

Refugees Human Rights Violations in Van

-Report-



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Bu yayın Avrupa Birliđi Sivil Düşün Programı kapsamında Avrupa Birliđi desteđi ile hazırlanmıştır. İçeriğın sorumluluđu tamamıyla Eşitlik Çalışmaları Derneđi'ne aittir ve AB'nin görüşlerini yansıtmamaktadır.

REFUGEES AND MIGRANTS IN TURKEY

Over the last decade, forced and economic migration to Turkey has increased rapidly due to the reasons such as conflict, occupation, poverty, and economic collapse, etc. in the Middle East and Central Asia.

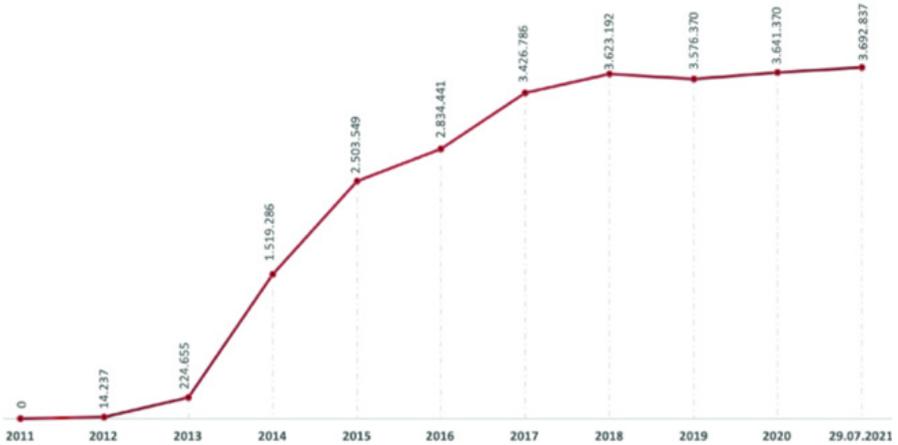
Turkey has been home to the world's largest temporary and internationally protected population since 2015.¹ The Syrian war, which started in 2011, has been a turning point. Because of the conflict, 6.8 million Syrians have been forced to migrate out of the country. 3.69 million Syrians, that is to say, more than half, are in Turkey.² 98 percent of Syrians in Turkey live in cities and rural areas, and less than two percent live in seven temporary shelters. Most of these people live in southeastern cities such as Gaziantep, Sanliurfa and in major cities such as Istanbul, Bursa, Izmir, and Konya.³

1 3RP (2021) Turkey Country Section 2021-2022: Regional Refugee and Resilience Plan, http://www.3rpsyriacrisis.org/wp-content/uploads/2021/02/3RP-Turkey-Country-Chapter-2021-2022_TR-opt.pdf, p. 4 (Accessed on 10.08.2021)

2 Directorate General of Migration Management (2021) "Temporary Protection" <https://www.goc.gov.tr/gecici-koruma5638> (accessed on 10.08.2021)

3 3RP, Turkey Country Section 2021-2022, p. 4.

Graphic 1. Syrians Under Temporary Protection by Year



Source: Directorate General of Migration Management (2021) “Temporary Protection” <https://www.goc.gov.tr/gecici-koruma5638> (accessed on 10.08.2021)

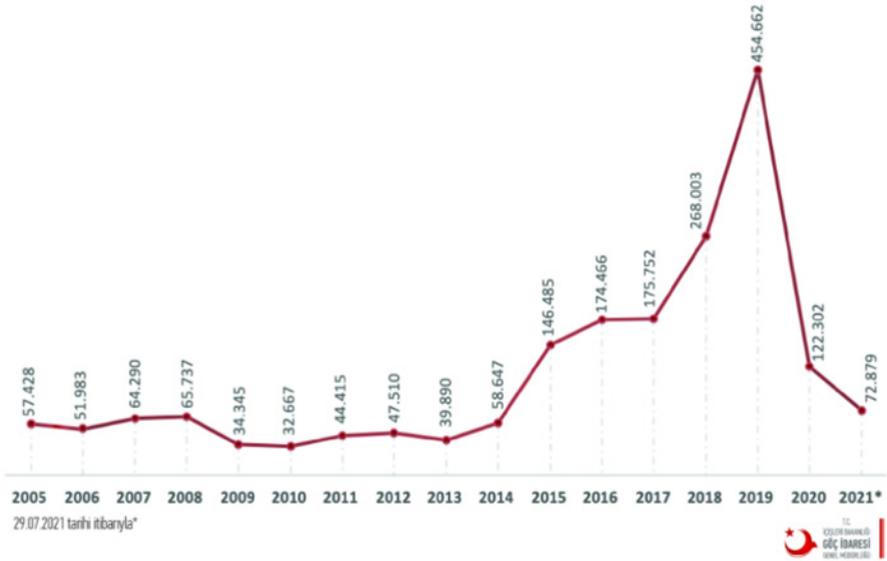
Turkey hosts approximately 320 thousand international protection applicants and status holders from other countries. The majority of international protection applicants and status holders in Turkey are from various nationalities, including Afghanistan, Iraq and Iran.⁴

In addition to 1 million 179 thousand foreign citizens with residence permits, there are also about 2 million unregistered migrants, which are defined as “irregular migrants” in the literature, in Turkey.⁵ The exact number of migrants in this situation is unknown. However, it is possible to draw some conclusions about the general trend through the number of “irregular” migrants caught by law enforcement.

4 3RP, Turkey Country Section 2021-2022, p. 4.

