

## **EU's Immigration Policy and EU-Turkey Relation**

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### **Abstract**

*In this paper, before specially focusing on Turkey's current condition regarding illegal immigration, Turkey's relationship with the EU will be scrutinized and Turkey's policies of struggle against the illegal immigration and their enactment in regard to the EU accordance policies will be mentioned. I will discuss Turkey's illegal immigration issue within the context of its relations with the EU. As mentioned in the previous chapter, the European Union looks at illegal immigration phenomenon through security perspective. Moreover, even at the accepted the Hague program, struggle against the illegal immigration seen as matter of international security problem.<sup>1</sup> In this respect, it is important to assess the European Union–Turkey relationships in regard to global security line.*

### **Introduction**

Global developments, political, social and economical instabilities with different states of welfare in the world are among the fundamental reasons of migration phenomenon. Thus, people migrate to have better life standards as well as for obligatory reasons. What makes migration phenomenon illegal is the method emigrants use to enter other countries. Whereas, entry taking place within the rules is a 'legal migration', the activities for entering the lands of other countries not abiding by the rules set by countries, with other words, entering in illegal ways, pave the way for 'illegal migration'. The European Union, which transits from being an economic community to a political union, pays attention to both legal and illegal migration phenomenon and there are developments worth seeing in the Union. The process of forming security policies of the Union started with the free applications implemented for economical bases and free travel of the people. By the free movement of persons and the removal of inner borders, the Union had a security issue. However, the Union which removed inner borders has taken security measures to protect the outer borders.

Accordingly, the Union is trying to establish common grounds by Trevi, Schengen and Europol formations for probable problems. Because the basic migration policy of EU is formed by security issues, some restrictions are brought fields like border control, application back and visa in illegal migration policies. These restricting measures have also paved the way for criticisms of forming 'European Castle'. However, this approach, affects the asylum and legal migration negatively. After September 11 and Madrid events that harden the formation of this approach, the border controls are applied strictly and the measures to prevent illegal migrations are taken. This approach caused difficulty of acceptance in national and international platforms. EU which had a liberal migration policy and was a very attractive place for the emigrants until these events has been shaping its migration policy in respect to security. For this, it also goes for legal and administrative formations. Some people criticize EU for its transition from flexible migration policies to strict ones.

Concordantly, EUs illegal migration perception is mainly related to the arrangements of restrictions. The legal and illegal migration that paved the way for the formation of security policies of the Union is also important for Turkey. The place of Turkey has become more significant by developing events and emerging security issues in the world. Especially by commencement of EU concordance process, this significance increased greatly. On the other hand, by this process, Turkey had to reconsider its illegal migration policies. Thus, EU, in this respect requires and expects member candidate states to fulfill the Schengen Acquis Turkey also makes legal and administrative arrangements in this frame. Joint Accession Partnership, National Programs, Progress Report and EU projects pay attention to illegal migration issues. EU requires Turkey to strengthen border controls and make return treaties as prevention of illegal migration. Turkey's geographical condition, its place at the transportation routes of Asia, Europe Africa continents, the civil war and instabilities in the neighboring countries and its physical structure render Turkey to a different position from western countries in respect to illegal migration experiences.

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<sup>1</sup> The Hague Program: Ten priorities for the next five years, Communication from the EU Commission to the European Parliament, Brussels, COM ( 23 May 2005).

For the emigrants struggling to transit to Europe, Turkey is a transit country owing to its geographical condition, a target country for those who want to come to work for a period and a source country for those who want to go from Turkey to Europe.

### 1.1. The EU's Immigration Policy

As a step of Europe's collapsing economy and thus a re-establishment of its social and political structure after the Second World War, European Coal and Steel Community (ECSC), the origin of today's EU, was established in Belgium by six members i.e. West Germany, Luxemburg, France, Italy and Holland in 1951. During the post-war period most of the European countries attempted to take many immigrant workings for flourishing their collapsed economy. In a sense, formation of the EU, which grew rapidly and was integrated by the initiation of these six countries, took place simultaneously with these dense immigration waves that poured to Europe. One of the most important outlets in the history of the EU, which consists of 27 members today, from 1951 to 2009, is no doubt the millions of workers that migrated from European colonies and the countries at the vicinity of Europe. It is estimated that 60–70 million workers have migrated to Europe within the last 50 years.<sup>2</sup>

For the last 50 years, it has been known that each the EU member state has unique peculiar experiences in immigration more than the experiences that we can generalize about the entire the EU member states. The related migration history and politics of every state show different position. When looked at his point of view, it is not possible to say that there is a formation of general, detailed and comprising immigration politics in the EU. Despite the fact that significant attempts were made recently, no concrete results are obtained yet. Until 1990s during which migration and asylum policies were made to be concordant within the EU, international migration process which Europe also passed through is as such. While approximately 20 million immigrants<sup>3</sup> came to the continent by the encouragements of European countries conceived as temporary immigrant workers at the period of 1950–1974, with the economical crisis after 1974, rope ceased receiving immigrant workers, and the immigrations after this year continued in the form of the union of families, marriage immigrations. In the 1990s Europe especially prior to and post collapse of communist regime became face to face with a dense asylum activities. More than four million refugees<sup>4</sup> came to Europe in the 1990s.

During the same period, 600.000–800.000 people are estimated to immigrate to Europe every year.<sup>5</sup> The immigration policies of the European states became more evident in the years towards the late 1990s and early 2000 against the immigration. Attacks of September 11, 2001 and that of Madrid Metro in Europe have been a turning point in International immigrations.<sup>6</sup> As a matter of fact, international immigration after the period of 1990s was considered as the basic factors of gradually increasing unemployment on the one hand and international security problem on the other hand. These events are said to contribute to the negative evaluation of international immigration and their increasing tendency in the EU as well as to the increase of hatred against the foreigners. It is obvious that general topic related to international immigration contains two paradoxes. First of them can be accounted for the aging of European population and low birth rate with labor market's rapidly increasing need of laborer (as a matter of fact it is obvious that it can only be provided by immigration), and on the other hand standings against immigration and foreign labor power. Secondly, assertion for the need of qualified labor power came forward and the EU economies' absorption of hundreds of thousands of unskilled labor power that came by immigration mainly.

