take action.

In any case, the Court is perceived as a significant actor by both sides. In other words, lawyers and NGO representatives see ECtHR as an instrument for expressing their interests against state while Migration and Asylum Bureau conceptualizes the Court as a sponsor for their reform process. Officials from Migration and Asylum Bureau state that ECtHR judgments constitute a fruitful ground for convincing lawmakers to accept the draft law. Here one can see instrumentalization of the Court from different perspectives. Regarding refugees' effect on state policy, instrumentalization of ECtHR by lawyers, NGO representatives or activists is obtrusive. At this point those people become mediators between not only state and refugees but also ECtHR and refugees.

Oktay Durukan from HCA calls this group of activists of refugee rights "advocates for refugee rights"[234] to which I include lawyers of refugees and re-conceptualize it as the "group of people who have expertise on the issue of asylum, share common values on refugee rights, and have the aim of changing asylum policy in Turkey". Advocates for refugee rights are of utmost significance in terms of organizing refugees' cases as application to the ECtHR. As refugees constituting the most vulnerable group of people in the society therefore lacking action capacity, advocates for refugee rights come into scene as supplier of capacity due to their specialization and expertise as well as to their purpose of having effect on state policy. Although right to individual petition paves the way for refugees' application to the Court, action capacity to exploit this legal opportunity is missing; therefore is fulfilled by advocates for refugee rights.

[234] Oktay Durukan, interview by author.

Accordingly, actor changes from the moment refugees reach advocates for refugee rights on. Refugees still perform their agency while getting into contact with lawyers or NGOs. Networks among refugees, relatives, and recognition level of a certain NGO or international NGOs in relation with domestic NGOs in Turkey play critical roles in bringing refugees together with their legal representatives. Advocates for refugee rights can be seen emergent as a result of improvement of civil society and expertise on refuges rights, different manners of asylum or international law. Building such capacity is time-consuming so this explains why ECtHR applications were not seen as opportunities for having influence on state policy before 2-3 years.

From this perspective, with respect to their self-organization, networking among international NGOs or institutions, strategies as well as actions, advocates for refugee rights constitute a transnational advocacy network in Turkey. As a TAN, advocates for refugee rights have shared values and principles as well as share the purpose of changing state policy on asylum. For this purpose, advocates for refugee rights use tactics of TANs that are described by Keck and Sikkink: "information politics, symbolic politics, leverage politics, accountability politics".[235]

Although four types of tactics are utilized more or less by advocates for refugee rights, utilization of leverage politics is outstanding. ECtHR constitutes the source of leverage as a more powerful and supranational body over Turkish state. Moreover, since Turkey is a party to ECHR, decisions of ECtHR are binding. Besides, increasing violation decisions of the Court bring about concern with prestige of the country on international arena. Therefore Turkey becomes vulnerable to leverage, which is a crucial characteristic for the success of leverage politics. As it has been mentioned, ultimate aim of TANs is to change state policy and behavior. In

[235] Keck and Sikkink, p.16.

case of Turkey, ECtHR as a source of both material and moral leverage is the most important aspect for advocates for refugee rights for this purpose.

The key here is to understand the impact that individual refugee has on policy reform as an impact mediated through advocates for refugees who are able to exploit ECtHR as a legal opportunity because of their expertise and capacity and also because of the prestige that the Court enjoys over the state. Therefore, analyzing how successful advocates for refugee rights have been is actually analysis of draft law's articles in comparison with ECtHR decisions. In the next chapter, a concrete analysis of the effect of ECtHR violation decisions on state policy is presented.

CHAPTER IV

COURT EFFECT AND DRAFT OF "FOREIGNERS AND INTERNATIONAL PROTECTION LAW"

Introduction

As refugees' application to the ECtHR came into the picture as strategic litigations of advocates for refugee rights, analysis of the Court's effect is actually analysis of success of advocates for refugee rights' in their aim of influencing and changing state policy. Therefore, question, "In what way ECtHR decisions affect draft asylum law in Turkey?" brings about analysis of the success of advocates for refugees. In other words, if the Court has had influences on the law, one should acknowledge advocates for refugee rights' part in this. It is also important to acknowledge that making ECtHR an international ally all started with individual refugees' reaching NGOs and lawyers, which reveals the agency of individual at that point. As a TAN, advocates for refugees operate with a shared aim, which is changing state policy and behavior. Writing of a new asylum law, that has many differences from the existing asylum legislation, definitely calls for policy change in Turkey.

According to Keck and Sikkink there are certain conditions under which human rights networks become successful. Those are: existence of domestic human rights NGOs, foreign governments –being informed by domestic NGOs- placing pressure on target state, vulnerability of target state that is availability of leverage, combination of moral and material pressure, and lastly internalization of norms of human rights regime.[236] In case of Turkey, one can see most of those conditions exist. As mentioned in the previous chapter; domestic NGOs are actually constituents

[236] Ibid., pp.116-118.

of the network, Turkish state is available for leverage, ECtHR combines moral and material pressure over the state, and state's –writers of the law- discourse is shaped through the will of improving human rights of refugees in Turkey.

Naturally, change does not come easily under those conditions. There are stages of effects of TANs. Keck and Sikkink define those stages as:

> 1) framing debates and getting issues on the agenda;
> 2) encouraging discursive commitments from states and other policy actors;
> 3) causing procedural change at the international and domestic level;
> 4) affecting policy; and
> 5) influencing behavior changes in target actors.[237]

As it is seen, change in behavior of state is the final stage. Distinguishing between change in policy and change in behavior is striking since states do not always behave in accordance with their policies. Policies are abstract while behaviors are thought to be implemented versions of those policies. Yet they do not necessarily coincide with each other in real world. Therefore, if the state does not behave in conformity with policies, policy change becomes meaningless. In case of Turkey, writing of a new asylum law proves change in policy. However, for being able to observe Turkish state's behaviors, one should wait for the law getting through the parliament. Thus, in this study, I will be dealing with the change in policy, as the asylum law has not yet been adopted by the parliament.

Nonetheless, change in policy is a huge success of advocates for refugees in Turkey that never had a specific law on asylum. Moreover, in present-day conditions, since the draft law has not got through the parliament yet, change in state policy is seen as the ultimate success. It is impossible to judge whether state behavior changes without having draft law passed through the parliament. Although advocates for refugees have been performing different tactics as information or symbolic politics, it

[237] Ibid., p.201.

is their application of leverage politics as strategic litigation to ECtHR that brings about the success. I think information and symbolic politics are much more effective first 2-3 stages of influences of TANs, namely influences as agenda setting or encouraging discursive commitments. But on the other hand, strategic litigation to ECtHR as leverage politics had the last word on pressuring the state and actualizing the conditions for change in Turkey.

In this regard, ECtHR is momentous from two perspectives. Firstly, due to institutional characteristics of the Court, Turkish state faces some kind of pressure that is different from any NGO, IO, or foreign government's pressure. Secondly, because of rights it offers, even the most vulnerable segments of society can have the possibility to have an effect on state policy. Individual agency is recognized through this process against the state. Those two characteristics are combined in case of strategic litigation of refugees' human rights violations in Turkey.

At this point, history of relation between Turkey and the Court, institutional characteristics of the Court, and refugees' litigation to the Court come to the front, which will be mentioned in detail in the following sections. After understanding functional cruciality of the ECtHR, analyzing effect of violation decisions on the asylum law will be more meaningful, that will be the last section of this chapter.

ECtHR: Institutional Features

ECtHR was founded in 1959 with the purpose of ruling on applications of states about violations of human rights announced in the European Convention on Human Rights, which was signed on 4 November 1950 and entered into force in 1953.[238] With Protocol No. 11 to the Convention coming into force in 1998, the Court became a full-time court and states' recognition of individual petition right became obligatory.[239]

ECtHR decisions are binding for the member states. As a judge from Turkey state, although those judgments aim to ameliorate human rights conditions in member states, this is not simply an ethical commitment of states to execute the Court's decisions due to being a party to the Convention.[240] In other words, binding nature of ECtHR judgments is unequivocally set in the Convention. Article 46 of the Convention clearly sets the binding force of Court judgments:

> ARTICLE 46:
> Binding force and execution of judgments
> 1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.[241]

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[238] European Court of Human Rights. *The Court in Brief*. Available [online]: http://www.echr.coe.int/NR/rdonlyres/DF074FE4-96C2-4384-BFF6-404AAF5BC585/0/Brochure_en_bref_EN.pdf [20 April 2012]

[239] Ibid.

[240] Akkan, "Avrupa İnsan Haklari Mahkemesi Kararlarının Bağlayıcılığı ve Yerine Getirilmesi."

[241] European Convention on Human Rights, Article 46:
"Binding force and execution of judgments
1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled

The Article includes not only binding nature of Court judgments but also procedural details if a member state refuses to abide by the decision. As it seen from Article 46, Committee of Ministers (the Committee or CM hereafter), constituting two main bodies of Council of Europe with Parliamentary Assembly, is responsible for execution of the Court's decisions in this system. Committee of Ministers is the "organ which both provides the impetus for and supervises proper execution of European [Court of Human Rights] judgments."[242] States should inform the Committee of Ministers regarding the measures it has taken for execution of the Court's decision. The Committee holds execution of the decision on agenda unless the state provides a satisfactory result. The Committee together with its own secretariat and particular body of Department for the Execution of Judgments conducts quarterly "Committee Human Rights meetings" in order to be able to examine execution of Court decisions.[243]

In those meetings, supervision by the Committee is done in accordance with sections, which coincide with different layers of execution in each case. Those sections are "final resolutions, new cases, just satisfaction, cases raising special questions, supervision of general measures already announced, and cases presented with a view to the preparation of a draft final resolution".[244] In the light of the

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to sit on the committee, refer to the Court the question whether that Party has failed to fulfill its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

[242] Lambert-Abdelgawad, p.33.

[243] Akkan, "Avrupa İnsan Haklari Mahkemesi Kararlarının Bağlayıcılığı ve Yerine Getirilmesi."

[244] "Section 1. Final Resolutions i.e. cases where Final Resolution, putting an end to the examination of the case, is proposed for adoption.
Section 2 New Cases examined for the first time.
Section 3 Just Satisfaction i.e. where CM has not received or verified yet the written confirmation of the full compliance with the payment obligations stemming from the judgment.

examination of the cases, if the Committee understands that the state does not execute the judgment of the Court, two different tools of the CM can be applied on that state. Those tools are "adoption of interim resolutions" and "application of Article 8 of the Statute of the Council of Europe". Interim resolutions can take different forms like "simple, public, and official finding of non-execution" in order to invite the state to take measures; commenting "directly on possible means of complying with the judgment" in order to encourage the state to take measure in the future; and only exceptionally threatening the state with serious measures.[245] On the other hand, Application of Article 8 is much more powerful and threatening than those resolutions. However, this tool has never been used in reality. It is exclusion from the Council of Europe if the state unconditionally rejects execution of a judgment.[246]

Section 4 *Cases* Raising Special Questions i.e. cases where the CM is examining questions of individual measures or questions relating to scope, extent or efficiency of general measures
Section 5 Supervision of General Measures already Announced i.e. cases not raising any outstanding issue as regards individual measures and where the adoption well identified general measures is under way
Section 6 Cases Presented with a View to The Preparation of a Draft Final Resolution i.e. cases where information provided indicates that all required execution measures have been adopted and whose examination is therefore in principle ended, pending the preparation and adoption of a Final Resolution."
Council of Europe, Committee of Ministers. April 2009. *Supervision of the Execution of Judgments of the European Court of Human Rights* (Second Annual Report 2008), p. 29.
Available [online]:
http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2008_en.pdf [10 May 2012]

[245] Lambert-Abdelgawad, pp.40-41.

[246] Ibid., pp.44-45.
"Article 8 of the Statute of the Council of Europe: Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.
Article 3: Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.
Article 7: Any member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so. Such withdrawal shall take effect at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year. If the

As it is seen, execution of ECtHR's judgments is very crucial for the Council of Europe. Therefore CM's supervisory role is of utmost significance for states. In principle, the Court does not impose specific measures that need to be taken. In other words, the Court does not force the state to take a certain measure in a certain way. It is member state's own decision of *how* to end existing violations and avoid similar violations. However, in recent years the Court has been directing states by its jurisprudence on cases where measures are limited or violations could not be ended otherwise.[247] Consequently, ECtHR judgments as well contribute to define duties or obligations of states under ECHR. That is to say, the Court has recently started to guide member states for ending and avoiding violations. Regarding taking measures for ending and avoiding violation or achieving *restitutio in integrum,*[248] states' obligations draw attention. Merrills characterizes the Convention in relation with obligations of states:

> […] the Convention is mainly concerned not with what a state must do, but with what it must not do; that is, with its obligation to refrain from interfering with the individual's rights. Nevertheless, utilizing the principle of effectiveness, the Court has held that even in respect of provisions which do not expressly create a positive obligation, there may sometimes be a duty to act in a particular way.[249]

In other words, although most of the rights guaranteed under the Convention refer to negative obligations, some of those rights may call for interference of state in order

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notification is given in the last three months of the financial year, it shall take effect at the end of the next financial year."
http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=001&CL=ENG

[247] Akkan, "Avrupa İnsan Hakları Mahkemesi Kararlarının Bağlayıcılığı ve Yerine Getirilmesi."

[248] *restitutio in integrum:* restoration of an injured party to the situation which would have prevailed had no injury been sustained; restoration to the original or pre-contractual position.
http://oxforddictionaries.com/definition/restitutio+in+integrum

[249] J. G. Merrills, *The Development of International Law by the European Court of Human Rights* (Manchester: MUP, 1993), p.103 cited in Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (North America: Hart Publishing, 2004), p.3.

to prevent, stop or avoid violation. According to Starmer, such positive obligations are "the hallmark of European Convention on Human Rights, and mark it out from other human rights instruments […]"[250] Since "passive non-interference" in Mowbray's words, does not ensure that Conventional rights of individuals are respected, positive obligations of states ask signatories to be "active in the guaranteeing of Convention rights".[251]

Shue goes one step further and argues that even if they seem negative, every basic right contains within itself three types of duties: "duties to *avoid* depriving, duties to *protect* from deprivation, duties to *aid* the deprived"[252] Therefore it is actually positive obligations of states that ensure individual's rights are being respected. If there is violation of those rights, Court decisions not only publish this violation but also ask for states to fulfill its obligations. Regarding refugees' cases in the ECtHR, states' positive obligations come to prominence in terms of need for state interference to ensure fully and effectively exercise of rights of those individuals of a vulnerable group.

In case of Turkey, ECtHR's violation decisions in refugees' cases mostly stem from Turkish state's deficiency in guaranteeing Convention rights of refugees. This means Turkey does not do its duty or does it insufficiently which ends up violation of refugees' rights. Draft asylum law includes positive obligations of Turkish state in order to guarantee protection of refugees' Conventional rights. This

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[250] K. Starmer, *European Human Rights Law* (London: Legal Action Group, 1999), ch. 5 cited in Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights,* p.5.

[251] Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights,* p.221.

[252] H. Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton, NJ: Princeton University Press, 1980, reprinted in Second Edition in 1996), pp.52-53 cited in Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights,* p.223.

will be mentioned in the section of analysis of draft law in relation with ECtHR judgments.

ECtHR and Refugees

As it has been mentioned in the Theoretical Framework, marginalized individuals and minorities have been applying to the Court. Refugees belong to this group. From mid-1990s onwards, petitions by immigrants and refugees to the Court and in response judicial interpretation of different articles of the Convention regarding those people have increased.[253] Anagnostou summarizes the situation:

> Either alone or on behalf of a community, individuals from such groups have appealed to Convention provisions to formulate compelling claims that arise out of particular national conditions, distortions or gaps in domestic frames of rights protection, and to promote a variety of demands *vis-à-vis* states.[254]

Scholars importantly acknowledge that application to the ECtHR by marginalized individuals and minorities and improvement of judicial interpretation of Convention rights over violations those people experience was "neither intended nor anticipated by the original architects of the Convention system."[255] Although the Convention does not have specific articles about the legal position of foreigners within a country regarding property rights, free movement or right to asylum; scope of fundamental rights and freedoms set in the Convention as well as in the Protocols have been expanded by virtue of ECtHR rulings.

Guiraudon states that jurisdiction of ECtHR focuses on specific areas regarding protection of rights of aliens. She attributes this to "increasing returns" of

[253] Anagnostou, p.722.

[254] Ibid., p.722.

[255] Anagnostou and Millns, p.395.

litigation, in the sense that lawyers manifold cases on a certain ground on which success was earned in the Court before.[256] This can be deduced from the situation that many different cases against different states mostly include claims under same articles and the Court has similar rulings on those cases.[257] Articles relevant to refugees' cases mostly are Article 2 (right to life), 3 (right to freedom from torture or inhuman or degrading treatment or punishment), 4 (prohibition of slavery or servitude), 5 (right to liberty and security), 6 (right to fair trial), 7 (no punishment without law), 8 (right to respect for private and family life), 9 (right to freedom of thought, conscience, and religion), 11 (right to freedom of assembly and association), 14 (prohibition of discrimination), and 16 (preventing parties from imposing restrictions on political activities of aliens regarding Articles 10, 11, and 14) of the Convention together with certain articles of Protocols like Article 4 (prohibition of collective expulsion of aliens) of Protocol No. 4 and Articles 1 (procedural safeguards relating to expulsion of aliens), 3 (compensation for wrongful conviction), and 4 (right not to be tried or punished twice) of Protocol No. 7.[258]

Same argument is admissible for the case of Turkey as well. Cases of refugees are mostly concentrated over violation claims of certain articles and Court decisions go in line with those claims in the sense that rulings are very similar. This

[256] Guiraudon, p.1100.

[257] See Thomas Spijkerboer, "Subsidiarity and 'Arguability': The European Court of Human Rights' Case Law on Judicial Review on Asylum Cases," *International Journal of Refugee Law* 21, No. 1 (2009), pp. 48-74.
Guiraudon, "European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion."
Anagnostou, "Does European Human Rights Law Matter? Implementation and Domestic Impact of Strasbourg Court Judgments on Minority-related Policies."
Anagnostou and Millns, "Individuals from Minority and Marginalized Groups before the Strasbourg Court: Legal Norms and State Responses from a Comparative Perspective."

[258] Buchinger and Steinkellner, p.424.

will be mentioned in detail in following sections after understanding Turkey's relations with the European Court of Human Rights.

ECtHR and Turkey

Turkey was one of the drafters of the European Convention on Human Rights and signed the Convention on 4 November 1950. ECHR was ratified by Turkey in March 1954.[259] In January 1987, Turkey recognized the right to individual petition as one of the last then Council of Europe Member States and when it recognized ECtHR compulsory jurisdiction on 22 January 1990, it was the last member state to do so.[260]

Regarding ECtHR activity on Turkey, one comes across large spectrum of cases concerning different but mostly repeating articles. Although the Court declared its first finding of violation against Turkey in 1995,[261] according to statistics that have been announced by the ECtHR, Turkey is at the top of the list of number of violation decisions between 1959 and 2011.[262] The table below indicates number of cases opened in ECtHR against Turkey and ECtHR judgments. A more detailed table including number of violation decisions for specific articles can be found in Appendix A.

[259] Turkish Grand National Assembly, Act No. 6366, 10 March 1954; Kaboğlu and Koutnatzis, p.455.

[260] Ibid., pp.457-58.

[261] Ibid., p.479.

[262] Data obtained from European Court of Human Rights, available [online]: http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data [20 April 2012]

Table: ECtHR statistics for Turkey between 1959-2011[263]

Total number of judgments	2747
Judgments finding at least one violation	2404
Judgments finding no violation	57
Friendly settlements / Striking out judgments	204
Other judgments*	82

According to ECtHR statistics, 1259 judgments involve violation of Article 6 (right to fair trail). Right to fair trial, length of proceedings and no enforcement come into prominence as the grounds of violation. Then protection of property (Protocol No. 1, Article 1) seems very problematic since Court has found Turkey in violation 611 times. Those cases are mostly about Cyprus where the Court decided that Turkish state did not protect Cypriots' properties in the Northern part of the island. Article 5 of the Convention is violated 554 times, which include refugees' cases as well. Although Article 5 includes various paragraphs, the Courts' statistics list violations of Article 5 under the title of "right to liberty and security".

Another core article of the Convention, Article 3 is on the fourth rank. The Court has found Turkey in violation of Article 3 in 407 decisions on the basis of prohibition of torture, inhuman or degrading treatment, and lack of effective investigation. Here, refugees' cases mostly include prohibition of torture and inhuman or degrading treatment. Article 13 is also very significant and problematic area since Turkey was found in violation of this article, which is "right to effective remedy", 237 times. Refugees' cases for sure are included in those decisions because of lack of sufficient law on asylum in Turkey. Article 2 right to life (230 decisions)

[263] Data obtained from European Court of Human Rights, available [online]: http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data [20 April 2012]
* Other judgments: just satisfaction, revision judgments, preliminary objections and lack of jurisdiction
A more detailed table of ECtHR judgments on Turkey can be found in Appendix A.

and Article 10 freedom of expression (207 times) are other articles, which draw attention with number of judgments.

Court's violation decisions on Turkey mostly concern certain articles of the Convention, however the ones which constitute the hard core of ECHR. The articles mentioned above are very crucial and actually can be viewed as the essence of fundamental human rights. Considering history of Turkey in relation with ECtHR decisions, one comes across variety of cases. Those cases include armed clashes between Turkish Armed Forces and PKK, dissolution of political parties, rulings of the Turkish State Security Courts, property rights regarding Northern Cyprus and internal displacement, religious culture and moral education, 10% national threshold in election system, domestic courts failing to comply within a reasonable time, interrogation methods, and failure to effectively investigate torture, disappearance or claims.[264]

Regarding compliance with the Court judgments, Kaboğlu examines Turkish state's responses in different layers such as "constitutional amendments, statutory modifications and changing the implementation of domestic legislation".[265] A series of constitutional amendments began in 1987, yet one can see it outstandingly between 1995 and 2001: amendments related to freedom of expression and association, death penalty, proportionality principle, personal liberty and security, privacy, right to fair trial, equality between spouses, and state security courts.[266] Statutory modifications included harmonization packages from 2002 to 2004; additional protection for freedom of assembly and association, freedom of

[264] Smith, pp.262-274.
Kaboğlu and Koutnatzis, pp.480-485.

[265] Ibid., pp.494-496.

[266] Ibid., p.494.

expression, personal freedom and security, and right to information; additionally 2005 reform of the Criminal Code, Code of Criminal Procedure, and Law on Enforcement of Sentences; and lastly 2004 statute on compensation for terrorism-related damages.[267] Ministry of Justice issued around 100 new directives regarding the implementation of new criminal law with the aim of resolving procedural deficiencies such as unlawful arrest, interrogation or custody, constituting an instance of changes in implementation of domestic law.[268]

However one should not misinterpret that Turkey has solved all its problems regarding the ECtHR cases. Even those issues, that have been amended, are still problematic in Turkey. Nonetheless such changes can be considered as indicators of Turkish state giving up its long-term unwillingness to comply with the Court judgments. For describing Turkey's record of compliance with ECHR, Smith states that:

> The Council of Europe has cited Turkey's 'manifest disregard' for its obligations under the Convention, including problems in payment of fines and satisfaction of judgments; retrial and other redress for applicants convicted after an unfair trial; and the restoration of civil and political rights to people whose criminal convictions had been reached in violation of the Convention (Council of Europe Committee on Legal Affairs and Human Rights).[269]

As Smith says, Turkey is not exemplary for its compliance with the judgments. Considering Committee of Ministers' tools for non-compliance once more, in this respect unfortunately Turkey can be a good example. For instance, Committee of Ministers issued four serious Interim Resolutions in relation with *Loizidou v.*

[267] Ibid., pp.495-496.

[268] Ibid., p.496.

[269] Smith, p.267.

Turkey[270] judgment. In 1999, 2000, 2001, and 2003 resolutions were issued and Turkey was severely criticized for demonstrating a "manifest disregard" and was reminded that "acceptance of the ECHR and binding nature of the ECtHR judgments has become a requirement for membership in the CoE".[271] Moreover, the same case "led the Committee of Ministers officially to brandish the threat of exclusion for the first time, although the threat was implausible", in Lambert Abdelgawad's words.[272] Yet, Committee of Ministers' those reactions, according to Kaboğlu, these measures made Turkey understand that "in the long term non-compliance is no more an option for the CoE Member States."[273]

A recent development in Turkey signals that conformity with ECtHR judgments in domestic law will be more important in the future. In a workshop conducted by Ministry of Justice in November 2011, ECtHR judgments on Turkey and solution suggestions regarding violations were discussed.[274] Moreover, in February 2012, Supreme Council of Judges and Public Prosecutors issued a press release stating that conformity with ECtHR judgments in domestic law while finalizing court decisions will be an additional criterion for promotion of judges and prosecutors.[275] Giving such a decision indicates importance that has recently started to be attached to ECtHR judgments by Turkish state.

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[270] *Louzidou v. Turkey* (Application no. 15318/89)

[271] Kaboğlu and Koutnatzis, p.493.

[272] Lambert-Abdelgawad, p.45.

[273] Kaboğlu and Koutnatzis, p.498.

[274] Adalet Bakanlığı, Uluslararası Hukuk ve Dış İlişkiler Genel Müdürlüğü, *Avrupa İnsan Hakları Mahkemesinin Türkiye Kararları, Sorunlar ve Çözüm Önerileri* Konulu Yüksek Düzeyli Konferans ve Çalıştay, 15-17 Kasım 2011, Ankara. Available [online]: http://www.inhak.adalet.gov.tr/faaliyet1/faaliyet1.html [12 June 2012]

[275] Hakimler ve Savcılar Yüksek Kurulu, *Basın* Açıklaması, 2012/2, 03.02.2012. Available [online]: http://www.hsyk.gov.tr/duyurular/2012/subat/basinaciklamasi-2.html [20 June 2012]

Regarding refugees' cases against Turkey and the ECtHR's violation decisions, one can state that Turkish state started to abide by the Court judgments recently with the preparation of draft law. In other words, although there are remaining problems in the area of human rights in Turkey, the state will be taking action at least on issue of asylum generally in conformity with the Court's judgments with draft law getting through the parliament. In the next section, I will be analyzing refugees' cases in relation with the articles of the draft asylum law in order to establish the effect of Court decisions. As I have mentioned before, this analysis will also be the analysis of success of advocates for refugee rights in their ultimate aim to change state policy and behavior as a TAN.

Refugee's Cases against Turkey in ECtHR

As most of my interviewees state, strategic litigation of refugees' cases to the ECtHR by advocates for refugee rights made Turkish state understand significance and seriousness of the issue. As it has been mentioned before, ECtHR presents an outstanding instance for leverage politics of TANs. Regarding ECtHR decisions, they represent the international judicial pressure that point to problems of Turkey in area of asylum. Recalling the story of access of refugees to the Court, one can still recognize individual agency as the person who starts the whole procedure at least by reaching the lawyers or NGOs. Therefore, analyzing those decisions in relation with articles of draft asylum law will provide not only success of advocates for refugee rights but also the way how a foreign individual could have influence on state policy.

Radikal. 29 February 2012. *Terfilere AİHM Kriteri*. Available [online]: http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1080234&CategoryID=78 [12 June 2012]
Ntvmsnbc. 29 February 2012. *Hakim ve Savcı Terfisine AİHM Kriteri*. Available [online]: http://www.ntvmsnbc.com/id/25326364/ [12 June 2012]

Repeat litigation and legal mobilization through advocacy networks especially on human rights areas is not unique to Turkey; however success of advocates for refugee rights in Turkey, which has always been very sensitive about its sovereignty and security, is striking. At this point, asylum law drafters' confident attitude toward the issue in terms of internalizing Court judgments should be noted. As officials from Migration and Asylum Bureau and Veysi Roger Turgut emphasized Migration and Asylum Bureau bureaucrats' willingness to take innovative action on the issue of asylum has been very effective in this process.[276] Anagnostou lists important conditions for ECtHR judgments to influence domestic legislation or policy: "repeat litigation and legal mobilization by interested civil society and support by domestic political and other influential elites".[277] Advocates for refugee rights in Turkey fulfill the first condition while Migration and Asylum Bureau officials' perception of Court decisions and issue of asylum fulfill the second. Veysi Roger Turgut states that the state realized the *necessity* to go into action by virtue of ECtHR judgments.[278] Mahmut Kaçan on the other hand, states that the Court's judgments have been driving force behind preparation of draft law since those judgments refer to the most important articles of the ECHR.[279]

Mahmut Kaçan's point about core articles of the ECHR is actually in line both with Turkey's statistics regarding violation of certain articles and with Guiraudon's argument that Court's jurisdiction has been focusing on specific areas as

[276] Migration and Asylum Bureau officials, Onur Arıner, and Veysi Roger Turgut, interview by author.

[277] Anagnostou, p.721.

[278] Veysi Roger Turgut, interview by author.

[279] Mahmut Kaçan, interview by author.

well as on specific articles regarding rights of aliens.[280] Refugees' cases opened in ECtHR against Turkey and violated articles of the Convention can be viewed as reflection of Turkish asylum policy's problems. Not only domestic NGOs but also international ones have been focusing on problems of asylum policy in Turkey. İHAD (Human Rights Research Association) publishes yearly "Monitoring Report on Right to Refuge and Asylum Seeking" in which both statistical data is presented and refugees' problems are mentioned.[281] Since 2008, asylum seeking procedure, conditions of detention, deportation and violation of principle of *non-refoulement,* administrative custody and judicial review, physical conditions in accommodation centers, and social and economic difficulties have been mentioned in those reports as problems that refugees face in Turkey.

HCA's report *Unwelcome Guests: The Detention of Refugees in Turkey's "Foreigners' Guesthouses"*[282] is very important in order to understand the context in which refugees' cases were opened in ECtHR and the Court decided on violation. This report presents problems which refugees face in Turkey about accessing their procedural rights and conditions in detention. The report has been very important since data were collected by interviews with refugees who had been or were in detention. According to the report, detained foreigners in Turkey usually cannot access asylum procedures due to either not being informed about the procedures or inability to reach an interpreter or prohibition from filing an application.[283] HCA draws attention to principle of *non-refoulement* at this point: "Unless asylum

[280] Guiraudon, p.1100.

[281] İnsan Hakları Araştırmaları Derneği. *Monitoring Report on Right to Refuge and Asylum Seeking*. Available [online]: http://www.ihad.org.tr/reports.php [21 June 2012]

[282] Helsinki Citizens Assembly, *Unwelcome Guests: The Detention of Refugees in Turkey's "Foreigners' Guesthouses.*

[283] Ibid., p.16.

procedures are made universally available to foreign nationals, legitimate refugees will continue to be *refouled* before being able to apply for asylum."[284] Moreover, based on HCA's own activities and observation, it is stated that

> Based on hCa's attempts to assist refugees held in detention facilities in airports in Turkey, it is apparent that MOI will not accept asylum applications from transit zones. […] MOI also refuses to allow lawyers, UNHCR representatives, or other advocates to visit these areas to counsel detainees. hCa receives several calls a year from detention facilities in airports, in particular Istanbul Ataturk Airport. All detainees report being denied their right to apply for asylum and are immediately deported.[285]

Right to judicial review is another important problem of Turkish asylum policy. Although right to judicial review is guaranteed both domestically (Turkish Constitution Article 19) and internationally (ECHR Article 5, ICCPR Article 9), in practice detainees cannot enjoy this right: "In practice, no system of judicial review exists in Turkey for detainees in guesthouses, and as a result, refugees have no means to challenge the legality or length of their detention."[286] Refugees' inability to enjoy right to judicial review is also linked with their inability to get legal aid. HCA states that most of refugees in detention cannot access advocates or other agencies, which can offer them legal aid.[287] Moreover, detention conditions come into prominence as significant problems. Since HCA was not permitted by MOI to go into guesthouses, this part of the report is based merely on narratives of interviewees. Prominent problems are; overcrowd number of people lying in same beds or even on the floor, food is bad and drinking water is not provided, medical services are insufficient,

[284] Ibid., p.16.

[285] Ibid., p.31.

[286] Ibid., p.33.

[287] Ibid., p.19.

recreational activities are unavailable, ventilation is not good, outside communication is limited, and sometimes police officers use "unjustified physical violence".[288]

One year later, Human Rights Watch (HRW) published a very lengthy report on problems of refugees in Turkey in 2008, as well. The report *Stuck in a Revolving Door: Iraqi and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union* is briefly about treatment of asylum seekers and migrants both in Greece and Turkey.[289] Regarding the part dealing with Turkey, HRW conducted interviews with both detainees and officers in Edirne Tunca detention facility and Kırklareli Gaziosmanpaşa Refugee Camp. Not only interviews but also HRW direct observation present problems regarding detention and treatment of refugee in Turkey. Conditions in Tunca are summarized as:

> Human Rights Watch spent two full days visiting the Edirne Tunca detention facility. The access we were given to the facility was particularly remarkable given the absolutely dreadful conditions we found there. On the first day we visited, June 11, 2008, the detainee population was 703. The capacity of the facility is 200.[290]

Moreover, HRW states that treatment of detainees in the facility was very bad. As it is stated in the report, not only individual interviewees but also the crowd around HRW staff told them their complaints about food, about being beaten, and about uncertainty of length of their stay.[291] Not being informed how long detainees would stay is also the main complaint of people staying in Gaziosmanpaşa. HRW states in

[288] Ibid., pp.34-35.

[289] Human Rights Watch, *Stuck in a Revolving Door: Iraqis and other Asylum Seekers and other Migrants at the Greece/Turkey Entrance to the European Union.*

[290] Ibid., p.52.

[291] Ibid., p.53.

the report that conditions in Gaziosmanpaşa were not as bad as in Tunca, but detainees complained about quality and quantity of food.[292]

Deportations from Turkey were also mentioned in the report. Focusing on deportation of Iraqis, HRW report presents how Turkish state deports Iraqis:

> The Turkish authorities detain Iraqis who have been deported or summarily expelled from Greece until they gather a sufficient number to fill a bus. After transporting them to the Habur crossing point on the Iraqi border, the Turkish authorities turn the Iraqis over to the Kurdish regional authorities. According to the […] testimonies [of interviewees], the Kurdish authorities sometimes imprison and abuse the returnees.[293]

The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg's report on human rights of asylum seekers and refugees following his visit to Turkey on 28 June – 3 July 2009, also demonstrates the problems of Turkish asylum policy clearly. Regarding deportation decisions, the report remarks ECHR Article 3:

> The deportation order is only suspended if the Administrative Court issues an interim measure, which is only occasionally the case. It seems that domestic administrative courts do not assess the claim on the merits, in particular whether there is a risk of being submitted to degrading and inhuman treatment in case of a deportation and thus a potential violation of Article 3 ECHR.[294]

Additionally, the Commissioner criticizes Turkish authorities practices regarding foreigners' access to asylum procedures in detention, at airports or land border. Turkish authorities should better train authorities in charge in those areas so that asylum seekers should be distinguished from regular or irregular migrants and should prepare written information in a language that refugees can understand including

[292] Ibid., p.59.

[293] Ibid., p.61.

[294] Council of Europe: Commissioner for Human Rights, *Report by Thomas Hammarberg,* p.9.

UNHCR and NGOs contact details.[295] Moreover, the Commissioner mentions conditions in "guesthouses" through his visits to İstanbul Kumkapı and İzmir. According to the Commissioner, Kumkapı presents a good example in terms of providing information in different languages and this can be seen as an improvement for

> […] ensuring full and prompt information and wishes to underline that in all cases where asylum seekers remain in detention they should always be informed promptly, in a language they understand, of the reasons of their arrest and detention, in conformity with Article 5, paragraph 2, of the European Convention on Human Rights.[296]

The significance of both HRW and Hammarberg reports stem from their international positions as well as significant information regarding implementation of asylum policy by virtue of their direct observations. HCA's report, as well, is very important since it demonstrates the difficulties NGOs face in Turkey (no access to guesthouses or detention facilities) and conditions of detention straight from refugees' narratives. Those three reports clearly show how asylum policy is implemented in Turkey. Given the fact that these reports were prepared in 2007, 2008, and 2009, it is seen that problems of refugees have not been solved throughout the years. Systematic problems continue in above-mentioned areas. This results in focus on certain articles and claims against Turkey in refugees' cases in ECtHR.

The first refugee case opened against Turkey was *A. and K. v. Turkey* (January 1991). As of June 2012, twenty-six cases have been opened against Turkey by refugees.[297] However number of *applications* to the Court is more than twenty-

[295] Ibid., pp.11-12.

[296] Ibid., p.16.