5 Directorate General of Migration Management (2021) “Residence Permits”, <https://www.goc.gov.tr/ikamet-izinleri> (accessed on 10.08.2021)

Graphic 2. Number of Irregular Migrants Caught by Year

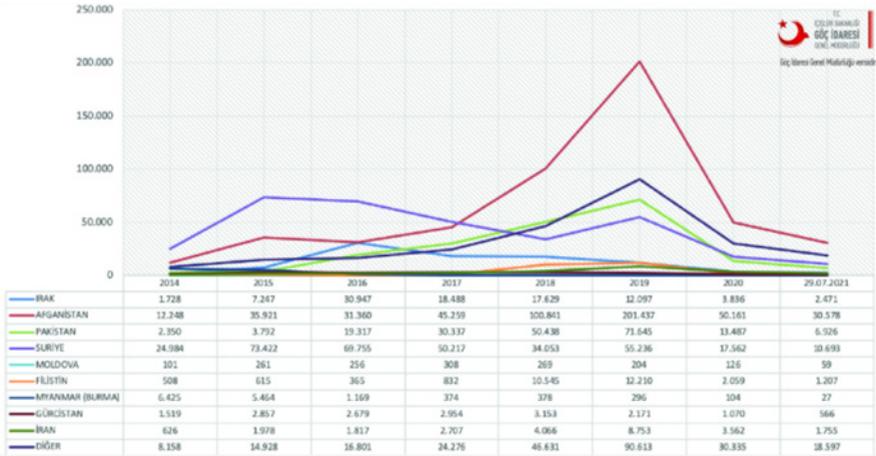


Source: Directorate General of Migration Management (2021) “Irregular Migration”, <https://www.goc.gov.tr/duzensiz-goc-istatistikler> (accessed on 10.08.2021)

Although the number of irregular migrants caught is, to some extent, related to government policy, it is possible to say that there has been a great increase in the entry of migrants to Turkey in recent years and that more migrants have entered or been in Turkey than those who have been caught. Afghans take the lead among the “caught irregular migrants”. Approximately 101 thousand out of 268 thousand “irregular” migrants caught in 2018, 201 thousand out of 454 thousand “irregular” migrants caught in 2019, and 50 thousand out of 122 thousand “irregular” migrants caught in 2020 came from Afghanistan.⁶

6 Directorate General of Migration Management (2021) “Irregular Migration”, <https://www.goc.gov.tr/duzensiz-goc-istatistikler> (accessed on 10.08.2021)

Graphic 3. Distribution of Irregular Migrants Caught by Year and Nationality



Source: Directorate General of Migration Management (2021) “Irregular Migration”, <https://www.goc.gov.tr/duzensiz-goc-istatistikler> (accessed on 10.08.2021)

For many years, Turkey has maintained its status as a transit country for migrants and refugees who want to reach Europe. At the same time, immigrants came to Turkey to work, albeit temporarily, from Uzbekistan, Georgia, Turkmenistan, Afghanistan, and Moldova. Especially after 2011, Turkey has also become a destination country for migrants due to the Syrian war, growing economic instability in the region, restrictions on accepting refugees by EU countries, and the Readmission Agreement signed with the EU.

In addition to the Syrians, one of the most debated agendas in Turkish politics and the public in 2021 was the Afghan refugees and immigrants who came to Turkey by crossing a long migration route. The withdrawal of US forces from Afghanistan and the rapid advance of the Taliban caused new Afghan immigration and many Afghans came to Turkey for transit or as the destination country. Almost all Afghans entered Turkey from the Van border. As is the case for Afghan migrants, Van is the most frequently used route by migrants coming from the countries located on the eastern side of

Turkey such as Iran, Pakistan, Bangladesh to enter Turkey.

AFGHAN MIGRATION

The main reason for the increasing Afghan migration in recent years is the conflicts within the country, war, and economic problems. The main factors for Afghans to prefer Turkey are that Turkey is bordered by the EU and is on the transit route in this respect and has more job and livelihood opportunities compared to Afghanistan. In addition, the “conservative democrat” and “political Islamist” identity of the AKP government and the idea that the majority of Turkey’s population is Muslim are also influential in Afghans’ preference for Turkey.

Figure 1. Migration Route of Afghans in Afghanistan, Iran and Pakistan to Turkey



Of the approximately 5.7 million forcibly displaced Afghanistan citizens, 2.9 million are internally displaced people and 2.8 million are refugees/asylum seekers. As of 2020, Afghans are the third

largest refugee population in the world who have been forcibly removed or forced out from the country.⁷

1 million 438 thousand Afghan refugees and 9 thousand 668 asylum seekers live in Pakistan and 780 thousand Afghan refugees live in Iran.⁸ There are 147 thousand 994 Afghan refugees and 33 thousand 103 Afghan asylum seekers in Germany and there are 40 thousand 96 refugees and 6 thousand 473 asylum seekers in Austria. Compared to these figures, the number of Afghan refugees in Turkey is quite low as 4 thousand 219. 125 thousand 104 asylum seekers have the status of asylum seeker in Turkey.⁹

In the last half-century, three major waves of migration from Afghanistan to neighboring and surrounding countries can be mentioned: The first one occurred in 1979 after the entry of the Soviet Union military forces into the country and it lasted until the early 1990s. The second one is after the Taliban came to power. Continuing conflicts between radical Islamist forces in the early 90s resulted in the Taliban's seizure of power throughout the country in 1996. A large number of people have been forced to emigrate out of Afghanistan under the Taliban's sharia based repressive regime. The third one is after the US invasion in 2001. With the removal of the Taliban from power and the decrease of conflicts after the invasion, a large number of Afghans have returned to their country. But due to the growing conflict with the Taliban, which regained power in the following years, and the depressed economic situation, Afghans have turned their face away from their country again. Recently, the last wave of migration has accelera-

7 UNHCR (2021) Global Trends 2020, Copenhagen, p. 7, 24.

8 The Pashtuns who constitute 20% of the Pakistan population and 40% of the Afghanistan population are separated by the Pakistan-Afghanistan border called the Durand Line. Cross-border migration of Pashtuns between Afghanistan and Pakistan has thus become a way of life. Similarly, the Shia Hazaras in Afghanistan have regularly engaged in migration to Iran because of their religious ties. Since Afghans' movements towards Pakistan and Iran have a long historical experience, the social networks that formed and became widespread over time with this experience have been one of the main mechanisms that accelerated and facilitated this mobility in the following periods. Geyik-Yildirim, S. (2018) "Migration and Afghans: "Stable Refugees", Journal of Migration Studies, 4 (2): 128-159, p. 133.