After signing Single European Act dated 1987, an official ground where topics like immigration and terrorism were mentioned for the first time together with the European Community politics, and cooperation in Justice and Home Affairs took place as a result of the process aforementioned. Besides, since the welfare and economic condition would develop more as an outcome of the goals set by SEA, this circumstance would make Europe as centre or attraction. Developments that took place after SEA paved the way for the immigration activities towards Europe.<sup>7</sup> In respect to SEA, as a result of free commodities, services, capital and travel of the people, the security phenomenon became more troubled.

2 İçduygu, Ahmet (2006), Türkiye-Avrupa Birliği İlişkileri Bağlamında Uluslararası Göç Tartışmaları, İstanbul: TÜSİAD, p.48.

3 Ibid., p.49

4 OECD (Organisation for Economic Co-operation and Development). (2003), Trend in International Migration, Paris: OECD Publication, p.238

5 IOM (International Organization For Migration), (2005), World Migration, Geneva: IOM Publication, p.77

6 Baykal, Mehmet (2005). Uluslararası Göçün Soğuk Savaş Sonrasında Aldığı Şekil Ve Bunun Türkiye ve Avrupa Güvenliğine Etkileri, Unpublished M. Sc. Thesis, Genel Kurmay Başkanlığı HAK SAREN Uluslararası İlişkiler Anabilim Dalı, p.94.

7 Kaya, Ahmet (2005), Avrupa Birliği'nin Yasadışı Göçle Mücadele Politikası Ve Türkiye Üzerindeki Etkileri (The struggle policy of EU against illegal immigration and its impacts on Turkey), (Master Theses, Ankara Üniversitesi, 2005), p.32

Gradually this problematic state expanded toward the terrorists, escaped bank robbers, international crimes, illegal drug trade and immigration trades. Common punishments for common crimes were put on the agenda time to time; however, this arrangement had not found ground for discussion.<sup>8</sup> In a way, the removal of border controls for economic purposes, provision of freedom of movement made the activities of crime organizations easy in the Community.<sup>9</sup> The topic of the 'free movement of persons', because of the security problems that it brought, requires the increase of the borders controls, bringing forward new arrangements regarding this issue and determining new policies about asylum and immigration policies which are directly related to the topic and common action.<sup>10</sup> In the process of its formation, we can see how the EU produces insecurity. Free travel principle policy of the EU citizens was formed to contribute to the redefinition of the identity of Europe and integrity of European Union. However, putting this principle into effect paved the way for immigration problem's appearance as an unsecure field in the European Union. During this period, the Union encouraged the immigration and took limiting precautions as well. Accordingly, Schengen Agreement and Schengen Application Agreement for Struggling against Illegal Immigrants dated 1990 puts some cautions and aims at forming cooperation modules in this respect.<sup>11</sup>

Discussion of International Immigration and asylum in the institutional integrity of the EU started with their presence in Maastricht Agreement, the EU's Founding Treaties on Justice and Home Affairs signed in 1991 and enacted in 1993. The aim here is the EU's condition of being a place of security in accordance with the free travel of the people principle. On the other hand, in the Amsterdam Treaty, signed in 1997 and put into effect in 1997, the strengthening of coordination in asylum and immigration fields were required. Hence, policies like visas, asylum, immigration and free movement of persons took part in the Community policies, the first essential pillar of Maastricht Agreement and thus they occupied a place within the frame of rules and regulations in scope of the Community legal devices. Therefore, the decisions after the year 2004 are required to be taken by the qualified majority and in this way Commission, Parliament and the Court of Justice were given authority.<sup>12</sup>

Many member states are under immigration pressure. This is why the EU attempted to form some immigration policies recently. The Community tries to ease this pressure by establishing a balance between the economical and humanity values in accordance with regulations and international agreements. The aim in developing common policies on illegal immigration; to put common policies on immigration together<sup>13</sup> in a concordant way, prevent illegal immigration, establish advanced mechanism and precautions to struggle with the illegal immigration. Antonio Vitorino, [European Commissioner](#) for justice and home affairs, stated that 500.000 illegal immigrants enter the EU lands, and it is necessary to have legal immigration facilities while struggling against the illegal immigration.<sup>14</sup> The struggle against the illegal immigration should be more for criminal dimension of human traffic and trade of immigration. In this respect, illegal immigration is a phenomenon, not a crime. Its characteristics that form a crime is defined both in international (related UN agreement organizing illegal immigrant traffic and human trade by Protocols) and national law (Turkish Panel Law). Thus, evaluating illegal immigration phenomenon in frames of human rights, social development and it is necessary to take required steps to solve the problem.

Solution of illegal immigration problem can be possible with the middle-term and long-term methods. It is understood that short-term limiting cautions are far from bringing solution. Long-term solution lies in the policies for resource countries. The most important of these solutions is to maintain political stability and increasing welfare in these countries and regions.<sup>15</sup> This circumstance requires the short-term and long-term solutions to be conducted in balance.

## 1.2. Turkey-EU Relations in the Context of Immigration

Turkey-EU relationships which has history of 50 years emerged with the facility of cooperation regulations between Turkey and EEC (European Economic Community) in 1960s.

8 Lodge, Juliet (1993), *The European Community and the Challenge of the Future*, Juliet Lodge (eds.), Pinter Publishers, London, pp.315-339

9 Köktaş, Akif (2000), "Avrupa Birliği Üye Devletlerin Yeni Polis teşkilatı, Avrupa Polis Ofisi", *Polis Dergisi*, 22, Winter: 61.