[297] A detailed table of all refugee cases opened in ECtHR against Turkey, including the claims and Court judgments, can be found in Appendix B.

six. That is to say, especially in cases of deportation, lawyers or NGOs apply to the Court directly under Rule 39 of the Rules of Court. According to Rule 39 (1):

> The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.[298]

In terms of asylum, interim measure mostly requires member state not to deport applicant to a country where there is a risk of violation of fundamental rights of that person. Moreover, interim measures can also include "positive actions" like requiring a member state to guarantee access to lawyer for a detained applicant.[299] According to ECRE and ELENA report, statistical data of Rule 39 interim measures is not publicly accessible in Turkey. However, upon Mülteci-Der's freedom of information request, forty-eight cases are reported by Ministry of Interior as including interim measure solely in the period between 2009-2010.[300] Moreover, most of my interviewees put emphasis on their numerous applications under Rule 39 in order to prevent deportation of refugees.[301] It is important to note that all of those Rule 39 interim resolution applications turned into cases opened in ECtHR against Turkey. Compared to numerous applications under Rule 39, merely twenty-six cases were opened at court until now.

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[298] Rules of Court, Rule 39 (Interim Measure)
1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
2. Notice of these measures shall be given to the Committee of Ministers.
3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.
European Court of Human Rights. *Rules of Court.* Available [online]: http://www.echr.coe.int/NR/rdonlyres/D1EB31A8-4194-436E-987E-65AC8864BE4F/0/RulesOfCourt.pdf [10 June 2012]

[299] European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Research on ECHR Rule 39 Interim Measure,* April 2012, p. 34.

[300] Ibid., p.55.

[301] Oktay Durukan, Salih Efe, Taner Kılıç, and Volkan Görendağ, interview by author.

Regarding violation decisions, cases, which have been opened against Turkey in the Court with refugees' claims, are of concern in this thesis. Out of twenty-six cases, some were found inadmissible and in some of them the Court found no violation. In fifteen of those twenty-six cases the Court decided on violation of at least one article of ECHR. The first violation decision was in *Jabari v. Turkey* (July 2000). Turkey violated Article 13 because Mrs. Jabari was not afforded judicial appeal against rejection of her asylum application.[302] The Court did not find Turkey in violation of Article 3 stating that deportation did not take place so it was not possible to evaluate serious risk of mistreatment of the applicant in the deported country.

In *Mamatkulov and Askarov v. Turkey* (February 2005), the Court decided that Turkey violated Article 3 by extraditing the applicants, who have applied for asylum.[303] *D. and Others v. Turkey* (June 2006) is a very important case since for the first time the Court did not consider deportation decision's taking place as a criterion for violation. ECtHR stated that if Turkish authorities deport applicants, Article 3 would be violated.[304] Subsequently, independent of whether deportation decision took place or not, the Court examined whether there is or would be serious risk of mistreatment for judgment of deportation decisions of Turkish authorities. The Court

[302] *Jabari v. Turkey* (Application No. 40035/98, July 2000). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696777&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [11 June 2012]

[303] *Mamatkulov and Askarov v. Turkey* (Application Nos. 46827/99 and 46951/99, February 2005). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=717615&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [11 June 2012]

[304] *D. And Others v. Turkey* (Application No. 24245/03, June 2006). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=806148&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [11 June 2012]

have been considering existence of serious risk of mistreatment in case of deportation for decidind on "potential" violation of Article 3.

With the Court's *Abdolkhani and Karimnia v. Turkey* (September 2009) judgment, refugees' cases against Turkey gained a new perspective. In this judgment, the Court for the first time found Turkey in violation of several articles and decided on compensation.[305] In this case, the Court decided that deportation of applicants either to country of origin or to an *intermediary country* would violate Article 3. Moreover, Turkey was found in violation of Article 5 due to inadequate protection against arbitrary detention, not informing applicants about the reasons of their detention, and no provision of remedy for judicial review of lawfulness of applicants' detention. Article 13 was also violated because Turkish state did not provide right to remedy effectively. The Court decided on compensation for non-pecuniary damage and costs and expenses of application. This case became the leading case after which eleven more cases were opened in ECtHR against Turkey with similar claims. Significantly, ECtHR referred to *Abdolkhani and Karimnia v. Turkey* judgment in decisions of all these eleven cases.

Z.N.S. v. Turkey case similarly included probable deportation violating Article 3 and deprivation of liberty as well as no provision of remedy violating Article 5.[306] Also, Turkey was subjected to pay compensation for non-pecuniary damage. In *Charahili v. Turkey* (April 2010) judgment, detention conditions caused violation of Article 3, for the first time.[307] Probable deportation would violate Article

[305] *Abdolkhani and Karimnia v. Turkey* (Application No. 30471/08, September 2009).

[306] *Z.N.S. v. Turkey* (Application No. 21896/08, January 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=861159&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[307] *Charahili v. Turkey* (Application No. 46605/07, April 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866317&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

3 and no protection against arbitrary detention violated Article 5 in this case. The Court also decided on compensation for non-pecuniary damage and costs and expenses of application. Deportation of applicant would violate Article 3 and no effective remedy violated Article 13 in *Keshmiri v. Turkey* (April 2010) judgment.[308] In *Ranjbar and Others v. Turkey* (April 2010), the Court decided that Turkey violated Article 5 due to lack of protection against arbitrary detention and should pay compensation for non-pecuniary damage.[309]

Tehrani and Others v. Turkey (April 2010) was also very significant since in this case Court decided on several violations.[310] Again, probable deportation of applicants either to country of origin or an intermediary country would violate Article 3. The same article was violated due to physical conditions in admission and accommodation center. Moreover, probable deportation would violate Article 13 as well since applicants were not provided with effective remedy. Unlawful detention and no effective remedy for questioning lawfulness of detention violated Article 5. The Court also decided on compensation for non-pecuniary damage and costs and expenses of application.

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[308] *Keshmiri v. Turkey* (Application No. 36370/08, April 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866321&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[309] *Ranjbar and Others v. Turkey* (Application No. 37040/07, April 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866315&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[310] *Tehrani and Others v. Turkey* (Application Nos. 32940/08, 41626/08, 43616/08, April 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866319&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

In *M.B. and Others v. Turkey* (June 2010), the Court again decided that deportation violated Article 3.[311] Besides, lack of effective remedy violated Article 13 and significantly, Article 34 was violated due to government's failure to comply with the Court's interim measure under Rule 39. Court's decision that probable deportation would violate Article 3 was also present in *Ahmadpour v. Turkey* (June 2010) judgment.[312] Additionally deprivation of liberty violated Article 5 in this case. In *Alipour and Hosseinzadgan v. Turkey* (July 2010), Article 5 was violated because Turkish authorities did not secure applicant's speedy release.[313]

The Court decided that deprivation of liberty and lack of remedy violated Article 5 in *D.B. v. Turkey* (July 2010) judgment.[314] Moreover, Turkey violated Article 34 since government failed to take timely action and had to pay compensation for non-pecuniary damage and costs and expenses of application. Similarly, in *Dbouba v. Turkey* (July 2010) decision probable deportation would violate Article 3, lack of effective remedy violated Article 13, unlawful detention violated Article 5, and Turkey was subjected to pay compensation for non-pecuniary damage and costs and expenses of application.[315] Lastly, in *Moghaddas v. Turkey* (February 2011)

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[311] *M.B. and Others v. Turkey* (Application No. 36009/08, June 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=869909&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[312] *Ahmadpour v. Turkey* (Application No. 12717/08, June 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=869911&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[313] *Alipour and Hosseinzadgan v. Turkey* (Application Nos. 6909/08, 12972/08, 28960/08, July 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871175&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[314] *D.B. v. Turkey* (Application No. 33526/08, July 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871173&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[315] *Dbouba v. Turkey* (Application No. 15916/09, July 2010). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871171&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

judgment, the Court decided that unlawful detention, not informing applicant about reasons of detention, and no remedy for reviewing detention violated Article 5 and that Turkey had to pay compensation for non-pecuniary damage and costs and expenses of application.[316]

As it seen from these cases, there was systematic violation of certain articles in similar situations. ECHR Article 3 (prohibition of torture, inhuman or degrading treatment), Article 5 (right to liberty and security), and Article 13 (right to an effective remedy) are the most important articles regarding Turkey's violations. Cases of refugees also include claims under Article 2 (right to life), Article 6 (right to fair trial), Article 8 (right to private and family life), and Article 34 (individuals', NGOs' or group of individuals' right to petition). One can understand the effect of those judgments legislation by analyzing the articles of law in comparison with the situations or reasons that had caused violation. In other words, in this way, one will see how draft law responses to violations in the next section.

ECtHR Judgments and the Draft Law

Regarding state's responses to ECtHR judgments, Anagnostou states that national authorities take, in addition to individual measures, general measures to end violations and prevent reoccurrence of similar violations.[317] Those general measures can be "*legislative amendments* or adoption of *administrative or executive measures*

[316] *Moghaddas v. Turkey* (Application No. 46134/08, February 2011). Available [online]: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=881526&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [12 June 2012]

[317] Anagnostou, p.722.

(i.e. ministerial circulars or regulations)".[318] Both types of general measures exist in Turkey. For the cases before *Abdolkhani and Karimnia v. Turkey* (September 2009), which is seen as turning point and leading case for advocates for refugee rights, Turkish state usually responded to violations by ministerial circulars or regulations.[319]

With the second wave of refugees' cases, seriousness of the issue became clear and this time state's measures for those judgments are located in the draft asylum law. Measures that are taken via draft law also constitute positive obligations of Turkey under the Convention. As it will be seen below, articles of the law not only involve what Turkish state must not do but also include what it must do for protection of refugees' rights. In the following paragraphs, I will be dealing with specific issues referring to certain articles of ECHR as well as conditions that caused violation and specifically draft asylum law's relevant articles on this issue together with existing circulars and regulations that had responded ECtHR judgments before preparation of draft law. It is important to note that the latest version of the draft law which has been published by the Migration and Asylum Bureau in June 2012 is used in the following study and this version of the draft law can be found in the Appendix C:

i. *Deportation and principle of non-refoulement:* As it is seen from the cases above, issue of deportation is the most serious problem regarding Turkey's existing asylum policy. Article 3 of ECHR is relevant for applicants' claims in deportation cases due to definition of refugee or asylum seeker status. In other words,

[318] Ibid., p.722. (*emphasis* added)

[319] Bertan Tokuzlu, interview by author.

refugees are people escaping from persecution because of lack of protection in their countries of origin, but deporting someone where he/she actually escapes from has in itself at least the potential of mistreatment of that person. Roughly this is the reason that almost all of refugees' cases involve claims under Article 3 of ECHR, which is prohibition of torture. In detail, the Article states, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."[320]

International refugee law has a specific principle in relation with Article 3, as well. Principle of *non-refoulement* is defined under Article 33 Prohibition of Expulsion or Return ("Refoulement") in 1951 Geneva Convention Relating to the Status of Refugees:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.[321]

Deportation and principle of non-refoulement has always been a problem for Turkey. Initially ECtHR's criterion for violation of Article 3 was the question of whether deportation had taken place or not.[322] Starting from *D. and Others v. Turkey* (June 2006), the Court's judgments have been shaped as "If the applicant is deported, Article 3 will be violated."[323] According to Bertan Tokuzlu, even potential violation made the state take measures.[324] He claims that concept of *subsidiary protection* was introduced in 2006 Circular No.57[325] for this reason. Although subsidiary protection

[320] European Convention on Human Rights.

[321] UNHCR, *Convention and Protocol Relating to the Status Refugees.*

[322] See table of ECtHR cases in Appendix B.

[323] See for instance, *D. and Others v. Turkey*.

[324] Bertan Tokuzlu, interview by author.

[325] 2006 Uygulama Talimatı, 57 No.lu Genelge,

was part of the EU Qualification Directive,[326] Turkey adopted merely the name of the concept. While the Directive included protection of social, economic or cultural rights, Circular No.57 lacked those details. Bertan Tokuzlu states that if one analyzes the content of the concept, it would be clear that aim is to prevent potential violations of Article 3 before ECtHR:

> İkincil Koruma: Başvuru sahibinin geldiği ülkeye geri gönderilmesi halinde, Avrupa İnsan Hakları Sözleşmesi çerçevesinde ciddi zarar görme riski bulunup bulunmadığı, kendisine ikincil koruma statüsü verilmesine gerek olup olmadığı değerlendirildikten sonra, kişinin zarar görme riskinin bulunması halinde verilen statüdür.[327]

From wording of the definition of the concept, it is clear that probability of damage of rights protected under ECHR is the main criterion for granting subsidiary protection. Significantly, definition of the concept directly and merely gives reference to ECHR. However, problems regarding Article 3 continued, which means that the circular, as Turkey's response to ECtHR judgments did not work. In *Abdolkhani and Karimnia v. Turkey* (September 2009), *Z.N.S. v. Turkey* (January 2010), *Charahili v. Turkey* (April 2010), *Keshmiri v. Turkey* (April 2010), *Tehrani and Others v. Turkey* (April 2010), *Ahmadpour v. Turkey* (June 2010), *M.B. and Others v. Turkey* (June 2010), and *Dbouba v. Turkey* (July 2010) cases deportation of applicants –whether took place or not and whether to country of origin or to an intermediary country- continued to be source of violation of Article 3 if there is a serious risk of mistreatment in the deported country:

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[326] The Council of the European Union. *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.* Available [online]: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML [5 June 2012]

[327] Subsidiary protection: It is the status that is given to an applicant after evaluation of existence of risk of harm within scope of European Convention on Human Rights and of necessity of giving subsidiary protection status in case of applicant's return to the country where he/she came from. (Author's translation)

> 88. The Court reiterates in this connection that the indirect removal of an alien to an intermediary country does not affect the responsibility of the expelling Contracting State to ensure that he or she is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention.[328]

Onur Arıner stated that since ECtHR cases continued one by one, first and foremost deportation legislation was prepared before other parts of the law.[329] Consequently, drafters of asylum law paid special attention to section dealing with deportations and included principle of *non-refoulement* in General Principle section of the draft law. Regarding existing asylum legislation in Turkey, principle of *non-refoulement* is merely present in 1951 Geneva Convention (which is part of domestic law under Constitution Article 90). Yet, with draft asylum law, specific article refers to the issue:

> Geri gönderme yasağı
> MADDE 4- (1) Bu Kanun kapsamındaki hiç kimse, işkenceye, insanlık dışı ya da onur kırıcı ceza veya muameleye tâbi tutulacağı veya ırkı, dini, tâbiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasî fikirleri dolayısıyla hayatının veya hürriyetinin tehdit altında bulunacağı bir yere gönderilemez.[330]

In addition to the principle of *non-refoulement*, asylum law includes a separate section for deportation. In the existing legislation, deportation is regulated under 1994 Regulation Article 29. Although this Article makes reference to 1951 Convention for conditions of deportation, it neither includes relevant articles of 1951

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[328] *Abdolkhani and Karimnia v. Turkey* (September 2009).

[329] Onur Arıner, interview by author.

[330] Yabancılar ve Uluslararası Koruma Kanunu (YUKK) Tasarısı –Draft of Foreigners and International Protection Law. Available [online]: http://gib.icisleri.gov.tr/ [20 June 2012]
"Prohibition of Return
Article 4 (1) Noone within the scope of this law can be returned to a place where he/she might be subjected to torture, inhuman or degrading punishment or treatment or might risk life or deprivation of liberty due to his/her race, religion, nationality, membership of a particular social group or political opinion." (Author' translation)

Convention nor indicates details separately.[331] This creates problems for Turkey since in refugees' cases in the ECtHR it becomes clear that legislation is not implemented properly and additionally legislation is not clear. In the draft asylum law, together with other details, risk of mistreatment is repeated once more.

For instance, while listing people of whom deportation decision can be taken, asylum seekers and refugees are mentioned in a separate paragraph. In Article 54 of the draft law, deportation of asylum seekers and refugees is limited by national security and public order.[332] More importantly, in Article 55, while listing people of whom deportation decision cannot be taken; specific emphasis has been put on risk of death penalty, torture, inhuman or degrading punishment or treatment in the deported country. This Article rules that, even though the person may be in the scope of people of whom deportation decision can be taken, if there is the risk of mistreatment, a deportation decision cannot be taken.[333]

Administrative custody is also included in this section of the law. In order to prevent unlawful custody or deprivation of liberty, Article 57 of the draft law describes whom to remand in custody for deportation and how decision for custody can be appealed.[334] In this article, detention in repatriation centers (geri gönderme merkezi–GGM) is limited to six months. Yet, if deportation cannot take place, detention can be extended for maximum another six months. Moreover, it is stated in

[331] 1994 Regulation Article 29: A refugee or an asylum seeker who is residing in Turkey legally can only be deported by the Ministry of the Interior within the framework of the 1951 Geneva Convention relating to the Status of Refugees or for reasons of national security and public order. Objection to deportation verdict can be made to the Ministry of the Interior within fifteen days. Objection shall be taken into consideration and resolved by a higher authority than the one who ruled on the verdict and the concerned shall be notified by the local Governorate.

[332] See draft law Article 54 in Appendix C.

[333] See draft law Article 55 in Appendix C.

[334] See draft law Article 57 in Appendix C.

the Article that necessity of administrative custody will be evaluated every month by the governorates and if it is decided that there is no reason of custody anymore, the person will immediately be released. Significantly, the article includes the obligation to inform the foreigner and his/her legal representative or lawyer about a decision of administrative custody. The person him/herself or legal representative or lawyer can apply to criminal court of peace for appeal. One of Migration and Asylum Bureau officials states that criminal court of peace was chosen on purpose since decision could be taken quicker in this way.[335] The court will decide within five days, however application to court does not end custody. This is one of the points that NGOs criticize about the law.

All in all, specific emphasis has been put on the part dealing with deportation by drafters of asylum law. It is important to note that for the first time Turkey responds to ECtHR judgments by law and in that much detail. One can easily observe significance of ECHR articles and protection of rights under those articles in draft law's related articles. Not only principle of *non-refoulement* but also section of deportation make references to ECHR and includes preclusive points. Impossibility of taking deportation decision about people who "has serious risk of death penalty, torture, inhuman or degrading treatment in the deported"[336] is the most conspicuous instance for that approach.

[335] Migration and Asylum Bureau official, interview by author.

[336] See draft law Article 55 in Appendix C.

ii. Deprivation of liberty: If deportation is the most problematic issue for Turkey, deprivation of liberty comes second. At this point, Article 5 of ECHR directly becomes a part of the issue. Principally, Article 5 is very complex with its paragraphs:

> Right to liberty and security
> 1.Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.
> 2.Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
> 3.Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
> 4.Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
> 5.Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.[337]

For violation of the article, refugee status is not such determinant since right to liberty is applicable just because of being a human regardless of risk of persecution in cases which are examined in this study. Regarding refugees' ECtHR cases against Turkey, almost all of the paragraphs of Article 5 have been violated in various cases. The Court has decided on large number of unlawful or arbitrary detention which indicates a serious problem regarding implementation of law.

In *Abdolkhani and Karimnia v. Turkey* (September 2009), *Z.N.S. v. Turkey* (January 2010), *Charahili v. Turkey* (April 2010), *Ranjbar and Others v. Turkey* (April 2010), *Tehrani and Others v. Turkey* (April 2010), *Ahmadpour v. Turkey* (June 2010), *Alipour and Hosseinzadgan v. Turkey* (July 2010), *D.B. v. Turkey* (July 2010), and *Dbouba v. Turkey* (July 2010) the Court established that Article 5 §1 had

[337] European Convention on Human Rights.

been violated. In most of those cases being kept in Foreigners' Admission and Accommodation Centers in various cities like Kırklareli or Edirne constitutes an important ground for deprivation of liberty of refugees:

> 57. It found that the placement of the applicants in the Kırklareli Foreigners' Admission and Accommodation Centre in that case constituted a deprivation of liberty and concluded that, in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, the deprivation of liberty to which the applicants had been subjected was not "lawful" for the purposes of Article 5 of the Convention.[338]

An additional important point is "lack of sufficient protection against arbitrary detention", as Court has many times emphasized in its decisions:

> 43. […], the Court finds that the deprivation of liberty to which the applicants were subjected did not have a strictly-defined statutory basis circumscribed by adequate safeguards against arbitrariness. The national system thus failed to protect the applicants from arbitrary detention and, consequently, their detention cannot be considered "lawful" for the purposes of Article 5 of the Convention.[339]

Turkish legal system's failure to provide an effective remedy whereby refugees could obtain speedy judicial review of the lawfulness of his/her detention has resulted in violation of Article 5 §4 in some of the above-mentioned cases. Regarding being informed promptly (Article 5 §2), *Abdolkhani and Karimnia v. Turkey* (September 2009) and *Dbouba v. Turkey* (July 2010) constitute sole examples.

If one checks existing legislation for administrative custody, he/she will understand reasons for such huge number of violation due to unlawful detention. In existing legislation on refugees or foreigners, there is no provision governing administrative custody of asylum seekers. Migration and Asylum Bureau officials are very proud for including details about administrative detention in the draft asylum

[338] *Alipour and Hosseinzadgan v. Turkey* (June 2010).

[339] *Ranjbar and Others v. Turkey* (April 2010) and *Charahili v. Turkey* (April 2010).

law.[340] This is very crucial since regulating conditions for custody as well as for objection aims directly at preventing arbitrariness, which has been mentioned by the ECtHR many times. Accordingly, Article 68 of the draft law specifically deals with administrative custody.[341] Draft law Article 68 §1 states that application for international protection cannot be a reason for detainment of foreigners. Additionally, Article 68 §2 clearly sets that administrative custody is an exceptional situation and lists situations in which the person can be held in administrative custody: for verification of identity and citizenship information if there is doubt about this information, for preventing the person from entering into the country from irregular ways, if facts and reasons for application for international protection cannot be evaluated, and if the person threatens public security and safety. According to Article 68 §4, reasons for administrative custody, decision and length of custody should be informed in written document to the person, to his/her legal representative or to lawyer. Moreover, Article 68 §5 limits the length of administrative custody to a maximum of thirty days.

This article is directly a result of ECtHR judgments since even paragraphs are responses to refugees' claims under ECHR Article 5 as well as to problems regarding Turkey's asylum policy that have been pointed out by the Court. First of all, Article 68 sets that deprivation of liberty is an exceptional situation; therefore determines the conditions under which detention could take place. Giving a written notice to the person him/herself or to legal representative or to lawyer is precisely an attempt to prevent violations under ECHR Article 5 §2.

Once again criminal court of peace is the institution for objection according to the draft law Article 68 §7. Details such as application to the court does not end

[340] Migration and Asylum Bureau officials, interview by author.

[341] See draft law Article 68 in Appendix C.

custody and court's decision is final can be viewed as problematic. Yet at least determining a certain institution and rules of objection seems to constitute a safeguard at least on paper against possible violations of ECHR Article 5 §4, effective remedy. Moreover, limiting time to five days for decision of the court is totally in line with "speedy reply" mentioned by the Court:

> 62. The Court refers to its findings under Article 5 § 1 of the Convention about the lack of legal provisions governing the procedure for detention in Turkey pending deportation. The proceedings in issue did not raise a complex issue. The Court considers that the Ankara Administrative Court was in an even better position than the Court to observe the lack of a sufficient legal basis for the applicant's detention. The Court therefore finds that the judicial review in the present case cannot be regarded as a "speedy" reply to the applicant's petition.[342]

One important point about this article is inclusion of right to have visitors in custody. According to Article 68 §8, detainee will be able to have visitors. That is to say, there should not be any obstacle for seeing legal representative or lawyers. Inclusion of UNHCR officers specifically is remarkable in terms of state's perception of UNHCR as an authorized institution in this area in the new system.

iii. Administrative objection and judicial remedy: Remedy has been one of the most problematic areas for Turkey regarding issue of asylum. From refugees' cases against Turkey, one can see that the Court has found Turkey in violation in many cases due to not providing effective remedy. Moreover from the table of all ECtHR cases of refugees in Appendix, one can see that almost all of the applicants had claims regarding Turkey's violation of right to effective remedy. Article 13 of ECHR states:

> Right to an effective remedy
> Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority

[342] *Z.N.S. v. Turkey* (January 2010).

> notwithstanding that the violation has been committed by persons acting in an official capacity.[343]

What is remarkable about Article 13 is the fact that Article 13 is the source of first violation decision of the Court against Turkey in *Jabari v. Turkey* (July 2000) while violation of other articles of ECHR were first found in *Abdolkhani and Karimnia v. Turkey* (September 2009) and then in the following cases by referring to this leading case. This is directly related with the insufficiency of domestic legislation in Turkey. Since there is no asylum law in Turkey and regulations or circulars govern issue, the possibility for effective remedy is often closed. Exhaustion of internal authorities is thus very limited in this sense.

Another important characteristic of Article 13 is its scope being very comprehensive. Since there is no differentiation between types of violations or national authorities as administrative or criminal in the article, each and every violation of any kind of remedy falls under this article. For instance; objection and remedy for authorities' refugee status application decision[344] as well as objection and remedy for deportation decision[345] are both under scope of "right to effective

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[343] European Convention on Human Rights.

[344] See for instance *Jabari v. Turkey* (July 2000):
"43. The applicant further complained that she did not have an effective remedy to challenge the decision whereby her application for asylum was rejected as being out of time. She averred that this amounted to a breach of Article 13 of the Convention.
44. The applicant maintained that since her application for asylum was out of time she was never afforded an opportunity to explain to the authorities why she feared deportation to Iran. There was no appeal against the rejection of her asylum application. Furthermore, her action before the Ankara Administrative Court could not be considered an effective remedy since that court could not suspend the deportation decision with immediate effect. The court did not give detailed reasons for its decision not to suspend the applicant's deportation since the decision was an interim one and a separate decision would have been required."

[345] See for instance *Abdolkhani and Karimnia v. Turkey* (September 2009):
"111. The Court observes that, when the applicants first entered Turkey, they were deported to Iraq without their statements being taken by border officials (see paragraph 11 above) and apparently without a formal deportation decision being taken. The Government submitted that the applicants had failed to request asylum when they first entered Turkish territory. The Court is not persuaded by the Government's argument, which was not supported by any documents. In the absence of a legal procedure governing the applicants' deportation and providing procedural safeguards, even if they had

remedy" that is Article 13. As the Court in *M.B. and Others v. Turkey* (June 2010) stated, serving decision of refugee status or deportation to the applicant is fundamental for effective and accessible remedy, which could change circumstances of the case:

> Having regard, in particular, to the fact that the applicants were not served with the deportation order, the Court finds no reason which could lead it to reach a different conclusion in the present case. Accordingly, the Court concludes that the applicants were not afforded an effective and accessible remedy in relation to their complaints under Article 3 of the Convention.[346]

Therefore Article 13 has been referred by almost all of the applications against Turkey. The Court found Turkey in violation in *Jabari v. Turkey* (July 2000), *Abdolkhani and Karimnia v. Turkey* (September 2009), *Keshmiri v. Turkey* (April 2010), *Tehrani and Others v. Turkey* (April 2010), *M.B. and Others v. Turkey* (June 2010), and *Dbouba v. Turkey* (July 2010). Additionally, in many cases the Court found ne necessity to review the case under Article 13 although there had been claims under that article.[347]

Consequently, writing of an asylum law is itself a measure against ECHR violations especially for judicial remedy. Bertan Tokuzlu has entitled violations of Article 13 as "automatic violations once application is found admissible"[348] due to lack of law and insufficiency of existing legislation in Turkey. In the existing legislation, administrative objection or judicial remedy against decisions of deportation is regulated in 1994 Regulation. Objection to decisions of refugee status are regulated both in 1994 Regulation and 2006 Circular No.57. Regarding

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sought asylum when they entered Turkey, there are reasons to believe that their requests would not have been officially recorded."

[346] *M.B. and Others v. Turkey* (June 2010).

[347] See for instance *Charahili v. Turkey* (April 2010), *Z.N.S. v. Turkey* (January 2010) or *Alipour and Hosseinzadgan v. Turkey* (July 2010).

[348] Lami Bertan Tokuzlu, interview by author.

deportation decisions; objection is merely administrative since one level higher official than the one who had given the decision evaluates the objection.[349] On the contrary, draft law Article 53 §3 sets administrative courts as the institutions for objection of deportation decision, which enables judicial remedy procedurally.[350] Application to courts should be done within fifteen days after notification of deportation decision. Moreover, administrative courts are required to render a decision on the case within fifteen days. Although the Article states that court's decision is final, it also guarantees that foreigner cannot be deported until administrative court gives its decision.

On the subject of objections against refugee status decisions, 1994 Regulation Article 6 and 2006 Circular No.57 Article 12 similarly limit opposition merely as administrative objection. Both documents state that objections should be taken to governorates and Ministry of Interior would give the final decision.[351] Draft law Article 80, on the other hand, regulates both administrative objection and judicial remedy in this manner.[352] According to the draft law Article 80 §1(a) within ten days after notification of decision of refugee status application, the person him/herself or legal representative or lawyer can apply to The Commission of International Protection Evaluation (this institution will be founded by the law when it gets through the parliament) for objection.

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[349] 1994 Regulation, Article 29 (See supranote 331).

[350] See draft law Article 53 in Appendix C.

[351] 1994 Regulation, Article 6: […] The foreigner, whose application for refugee status is rejected, can object this decision in fifteen days to relevant governorate. Objection will be evaluated by Ministry of Interior and the final decision will be notified to the foreigner. (Author's translation)
2006 Circular No.57, Article 12: [...] Petition of objection or documents for requesting additional interview of the applicant, who objects first negative decision regarding application for refugee status, will be sent to Ministry and action will be taken in accordance with Ministry's instruction. (Author's translation)

[352] See draft law Article 80 in Appendix C.

In the same paragraph, it is stated that if the applicant is under administrative custody or has an inadmissible application for refugee status or is subjected to precipitated evaluation of application; objection should directly be to court. Draft law Article 80 §1(b) states that result of administrative objection and judicial objection procedures should be informed to the applicant or legal representative or lawyer. According to draft law Article 80 §1(ç) objection to administrative decisions should be done to the administrative courts within thirty days after notification of decision. Importantly, appointing administrative courts as the competent authorities enables way for judicial remedy after administrative objection is evaluated. Significantly, in Article 80 §1(e) it is once more repeated that the person is permitted to stay in the country until a final decision is rendered.

Since administrative objection and judicial remedy for deportation decisions as well as for refugee status decisions are cornerstones in claims of refugees and decisions of ECtHR, Turkey should have taken measures against those situations long ago. As mentioned before, having a particular law regulating these matters is a measure in itself. Additionally, specific articles aim to prevent further violations. This can be deduced from changes those articles promise. Especially setting administrative courts as authorities for objection is directly linked with violation of Article 13 because in this way "automatic violations" will be avoided first and foremost. Another outstanding point about this article is "stay of execution", i.e. deportation will not take place until either administrative objection or judicial remedy is finalized. According to Onur Arıner this is one of the most important

points of draft law in relation with ECtHR judgments.[353] Stay of execution is also significant with reference to automatic violations.[354]

iv. Admission and Accommodation Centers: Regarding ECtHR cases of refugees, admission and accommodation centers come into prominence from two different aspects: deprivation of liberty and material conditions in centers. Cases referring to deprivation of liberty have been mentioned above concerning violation of Article 5 of ECHR. Material conditions in centers relate to Article 3 of the Convention, i.e. prohibition of inhuman and degrading treatment. Cases of *Abdolkhani and Karimnia v. Turkey* (No. 2, July 2010)*, Charahili v. Turkey* (April 2010) and *Tehrani and Others v. Turkey* (April 2010) involve violation of Article 3 due to insufficient conditions of Hasköy and Fatih Police Headquarters and Tunca Foreigners Admission and Accommodation Center:

> 92. The Court observes that the Government presented only one photograph of the inside of a room at the Tunca Accommodation Centre, where there were a number of bunk beds placed closely next to each other with unused mattresses still in their plastic coverings and no sheets or blankets. The photographs presented by the applicants, however, show an uncountable number of men lying on the floor within touching distance of each other or sitting on blankets. Similarly the mealtime photograph shows men sitting elbow to elbow on the floor of the same unit while having their meal, while the others queue to receive theirs. The overall image depicted in the photographs of the accommodation centre is of excessive crowding as well as a consequent lack of general orderliness and hygiene.[355]

However, there are other cases of which one claim is related with material conditions. The Court rejected claims in *Z.N.S. v. Turkey* (January 2010), *Tehrani and Others v. Turkey* (April 2010)*,* and *Alipour and Hosseinzadgan v. Turkey* (July 2010) about physical conditions in Kırklareli Foreigners Admission and

[353] Onur Arıner, interview by author.

[354] Bertan Tokuzlu, interview by author.

[355] *Tehrani and Others v. Turkey* (April 2010).

Accommodation Center. This is of utmost significance regarding existing legislation paving way for arbitrariness. In other words, one can see that conditions in centers are not same everywhere and that some centers could provide satisfactory conditions. This discrepancy between centers stems from ambiguous legislation. Two main pieces of asylum legislation in Turkey, 1994 Regulation and 2006 Circular No.57 do not include provisions on admission and accommodation centers. Instead, issue is regulated by a separate regulation called "Mülteci Misafirhaneleri Yönetmeliği (Regulation on Refugees' Guesthouses)". In the Regulation, articles mostly concern management of guesthouses. Nevertheless, there are also articles about services that should be provided.[356] Those services include food, laundry, and resting and reading room. The Regulation stays quiet on standards with respect to material conditions in those houses.

Draft law, on the other hand, includes a specific article on the topic. However, this article solely determines who will be staying in and who will be managing centers. In other words, law leaves the issue to secondary legislation, to specific regulation on the subject.[357] Draft law Article 100 §3 states that vulnerable people with special needs will be privileged for accommodation in those centers. Additionally, according to draft law Article 100 §4, those centers are managed by governorates, however state institutions and organizations, Turkish Red Crescent and non-profit organizations specialized on issue of migration can be involved in management. Yet, the article does not include details regarding material conditions in centers. Therefore it is not possible to judge whether violations regarding conditions in centers would be prevented or not. This subject will be clearer when the law gets

[356] Mülteci Misafirhaneleri Yönetmeliği, 29/04/1983, http://www.mevzuat.adalet.gov.tr/html/21589.html

[357] See draft law Article 100 in Appendix C.

through the parliament. For the present, at least including an article on centers and promise for a new specific regulation can be viewed as a positive development.

Conclusion

From ECHR Article 46, it becomes clear that states' conformity with ECtHR judgments is not only an ethical requirement but also obligatory under the Convention. Moreover, Committee of Ministers', as the organ of execution, tools for ensuring compliance and examination of cases one by one in Committee Human Rights Meetings apparently indicate that proceedings do not end with finding of the violations. States are kept under supervision until the Committee finds measures taken by governments to be satisfactory. This is actually the main reason for ECtHR being an outstanding example of leverage politics.

Advocates for refugee rights taking ECtHR as an international ally achieve majority of their goals at one and the same time. This is due to the fact that the Court pressurizes the state judicially and morally and also raises concerns of prestige. Moreover, continual process following ECtHR judgments adds obligation and necessity to take measures under CM's sanctions. At this point, it is worth noting the willingness of Turkey to comply with ECtHR judgments. According to Kaboğlu, this willingness is compulsory since Turkey had understood that there is no other option except for compliance after its long-term disobedience that resulted in strongly worded resolutions and threat of using Article 8 of Statute of Council of Europe.[358] However, some of my interviewees strongly emphasize Turkey's willingness to take action on issue of asylum therefore desire to comply with judgments can be said to

[358] Kaboğlu and Koutnatzis, p.498.

be sincere.[359] Development of awareness on the issue is also mentioned for Turkey's abidance by judgments.[360]

Most members of advocates for refugee rights directly refer to ECtHR's pressure and concerns about prestige of the country as reasons for Turkey's compliance to judgments, i.e. writing of draft asylum law.[361] This is why analyzing effect of Court decisions is actually analysis of success of advocates for refugee rights. Regarding refugees' cases against Turkey, it is seen that claims and specific areas of jurisprudence is in line with general picture of cases of refugees in ECtHR against various states. Articles 2, 3, 5, 6, 8, and 13 constitute main grounds of claims usually.

In case of Turkey, ECtHR judgments include violation of Article 3 due to deportation and material conditions in admission and accommodation centers or police stations; Article 5 due to unlawful deprivation of liberty, arbitrary detention, lack of effective remedy to question lawfulness of detention; and Article 13 due to deficiency of effective and accessible remedy to decisions of deportation or refugee status determination.[362] As Mahmut Kaçan mentions, those articles are core and vital points of ECHR; therefore Turkey's violations signal to urgency of necessity to take measures.[363]

Classifying judgments under subtitles of *deportation and principle of non-refoulement, deprivation of liberty, administrative objection and judicial remedy,* and

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[359] Migration and Asylum Bureau officials, interview by author.
"Biz AİHM kararlarına 'gönülden' uyuyoruz."