9 UNHCR (2021) "Refugee Data Finder", <https://www.unhcr.org/refugee-statistics/download/?url=n1hl6> (accessed on 10.08.2021)

ted with the rapid expansion of the Taliban forces' impact area.

INTERNATIONAL CONTEXT

For many years, Afghans had preferred two neighboring countries, Pakistan and Iran, for various reasons for immigration. However, the Turkish route has always been an up-to-date alternative. Although their numbers vary depending on the situation in Afghanistan, Iran's political attitude towards refugees, and economic conditions, there has been a certain population of Afghan refugees and migrants in Turkey for many years.

In the Turkish economy, "irregular" migrants such as Afghans, Iranians, Iraqis, Pakistanis are employed relatively intensively in sectors such as textiles, construction, food, etc. Turkey's migration policy allows and foresees this. AKP Deputy Chairman and Head of Local Governments Mehmet Ozhaseki's following words confirm this situation regarding the Syrian and Afghan asylum seekers: "Now in some cities, they are keeping the industry afloat. Go to the Gaziantep industry, hundreds of thousands of people work in the heaviest and most difficult jobs. As in Kayseri industry. They can't find workers, but these guys work."¹⁰

These "irregular" migrants are mostly not allowed to stay in Turkey, but the government and government agencies follow a policy of condoning them. Migrants are a source of cheap labor for many sectors. In conditions where fertility is falling in Turkey, the government's three-child policy is not met, the domestic workforce does not prefer or accept low wages with the improvement in education level, millions of "irregular" migrants have become an important source of income for employers.¹¹ From this point of view, as Ozhaseki admits, a part of the Turkish economy is based

¹⁰ T24 (2021) "Ozhaseki of AKP: Syrian and Afghan asylum seekers keep the industry afloat in some cities", <https://t24.com.tr/haber/akp-li-ozhaseki-gocmenler-bazi-sehirlerde-sanayiyi-ayakta-tutuyor,968305> (accessed on 10.08.2021)

¹¹ Hacıoğlu, H. (2020) "How Does Turkey Perceive Irregular Migrants?", Voice Of America, <https://www.amerikaninsesi.com/a/turkiye-d%C3%BCzensiz-gocmenlere-nasil-bakiyor/5704460.html> (accessed on 10.08.2021)

on the intense exploitation of cheap and migrant labor.

The “refugee problem” is one of the leading negotiation agendas in the international arena. The Turkish government uses the “refugee problem” as a pressure tool to persuade the EU on certain issues. When political disagreements occur, the issue of Turkey opening the border gates and canceling the Readmission Agreement is brought to the agenda.

On the other hand, the Readmission Agreement between Turkey and the EU, which entered into force in 2016, de facto means that the EU suspends fundamental human rights, in particular the right of asylum. Attempts to block or turn a blind eye to refugee crossings, refugee camps with inhumane conditions in Greece, segregation of refugees by education, occupation, and employment status are increasingly becoming prominent in the EU’s refugee policy. In the report prepared by the European Parliament review group and StateWatch, it is stated that Frontex, the European Border and Coast Guard Agency, shuts its eyes to fundamental rights violations such as pushing refugee boats back on the border regions despite the risk of death and remains incapable in preventing violations of rights.¹²

It is a fundamental right for people who are fleeing war, oppression, and life risks to seek asylum in any country they want. The Readmission Agreement does not offer any humanitarian solutions for refugees, and its main purpose is to keep refugees outside the EU borders. Turkey, on the other hand, acts as a “refugee depot” for the EU and a firewall that protects the EU from refugees. Austrian Chancellor Sebastian Kurz’s words about Afghan refugees have become an expression of a growing approach in the EU: “I don’t want to import this sick ideology into Europe. ... If people have to flee, I think neighboring countries, Turkey or the safe zones of Afghanistan are definitely the right places for peop-

12 Euronews (2021) “European Parliament report: Frontex turns a blind eye to human rights violations against asylum seekers”, <https://tr.euronews.com/2021/07/16/avrupa-parlamentosu-raporu-fronteks-s-g-nmac-lara-kars-insan-hakk-ihllaleri-ne-goz-yumuyor> (accessed on 10.08.2021)

le rather than their migration to Germany, Austria or Sweden.”¹³

VAN, MIGRANTS AND REFUGEES

The most frequent entry points of “irregular” immigrants both with the recent Afghan migration and the migration which have been going on for many years from the countries in the east of Turkey such as Afghanistan, Iran, Pakistan, and Bangladesh are at the Van border. 295 kilometers of the 534-kilometer Turkish-Iranian border is within the city of Van. Van is the nineteenth most populous city in Turkey and is the largest province in the Eastern Anatolia region in terms of population. As of the end of 2020, its population is 1 million 149 thousand people. It borders Agri to the North, Bitlis to the West, Siirt to the Southwest, Hakkari to the South and Iran to the East.¹⁴

Figure 2. Van province and its districts



13 NTV (2021) “Austrian Chancellor Kurz: Turkey is a more accurate place for Afghan refugees”, <https://www.ntv.com.tr/dunya/avusturya-basbakani-kurz-afgan-multeciler-icin-turkiye-daha-dogru-yer,0XRvrvD1F0a1ejqY3c6kvA> (accessed on 10.08.2021)
14 Wikipedia (2021) “Van”, <https://tr.wikipedia.org/wiki/Van> (accessed on 10.08.2021)

Migrants from the East side of Turkey also enter from border provinces such as Agri and Hakkari, in addition to the Van border. However, due to its mountainous structure and the fact that this situation facilitates border crossings, the Van border is more preferred. There are two main entry points to Van: Caldiran and Baskale districts. Some of the passport holders enter through Kapikoy or Gurbulak border gates and stay in Turkey beyond the legal limits and become “irregular” migrants.