10 Ertan, Beşe (2002), *Terörizm, Avrupa Birliği Ve İnsan Hakları*, Ankara: Seçkin Yayınları, pp.77-78.

11 Boer, Monica Den (1996), *Policymaking In The European Union*, London: Oxford University Press, pp.390-397.

12 Kaya, Ahmet (2005), *Avrupa Birliği'nin Yasadışı Göçle Mücadele Politikası Ve Türkiye Üzerindeki Etkileri*, p.56

13 Alkan, M. Nail (2002), *Avrupa'da Sınırlar*, Ankara Üniversitesi Avrupa Toplulukları Araştırma ve Uygulama Merkezi, Ankara, s.68.

14 Kirişçi, Kemal (2002), *Justice and Home Affairs Issues in Turkish-EU Relations*, İstanbul: TESEV Publication, p.46.

15 Laçiner, Sedat, Özcan, Mehmet and Bal, İhsan (2004), *Türkiyeli Avrupa, Türkiye'nin Üyeliğinin AB'ye Olası Etkileri*, İstanbul: Hayat Yayınları pp.199-200.

These relationships of Turkey–EC gained a new dimension by determining Turkey as candidate member with Helsinki Summit Result Announcement of European Council dated 11 December 1999. After Turkey's candidacy as member state, the Accession Partnership was prepared for Turkey: Turkey issued many laws and Constitutional changes for acquirement of the EU and thus EC accordance by establishing its National Program.<sup>16</sup> As an outcome of these general and concrete developments we mentioned, a decision to start full membership negotiation with Turkey by 3 October 2005 was taken at the EU Council Summit in Brussels on 17 December 2004. Full Membership Negotiation frame Certificate that determines the general joint negotiation principles between Turkey and the EU was acknowledged by taking the Commission's decisions into consideration at the European Council of Ministers meeting held in Luxemburg between the dates 2-3 October 2005. After the acknowledgement of these certificates, Turkey's EU membership negotiations officially started with an Intergovernmental Conference held at the same time in Luxemburg. İsmail Cem who was Foreign Minister, summarized the Turkey and the EU relations under circumstance.

“Turkey's relationship with the EU is based on mutual benefits. Thus it is a healthy relationship. Here Turkey is not only taking and gaining side. Europe's benefit by opening the way for Turkey's membership is at least as big as the number of Turkish people. By saying this, Former Minister of Foreign Affairs İsmail Cem emphasized on the fact that the relationship between the EU and Turkey take places mutual interaction basis rather than a single sided effect.”<sup>17</sup> Turkish foreign immigration started by a bilateral agreement on 30 October 1961 between Germany and Turkey for economical reasons, and continued in a way to include all West European countries. When current statistical information is analyzed, it is seen that there are about 3.7 million Turkish citizens in the EU countries out of all 4 million Turkish immigrants abroad, and when considered that there are 20 million immigrants in the EU states, Turkish people in Europe form one of the largest immigrant groups. However, immigration is not the only factor that affects Turkey–EU relations. Since Turkey became a state receiving immigration and being a location for the transition of other immigrants since the beginning of the 1980s, Turkey's position in European oriented International immigration regime changed as immigrant receiver, immigrant giver and state of immigrant transition place.<sup>18</sup>

For this reason, in regard to border security and struggle against illegal immigration as well as its own security and negotiations, Turkey has to take various responsibilities and develop some strategies. Immigration issue is considered as a factor, by the EU in general, that hardens the Negotiation Process for Turkey which both a source and transition state. By the official start of Turkey's negotiations with the EU in October 2005, the EU Justice and Home Affairs commission underlines the fact that Turkey has to do some changes regarding the immigration regulations. Among the demands of the EU about this issue are required preparations to join the Schengen Information System (SIS) and Europol, make visa rules and application in accordance with the EU standards, fight with illegal immigration to Turkey and most important of all i.e. Turkey's removal of its condition set for 1951 the Geneva Convention about geographic worry. Turkey has no responsibility towards the people emigrating from the east countries in scope of the Geneva Convention.

Another point that the EU states worry about the immigration issue as far as Turkey's membership is concerned, is illegal immigration through Turkey to Europe. Border inspections between EU, which got together regarding this respect for the first time in June 2008, and Turkey come up. Especially after the Helsinki Summit of the EU in 1999, in regard to asylum and immigration policies that it applies to Turkey, after the removal of the geographic worry, the most significant issue is to strengthen border inspection. That the EU countries mainly develop cautions to increase the border control and security in the solution of the problem paves the way for the victimization of people escaping from pressure, poverty and tyranny in the hands of organized crime networks.<sup>19</sup> To approach the matter only in security orbit, only changes ground in getting rid of the matter. Therefore, applying effective security cautions form only a part of struggle against the illegal immigration. To take socially oriented approaches (political fields such as social development and human rights) along with the approach of security perspective fastens the process of success in the ground of strife. As it is the transition point for the resource countries in Asia as well as for the commence of its relationship with the EU that paves the way for the initiation of the EU membership procedures, Turkey had to do many legal arrangements on issues like immigration and asylum for the acceptance of the EU acquirements.<sup>20</sup>

16 Özdal, Barış and Genç, Mehmet (2005), *Avrupa Güvenlik ve savunma politikası'nın Türkiye AB ilişkilerine Etkileri*, İstanbul: Alfa Aktüel, p.70.

17 Cem, İsmail (2004), *Türkiye Avrupa Avrasya*, İstanbul: İstanbul Bilgi Üniversitesi, pp.74–75.

18 İçduygu, Ahmet (2007), “Türkiye-Avrupa Birliği İlişkileri Bağlamında Uluslararası Göç Tartışmaları”, TÜSİAD Basın Bülteni, p. 24.