[360] Onur Arıner, Veysi Roger Turgut, and Mahmut Kaçan, interview by author.

[361] Salih Efe, Oktay Durukan, Taner Kılıç, Volkan Görendağ, and Lami Bertan Tokuzlu, interview by author.

[362] See Table of refugees' cases in ECtHR against Turkey in Appendix B.

[363] Mahmut Kaçan, interview by author.

admission and accommodation centers and comparing draft law with existing legislation on those specific topics make it easier to understand how draft law responds to ECtHR judgments. Except for admission and accommodation centers, draft law appears to include general measures, a proper aim to prevent further violations on similar issues.

As it has been mentioned before, change in policy and change in state behavior are not the same. Since the draft law has not yet been adopted by the parliament, it is not possible to analyze Turkey's behavior on those matters. Nonetheless, draft law signals change in state policy and this constitutes an important step for influence of advocates for refugee rights on state policy. Regarding Turkey's changing asylum policy by virtue of draft law; one can notice one-to-one correspondence between ECtHR judgments and articles of law.

First of all, Turkey will have a specific law therefore legal gap in domestic legislation will be filled. Possibility for remedy will be easier and accessible. Additionally, inclusion of stay of execution in case of deportation decisions is a direct response to ECtHR which has found Turkey in violation due to lack of remedy and deportation. Determining procedure of administrative objection is another measure in terms of ECtHR judgments. It becomes clear that ECtHR judgments constitute the basis for those articles since the articles include every point that the Court has found problematic in Turkey.

As a result, analysis of the draft law in comparison with ECtHR judgments presents success of advocates fore refugee rights. At this point, it is important to acknowledge agency of individual refugees as the people who have started the whole procedure by reaching NGOs or lawyers. Draft law also demonstrates that advocates for refugee rights have very strategically started to exploit ECtHR as a legal

opportunity. Migration and Asylum Bureau's approach to the Court is also remarkable since bureaucrats in this bureau keen on abiding by the Court's decision as well as internalizing those judgments. Their visits to Strasbourg for exchange of ideas indicate not only Court's effect on the law but also the Bureau's willingness to comply with the judgments.

CHAPTER V

CONCLUSION

Individual effect on state policy or behavior is one of the sources of debates in international relations. In this thesis, rather than direct effect of individuals in state apparatuses, I focused on mediated individual effect. While direct effect of individuals, who are part of decision-making process, is relatively more visible in international relations, mediated effect of individuals seems to be more indirect and subtle. This is due to mediation by other actors like NGOs, networks or organizations, which turn into actors of effect after a while. However, it is still crucial to recognize individual's agency in mediated effect on state behavior. That is to say, studying through lenses of individual level of analysis in international relations is not merely focusing on statesmen.

In case of Turkey, a striking example of such mediated effect of an individual on state behavior manifests itself in the preparation of the draft law on Foreigners and International Protection by the Migration and Asylum Bureau under Ministry of Interior. Preparation of this draft law corresponds with the increase in the number of ECtHR judgments on Turkish state's violations of human rights of refugees. Accordingly, this thesis examined the ECtHR judgments' influence on the draft law as an example of mediated impact of individual refugees on state policy.

ECtHR judgments have had a conspicuous impact on Turkish state's reforms or amendments on matters concerning pre-trial detention, State Security Courts, retrials in Turkish courts, party closings, freedom of expression, and religious

freedom in general.[364] However, the effect of the Court on Turkish asylum policy in particular has gone relatively unnoticed so far. Moreover, in studies that have examined ECtHR's influence, individual has not been the unit of analysis.[365] In this particular study, I have focused on ECtHR judgments' effect on draft asylum law through the lenses of individual level of analysis.

In a traditional sense, relation between state and refugee is constituted over border controls for entrance to the country, recognition of legal status and protection of certain rights of refugees. However, ECtHR judgments' effect on the draft law demonstrates that relationship between individual refugee and Turkish state has come into a different phase. In the Turkish case, individual refugee has had an impact on state policy through ECtHR judgments. However, this is a mediated effect. In that case, individuals, whom are not thought to be effective on state outcome, are empowered by virtue of mediation by other actors.

In the destination country, refugees find themselves in a position of foreigner, non-citizen and constitute the most vulnerable group in the society in social, economic, cultural, political or psychological terms. Naturally, they are not part of decision-making process and certainly lack action capacity due to their vulnerable situation. At this point, other actors like NGOs, lawyers and activists involved in the issue become mediators between individual refugees and the state. Accordingly, the answer of my research question "How can an individual who is foreign and in a

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[364] See Smith, "Leveraging Norms: The ECHR and Turkey's Human Rights Reforms."
See also Kaboğlu and Koutnatzis, "The Reception Process in Greece and Turkey."

[365] See for instance Rıza Türmen, "Avrupa İnsan Haklari Sözleşmesi'nin İç Hukukumuza Etkileri." Available [online]: http://212.175.130.160/files/pdf/anayasa_yargisi/anayargi/turmen.pdf [16 June 2012]
Bülent Çiçekli, M. Bedri Eryılmaz ve Ömer Yılmaz, "Avrupa İnsan Hakları Mahkemesi Türkiye Kararlarının Analizi (2002-2005)," *Uluslararası Hukuk ve Politika* 3, No. 9 (2007), ss.28-59.
Serkan Cengiz, "AİHM Kararlarının İç Hukuka Etkisi," *TBB Dergisi,* Sayı 79 (2008), ss.334-350.
Şeref Ünal, "Avrupa İnsan Hakları Mahkemesi Kararlarının Türk İç Hukukuna Etkileri." Available [online]: http://www.anayasa.gov.tr/files/pdf/anayasa_yargisi/anayargi/unal.pdf [16 June 2012]

vulnerable position affect state policy?" lies in two stages. The first stage is refugees' access to the ECtHR while the second stage is effect of Court judgments on draft law.

Access to ECtHR is the process in which individual agency reveals itself most. Although refugees do not reach lawyers or NGOs with specific purpose of application to the Court, expressing their problems to a lawyer or NGO and getting legal aid are their own decision. Therefore, individual refugee's agency is most apparent in reaching NGOs or lawyers through networks among refugees, relatives or other domestic or international NGOs. It became clear from the interviews that lawyers and representatives of the refugees are all members or volunteers of different NGOs operating in area of asylum in Turkey. Thus, access to lawyer usually equals with access to NGO that offers legal aid for refugees. Turkish Branches of Helsinki Citizens Assembly and Amnesty International appear to be most active NGOs in legal aid and application to the Court. This being the case, other NGOs in Turkey direct refugees to those particular NGOs as well.

After refugees reach NGOs or lawyers; the "actor" changes its face in this thesis. In other words, individual is not only mediated but "advocates for refugee rights"[366] –as they call themselves- become involved in the issue as the main and active actors. There are two reasons behind this activity. First, it is due to refugees' lack of action capacity because of their vulnerable situation and lack of expertise. Second, advocates for refugee rights have their own purpose of expressing their demands to the state and having the right to comment on state policy.

Analysis of activities of advocates for refugee rights, their self-organization, and strategies that are used for expressing themselves indicates that they all act in

[366] Oktay Durukan, interview by author.

line with the purpose of changing Turkish asylum policy and implementation. From the interviews, it became clear that ECtHR has been instrumentalized by advocates for refugee rights. The Court, for advocates for refugee rights, came to the fore as an instrument for making refugees' problems in Turkey visible both to the state and international arena and compelling state to recognize as well as take action on those problems. As it is stated, advocates for refugee rights consciously organized refugees' cases to the ECtHR since Turkish state did not seek for domestic resolution to the systematic and continual problems regarding Turkish asylum policy and violations of refugee rights.

Considering advocates for refugee rights' organization, cooperation, activities, and purposes, I conceptualized them as a transnational advocacy network (TAN): a network of NGOs, activists and experts "distinguishable largely by the centrality of principled ideas or values in motivating their formation"[367] whose ultimate aim is to change state policy and behavior. As a TAN, advocates for refugee rights in Turkey use tactics of *information politics, symbolic politics, accountability politics* and *leverage politics.* Although those tactics are all significant for their ultimate aim to influence state outcome, leverage politics comes into prominence as the most important tactic in Turkey due to advocates for refugees' manner of application and success of choosing a supranational court as an ally.

Strategic litigation of refugees' cases to ECtHR is a striking usage of leverage politics. Making a more powerful international ally to bring pressure over the state is already conspicuous, yet additionally ECtHR' institutional characteristics increase the effectiveness of the pressure considerably. The Court's ability to impose sanction in case of refusal of execution of judgment and violated articles' vitality (such as

[367] Keck and Sikkink, p.1.

prohibition of torture, right to liberty and to effective remedy) make leverage politics more influential. Besides, Turkish state's vulnerability to leverage facilitates advocates for refugee rights' work. Turkish state's membership to Council of Europe as well as prestige concerns in international arena make Turkey vulnerable to leverage.

As TANs' ultimate aim is to change state policy and behavior, ECtHR judgments influencing draft of Foreigners and International Protection Law is a huge step for advocates for refugee rights. Even though draft law has not passed through the parliament yet, it is making its way through the legislative process and promises important changes in Turkish asylum policy. Therefore content of draft law actually brings about policy change. However, to be able to analyze state behavior, one should wait for the implementation of law. Nevertheless, draft law is considered as a policy change at least on paper.

Turkey's experience with ECtHR consists of twenty-six cases of refugees against Turkish state. Although *Jabari v. Turkey* (July 2000) and *D. and Others v. Turkey* (June 2006) are very important cases reflecting Court's sensitivity on effective remedy and deportation, the more important case has been *Abdolkhani and Karimnia v. Turkey* (September 2009). In ruling of the Court in this case, Turkish state was found in violation of articles regarding prohibition of torture, degrading and inhuman treatment, right to liberty, and right to effective remedy. Additionally, for the first time Turkish state had to pay compensation to the applicants. *Abdolkhani and Karimnia v. Turkey* is the leading case after which eleven more cases followed with violations of the same articles and with compensation.

Both officials of Migration and Asylum Bureau and advocates for refugees acknowledge Court's judgments' importance and influence. Especially, the Bureau's

visits to Strasbourg to get the Court's opinion regarding the draft law underline the significance of ECtHR judgments for the Bureau. Particular issues like deportation, detention, *non-refoulement*, and effective remedy have been included in the draft law in line with ECtHR judgments. Compared to the existing legislation on asylum, it becomes clear that the draft law responds to the Court judgments in the purposes of avoid more violations on those matters. Inclusion of principle of non-refoulement, risk of mistreatment, appointment of certain courts and time-limits for court decisions for objections, details for administrative objection as well as judicial remedy and introduction of conditions for administrative custody can be counted as instances of concrete indicators of ECtHR judgments' effect on draft law.

Consequently, the draft law demonstrates that Turkey is about to face significant changes in asylum policy. It is very important to note that ECtHR judgments have been effective on this policy change. ECtHR judgments' influence brings back advocates for refugee rights into stage. This is due to the fact that analysis of Court judgments effect on draft law is actually analysis of advocates for refugee rights' success. As a TAN, their ultimate aim is to change state policy and accordingly state behavior. With draft law, their aim has been realized at least on paper as a first step. In terms of taking ECtHR as an international ally for putting pressure on state and having impact on state policy, they have been successful so far.

It is crucial to acknowledge that advocates for refugee rights' success is not independent from individual refugees. In other words, without individual refugees' agency in reaching NGOs and lawyers, advocates for refugee rights would not be able to exploit ECtHR as a legal opportunity. Ultimately, ECtHR procedure proceeds through individual petitions and individual refugees are the ones who had started the whole process. It is important to understand that lawyers or NGOs do not directly

reach refugees for the purposes of filing their cases to the Court. Instead, refugees reach advocates for refugee rights since they face problems in Turkey. Advocates for refugee rights activities as a TAN start after refugees get in contact with them. Although refugees lack financial resources and legal information about their rights, advocates for refugee rights provide action capacity for refugees as mediators between individual refugees and state as well as between refugees and the Court. All in all, this study portrays a case of mediated individual effect on state policy through analysis of refugees' access to ECtHR and Court's judgments' effect on draft law.

This thesis presents the process after individual refugee takes action in terms of reaching NGOs ad lawyers. The process continues with instrumentalization of ECtHR by advocates for refugee rights and Court's judgments impact on state policy. However, there is another side of the story, which is the state. As Anagnostou states, conditions for ECtHR judgments to bring domestic change, reinforcement of domestic political or bureaucratic elites are as important as organized litigation and "legal mobilization" of civil society.[368] From the perspective of civil society, advocates for refugee rights as a TAN are involved in strategic litigation. Regarding political support, Migration and Asylum Bureau officials play a very crucial role. I am aware that, together with the Bureau, Turkish state's perception, socialization, and internalization of Court judgments and norms are of utmost significance. Yet this is not among the interests of this work; nevertheless this important aspect of Court effect on state policy should be analyzed in further research. Then the story of asylum policy change in Turkey would be completed. Therefore one must also acknowledge importance of state's socialization and internalization process in this story.

[368] Anagnostou, p.721.

In further research, the story of asylum policy reform in Turkey can be analyzed from the theoretical perspective of "good governance". Good governance literature focuses on the question how states *should* govern or make policy in a top to down path. This thesis analyzes the story of policy making from a bottom-up perspective, i.e. taking individual as the unit of analysis. Therefore the question "How does Turkish state manage its problem with refugees?" can be a meaningful ground for future research to analyze asylum policy reform in Turkey from a good governance framework. Such a future research could aim to question whether Turkish asylum policy reform presents an instance of good governance in terms of preparation of draft law with consultation involving NGOs and academics as well as involvement of civil society for expressing their demands to the state and state's perception of these demands and responds. Looking from a different perspective, my thesis presents the story of asylum policy change from the perspective of individual refugees and civil society and in this way addresses the question: how a foreign individual can affect state policy?

APPENDICES

APPENDIX A: Table of ECtHR statistics for Turkey between 1959-2011[369]

TOTAL NUMBER OF JUDGMENTS	2747
Judgments finding at least one violation	2404
Judgments finding no violation	57
Friendly settlements / Striking out judgments	204
Other judgments*	82
Right to life / deprivation of life (Art. 2)	92
Lack of effective investigation (Art. 2)	138
Prohibition of torture (Art. 3)	29
Inhuman or degrading treatment (Art. 3)	243
Lack of effective investigation (Art. 3)	135
Right to liberty and security (Art. 5)	554
Right to fair trial (Art. 6)	729
Length of proceedings (Art. 6)	493
No enforcement (Art. 6)	37
No punishment without law (Art. 7)	4
Right to respect for private and family life (Art. 8)	83
Freedom of thought, conscience and religion (Art. 9)	4
Freedom of expression (Art. 10)	207
Freedom of assembly and association (Art. 11)	53
Right to an effective remedy (Art. 13)	237
Prohibition of discrimination (Art. 14)	3
Protection of property (Protocol No. 1, Art. 1)	611
Right to education (Protocol No. 1, Art. 2)	4
Right to free elections (Protocol No. 1, Art. 3)	6
Other articles of the Convention	30

[369] Data obtained from European Court of Human Rights. Available [online]: http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data [20 April 2012]
* Other judgments: just satisfaction, revision judgments, preliminary objections and lack of jurisdiction

APPENDIX B: Table of refugees' cases opened in ECtHR against Turkey between 1991-2011[370]

CASE	FACTS and CLAIM	DECISION / JUDGMENT
A. and K. v. Turkey European Commission of Human Rights Application No. 14401/88 January 1991	A. and K. are two Iranians; one was working in a secularist party and the other was sympathizer of the Shah. Turkey decides to deport those two Iranians because they are arrested due to the claim of conducting false passports and illegal works Claim: ECHR Article 3 and 13 are violated if they are deported	They are merely forced to perform military service in Iran therefore there is no risk under Article 3 of ECHR. Application is found inadmissible.
F. et al. v. Turkey European Commission of Human Rights Application No. 13624/88 July 1991	34 Iranians of Kurdish ethnic origin who had been working for KDPI. Turkey decides to deport 9 of those people and let the other 25 stay in the country. Claim: deportation decision has violated ECHR Article 3, 6 and 13	Since the applicants did not provide the Commission with the necessary documents, it was decided that applicant withdrew the application.
A. G. and Others v. Turkey European Court of Human Rights First Section Application No. 40229/98 June 1999	Iranian A.G. with his wife and 3 children were the applicants. A.G. was working for Marxist Leninist organization IPFG. In 1995 his wife and children fled to Turkey and applied to UNHCR but they were rejected; thus Turkey decided to deport them. Upon their objection to the decision, they were permitted to stay in the country for 3 months. In 1996 the applicant escaped to Turkey, applied to UNHCR, got temporary residence permit and was settled to Van. Yet UNHCR rejected the case.	Since applicants could not prove the risk, there is no violation of Article 3. Since the applicant was in relation with NGOs, he should have been informed about legal aid; therefore there is no violation of Article 6 and 13. Since geographic limitation is a right birth from 1951 Geneva Convention and it is a part of Turkish asylum policy, there is no violation of Article 14.

[370] Table has been prepared by analysis of all ECtHR decisions on refugee cases against Turkey. It includes all cases regardless of inadmissibility or no violation. Some scholars include *Fraydun Ahmet Kordian v. Turkey (Application no. 6575/06)* into the list because of being related to Article 3. However, I have excluded it since it is a case about extradition. Additionally, table starts from 1991 since the first case was opened then.

	Then the case was appealed to Ankara Administrative Court but rejected again. İHD reported about the mistreatments during the detention in Turkey. Claim: decision to deport violates ECHR Article 2, 3, and 8; closure of appeal and legal aid violates Article 6 and 13; and geographic limitation violates Article 14	
Jabari v. Turkey European Court of Human Rights Fourth Section Application No. 40035/98 July 2000	Jabari is an Iranian woman. She was accused of adultery and probably was going to be sentenced to recm. In 1997 she illegally arrived in Turkey. In 1998 she was arrested in Paris with false passport and sent back to İstanbul. She was detained because of false passport and illegal entrance. Yet, Bakırköy Public Prosecution Office released her due to the risk of life that had caused the illegal entrance. İstanbul Police Department of Foreigners, Borders and Asylum decided to deport her to Iran. She applied for refugee status but was rejected on the grounds of 1994 Regulation 5 days limit for application. On 16.02.1998, UNHCR recognized her as a refugee. In March 1998, she appealed to Ankara Administrative Court for deportation decision but was rejected. Then she applied to ECtHR and during this time was permitted to stay in Turkey. Claim: ECHR Article 3 and 13 were violated.	The Court decided that because of lack of effective remedy for reviewing decision of refugee status determination, Turkey violated Article 13. The deportation should be realized in order Article 3 to be violated, so there is no violation of Article 3.
G. H. H. and Others v. Turkey	Iranian G. H. H. was anti-regime in Iran.	Since applicants were permitted to stay in

European Court of Human Rights First Section Application No. 43258/98 July (final October) 2000	He applied for refugee status but was rejected by İstanbul police because of 5 days limit of 1994 Regulation. He applied to UNHCR, but was rejected again. Upon documents he presented, he was granted temporary residence permit. State decided to deport him, but he applied to UNHCR for the second time. Therefore he was granted temporary residence permit until he was sent to a third country. In 1999, he was resettled to the USA. Claim: decision of deportation and rejecting refugee status violated ECHR Article 3 and 13.	Turkey until resettlement and had no risk to be deported to Iran during this period, the Court decided that there is no violation of the Article 3 and 13.
Khadjawi v. Turkey European Court of Human Rights Fourth Section Application No. 52239/99 January 2000	Iranian Khadjawi's wife had been recognized as refugee in Netherlands. He illegally arrived in Turkey and his wife asked Dutch authorities to grant visa for him. Application was accepted and the Dutch authorities recognized him. Since he entered illegally and exceeded 5 days limit for application, Turkish authorities held deportation decision. Claim: deportation decision violates ECHR Article 2 and 3.	Since Turkey guaranteed that the applicant would not be deported physically during the case and he went to the Netherlands during the trial, the application was found inadmissible.
M. T. and Others v. Turkey European Court of Human Rights Third Section Application No. 46765/99 May 2002	M.T., his wife and children were Iranian; of Kurdish ethnic origin and Muslim-Sunni faith. M.T. was member of KPDI. He was arrested and mistreated. In 1997, he escaped to Turkey with family, applied to UNHCR but was rejected. In 1998 and 1999, Turkey decided to deport them. Claim: deportation decision violates ECHR Articles 2, 3, 8,	Turkey guaranteed that M.T and his family would not be deported until the case is finalized. UNHCR granted them refugee status during the trial and they were resettled to Finland. Since they were resettled and were not deported, the application was found inadmissible.

	13, and 14.	
A. E. and Others v. Turkey European Court of Human Rights Third Section Application No. 45279/99 May 2002	A.E together with his wife and 4 children were Iranian citizens. His family was member of KDPI. He was arrested and mistreated. He escaped to Turkey with family, applied to UNHCR but they were rejected. He also misinformed UNHCR. Turkish authorities as well rejected his application because of 5 days limit of 1994 Regulation. Then he left Turkey and re-entered, got temporary residence permit from authorities. UNHCR informed authorities about his rejection and lie, and then Turkey decided to deport him. Upon his objection, he got temporary residence permit. He applied to UNHCR for the third time and he was rejected again. Authorities decided to deport him for the second time. He was arrested at the border of Azerbaijan and got 3 months of visa for Turkey. Then they moved to Norway. Claim: deportation decision violated ECHR Articles 3, 8, and 13.	Since the applicant and his family live in Norway and there is no concrete risk under Article 3, the application was found inadmissible.
Affaire Muslim v. Turkey European Court of Human Rights Fourth Section April (final July) 2005	The applicant was Iraqi citizen and was of Turkmen ethnic origin. He applied to Turkish authorities for refugee status but was rejected. No deportation decision was held; in the contrary he got temporary permission to stay in the country. Claim: rejection of asylum application violates ECHR Articles 2, 3, 8, and 13.	Since no decision for deportation was held and the applicant was permitted to stay in Turkey, there is no real risk for mistreatment in Iraq; therefore there is no violation of Article 2 and 3. Since there is no decision of deportation and no obligation for the state to provide financial support, there is no violation of

		Article 8 and 13.
Mamatkulov and Askarov v. Turkey European Court of Justice Applications Nos. 46827/99 and 46951/99 February 2005	Applicants were two Uzbek nationals. They are members of Erk (Freedom), an opposition party in Uzbekistan. Mamatkulov: On 03.03.1999, he arrived in İstanbul with tourist visa. He was arrested at İstanbul Atatürk Airport under an international arrest warrant. Uzbekistan requested his extradition under bilateral treaty with Turkey. On 05.03.1999, Bakırköy public prosecutor applied for him to be remanded in custody. He remanded in custody for 45 days, in accordance with European Convention on Mutual Assistance in Criminal Matters. On 11.03.1999, judge made an order remanding in custody pending his extradition. His representative argued that applicant would be mistreated in Uzbekistan and had asked Turkish authorities for political asylum. On 19.03.1999, Assize Court dismissed applicant's appeal. Askarov: He entered Turkey on 13.12.1998 with false passport. On 05.03.1999, Turkish police arrested him and took into custody acting on a request for his extradition by the Republic of Uzbekistan. On 07.03.1999, Bakırköy public prosecutor applied for him to remand in custody and judge ordered same way. On 15.03.1999, Criminal Court made an order remanding him in custody pending his	The Court decided that due to extradition of applicants, Turkey violated Article 3. There is no necessity for separate examination under Article 2. Article 6 /1 does not apply to extradition process in Turkey. Turkey has failed to comply with its obligations under Article 34. Non-pecuniary damage: 5,000€ for each Costs and expenses: 15,000€ Reminder of the claim for just satisfaction is dismissed.

	extradition. On 26.03.1999, Assize Court dismissed applicant's appeal. On 18.03.1999, Chamber of the Court on the basis of Rule 39 of the Rules of the Court informed Government not to extradite applicants before 23 March. On 19 March, Turkish authorities ordered applicants' extradition. On 23 March, Chamber decided to extend interim measure until further notice. On 27 March, applicants were handed over to Uzbek authorities. On 28.06.1999, Supreme Court of Uzbekistan found applicants guilty and sentenced to terms of imprisonment. Claim: their extradition to Uzbekistan violated Articles 2 and 3; extradition process in Turkey was unfair so Article 6 /1 was violated; by extraditing applicants, Turkey failed to comply with the Court under Rule 39 so Article 34 was violated; and asked for compensation under Article 41.	
D. and Others v. Turkey European Court of Justice Application No. 24245/03 June 2006	Applicants were 3 Iranian citizens; man from Kurdish ethnic origin, his wife from Azeri ethnic origin, and their child. Their marriage was objected because of religion and was invalidated. They re-married by father's permission; but he was sentenced to flogging. They escaped to Turkey and UNHCR granted them temporary asylum seeker status but rejected refugee status. In 2002, Turkey did not renew their residence permit, asked them to choose either going	The applicants were permitted to stay in Turkey during the trial and deportation decision was not realized. However, the Court decided that if Turkey deports them, this would violate Article 3. Yet there is no necessity to review the case under Article 13 and 14.

	back to Iran or another third country. Otherwise they would be deported. Claim: decision of deportation violates ECHR Articles 3, 13, and 14.	
Roza Taleghani and Others v. Turkey European Court of Human Rights Second Section Application No. 34202/07 November 2007	Applicants were four Iranian citizens and in 2007 arrived in Turkey illegally. UNHCR granted refugee status to 3 of them and Austrian Consulate permitted them to go there where mother of one of them was living. Since they entered illegally, Turkish authorities did not let them leave the country and decided to deport. They applied to ECtHR for ceasing the deportation. Turkey released them and they went to Austria. Claim: decision of deportation violates ECHR Article 3.	Since the lawyers of the applicants stated that Turkish authorities helped them for going to Austria and the applicants thus withdrew their claims, the Court decided not to review the case.
Anvar Mohammadi v. Turkey European Court of Human Rights Second Section Application No. 3373/06 August 2007	Mohammadi was Iranian citizen, member of KDPI and anti-regime. In 2000, he escaped to Turkey illegally and applied both to Turkish authorities and to UNHCR. In 2003 UNHCR rejected his application and in 2005 Turkish authorities rejected as well. Then the case was re-opened in UNHCR. He was arrested at Ankara Airport while trying to escape. He litigated for not to be deported, since trial continued he was permitted temporary residence. In 2006, UNHCR granted refugee status. He was arrested by the police in Van, but not deported. Claim: deportation decision violated ECHR Article 3.	Since the deportation was not practiced and the applicant moved to Canada during the trial, the Court decided that there is no violation of Article 3.

N. M. v. Turkey European Court of Human Rights Second Section Application No. 42175/05 March 2008	N.M. was an Iranian citizen. In 2002, she entered Turkey illegally with her children. Her application to UNHCR was rejected. In 2004, she returned to Iran. Turkish authorities claim that she voluntarily returned but the applicant claims that she was deported. She was sentenced to pecuniary fine in Iran. Then she escaped to Turkey again. Turkey decided to deport her. At the border Iranian authorities accused her of being Turkish spy and kept under detention. In 2004 she escaped to Turkey once more and applied to UNHCR, but she was rejected. In 2007, UNHCR granted her and children refugee status and resettlement process started; therefore Turkish authorities gave her residence permit. Claim: deportation decision violates ECHR Article 3.	Since the applicant was given residence permit and resettlement process started, there is no violation of Article 3. The case was found inadmissible.
Abdolkhani and Karimnia v. Turkey European Court of Human Rights Application No. 30471/08 September 2009 Represented by Mrs. D. Abadi (director of Iranian Refugees Alliance Inc.-New York) Lawyers: A. Baba and S. Uludağ (İstanbul)	Abdolkhani and Karimnia were two Iranian citizens. They had joined PMOI in Iran. They moved to Iraq Al-Ashraf camp and left organization in 2005 and 2006. Then they joined TIPF in Iraq (Ashraf Refugee Camp –ARF). They applied to UNHCR in Iraq and were recognized as refugee in 2006 and 2007. In April 2008, TIPF was closed and they were taken to Northern Iraq. They escaped to Turkey illegally. They were arrested and on 17.06.2008 they were deported to Iraq. But they re-entered Turkey and were arrested with false passport in Muş on	The Court decided that deportation of the applicants either to Iraq or Iran would violate Article 3. There is no necessity to review the case under Article 2. Since right for remedy is not provided effectively, Turkey violated Article 13. Since the applicants were detained without sufficient protection against arbitrary detention therefore resulted in unlawful detention, Turkey violated Article 5 §1.

	21.06.2008. They stated that they wanted to seek asylum in İstanbul UNHCR office. They were sent to Department of Foreigners in Police Headquarters in Hasköy. They stayed there until 26.09.2008 when they were sent to Kırklareli Foreigners Admission and Accommodation Center. On 25.03.2009, Sweden accepted the applicants' files for resettlement via UNHCR attempt. Claim: detention and deportation violate ECHR Articles 2, 3, 5, and 13 and asked for compensation under Article 41.	Since the applicants were not informed about the reasons for their detention, Turkey violated Article 5 §2. Since Turkish legal system did not provide the applicants with a remedy whereby they could obtain judicial review of the lawfulness of their detention, Turkey violated Article 5 §4. Pecuniary damage: rejected by the Court Non-pecuniary damage: 20,000€ for each Costs and expenses: jointly 3,500€
Abdolkhani and Karimina v. Turkey (no. 2) July 2010	Claim: Conditions of detention in Hasköy Police Headquarters and Kırklareli Foreigners Admission and Accommodation Center violated Article 3 and asked for compensation under Article 41 of the Convention.	Conditions of detention in Kırklareli Center do not violate Article 3. Detention conditions in Hasköy Police Headquarter violate Article 3. Non-pecuniary damage: 9,000€ for each Costs and expenses: 1,950€ jointly
Z. N. S. v. Turkey European Court of Human Rights Second Section Application No. 21896/08 January 2010 Represented by S. Efe (lawyer-Ankara)	Applicant was an Iranian citizen. On 24.09.2002, she entered Turkey with false passport and started to work in İstanbul. On 22.10.2003, she applied to UNHCR. In 2004, she was detained by Turkish authorities and deported to Iran, where she claims to have been imprisoned for 9 months and subjected to ill treatment.	The Court decided that deportation to Iran would violate Article 3. There is no necessity to review the case under Article 5 § 3, 6, and 13. Since Kırklareli Foreigners' Admission and Accommodation Centre in that case constituted a deprivation of liberty, detention was unlawful therefore Turkey

	On 03.02.2005, the applicant re-entered Turkey illegally, by the time the UNHCR had closed the case in her absence. On 07.09.2007, the applicant was baptized in a Protestant church in İstanbul. In late 2007, she applied to the UNHCR and requested her case to be re-examined. On 10.06.2008, she was transferred to Kırklareli Foreigners' Admission and Accommodation Centre pending the outcome of the proceedings before the Court. On 29.12.2008, the applicant and her son were recognized as refugees by UNHCR. Claim: deportation to Iran would violate ECHR Article 2 and 3; unlawfully detained without the opportunity to challenge the lawfulness of her detention therefore Turley violated Article 5 § 1,3,4, Article 6 and 13; conditions of detention violated Article 3; asked for compensation under Article 41.	violated Articler 5 §1. Since Turkish legal system did not provide the applicant with a remedy, Turkey violated Article 5 §4. Material conditions of detention in Kırklareli Foreigners' Admission and Accommodation Centre do not violate Article 3. Pecuniary damage: rejected by the Court Non-pecuniary damage: 20,000€ Costs and expenses: rejected by the Court
Charahili v. Turkey European Court of Human Rights Second Section Application No. 46605/07 April 2010 Represented by A. Yılmaz (lawyer-İstanbul)	Charahili was Tunisian national. He left Tunisia in 2003 to Syria, left Syria to Turkey in 2005 and started to work in Hatay. He was arrested by the anti-terrorist branch of police in accusation of membership to Al-Qaeda. He stated being a member of Ennahda in Tunisia. On 17.08.2006, decision for detention by Adana police was held. He objected the decision, but his objection was rejected. He applied to Turkish authorities and UNHCR. On 12.04.2007, Adana	The Court decided that there is no necessity to review the case under Articles 2, 6, 8, and 13. Deportation of the application would violate Article 3. Since the conditions of the detention in Fatih Police Station during 20 months were degrading and inhuman and insufficient for medical aid, Turkey violated Article 3. Since the applicant was detained without sufficient protection against arbitrary detention

	Criminal Court decided to release him but he was taken to Adana Security Directorate to the department of foreigners then to Adana Fatih Polica Station. On 16.04.2007, Turkish authorities rejected his asylum application yet UNHCR granted him refugee status on 03.05.2007. On 16.10.2007, decision to deportation was held. His lawyer appealed the decision. Although he had to pay 161.89 TL to Ankara Administrative Court, the court closed the case with the claim of not paying the fee. On 19.02.2008, Adana Criminal Court found him guilty of being a member of Al-Qaeda. On 07.11.2008, he was sent to Kırklareli Foreigners Admission and Accommodation Center. In the meantime in Tunisia, as member of a terrorist group, he was sentenced to 5 years of imprisonment. His case prevails in High Court of Appeal. Claim: deportation, detention, and the judiciary process violated ECHR Articles 2, 3, 5, 6, 8, and 13 are violated and asked for compensation under Article 41.	in Fatih Police Station and Kırklareli therefore resulted in unlawful detention, Turkey violated Article 5 §1. Pecuniary damage: rejected by the Court Non-pecuniary damage: 26,000€ Costs and expense: 3,500€
Keshmiri v. Turkey European Court of Human Rights Second Section Application No. 36370/08 April 2010 Represented by A. Baba (lawyer-	Keshmiri was an Iranian citizen. He had joined PMOI in Iran in 1985. In 1986, he moved to Iraq Al-Ashraf camp. Then he joined TIPF in Iraq (Ashraf Refugee Camp –ARF). On 05.05.2006, he was recognized as a refugee by	The Court decided that there is no necessity to review the case under Article 2. If the applicant is deported to Iran or Iraq, Turkey would violate Article 3. Since the decision for deportation was not