Other groups of migrants entering frequently from the Van border are Iranian, Pakistani and Bangladeshi migrants and refugees.

After the 1979 regime change in Iran and the establishment of the Islamic Republic, almost all the dissidents were declared as enemies of the regime. Therefore, a large number of Iranian political refugees enter Van. The death penalty, actual detention, and torture are still widely practiced in Iran. People whose lives are at risk for reasons such as political opinion, political action, or sexual orientation continue to leave Iran.

The leave of Pakistani and Bangladeshi migrants from their countries is mostly based on economic reasons. In extreme poverty, unemployment, extreme economic inequality, and economic depression, people are embarking on a dangerous and long migration journey. Since these two countries are former British colonies, the goal of most migrants is to reach the UK.

From time to time, migrants and refugees from Iraq and Syria, and even the migrants from various African countries enter Turkey from the Van border as it is a migration and trade route.

After entering the Van border, migrants mostly cross to other provinces on foot or by vehicle and start to work in informal jobs in cities such as Istanbul, Izmir, Konya. However, some of the migrants stay and work in Van as they cannot handle a longer migration route which is already quite long.

Refugees and migrants entering Turkey from the Van border can be considered in three categories according to their reasons for leaving their country:

The first is the political refugees at risk for political reasons, these are mostly coming from Afghanistan and Iran.

The second is mostly Afghan refugees fleeing war and conflict.

The third group is the migrants who come to Turkey to work, either in search of a better life or to send money to their families, because of extreme poverty and unemployment in Afghanistan, Iran, Pakistan, and Bangladesh.

INTERNATIONAL PROTECTION IN TURKEY

The Geneva Convention dated 1951 on the legal status of refugees, together with the protocol approved in 1967 in New York, defines refugees as follows:

“A person who is outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁵

Although Turkey was one of the first signatories of the Geneva Convention, it puts a geographical limitation and reservation for the definition of refugees. Thus, Turkey accepts only those who come from Europe as refugees with a vital risk or danger of persecution. Although many countries removed such reservations in the 1967 Protocol, Turkey continued its attitude.

15 Convention on the legal status of refugees (1952) <https://www.goc.gov.tr/kurumlar/goc.gov.tr/yonetmelikler/Sozlesmeler/Multecilerin-Hukuki-Durumuna-Iliskin-Sozlesme.pdf> (accessed on 10.08.2021)

In the early 1990s, Turkey faced mass refugee influxes on the Iraqi border during the First Gulf War, so it had to make a regulation for refugees. In this context, the field of migration and refugees has been tried to be managed with the regulation regarding the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country which was put into effect with the Council of Ministers Decision dated 14.09.1994 and numbered 94/6169 of the Ministry of Interior.¹⁶ Determination of the status of immigrants and refugees within the scope of the regulation was put into practice through the Section for Foreigners established within the police force.

With the war and conflict in Syria started in 2011, Turkey has faced a mass influx of refugees for the second time. Millions of Syrians who fled the war and took refuge in Turkey have been described as “guests” with no legal status. With the increasing number of refugees, existing regulations have become inadequate, thereupon, Law on Foreigners and International Protection no. 6458 was accepted in the Grand National Assembly of Turkey and published in the Official Gazette on April 11, 2013. A year later, it came into force on April 11, 2014, and this is the law that is still in effect.

The law regulates asylum provision in accordance with international human rights and refugee law, and in the law, “non-refoulement” is clearly defined:

“Non-refoulement”

“Article 4 – (1) No one within the scope of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom

¹⁶ Elcin, D. (2016) “Similarities and Differences between the European Council Directive no. 2001/55 on the Temporary Protection Status applied to Syrians in Turkey and the Temporary Protection Regulation”, TBB Magazine, 124: 9-80, 12, 15.

would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.”¹⁷

In Article 61 of the law, due to Turkey’s reservations, a definition of a refugee is given that includes geographical limitations, which is narrowing the definition considerably and making it unusable:

“ARTICLE 61 - (1) A person who as a result of events occurring in European countries and owing to a 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 citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process..”¹⁸

According to Law on Foreigners and International Protection No. 6458, a migrant seeking international protection from Turkey can benefit from three protection statuses according to their conditions:

- refugees,
- conditional refugees or
- subsidiary protection status.¹⁹

17 Law on Foreigners and International Protection (2013) <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf> (accessed on 10.08.2021)

18 Law on Foreigners and International Protection

19 Law on Foreigners and International Protection

As the refugee definition has become unusable due to geographical limitation, in the Law on Foreigners and International Protection No. 6458, an intermediate formula has been developed to cover immigrants from outside Europe, defined as “conditional refugees”:

“Article 62 - (1) A person who as a result of events occurring outside European countries and owing to a 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 or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey until they are resettled to a third country.”²⁰

The type of protection considered as complementary protection in international refugee law has been accepted as subsidiary protection in Article 63 of Law No. 6458.