19 Laçiner, Özcan ve Bal, (2004), pp.199–200.

20 Kirişçi, Kemal (2002), *Justice and Home Affairs Issues in Turkish-EU Relations*, p.53

Besides, while making deterrent arrangements in struggle against illegal migration, centers must be established for the provision of the return of those who are caught in illegal immigration.<sup>21</sup>

### 1.3. Refugee Policies in the EU and Turkey

Before beginning to discuss the issue of refuge in European Union and Turkey, we had better clarify what should be understood from these concepts. Though the concepts of ‘asylum seeker, refugee and immigrant’ are similar, these concepts are different from one another in deed. However, today we see the use of the concept asylum seeker as an adaptation of the concept refugee to the current use. A person who seeks shelter in a third country leaving his homeland is called “asylum seeker.” Nevertheless, the concept of “refugee” is used to refer people who are given shelter after the evaluation of their refuge application by state authorities with the implementation of national and international laws.<sup>22</sup> According to Geneva Convention, 1950, refugee is defined as the person who rightly feels the fear of being oppressed for his race, religion, nationality, belonging to a particular social group, political thoughts because of the events that happened in Europe before 1951, and in fear of this, which has to flee his country and asks for shelter from another country.<sup>23</sup> Two points are remarkable in this definition: refugee’s being outside his own country and his rightly feeling fear. According to the definition of Fuat Özdoğdu, who is United Nations High Commissioner of the Istanbul represe, generally people become refugee in three ways:

**i) Individual Refugee:** When people leave their homeland and seek shelter in another country, they are called individual refugees. After they are subjected to status determination interviews in United Nations High Commision (UNHC) or in the country where they seek refuge, either they are given refugee status or they are rejected.

**ii) Prime Facie Refugee:** It comes up at times when there are concerted population movements. UNHC or relevant countries can’t interview with everyone individually and accept everyone as prime facie refugees because the reasons why they left their countries are known. For example, the state of war might be one reason of this. The people coming to Turkey from central and southern Iraq after the Iraqi war are the examples of this.

**iii) Refugee sur-plus:** A person might leave his own country and go to another not because of reasons like oppression, war, but because of reasons like being a student and tourist. Upon the change of the conditions in his homeland, he can seek refuge and stay there as a refugee.<sup>24</sup>

Before discussing the approach of Turkey to the issue of refuge, it is better to make it clear that Turkey does not regard itself as an immigrant receiving country and because of this, Turkey has never been in attempts to form immigration policy.<sup>25</sup> The first legal regulation regarding refuge in Turkey was enforced with the settlement law no 2510 in 1934. In the issues like who are given the refugee status, who are naturalized, Settlement law mostly used ‘the allegiance to Turkic race and culture’ as the basic criteria.<sup>26</sup> The law which was prepared with a nationalist discourse, as it is expressed by Kemal Kirişçi, it gives us some clues about the new identity based on a homogeneous nation which was aimed at being built by the young Turkish Republic after multiethnic Ottoman society.<sup>27</sup> Moreover, this law forms the background of Turkey’s persistence in deportation, settling refugees in a third country and cultural and ideological background of the geographical restrictions annotated in Geneva Convention.<sup>28</sup>

Turkey is one of the countries who formed and signed Geneva Convention which determines the status of refugees in 1951 in the aftermath of World War II. Turkey, who signed the agreement using the right of time limitation and geographical reservation, stated that it would provide protection for the refugees coming from Europe as a result of the events happened before January, 1951. Turkey agreed to abolish time limitation while signing the supplementary protocol regarding refugees in 1967; however, it did not abolish geographical reservation.<sup>29</sup>

21 BMMYK, AB Komisyonu ve Türkiye İçişleri Bakanlığı (şubat 2005), *İltica ve Göç Mevzuatı*, İltica ve Göç Konulu Avrupa Birliği Eleştirme Projesi Yayını, Ankara, p.41.

22 Kirişçi, Kemal, (2008) “Osmanlı ve Cumhuriyet Türkiye’sinde Göç ve Sığınma” (Immigration and Refuge in the Ottoman and Republican Turkey), *Düşünce ve Gündem*, 44, Summer: 12.

23 Geneva Convention, [http://en.wikipedia.org/wiki/Geneva\\_Conventions](http://en.wikipedia.org/wiki/Geneva_Conventions), (03.4.09)

24 Özdoğdu, Fuat, (2008), “Refuge Movements in the world, the position of Turkey and the problems faced by refugees”, *Düşünce ve Gündem*, 44, Summer: 23.

25 İçduygu, Ahmet and Keyman, Fuat (2000), “Globalization, Security, and Migration: The Case of Turkey Global Governance”, 6, July-September, p.385.

26 Didem Danış, Aslı (2004), “New Immigration Movements and Turkey”, *Birikim*, 184–185, August-September: 216–224.

27 Kirişçi, Kemal (2000), “Disaggregating Turkish Citizenship and Immigration Practices”, *Middle Eastern Studies*, 36, Winter: 1–22.

28 Kirişçi, Kemal (2003), “The Question of Asylum and Illegal Migration in European Union-Turkish Relation”, *Turkish Studies*, 4: 79–78.

29 Johansson, Bo and Zeybekoğlu, Emrehan (eds.) (2003), *Asylum in Turkey: Today and Future Prospects, in Migration and Labour in Europe: Views from Turkey and Sweden*, İstanbul: Şefik, p.77

In accordance with this reservation, those coming from outside Europe are not accepted as refugees by Turkey, they are provided with temporary protection and they are sent to other countries. In other words, Turkey does not fully claim responsibility for the refugees coming from outside Europe because of social, political and geographical reasons. This agreement is of great importance since it was the first one to determine the rights of refugees and immigrants. Until 1990s, Turkey treated the coming refugees based on Settlement law, Geneva Convention and general established practices. During this period, the number of those who took refuge in Turkey coming from Soviets and neighboring countries exceeded 20 thousands and they were accommodated in third countries as refugees.<sup>30</sup> This practice continued until the late 1980s but as of this date, Turkey began to receive immigration from Middle Eastern and African countries as well. Nevertheless, the events happening in the neighboring countries and the fact that majority of the refugees were coming from outside Europe revealed that there was deficiency in this field. Furthermore, upon seeing 468 Kurdish people knocking on the door of Turkey in one night, it is seen that there was no legal regulation related to this field in the country.<sup>31</sup> As a consequence of great refugee movements, setting forth the reason of internal security Turkey displayed a more restrictive attitude towards receiving refugees.