İstanbul)	UNHCR Geneva office. He entered Turkey illegally with a false passport and was arrested while trying to escape to Greece. UNHCR Ankara Office asked Turkish authorities to let the applicant seek asylum but their request was rejected because the applicant was assumed to be threat to national security as a member of PMOI. He was sent to prison in Muğla. On 01.08.2008, in order to deport to Iran, he was sent to Van. On invocation of the interim measure under Rule 39 of the Rules of the Court, he was transferred to Kırklareli Foreigners Admission and Accommodation Center. Claim: deportation violated ECHR Article 2 and 3, no efficient remedy violated Article 13 and asked for compensation under Article 41.	issued to him and thus no effective remedy was provided, Turkey violated Article 13. Compensation: the applicant did not claim just satisfaction therefore Court decided there is no reason to award him.
Ranjbar and Others v. Turkey European Court of Human Rights Second Section Application No. 37040/07 April 2010 Represented by S. Efe (lawyer-Ankara) and V. R. Turgut (lawyer-Van)	Applicants were five Iranian citizens. They escaped from Iran in 2005 and 2006 and arrived in Turkey illegally. In November 2006, they were interviewed by the Turkish authorities for asylum seeker status and residence permit. They stated that they were members of various illegal organizations and attended anti-regime activities in Iran. During the procedure, they were settled in Van. The Turkish authorities rejected their applications and they were arrested. They got refugee status documents from UNHCR. On 22.08.2007, decision to deportation was issued and the	Since the application included deportation to Iran, but applicants were not deported there, the Court rejected to review the case under Articles 2 and 3. Since the applicants were detained without sufficient protection against arbitrary detention therefore resulted in unlawful detention, Turkey violated Article 5 §1. There is no necessity to review the case under Article 5 §2 and §4. Pecuniary damage: rejected by the Court Non-pecuniary damage: 9,000€ for each applicant

	same day they were deported to Iraq. They lived in Iraq for 5 months. On 10.02.2008, they were resettled to Sweden. Claim: deportation and detention violated ECHR Articles 2, 3, and 5 and asked for compensation under Article 41.	Costs and expense: no evidence, no compensation
Tehrani and Others v. Turkey European Court of Human Rights Second Section Application No. 32940/08, 41626/08, 43616/08 April 2010 Represented by Mrs. D. Abadi (director of Iranian Refugees Alliance Inc.-New York)	Applicants were four Iranian citizens. Application 32940: Applicant left Iran in December 2002, joined PMOI in Iraq in January 2003, and joined TIPF in June 2003. On 05.05.2006, applicant was recognized as a refugee by UNHCR. On 07.07.2008, he was arrested in Turkey and sent to Tunca Foreigners Admission and Accommodation Center in Edirne. On 07.12.2008, he was transferred to a bigger building again in Tunca. On 01.06.2009, he was sent to Kırklareli Foreigners Admission and Accommodation Center. Application 41626: The Application was a member of PMOI in Iran. In 1990, he escaped to Turkey with his wife and children and was recognized as a refugee by UNHCR. In 1992, he was resettled to Finland with his family. In 1993, he left Finland in order to join PMOI in Iraq. In 2004, he left PMOI and joined TIPF first and then stayed in Al-Ashraf. In May/June 2008, he entered Turkey in order to get visa from Fin authorities and	The Court decided that conditions in Didim do not violate Article 3. If the applicants are deported to Iran or Iraq, Turkey would violate Article 3. Probable deportation would violate Article 13. Physical conditions in Kırklareli Foreigners Admission and Accommodation Centre do not violate Article 3. Physical conditions in Tunca Foreigners Admission and Accommodation Centre violate Article 3. Since authorities issued no explicit provision, detention was unlawful and Turkey violated Article 5 §1. Since Turkey did not provide the applicant with effective remedy, Article 5 §4 was violated. There is no necessity to review the case under Article 5 §2 and Article 8. Pecuniary damage: was not demanded Non-pecuniary damage: Application 32940: 26,000€ Application 41626: 20,000€ Application 43616:

	decided to go to Greece while waiting for the result. On 04.08.2008, he was arrested and sent to Aydın-Didim Gendarmerie Station. He proclaimed that he wanted to seek asylum. He was kept in a warehouse under Didim Gendarmerie for 10 days. On 15.08.2008, he was transferred to Didim detention center for 22 days. On 28.08.2008, Fin authorities granted the applicant visa and on 04.09.2008 he was granted residence and work permit in Finland. On 05.09.2008, he was transferred to Kırklareli Foreigners Admission and Accommodation Center. On 07.02.2010, his representative issued a petition stating that the applicant has been kept under detention for 17 months and deportation to Iran carries risk of life for him. Application 4316: K.M. stayed in Al-Ashraf as a member of PMOI until 19.11.2006. He went to TIPF and was recognized as refugee by UNHCR on 16.10.2007. P.R.S. joined PMOI in Iraq in 1990, left and moved to TIPF in April 2004. Applicant was recognized as a refugee by UNHCR on 05.05.2006. On 11.09.2008, both were arrested at the border while trying to escape to Greece. Next day they were taken to Tunca Foreigners Admission and Accommodation Center. On 14.10.2008, they were transferred to Kırklareli Foreigners Admission and Accommodation Center. On 14.05.2009, they demanded	21,000€ for each <u>Costs and expenses:</u> 3,500€ for each application (for 43616 jointly)

	their release. Ankara Administrative Court decided their release on 7 and 27 October 2009. On 25.11.2009, they were released with 5 months of residence permit. Upon Security General Directorate's bill of review Ankara Administrative Court reversed the judgment on the basis of applicants' being threat to public order and security. Claim: deportation either to Iran or to Iraq would violate ECHR Article 2, 3, and 13; detention violated Article 5 §1 and §4; detention conditions violated Article 3 and therefore Art. 13; not informing the reasons for their detention directly to themselves violated Art. 5 §2; 41626 was not let go to Finland therefore violated Article 8; and asked for compensation under Article 41.	
M. B. and Others v. Turkey European Court of Human Rights Second Section Application No. 36009/08 June 2010 Represented by S. Efe (lawyer-Ankara)	Applicants were four Iranian nationals. On 28.07.1999, the applicant together with family escaped to Turkey. They applied to Turkish authorities in Hakkari for temporary residence permit. On 02.08.2002, Turkish authorities dismissed his application since UNHCR rejected their recognition as refugees. In 2002, the applicants converted to Christianity and began working for the Gedik Paşa Armenian Protestant Church in İstanbul. On 1 and 9 April 2008, after being interviewed, the applicants were recognized as refugees by the UNHCR in	The Court decided that deportation to Iran would violate Article 3. There is no necessity to review the case under Article 2. Because of lack of effective remedy in domestic law, Turkey violated Article 13. There is no separate issue under Article 5 §4. Having regard to the short time which elapsed between the receipt of the fax message by the Government and the deportation of the applicants, the Court considers that it has not been established that the Government had failed to

	Ankara. On 14.05.2008, the applicants applied to the Foreigners' Department at the Hakkari Police Headquarters. On 30.07.2008, they were deported to Iran. On 31.07.2008 they re-entered Turkey illegally. On 21.08.2008, UNHCR office in Ankara interviewed them regarding the circumstances of their deportation and re-entry into Turkey. In August 2008, the applicants' representative lodged an application with the General Police Headquarters for the suspension of the deportation decision and the grant of residence permits but no response was received. According to the submissions of the applicants' representative, the applicants are currently hiding in Ankara. Claim: removal to Iran violates ECHR Articles 2 and 3; lack of effective remedy in domestic law violates Article 13; no opportunity to challenge their detention violates Articles 5 and 6; their deportation to Iran despite the interim measure violates Article 34; and asked for compensation under Article 41.	demonstrate the necessary diligence in complying with the measure indicated by the Court, Turkey violated Article 34. Pecuniary damage: rejected by the Court Non-pecuniary damage: potential violation of Article 3 of the Convention and an actual violation of Article 13 of the Convention constitutes in itself sufficient just satisfaction Costs and expenses: no award
Ahmadpour v. Turkey European Court of Human Rights Second Section Application No. 12717/08 June 2010 Represented by A. Baba (lawyer-İstanbul)	Applicant was an Iranian national. She divorced from her husband in Iran and father became the legal guardian of the children. On 02.10.2005, she arrived in Turkey with the children. She applied both to Turkish authorities and UNHCR for recognition and residence permit. On 28.09.2006, she married an	If the application is deported to Iran, Turkey would violate Article 3. Since Kırklareli Foreigners' Admission and Accommodation Centre in that case constituted a deprivation of liberty, the applicant was unlawfully detained and Turkey violated Article 5 §1.

	Iranian Christian national and converted to Christianity in October 2006. UNHCR dismissed the application, Ministry of Interior served the decision of rejection granting temporary residence permit on 22.12.2006 and informed that they had the right to object to the decisions concerned. On 07.11.2007, the applicant was informed that she would be deported. On 15.11.2007, she lodged a case with the Ankara Administrative Court requesting the latter to annul the decision of deportation and to order a stay of execution of that decision pending the proceedings and also requested legal aid. On 30.11.2007, the applicant's request for legal aid was rejected. On 18.02.2008, she was settled in the Kumkapı Foreigners' Admission and Accommodation Centre. On 13.03.2008, UNHCR reopened her file; on 10.04.2008, the applicant was recognized as a refugee. On 07.10.2009, the Ministry of the Interior granted residence permits for the applicant and her children for 6 months in order to allow the applicant's children to continue their education: subsequently released from detention. Claim: removal to Iran would violate ECHR Article 2 and 3; unlawful detention violates Article 5; asked for compensation under Article 41.	Damage: court's finding of a potential violation constitutes sufficient just satisfaction
Alipour and Hosseinzadgan v.	Applicants were two Iranian nationals.	Hosseinzadgan had decided to withdraw her

Turkey European Court of Human Rights Second Section Application No. 6909/08, 12792/08, and 28960/08 July 2010 Represented by L. Kanat (lawyer-Ankara)	Alipour: On 28.11.2000, the applicant arrived in Turkey. In 2004, the applicant's request for asylum was rejected by UNHCR and subsequently by the MOI. On 06.11.2007, the applicant filed a petition with the MOI requesting a residence permit since he wished to marry an Iranian refugee in Afyon. On 29.11.2007, the director of the department responsible for Foreigners, Borders and Asylum attached to the General Police Headquarters requested the Afyon police to apprehend and deport the applicant as soon as possible. In the meantime, UNHCR re-opened the file. On 10.01.2008, the applicant was arrested by police officers in Afyon and taken to Ağrı for deportation where he escaped from the police. On 17.01.2008, UNHCR Ankara office interviewed the applicant and on 06.02.2008 he was recognized as a refugee. In March 2008, he was settled to Kırklareli Aliens' Admission and Accommodation Centre. On 04.03.2010, he left Turkey and arrived in Sweden where he was granted refugee status. Hosseinzadgan: On 28.08.2004, she arrived in Turkey. She applied both to MOI and UNHCR and on 08.01.2008 UNHCR recognized her as a refugee. On 14.03.2008, the applicant was notified that her request for temporary asylum had been rejected by the MOI; same day she was arrested by police officers from the Burdur police	application as the Swedish Government had granted her refugee status. Alipour can no longer claim to be a victim of a violation of Articles 3 and 13 of the Convention therefore this part of application is ill-founded. Since national authorities failed to secure the applicant's speedy release from the Kırklareli Foreigners' Admission and Accommodation Centre to enable an earlier departure for Sweden once he had been granted refugee status there, Turkey violated Article 5 §1. The Court concludes that he did have access to adequate medical assistance, therefore this part of the application is manifestly ill founded. So there is no violation of Article 3 and material conditions did not constitute a violation either. Pecuniary damage: - Non-pecuniary damage: 9,000€ for Alipour Costs and expenses: no award

	headquarters. She was settled in Kırklareli Foreigners' Admission and Accommodation Centre. On 27.08.2008, the applicant, together with four other persons including Alipour, started a hunger strike to protest about her placement and the physical conditions in the Centre. On 06.03.2009, Ankara Administrative Court ordered her release with a view to facilitating her interview at the Canadian Consulate and ordered to grant a residence permit until her transfer to Canada, and then she was transferred to Eskişehir. On 24.07.2009, the MOI authorized the applicant's departure from Turkey to Sweden. Claim: removal to Iran would violate ECHR Article 3; since he had no chance to challenge the decision Turkey violated Article 13; detention in Kırklareli was unlawful therefore Turkey violated Article 5; material conditions in Kırklareli violated Article 3 since no medical assistance was provided; and asked for compensation under Article 41.	
D. B. v. Turkey European Court of Human Rights Second Section Application No. 15916/09 July 2010 Represented by S. Efe (lawyer-Ankara)	Applicant was an Iranian national. He was an active member of the Worker-Communist Party of Iran and the Freedom and Equality Seeking Students Movement in Iran. In early 2008, the applicant arrived illegally in Turkey. On 05.04.2008, Turkish security forces arrested the applicant while trying to leave	Since the applicant was released and granted temporary residence permit for five months pending his departure to Sweden, he was not a victim; therefore there is no violation of Articles 2, 3 and 13. In Edirne and Kırklareli, he was deprived of his liberty therefore Turkey

	Turkey illegally and he was subsequently placed in the Edirne Foreigners' Admission and Accommodation Centre. On 22.04.2008, he applied to MOI for temporary asylum and on 24.07.2008 he was rejected. Between 9 and 21 July 2008, the applicant went on a hunger strike in protest against his detention and the refusal of the authorities to allow him to have access to the temporary asylum system. On 25.07.2008, he was transferred to Kırlareli. He lodged, with the Edirne governor's office, a petition written in Farsi containing his objection against the decision rejecting his temporary asylum request but on 09.09.2008 his objection was rejected by MOI. In September 2008, Mazlum-Der reported that the Centre's administration did not allow the applicant, who was suffering psychologically, to talk with any other detainee; nor was he authorized to hold a meeting with the representatives of the UNHCR. On 20.03.2009 he was granted refugee status by UNHCR. On 19.10.2009, Ankara Administrative Court ordered the applicant's release from the Kırklareli Centre since Sweden had accepted him. In January 2010, the Government noted that the applicant had been granted a residence permit for five months pending his departure to Sweden. On 04.03.2010, he left Turkey and arrived in Sweden where he was granted refugee status. Claim: deportation would violate ECHR Articles 2 and 3;	violated Article 5 §1. Turkish legal system did not provide the applicant with a remedy whereby he could obtain speedy judicial review of the lawfulness of his detention therefore Turkey violated Article 5 §4. There is no need to make a separate ruling on the applicant's allegations under being held in a cell. In the Court's view, the fact that the applicant was subsequently able to meet a lawyer, sign the authority form and provide information regarding his situation in Iran does not alter the fact that the lack of timely action on the part of the authorities was incompatible with the respondent Government's obligations under Article 34 of the Convention. Turkey violated Article 34. Pecuniary damage: rejected by the Court Non-pecuniary damage: 11,000€ Costs and expenses: 158€

	lack of effective domestic remedy violates Article 13; unlawful detention violates Article 5; solitary confinement for eight months in Edirne and Kırklareli violates Article 3; and asked for compensation under Article 41.	
Dbouba v. Turkey European Court of Human Rights Second Section Application No. 15916/09 July 2010 Represented by M. Sfar (the president of the Collectif de la Communauté Tunisienne en Europe-Paris)	Applicant was a Tunisian national. In 1986, he became an active sympathizer of the Islamic Tendency Movement, an illegal organization in Tunisia (Ennahda since 1989). In 1990, he left Tunisia and arrived in Syria, via Libya and Egypt. In 1992, he went to Italy and in 1994 he returned to Syria. In 1996, in Syria he was detained and questioned by Tunisian officials and subsequently, he left Syria and arrived in Turkey. Between 1996 and 2007 the applicant lived in the province of Şanlıurfa without a residence permit. On 19.06.2007, officers from the Anti-Terrorist Branch of the Şanlıurfa Police Headquarters arrested him. Following his release from pre-trial detention and prior to his placement in a foreigners' admission and accommodation centre, he was informed that a procedure for detention was initiated The applicant was placed in the anti-terrorist branch of the Kocaeli police headquarters following the decision of the Istanbul Assize Court dated 24.01.2008. On 05.03.2008, the director of the department responsible for Foreigners, Borders and	If the applicant is deported to Tunisia, Turkey would violate Article 3. Lack of effective remedies violated Article 13. Due to the unlawfulness of his detention; Turkey violated Article 5 §1,2,4,5. Pecuniary damage: rejected by the Court Non-pecuniary damage: 11,000€ Costs and expenses: 4,000€

	Asylum attached to the General Police Headquarters requested the Kocaeli governor's office to ensure the applicant's removal from Turkey. He could not however be deported, on account of the decision of the Istanbul Assize Court banning him from leaving Turkey. On 11.03.2008, he was transferred to Kırklareli Foreigners' Admission and Accommodation Centre, where he is currently being held. On 03.12.2008, he was recognized as a refugee by UNHCR. On 23.12.2008, he made an official application to the MOI for temporary asylum. Claim: removal to Tunisia violates ECHR Article 3; his detention was unlawful therefore violation of Article 5 §1; not being informed about the reasons of the detention therefore violation of Article 5 §2; not able to challenge the lawfulness of his detention therefore violation of Article 5 §4; could not claim compensation for mentioned violations of Article 5 therefore violation of Article 5 §5; conditions of detention violated Article 3; and asked for compensation under Article 41.	
Moghaddas v. Turkey European Court of Human Rights Second Section Application No. 46134/08 February 2011 Represented by Mrs. D. Abadi, (director of Iranian Refugees'	Applicant was an Iranian citizen. In 1990, he fled from Iran to Turkey. In early 1991, he crossed the border to Iraq and joined PMOI there. He lived in Al-Ashraf camp. In 2003 or 2004, he left PMOI and went to TIPF. On 12.09.2007, he applied to UNHCR in Iraq. However, before he case was decided,	Court decided that complaints under Article 5 §1, 2, and 4 are admissible while rest of the application is found inadmissible. There has been violation of Article 5 §1, 2, and 4. Non-pecuniary damage: 9,000€ Costs and expenses: 3,500€

Alliance Inc., New York)	TIPF was closed down. In September 2008, he fled to Turkey. On 14.09.2008, the applicant together with a friend attempted to flee to Greece by boat. Yet they were stranded in the water. Next day, they were rescued and arrested by Turkish coastguards. He was transferred to Güzelçamlı gendarmerie station in Kuşadası, Aydın. He was subjected to administrative sanction for attempting to leave the country without passport or valid document. On 26.09.2008, he was put in a bus by police officers to be taken to Iraqi border for deportation. On the 27th of September, he was handed over to Iraqi authorities at Habur border crossing. Yet the authorities due to not being Iraqi did not accept him. Next day, he was taken to Silopi and informed that he would be deported to Iran. He claimed that he would be executed in Iran. Same day, he was taken to Habur once more. He claims that he was forced to go to Iraq illegally. On 01.01.2009, he was recognized as a refugee by UNHCR Erbil, Iraq. On 10.09.2009, the applicant fled Iraq and arrived in Switzerland. <u>Claim:</u> his removal to Iraq violated Articles 2 and 3; since he did not have an effective remedy at his disposal, Turkey violated Article 13; since he was kept in various gendarmerie and police stations until his deportation and deportation was unlawful,	Reminder of applicant's claim for just satisfaction is dismissed.

	Turkey violated Article 3; his detention in Güzelçamlı was unlawful therefore Turkey violated Article 5 §1, he had not been informed at any stage so Turkey violated Article 5 §2, 4; conditions in Güzelçamlı violated Article 3; and asked for compensation under Article 41.	

APPENDIX C: Draft of “Foreigners and International Protection Law” as of June 2012

YABANCILAR VE ULUSLARARASI KORUMA KANUNU TASARISI

BİRİNCİ KISIM
Amaç, Kapsam, Tanımlar ve Genel İlkeler

BİRİNCİ BÖLÜM
Amaç, Kapsam ve Tanımlar

Amaç

MADDE 1- (1) Bu Kanunun amacı; yabancıların Türkiye’ye girişleri, Türkiye’de kalışları ve Türkiye’den çıkışları ile Türkiye’den koruma talep eden yabancılara sağlanacak korumanın kapsamına ve uygulanmasına ilişkin usûl ve esasları ve İçişleri Bakanlığına bağlı Göç İdaresi Genel Müdürlüğünün kuruluş, görev, yetki ve sorumluluklarını düzenlemektir.

Kapsam

MADDE 2- (1) Bu Kanun, yabancılarla ilgili iş ve işlemleri; sınırlarda, sınır kapılarında ya da Türkiye içinde yabancıların münferit koruma talepleri üzerine sağlanacak uluslararası korumayı, ayrılmaya zorlandıkları ülkeye geri dönemeyen ve kitlesel olarak Türkiye’ye gelen yabancılara acil olarak sağlanacak geçici korumayı, Göç İdaresi Genel Müdürlüğünün kuruluş, görev, yetki ve sorumluluklarını kapsar.

(2) Bu Kanunun uygulanmasında, Türkiye’nin taraf olduğu milletlerarası anlaşmalar ile özel kanunlardaki hükümler saklıdır.

Tanımlar

MADDE 3- (1) Bu Kanunun uygulanmasında;

a) Aile üyeleri: Başvuru sahibinin veya uluslararası koruma statüsü sahibi kişinin eşini, ergin olmayan çocuğu ile bağımlı ergin çocuğunu,

b) Avrupa ülkeleri: Avrupa Konseyi üyesi olan ülkeler ile Bakanlar Kurulunca belirlenecek diğer ülkeleri,

c) Bakan: İçişleri Bakanını,

ç) Bakanlık: İçişleri Bakanlığını,

d) Başvuru sahibi: Uluslararası koruma talebinde bulunan ve henüz başvurusu hakkında son karar verilmemiş olan kişiyi,

e) Çocuk: Henüz onsekiz yaşını doldurmamış ve ergin olmamış kişiyi,

f) Destekleyici: Aile birliği amacıyla Türkiye’ye gelecek yabancıların masraflarını üstlenen ve ikamet izni talebinde bulunanlar tarafından başvuruya dayanak gösterilen Türk vatandaşını veya Türkiye’de yasal olarak bulunan yabancıyı,

g) Genel Müdür: Göç İdaresi Genel Müdürünü,

ğ) Genel Müdürlük: Göç İdaresi Genel Müdürlüğünü,

h) Giriş ve çıkış kontrolü: Sınır kapılarındaki kontrol işlemlerini,

ı) Göç: Yabancıların, yasal yollarla Türkiye’ye girişini, Türkiye’de kalışını ve Türkiye’den çıkışını ifade eden düzenli göç ile yabancıların yasadışı yollarla Türkiye’ye girişini, Türkiye’de kalışını, Türkiye’den çıkışını ve Türkiye’de izinsiz

çalışmasını ifade eden düzensiz göçü ve uluslararası korumayı,

i) İkamet adresi: Türkiye'de adres kayıt sisteminde kayıtlı olunan yeri,

j) İkamet izni: Türkiye'de kalmak üzere verilen izin belgesini,

k) Konsolosluk: Türkiye Cumhuriyeti başkonsolosluklarını, konsolosluklarını veya büyükelçilik konsolosluk şubelerini,

l) Özel ihtiyaç sahibi: Başvuru sahibi ile uluslararası koruma statüsü sahibi kişilerden; refakatsiz çocuk, özürlü, yaşlı, hamile, oniki yaşından küçük çocuğu olan yalnız anne ya da baba veya işkence, cinsel saldırı ya da diğer ciddî psikolojik, bedensel ya da cinsel şiddete maruz kalmış kişiyi,

m) Refakatsiz çocuk: Sorumlu bir kişinin etkin bakımına alınmadığı sürece, kanunen ya da örf ve adet gereği kendisinden sorumlu bir yetişkinin refakati bulunmaksızın Türkiye'ye gelen veya Türkiye'ye giriş yaptıktan sonra refakatsiz kalan çocuğu,

n) Seyahat belgesi: Pasaport yerine geçen belgeyi,

o) Sınır kapısı: Bakanlar Kurulu kararıyla Türkiye'ye giriş ve Türkiye'den çıkış için belirlenen sınır geçiş noktasını,

ö) Son karar: Başvuru sahibinin başvurusuyla veya uluslararası koruma statüsü sahibi kişinin statüsüyle ilgili kararlardan; idarî itirazda bulunulmaması ve yargıya başvurulmaması hâlinde Genel Müdürlük tarafından verilen kararı veya yargıya başvurulması sonucunda temyiz edilmesi mümkün olmayan kararı,

p) Sözleşme: Mültecilerin Hukuki Durumuna Dair 1967 Protokolüyle değişik 28/7/1951 tarihli Mültecilerin Hukuki Durumuna Dair Sözleşmeyi,

r) Uluslararası koruma: Mülteci, şartlı mülteci veya ikincil koruma statüsünü,

s) Vatandaşı olduğu ülke: Yabancının vatandaşı olduğu ülkeyi veya yabancının birden fazla vatandaşlığının bulunduğu durumlarda, vatandaşlığında olduğu ülkelerden her birini,

ş) Vatansız kişi: Hiçbir devlete vatandaşlık bağıyla bağlı bulunmayan ve yabancı sayılan kişiyi,

t) Vize: Türkiye'de en fazla doksan güne kadar kalma hakkı tanıyan ya da transit geçişi sağlayan izni,

u) Vize muafiyeti: Vize alma gerekliliğini kaldıran düzenlemeyi,

ü) Yabancı: Türkiye Cumhuriyeti Devletiyle vatandaşlık bağı bulunmayan kişiyi,

v) Yabancı kimlik numarası: 25/4/2006 tarihli ve 5490 sayılı Nüfus Hizmetleri Kanunu uyarınca yabancılara verilen kimlik numarasını,

ifade eder.

İKİNCİ BÖLÜM
Geri Gönderme Yasağı

Geri gönderme yasağı

MADDE 4- (1) Bu Kanun kapsamındaki hiç kimse, işkenceye, insanlık dışı ya da onur kırıcı ceza veya muameleye tâbi tutulacağı veya ırkı, dini, tâbiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasî fikirleri dolayısıyla hayatının veya hürriyetinin tehdit altında bulunacağı bir yere gönderilemez.

(2) Sözleşmenin 33 üncü maddesinin ikinci fıkrası hükümleri saklıdır.

İKİNCİ KISIM

BİRİNCİ BÖLÜM
Türkiye'ye Giriş ve Vize

Türkiye'ye giriş ve Türkiye'den çıkış

MADDE 5- (1) Türkiye'ye giriş ve Türkiye'den çıkış, sınır kapılarından geçerli pasaport veya pasaport yerine geçen belgelerle yapılır.

Belge kontrolü

MADDE 6- (1) Yabancı, pasaport veya pasaport yerine geçen belge ya da belgelerini, Türkiye'ye giriş ve Türkiye'den çıkışlarda görevlilere göstermek zorundadır.

(2) Sınır geçişlerine ilişkin belge kontrolleri, taşıtlarda seyir hâlinde de yerine getirilebilir.

(3) Havalimanlarının transit alanlarını kullanan yabancılar, yetkili makamlarca kontrole tâbi tutulabilirler.

(4) Türkiye'ye girişlerde, yabancının 7 nci madde kapsamında olup olmadığı kontrol edilir.

(5) Bu maddenin uygulanmasında, kapsamlı kontrole tâbi tutulması gerekli görülenler en fazla dört saat bekletilebilir. Yabancı, bu süre içerisinde her an ülkesine dönebileceği gibi dört saatlik süreyle sınırlı kalmaksızın ülkeye kabûlle ilgili işlemlerin sonuçlanmasını da bekleyebilir. Kapsamlı kontrol işlemlerine dair usûl ve esaslar yönetmelikle düzenlenir.

Türkiye'ye girişlerine izin verilmeyecek yabancılar

MADDE 7- (1) Aşağıdaki yabancılar, Türkiye'ye girişlerine izin verilmeyerek geri çevrilir:

a) Pasaportu, pasaport yerine geçen belgesi, vizesi veya ikamet ya da çalışma izni olmayanlar ile bu belgeleri veya izinleri hileli yollarla edindiği veya sahte olduğu anlaşılanlar.

b) Vize, vize muafiyeti veya ikamet izin süresinin bitiminden itibaren en az altmış gün süreli pasaport veya pasaport yerine geçen belgesi olmayanlar.

c) 15 inci maddenin ikinci fıkrası saklı kalmak kaydıyla, vize muafiyeti kapsamında olsalar dahi, 15 inci maddenin birinci fıkrasında sayılan yabancılar.

(2) Bu maddeyle ilgili olarak yapılan işlemler, geri çevrilen yabancılara tebliğ edilir. Tebligatta, yabancıların karara karşı itiraz haklarını etkin şekilde nasıl kullanabilecekleri ve bu süreçteki diğer yasal hak ve yükümlülükleri de yer alır.

Uluslararası koruma başvurusuna ilişkin uygulama

MADDE 8- (1) 5 inci, 6 ncı ve 7 nci maddelerde yer alan şartlar, uluslararası koruma başvurusu yapmayı engelleyici şekilde yorumlanamaz ve uygulanamaz.

Türkiye'ye giriş yasağı

MADDE 9- (1) Genel Müdürlük, gerektiğinde ilgili kamu kurum ve kuruluşlarının görüşlerini alarak, Türkiye dışında olup da kamu düzeni veya kamu güvenliği ya da kamu sağlığı açısından Türkiye'ye girmesinde sakınca görülen yabancıların ülkeye girişini yasaklayabilir.

(2) Türkiye'den sınır dışı edilen yabancıların Türkiye'ye girişi, Genel Müdürlük veya valilikler tarafından yasaklanır.

(3) Türkiye'ye giriş yasağının süresi en fazla beş yıldır. Ancak, kamu düzeni veya kamu güvenliği açısından ciddî tehdit bulunması hâlinde bu süre Genel Müdürlükçe en fazla on yıl daha artırılabilir.

(4) Vize veya ikamet izni süresi sona eren ve bu durumları yetkili makamlarca tespit edilmeden önce Türkiye dışına çıkmak için valiliklere başvuruda bulunup hakkında sınır dışı etme kararı alınan yabancıların Türkiye'ye giriş yasağı süresi bir yılı geçemez.

(5) 56 ncı madde uyarınca Türkiye'yi terke davet edilenlerden, süresi içinde ülkeyi terk edenler hakkında giriş yasağı kararı alınmayabilir.

(6) Genel Müdürlük, giriş yasağını kaldırabilir veya giriş yasağı saklı kalmak kaydıyla yabancının belirli bir süre için Türkiye'ye girişine izin verebilir.

(7) Kamu düzeni veya kamu güvenliği sebebiyle bazı yabancıların ülkeye kabûlü Genel Müdürlükçe ön izin şartına bağlanabilir.

Türkiye'ye giriş yasağının tebliği

MADDE 10- (1) Giriş yasağına ilişkin tebligat, 9 uncu maddenin birinci fıkrası kapsamında olan yabancılara Türkiye'ye giriş yapmak üzere geldiklerinde sınır kapılarındaki yetkili makamlar tarafından, 9 uncu maddenin ikinci fıkrası kapsamında olan yabancılara ise valilikler tarafından yapılır. Tebligatta, yabancıların karara karşı itiraz haklarını etkin şekilde nasıl kullanabilecekleri ve bu süreçteki diğer yasal hak ve yükümlülükleri de yer alır.

Vize zorunluluğu, vize başvurusu ve yetkili makamlar

MADDE 11- (1) Türkiye'de doksan güne kadar kalacak yabancılar, vatandaşı oldukları veya yasal olarak bulundukları ülkedeki konsolosluklardan geliş amaçlarını da belirten vize alarak gelirler. Vizenin veya vize muafiyetinin Türkiye'de sağladığı kalış süresi, her yüzseksen günde doksan günü geçemez.

(2) Vize başvurularının değerlendirmeye alınabilmesi için, başvuruların usûlüne uygun olarak yapılması gerekir.

(3) Vizeler, Türkiye'ye giriş için mutlak hak sağlamaz.

(4) Vizeler, konsolosluklarca, istisnaî durumlarda ise, sınır kapılarının bağlı olduğu valiliklerce verilir. Konsolosluklara yapılan başvurular doksan gün içinde sonuçlandırılır.

(5) Yabancı ülke diplomatları ile ülke menfaatleri gözönünde bulundurularak vize verilmesinde yarar görülen yabancılara, istisnaî olarak Türkiye Cumhuriyeti büyükelçiliklerince de re'sen vize verilebilir. Bu amaçla verilen vizeler, genel vize verme usûlüne uygun olarak Bakanlık ve Dışişleri Bakanlığına derhâl bildirilir. Bu vizeler harca tâbi değildir.

(6) Vize türlerine ve işlemlerine ilişkin usûl ve esaslar yönetmelikle düzenlenir.

Vize muafiyeti

MADDE 12- (1) Aşağıda sayılan yabancılardan Türkiye'ye girişte vize şartı aranmaz:

a) Türkiye Cumhuriyeti'nin taraf olduğu anlaşmalarla ya da Bakanlar Kurulu kararıyla vizeden muaf tutulan ülkelerin vatandaşları.

b) Türkiye'ye giriş yapacağı tarih itibarıyla, geçerli ikamet veya çalışma izni bulunanlar.

c) 15/7/1950 tarihli ve 5682 sayılı Pasaport Kanununun 18 inci maddesine göre verilmiş ve geçerliliklerini yitirmemiş yabancılara mahsus damgalı pasaport sahipleri.

ç) 29/5/2009 tarihli ve 5901 sayılı Türk Vatandaşlığı Kanununun 28 inci maddesi kapsamında olduğu anlaşılanlar.

(2) Aşağıda sayılan yabancılardan Türkiye'ye girişte vize şartı aranmayabilir:

a) Mücbir nedenlerle, Türk hava ve deniz limanlarını kullanmak zorunda kalan taşıtlardaki yabancılardan liman şehrine çıkacak kişiler.

b) Deniz limanlarına gelip, yetmişiki saati geçmemek kaydıyla, liman şehrini veya civar illeri turizm amaçlı gezecek kişiler.

Sınır kapılarında verilen vizeler

MADDE 13- (1) Vize almadan sınır kapılarına gelen yabancılara, süresi içinde Türkiye'den ayrılacaklarını belgelemeleri hâlinde, sınır kapılarında istisnaî olarak vize verilebilir.

(2) Sınır vizesi, sınır kapılarının bağlı olduğu valiliklerce verilir. Valilik bu yetkisini sınırda görevli kolluk birimine devredebilir. Bakanlar Kurulunca farklı bir süre belirlenmediği sürece, bu vize Türkiye'de en fazla onbeş gün kalma hakkı sağlar.

(3) Sınır vizesinin verilmesinde, insanî nedenlere bağlı olarak sağlık sigortası şartı aranmayabilir.

Havalimanı transit vizeleri

MADDE 14- (1) Türkiye'den transit geçecek yabancılara, havalimanı transit vizesi şartı getirilebilir. Havalimanı transit vizeleri, en fazla altı ay içinde kullanılmak üzere konsolosluklar tarafından verilir.

(2) Havalimanı transit vizesi istenecek yabancılar, Bakanlık ve Dışişleri Bakanlığınca müştereken belirlenir.

Vize verilmeyecek yabancılar

MADDE 15- (1) Aşağıda belirtilen yabancılara vize verilmez:

a) Talep ettikleri vize süresinden en az altmış gün daha uzun süreli pasaport ya da pasaport yerine geçen belgesi olmayanlar.

b) Türkiye'ye girişleri yasaklı olanlar.

c) Kamu düzeni veya kamu güvenliği açısından sakıncalı görülenler.

ç) Kamu sağlığına tehdit olarak nitelendirilen hastalıklardan birini taşıyanlar.

d) Türkiye Cumhuriyeti'nin taraf olduğu anlaşmalar uyarınca, suçluların geri verilmesine esas olan suç veya suçlardan sanık olanlar ya da hükümlü bulunanlar.

e) Kalacağı süreyi kapsayan geçerli sağlık sigortası bulunmayanlar.

f) Türkiye'ye giriş, Türkiye'den geçiş veya Türkiye'de kalış amacını haklı nedenlere dayandıramayanlar.

g) Kalacağı sürede, yeterli ve düzenli maddî imkâna sahip olmayanlar.

ğ) Vize ihlâlinden veya önceki ikamet izninden doğan ya da 21/7/1953 tarihli ve 6183 sayılı Âmme Alacaklarının Tahsil Usulü Hakkında Kanuna göre takip ve tahsil edilmesi gereken alacakları ödemeyi kabûl etmeyenler veya 26/9/2004 tarihli ve 5237 sayılı Türk Ceza Kanununa göre takip edilen borç ve cezalarını ödemeyi kabûl etmeyenler.

(2) Bu madde kapsamında olmasına rağmen vize verilmesinde yarar görülenlere Bakanın onayıyla vize verilebilir.

Vizenin iptali

MADDE 16- (1) Vizeler;

a) Sahteciliğe konu olduğunun tespiti,

b) Üzerinde silinti, kazıntı veya tahrifat yapıldığının anlaşılması,
c) Vize sahibinin Türkiye'ye girişinin yasaklanması,
ç) Yabancının suç işleyebileceği yönünde kuvvetli şüphe bulunması,
d) Pasaport veya pasaport yerine geçen belgenin sahte olması veya geçerliliğinin sona ermesi,
e) Vize veya vize muafiyetinin amacı dışında kullanılması,
f) Vizenin verilmesine temel olan şartların veya belgelerin geçerli olmadığının anlaşılması,
hâllerinde, vizeyi veren makamlar veya valiliklerce iptal edilir.
(2) Vizenin geçerlilik süresi içinde yabancıyla ilgili sınır dışı etme kararı alınması hâlinde vize iptal edilir.

Vize işlemlerinin tebliği
MADDE 17- (1) Vize talebinin reddi ya da vizenin iptaline ilişkin işlemler ilgiliye tebliğ edilir.

Bakanlar Kurulunun vize ve pasaport işlemlerinde yetkisi
MADDE 18- (1) Bakanlar Kurulu;
a) Pasaporta ve vizeye dair işlemlerin belirlenmesine ilişkin anlaşmalar yapmaya ve gerek gördüğü hâllerde bazı devletlerin vatandaşları için vize zorunluluğunu tek taraflı olarak kaldırmaya, vizelerin harçtan muaf tutulması da dâhil olmak üzere vize kolaylığı getirmeye ve vize sürelerini belirlemeye,
b) Savaş hâlinde veya diğer olağanüstü hâllerde ülkenin bir bölgesini veya tamamını kapsamak üzere, yabancılar için pasaporta dair kayıt ve şartlar koymaya,
c) Yabancıların Türkiye'ye girişlerini belli şartlara bağlayıcı veya kısıtlayıcı her tür önlemi almaya,
yetkilidir.

İKİNCİ BÖLÜM
İkamet

İkamet izni
MADDE 19- (1) Türkiye'de, vizenin veya vize muafiyetinin tanıdığı süreden ya da doksan günden fazla kalacak yabancıların ikamet izni almaları zorunludur. İkamet izni, altı ay içinde kullanılmaya başlanmadığında geçerliliğini kaybeder.