“Article 63 - (1) A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would;

- a) be sentenced to death or face the execution of the death penalty;
- (b) face torture or inhuman or degrading treatment or punishment;
- (c) face a serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict; and therefore, is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.”²¹

Due to the uncertainty of the status of millions of Syrian refugees, who were initially described as “guests”, in Article 91 of Law No. 458, “temporary protection status”, which has no equivalent in international law, is defined. According to the Temporary Protection Regulation issued pursuant to Article 91/2 of the Law, this type of protection refers to the protection which is developed to find urgent solutions to meet the international protection needs of foreigners who come to the borders of the Turkish Republic in mass and whose international protection request cannot be evaluated individually.²² It consists of the elements of free admission to the territory of the country, compliance with the principle of non-refoulement, and meeting basic needs.

READMISSION AGREEMENT

The Readmission Agreement between Turkey and the EU was signed in 2013 and adopted by Parliament in 2014. In the first paragraph of the fourth article of the agreement entitled “Readmission of third-country nationals and stateless persons”, Turkey undertakes to readmit refugees and migrants went from Turkey to EU countries:

21 Law on Foreigners and International Protection

22 Baran-Celik, N. (2015) “Rights and Obligations of Foreigners Applying for International Protection or Benefiting from International Protection in Turkish Law”, Inonu University Faculty of Law Journal Special Issue, 1: 67-148, 73.

1. Turkey shall readmit, upon application by a Member State and without further formalities to be undertaken by that Member State other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfill the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that ... such persons:

- a. If he has a valid visa issued by Turkey for direct entry into the territory of a Member State from the territory of Turkey at the time of submitting his application for readmission,
- b. hold a residence permit issued by Turkey; or
- c. illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Turkey.²³

In 2015, a refugee crisis had erupted, affecting the world. Migrants and asylum seekers trying to cross the EU borders illegally in hopes of achieving better living conditions generally used the Aegean (from Turkey to Greece by sea or land) and Central Mediterranean (usually by sea from Libya to Italy) routes. The refugee crisis concerns Turkey and Europe closely due to the conflicts in Syria and the Middle East, especially considering their geographical location. The total number of people who reached the EU borders illegally in 2015 was over 1.8 million. 33% of them are Syrian. The rest of this rate consists of citizens from Iraq, Pakistan, and Afghanistan and citizens of other nationalities.²⁴

23 Official Gazette (2014) "Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing Without Authorisation", <https://www.resmigazete.gov.tr/eskiler/2014/08/20140802-1-1.pdf> (accessed on 10.08.2021)

24 Saliji, T. (2018) "European Union Readmission Agreements: The Case of Turkey", Ankara University Master's Thesis, p. 91-92.

The Readmission Agreement signed in 2014 was supposed to come into effect at the end of a 3-year process, that is, in 2017. However, with the refugee crisis, the implementation was moved to an earlier date and Turkey began to implement the obligations of the readmission agreement as of June 1, 2016.

REASONS FOR AVOIDING ASYLUM APPLICATION

Since Turkey did not have its own asylum system for many years, asylum seekers have made their applications for international protection to the United Nations (UN) High Commissioner for Refugees offices in Turkey. The commissioner's Van office, which was opened in 1997, conducted the registration of asylum seekers, determination of their status, and placement of those who were granted refugee status in a third country until 2018.

As of 2018, Van Office of the UN High Commissioner for Refugees has stopped the registration and status determination processes of asylum seekers and transferred these activities to Turkey. With this process, as refugees and migrants began to experience great problems in Van, migration routes increasingly became the "road to death".

One of the new regulations made within the scope of the Law on Foreigners and International Protection No. 6458 was the establishment of the Directorate General of Migration Management and provincial organizations affiliated with this directorate. Although transferring immigration applications from the Section for Foreigners within the Police Force to a civil institution looks like a positive step, it has not had much effect in practice.

Unlike the UN High Commissioner for Refugees, Migration Management agencies have tended to reject a large proportion of asylum applications. For this reason, asylum seekers who have applied for asylum to the UN High Commissioner for Refugees at the Van border or by coming to Van in the past have started to avoid legal appli-

cations as of 2018, seeing that the result is usually deportation.

At this point, two basic problems can be mentioned:

The first is the fact that the refugees are not only limited to those who come from Europe according to Foreigners and International Protection Law No. 6458 but also that the protections such as conditional refugee and temporary protection are not adequately implemented. When large numbers of refugees are caught by law enforcement, either their asylum applications are not received, or they are not subjected to a sound evaluation process when their asylum application is received. Turkey does not have a healthy, functioning asylum system based on basic human rights.

The second problem is the preferences or weaknesses of the Migration Management's personnel policy. The personnel evaluating asylum applications consists of people who have not received adequate training on refugees and asylum, as well as general human rights training. For example, a homophobic staff may determine the asylum status of LGBTI+ refugees who are facing the threat of the death penalty in Iran. A staff member with extreme religious views may evaluate the application of an Afghan who has changed his religion and become a Christian or Bahai and may give a deportation decision or, an ultranationalist staff member may reject an Iranian Kurd's application of protection because of political motivations only.

MIGRANT SMUGGLING

Since 2018, this situation of the asylum policy has led to the acceleration of migrant smuggling at the border. Instead of applying for asylum at the border or within the borders of Van, migrants and refugees are trying to reach the western provinces in a way. Since they are often deported when caught by law enforcement, they prefer more difficult, steep, and dangerous routes where they are less likely to be caught and they fall into the trap of migrant trade networks.

Migrant smuggling has become a highly "lucrative" activity.