In 1996, Turkey entered a new reformation process regarding refuge. As a result of the cooperation between United Nations and Police Department, several regulations related to asylum seekers began to be made. During this period, three important events occurred as pointed out by Kemal Kirişçi: The first one is asylum seekers were given the right of appeals against deportation. Secondly, Turkish authorities started to cooperate with nongovernmental organizations. Thirdly, collaboration between Turkey and United Nations were improved for the training of bureaucrats.<sup>32</sup> By 2000s, Turkey had made a long distance in terms of refuge. In 2002 and 2003 when Turkey started adjustment process to European Union legislation, some positive improvements intended for asylum seekers emerged. However, no progress about refuge has been made since 2005. European Union's attitude towards Turkey and the events happening in neighboring countries have great impact on this.<sup>33</sup>

The decision to initiate Adjustment Process to European Union legislation in the field of refuge was made in Turkey National Programme, 2003.<sup>34</sup> With this 'refuge and action plan' Turkey displayed what it would do to adjust to European Union legislation until gaining full membership. In this program, the issues like the continuation of the attempts to advance quartering and social support mechanisms for refugees especially and to develop administrative and technical capacity in this field were suggested.<sup>35</sup> The draft includes a commitment which is about the legislation of necessary regulations in this field, the continuation of adjustment attempts to the EU legislation following the enforcement of Refuge Law. The abolishment of geographical reservation in Turkey the National Program, 2003 was bound by two conditions in the scope of the EU full membership negotiations:

1. During the joining process, making required legal changes in a way that it does not encourage any refugee movement from east to Turkey.
2. Showing enough sensitivity in the subject of sharing burden among EU countries<sup>36</sup>

Considering the economic conditions of the neighboring countries of Turkey, the statement in 'Refuge, Immigration National Action Plan' regarding the abolishment of geographical reservation annotated in 1951 Geneva Convention shows apparently the need to support Turkey in the economic and technical sense.

By the commencement of full membership negotiations of Turkey to the EU in December, 2004, as in many other subjects, Turkey needs to make some legal changes in the issue of refuge too and adjust to the EU legislation. In this framework, the uppermost things Turkey is prescribed to do regarding the issue of refuge are the abolishment of geographical reservation summarized above, the evaluation of asylum applications of those coming from outside Europe too, strengthening the attempts to fight against illegal immigration.<sup>37</sup> In return for Turkey's logical reasons, the EU has to relieve Turkey and guarantee this issue.

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30 Kirişçi, (2008), p.15.

31 Kılıç, Taner (2008), "Mültecilik Mevzuatından Kaynaklanan Sorunlar ve Çözüm Önerileri" (Problems sourcing from refuge legislation and solution offers), *Düşünce ve Gündem*, 44, Summer: 26–29.

32 Kirişçi, (2008), p. 15.

33 Ibid, p.15.

34 Avrupa Birliği Genel Sekreterliği, (2003), *Avrupa Birliği Müktesebatının Üstlenmesine İlişkin Türkiye Ulusal Programı*, Ankara, p. 112.

35 BMMYK, AB Komisyonu ve Türkiye İçişleri Bakanlığı (şubat 2005), *İltica ve Göç Mevzuatı*, p.41.

36 *Avrupa Birliği Müktesebatının Üstlenmesine İlişkin Türkiye Ulusal Programı*, (2003), p. 112

37 Laçiner, Özcan ve Bal, (2005), pp.117–128.

In the scope of Turkey's the Adjustment Program to the acquisition of the EU (2007-2013) which was announced to the public on April 17,2007,<sup>38</sup> fundamental regulations directed at the goals of the National Action Plan were calendared. The Adjustment Program suggests to change the Foreigner law dealt with under the titles of 'justice, liberty and security' and refuge law between the years of 2009 (01.10.2009) and 2013, and the change of the regulations of refuge and asylum law no. 94/6169 is also put forward in the adjustment program. The aims of the aforementioned law and regulations are stated as follows in the 2007–2013 programs: The purpose of the refuge law: Adjustment to the EU legislation within the scope of full membership, adapting Turkish legislation to the EU acquisitions in terms of the issues of refuge, immigration and foreigners. With respect to this, forming the necessary administrative and physical infrastructure.<sup>39</sup>

The purpose of the regulation regarding the change of refuge and asylum regulation: Directed at the refugees who are outside the scope of Geneva Convention, in case of sending the people in point back to their homelands or in case of their deportation, the regulation must be prepared in accordance with the conditions of especially Europe Human Rights Agreement and with the related acquisition of the EU and with the conditions of international agreement. In parallel with the completion of the negotiations of Turkey's joining European Union and following the completion of the projects and conditions identified in National Action Plan, it envisages the submission of a proposal regarding the abolishment of geographical reservation to Turkish Grand National Assembly in 2012 probably. However, the abolishment of reservation expected from Turkey depends, in a sense, on the EU's behaving in a way to eliminate the worries of Turkey about this issue. In 1990s, Europe did not regard the issue of refuge as a problem that would concern the EU; however, only European Parliament and European Council were dealing with the issue. Stress was laid mostly on human rights then but today it has moved on to the protection of communities and security.