İkamet izninden muafiyet
MADDE 20- (1) Aşağıda sayılan yabancılar ikamet izninden muaf tutulurlar:
a) Doksan güne kadar vizeyle veya vizeden muaf olarak gelenler, vize süresi veya vize muafiyeti süresince.
b) Vatansız Kişi Kimlik Belgesi sahibi olanlar.
c) Türkiye'de görevli diplomasi ve konsolosluk memurları.
ç) Türkiye'de görevli diplomasi ve konsolosluk memurlarının ailelerinden Dışişleri Bakanlığınca bildirilenler.
d) Uluslararası kuruluşların Türkiye'deki temsilciliklerinde çalışan ve statüleri anlaşmalarla belirlenmiş olanlar.
e) Türkiye Cumhuriyeti'nin taraf olduğu anlaşmalarla ikamet izninden muaf tutulanlar.
f) 5901 sayılı Türk Vatandaşlığı Kanununun 28 inci maddesi kapsamında olanlar.

g) 69 uncu maddenin yedinci fıkrası ile 76 ncı ve 83 üncü maddelerin birinci fıkraları kapsamında belge sahibi olanlar.

(2) Birinci fıkranın (c), (ç), (d) ve (e) bentlerinde belirtilen yabancılara, şekil ve içeriği Bakanlık ve Dışişleri Bakanlığınca birlikte belirlenen belge tanzim edilir. Bu yabancılar, ikamet izninden muafiyet sağlayan durumları sona erdikten sonra da Türkiye'de kalmaya devam edeceklerse, en geç on gün içinde ikamet izni almak üzere valiliklere başvurmakla yükümlüdür.

İkamet izni başvurusu

MADDE 21- (1) İkamet izni başvurusu, yabancının vatandaşı olduğu veya yasal olarak bulunduğu ülkedeki konsolosluklara yapılır.

(2) İkamet izni için başvuracak yabancılarda, talep ettikleri ikamet izni süresinden altmış gün daha uzun süreli pasaport ya da pasaport yerine geçen belgeye sahip olmaları şartı aranır.

(3) Başvuru için gerekli olan bilgi ve belgeler eksik ise, başvurunun değerlendirilmesi eksiklikler tamamlanıncaya kadar ertelenebilir. Eksik olan bilgi ve belgeler ilgiliye bildirilir.

(4) Konsolosluklar, ikamet izni başvurularını görüşleriyle birlikte Genel Müdürlüğe iletir. Genel Müdürlük, gerekli gördüğünde ilgili kurumların görüşlerini de alarak başvuruları sonuçlandırdıktan sonra, ikamet izninin düzenlenmesi ya da başvurunun reddedilmesi için konsolosluğa bilgi verir.

(5) Başvurular, en geç doksan gün içinde sonuçlandırılır.

(6) İkamet izni başvurusunun reddine ilişkin işlemler ilgiliye tebliğ edilir.

Türkiye içinden yapılabilecek ikamet izni başvuruları

MADDE 22- (1) İkamet izni başvuruları, aşağıdaki hâllerde istisnaî olarak valiliklere de yapılabilir:

a) Adlî veya idarî makamların kararlarında veya taleplerinde.

b) Yabancının Türkiye'den ayrılmasının makûl veya mümkün olmadığı durumlarda.

c) Uzun dönem ikamet izinlerinde.

ç) Öğrenci ikamet izinlerinde.

d) İnsanî ikamet izinlerinde.

e) İnsan ticareti mağduru ikamet izinlerinde.

f) Aile ikamet izninden kısa dönem ikamet iznine geçişlerde.

g) Türkiye'de ikamet izni bulunan anne veya babanın Türkiye'de doğan çocukları için yapacağı başvurularda.

ğ) Geçerli ikamet izninin verilmesine esas olan gerekçenin sona ermesi veya değişikliğe uğramasından dolayı yeni kalış amacına uygun ikamet izni almak üzere yapılacak başvurularda.

h) 20 nci maddenin ikinci fıkrası kapsamında yapılacak ikamet izni başvurularında.

ı) Türkiye'de yükseköğrenimini tamamlayanların, kısa dönem ikamet iznine geçişlerinde.

i) Başvurunun valiliklere yapılmasını zorunlu kılan nedenlerin varlığı hâlinde.

İkamet izinlerinin tanzimi ve şekli

MADDE 23- (1) İkamet izinleri, pasaport veya pasaport yerine geçen belgelerin geçerlilik süresinden altmış gün daha kısa süreli, kalış amacına bağlı ve her yabancı için ayrı düzenlenir.

(2) İkamet izninin şekli ve içeriği Bakanlıkça, ikamet izni yerine geçen çalışma izninin şekli ve içeriği ise, Bakanlık ve ilgili kurumlarca birlikte belirlenir.

İkamet izinlerinin uzatılması

MADDE 24- (1) İkamet izinleri valiliklerce uzatılabilir.

(2) Uzatma başvuruları, ikamet izni süresinin dolmasına altmış gün kalmasından itibaren ve her koşulda ikamet izni süresi dolmadan önce valiliklere yapılır. İkamet iznini uzatma başvurusunda bulunanlara, harca tâbi olmayan bir belge verilir. Bu yabancılar, ikamet izni süreleri sona ermiş olsa dahi haklarında karar verilinceye kadar bu belgeyle Türkiye'de ikamet edebilir.

(3) Uzatılan ikamet izinleri, yasal izin sürelerinin bitim tarihinden itibaren başlatılır.

(4) Uzatma başvuruları, valiliklerce sonuçlandırılır.

Türkiye içinden yapılan ikamet izni talebinin reddi, iptali veya uzatılmaması

MADDE 25- (1) Türkiye içinden yapılan ikamet izni talebinin reddi, ikamet izninin uzatılmaması veya iptali ile bu işlemlerin tebliği valiliklerce yapılır. Bu işlemler sırasında, yabancının Türkiye'deki aile bağları, ikamet süresi, menşe ülkedeki durumu ve çocuğun yüksek yararı gibi hususlar gözönünde bulundurulur ve ikamet iznine ilişkin karar ertelenebilir.

(2) İkamet izni talebinin reddi, iznin uzatılmaması veya iptali, yabancıya ya da yasal temsilcisine veya avukatına tebliğ edilir. Tebligatta, yabancının karara karşı itiraz haklarını etkin şekilde nasıl kullanabileceği ve bu süreçteki diğer yasal hak ve yükümlülükleri de yer alır.

İkamet izinlerine ilişkin diğer hükümler

MADDE 26- (1) Tutuklu veya hükümlü olarak cezaevlerinde ya da idarî gözetim altında geri gönderme merkezlerinde bulunan yabancıların, buralarda geçirdikleri süreler ikamet izni süresinin ihlâli sayılmaz. Bu kişilerin varsa ikamet izinleri iptal edilebilir. Bunlardan, yabancı kimlik numarası bulunmayanlara, ikamet izni şartı aranmadan yabancı kimlik numarası verilebilir.

(2) Konsolosluklardan ikamet ve çalışma izni alarak Türkiye'ye gelen yabancılar, giriş tarihinden itibaren en geç yirmi iş günü içinde adres kayıt sistemine kayıtlarını yaptırmak zorundadırlar.

Çalışma izninin ikamet izni sayılması

MADDE 27- (1) Geçerli çalışma izni ile 27/2/2003 tarihli ve 4817 sayılı Yabancıların Çalışma İzinleri Hakkında Kanunun 10 uncu maddesine istinaden verilen Çalışma İzni Muafiyet Teyit Belgesi, ikamet izni sayılır. Çalışma izni ya da Çalışma İzni Muafiyet Teyit Belgesi verilen yabancılardan, 2/7/1964 tarihli ve 492 sayılı Harçlar Kanununa göre çalışma izni süresi kadar ikamet izni harcı tahsil edilir.

(2) Çalışma izni verilebilmesi veya iznin uzatılabilmesi için, yabancının 7 nci madde kapsamına girmemesi şartı aranır.

İkamette kesinti

MADDE 28- (1) Bu Kanun hükümlerinin uygulanmasında; zorunlu kamu hizmeti, eğitim ve sağlık nedenleri hariç, bir yılda toplam altı ayı geçen veya son beş yıl içinde toplam bir yılı aşan Türkiye dışında kalışlar ikamette kesinti sayılır. İkamet süresinde kesintisi olanların ikamet izni başvurularında veya başka bir ikamet iznine geçişlerinde, önceki izin süreleri hesaba katılmaz.

(2) Kesintisiz ikamet izin sürelerinin hesaplanmasında, öğrenci ikamet izinlerinin yarısı, diğer ikamet izinlerinin ise tamamı sayılır.

İkamet izinleri arasında geçişler

MADDE 29- (1) Yabancılar, ikamet izninin verilmesine esas olan gerekçenin sona ermesi veya farklı bir gerekçenin ortaya çıkması hâlinde, yeni kalış amacına uygun ikamet izni talebinde bulunabilir.

(2) İkamet izinleri arasındaki geçişlere ilişkin usûl ve esaslar yönetmelikle düzenlenir.

İkamet izni çeşitleri

MADDE 30- (1) İkamet izni çeşitleri şunlardır:

a) Kısa dönem ikamet izni.

b) Aile ikamet izni.

c) Öğrenci ikamet izni.

ç) Uzun dönem ikamet izni.

d) İnsanî ikamet izni.

e) İnsan ticareti mağduru ikamet izni.

Kısa dönem ikamet izni

MADDE 31- (1) Aşağıda belirtilen yabancılara kısa dönem ikamet izni verilebilir:

a) Bilimsel araştırma amacıyla gelecekler.

b) Türkiye'de taşınmaz malı bulunanlar.

c) Ticarî bağlantı veya iş kuracaklar.

ç) Hizmet içi eğitim programlarına katılacaklar.

d) Türkiye Cumhuriyeti'nin taraf olduğu anlaşmalar ya da öğrenci değişim programları çerçevesinde eğitim veya benzeri amaçlarla gelecekler.

e) Turizm amaçlı kalacaklar.

f) Kamu sağlığına tehdit olarak nitelendirilen hastalıklardan birini taşımamak kaydıyla tedavi görecekler.

g) Adlî veya idarî makamların talep veya kararına bağlı olarak Türkiye'de kalması gerekenler.

ğ) Aile ikamet izninden kısa dönem ikamet iznine geçenler.

h) Türkçe öğrenme kurslarına katılacaklar.

ı) Kamu kurumları aracılığıyla Türkiye'de eğitim, araştırma, staj ve kurslara katılacaklar.

i) Türkiye'de yükseköğrenimini tamamlayanlardan mezuniyet tarihinden itibaren altı ay içinde müracaat edenler.

(2) Kısa dönem ikamet izni, her defasında en fazla birer yıllık sürelerle verilir.

(3) Birinci fıkranın (h) bendi kapsamında verilen ikamet izinleri en fazla iki defa verilebilir.

(4) Birinci fıkranın (i) bendi kapsamında verilen ikamet izinleri, bir defaya mahsus olmak üzere en fazla bir yıl süreli verilebilir.

Kısa dönem ikamet izninin şartları

MADDE 32- (1) Kısa dönem ikamet izinlerinin verilmesinde aşağıdaki şartlar aranır:

a) 31 inci maddenin birinci fıkrasında sayılan gerekçelerden biri veya birkaçını ileri sürerek talepte bulunmak ve bu talebiyle ilgili bilgi ve belgeleri ibraz

etmek.

b) 7 nci madde kapsamına girmemek.

c) Genel sağlık ve güvenlik standartlarına uygun barınma şartlarına sahip olmak.

ç) İstenilmesi hâlinde, vatandaşı olduğu veya yasal olarak ikamet ettiği ülkenin yetkili makamları tarafından düzenlenmiş adlî sicil kaydını gösteren belgeyi sunmak.

d) Türkiye'de kalacağı adres bilgilerini vermek.

Kısa dönem ikamet izninin reddi, iptali veya uzatılmaması

MADDE 33- (1) Aşağıdaki hâllerde kısa dönem ikamet izni verilmez, verilmişse iptal edilir, süresi bitenler uzatılmaz:

a) 32 nci maddede aranan şartlardan birinin veya birkaçının yerine getirilmemesi veya ortadan kalkması.

b) İkamet izninin, veriliş amacı dışında kullanıldığının belirlenmesi.

c) Son bir yıl içinde toplamda yüzyirmi günden fazla süreyle yurtdışında kalınması.

ç) Hakkında geçerli sınır dışı etme veya Türkiye'ye giriş yasağı kararı bulunması.

Aile ikamet izni

MADDE 34- (1) Türk vatandaşlarının veya ikamet izinlerinden birine sahip olan yabancılar ile mültecilerin ve ikincil koruma statüsü sahiplerinin;

a) Yabancı eşine,

b) Kendisinin veya eşinin ergin olmayan yabancı çocuğuna,

c) Kendisinin veya eşinin bağımlı yabancı çocuğuna,

her defasında iki yılı aşmayacak şekilde aile ikamet izni verilebilir. Ancak, aile ikamet izninin süresi hiçbir şekilde destekleyicinin ikamet izni süresini aşamaz.

(2) Vatandaşı olduğu ülkenin hukukuna göre birden fazla eş ile evlilik hâlinde, eşlerden yalnızca birine aile ikamet izni verilir. Ancak, diğer eşlerinden olan çocuklara da aile ikamet izni verilebilir.

(3) Çocukların aile ikamet izninde, Türkiye dışında varsa ortak velayeti bulunan anne veya babanın muvafakati aranır.

(4) Aile ikamet izinleri, onsekiz yaşına kadar, öğrenci ikamet izni almadan ilk ve ortaöğretim kurumlarında eğitim hakkı sağlar.

(5) En az üç yıl aile ikamet izniyle Türkiye'de kalmış olanlardan onsekiz yaşını tamamlayanlar, talep etmeleri hâlinde bu izinlerini kısa dönem ikamet iznine dönüştürebilir.

(6) Boşanma hâlinde, Türk vatandaşıyla evli yabancıya, en az üç yıl aile ikamet izniyle kalmış olmak kaydıyla kısa dönem ikamet izni verilebilir. Ancak yabancı eşin, aile içi şiddet gerekçesiyle mağdur olduğu ilgili mahkeme kararıyla sabit ise, üç yıllık süre şartı aranmaz.

(7) Destekleyicinin ölümü hâlinde, bu kişiye bağlı aile ikamet izniyle kalanlara, süre şartı aranmadan kısa dönem ikamet izni verilebilir.

Aile ikamet izninin şartları

MADDE 35- (1) Aile ikamet izni taleplerinde, destekleyicide aşağıdaki şartlar aranır:

a) Toplam geliri asgari ücretten az olmamak üzere, ailedeki fert başına asgari ücretin üçte birinden az olmayan aylık geliri bulunmak.

b) Ailenin nüfusuna göre, genel sağlık ve güvenlik standartlarına uygun

barınma şartlarına sahip olmak ve tüm aile fertlerini kapsayan sağlık sigortası yaptırmış olmak.

c) Başvuru tarihi itibarıyla, beş yıl içinde aile düzenine karşı suçlardan herhangi birinden hüküm giymemiş olduğunu adlî sicil kaydıyla belgelemek.

ç) Türkiye'de en az bir yıldır ikamet izniyle kalıyor olmak.

d) Adres kayıt sisteminde kaydı bulunmak.

(2) Bilimsel araştırma amaçlı ikamet izni ya da çalışma izni bulunan veya Türk vatandaşlarıyla evli olan yabancılar hakkında, birinci fıkranın (ç) bendi uygulanmaz.

(3) Türkiye'de, destekleyicinin yanında kalmak üzere aile ikamet izni talebinde bulunacak yabancılarda aşağıdaki şartlar aranır:

a) 34 üncü maddenin birinci fıkrası kapsamında olduğunu gösteren bilgi ve belgeleri ibraz etmek.

b) 34 üncü maddenin birinci fıkrasında belirtilen kişilerle birlikte yaşadığını veya yaşama niyeti taşıdığını ortaya koymak.

c) Evliliği aile ikamet izni alabilmek amacıyla yapmamış olmak.

ç) Eşlerden her biri için onsekiz yaşını doldurmuş olmak.

d) 7 nci madde kapsamına girmemek.

(4) Türkiye'de bulunan mülteciler ve ikincil koruma statüsü sahiplerinde, bu maddenin birinci fıkrasında belirtilen şartlar aranmayabilir.

Aile ikamet izni talebinin reddi, iptali veya uzatılmaması

MADDE 36- (1) Aşağıdaki hâllerde aile ikamet izni verilmez, verilmişse iptal edilir, süresi bitenler uzatılmaz:

a) 35 inci maddenin birinci ve üçüncü fıkralarında aranan şartların karşılanmaması veya ortadan kalkması.

b) Aile ikamet izni alma şartları ortadan kalktıktan sonra kısa dönem ikamet izni verilmemesi.

c) Hakkında geçerli sınır dışı etme veya Türkiye'ye giriş yasağı kararı bulunması.

ç) Aile ikamet izninin, veriliş amacı dışında kullanıldığının belirlenmesi.

d) Son bir yıl içinde toplamda yüzseksen günden fazla süreyle yurtdışında kalınması.

Anlaşmalı evlilik yoluyla talep edilen aile ikamet izni

MADDE 37- (1) Aile ikamet izni verilmeden veya uzatılmadan önce makûl şüphe varsa, evliliğin sırf ikamet izni alabilme amacıyla yapılıp yapılmadığı araştırılır. Araştırma sonucunda, evliliğin bu amaçla yapıldığı tespit edilirse aile ikamet izni verilmez, verilmişse iptal edilir.

(2) Aile ikamet izni verildikten sonra da evliliğin anlaşmalı olup olmadığı konusunda valiliklerce denetim yapılabilir.

(3) Anlaşmalı evlilik yoluyla alınan ve sonradan iptal edilen ikamet izinleri, bu Kanunda öngörülen ikamet izin sürelerinin toplanmasında hesaba katılmaz.

Öğrenci ikamet izni

MADDE 38- (1) Türkiye'de bir yükseköğretim kurumunda ön lisans, lisans, yüksek lisans ya da doktora öğrenimi görecek yabancılara öğrenci ikamet izni, bir yıllık sürelerle verilir ve uzatılır.

(2) Bakımı ve masrafları gerçek veya tüzel kişi tarafından üstlenilen ilk ve orta derecede öğrenim görecek yabancılara, velilerinin veya yasal temsilcilerinin

muvafakatiyle öğrenimleri süresince birer yıllık sürelerle öğrenci ikamet izni verilebilir ve uzatılabilir.

(3) Öğrenci ikamet izni, öğrencinin anne ve babası ile diğer yakınlarına, ikamet izni alma konusunda hiçbir hak sağlamaz.

(4) Öğrenim süresi bir yıldan kısa ise, öğrenci ikamet izni süresi öğrenim süresini aşamaz.

Öğrenci ikamet izninin şartları

MADDE 39- (1) Öğrenci ikamet izninde aşağıdaki şartlar aranır:

a) 38 inci madde kapsamındaki bilgi ve belgeleri ibraz etmek.

b) 7 nci madde kapsamına girmemek.

c) Türkiye'de kalacağı adres bilgilerini vermek.

Öğrenci ikamet izni talebinin reddi, iptali veya uzatılmaması

MADDE 40- (1) Aşağıdaki hâllerde, öğrenci ikamet izni verilmez, verilmişse iptal edilir, süresi uzatılmaz:

a) 39 uncu maddede aranan şartların karşılanmaması veya ortadan kalkması.

b) Öğrenimin sürdürülemeyeceği konusunda kanıtların ortaya çıkması.

c) Öğrenci ikamet izninin, veriliş amacı dışında kullanıldığının belirlenmesi.

ç) Hakkında geçerli sınır dışı etme kararı veya Türkiye'ye giriş yasağı bulunması.

Öğrencilerin çalışma hakkı

MADDE 41- (1) Türkiye'de öğrenim gören ön lisans, lisans, yüksek lisans ve doktora öğrencileri, çalışma izni almak kaydıyla çalışabilirler. Ancak, ön lisans ve lisans öğrencileri için çalışma hakkı, ilk yıldan sonra başlar ve haftada yirmidört saatten fazla olamaz.

(2) Ön lisans ve lisans öğrencilerinin çalışma hakkına ilişkin usûl ve esaslar, Göç Politikaları Kurulunca belirlenecek esaslar çerçevesinde Bakanlık ile Çalışma ve Sosyal Güvenlik Bakanlığı tarafından müştereken düzenlenir.

Uzun dönem ikamet izni

MADDE 42- (1) Türkiye'de kesintisiz en az sekiz yıl ikamet izniyle kalmış olan ya da Göç Politikaları Kurulunun belirlediği şartlara uyan yabancılara, Bakanlığın onayıyla valilikler tarafından süresiz ikamet izni verilir.

(2) Mülteci, şartlı mülteci ve ikincil koruma statüsü sahipleri ile insanî ikamet izni sahiplerine ve geçici koruma sağlananlara uzun dönem ikamet iznine geçiş hakkı tanınmaz.

Uzun dönem ikamet izninin şartları

MADDE 43- (1) Uzun dönem ikamet iznine geçişte aşağıdaki şartlar aranır:

a) Kesintisiz en az sekiz yıl ikamet izniyle Türkiye'de kalmış olmak.

b) Son üç yıl içinde sosyal yardım almamış olmak.

c) Kendisi veya varsa ailesinin geçimini sağlayacak yeterli ve düzenli gelir kaynağına sahip olmak.

ç) Geçerli sağlık sigortasına sahip olmak.

d) Kamu düzeni veya kamu güvenliği açısından tehdit oluşturmamak.

(2) Göç Politikaları Kurulunun belirlediği şartlara sahip olması nedeniyle uzun dönem ikamet izni verilmesi uygun görülen yabancılar için, birinci fıkranın (d) bendi dışındaki şartlar aranmaz.

Uzun dönem ikamet izninin sağladığı haklar

MADDE 44- (1) Uzun dönem ikamet izni bulunan yabancılar;

a) Askerlik yapma yükümlülüğü,

b) Seçme ve seçilme,

c) Kamu görevlerine girme,

ç) Muaf olarak araç ithal etme,

ve özel kanunlardaki düzenlemeler hariç, sosyal güvenliğe ilişkin kazanılmış hakları saklı kalmak ve bu hakların kullanımında ilgili mevzuat hükümlerine tâbi olmak şartıyla, Türk vatandaşlarına tanınan haklardan yararlanırlar.

(2) Birinci fıkradaki haklara kısmen veya tamamen kısıtlamalar getirmeye Bakanlar Kurulu yetkilidir.

Uzun dönem ikamet izninin iptali

MADDE 45- (1) Uzun dönem ikamet izinleri;

a) Yabancının, kamu düzeni veya kamu güvenliği açısından ciddî tehdit oluşturması,

b) Sağlık, eğitim ve ülkesindeki zorunlu kamu hizmeti dışında bir nedenle kesintisiz bir yıldan fazla süreyle Türkiye dışında bulunması,

hâllerinde iptal edilir.

(2) Birinci fıkranın (b) bendi kapsamında uzun dönem ikamet izni iptal edilen yabancıların, bu izni tekrar almak üzere yapacakları başvurular ve bunların sonuçlandırılmasına ilişkin usûl ve esaslar yönetmelikle belirlenir.

İnsanî ikamet izni

MADDE 46- (1) Aşağıda belirtilen hâllerde, diğer ikamet izinlerinin verilmesindeki şartlar aranmadan, Bakanlığın onayı alınmak ve en fazla birer yıllık sürelerle olmak kaydıyla, valiliklerce insanî ikamet izni verilebilir ve bu izinler uzatılabilir:

a) Çocuğun yüksek yararı söz konusu olduğunda.

b) Haklarında sınır dışı etme veya Türkiye'ye giriş yasağı kararı alındığı hâlde, yabancıların Türkiye'den çıkışları yaptırılamadığında ya da Türkiye'den ayrılmaları makûl veya mümkün görülmediğinde.

c) 55 inci madde uyarınca yabancı hakkında sınır dışı etme kararı alınmadığında.

ç) 53 üncü, 72 nci ve 77 nci maddelere göre yapılan işlemlere karşı yargı yoluna başvurulduğunda.

d) Başvuru sahibinin ilk iltica ülkesi veya güvenli üçüncü ülkeye geri gönderilmesi işlemlerinin devamı süresince.

e) Acil nedenlerden dolayı veya ülke menfaatlerinin korunması açısından Türkiye'ye girişine ve Türkiye'de kalmasına izin verilmesi gereken yabancıların, ikamet izni verilmesine engel teşkil eden durumları sebebiyle diğer ikamet izinlerinden birini alma imkânı bulunmadığında.

f) Olağanüstü durumlarda.

(2) İnsanî ikamet izni alan yabancılar, iznin veriliş tarihinden itibaren en geç yirmi iş günü içinde adres kayıt sistemine kayıt yaptırmak zorundadır.

İnsanî ikamet izninin iptali veya uzatılmaması

MADDE 47- (1) İnsanî ikamet izni Bakanlığın onayı alınmak kaydıyla, iznin verilmesini zorunlu kılan şartlar ortadan kalktığında valiliklerce iptal edilir ve uzatılmaz.

İnsan ticareti mağduru ikamet izni

MADDE 48- (1) İnsan ticareti mağduru olduğu veya olabileceği yönünde kuvvetli şüphe duyulan yabancılara, yaşadıklarının etkisinden kurtulabilmeleri ve yetkililerle işbirliği yapıp yapmayacaklarına karar verebilmeleri amacıyla valiliklerce otuz gün süreli ikamet izni verilir.

(2) Bu ikamet izinlerinde, diğer ikamet izinlerinin verilmesindeki şartlar aranmaz.

İnsan ticareti mağduru ikamet izninin uzatılması ve iptali

MADDE 49- (1) İyileşme ve düşünme süresi tanımak amacıyla verilen ikamet izni, mağdurun güvenliği, sağlığı veya özel durumu nedeniyle en fazla altışar aylık sürelerle uzatılabilir. Ancak, bu süreler hiçbir şekilde toplam üç yılı geçemez.

(2) İnsan ticareti mağduru olduğu veya olabileceği yönünde kuvvetli şüphe bulunan yabancıların, kendi girişimleriyle suçun failleriyle yeniden bağ kurduklarının belirlendiği durumlarda ikamet izinleri iptal edilir.

ÜÇÜNCÜ BÖLÜM
Vatansız Kişiler

Vatansızlığın tespiti

MADDE 50- (1) Vatansızlığın tespiti Genel Müdürlükçe yapılır. Vatansız kişilere, Türkiye'de yasal olarak ikamet edebilme hakkı sağlayan Vatansız Kişi Kimlik Belgesi düzenlenir. Başka ülkeler tarafından vatansız kişi işlemi görenler bu haktan yararlandırılmaz.

(2) Vatansız kişiler, Vatansız Kişi Kimlik Belgesi almakla yükümlü olup, belge Genel Müdürlüğün uygun görüşü alınarak, valiliklerce düzenlenir. Hiçbir harca tâbi olmayan bu belge, ikamet izni yerine geçer ve iki yılda bir valiliklerce yenilenir. Vatansız Kişi Kimlik Belgesinde yabancı kimlik numarası da yer alır.

(3) Vatansız Kişi Kimlik Belgesine sahip olarak Türkiye'de geçirilen süreler, ikamet sürelerinin toplanmasında hesaba katılır.

(4) Vatansız Kişi Kimlik Belgesi, kişinin herhangi bir ülke vatandaşlığını kazanmasıyla birlikte geçerliliğini kaybeder.

(5) Vatansızlık durumlarının tespiti ve Vatansız Kişi Kimlik Belgesiyle ilgili usûl ve esaslar yönetmelikle belirlenir.

Vatansız kişilere tanınan haklar ve güvenceler

MADDE 51- (1) Vatansız Kişi Kimlik Belgesine sahip kişiler;

a) Bu Kanundaki ikamet izinlerinden birini almak üzere talepte bulunabilirler,

b) Kamu düzeni veya kamu güvenliği açısından ciddî tehdit oluşturmadıkları sürece sınır dışı edilmezler,

c) Yabancılarla ilgili işlemlerde aranan karşılıklılık şartından muaf tutulurlar,

ç) Çalışma izniyle ilgili iş ve işlemlerde, 4817 sayılı Yabancıların Çalışma İzinleri Hakkında Kanun hükümlerine tâbidirler,

d) 5682 sayılı Pasaport Kanununun 18 inci maddesi hükümlerinden yararlanabilirler.

DÖRDÜNCÜ BÖLÜM
Sınır Dışı Etme

Sınır dışı etme

MADDE 52- (1) Yabancılar, sınır dışı etme kararıyla, menşe ülkesine veya

transit gideceği ülkeye ya da üçüncü bir ülkeye sınır dışı edilebilir.

Sınır dışı etme kararı

MADDE 53- (1) Sınır dışı etme kararı, Genel Müdürlüğün talimatı üzerine veya re'sen valiliklerce alınır.

(2) Karar, gerekçeleriyle birlikte hakkında sınır dışı etme kararı alınan yabancıya veya yasal temsilcisine ya da avukatına tebliğ edilir. Hakkında sınır dışı etme kararı alınan yabancı bir avukat tarafından temsil edilmiyorsa, kendisi veya yasal temsilcisi kararın sonucu, itiraz usûlleri ve süreleri hakkında bilgilendirilir.

(3) Yabancı veya yasal temsilcisi ya da avukatı, sınır dışı etme kararına karşı, kararın tebliğinden itibaren onbeş gün içinde idare mahkemesine başvurabilir. Mahkemeye başvuran kişi, sınır dışı etme kararını veren makama da başvurusunu bildirir. Mahkemeye yapılan başvurular onbeş gün içinde sonuçlandırılır. Mahkemenin bu konuda vermiş olduğu karar kesindir. Yargı yoluna başvurulması hâlinde yargılama sonuçlanıncaya kadar yabancı sınır dışı edilmez.

Sınır dışı etme kararı alınacaklar

MADDE 54- (1) Aşağıda sayılan yabancılar hakkında sınır dışı etme kararı alınır:

a) 5237 sayılı Türk Ceza Kanununun 59 uncu maddesi kapsamında sınır dışı edilmesi gerektiği değerlendirilenler.

b) Terör örgütü yöneticisi, üyesi, destekleyicisi veya çıkar amaçlı suç örgütü yöneticisi, üyesi veya destekleyicisi olanlar.

c) Türkiye'ye giriş, vize ve ikamet izinleri için yapılan işlemlerde gerçek dışı bilgi ve sahte belge kullananlar.

ç) Türkiye'de bulunduğu süre zarfında geçimini meşru olmayan yollardan sağlayanlar.

d) Kamu düzeni veya kamu güvenliği ya da kamu sağlığı açısından tehdit oluşturanlar.

e) Vize veya vize muafiyeti süresini on günden fazla aşanlar veya vizesi iptal edilenler.

f) İkamet izinleri iptal edilenler.

g) İkamet izni bulunup da süresinin sona ermesinden itibaren kabûl edilebilir gerekçesi olmadan ikamet izni süresini on günden fazla ihlâl edenler.

ğ) Çalışma izni olmadan çalıştığı tespit edilenler.

h) Türkiye'ye yasal giriş veya Türkiye'den yasal çıkış hükümlerini ihlâl edenler.

ı) Hakkında Türkiye'ye giriş yasağı bulunmasına rağmen Türkiye'ye geldiği tespit edilenler.

i) Uluslararası koruma başvurusu reddedilen, uluslararası korumadan hariçte tutulan, başvurusu kabûl edilemez olarak değerlendirilen, başvurusunu geri çeken, başvurusu geri çekilmiş sayılan, uluslararası koruma statüleri sona eren veya iptal edilenlerden haklarında verilen son karardan sonra bu Kanunun diğer hükümlerine göre Türkiye'de kalma hakkı bulunmayanlar.

j) İkamet izni uzatma başvuruları reddedilenlerden, on gün içinde Türkiye'den çıkış yapmayanlar.

(2) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişiler hakkında, sadece ülke güvenliği için tehlike oluşturduklarına dair ciddî emareler bulunduğunda veya kamu düzeni açısından tehlike oluşturan bir suçtan kesin hüküm giymeleri durumunda sınır dışı etme kararı alınabilir.

Sınır dışı etme kararı alınmayacaklar

MADDE 55- (1) 54 üncü madde kapsamında olsalar dahi, aşağıdaki yabancılar hakkında sınır dışı etme kararı alınmaz:

a) Sınır dışı edileceği ülkede ölüm cezasına, işkenceye, insanlık dışı ya da onur kırıcı ceza veya muameleye maruz kalacağı konusunda ciddî emare bulunanlar.

b) Ciddî sağlık sorunları, yaş ve hamilelik durumu nedeniyle seyahat etmesi riskli görülenler.

c) Hayatî tehlike arz eden hastalıkları için tedavisi devam etmekte iken sınır dışı edileceği ülkede tedavi imkânı bulunmayanlar.

ç) Mağdur destek sürecinden yararlanmakta olan insan ticareti mağdurları.

d) Tedavileri tamamlanıncaya kadar, psikolojik, fiziksel veya cinsel şiddet mağdurları.

(2) Birinci fıkra kapsamındaki değerlendirmeler, herkes için ayrı yapılır. Bu kişilerden, belli bir adreste ikamet etmeleri, istenilen şekil ve sürelerde bildirimde bulunmaları istenebilir.

Türkiye'yi terke davet

MADDE 56- (1) Sınır dışı etme kararı alınanlara, sınır dışı etme kararında belirtilmek kaydıyla, Türkiye'yi terk edebilmeleri için yedi günden az olmamak üzere otuz güne kadar süre tanınır. Ancak, kaçma ve kaybolma riski bulunanlara, yasal giriş veya yasal çıkış kurallarını ihlâl edenlere, sahte belge kullananlara, asılsız belgelerle ikamet izni almaya çalışanlara veya aldığı tespit edilenlere, kamu düzeni, kamu güvenliği veya kamu sağlığı açısından tehdit oluşturanlara bu süre tanınmaz.

(2) Türkiye'den çıkış için süre tanınan kişilere, "Çıkış İzin Belgesi" verilir. Bu belge hiçbir harca tâbi değildir. Vize ve ikamet harçları ile bunların cezalarına ilişkin yükümlülükler saklıdır.

Sınır dışı etmek üzere idarî gözetim ve süresi

MADDE 57- (1) 54 üncü madde kapsamındaki yabancılar, kolluk tarafından yakalanmaları hâlinde, haklarında karar verilmek üzere derhâl valiliğe bildirilir. Bu kişilerden, sınır dışı etme kararı alınması gerektiği değerlendirilenler hakkında, sınır dışı etme kararı valilik tarafından alınır. Değerlendirme ve karar süresi kırksekiz saati geçemez.

(2) Hakkında sınır dışı etme kararı alınanlardan; kaçma ve kaybolma riski bulunan, Türkiye'ye giriş veya çıkış kurallarını ihlâl eden, sahte ya da asılsız belge kullanan, kabûl edilebilir bir mazereti olmaksızın Türkiye'den çıkmaları için tanınan sürede çıkmayan, kamu düzeni, kamu güvenliği veya kamu sağlığı açısından tehdit oluşturanlar hakkında valilik tarafından idarî gözetim kararı alınır. Hakkında idarî gözetim kararı alınan yabancılar yakalamayı yapan kolluk birimince geri gönderme merkezlerine kırksekiz saat içinde götürülür.

(3) Geri gönderme merkezlerindeki idarî gözetim süresi altı ayı geçemez. Ancak bu süre, sınır dışı etme işlemlerinin yabancının işbirliği yapmaması veya ülkesiyle ilgili doğru bilgi ya da belgeleri vermemesi nedeniyle tamamlanamaması hâlinde, en fazla altı ay daha uzatılabilir.

(4) İdarî gözetimin devamında zaruret olup olmadığı, valilik tarafından her ay düzenli olarak değerlendirilir. Gerek görüldüğünde, otuz günlük süre beklenilmez. İdarî gözetimin devamında zaruret görülmeyen yabancılar için idarî gözetim derhâl sonlandırılır. Bu yabancılara, belli bir adreste ikamet etme, belirlenecek şekil ve sürelerde bildirimde bulunma gibi idarî yükümlülükler getirilebilir.

(5) İdarî gözetim kararı, idarî gözetim süresinin uzatılması ve her ay düzenli olarak yapılan değerlendirmelerin sonuçları, gerekçesiyle birlikte yabancıya veya yasal temsilcisine ya da avukatına tebliğ edilir. Aynı zamanda, idarî gözetim altına alınan kişi bir avukat tarafından temsil edilmiyorsa, kendisi veya yasal temsilcisi kararın sonucu, itiraz usûlleri ve süreleri hakkında bilgilendirilir.