Smugglers state that they receive 500 to 1000 dollars for each migrant crossing the border. Therefore, a smuggler who passes 100 migrants across the border can earn between 50 thousand and 100 thousand dollars at a time. And even if they are caught, there is no financial loss for them. This excessive gain is the main reason why smugglers put large numbers of migrants on boats in Lake Van in a way that exceeds their capacity.

Another important element that promotes trafficking is the policy of impunity. The crime of migrant smuggling is regulated in Article 79 in the second part titled “Migrant Smuggling and Human Trafficking” of the first part titled “International Offenses” of Turkish Penal Code No. 5237 entered into force on 1 June 2005. According to it:

“(1) Any person who, by illegal means and with the purpose of obtaining, directly or indirectly, a material gain:

(a) enables a non-citizen to enter, or remain in, the country, or,

b) enables a Turkish citizen or a non-citizen to go abroad, shall be sentenced to a penalty of imprisonment for a term of three to eight years and a judicial fine of up to ten thousand days. (Sentence Added on 22 July 2010 – By Article 6 of the Law no. 6008) where the offense remains as an incomplete attempt, the penalty shall be imposed as if completed.

(2) (Paragraph Added on 22 July 2010 – By Article 6 of the Law no. 6008) The penalty to be imposed shall be increased by half to two-third where it:

a) constitutes a danger to the lives of the victims,

b) subjects the victims to degrading treatment.

(3) Where the offense is committed in the course of the activities of a criminal organization, the penalty to

be imposed shall be increased by one-half.

(4) Where the offense is committed by a legal entity, the relevant security measures shall be imposed upon that legal entity.”²⁵

The penalties stipulated in the same article of the law are as follows:

Any person who, by illegal means and with the purpose of obtaining, directly or indirectly, a material gain, enables a non-citizen to enter, or remain in, the country, or, enables a Turkish citizen or a non-citizen to go abroad, shall be sentenced to a penalty of imprisonment for a term of three to eight years and a judicial fine of up to ten thousand days. Even if the offense remains as an incomplete attempt, the penalty shall be imposed as if completed.

“If the offense constitutes a danger to the lives of the victims, subjects the victims to degrading treatment, the penalty to be imposed shall be increased by half to two-third

“If this offense is committed by more than one person together, the penalty to be imposed shall be increased by one-half, and if the offense is committed in the course of the activities of a criminal organization, the penalty to be imposed shall be increased by one-half to onefold.

“Where the offense is committed by a legal entity, the relevant security measures shall be imposed upon that legal entity.”²⁶

25 Turkish Penal Code (2004) mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf (accessed on 10.08.2021)

26 Turkish Penal Code.

Although there are relatively heavy provisions in the Turkish Penal Code on migrant smuggling, it is observed that detention measures are generally not applied or there are short-term detentions after the investigation and judicial process regarding the detected and caught smugglers. For example, two smugglers were put on trial after the boat with refugees sank in Bitlis on 26 December 2019 and 7 refugees lost their lives, but they were released within two months.

When migrant smugglers are punished, the penalties are applied at the lowest limit. As noted in the Van Bar Association report,

“It was also seen that the sentences approved at the appeal stages become meaningless with the Law Amending the Law on the Execution of Sentences and Security Measures and Certain Laws No. 7242 published in the Official Gazette on April 15, 2020, and the punishment of migrant smugglers whose sentence has been finalized executed without even being put into prison.”²⁷

In addition, various consumer goods such as tea, cigarettes, and gasoline are smuggled across the Iran-Van border and a de facto informal economy emerged. In 10 years, 71 people who engaged in such smuggling and made their living from this business were killed mostly by Turkish soldiers. Although many lawsuits have been filed regarding these deaths, they have not been brought to the public agenda and most of them have been settled with impunity. The fact that migrant smuggling taking place so easily in a system where even cigarette smuggling is a crime and daily 1000-1500 immigrants can cross the border in some periods points out that the smugglers have connections in official institutions.²⁸

27 Van Bar Association Migration and Asylum Commission (2020) “Investigation Report on the Massacre of Migrants/Asylum Seekers in Lake Van on 27 June 2020” <http://www.vanbarosu.org.tr/uploads/2694.pdf>, p. 14 (Accessed on 10.08.2021)

28 The information that is given by the journalists who spoke at the workshop

THE JOURNEY OF MIGRATION THAT TURNED INTO THE JOURNEY OF DEATH

Most refugees from Afghanistan, Pakistan, Bangladesh, and the eastern regions of Iran reach Van by walking mostly on foot, which takes between 15 and 30 days. Migrant smugglers on the Iranian side of the Van border only describe the route and the refugees and migrants cross the border on their own. In some cases, migrant smugglers contracted from the Turkish side meet them, and in this case, the migration journey, which carries the risk of death, continues via Lake Van or the highway.

For the majority of migrants and refugees, it is critical not to be caught by law enforcement in Turkey. Because the asylum system is based on refoulement. This, in turn, causes migrants and smuggler groups to prefer steep and dangerous roads where there is no gendarmerie and police control.

Especially Balaban Checkpoint between Gevas district of Van and Tatvan district of Bitlis is located in a very steep area and it is hardly possible to get around it. Migrant smugglers who do not want to be caught use Lake Van to cross through it. For this reason, in recent years, the number of boats sinking in Lake Van and migrants who have lost their lives has been increasing.

A boat carrying more than 70 refugees had capsized off the coast of Adilcevaz district of Bitlis in Lake Van on December 26, 2019, 7 refugees had lost their lives, 64 people had survived the disaster.

On June 27, 2020, the boat in which more than 100 migrants were boarded sank in Lake Van too, and it was determined that 61 asylum seekers lost their lives as a result of the search efforts that lasted for days. It is understood from the statements of the case defendants that Lake Van has become a standard route that is used by migrant smugglers in recent years and a large number of immigrants are being passed through Van Lake by boats.