Especially after September 11 events, there started an inclination from positive immigration policies to negative immigration policies.<sup>40</sup> Taking the demographical and financial structure of European Union into consideration, it is not possible to ignore immigration policy. Legal immigration mechanisms, especially legal immigration means related to laborers need to be simplified.<sup>41</sup> We can summarize the primary demand of the EU from Turkey regarding the issue of asylum seeker and refugee as the fulfillment of adjustment to the EU acquisition and respecting the rights and liberty of refugees. The demand of the EU from Turkey is being able to keep the refugees and asylum seekers coming to Europe within the borders of Turkey till sending them to a third country. Therefore, the authorities who witnessed the formation of castle Europe are worried about Turkey's turning into a tampon region.<sup>42</sup> In other words, Turkey's becoming the first refugee country worries Turkish authorities in terms of its economic, social and political consequences.<sup>43</sup> Considering the fact that Turkey has the position of being both a target and transitional country for asylum seekers and refugees, it is seen that this worry is not in vain. In this respect, in addition to the current refugee funds, the EU should assist Turkey in the issue of burden share.<sup>44</sup>

#### 1.4. EU Legislation in the Area of Immigration

Nation states and international communities give importance to immigration phenomenon, either of legal or illegal, or with respect to this, they make some legal and administrative regulations today. Within this framework, remarkable progress concerning legal and illegal immigration emerges in the EU. I will analyze the illegal immigration policy of the EU within the framework of the perception of security, and within the scope of juridical and institutional structure. The countries forming the union had determined their policies based on the legal procedure defined by their own domestic law so far. Due to this fact, it was impossible to talk about a common immigration policy of the union.

38 Türkiye İlerleme Raporu, (2007), <http://www.ikv.org.tr/pdfs/2007TRILERLEMERAPORU-TR.pdf>, p.11.

39 Türkiye'nin AB Müktesebatına Uyum Programı (2007–2013) (Turkey's Adjustment Program to EU acquisition), <http://www.abgs.gov.tr/index.php?p=6&l=1>, (03.04.2009).

40 Çiçekli, Bülent (2004), Uluslararası Terörizm ve Uluslar arası Göç: 11 Eylül Sonrası Terör Tehdidi ve Göç Kontrol Politikalarının Terörizmle Mücadelede kullanımı, (eds.) Kamer Kasım and Zerrin A. Bakan, Uluslararası Güvenlik Sorunları, (International Terrorism and International Immigration: The threat of terrorism after September 11 and Utilizing Immigration Control Policies in the struggle against Terrorism), Ankara, TASAM, pp.189-217

41 Apap, Joanna (2004), "Recent Developments as regards European Migration Policy in view of Enlarged Europe", Joanna Apap (eds.), *Justice and Home Affairs*, Edward Elgar Publishing, p.182.

42 Johansson and Zeybekoğlu, (2003), pp.57-58.

43 Akdağ, G.Arıkan, (2007), "AB Kapısında Türkiye ve Göç Politikası" (Turkey at the Door of the EU and its Immigration Policy)'. *Stratejik Öngörü*, 4, İstanbul: TASAM, p.167.

44 Ibid, p.167.

European Union, which has been moving from the state of an economic community to a political unity, 45 has been in attempts to become integrated in terms of domestic political issues like security policy, terrorism, organized crime, visa, immigration and refuge too following the events happened in the global scale. The subject how to fight against crime activities going beyond the borders like illegal immigration which is also defined as negative immigration has been put on the agenda of the EU.<sup>46</sup>

In 1970s for the first time, the union started collaboration and obtaining information regarding the issues like terrorism, drug and the trace of organized crimes.<sup>47</sup> The basic goal here is to find a common solution to potential problems. On the other hand, intended for the expansion of domestic market, European Single Act mentions the free circulation of goods, service, capital and individuals for the first time. Nevertheless, the removal of borders for economic purpose and providing free circulation somehow simplified the movement area of organized crime groups as well.<sup>48</sup> In this sense, upon the implementation of Schengen Treaty on 30th. 06, 1993 which was signed on 14th June, 1985, cooperative process concerning the issues of police, customs and judicial in the EU came along with the principle of free circulation synchronously. Schengen Treaty, being the first regulation accepted after the removal of internal frontier control, is of great legal value in terms of struggle against crime. Displaying some precautions within the scope of struggle against illegal immigration, 1990 dated Schengen Treaty aims at forming cooperative modules in this field.<sup>49</sup>

Common rules related to especially visa requirement, border management and repatriation were introduced by Schengen Treaty at the level of European Union. Therefore, in accordance with the 96th article of Schengen Treaty, the data about the illegal aliens (those violating the rule of visa and residence permit or entering a country illegally), and about the aliens who threaten public peace and security is recorded on Schengen Database. Struggle against illegal immigration and prevention of illegal immigration started to be among the subjects of top priority of the Union. Amsterdam Treaty also includes a decree: “council will take measures concerning immigration policy including illegal immigration, illegal residence.”<sup>50</sup> Again at 1999 dated Tampere Summit, member states accepted to fight against illegal immigration with transitional countries. Tampere Summit reflected the things need to be done to struggle with illegal immigration within the framework of common immigration policy of the union. This decisiveness was expressed as follows: “those who are involved in human trade and those abusing immigrants economically need to be fought against”<sup>51</sup> Additionally, candidate states were asked to consider immigrant smuggling a crime in their national law in accordance with the additional protocol of the European Union Treaty which was accepted in New York on the 15th November, 2000.<sup>52</sup>

Thus, the conditions regarding immigrant smuggling and human trade need to be adopted by nation states were embodied by protocols for the first time. With its declaration on 11th July, 2001, European Union Commission took one more step with respect to human trade and illegal immigrant. The Commission clearly defines in which condition illegal immigrant occurs by the 15th November 2001 dated declaration. According to this:

- \*If the subject of a third country enters member states illegally
- \*If the subject of a third country dwells in member states illegally
- \*If the subject of a third country enters member states legally but exceeds the time of settlement.<sup>53</sup>

At the Laeken Summit on 14th-15th December, 2001, the preparation of an action plan for illegal immigrant was suggested. At the Sevilla Summit which was held on 21-22nd June, 2002, the formation of liberty, security and justice areas, the acceleration of the state of the implementation of the program that was accepted at Tampere Summit to develop a common policy about immigration and refuge were demanded. One of the decisions made at Tampere Summit is related to illegal immigration and illegal immigrant traders. The Council adopted an exhaustive action plan regarding the struggle with illegal immigration in February, 2002 to be able to enforce these decisions.