(6) İdarî gözetim altına alınan kişi veya yasal temsilcisi ya da avukatı, idarî gözetim kararına karşı sulh ceza hâkimine başvurabilir. Başvuru idarî gözetimi durdurmaz. Dilekçenin idareye verilmesi hâlinde, dilekçe yetkili sulh ceza hâkimine en serî şekilde ulaştırılır. Sulh ceza hâkimi incelemeyi beş gün içinde sonuçlandırır. Sulh ceza hâkiminin kararı kesindir. İdarî gözetim altına alınan kişi veya yasal temsilcisi ya da avukatı, idarî gözetim şartlarının ortadan kalktığı veya değiştiği iddiasıyla yeniden sulh ceza hâkimine başvurabilir.

(7) İdarî gözetim işlemine karşı yargı yoluna başvuranlardan, avukatlık ücretlerini karşılama imkânı bulunmayanlara, talepleri hâlinde 19/3/1969 tarihli ve 1136 sayılı Avukatlık Kanunu hükümlerine göre avukatlık hizmeti sağlanır.

Geri gönderme merkezleri

MADDE 58- (1) İdarî gözetime alınan yabancılar, geri gönderme merkezlerinde tutulurlar.

(2) Geri gönderme merkezleri Bakanlık tarafından işletilir. Bakanlık, kamu kurum ve kuruluşları, Türkiye Kızılay Derneği veya kamu yararına çalışan derneklerden göç alanında uzmanlığı bulunanlarla protokol yaparak bu merkezleri işlettirebilir.

(3) Geri gönderme merkezlerinin kurulması, yönetimi, işletilmesi, devri, denetimi ve sınır dışı edilmek amacıyla idarî gözetimde bulunan yabancıların geri gönderme merkezlerine nakil işlemleriyle ilgili usûl ve esaslar yönetmelikle düzenlenir.

Geri gönderme merkezlerinde sağlanacak hizmetler

MADDE 59- (1) Geri gönderme merkezlerinde;

a) Yabancı tarafından bedeli karşılanamayan acil ve temel sağlık hizmetleri ücretsiz verilir,

b) Yabancıya; yakınlarına, notere, yasal temsilciye ve avukata erişme ve bunlarla görüşme yapabilme, ayrıca telefon hizmetlerine erişme imkânı sağlanır,

c) Yabancıya; ziyaretçileri, vatandaşı olduğu ülke konsolosluk yetkilisi, Birleşmiş Milletler Mülteciler Yüksek Komiserliği görevlisiyle görüşebilme imkânı sağlanır,

ç) Çocukların yüksek yararları gözetilir, aileler ve refakatsiz çocuklar ayrı yerlerde barındırılır,

d) Çocukların eğitim ve öğretimden yararlandırılmaları hususunda, Millî Eğitim Bakanlığınca gerekli tedbirler alınır.

Sınır dışı etme kararının yerine getirilmesi

MADDE 60- (1) Geri gönderme merkezlerindeki yabancılar, kolluk birimi tarafından sınır kapılarına götürülür.

(2) Geri gönderme merkezlerine sevk edilmesine gerek kalmadan sınır dışı edilecek olan yabancılar, Genel Müdürlük taşra teşkilatının koordinesinde kolluk birimlerince sınır kapılarına götürülür.

(3) Sınır dışı edilecek yabancıların seyahat masrafları kendilerince karşılanır. Bunun mümkün olmaması hâlinde, masrafların eksik kalan kısmı veya tamamı Genel Müdürlük bütçesinden ödenir. Masraflar geri ödenmediği sürece, yabancının Türkiye'ye girişine izin verilmeyebilir.

(4) Genel Müdürlük sınır dışı işlemleriyle ilgili olarak uluslararası kuruluşlar, ilgili ülke makamları ve sivil toplum kuruluşlarıyla işbirliği yapabilir.

(5) Yabancıların pasaportları veya diğer belgeleri, sınır dışı edilinceye kadar tutulabilir ve sınır dışı işlemlerinde kullanılmak üzere biletleri paraya çevrilebilir.

(6) Gerçek veya tüzel kişiler, kalışlarını veya dönüşlerini garanti ettikleri yabancıların sınır dışı edilme masraflarını ödemekle yükümlüdür. Yabancıyı izinsiz çalıştıran işveren veya işveren vekillerinin, yabancının sınır dışı edilme işlemleri konusundaki yükümlülükleri hakkında 4817 sayılı Kanunun 21 inci maddesinin üçüncü fıkrası hükmü uygulanır.

ÜÇÜNCÜ KISIM
Uluslararası Koruma

BİRİNCİ BÖLÜM
Uluslararası Koruma Çeşitleri, Uluslararası Korumanın Haricinde Tutulma

Mülteci

MADDE 61- (1) Avrupa ülkelerinde meydana gelen olaylar nedeniyle; ırkı, dini, tâbiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasî düşüncelerinden dolayı zulme uğrayacağından haklı sebeplerle korktuğu için vatandaşı olduğu ülkenin dışında bulunan ve bu ülkenin korumasından yararlanamayan ya da söz konusu korku nedeniyle yararlanmak istemeyen yabancıya veya bu tür olaylar sonucu önceden yaşadığı ikamet ülkesinin dışında bulunan, oraya dönemeyen veya söz konusu korku nedeniyle dönmek istemeyen vatansız kişiye statü belirleme işlemleri sonrasında mülteci statüsü verilir.

Şartlı mülteci

MADDE 62- (1) Avrupa ülkeleri dışında meydana gelen olaylar sebebiyle; ırkı, dini, tâbiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasî düşüncelerinden dolayı zulme uğrayacağından haklı sebeplerle korktuğu için vatandaşı olduğu ülkenin dışında bulunan ve bu ülkenin korumasından yararlanamayan, ya da söz konusu korku nedeniyle yararlanmak istemeyen yabancıya veya bu tür olaylar sonucu önceden yaşadığı ikamet ülkesinin dışında bulunan, oraya dönemeyen veya söz konusu korku nedeniyle dönmek istemeyen vatansız kişiye statü belirleme işlemleri sonrasında şartlı mülteci statüsü verilir. Üçüncü ülkeye yerleştirilinceye kadar, şartlı mültecinin Türkiye'de kalmasına izin verilir.

İkincil koruma

MADDE 63- (1) Mülteci veya şartlı mülteci olarak nitelendirilemeyen, ancak menşe ülkesine veya ikamet ülkesine geri gönderildiği takdirde;

a) Ölüm cezasına mahkûm olacak veya ölüm cezası infaz edilecek,

b) İşkenceye, insanlık dışı ya da onur kırıcı ceza veya muameleye maruz kalacak,

c) Uluslararası veya ülke genelindeki silahlı çatışma durumlarında, ayrım gözetmeyen şiddet hareketleri nedeniyle şahsına yönelik ciddî tehditle karşılaşacak,

olması nedeniyle menşe ülkesinin veya ikamet ülkesinin korumasından yararlanamayan veya söz konusu tehdit nedeniyle yararlanmak istemeyen yabancı ya da vatansız kişiye, statü belirleme işlemleri sonrasında ikincil koruma statüsü verilir.

Uluslararası korumanın haricinde tutulma

MADDE 64- (1) Başvuru sahibi;

a) Birleşmiş Milletler Mülteciler Yüksek Komiserliği dışında, diğer bir Birleşmiş Milletler organı veya örgütünden hâlen koruma veya yardım görüyorsa,

b) İkamet ettiği ülke yetkili makamlarınca, o ülke vatandaşlarının sahip bulundukları hak ve yükümlülüklere sahip olarak tanınıyorsa,

c) Sözleşmenin 1 inci maddesinin (F) fıkrasında belirtilen fiillerden suçlu olduğuna dair ciddî kanaat varsa,

uluslararası korumadan hariçte tutulur.

(2) Birinci fıkranın (a) bendine giren bir kişi hakkındaki koruma veya yardım herhangi bir nedenle sona erdiği zaman, bu kişilerin konumları Birleşmiş Milletler Genel Kurulunda alınan kararlara istinaden kesin bir çözüme kavuşturulmadığı takdirde, bu kişiler bu Kanunun sağladığı korumadan yararlanabilir.

(3) Başvuru sahibinin, uluslararası koruma başvurusu yapmadan önce, Türkiye dışında hangi saikle olursa olsun zalimce eylemler yaptığını düşündürecek nedenler varsa birinci fıkranın (c) bendi kapsamında değerlendirme yapılır.

(4) Birinci fıkranın (c) bendi ile üçüncü fıkrada belirtilen suç ya da fiillerin işlenmesine iştirak eden veya bu fiillerin işlenmesini tahrik eden kişi uluslararası korumadan hariçte tutulur.

(5) Birinci fıkranın (c) bendi ile üçüncü ve dördüncü fıkralardaki durumlara ek olarak; kamu düzeni veya kamu güvenliği açısından tehlike oluşturduğuna dair ciddî emareler bulunan yabancı veya vatansız kişi ile birinci fıkranın (c) bendi kapsamında olmayan, fakat Türkiye'de işlenmesi hâlinde hapis cezası verilmesini gerektiren suç veya suçları daha önce işleyen ve sadece bu suçun cezasını çekmemek için menşe veya ikamet ülkesini terk eden yabancı veya vatansız kişi, ikincil korumadan hariçte tutulur.

(6) Başvuru sahibinin uluslararası korumadan hariçte tutulması, hariçte tutma nedenlerinden herhangi birinin diğer aile üyeleri için oluşmaması şartıyla, başvuru sahibinin aile üyelerinin de hariçte tutulmasını gerektirmez.

İKİNCİ BÖLÜM
Genel Usûller

Başvuru

MADDE 65- (1) Uluslararası koruma başvuruları valiliklere bizzat yapılır.

(2) Başvuruların ülke içinde veya sınır kapılarında kolluk birimlerine yapılması hâlinde, bu başvurular derhâl valiliğe bildirilir. Başvuruyla ilgili işlemler valilikçe yürütülür.

(3) Her yabancı veya vatansız kişi kendi adına başvuru yapabilir. Başvuru sahibi, başvuruları aynı gerekçeye dayanan ve kendisiyle birlikte gelen aile üyeleri adına başvuru yapabilir. Bu durumda; ergin aile üyelerinin, kendi adlarına başvuruda bulunulmasına yönelik muvafakati alınır.

(4) Makûl bir süre içinde valiliklere kendiliğinden uluslararası koruma başvurusunda bulunanlar hakkında; yasadışı girişlerinin veya kalışlarının geçerli nedenlerini açıklamak kaydıyla, Türkiye'ye yasal giriş şartlarını ihlâl etmek veya Türkiye'de yasal şekilde bulunmamaktan dolayı cezaî işlem yapılmaz.

(5) Hürriyeti kısıtlanan kişilerin uluslararası koruma başvuruları, valiliğe

derhâl bildirilir. Başvuruların alınması ve değerlendirilmesi, diğer adlî ve idarî işlemlerin ya da tedbir ve yaptırımların uygulanmasını engellemez.

Refakatsiz çocuklar

MADDE 66- (1) Uluslararası koruma başvurusunda bulunan refakatsiz çocuklar hakkında aşağıdaki hükümler uygulanır:

a) Refakatsiz çocuklarla ilgili tüm işlemlerde çocuğun yüksek yararının gözetilmesi esastır. Başvuru alındığı andan itibaren, haklarında 3/7/2005 tarihli ve 5395 sayılı Çocuk Koruma Kanunu hükümleri uygulanır.

b) Aile ve Sosyal Politikalar Bakanlığı tarafından, uygun konaklama yerlerine veya yetişkin akrabalarının veya koruyucu bir ailenin yanına yerleştirilirler.

c) Onaltı yaşını doldurmuş olanlar, uygun koşullar sağlandığında kabûl ve barınma merkezlerinde de barındırılabilir.

ç) Mümkün olduğu ölçüde, çocukların yararı, yaşları ve olgunluk düzeyleri dikkate alınarak, kardeşler bir arada bulundurulur. Zorunlu olmadığı sürece konaklama yerlerinde değişiklik yapılmaz.

Özel ihtiyaç sahipleri

MADDE 67- (1) Özel ihtiyaç sahiplerine bu Kısımda yazılı hak ve işlemlerde öncelik tanınır.

(2) İşkence, cinsel saldırı ya da diğer ciddî psikolojik, bedensel ya da cinsel şiddete maruz kalan kişilere, bu türden fiillerin neden olduğu hasarlarını giderecek yeterli tedavi imkânı sağlanır.

Başvuru sahiplerinin idarî gözetimi

MADDE 68- (1) Başvuru sahipleri, sadece uluslararası koruma başvurusunda bulunmalarından dolayı idarî gözetim altına alınamaz.

(2) Başvuru sahiplerinin idarî gözetim altına alınması istisnaî bir işlemdir. Başvuru sahibi sadece aşağıdaki hâllerde idarî gözetim altına alınabilir:

a) Kimlik veya vatandaşlık bilgilerinin doğruluğuyla ilgili ciddî şüphe varsa, bu bilgilerinin tespiti amacıyla.

b) Sınır kapılarında usûlüne aykırı surette ülkeye girmekten alıkonulması amacıyla.

c) İdarî gözetim altına alınmaması durumunda başvurusuna temel oluşturan unsurların belirlenemeyecek olması hâlinde.

ç) Kamu düzeni veya kamu güvenliği açısından ciddî tehlike oluşturması hâlinde.

(3) İdarî gözetimin gerekip gerekmediği bireysel olarak değerlendirilir. İkinci fıkrada belirtilen hâllerde; idarî gözetim altına alınmadan önce, 71 inci maddede belirtilen ikamet zorunluluğu ve bildirim yükümlülüğünün yeterli olup olmayacağı öncelikle değerlendirilir. Valilik, idarî gözetim yerine başka usûller belirleyebilir. Bu tedbirler yeterli olmadığı takdirde, idarî gözetim uygulanır.

(4) İdarî gözetim kararı, idarî gözetim altına alınma gerekçelerini ve gözetimin süresini içerecek şekilde idarî gözetim altına alınan kişiye veya yasal temsilcisine ya da avukatına yazılı olarak tebliğ edilir. İdarî gözetim altına alınan kişi bir avukat tarafından temsil edilmiyorsa kararın sonucu ve itiraz usûlleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

(5) Başvuru sahibinin, idarî gözetim süresi otuz günü geçemez. İdarî gözetim altına alınan kişilerin işlemleri en kısa sürede tamamlanır. İdarî gözetim, şartları ortadan kalktığı takdirde derhâl sonlandırılır.

(6) İdarî gözetimin her aşamasında, kararı alan makam tarafından, idarî gözetim sonlandırılarak, 71 inci maddede belirtilen yükümlülüklerin veya başka tedbirlerin yerine getirilmesi istenebilir.

(7) İdarî gözetim altına alınan kişi veya yasal temsilcisi ya da avukatı, idarî gözetime karşı sulh ceza hâkimine başvurabilir. Başvuru idarî gözetimi durdurmaz. Dilekçenin idareye verilmesi hâlinde, dilekçe yetkili sulh ceza hâkimine en serî şekilde ulaştırılır. Sulh ceza hâkimi incelemeyi beş gün içinde sonuçlandırır. Sulh ceza hâkiminin kararı kesindir. İdarî gözetim altına alınan kişi veya yasal temsilcisi ya da avukatı, idarî gözetim şartlarının ortadan kalktığı veya değiştiği iddiasıyla yeniden sulh ceza hâkimine başvurabilir.

(8) İkinci fıkra uyarınca idarî gözetim altına alınan kişi, usûl ve esasları yönetmelikle belirlenmek üzere ziyaretçi kabûl edebilir. İdarî gözetim altına alınan kişiye yasal temsilcisi, avukat, noter ve Birleşmiş Milletler Mülteciler Yüksek Komiserliği görevlileriyle görüşme imkânı sağlanır.

Kayıt ve kontrol

MADDE 69- (1) Uluslararası koruma başvuruları valiliklerce kaydedilir.

(2) Başvuru sahibi kayıt esnasında kimlik bilgilerini doğru olarak bildirmek ve varsa kimliğini ispatlayacak belge ve seyahat dokümanlarını yetkili makamlara teslim etmekle yükümlüdür. Bu yükümlülüğün yerine getirilmesini sağlamak amacıyla, başvuru sahibinin üzerinde ve eşyalarında kontrol yapılabilir.

(3) Kayıt esnasında başvuru sahibinin kimliğine ilişkin belge olmaması hâlinde, kimlik tespitinde kişisel verilerinin karşılaştırılmasından ve yapılan araştırmalardan elde edilen bilgiler kullanılır. Kimlik tespit araştırmaları sonucunda da kimliğine dair bilgi elde edilememesi hâlinde, başvuranın beyanı esas alınır.

(4) Kayıt esnasında; başvuru sahibinin menşe veya ikamet ülkesini terk etme sebepleri, ülkesini terk ettikten sonra başından geçen ve başvuru yapmasına neden olan olaylar, Türkiye'ye giriş şekli, kullandığı yol güzergâhları ve vasıta bilgileri, daha önceden başka bir ülkede uluslararası korumaya başvurmuş veya korumadan yararlanmışsa, bu başvuru veya korumaya ilişkin bilgi ve belgeleri alınır.

(5) Mülakat zamanı ve yeri kayıt esnasında bildirilir.

(6) Kamu sağlığını tehlikeye düşürebileceği değerlendirilen başvuru sahibi sağlık kontrolünden geçirilir.

(7) Başvuru sahibine kayıt esnasında; kimlik bilgilerini içeren, uluslararası koruma başvurusunda bulunduğunu belirten, otuz gün geçerli kayıt belgesi verilir. Kayıt belgesi, gerektiğinde otuz günlük sürelerle uzatılabilir. Kayıt belgesi, hiçbir harca tâbi olmayıp başvuru sahibinin Türkiye'de kalışına imkân sağlar.

Başvuru sahibinin bilgilendirilmesi ve tercümanlık

MADDE 70- (1) Başvuru sahibi, başvurusuyla ilgili takip edilecek usûller, başvurusunun değerlendirilmesi sürecindeki hak ve yükümlülükleri, yükümlülüklerini nasıl yerine getireceği ve bu yükümlülüklere uymaması ya da yetkililerle işbirliğinde bulunmaması hâlinde ortaya çıkabilecek muhtemel sonuçlar, itiraz usûlleri ve süreleri konusunda kayıt esnasında bilgilendirilir.

(2) Başvuru sahibinin talep etmesi hâlinde, başvuru, kayıt ve mülakat aşamalarındaki kişisel görüşmelerde tercümanlık hizmetleri sağlanır.

İkamet zorunluluğu ve bildirim yükümlülüğü

MADDE 71- (1) Başvuru sahibine, kendisine gösterilen kabûl ve barınma merkezinde, belirli bir yerde veya ilde ikamet etme zorunluluğu ile istenilen şekil ve

sürelerde bildirimde bulunma gibi idarî yükümlülükler getirilebilir.

(2) Başvuru sahibi, adres kayıt sistemine kayıt yaptırmak ve ikamet adresini valiliğe bildirmekle yükümlüdür.

Kabûl edilemez başvuru

MADDE 72- (1) Başvuru sahibi;

a) Farklı bir gerekçe öne sürmeksizin aynı başvuruyu yenilemişse,

b) Kendi adına başvuru yapılmasına muvafakat verdikten sonra, başvurunun herhangi bir aşamasında haklı bir neden göstermeksizin veya başvurunun reddedilmesinin ardından farklı bir gerekçe öne sürmeksizin ayrı bir başvuru yapmışsa,

c) İlk iltica ülkesinden gelmişse,

ç) Güvenli üçüncü ülkeden gelmişse,

başvurusunun kabûl edilemez olduğuna ilişkin karar verilir.

(2) Birinci fıkrada belirtilen durumların, değerlendirmenin herhangi bir aşamasında ortaya çıkması hâlinde değerlendirme durdurulur.

(3) Başvurunun kabûl edilemez olduğuna ilişkin karar, ilgiliye veya yasal temsilcisine ya da avukatına tebliğ edilir. İlgili kişi bir avukat tarafından temsil edilmiyorsa kararın sonucu, itiraz usûlleri ve süreleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

İlk iltica ülkesinden gelenler

MADDE 73- (1) Başvuru sahibinin, daha önceden mülteci olarak tanındığı ve hâlen bu korumadan yararlanma imkânının olduğu veya geri göndermeme ilkesini de içeren yeterli ve etkili nitelikte korumadan hâlen faydalanabileceği bir ülkeden geldiğinin ortaya çıkması durumunda, başvuru kabûl edilemez olarak değerlendirilir ve ilk iltica ülkesine gönderilmesi için işlemler başlatılır. Ancak geri gönderme işlemi gerçekleşinceye kadar ülkede kalışına izin verilir. Bu durum ilgiliye tebliğ edilir. İlgilinin, ilk iltica ülkesi olarak nitelenen ülke tarafından kabûl edilmemesi hâlinde, başvuruya ilişkin işlemler devam ettirilir.

Güvenli üçüncü ülkeden gelenler

MADDE 74- (1) Başvuru sahibinin, Sözleşmeye uygun korumayla sonuçlanabilecek bir uluslararası koruma başvurusu yaptığı veya başvurma imkânının olduğu güvenli üçüncü bir ülkeden geldiğinin ortaya çıkması durumunda başvuru kabûl edilemez olarak değerlendirilir ve güvenli üçüncü ülkeye gönderilmesi için işlemler başlatılır. Ancak geri gönderme işlemi gerçekleşinceye kadar ülkede kalışına izin verilir. Bu durum ilgiliye tebliğ edilir. İlgilinin, güvenli üçüncü ülke olarak nitelenen ülke tarafından kabûl edilmemesi hâlinde, başvuruya ilişkin işlemler devam ettirilir.

(2) Aşağıdaki şartları taşıyan ülkeler güvenli üçüncü ülke olarak nitelendirilir:

a) Kişilerin hayatının veya hürriyetinin, ırkı, dini, tâbiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasî düşünceleri nedeniyle tehdit altında olmaması.

b) Kişilerin işkenceye, insanlık dışı ya da onur kırıcı ceza veya muameleye tâbi tutulacağı ülkelere geri gönderilmemesi ilkesinin uygulanıyor olması.

c) Kişinin mülteci statüsü talep etme ve mülteci olarak nitelendirilmesi durumunda Sözleşmeye uygun olarak koruma elde etme imkânının bulunması.

ç) Kişinin ciddî zarar görme riskinin olmaması.

(3) Bir ülkenin başvuru sahibi için güvenli üçüncü ülke olup olmadığı, başvuru sahibinin ilgili üçüncü ülkeye gönderilmesini makûl kılacak bu kişi ve ülke

arasındaki bağlantılar da dâhil olmak üzere, her başvuru sahibi için ayrı olarak değerlendirilir.

Mülakat

MADDE 75- (1) Etkin ve adil karar verebilmek amacıyla, başvuru sahibiyle kayıt tarihinden itibaren otuz gün içinde bireysel mülakat yapılır. Mülakatın mahremiyeti dikkate alınarak, kişiye kendisini en iyi şekilde ifade etme imkânı tanınır. Ancak, aile üyelerinin de bulunmasının gerekli görüldüğü durumlarda, kişinin muvafakati alınarak mülakat aile üyeleriyle birlikte yapılabilir. Başvuru sahibinin talebi üzerine, avukatı gözlemci olarak mülakata katılabilir.

(2) Başvuru sahibi, yetkililerle işbirliği yapmak ve uluslararası koruma başvurusunu destekleyecek tüm bilgi ve belgeleri sunmakla yükümlüdür.

(3) Özel ihtiyaç sahipleriyle yapılacak mülakatlarda; bu kişilerin özel durumları gözönünde bulundurulur. Çocuğun mülakatında psikolog, çocuk gelişimci veya sosyal çalışmacı ya da ebeveyni veya yasal temsilcisi hazır bulunabilir.

(4) Mülakatın gerçekleştirilememesi hâlinde, yeni mülakat tarihi belirlenir ve ilgili kişiye tebliğ edilir. Mülakat tarihleri arasında en az on gün bulunur.

(5) Gerekli görüldüğünde başvuru sahibiyle ek mülakatlar yapılabilir.

(6) Mülakatlar sesli veya görsel olarak kayıt altına alınabilir. Bu durumda mülakat yapılan kişi bilgilendirilir. Her mülakatın sonunda tutanak düzenlenir, bir örneği mülakat yapılan kişiye verilir.

Uluslararası koruma başvuru sahibi kimlik belgesi

MADDE 76- (1) Mülakatı tamamlanan başvuru sahibine ve varsa birlikte geldiği aile üyelerine, uluslararası koruma talebinde bulunduğunu belirten ve yabancı kimlik numarasını içeren altı ay süreli Uluslararası Koruma Başvuru Sahibi Kimlik Belgesi düzenlenir. Başvurusu sonuçlandırılamayanların kimlik belgeleri altı aylık sürelerle uzatılır.

(2) 72 nci ve 79 uncu maddeler kapsamında olanlar ile bunların aile üyelerine kimlik belgesi verilmez.

(3) Kimlik belgesinin şekli ve içeriği Genel Müdürlükçe belirlenir.

(4) Kimlik belgesi, hiçbir harca tâbi olmayıp, ikamet izni yerine geçer.

Başvurunun geri çekilmesi veya geri çekilmiş sayılması

MADDE 77- (1) Başvuru sahibinin;

a) Başvurusunu geri çektiğini yazılı olarak beyan etmesi,

b) Mazeretsiz olarak mülakata üç defa üst üste gelmemesi,

c) İdarî gözetim altında bulunduğu yerden kaçması,

ç) Mazeretsiz olarak; bildirim yükümlülüğünü üç defa üst üste yerine getirmemesi, belirlenen ikamet yerine gitmemesi veya ikamet yerini izinsiz terk etmesi,

d) Kişisel verilerinin alınmasına karşı çıkması,

e) Kayıt ve mülakattaki yükümlülüklerine uymaması,

hâllerinde başvurusu geri çekilmiş kabûl edilerek, değerlendirme durdurulur.

Karar

MADDE 78- (1) Başvuru, kayıt tarihinden itibaren en geç altı ay içinde Genel Müdürlükçe sonuçlandırılır. Kararın bu süre içerisinde verilememesi hâlinde başvuru sahibi bilgilendirilir.

(2) Kararlar bireysel olarak verilir. 64 üncü maddenin altıncı fıkrası saklı kalmak kaydıyla, aile adına yapılan başvuru bütün olarak değerlendirilir ve verilen karar tüm aile üyelerini kapsar.

(3) Başvuru hakkında karar verilirken menşe veya önceki ikamet ülkesinin

mevcut genel şartları ve başvuru sahibinin kişisel şartları gözönünde bulundurulur.

(4) Başvuru sahibine, zulüm veya ciddî zarar görme tehdidine karşı vatandaşı olduğu ülke veya önceki ikamet ülkesinin belirli bir bölgesinde koruma sağlanabiliyorsa ve başvuru sahibi, ülkenin o bölgesine güvenli bir şekilde seyahat edebilecek ve yerleşebilecek durumdaysa, başvuru sahibinin uluslararası korumaya muhtaç olmadığına karar verilebilir.

(5) Dördüncü fıkradaki durumların ortaya çıkması, başvurunun tam bir incelemeye tâbi tutulmasını engellemez.

(6) Karar, ilgiliye veya yasal temsilcisine ya da avukatına tebliğ edilir. Olumsuz kararın tebliğinde, kararın maddî gerekçeleri ve hukukî dayanakları da belirtilir. İlgili kişi bir avukat tarafından temsil edilmiyorsa, kararın sonucu, itiraz usûlleri ve süreleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

Hızlandırılmış değerlendirme

MADDE 79- (1) Başvuru sahibinin;

a) Başvuru sırasında gerekçelerini sunarken, uluslararası korumayı gerektirecek konulara hiç değinmemiş olması,

b) Sahte belge ya da yanıltıcı bilgi ve belge kullanarak veya kararı olumsuz etkileyebilecek bilgi ve belgeleri sunmayarak yetkilileri yanlış yönlendirmesi,

c) Kimliğinin ya da uyruğunun tespit edilmesini güçleştirmek amacıyla kimlik ya da seyahat belgelerini kötü niyetle imha etmesi veya elden çıkarması,

ç) Sınır dışı edilmek üzere idarî gözetim altında olması,

d) Sadece, Türkiye'den gönderilmesine yol açacak bir kararın uygulanmasını erteletmek ya da engellemek amacıyla başvuruda bulunması,

e) Kamu düzeni veya kamu güvenliği açısından tehlike oluşturması ya da bu nedenlerle Türkiye'den daha önce sınır dışı edilmiş olması,

f) Başvurusunun geri çekilmiş sayılmasından sonra yeniden başvuruda bulunması,

hâllerinde, başvurusu hızlandırılmış olarak değerlendirilir.

(2) Başvurusu hızlandırılmış olarak değerlendirilen başvuru sahibiyle, başvuru tarihinden itibaren en geç üç gün içinde mülakat yapılır. Başvuru, mülakattan sonra en geç beş gün içinde sonuçlandırılır.

(3) Bu maddeye göre değerlendirilen başvurulardan, incelenmesinin uzun süreceği anlaşılanlar, hızlandırılmış değerlendirmeden çıkarılabilir.

(4) Refakatsiz çocukların başvuruları hızlandırılmış olarak değerlendirilemez.

İdarî itiraz ve yargı yolu

MADDE 80- (1) Bu Kısımda yazılı hükümler uyarınca alınan kararlara karşı idarî itiraz ve yargı yoluna başvurulduğunda aşağıdaki hükümler uygulanır:

a) İlgili kişi veya yasal temsilcisi ya da avukatı tarafından kararın tebliğinden itibaren on gün içinde Uluslararası Koruma Değerlendirme Komisyonuna itiraz edilebilir. Ancak 68 inci, 72 nci ve 79 uncu maddelere göre verilen kararlara karşı, sadece yargı yoluna başvurulabilir.

b) İdarî itiraz sonucu alınan karar, ilgiliye veya yasal temsilcisine ya da avukatına tebliğ edilir. Kararın olumsuz olması hâlinde; ilgili kişi bir avukat tarafından temsil edilmiyorsa kararın sonucu, itiraz usûlleri ve süreleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

c) Bakanlık, verilen kararlara karşı yapılan idarî itiraz usûllerini düzenleyebilir.

ç) 68 inci maddede düzenlenen yargı yolu hariç olmak üzere, 72 nci ve 79 uncu maddeler çerçevesinde alınan kararlara karşı, kararın tebliğinden itibaren onbeş gün, alınan diğer idarî karar ve işlemlere karşı kararın tebliğinden itibaren otuz gün içinde, ilgili kişi veya yasal temsilcisi ya da avukatı tarafından yetkili idare mahkemesine başvurulabilir.

d) 72 nci ve 79 uncu maddeler çerçevesinde mahkemeye yapılan başvurular onbeş gün içerisinde sonuçlandırılır. Mahkemenin bu konuda vermiş olduğu karar kesindir.

e) İtiraz veya yargılama süreci sonuçlanıncaya kadar ilgili kişinin ülkede kalışına izin verilir.

Avukatlık hizmetleri ve danışmanlık

MADDE 81- (1) Başvuru sahibi ile uluslararası koruma statüsü sahibi kişiler, bu Kısımda yazılı iş ve işlemlerle ilgili olarak, ücretleri kendilerince karşılanması kaydıyla avukat tarafından temsil edilebilir.

(2) Avukatlık ücretlerini karşılama imkânı bulunmayan başvuru sahibi ve uluslararası koruma statüsü sahibi kişiye, bu Kısım kapsamındaki iş ve işlemlerle ilgili olarak yargı önündeki başvurularında 1136 sayılı Kanunun adlî yardım hükümlerine göre avukatlık hizmeti sağlanır.

(3) Başvuru sahibi ve uluslararası koruma statüsü sahibi kişi, sivil toplum kuruluşları tarafından sağlanan danışmanlık hizmetlerinden faydalanabilir.

Şartlı mültecinin ve ikincil koruma statüsü sahibinin ikameti

MADDE 82- (1) Şartlı mülteci ve ikincil koruma statüsü sahibi kişiye, Genel Müdürlükçe, kamu düzeni veya kamu güvenliği nedeniyle belirli bir ilde ikamet etme, belirlenen süre ve usûllerle bildirimde bulunma yükümlülüğü getirilebilir.

(2) Bu kişiler, adres kayıt sistemine kayıt yaptırmak ve ikamet adresini valiliğe bildirmekle yükümlüdür.

Uluslararası koruma statüsü sahibi kimlik belgesi

MADDE 83- (1) Mülteci statüsü verilenlere yabancı kimlik numarasını içeren üçer yıl süreli kimlik belgesi düzenlenir.

(2) Şartlı mülteci ve ikincil koruma statüsü verilenlere, yabancı kimlik numarasını içeren birer yıllık süreli kimlik belgesi düzenlenir.

(3) Birinci ve ikinci fıkralardaki kimlik belgeleri hiçbir harca tâbi olmayıp, ikamet izni yerine geçer. Kimlik belgelerinin şekil ve içeriği Genel Müdürlükçe belirlenir.

Seyahat belgesi

MADDE 84- (1) Mültecilere, valiliklerce Sözleşmede belirtilen seyahat belgesi düzenlenir.

(2) Şartlı mülteci ve ikincil koruma statüsü sahiplerinin seyahat belgesi talepleri 5682 sayılı Kanunun 18 inci maddesi çerçevesinde değerlendirilir.

Uluslararası koruma statüsünün sona ermesi

MADDE 85- (1) Uluslararası koruma statüsü sahibi kişi;

a) Vatandaşı olduğu ülkenin korumasından kendi isteğiyle tekrar yararlanırsa,

b) Kaybettiği vatandaşlığını kendi isteğiyle tekrar kazanırsa,

c) Yeni bir vatandaşlık kazanmışsa ve vatandaşlığını kazandığı ülkenin korumasından yararlanıyorsa,

ç) Terk ettiği veya zulüm korkusuyla dışında bulunduğu ülkeye kendi isteğiyle tekrar dönmüşse,

d) Statü verilmesini sağlayan koşullar ortadan kalktığı için vatandaşı olduğu ülkenin korumasından yararlanabilecekse,

e) Vatansız olup da, statü verilmesine yol açan koşullar ortadan kalktığı için önceden yaşadığı ikamet ülkesine dönebilecekse,

uluslararası koruma statüsü sona erer.

(2) Birinci fıkranın (d) ve (e) bentlerinin incelenmesinde; statü verilmesine neden olan şartların ortadan kalkıp kalkmadığı veya önemli ve kalıcı bir şekilde değişip değişmediği gözönünde bulundurulur.

(3) İkincil koruma statüsü verilmesine neden olan şartlar ortadan kalktığında veya korumaya gerek bırakmayacak derecede değiştiğinde de statü sona erer. İkincil koruma statüsü verilmesini gerektiren şartlardaki değişikliklerin önemli ve kalıcı olup olmadığı gözönünde bulundurulur.

(4) Birinci ve üçüncü fıkralarda belirtilen şartların ortaya çıkması hâlinde, statü yeniden değerlendirilebilir. Bu kişiye; statüsünün yeniden değerlendirildiği ve nedenleri yazılı olarak bildirildikten sonra, statüsünün devam etmesi gerektiğine ilişkin nedenlerini sözlü veya yazılı şekilde sunabilmesine fırsat verilir.

(5) Maddî gerekçelerini ve hukukî dayanaklarını içeren sona erme kararı, ilgiliye veya yasal temsilcisine ya da avukatına tebliğ edilir. İlgili kişi bir avukat tarafından temsil edilmiyorsa kararın sonucu, itiraz usûlleri ve süreleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

Uluslararası koruma statüsünün iptali

MADDE 86- (1) Uluslararası koruma statüsü verilen kişilerden;

a) Sahte belge kullanma, hile, aldatma yoluyla veya beyan etmediği gerçeklerle statü verilmesine neden olanların,

b) Statü verildikten sonra, 64 üncü madde çerçevesinde hariçte tutulması gerektiği anlaşılanların,

statüsü iptal edilir.

(2) Maddî gerekçelerini ve hukukî dayanaklarını içeren iptal kararı, ilgiliye veya yasal temsilcisine ya da avukatına tebliğ edilir. İlgili kişi bir avukat tarafından temsil edilmiyorsa kararın sonucu, itiraz usûlleri ve süreleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

Gönüllü geri dönüş desteği

MADDE 87- (1) Başvuru sahibi ve uluslararası koruma statüsü sahibi kişilerden, gönüllü olarak geri dönmek isteyenlere, aynî ve nakdî destek sağlanabilir.

(2) Genel Müdürlük, gönüllü geri dönüş çalışmalarını, uluslararası kuruluşlar, kamu kurum ve kuruluşları, sivil toplum kuruluşlarıyla işbirliği içerisinde yapabilir.

ÜÇÜNCÜ BÖLÜM
Haklar ve Yükümlülükler

Hak ve yükümlülüklere ilişkin genel ilkeler

MADDE 88- (1) Uluslararası koruma statüsü sahibi kişiler, karşılıklılık şartından muaftır.