Despite numerous deaths in one year, it is seen that the smuggler titled Refugees Human Rights Violations in Van, organized by the Association of Equity Studies on August 6, 2021.

activities continue on the lake. On April 8, 2021, 20 asylum seekers were caught in a boat in Van Lake, off the Ahlat district of Bitlis by the Ahlat Public Security Boat Command Team. It was determined that there were 17 Afghan, one Pakistani and two Bangladeshi asylum seekers on board, and the immigrants were fined 94 thousand 920 Turkish liras.

Deaths occur not only in Lake Van, but also in other stages of the migration journey. Especially in winter, migrants cross mountains and steep cliffs to cross the border far from the checkpoints. Migrants lose their lives due to extreme cold, snowstorms, and sometimes frost.

13 asylum seekers froze to death in the Caldiran District of Van on February 8, 2020.

Only a week later, on February 15, 2020, the asylum seekers crossing the Iranian border were captured in Saray District, and 3 out of 27 asylum seekers were found frozen to death.

A month later, on March 14, 2020, the mortal remains of 7 asylum seekers who died of cold in the district of Caldiran again were found.

The bodies of 26 asylum seekers who were frozen to death were found in 2019. Many of the bodies found to have frozen to death are unrecognizable due to natural conditions and wild animals, and they are buried in the cemetery of the nameless like dozens of asylum seekers whose dead bodies were found in the sea.

In addition, a large number of migrants died as a result of traffic accidents in vehicles arranged by smugglers. Some of these accidents are as follows:

The minibus carrying 21 asylum seekers rolled into a ditch in Van on November 6, 2018, and 5 of them lost their lives.

On May 6, 2019, 5 immigrants lost their lives as a result of the rollover of the truck with the refugees in its trailer in the town of Tusba in Van.

17 immigrants lost their lives as a result of the minibus carrying asy-

lum seekers rolled over into a ditch on July 26, 2019.

On 27 June 2020, 1 migrant died as a result of the accident by the minibus carrying refugees in the Muradiye district of Van.

A minibus carrying 33 migrants tumbled on the Van-Ercis Highway on November 12, 2020. 2 people were killed in the accident and 31 were injured.

On July 10, 2021, 12 people died as a result of a minibus carrying asylum seekers rolled into a ditch in Muradiye district of Van.

REFOULEMENT (REMOVAL) CENTERS

Administrative detention defined in the second paragraph of Article 57 of Law No. 6458 can be applied for the migrants to whom a removal from Turkey decision is issued:

“Those for whom a removal decision have been issued, the governorate shall issue an administrative detention decision for those who; bear the risk of absconding or disappearing; breached the rules of entry into and exit from to Turkey; have used false or fabricated documents; have not left Turkey after the expiry of the period granted to them to leave, without an acceptable excuse; or, pose a threat to public order, public security or public health or alternative obligations to administrative detention are imposed for these persons pursuant to Article 57/A. Foreigners subject to administrative detention shall be taken to removal centers within forty-eight hours of the decision by the [same] law enforcement unit that apprehended them.”²⁹

The duration of administrative detention in removal centers shall

29 Law on Foreigners and International Protection

not exceed six months. However, in cases where the removal cannot be completed due to the foreigner's failure of cooperation or providing correct information or documents about their country [of origin], this period may be extended for a maximum of six additional months.

However, administrative detention is an exceptional measure and should not be applied in non-obligatory situations. Applicants shall not be subject to administrative detention solely for lodging an international protection claim. The governorship may establish other procedures instead of administrative detention. If these measures are not sufficient, administrative detention can be applied only in exceptional cases.

The administrative detention process shall be realized in removal centers and these centers are defined in Article 58 of Law No. 6458:

“Article 58 - (1) Foreigners subject to administrative detention shall be held in removal centers.

“(2) The removal centers shall be operated by the Ministry. The Ministry may have these centers operated by public institutions and agencies, the Turkish Red Crescent Association or non-profit associations with expertise in the field of migration by means of a protocol.

“(3) The principles and procedures related to the establishment, management, outsourcing, inspection of removal centers and the transfer of foreigners subject to administrative detention to removal centers for removal purposes shall be regulated with a Directive.³⁰

Since the asylum system in Turkey is operated on the basis of deportation, removal centers have become widespread and the number of those kept in these centers has increased. For example, Asylum seeker reception centers were established as a pilot

scheme in six provinces in Turkey for a large number of refugees who came after the Syrian Civil War. Over time, all of these were closed and converted into removal centers.

Although asylum seekers identified by law enforcement agencies have the right to apply for asylum under law 6458 after they are apprehended, these rights are often violated. Refugees are either forcibly deported directly by being taken to the border gate, or they are sent to removal centers where they are kept under administrative detention.

Migrants held under administrative detention at removal centers also face various rights violations. First of all, these centers do not have the necessary and adequate medical equipment. There are no doctors to check pregnant women. Refugees who go to the hospital are unable to establish healthy communication with doctors because they do not have an interpreter in their own language and therefore cannot undergo the necessary control and treatment procedures.

A rape case against a refugee woman named Z.M. who came from Iran was also reflected in the press. The rape case was revealed when Z.M. explained the incident to the management of the removal center on July 26, 2020. The woman who testified to Van Ed-remit Gendarmerie Command identified Y.V. and I.H.K who raped her. After identification, 2 security guards, whose statements were taken by the gendarmerie, were arrested on the charge of “aggravated sexual abuse” by the decision of Peace Court of Criminal Jurisdiction and jailed in Van T Type Closed Prison.

THOSE WHO CAN REACH VAN

Almost all migrants who cross the border on their migration journey and reach Van aim to reach the western part of the country. From here, they plan to reach Greece and Bulgaria either by sea from the Aegean coast or through the land border.