45 Çankıcı, Emin, (2001), *Ekonomik Gelişmeler ve Türkiye- AB İlişkileri*, Ankara, Tutubay Yayınları, p. 309.

46 Gamble, Andrew and Payne, Anthony (1996), *Regionalism and World Order*, London: Macmillan Press, p.50.

47 Kaya, Ahmet (2005), Avrupa Birliği'nin Yasadışı Göçle Mücadele Politikası Ve Türkiye Üzerindeki Etkileri (The struggle policy of EU against illegal immigration and its impacts on Turkey), p.30.

48 Beşe, Ertan (2002) *Terörizm, Avrupa Birliği Ve İnsan Hakları (Terrorism, European Union and Human Rights)*, Ankara: Seçkin, pp.77-78

49 Wallace, Helen and Wallace, Willam (2000), *Policy Making in the European Union*, London: Oxford University Press: pp.390-397.

50 İKV (2000), “Amsterdam Antlaşması” (Amsterdam Treaty), İstanbul, Volume: 162.

51 Tampere Summit, [http://www.europarl.europa.eu/summits/tam\\_en.htm#union](http://www.europarl.europa.eu/summits/tam_en.htm#union), (24.05.09).

52 “Justice, Freedom and Security: An Agenda for Europe”

[http://www.europarl.europa.eu/comparl/libe/elsj/zoom\\_in/08\\_en.htm?textMode=on1](http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/08_en.htm?textMode=on1)

53 “Communication from the Commission to the European Parliament on a Common Policy on Illegal Immigration”, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0672:EN:NOT> (24.05.09).



This plan identified 6 potential action fields regarding the struggle with illegal immigration and to prevent illegal immigration: Visa policy, information exchange and analysis, readmission and deportation policies, measures for internal frontier, measures for border management, Europol and penalty.<sup>54</sup> The precautions that must be taken about the struggle with illegal immigration and human trade are stated officially at the Sevilla Summit too on 21st-22nd June 2002.<sup>55</sup> Based on this document, many regulations ranging from illegal entry of immigrants, security measures against human traders, forgery of documents to illegal working areas were adopted. 4th June 2004 dated declaration of the Commission<sup>56</sup> makes a distinction between legal and illegal immigration, and states that illegal immigration is a structural phenomenon. The declaration adopts the measures taken against illegal immigration in exhaustive action plan. Furthermore, the issue that it is impossible to prevent illegal immigration but a common approach should be developed gradually to make illegal immigration more regular was also on the agenda of the declaration. While making the necessary arrangements, the Commission recommends the member states to notify one another.<sup>57</sup> European Trade Union Confederation claims that struggle with illegal immigration is only possible by opening legal immigration means and by legitimizing illegal immigration. European Trade Union Confederation defends the idea that the EU must have a global immigration policy to make this real.<sup>58</sup> As can be understood from here, illegal immigration can't be prevented by taking security measures but it will continue to exist by changing its direction.

In addition to this, the European Parliament admits that empowering the legal procedure constitutes one part of the struggle with this phenomenon; however, consolidating the common development policies can minimize its negative consequences.<sup>59</sup> Penal sanction regarding the struggle with illegal immigration and human trade adopted by the Union can be summarized as follows: “Schengen Treaty entails third country citizens who are not admitted to the Union and are caught illegally being deported by the transporter. On 28th June 2001, the Council adopted a declaration which entails member states’ enforcing financial sanction (3000—5000 Euro per person) on transporters, which also follows through the conditions of the Schengen Treaty. Within this frame work again, according to the decision of the Council on 29th April 2004; before the completion of the registration procedure during the entry to the Union, transporters are liable to deliver the information about the third country citizens in case of the fact that they are asked by the officials in charge in cross borders. The Council adopted a declaration and framework which aim at preventing illegal entry, transitional passage and dwelling on 28th November 2002. Those who are charged with these kinds of crimes are banned from these and the equipments utilized are confiscated. On 27th February 2004, the Commission carried out an evaluation aiming at transforming illegal working to legal working based on the action plan prepared in 2003 related to illegal working.<sup>60</sup> Additionally, as of 1st January 2005, the Council accepted to evaluate the conditions concerning immigration within the framework of “co-decision procedure.”<sup>61</sup> Thus, the Union is shaping itself and attempting to determine a common immigration policy in accordance with the conjuncture emerging.

54 **Visa policy**; this policy entails exchanging information concerning issuing visa between member states. The Commission embarked on a feasibility study for the formation of European Information system.

**Information exchange, cooperation and infrastructure intended for Coordination**: the establishment of a continuous technical support unit is suggested for the formation of a database aimed at the coordination between member states’ law executive units and strengthening cooperation, to coordinate operational cooperation and to support issues like data collection and spreading analysis.

**Border Management**: Within the scope of the constitution of European Border Protection Unit, several steps have been taken to put a series of pilot projects into practice. Moreover, EU Cabinet Council adopted the plan concerning the management of cross borders of EU member states on 13th June, 2002. Following this, regarding the integrated management of EU cross borders, 7th May 2002 dated commission Declaration was adopted. Additionally, the commission adopted a declaration that reflects the community deportation policy aimed at illegal dwellers and also “the Green Book”. These documents became influential later on the adoption of deportation action program.