(2) Başvuru sahibine, başvurusu reddedilen veya uluslararası koruma statüsü sahibi kişilere sağlanan hak ve imkânlar, Türk vatandaşlarına sağlanan hak ve imkânlardan fazla olacak şekilde yorumlanamaz.

Eğitim ve öğretime erişim

MADDE 89- (1) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişi

ve aile üyeleri, ilköğretim ve ortaöğretim hizmetlerinden faydalanır.

Sosyal yardım ve hizmetlere erişim

MADDE 90- (1) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişilerden ihtiyaç sahibi olanların, sosyal yardım ve hizmetlere erişimleri sağlanabilir.

Sağlık hizmetlerine erişim

MADDE 91- (1) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişilerden; herhangi bir sağlık güvencesi olmayan ve ödeme gücü bulunmayanlar, 31/5/2006 tarihli ve 5510 sayılı Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu hükümlerine tâbidir. Genel sağlık sigortasından faydalanacak kişilerin primlerinin ödenmesi için Genel Müdürlük bütçesine ödenek konulur. Primleri Genel Müdürlük tarafından ödenenlerden ödeme güçlerine göre primin tamamı veya belli bir oranı talep edilir.

(2) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişilerden, sağlık güvencesi veya ödeme gücünün bulunduğu veya başvurunun sadece tıbbî tedavi görmek amacıyla yapıldığı sonradan anlaşılanlar, genel sağlık sigortalılıklarının sona erdirilmesi için en geç on gün içinde Sosyal Güvenlik Kurumuna bildirilir ve yapılan tedavi ve ilaç masrafları ilgililerden geri alınır.

Başvuru sahibi ve şartlı mültecinin iş piyasasına erişimi

MADDE 92- (1) Başvuru sahibi veya şartlı mülteci, uluslararası koruma başvurusu tarihinden altı ay sonra çalışma izni almak için başvurabilir. Çalışma izin talebi, 4817 sayılı Kanun kapsamında değerlendirilerek sonuçlandırılır.

Mülteci ve ikincil koruma statüsü sahibi kişinin iş piyasasına erişimi

MADDE 93- (1) Mülteci veya ikincil koruma statüsü sahibi, statü almasından itibaren bağımlı veya bağımsız olarak çalışabilir. Yabancıların çalışamayacağı iş ve mesleklere ilişkin diğer mevzuatta yer alan hükümler saklıdır. Mülteci veya ikincil koruma statüsü sahibi kişiye verilecek kimlik belgesi, çalışma izni yerine de geçer ve bu durum kimlik belgesine yazılır.

(2) Mülteci ve ikincil koruma statüsü sahibinin iş piyasasına erişimi, iş piyasasındaki durum ve çalışma hayatındaki gelişmeler ile istihdama ilişkin sektörel ve ekonomik şartların gerekli kıldığı hâllerde, belirli bir süre için, tarım, sanayi veya hizmet sektörleri, belirli bir meslek, işkolu veya mülkî ve coğrafî alan itibarıyla sınırlandırılabilir. Ancak, Türkiye'de üç yıl ikamet eden veya Türk vatandaşıyla evli olan ya da Türk vatandaşı çocuğu olan mülteci ve ikincil koruma statüsü sahipleri için bu sınırlamalar uygulanmaz.

(3) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişilerin çalışmasına ilişkin usûl ve esaslar, Bakanlığın görüşü alınarak Çalışma ve Sosyal Güvenlik Bakanlığı tarafından belirlenir.

Harçlık

MADDE 94- (1) 72 nci ve 79 uncu maddelerde sayılanlar hariç olmak üzere, muhtaç olduğu tespit edilen başvuru sahibine, Maliye Bakanlığının uygun görüşü alınarak Bakanlığın belirleyeceği usûl ve esaslar çerçevesinde harçlık verilebilir.

Yükümlülükler

MADDE 95- (1) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişi, bu Kısımda yazılı yükümlülüklerine ek olarak;

a) Çalışma durumuna ait güncel bilgileri otuz gün içinde bildirmekle,

b) Gelirlerini, taşınır ve taşınmazlarını otuz gün içinde bildirmekle,

c) Adres, kimlik ve medenî hâl değişikliklerini yirmi iş günü içinde bildirmekle,

ç) Kendisine sağlanan hizmet, yardım ve diğer imkânlardan haksız olarak yararlandığının tespit edilmesi hâlinde, bedellerini tamamen veya kısmen geri ödemekle,

d) Genel Müdürlükçe kendisinden bu Kısım çerçevesinde istenilenleri yerine getirmekle,

yükümlüdür.

(2) Bu Kısımda yazılı yükümlülüklere uymayanlar ile başvuruları ve uluslararası koruma statüleriyle ilgili olumsuz karar verilenlere; eğitim ve temel sağlık hakları hariç, diğer haklardan faydalanmaları bakımından sınırlama getirilebilir. Sınırlamaya ilişkin değerlendirme bireysel yapılır. Karar ilgili kişiye veya yasal temsilcisine ya da avukatına yazılı olarak tebliğ edilir. İlgili kişi bir avukat tarafından temsil edilmiyorsa kararın sonucu, itiraz usûlleri ve süreleri hakkında kendisi veya yasal temsilcisi bilgilendirilir.

DÖRDÜNCÜ BÖLÜM
Geçici Koruma ve Uluslararası Korumaya İlişkin Diğer Hükümler

Geçici koruma

MADDE 96- (1) Ülkesinden ayrılmaya zorlanmış, ayrıldığı ülkeye geri dönemeyen, acil ve geçici koruma bulmak amacıyla kitlesel olarak sınırlarımıza gelen veya sınırlarımızı geçen yabancılara geçici koruma sağlanabilir.

(2) Bu kişilerin Türkiye'ye kabûlü, Türkiye'de kalışı, hak ve yükümlülükleri, Türkiye'den çıkışlarında yapılacak işlemler, kitlesel hareketlere karşı alınacak tedbirlerle, ulusal ve uluslararası kurum ve kuruluşlar arasındaki işbirliği ve koordinasyon, merkez ve taşrada görev alacak kurum ve kuruluşların görev ve yetkilerinin belirlenmesi, Bakanlar Kurulu tarafından çıkarılacak yönetmelikle düzenlenir.

Uluslararası koruma süreçlerinde işbirliği

MADDE 97- (1) Bakanlık, bu Kısımda yazılı uluslararası koruma süreçleriyle ilgili konularda, 5/5/1969 tarihli ve 1173 sayılı Milletlerarası Münasebetlerin Yürütülmesi ve Koordinasyonu Hakkında Kanun çerçevesinde Birleşmiş Milletler Mülteciler Yüksek Komiserliği, Uluslararası Göç Örgütü, diğer uluslararası kuruluşlar ve sivil toplum kuruluşlarıyla işbirliği yapabilir.

(2) Sözleşme hükümlerinin uygulanmasına nezaret etme görevini yerine getirmesinde, Birleşmiş Milletler Mülteciler Yüksek Komiserliğiyle gerekli işbirliği sağlanır. Bakanlık, bu Kanun çerçevesindeki uluslararası koruma, başvuru, değerlendirme ve karar süreçlerini belirlemeye, bu amaçla Dışişleri Bakanlığının uygun görüşü alınmak suretiyle Birleşmiş Milletler Mülteciler Yüksek Komiserliğiyle uluslararası anlaşma niteliği taşımayan protokoller yapmaya yetkilidir.

(3) Birleşmiş Milletler Mülteciler Yüksek Komiserliğinin uluslararası koruma başvurusunda bulunmuş kişilere sınır kapıları da dâhil olmak üzere erişimi ve başvuru sahibinin de kabûl etmesi şartıyla, başvurusuyla ilgili bilgilere erişimi sağlanır. Birleşmiş Milletler Mülteciler Yüksek Komiserliği, başvurunun her aşamasında görüşlerini yetkililere iletebilir.

Menşe ülke bilgisi

MADDE 98- (1) Uluslararası koruma başvuruları incelenirken, etkin ve adil karar verebilmek, başvuran tarafından iddia edilen hususların doğruluğunu tespit edebilmek amacıyla menşe, ikamet ve transit ülkelerle ilgili Birleşmiş Milletler Mülteciler Yüksek Komiserliği kaynakları ve diğer kaynaklardan güncel bilgi toplanır.

(2) Menşe ülke bilgi sisteminin kurulması, bilgilerin toplanması, depolanması, sistemin işletilmesi, ilgili kamu kurum ve kuruluşlarının kullanımına açılması Genel Müdürlükçe belirlenecek usûl ve esaslar çerçevesinde yapılır.

Gizlilik ilkesi ve kişisel dosyaya erişim

MADDE 99- (1) Başvuru sahibinin ve uluslararası koruma statüsü sahibi kişinin tüm bilgi ve belgelerinde gizlilik esastır.

(2) Ancak, başvuru sahibi ve uluslararası koruma statüsü sahibi kişi ile yasal temsilcisi veya avukatı, başvuru sahibi ve uluslararası koruma statüsü sahibinin kişisel dosyasında yer alan kayıt belgeleri, mülakat raporu, başvuranın başvurusuna ilişkin sunduğu bilgi ve belgeler ve karar örneği ile menşe ülke bilgilerini inceleyebilir, birer örneğini alabilir. Millî güvenlik ve kamu düzeninin korunması ile suç işlenmesinin önlenmesine ilişkin belgeler incelenemez ve verilemez.

Kabûl ve barınma merkezlerinin kurulması ve işletilmesi

MADDE 100- (1) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişinin, barınma ihtiyaçlarını kendisinin karşılaması esastır.

(2) Genel Müdürlük, başvuru sahibi veya uluslararası koruma statüsü sahibi kişinin barınma, iaşe, sağlık, sosyal ve diğer ihtiyaçlarının karşılanacağı kabûl ve barınma merkezleri kurabilir.

(3) Merkezlerde özel ihtiyaç sahiplerinin barındırılmasına öncelik verilir.

(4) Kabûl ve barınma merkezleri, valilikler tarafından işletilir. Genel Müdürlük, merkezleri, kamu kurum ve kuruluşlarıyla, Türkiye Kızılay Derneği ve göç alanında uzmanlığı bulunan kamu yararına çalışan derneklerle protokol yaparak işlettirebilir.

(5) Kabûl ve barınma merkezi dışında ikamet eden başvuru sahibi veya uluslararası koruma statüsü sahibi kişiler ve aile üyeleri bu merkezlerdeki hizmetlerden yararlandırılabilir.

(6) Kabûl ve barınma merkezlerinde sağlanan hizmetler, satın alma yoluyla da yürütülebilir.

(7) İmkânlar ölçüsünde merkezlerde kalan ailelerin bütünlüğü korunur.

(8) Kabûl ve barınma merkezlerinin kurulması, yönetimi ve işletilmesiyle ilgili usûl ve esaslar yönetmelikle düzenlenir.

DÖRDÜNCÜ KISIM
Yabancılar ve Uluslararası Korumaya İlişkin Ortak Hükümler

Uyum

MADDE 101- (1) Genel Müdürlük, ülkenin ekonomik ve malî imkânları ölçüsünde, yabancı ile başvuru sahibinin veya uluslararası koruma statüsü sahibi kişilerin ülkemizde toplumla olan karşılıklı uyumlarını kolaylaştırmak ve ülkemizde, yeniden yerleştirildikleri ülkede veya geri döndüklerinde ülkelerinde sosyal hayatın tüm alanlarında üçüncü kişilerin aracılığı olmadan bağımsız hareket edebilmelerini

kolaylaştıracak bilgi ve beceriler kazandırmak amacıyla, kamu kurum ve kuruluşları, yerel yönetimler, sivil toplum kuruluşları, üniversiteler ile uluslararası kuruluşların öneri ve katkılarından da faydalanarak uyum faaliyetleri planlayabilir.

(2) Yabancılar, ülkenin siyasî yapısı, dili, hukukî sistemi, kültürü ve tarihi ile hak ve yükümlülüklerinin temel düzeyde anlatıldığı kurslara katılabilir.

(3) Kamusal ve özel mal ve hizmetlerden yararlanma, eğitime ve ekonomik faaliyetlere erişim, sosyal ve kültürel iletişim, temel sağlık hizmeti alma gibi konularda kurslar, uzaktan eğitim ve benzeri sistemlerle tanıtım ve bilgilendirme etkinlikleri Genel Müdürlükçe kamu kurum ve kuruluşları ile sivil toplum kuruluşlarıyla da işbirliği yapılarak yaygınlaştırılır.

Davete uyma yükümlülüğü

MADDE 102- (1) Yabancılar, başvuru sahipleri ve uluslararası koruma statüsü sahibi kişiler;

a) Türkiye'ye girişi veya Türkiye'de kalışı hakkında inceleme ihtiyacının doğması,

b) Hakkında sınır dışı etme kararı alınma ihtimalinin bulunması,

c) Bu Kanunun uygulanmasıyla ilgili işlemlerin bildirimi,

nedenleriyle, ilgili valiliğe veya Genel Müdürlüğe davet edilebilirler. Davete uyulmadığında veya uyulmayacağına ilişkin ciddî şüphe olması durumunda yabancılar davet edilmeksizin kolluk tarafından getirilebilirler. Bu işlem, idarî gözetim olarak uygulanamaz ve bilgi alma süresi dört saati geçemez.

Taşıyıcıların yükümlülükleri

MADDE 103- (1) Taşıyıcılar;

a) Ülkeye giriş yapmak veya ülkeden transit geçmek üzere sınır kapılarına getirmiş oldukları yabancılardan herhangi bir nedenle Türkiye'ye girişleri ve Türkiye'den transit geçişleri reddedilenleri, geldikleri ya da kesin olarak kabûl edilecekleri bir ülkeye geri götürmekle,

b) Yabancıya refakat edilmesi gerekli görüldüğü durumlarda refakatçilerin gidiş ve dönüşlerini sağlamakla,

c) Taşıdıkları kişilerin belge ve izinlerini kontrol etmekle,

yükümlüdür.

(2) Genel Müdürlük, sınır kapılarına yolcu getiren taşıyıcılardan, Türkiye'ye hareketlerinden önce taşıyacakları yolcuların bilgilerinin verilmesini isteyebilir.

(3) Birinci ve ikinci fıkralarda yer alan yükümlülüklere ilişkin uygulanacak usûl ve esaslar, Bakanlık ve Ulaştırma, Denizcilik ve Haberleşme Bakanlığınca müştereken çıkarılacak yönetmelikle belirlenir.

Kişisel veriler

MADDE 104- (1) Yabancılara, başvuru ve uluslararası koruma statüsü sahiplerine ait kişisel veriler, Genel Müdürlükçe veya valiliklerce ilgili mevzuata ve taraf olunan uluslararası anlaşmalara uygun olarak alınır, korunur, saklanır ve kullanılır.

Tebligat

MADDE 105- (1) Bu Kanuna ilişkin tebligat işlemleri, 11/2/1959 tarihli ve 7201 sayılı Tebligat Kanunu hükümlerine göre yapılır.

(2) Bu maddenin uygulanmasına ilişkin usûl ve esaslar yönetmelikle düzenlenir.

Yetkili idare mahkemeleri

MADDE 106- (1) Bu Kanunun uygulanmasına ilişkin olarak idarî yargıya

başvurulması hâlinde, bir yerde birden fazla idare mahkemesinin bulunması hâlinde bu davaların hangi idare mahkemesinde görüleceği Hâkimler ve Savcılar Yüksek Kurulu tarafından belirlenir.

İdarî para cezası

MADDE 107- (1) Diğer kanunlara göre daha ağır bir ceza gerektirmediği takdirde;

a) 5 inci maddeye aykırı şekilde, Türkiye'ye yasa dışı giren veya Türkiye'yi yasa dışı terk eden ya da buna teşebbüs eden yabancılar hakkında iki bin Türk Lirası,

b) 9 uncu maddenin birinci ve ikinci fıkraları uyarınca Türkiye'ye girişleri yasaklanmış olmasına rağmen Türkiye'ye girebilmiş olanlar hakkında bin Türk Lirası,

c) 56 ncı maddenin birinci fıkrasında tanınan sürede Türkiye'den ayrılmayanlar hakkında bin Türk Lirası,

ç) 57 nci, 58 inci, 60 ıncı ve 68 inci maddeler kapsamındaki işlemler sırasında kaçanlar hakkında bin Türk Lirası,

idarî para cezası uygulanır.

(2) İdarî para cezası öngörülen suçların bir takvim yılı içinde tekrarı hâlinde, para cezaları yarı oranında arttırılarak uygulanır.

(3) Bu maddedeki idarî para cezalarının uygulanması, Kanunda öngörülen diğer idarî tedbirlerin uygulanmasına engel teşkil etmez.

(4) Bu maddedeki idarî para cezaları, valilik veya kolluk birimlerince uygulanır. Verilen para cezaları tebliğ tarihinden itibaren otuz gün içinde ödenir.

BEŞİNCİ KISIM
Göç İdaresi Genel Müdürlüğü

BİRİNCİ BÖLÜM
Kuruluş, Görev ve Yetki

Kuruluş

MADDE 108- (1) Göç alanına ilişkin politika ve stratejileri uygulamak, bu konularla ilgili kurum ve kuruluşlar arasında koordinasyonu sağlamak, yabancıların Türkiye'ye giriş ve Türkiye'de kalışları, Türkiye'den çıkışları ve sınır dışı edilmeleri, uluslararası koruma, geçici koruma ve insan ticareti mağdurlarının korunmasıyla ilgili iş ve işlemleri yürütmek üzere İçişleri Bakanlığına bağlı Göç İdaresi Genel Müdürlüğü kurulmuştur.

Görev ve yetki

MADDE 109- (1) Göç İdaresi Genel Müdürlüğünün görev ve yetkileri şunlardır:

a) Göç alanına ilişkin, mevzuatın ve idarî kapasitenin geliştirilmesi, politika ve stratejilerin belirlenmesi konularında çalışmalar yürütmek ve Bakanlar Kurulunca belirlenen politika ve stratejilerin uygulanmasını izlemek ve koordine etmek.

b) Göç Politikaları Kurulunun sekretarya hizmetlerini yürütmek, Kurul kararlarının uygulanmasını takip etmek.

c) Göçle ilgili iş ve işlemleri yürütmek.

ç) 19/9/2006 tarihli ve 5543 sayılı İskân Kanununda Bakanlığa verilen görevleri yürütmek.

d) İnsan ticareti mağdurlarının korunmasına ilişkin iş ve işlemleri yürütmek,

e) Türkiye'de bulunan vatansız kişileri tespit etmek ve bu kişilerle ilgili iş ve işlemleri yürütmek.

f) Uyum süreçlerine ilişkin iş ve işlemleri yürütmek.

g) Geçici korumaya ilişkin iş ve işlemleri yürütmek.

ğ) Düzensiz göçle mücadele edilebilmesi amacıyla kolluk birimleri ve ilgili kamu kurum ve kuruluşları arasında koordinasyonu sağlamak, tedbirler geliştirmek, alınan tedbirlerin uygulanmasını takip etmek.

h) Kamu kurum ve kuruluşlarının göç alanına yönelik faaliyetlerinin programlanmasına ve projelendirilmesine yardımcı olmak, proje tekliflerini değerlendirmek ve onaylamak, yürütülen çalışma ve projeleri izlemek, bu çalışma ve projelerin uluslararası standartlara uygun şekilde yürütülmesine destek vermek.

ı) Mevzuatla verilen diğer görevleri yürütmek.

İKİNCİ BÖLÜM
Göç Politikaları Kurulu

Göç Politikaları Kurulu ve görevleri

MADDE 110- (1) Göç Politikaları Kurulu, İçişleri Bakanının başkanlığında, Aile ve Sosyal Politikalar, Avrupa Birliği, Çalışma ve Sosyal Güvenlik, Dışişleri, İçişleri, Kültür ve Turizm, Maliye, Millî Eğitim, Sağlık ve Ulaştırma, Denizcilik ve Haberleşme bakanlıkları müsteşarları ile Yurtdışı Türkler ve Akraba Topluluklar Başkanı ve Göç İdaresi Genel Müdüründen oluşur. Toplantı gündemine göre, konuyla ilgili bakanlık, ulusal veya uluslararası diğer kurum ve kuruluşlar ile sivil toplum kuruluşlarının temsilcileri toplantıya davet edilebilir.

(2) Kurul, Kurul Başkanının çağrısı üzerine her yıl en az bir kez toplanır. Gerekli görüldüğü hâllerde Kurul Başkanının çağrısıyla olağanüstü toplanabilir. Toplantı gündemi, üyelerin görüşü alınarak Başkan tarafından belirlenir. Kurulun sekretarya hizmetleri, Genel Müdürlük tarafından yerine getirilir.

(3) Kurulun görevleri şunlardır:

a) Türkiye'nin göç politika ve stratejilerinin uygulanmasını takip etmek.

b) Göç alanında strateji belgeleri ile program ve uygulama belgelerini hazırlamak.

c) Kitlesel akın durumunda uygulanacak yöntem ve tedbirleri belirlemek.

ç) İnsanî mülahazalarla toplu hâlde Türkiye'ye kabûl edilecek yabancılar ile bu yabancıların ülkeye giriş ve ülkede kalışlarıyla ilgili usûl ve esasları belirlemek.

d) Çalışma ve Sosyal Güvenlik Bakanlığının önerileri çerçevesinde, Türkiye'nin ihtiyaç duyduğu yabancı işgücü ile Gıda, Tarım ve Hayvancılık Bakanlığının da görüşleri doğrultusunda tarım alanlarındaki mevsimlik işler için gelecek yabancılara ilişkin esasları belirlemek.

e) Yabancılara verilecek uzun dönem ikamet iznine ilişkin şartları belirlemek.

f) Göç alanında yabancı ülkeler ve uluslararası kuruluşlarla etkin işbirliği ve bu alandaki çalışmaların çerçevesini belirlemek.

g) Göç alanında görev yapan kamu kurum ve kuruluşları arasında koordinasyonun sağlanmasına yönelik kararlar almak.

ÜÇÜNCÜ BÖLÜM
Merkez, Taşra ve Yurtdışı Teşkilatı, Hizmet Birimleri

Teşkilat

MADDE 111- (1) Genel Müdürlük, merkez, taşra ve yurtdışı teşkilatından oluşur.

(2) Genel Müdürlük merkez teşkilatı ekli (I) sayılı cetvelde gösterilmiştir.

Genel Müdür

MADDE 112- (1) Genel Müdür, Genel Müdürlüğün en üst amiri olup, Bakana karşı sorumludur.

(2) Genel Müdürün görevleri şunlardır:

a) Genel Müdürlüğü mevzuat hükümlerine, Hükümet programı ve politikalarına uygun olarak yönetmek.

b) Genel Müdürlüğün görev alanına giren hususlarda gerekli mevzuat çalışmalarını yürütmek, belirlenen strateji, amaç ve performans ölçütleri doğrultusunda Genel Müdürlüğü yönetmek.

c) Genel Müdürlüğün faaliyet ve işlemlerini denetlemek, yönetim sistemlerini gözden geçirmek, kurumsal yapı ile yönetim süreçlerinin etkililiğini gözetmek ve yönetimin geliştirilmesini sağlamak.

ç) Genel Müdürlüğün orta ve uzun vadeli strateji ve politikalarını belirlemek, bu amaçla uluslararası kuruluşlar, üniversiteler ve sivil toplum kuruluşlarıyla işbirliği yapılmasını sağlamak.

d) Faaliyet alanına giren konularda kamu kurum ve kuruluşlarıyla işbirliği ve koordinasyonu sağlamak.

(3) Genel Müdürlüğün yönetim ve koordinasyonunda Genel Müdüre yardımcı olmak üzere, iki Genel Müdür yardımcısı atanabilir. Genel Müdür yardımcıları, Genel Müdür tarafından verilen görevleri yerine getirir ve Genel Müdüre karşı sorumludur.

Hizmet birimleri

MADDE 113- (1) Genel Müdürlüğün hizmet birimleri ve görevleri şunlardır:

a) Yabancılar Dairesi Başkanlığı:

1) Düzenli ve düzensiz göçle ilgili iş ve işlemleri yürütmek,

2) 5543 sayılı Kanunda Bakanlığa verilen görevleri yürütmek,

3) Türkiye'de bulunan vatansız kişilerle ilgili iş ve işlemleri yürütmek,

4) Düzensiz göçle mücadele edilebilmesi amacıyla kolluk birimleri ve ilgili kamu kurum ve kuruluşları arasında koordinasyonu sağlamak, tedbirler geliştirmek, alınan tedbirlerin uygulanmasını takip etmek,

5) Genel Müdür tarafından verilen diğer görevleri yapmak.

b) Uluslararası Koruma Dairesi Başkanlığı:

1) Uluslararası korumaya ilişkin iş ve işlemleri yürütmek.

2) Geçici korumaya ilişkin iş ve işlemleri yürütmek.

3) Menşe ülkelerle ilgili bilgileri toplamak ve güncellemek.

4) Genel Müdür tarafından verilen diğer görevleri yapmak.

c) İnsan Ticareti Mağdurlarını Koruma Dairesi Başkanlığı:

1) İnsan ticaretiyle mücadele ve mağdurların korunmasına ilişkin iş ve işlemleri yürütmek.

2) İnsan ticaretiyle mücadele ve mağdurların korunmasına ilişkin projeleri yürütmek.

3) İnsan ticareti mağdurlarına yönelik yardım hatlarını kurmak, işletmek veya işlettirmek.

4) Genel Müdür tarafından verilen diğer görevleri yerine getirmek.

ç) Göç Politika ve Projeleri Dairesi Başkanlığı:

1) Göç alanında politika ve stratejiler belirlenmesine yönelik çalışmalar yürütmek ve belirlenen politika ve stratejilerin uygulanmasını izlemek ve koordine etmek.

2) Göç Politikaları Kurulunun sekretarya hizmetlerini yürütmek, Kurul kararlarının uygulanmasını takip etmek.

3) Göç alanına ilişkin projeleri yürütmek.

4) Kamu kurum ve kuruluşlarının göç alanına yönelik faaliyetlerinin programlanmasına ve projelendirilmesine yardımcı olmak, proje tekliflerini değerlendirmek ve onaylamak, yürütülen çalışma ve projeleri izlemek, bu çalışma ve projelerin uluslararası standartlara uygun şekilde yürütülmesine destek vermek.

5) Göç alanına ilişkin inceleme, araştırma ve etki analizleri yapmak veya yaptırmak.

6) Türkiye İstatistik Kurumuyla işbirliği hâlinde göç alanına ve insan ticaretiyle mücadele ve mağdurların korunmasına ilişkin istatistikleri yayınlamak.

7) Yıllık göç raporunu hazırlamak ve yayınlamak

8) Genel Müdür tarafından verilen diğer görevleri yapmak.

d) Uyum ve İletişim Dairesi Başkanlığı:

1) Yabancıların toplumla olan karşılıklı uyumlarına ilişkin iş ve işlemleri yürütmek.

2) Genel Müdürlüğün görev alanıyla ilgili konularda kamuoyunu bilgilendirmek ve toplumsal bilinci arttırmaya yönelik çalışmalar yapmak.

3) Basın ve halkla ilişkiler faaliyetlerini planlamak ve yürütmek.

4) Genel Müdür tarafından verilen diğer görevleri yapmak.

e) Bilgi Teknolojileri Dairesi Başkanlığı:

1) Genel Müdürlüğün görev alanıyla ilgili bilgi sistemleri kurmak, işletmek ve işlettirmek.

2) Bu Kanun kapsamındaki kişisel verilerin alınması, korunması, saklanması ve kullanılmasına ilişkin altyapı iş ve işlemlerini yürütmek.

3) Genel Müdürlük birimleri arasında haberleşmeyi yürütmek, elektronik evrakın kayıt, tasnif ve dağıtımını sağlamak, bilişim ve haberleşme ihtiyaçları ile bağlantılı yazılımları temin etmek, oluşturmak ve geliştirmek.

4) Genel Müdür tarafından verilen diğer görevleri yapmak.

f) Dış İlişkiler Dairesi Başkanlığı:

1) Genel Müdürlüğün görev alanıyla ilgili konularda diğer ülkeler ve uluslararası alanda faaliyet gösteren kuruluşlarla iletişim ve işbirliğini yürütmek, gerekli bağlantıyı ve eşgüdümü sağlamak, yeni işbirliği alanlarına yönelik çalışmalar yapmak.

2) Genel Müdürlüğün görev ve faaliyet alanına giren konularda Avrupa Birliği ile ilişkilerin yürütülmesini sağlamak.

3) Genel Müdürlük personelinin yurtdışında geçici görevlendirilmeleriyle ilgili işlemleri yürütmek.

4) Genel Müdürlüğün görev alanıyla ilgili ülkeye gelen yabancı heyet ve yetkililerin ziyaretlerini programlamak, uluslararası toplantı, konferans, seminer ve benzeri faaliyetlerin düzenlenmesiyle ilgili çalışma yapmak, eşgüdümü sağlamak.

5) Genel Müdürlüğün görev alanına giren konularda yabancı ülkelerde gerçekleşen faaliyet ve gelişmeleri izlemek.

6) Türkiye'deki diplomatik temsilciliklerde göç konularında görev yapan yetkililerle temasları yürütmek.

7) Genel Müdür tarafından verilen diğer görevleri yapmak.

g) Strateji Geliştirme Dairesi Başkanlığı:

1) 10/12/2003 tarihli ve 5018 sayılı Kamu Malî Yönetimi ve Kontrol Kanunu, 22/12/2005 tarihli ve 5436 sayılı Kanunun 15 inci maddesi ve diğer mevzuatla strateji geliştirme ve malî hizmetler birimlerine verilen görevleri yapmak.

2) Genel Müdür tarafından verilen diğer görevleri yapmak.

ğ) Hukuk Müşavirliği:

1) 26/9/2011 tarihli ve 659 sayılı Genel Bütçe Kapsamındaki Kamu İdareleri ve Özel Bütçeli İdarelerde Hukuk Hizmetlerinin Yürütülmesine İlişkin Kanun Hükmünde Kararname hükümlerine göre hukuk birimlerine verilen görevleri yapmak.

2) Genel Müdür tarafından verilen diğer görevleri yapmak.

h) İnsan Kaynakları Dairesi Başkanlığı:

1) Genel Müdürlüğün insan gücü politikası ve planlaması ile insan kaynakları sisteminin geliştirilmesi ve performans ölçütlerinin oluşturulması konusunda çalışmalar yapmak ve tekliflerde bulunmak.

2) Genel Müdürlük personelinin atama, nakil, terfi, emeklilik ve benzeri özlük işlemlerini yürütmek.

3) Genel Müdür tarafından verilen diğer görevleri yapmak.

ı) Destek Hizmetleri Dairesi Başkanlığı:

1) 5018 sayılı Kanun hükümleri çerçevesinde kiralama ve satın alma işlerini yürütmek, temizlik, güvenlik, aydınlatma, ısıtma, onarım, taşıma ve benzeri hizmetleri yapmak veya yaptırmak.

2) Genel Müdürlüğün taşınır ve taşınmazlarına ilişkin işlemleri ilgili mevzuat çerçevesinde yürütmek.

3) Genel evrak ve arşiv faaliyetlerini düzenlemek ve yürütmek.

4) Genel Müdürlük sivil savunma ve seferberlik hizmetlerini planlamak ve yürütmek.

5) 9/10/2003 tarihli ve 4982 sayılı Bilgi Edinme Hakkı Kanununa göre yapılacak bilgi edinme başvurularını etkin, süratli ve doğru bir şekilde sonuçlandırmak üzere gerekli tedbirleri almak.

6) Merkezler ve insan ticareti mağdurları sığınma evleri kurmak, işletmek veya işlettirmek.

7) Genel Müdür tarafından verilen diğer görevleri yapmak.

i) Eğitim Dairesi Başkanlığı:

1) Genel Müdürlüğün görev alanıyla ilgili eğitim faaliyetlerini planlamak ve uygulamak.

2) Bilimsel nitelikli yayınlar yapmak.

3) Seminer, sempozyum, konferans ve benzeri etkinlikler düzenlemek.

4) Ulusal ve uluslararası yayın, mevzuat, mahkeme kararları ile diğer bilgi ve belgeleri izlemek, derlemek ve ilgili dairelere bildirmek.

5) Genel Müdür tarafından verilen diğer görevleri yapmak.

Taşra teşkilatı

MADDE 114- (1) Genel Müdürlük, ilgili mevzuat hükümleri çerçevesinde taşra teşkilatı kurmaya yetkilidir.

Yurtdışı teşkilatı

MADDE 115- (1) Genel Müdürlük, 13/12/1983 tarihli ve 189 sayılı Kamu

Kurum ve Kuruluşlarının Yurtdışı Teşkilatı Hakkında Kanun Hükmünde Kararname esaslarına uygun olarak yurtdışı teşkilatı kurmaya yetkilidir.

(2) Büyükelçiliklerde görev alan göç müşavirlerinin görevleri şunlardır:

a) Görevli oldukları ülkelerdeki kurum ve kuruluşlarla Genel Müdürlük arasında göç alanına ilişkin işbirliği ve koordinasyonu sağlamak.

b) Genel Müdürlüğün görev alanına giren konulardaki gelişmeleri izlemek ve Genel Müdürlüğe iletmek.

c) Bulundukları ülkeyle ülkemiz arasında göç alanındaki mevzuatın uygulanmasını takip etmek,

ç) Düzensiz göçe konu yabancıların sınır dışı edileceği veya gönüllü geri dönüşlerinin sağlanacağı ülkelerde bu faaliyetleri kolaylaştırmak amacıyla gerekli temas ve bağlantıları kurmak.

d) Menşe ülke bilgilerine ilişkin işlemleri yürütmek.

e) Genel Müdürlükçe insan ticaretiyle mücadele ve mağdurların korunması alanına ilişkin olarak verilecek görevleri yapmak.

f) Görevli oldukları ülkelerle müştereken yürütülecek göç ve insan ticaretiyle mücadele ve mağdurların korunması alanına ilişkin proje tekliflerini önermek, hazırlamak ve yürütülen projeleri takip etmek.

g) Genel Müdürlükçe verilecek diğer görevleri yapmak.

(3) Konsolosluklarda görev alan göç ataşelerinin görevleri şunlardır:

a) Konsolosluklara yapılacak vize ve ikamet izni başvurularını almak ve sonuçlandırmak.

b) Başvurularla ilgili bilgi ve belge toplamak, eksik bilgi ve belgeleri yabancıdan talep etmek, gerektiğinde ilgiliyle mülakatlar yaparak değerlendirmek ve bunları kayıt altına almak.

c) Konsolosluklarca karara bağlanabilecek vize başvurularını doğrudan, ikamet izni başvuruları ile Genel Müdürlüğün kararını gerektiren vize başvurularını ise Genel Müdürlüğün kararını aldıktan sonra konsolosun onayına sunmak.

ç) Türkiye'den sınır dışı edilecek veya gönüllü geri dönecek yabancıların, gidecekleri ülkedeki iş ve işlemlerinde yardımcı olmak.

d) Görev yaptıkları ülkede göç konuları ile ilgili gelişmeleri takip etmek ve yıllık raporlar hazırlamak.

e) Göç alanına ilişkin konsoloslar tarafından verilen diğer görevleri yürütmek.

f) Genel Müdürlükçe verilecek diğer görevleri yürütmek.

Çalışma grupları

MADDE 116- (l) Genel Müdürlük merkez teşkilatında, hizmetlerin yürütülebilmesi amacıyla, birim amirlerinin teklifi ve Genel Müdürün onayıyla çalışma grupları oluşturulabilir. Gruplar, Genel Müdür tarafından görevlendirilecek bir uzmanın eşgüdümünde faaliyet gösterir. Çalışma gruplarının çalışma usûl ve esasları Bakan onayıyla yürürlüğe girer.

Yöneticilerin sorumlulukları ve yetki devri

MADDE 117- (1) Genel Müdürlüğün her kademedeki yöneticileri, görevlerini mevzuata, stratejik plan ve programlara, performans ölçütlerine ve hizmet kalite standartlarına uygun olarak yürütmekten üst kademelere karşı sorumludur.

(2) Genel Müdür ve her kademedeki Genel Müdürlük yöneticileri, sınırları açıkça belirtilmek ve yazılı olmak şartıyla yetkilerinden bir kısmını alt kademelere devredebilir. Yetki devri, uygun araçlarla ilgililere duyurulur.

Koordinasyon ve işbirliği

MADDE 118- (1) Genel Müdürlük, görevleriyle ilgili konularda kamu kurum ve kuruluşları, üniversiteler, yerel yönetimler, sivil toplum kuruluşları, özel sektör ve uluslararası kuruluşlarla işbirliği ve koordinasyonu sağlamakla yetkilidir.