Although migrants consider Turkey as a transit country, after they

reach Van, they may not be able to go to other regions. Migrants who arrive in Van with their passports or illegally are sometimes forced to stay in Van for years.

It is not possible for asylum seekers, who are in “irregular” migrant situations because their legal stay has expired or because they have already entered illegally, to work in a formal job. Refugees who have to meet their basic food and other needs to live are employed in various jobs without any rights or guarantees. Since they accept salaries far below the minimum wage, sometimes they are preferred to be employed more. Practices such as long working hours, low wages, dismissal possibility at any time, humiliation, insults, failure to getting payment have become ordinary working orders for them. In particular, children are employed as apprentices in industrial sites for very low wages, almost like slaves.

During the Covid-19 epidemic, especially due to the closure of small enterprises, they were deprived of the work they had to do despite all the problems, and some have completely lost their income.

Refugees who do not have a regular and sufficient income live in old, derelict buildings that are on the verge of fall down. Some of them stay in the bus stations for a long time. There are a large number of refugees who are forced to live in the park as homeless in the summer.

Refugees in the position of irregular migrants are not actually able to use any health services. As they are illegal and violators of the law from the viewpoint of the state, the refugees in this situation can only receive treatment when they apply to health care units in an emergency or mandatory situation. However, when they apply to any public institution including hospitals, that public institution is obliged to report it to the relevant law enforcement authorities. For this reason, although most of the refugees have health problems, they are unable to go to hospitals due to deportation concerns, and their right to access healthcare services, which is a basic human right, is violated.

Another option for unregistered refugees is paid treatment in private

hospitals. Private hospitals are also required to report unregistered migrants to law enforcement. However, since it is a paid service, it is known that this obligation is sometimes ignored, and actual practices are applied. However, considering that they are already struggling to survive in a difficult situation and most of them have no income, it is also impossible for refugees to cover private hospital costs.

The refugees who have applied for asylum and whose application is in the evaluation process are legally entitled to free access to medical services for a certain period of time. However, this is valid under very limited conditions and for a temporary period. First of all, the condition of being in the province where the refugee is registered is sought. On the other hand, with the new regulation, the process of using health care services is limited to one year. Because gaining the International Protection Status, to which the asylum seeker applies, has been made difficult to obtain and the evaluation process may take years. For this reason, the government limited this right to one year through its regulation on access to health care services. After one year, refugees are forced to pay contributions. And these contributions are based on the “tourist” tariff. In other words, they have to pay about three times the service price paid by a Turkish citizen who doesn’t have any health insurance. Given that they do not have regular and adequate income, this is not possible for them, and it leads to very serious victimization. In this way, health care is removed from being a right, and it is converted into a “service” that is provided for a fee.

RECOMMENDED SOLUTIONS

Even the fact that refugees and immigrants, who entered Turkey from the Van border, are staying in Van, or transiting to other provinces, have had to leave their countries shows that the problem is an international one. For this reason, what can be done both in Van and throughout Turkey will inevitably be invalid with certain limitations.

- One of the first and foremost steps to be taken in the international arena is the cancellation of the Readmission Agreement

signed between the EU and Turkey. The EU's approach to keeping refugees out of its borders and treating Turkey as a "refugee depot" must change. On the other hand, the use of refugees as a means of negotiation in international politics should be stopped and a policy should be followed that takes into account their fundamental rights.

- Safe ways for refugees to enter a third country should be opened, not only Turkey but also the EU and other countries should accept asylum requests and their refugee status.
- Especially the entry of migrants who are identified as "irregular" and entering Turkey from the Van border should be regulated, registered, they should undergo health checks, especially for Covid-19, and their asylum requests must be received by experts.
- In border cities such as Van, Agri, Igdir, the wall construction aimed at preventing the entry of refugees into the country should be stopped. The approach of condemning people at risk to death behind the wall should be stopped, and an asylum system with respect to fundamental rights should be applied.
- The geographical limitation established in the Geneva Convention on the Legal Status of Refugees dated 1951 should be abolished. Refugees coming from the eastern side of Turkey should be granted refugee status and their rights arising from this status must be recognized.
- An immigration law office that will inform immigrants legally, answer their questions and provide free services must be established in Van within the body of the Immigration Administration and in cooperation with the Van Bar Association.
- The lack of a healthy asylum and migration policy encourages migrant smuggling. Precautions must be taken against migrant smuggling, and legal practices leading to impunity for caught migrant smugglers must be changed.
- In order to prevent possible tragedies in Lake Van, surveillance activities should be increased in a way that does not harm peop-

le's right to seek asylum.

- The basic needs of refugees, who are forced to live in inhumane conditions in Van, such as housing, health and food, must be met.
- Policies should be developed to protect refugee women and LGBTI+s from gender-based violence and victims of gender-based violence must be supported with a holistic approach in accordance with the Istanbul Convention and Law No. 6284.
- Search/checkpoints in Van must be transformed to the points where asylum seekers can apply for asylum and asylum seekers should have the opportunity to benefit from international protection without fear of deportation.³¹
- In order to prevent corruption of public officials working in the border region, the assets of them and their immediate family members must be inspected at regular intervals before they take office and when their duties end, and it should be ensured that the law enforcement officers working at border line and search/control points receive systematic training in the fields of human rights and refugee law.³²

31 Van Bar Association Migration and Asylum Commission, Investigation Report on the Massacre of Migrants/Asylum Seekers in Lake Van on 27 June 2020

32 Van Bar Association Migration and Asylum Commission, Investigation Report on the Massacre of Migrants/Asylum Seekers in Lake Van on 27 June 2020



EŐİTLİK
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