**Police Cooperation**: Police cooperation Europol should be empowered for its struggle with illegal immigration.

**Legal status of aliens and Penal code**; the sanctions aimed at those simplifying illegal immigration need to be harmonized and increased in the presence of member states. This kind of crimes entail heavy sentence. Expropriation of the fruits of crime is regarded as the key factor.

**Deportation and Readmission policies**; just as the same way common standards and measures are formed, a deportation policy needs to be formed too. In terms of taking immigration movements under control, the Union gives distinctive importance to signing readmission agreement with transitional and source countries.

55 Terzioğlu, Mehmet, “Yasadışı Göç, İnsan Ticareti ve İltica” (Illegal immigration, Human trade and refuge) Yabancılar Huhut Daire Başkanlığı (department of the legal status of aliens) <http://www.caginpolisi.com.tr/10/15-16.htm> (24.05.09).

56 “Developing a Common European Immigration Policy”, [http://ec.europa.eu/justice\\_home/doc\\_centre/immigration/doc\\_immigration\\_intro\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/immigration/doc_immigration_intro_en.htm), (28.05.09).

57 “Tampere European Council 15 and 16 October 1999 Presidency Conclusions”, [http://www.europarl.europa.eu/summits/tam\\_en.htm#union](http://www.europarl.europa.eu/summits/tam_en.htm#union), (24.05.09).

58 Jones, D. (2009) “Kaçak Göçmenler Türkiye’nin Başını Ağrıttıyor” (Illegal Migrants Make Problem to Turkey), <http://www.euractiv.com.tr/ab-ve-turkiye/analyze/kacak-gocmenler-turkiyenin-basini-agritiyor-006235>, (24 May 2009).

59 “European Parliament” [http://www.europarl.europa.eu/comparl/libe/elsj/zoom\\_in/08\\_en%20.htm?texMoe=0n](http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/08_en%20.htm?texMoe=0n), (28.05.09).

60 Ibid.

61 Tezcan, Ercüment (2006), *Avrupa Birliği Kurumlar Hukuku (European Union Corporate Law)*, Ankara: USAK Publishing, p. 30.

## **Conclusion**

General debates about migration, Turkey and EU's approach to migration and the policies to be formed on migration are stated in the afore chapters. No matter whether the international migration happens legally or illegally, it has become a challenging issue for nation and supra-national ruling mechanisms in the current century. To put in other words, the migration phenomenon in the 21. century is the most important point for the national and international establishments. Thus, migration has become a central issue for European Union member states as well as the candidate states for membership.

While EU's negative migration policies have been strengthened after September 11, some protecting precautions considered within the human rights concepts have been taken. Concordantly, EU's illegal migration perception is mainly related to the arrangements of restrictions. The legal and illegal migration that paved the way for the formation of security policies of the Union is also important for Turkey. The place of Turkey has become more significant by developing events and emerging security issues in the world. Especially by commencement of EU concordance process, this significance increased greatly. On the other hand, by this process, Turkey had to reconsider its illegal migration policies. Thus, EU, in this respect requires and expects member candidate states to fulfill the Schengen Acquis Turkey also makes legal and administrative arrangements in this frame. Joint Accession Partnership, National Programs, Progress Report and EU projects pay attention to illegal migration issues. EU requires Turkey to strengthen border controls and make return treaties as prevention of illegal migration.

Illegal migration phenomenon is not only the problem of Turkey but also that of many EU countries. It is not a problem that can be overcome only by border and visa inspections. It also related to the countries' preference in illegal labor market to labor market in EU countries. Therefore, fight against illegal migration flow, illegal border pass and visa violations are phenomenon that must be taken into consideration within all EU countries beyond Turkey. Illegal migration is now supra-national problem. Thus, countries can not get rid of this problem by themselves. Therefore, this problem should be talking into account not only on country levels but also considered in cooperation with national and international civil society establishments as common attitude and common approach to illegal migration problem will be shaped by a formed cooperation. Besides, increased and effective security measures to fight against illegal migration do not go beyond changing the route of the illegal emigrants. It leads to the continuation of the illegal migration and thus no effective solution can be found to the problem. This shows that the increase of international securities forms only one aspect of the illegal migration phenomenon. Fight against illegal migration can be a success, only if long-term social solutions are taken into consideration in addition to short-term solutions like security measures.

That financial and political instability are likely to continue in the source countries which are the reasons of illegal migration, indications of unfair income distributions in the world show that illegal migration will continue increasingly. For this reason, EU which enjoys high welfare standards should issue policies to progress developing countries. As mentioned in the National Action Plan, the countries forming the EU are in effort of hardening the asylum seeking and refugee applications. In addition, there are still no common asylum and refugee policies in within the Union and the debates about a third secure country are still going on. As a matter of fact, the probability of massive people flow to Turkey in case of conflicts and clashes in Middle East and Caucasian, as seen in the past, and their struggle to force Turkey's borders must be kept in mind. Therefore, short and long term solutions must be produced. Turkey must determine an effective strategy to prevent illegal migration. In addition to legal and administrative arrangements, there should be cooperation between the countries emigrants come from and the target and transit countries to prevent the illegal migrations.

During this cooperation process, international organizations, laborer and employing organizations and other civil society establishments must not be forgotten. Countries should develop solutions by taking all human rights into considerations. The distinction between legal and illegal migration must be paid attention. The differences between the asylum seekers and those using the country as transit and the ones living in the country must be taken into account. The rights of the refugees and asylum seekers must be protected and the projects to employ them must be improved. Some collaboration must be made with national and international civil society organizations to find practical solutions to illegal and irregular migration problems. Last but not the least, the countries facing illegal migration flows also have to fight against the unwanted results of these migrations. International migration has become an inevitable part of a life in the globalizing world. However, every country has its share to produce policies to enjoy life with fewer problems originating from the migration phenomenon.