(2) Genel Müdürlüğün bu Kanun kapsamındaki her tür bilgi ve belge talebi, ilgili kurum ve kuruluşlar tarafından geciktirilmeden yerine getirilir.

Düzenleme yetkisi

MADDE 119- (1) Genel Müdürlük, görev, yetki ve sorumluluk alanına giren ve önceden kanunla düzenlenmiş konularda idarî düzenleme yapmaya yetkilidir.

DÖRDÜNCÜ BÖLÜM
Sürekli Kurul ve Komisyonlar ile Geçici Komisyonlar

Sürekli kurul ve komisyonlar

MADDE 120- (1) Genel Müdürlüğün sürekli kurul ve komisyonları şunlardır:

a) Göç Danışma Kurulu.

b) Uluslararası Koruma Değerlendirme Komisyonu.

c) Düzensiz Göçle Mücadele Koordinasyon Kurulu.

(2) Sürekli kurul ve komisyonların üyelerinin yeterlilikleri, olağan ve olağanüstü toplantılarının yer ve zamanı ile çalışma ve karar verme usûl ve esasları ile kurul ve komisyonlara ilişkin diğer hususlar yönetmelikle belirlenir.

(3) Sürekli kurul ve komisyonların sekretaryası ve destek hizmetleri Genel Müdürlük tarafından sağlanır.

Göç Danışma Kurulu

MADDE 121- (1) Göç Danışma Kurulu, Bakanlık Müsteşarı veya görevlendireceği müsteşar yardımcısının başkanlığında, Başbakanlık İnsan Hakları Başkanlığı, Avrupa Birliği, Çalışma ve Sosyal Güvenlik ve Dışişleri bakanlıklarının temsilcileri, Genel Müdür, genel müdür yardımcıları, Yabancılar Dairesi, Uluslararası Koruma Dairesi, İnsan Ticareti Mağdurlarını Koruma Dairesi, Uyum ve İletişim Dairesi ve Göç Politika ve Projeleri Dairesi başkanları, Birleşmiş Milletler Mülteciler Yüksek Komiserliği Türkiye Temsilcisi, Uluslararası Göç Örgütü Türkiye Temsilcisi, göç konularıyla ilgili beş öğretim elemanı ve göç alanında çalışmalarda bulunan beş sivil toplum kuruluşu temsilcisinden oluşur. Kurul toplantılarına Başkan tarafından, yurtiçi ve yurtdışından göç alanında uzman kişiler çağrılarak görüşleri alınabilir. Kurul yılda iki kez olağan olarak toplanır. Kurul, ayrıca Başkanın çağrısı üzerine her zaman olağanüstü toplanabilir. Toplantı gündemi, Başkan tarafından belirlenir.

(2) Öğretim elemanları ve sivil toplum kuruluşu temsilcileri, Bakanlıkça belirlenecek usûl ve esaslar çerçevesinde seçilir.

(3) Kurulun görevleri şunlardır:

a) Göç uygulamalarını izlemek ve önerilerde bulunmak.

b) Göç alanında yapılması planlanan yeni düzenlemeleri değerlendirmek.

c) Göç politikaları ve hukuku alanında bölgesel ve uluslararası gelişmeleri değerlendirmek ve bu gelişmelerin Türkiye'ye yansımalarını incelemek.

ç) Göçle ilgili mevzuat çalışmalarını ve uygulamalarını değerlendirmek.

d) Göç alanında çalışmalar yapmak üzere alt komisyonlar kurmak, komisyon çalışmaları sonrasında ortaya çıkacak raporları değerlendirmek.

(4) Kurulun tavsiye niteliğindeki kararları, Genel Müdürlük ile kamu kurum

ve kuruluşlarınca değerlendirilir.

Uluslararası Koruma Değerlendirme Komisyonu

MADDE 122- (1) Uluslararası Koruma Değerlendirme Komisyonu, Genel Müdürlük temsilcisi başkanlığında, Adalet ve Dışişleri bakanlıklarınca görevlendirilen birer temsilci ve bir göç uzmanından oluşur. Komisyona, Birleşmiş Milletler Mülteciler Yüksek Komiserliği Türkiye Temsilciliği temsilcisi gözlemci olarak katılmak üzere davet edilebilir. Genel Müdürlük merkez veya taşra teşkilatında, bir veya birden fazla komisyon kurulabilir. Genel Müdürlük temsilcisi ve göç uzmanı iki yıl, diğer üyeler ise en az bir yıl için asıl ve yedek olmak üzere belirlenir. Komisyon başkan ve üyelerine, görevleri süresince ek görev verilmez.

(2) Komisyonun görevleri şunlardır:

a) İdarî gözetim kararları ve kabûl edilemez başvurularla ilgili kararlar ile hızlandırılmış değerlendirme sonucu verilen kararlar hariç, uluslararası koruma başvuruları hakkında verilen kararlar ile başvuru ve uluslararası koruma statüsü sahibi hakkındaki diğer kararlara karşı itirazları değerlendirmek ve karar vermek.

b) Uluslararası korumanın sona ermesi ya da iptaline yönelik kararlara karşı itirazları değerlendirmek ve karar vermek.

(3) Komisyonlar, doğrudan Genel Müdürün koordinasyonunda çalışır.

Düzensiz Göçle Mücadele Koordinasyon Kurulu

MADDE 123- (1) Düzensiz Göçle Mücadele Koordinasyon Kurulu, Bakanlık Müsteşarı veya görevlendireceği müsteşar yardımcısı başkanlığında, Genelkurmay Başkanlığı, Çalışma ve Sosyal Güvenlik ve Dışişleri bakanlıkları ile Millî İstihbarat Teşkilatı Müsteşarlığı, kolluk birimleri ve Genel Müdürlük temsilcilerinden oluşur.

(2) Kurul toplantılarına, ilgili kamu kurum ve kuruluşlarının merkez ve taşra birimleri, sivil toplum kuruluşları, uluslararası kuruluş temsilcileri ile konuyla ilgili uzmanlar çağrılabilir. Kurul, gündemli olarak altı ayda bir toplanır. Kurul, ayrıca Başkanın çağrısı üzerine her zaman olağanüstü toplanabilir. Toplantı gündemi, üyelerin görüşü alınmak suretiyle Başkan tarafından belirlenir.

(3) Kurulun görevleri şunlardır:

a) Düzensiz göçle etkin şekilde mücadele edilebilmesi amacıyla kolluk birimleri ve ilgili kamu kurum ve kuruluşları arasında koordinasyonu sağlanmak.

b) Yasadışı olarak Türkiye'ye giriş ve Türkiye'den çıkış yollarını tespit ederek önlemler geliştirmek.

c) Düzensiz göçe yönelik tedbirleri geliştirmek.

ç) Düzensiz göçle mücadele alanında mevzuat oluşturma ve uygulama çalışmalarını planlamak ve uygulanmasını izlemek.

(4) Kurulun kararları, kamu kurum ve kuruluşlarınca öncelikle değerlendirilir.

Geçici komisyonlar

MADDE 124- (1) Genel Müdürlük, görev alanına giren konularla ilgili olarak çalışmalarda bulunmak üzere Bakan onayıyla, kamu kurum ve kuruluşları, sivil toplum kuruluşları, uluslararası kuruluşlar ile konuyla ilgili uzmanların katılımıyla geçici komisyonlar oluşturabilir.

(2) Geçici komisyonların oluşumu, üye sayısı, görevlendirme ve seçilme yeterlilikleri, olağan ve olağanüstü toplantılarının yer ve zamanı, çalışma, karar alma usûl ve esasları ile kurullarla ilgili diğer hususlar yönetmelikle belirlenir.

BEŞİNCİ BÖLÜM
Atama ve Personele İlişkin Hükümler

Atama ve görevlendirme

MADDE 125- (1) Genel Müdürlükte, Genel Müdür ve Genel Müdür Yardımcısı kadrolarına müşterek kararla, diğer kadrolara Genel Müdürün teklifi üzerine Bakan onayıyla atama yapılır.

(2) Genel Müdürlüğün görev alanıyla ilgili konularda çalıştırılmak üzere bütün kamu kurum ve kuruluşlarının personeli, kendilerinin ve kurumlarının muvafakatiyle Genel Müdürlükte geçici olarak görevlendirilebilir. Görevlendirme, personelin aylık, ödenek, her tür zam ve tazminatlar ile diğer malî ve sosyal hak ve yardımları kendi kurumlarınca ödenmek kaydıyla yapılır. Bu şekilde görevlendirilen personel, kurumlarından aylıklı izinli sayılır, Genel Müdürlükte geçen hizmet süreleri meslekî kıdemlerinden kabûl edilir ve asıl kadrosuyla ilgisi devam eder. Bunların terfileri başkaca bir işleme gerek kalmaksızın süresinde yapılır. Görevlendirilecek personel sayısı, mevcut personelin yüzde otuzunu aşamaz.

Personele ilişkin hükümler

MADDE 126- (1) Genel Müdürlük merkez teşkilatında Göç Uzmanı ve Göç Uzman Yardımcısı, taşra teşkilatında İl Göç Uzmanı ve İl Göç Uzman Yardımcısı istihdam edilebilir.

(2) Göç Uzman Yardımcılığı ve İl Göç Uzman Yardımcılığına atanabilmek için, 14/7/1965 tarihli ve 657 sayılı Devlet Memurları Kanununun 48 inci maddesinde sayılan şartlara ek olarak hukuk, siyasal bilgiler, iktisat, işletme ve uluslararası ilişkiler alanında en az dört yıllık lisans eğitimi veren ve bunların dışında yönetmelikle belirlenen fakültelerden veya bunlara denkliği Yükseköğretim Kurulu tarafından kabûl edilen yurt içindeki ve yurt dışındaki yükseköğretim kurumlarından mezun olmak ve yapılacak özel yarışma sınavında başarılı olmak gerekir. Göç Uzman Yardımcılığı ve İl Göç Uzman Yardımcılığı yarışma sınavı, yazılı ve sözlü aşamalarından oluşur.

(3) Göç Uzman Yardımcılarının mesleğe alınmaları, yarışma sınavı, tez hazırlama ve yeterlik sınavları ile uzmanlığa atanmaları hakkında 657 sayılı Kanunun ek 41 inci maddesi hükümleri uygulanır.

(4) İl Göç Uzman Yardımcılığına atananlar, en az üç yıl fiilen çalışmak kaydıyla açılacak yeterlik sınavına girme hakkını kazanırlar. Sınavda başarılı olamayanlar veya geçerli mazereti olmaksızın sınav hakkını kullanmayanlara, bir yıl içinde ikinci kez sınav hakkı verilir. İkinci sınavda başarı gösteremeyen veya sınav hakkını kullanmayanlar İl Göç Uzman Yardımcısı unvanını kaybederler ve durumlarına uygun memur unvanlı kadrolara atanırlar. İl Göç Uzmanı ve İl Göç Uzman Yardımcılarının mesleğe alınmaları, yarışma sınavı, komisyonların oluşumu, yetiştirilmeleri, yeterlik sınavları, atanmaları, eğitimleri, çalışma ve görevlendirilmelerine ilişkin usûl ve esaslar ile diğer hususlar yönetmelikle düzenlenir.

(5) Genel Müdürlükte özel bilgi ve uzmanlığı gerektiren işlerde sözleşmeyle yabancı uzman istihdam edilebilir. Bu personele ödenecek aylık ücretin net tutarı, birinci dereceli Göç Uzmanına malî haklar kapsamında ödenen aylık net tutarı geçmemek üzere Genel Müdür tarafından belirlenir ve bunlar 5510 sayılı Sosyal Sigortalar ve Genel Sağlık Sigortası Kanununun 4 üncü maddesinin birinci fıkrasının (a) bendi kapsamında sigortalı sayılır. Bu şekilde istihdam edilecek personel sayısı, Genel Müdürlüğün toplam kadro sayısının yüzde birini geçemez ve bunların

istihdamına ilişkin usûl ve esaslar yönetmelikle belirlenir.

(6) Genel Müdürlükte, Genel Müdür, Genel Müdür yardımcıları ile Göç Politika ve Projeleri Dairesi, Uyum ve İletişim Dairesi, Dış İlişkiler Dairesi, Strateji Geliştirme Dairesi ve Destek Hizmetleri Dairesi başkanları, mülkî idare amirliği hizmetleri sınıfından atanır veya görevlendirilir.

Kadrolar

MADDE 127- (1) Genel Müdürlüğün kadrolarının tespiti, ihdası, kullanımı ve iptali ile kadrolara ilişkin diğer hususlar, 13/12/1983 tarihli ve 190 sayılı Genel Kadro ve Usulü Hakkında Kanun Hükmünde Kararname hükümlerine göre düzenlenir.

ALTINCI BÖLÜM
Çeşitli Hükümler

Yürürlükten kaldırılan mevzuat

MADDE 128- (1) 15/7/1950 tarihli ve 5683 sayılı Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanun ile 15/7/1950 tarihli ve 5682 sayılı Pasaport Kanununun 4 üncü, 6 ncı, 7 nci, 8 inci, 9 uncu, 10 uncu, 11 inci, 24 üncü, 25 inci, 26 ncı, 28 inci, 29 uncu, 32 nci, 33 üncü, 35 inci, 36 ncı, 38 inci ve ek 5 inci maddeleri, 5 inci maddesinin birinci ve ikinci fıkraları ile 34 üncü maddesinin birinci fıkrasının ikinci cümlesi yürürlükten kaldırılmıştır.

Değiştirilen hükümler

MADDE 129- (1) 5682 sayılı Pasaport Kanununun 34 üncü maddesinde yer alan "vatandaşlar ve yabancılara" ibaresi "vatandaşlara" şeklinde değiştirilmiştir.

(2) 2/7/1964 tarihli ve 492 sayılı Harçlar Kanununun 88 inci maddesinin birinci fıkrasına (e) bendinden sonra gelmek üzere aşağıdaki bentler eklenmiştir:

"(f) Uzun dönem ikamet izni bulunanlar,

(g) İnsan ticareti suçunun mağduru olanlar."

(3) 14/7/1965 tarihli ve 657 sayılı Devlet Memurları Kanununun;

a) 36 ncı maddesinin "Ortak Hükümler" başlıklı bölümünün (A) fıkrasının (11) numaralı bendine "Enerji ve Tabii Kaynaklar Uzman Yardımcıları" ibaresinden sonra gelmek üzere ", Göç Uzman Yardımcıları, İl Göç Uzman Yardımcıları" ibaresi, "Enerji ve Tabii Kaynaklar Uzmanlığına" ibaresinden sonra gelmek üzere ", Göç Uzmanlığına, İl Göç Uzmanlığına" ibaresi eklenmiştir.

b) 152 nci maddesinin "II– Tazminatlar" kısmının "A– Özel Hizmet Tazminatı" bölümünün (ğ) bendine "Yükseköğretim Kurulu Uzmanları" ibaresinden sonra gelmek üzere ", Göç Uzmanları" ibaresi, (h) bendine "İçişleri Bakanlığı İl Planlama Uzmanları," ibaresinden sonra gelmek üzere "İl Göç Uzmanları," ibaresi eklenmiştir.

c) Eki (I) sayılı Ek Gösterge Cetvelinin "I- Genel İdare Hizmetleri Sınıfı" bölümünün (g) bendine "Avrupa Birliği İşleri Uzmanları," ibaresinden sonra gelmek üzere "Göç Uzmanları," ibaresi, (h) bendine "İçişleri Bakanlığı Planlama Uzmanları," ibaresinden sonra gelmek üzere "İl Göç Uzmanları," ibaresi eklenmiştir.

(4) 14/2/1985 tarihli ve 3152 sayılı İçişleri Bakanlığı Teşkilat ve Görevleri Hakkında Kanunun 29 uncu maddesinin birinci fıkrasına (d) bendinden sonra gelmek üzere aşağıdaki bent eklenmiştir:

"e) Göç İdaresi Genel Müdürlüğü."

(5) 27/2/2003 tarihli ve 4817 sayılı Yabancıların Çalışma İzinleri Hakkında Kanunun;

a) 5 inci maddesinin birinci fıkrasında geçen "ikamet izninin süresi ile" ibaresi yürürlükten kaldırılmıştır.

b) 8 inci maddesinin birinci fıkrasına (h) bendinden sonra gelmek üzere aşağıdaki bent eklenmiştir.

"ı) Uluslararası koruma başvurusunda bulunan ve İçişleri Bakanlığınca şartlı mülteci statüsü verilen yabancı ve vatansız kişilere,"

c) 12 nci maddesinin birinci fıkrası aşağıdaki şekilde değiştirilmiştir.

"Yabancılar, ilk çalışma izni başvurularını bulundukları ülkelerdeki Türkiye Cumhuriyeti konsolosluklarına yapar. Konsolosluk, bu başvuruları doğrudan Bakanlığa iletir. Bakanlık, ilgili mercilerin görüşlerini alarak 5 inci maddeye göre başvuruları değerlendirir; durumu uygun görülen yabancılara çalışma izni verir. Yabancılar, konsolosluklardan almış oldukları çalışma izinlerinde belirtilen süre kadar Türkiye'de kalıp çalışabilir."

ç) 14 üncü maddesinin birinci fıkrasının (c) bendi aşağıdaki şekilde değiştirilmiştir.

"(c) İçişleri Bakanlığının olumsuz görüş bildirmesi,"

d) 16 ncı maddesinin birinci fıkrasının (a) bendi aşağıdaki şekilde değiştirilmiştir.

"(a) Yabancı hakkında sınır dışı etme kararı alınmış olması veya Türkiye'ye girişinin yasaklanması,"

(6) 10/12/2003 tarihli ve 5018 sayılı Kamu Malî Yönetimi ve Kontrol Kanununa ekli (I) sayılı cetvele 54 üncü sırasından sonra gelmek üzere "55) Göç İdaresi Genel Müdürlüğü" sırası eklenmiştir.

(7) 25/4/2006 tarihli ve 5490 sayılı Nüfus Hizmetleri Kanununun;

a) 3 üncü maddesinin birinci fıkrasının (bb) bendi aşağıdaki şekilde değiştirilmiştir.

"bb) Yabancılar kütüğü: Türkiye'de Vatansız Kişi Kimlik Belgesi alanlar ve herhangi bir amaçla en az doksan gün süreli ikamet izni verilenlerle, yasal olarak bulunan yabancılardan yabancılar kimlik numarası talep edenlerin kayıtlarının tutulduğu kütüğü,"

b) 8 inci maddesinin birinci fıkrası aşağıdaki şekilde değiştirilmiştir.

"(1) Türkiye'de herhangi bir amaçla en az doksan gün süreli ikamet izni alan yabancılar, Genel Müdürlükçe yabancılar kütüğüne kayıt edilir. Ancak, Türkiye'de yasal olarak bulunan yabancılar da talep etmeleri hâlinde yabancılar kütüğüne kayıt edilir. Bu kütüğe kayıt edilen yabancılar, her tür nüfus olayını nüfus müdürlüklerine beyan etmekle yükümlüdürler. Diplomatik misyon mensupları bu hükmün dışındadır."

(8) 31/5/2006 tarihli ve 5510 sayılı Sosyal Sigortalar ve Genel Sağlık Sigortası Kanununun;

a) 3 üncü maddesinin birinci fıkrasının (27) numaralı bendi aşağıdaki şekilde değiştirilmiştir.

"27) Uluslararası koruma başvurusu veya statüsü sahibi ve vatansız kişi: İçişleri Bakanlığı tarafından başvuru sahibi, mülteci, ikincil koruma veya şartlı mülteci statüsü sahibi veya vatansız olarak tanınan kişileri,"

b) 60 ıncı maddesinin birinci fıkrasının (c) bendinin (2) numaralı alt bendi

aşağıdaki şekilde değiştirilmiştir.

"2) Uluslararası koruma başvurusu veya statüsü sahibi ve vatansız olarak tanınan kişiler,"

c) 61 inci maddesinin birinci fıkrasının (b) bendindeki "vatansız ve sığınmacı sayıldıkları" ibaresi "uluslararası koruma başvurusu yaptıkları veya uluslararası koruma statüsü aldıkları veya vatansız kişi sayıldıkları" şeklinde değiştirilmiştir.

(9) Ekli (1), (2) ve (3) sayılı listelerde yer alan kadrolar ihdas edilerek, 190 sayılı Kanun Hükmünde Kararnamenin eki (I) sayılı cetvele "Göç İdaresi Genel Müdürlüğü" bölümü olarak eklenmiştir.

(10) 27/6/1989 tarihli ve 375 sayılı Kanun Hükmünde Kararnameye ekli (II) sayılı cetvelin 9 uncu sırasına "Basın-Yayın ve Enformasyon," ibaresinden sonra gelmek üzere "Göç İdaresi," ibaresi eklenmiştir.

Atıf yapılan hükümler

MADDE 130- (1) Diğer mevzuatta, 15/7/1950 tarihli ve 5683 sayılı Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanuna yapılmış olan atıflar, bu Kanuna yapılmış sayılır. Diğer mevzuatta geçen yabancılara mahsus "ikamet tezkeresi" ibaresinden, bu Kanundaki "ikamet izni" anlaşılır.

Geçiş hükümleri

GEÇİCİ MADDE 1- (1) Genel Müdürlüğün görev alanına giren konularla ilgili Emniyet Genel Müdürlüğünce tutulan dosya, yazılı ve elektronik ortamdaki kayıt ve diğer dokümanlar ile bilgi sistemleri, elektronik projeler ve veri tabanları Genel Müdürlüğe ve ilgili taşra birimlerine kademeli olarak devredilir. Devre ilişkin olarak, Emniyet Genel Müdürlüğü ile Genel Müdürlük arasında bu maddenin yayımı tarihinden itibaren altı ay içerisinde protokol yapılır ve Bakan onayıyla yürürlüğe girer.

(2) Bu Kanunun yayımından itibaren bir yıl sonra merkezlere ait taşınırlar hiçbir işleme gerek kalmaksızın Genel Müdürlüğe devredilmiş, taşınmazlar ise hiçbir işleme gerek kalmaksızın Genel Müdürlüğe tahsis edilmiş sayılır. Devir nedeniyle yapılan işlemler, harçlardan, düzenlenen kâğıtlar damga vergisinden müstesnadır. Bu Kanunun uygulanmasında taşınır devri ile taşınmazların tahsisi ve benzeri hususlarda ortaya çıkabilecek sorunları gidermeye Bakan yetkilidir.

(3) Genel Müdürlüğün 2011 malî yılı harcamaları için gereken ödenek ihtiyacı, 21/12/2011 tarihli ve 6260 sayılı 2012 Yılı Merkezî Yönetim Bütçe Kanununun 8 inci maddesinin birinci fıkrasının (ç) bendine göre karşılanır. 31/12/2013 tarihine kadar Göç İdaresi Genel Müdürlüğü adına ihdas edilen kadroların yüzde ellisini geçmemek üzere, 6260 sayılı Kanundaki sınırlamalara tâbi olmadan atama yapılabilir.

(4) Bu Kanunda belirlenen esaslara göre Genel Müdürlüğün taşra teşkilatlanmasının tamamlanacağı tarihe kadar, yürütülmekte olan görev ve hizmetler daha önce bu görev ve hizmetleri yapmakta olan birimler veya personel tarafından yapılmaya devam edilir. Genel Müdürlük, ilgili yerlerdeki teşkilatlanmanın tamamlandığı tarihte söz konusu birimlerde görev yapmakta olan personeli, 125 inci maddenin ikinci fıkrasında belirtilen sayı sınırlamasına tâbi olmaksızın devir tarihinden itibaren üç yılı aşmamak üzere anılan maddeye göre istihdam edebilir.

(5) Genel Müdürlük, merkez teşkilatında görev yapmak üzere, Emniyet Genel Müdürlüğü Yabancılar Hudut İltica Dairesi Başkanlığı ile il emniyet müdürlüklerinin ilgili şubelerinde en az iki yıl süreyle görev yapmış personeli, 125 inci maddenin

ikinci fıkrasında belirtilen sayı sınırlamasına tâbi olmaksızın bu maddenin yayımı tarihinden itibaren üç yıl süreyle anılan maddeye göre istihdam edebilir.

(6) Bu Kanunun İkinci Kısmının yürürlüğe girdiği tarihten itibaren bir yıl içinde valiliklere yazılı olarak müracaat eden yabancılar, bu Kanunda ikamet izinleriyle ilgili kendilerine tanınan haklardan yararlandırılır.

(7) Bu Kanunun Üçüncü Kısmının yürürlüğe girdiği tarihten önce, 14/9/1994 tarihli ve 94/6169 sayılı Bakanlar Kurulu Kararı ile yürürlüğe konulan Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik uyarınca statü verilenlere bu Kanunda belirtilen statülerine göre işlem yapılır, başvuru yapanların işlemleri ise bu Kanuna göre sonuçlandırılır. Bu Kanunun yayımı tarihinden itibaren Üçüncü Kısmın yürürlüğe girdiği tarihe kadar, anılan Yönetmelik uyarınca statü verilenler ile başvuru yapanlardan ikamet izni harcı alınmaz.

(8) Bu Kanunun uygulanmasına ilişkin düzenlemeler yürürlüğe girinceye kadar mevcut düzenlemelerin bu Kanuna aykırı olmayan hükümlerinin uygulanmasına devam olunur.

Yürürlük

Madde 131- (1) Bu Kanunun Beşinci Kısmı yayımı tarihinde, diğer hükümleri yayımı tarihinden bir yıl sonra yürürlüğe girer.

Yürütme

MADDE 132- (1) Bu Kanun hükümlerini Bakanlar Kurulu yürütür.

(I) SAYILI CETVEL
GÖÇ İDARESİ GENEL MÜDÜRLÜĞÜ TEŞKİLATI

Genel Müdür	Genel Müdür Yardımcısı	Hizmet Birimleri
Genel Müdür	Genel Müdür Yardımcısı Genel Müdür Yardımcısı	1. Yabancılar Dairesi Başkanlığı 2. Uluslararası Koruma Dairesi Başkanlığı 3. İnsan Ticareti Mağdurlarını Koruma Dairesi Başkanlığı 4. Göç Politika ve Projeleri Dairesi Başkanlığı 5. Uyum ve İletişim Dairesi Başkanlığı 6. Bilgi Teknolojileri Dairesi Başkanlığı 7. Dış İlişkiler Dairesi Başkanlığı 8. Strateji Geliştirme Dairesi Başkanlığı 9. Hukuk Müşavirliği 10. İnsan Kaynakları Dairesi Başkanlığı 11. Destek Hizmetleri Dairesi Başkanlığı 12. Eğitim Dairesi Başkanlığı

(1) SAYILI LİSTE

KURUMU: GÖÇ İDARESİ GENEL MÜDÜRLÜĞÜ
TEŞKİLAT: MERKEZ

İHDAS EDİLEN KADROLARIN				
Sınıfı	Unvanı	Derecesi	Serbest Kadro Adedi	Toplam
MİAH	Genel Müdür	1	1	1
MİAH	Genel Müdür Yardımcısı	1	2	2
MİAH	Göç Politika ve Projeleri Dairesi Başkanı	1	1	1
MİAH	Uyum ve İletişim Dairesi Başkanı	1	1	1
MİAH	Dış İlişkiler Dairesi Başkanı	1	1	1
MİAH	Strateji Geliştirme Dairesi Başkanı	1	1	1
MİAH	Destek Hizmetleri Dairesi Başkanı	1	1	1
GİH	Yabancılar Dairesi Başkanı	1	1	1
GİH	Uluslararası Koruma Dairesi Başkanı	1	1	1
GİH	İnsan Ticareti Mağdurlarını Koruma Dairesi Başkanı	1	1	1
GİH	Bilgi Teknolojileri Dairesi Başkanı	1	1	1
GİH	İnsan Kaynakları Dairesi Başkanı	1	1	1
GİH	Eğitim Dairesi Başkanı	1	1	1
GİH	I. Hukuk Müşaviri	1	1	1
GİH	Göç Uzmanı	1	15	15
GİH	Göç Uzmanı	2	15	15
GİH	Göç Uzmanı	3	15	15
GİH	Göç Uzmanı	4	15	15
GİH	Göç Uzmanı	5	15	15
GİH	Göç Uzmanı	6	15	15
GİH	Göç Uzmanı	7	15	15
GİH	Göç Uzman Yardımcısı	8	35	35
GİH	Göç Uzman Yardımcısı	9	65	65
GİH	Malî Hizmetler Uzmanı	5	5	5
GİH	Malî Hizmetler Uzman Yardımcısı	9	5	5
GİH	Çözümleyici	1	1	1
GİH	Çözümleyici	2	1	1
GİH	Çözümleyici	4	1	1
GİH	Çözümleyici	6	1	1
GİH	Çözümleyici	7	1	1
GİH	Çözümleyici	8	1	1
GİH	Programcı	1	1	1
GİH	Programcı	3	1	1
GİH	Programcı	4	1	1
GİH	Programcı	5	1	1
GİH	Programcı	6	1	1
GİH	Programcı	8	2	2

GİH	Mütercim	1	2	2
GİH	Mütercim	2	2	2
GİH	Mütercim	3	3	3
GİH	Mütercim	4	3	3
GİH	Mütercim	5	3	3
GİH	Mütercim	6	3	3
GİH	Mütercim	7	3	3
GİH	Mütercim	8	3	3
GİH	Mütercim	9	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	3	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	4	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	5	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	6	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	7	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	8	3	3
GİH	Veri Hazırlama ve Kontrol İşletmeni	9	3	3
GİH	Memur	9	3	3
GİH	Memur	10	3	3
GİH	Memur	11	3	3
GİH	Memur	12	3	3
GİH	Sekreter	5	1	1
GİH	Sekreter	7	2	2
GİH	Sekreter	9	2	2
GİH	Sekreter	11	1	1
GİH	Şoför	5	1	1
GİH	Şoför	9	2	2
GİH	Hukuk Müşaviri	1	2	2
GİH	Hukuk Müşaviri	4	3	3
AH	Avukat	5	3	3
AH	Avukat	6	3	3
AH	Avukat	7	3	3
AH	Avukat	8	3	3
AH	Avukat	9	3	3
TH	Mühendis	1	1	1
TH	Mühendis	6	2	2
TH	Mühendis	8	2	2
TH	İstatistikçi	1	1	1
TH	İstatistikçi	6	2	2
TH	İstatistikçi	8	2	2
TH	Sosyolog	1	1	1
TH	Sosyolog	6	2	2
TH	Sosyolog	8	2	2
SH	Sosyal Çalışmacı	1	1	1
SH	Sosyal Çalışmacı	6	2	2
SH	Sosyal Çalışmacı	8	2	2
SH	Psikolog	1	1	1
SH	Psikolog	6	2	2

SH	Psikolog	8	2	2
YH	Hizmetli	5	5	5
YH	Hizmetli	12	5	5
TOPLAM			365	365

(2) SAYILI LİSTE

KURUMU: GÖÇ İDARESİ GENEL MÜDÜRLÜĞÜ
TEŞKİLATI: TAŞRA

İHDAS EDİLEN KADROLARIN				
Sınıfı	Unvanı	Derecesi	Serbest Kadro Adedi	Toplam
GİH	İl Göç İdaresi Müdürü	1	81	81
GİH	İlçe Göç İdaresi Müdürü	1	50	50
GİH	İlçe Göç İdaresi Müdürü	2	50	50
GİH	İlçe Göç İdaresi Müdürü	3	48	48
GİH	Merkez Müdürü	1	5	5
GİH	Merkez Müdürü	2	5	5
GİH	Merkez Müdürü	3	5	5
GİH	İnsan Ticareti Mağdurları Sığınma Evi Müdürü	1	5	5
GİH	İnsan Ticareti Mağdurları Sığınma Evi Müdürü	2	5	5
GİH	İnsan Ticareti Mağdurları Sığınma Evi Müdürü	3	5	5
GİH	İl Göç Uzmanı	1	50	50
GİH	İl Göç Uzmanı	2	50	50
GİH	İl Göç Uzmanı	3	50	50
GİH	İl Göç Uzmanı	4	100	100
GİH	İl Göç Uzmanı	5	100	100
GİH	İl Göç Uzmanı	6	130	130
GİH	İl Göç Uzmanı	7	250	250
GİH	İl Göç Uzman Yardımcısı	8	450	450
GİH	İl Göç Uzman Yardımcısı	9	500	500
GİH	Çözümleyici	1	1	1
GİH	Çözümleyici	2	2	2
GİH	Çözümleyici	3	2	2
GİH	Çözümleyici	4	2	2
GİH	Çözümleyici	5	2	2
GİH	Çözümleyici	6	2	2
GİH	Çözümleyici	7	2	2
GİH	Çözümleyici	8	2	2
GİH	Programcı	1	1	1
GİH	Programcı	2	2	2
GİH	Programcı	3	2	2
GİH	Programcı	4	2	2
GİH	Programcı	5	2	2
GİH	Programcı	6	2	2

GİH	Programcı	7	2	2
GİH	Programcı	8	2	2
GİH	Mütercim	1	4	4
GİH	Mütercim	2	4	4
GİH	Mütercim	3	4	4
GİH	Mütercim	4	4	4
GİH	Mütercim	5	4	4
GİH	Mütercim	6	4	4
GİH	Mütercim	7	4	4
GİH	Mütercim	8	4	4
GİH	Mütercim	9	4	4
GİH	Veri Hazırlama ve Kontrol İşletmeni	3	50	50
GİH	Veri Hazırlama ve Kontrol İşletmeni	4	50	50
GİH	Veri Hazırlama ve Kontrol İşletmeni	5	50	50
GİH	Veri Hazırlama ve Kontrol İşletmeni	6	20	20
GİH	Veri Hazırlama ve Kontrol İşletmeni	7	20	20
GİH	Veri Hazırlama ve Kontrol İşletmeni	8	20	20
GİH	Veri Hazırlama ve Kontrol İşletmeni	9	20	20
GİH	Memur	9	20	20
GİH	Memur	10	20	20
GİH	Memur	11	20	20
GİH	Memur	12	20	20
GİH	Şoför	5	15	15
GİH	Şoför	10	15	15
AH	Avukat	5	5	5
AH	Avukat	6	5	5
AH	Avukat	7	10	10
AH	Avukat	8	10	10
TH	Sosyolog	1	5	5
TH	Sosyolog	6	5	5
TH	Sosyolog	8	5	5
SH	Sosyal Çalışmacı	1	15	15
SH	Sosyal Çalışmacı	6	15	15
SH	Sosyal Çalışmacı	8	15	15
SH	Psikolog	1	15	15
SH	Psikolog	6	15	15
SH	Psikolog	8	15	15
YH	Hizmetli	9	30	30
YH	Hizmetli	12	30	30
TOPLAM			2540	2540

(3) SAYILI LİSTE

KURUMU: GÖÇ İDARESİ GENEL MÜDÜRLÜĞÜ
TEŞKİLAT: YURTDIŞI

İHDAS EDİLEN KADROLARIN				
Sınıfı	Unvanı	Derecesi	Serbest Kadro Adedi	Toplam
GİH	Göç Müşaviri	1	15	15
GİH	Göç Ataşesi	1	85	85
TOPLAM			100	100

APPENDIX D: List of Interviewees (Alphabetically ordered according to surname)

Hakkı Onur Arıner
International Organization for Migration officer, working as an expert in Migration and Asylum Bureau
Interview by author, tape recording, Ankara, Turkey, 26 April 2011.

Oktay Durukan
Director of Refugee Advocacy and Support Program in Helsinki Citizens Assembly
Interview by author, filed visit, İstanbul, Turkey, 07 March 2011.

Salih Efe
Lawyer of refugees and volunteer of Amnesty International
Interview by author, tape recording, Ankara, Turkey, 19 March 2011.

Volkan Görendağ
Director of Refugee Coordinatorship in Amnesty International
Interview by author, tape recording, Ankara, Turkey, 09 April 2012.

Mahmut Kaçan
Former UNHCR officer, lawyer, and volunteer of Amnesty International
Interview by author, tape recording, İstanbul, Turkey, 22 April 2012.

Taner Kılıç
Chairman of the executive board in Mültecilerle Dayanışma Derneği (Mülteci-Der) and lawyer
Interview by author, e-mail, 08 April 2012.

Lami Bertan Tokuzlu
Assistant Professor in İstanbul Bilgi University
Interview by author, tape recording, İstanbul, Turkey, 29 April 2011.

Veysi Roger Turgut
Lawyer of refugees and volunteer of Amnesty International
Interview by author, tape recording, İstanbul, Turkey, 22 April 2012.

Nedim Yüca
Former UNHCR officer and lawyer
Interview by author, filed visit, Ankara, Turkey,17 March 2011.

Migration and Asylum Bureau Officials under
Interview by author, field visit, Ankara, Turkey, 18 March 2011.

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