

EXTERNALIZATION OF THE REFUGEE RESPONSIBILITY:
THE ROLE OF TURKEY WITHIN THE INTERNATIONAL REFUGEE
SYSTEM WITH SPECIAL REGARD TO AFGHAN REFUGEES

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ABSTRACT

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This thesis analyses the transformation of the refugee system in the neoliberal period. Departing from the idea that the fundamental of the modern refugee system has a close relation to capitalist economic structure both politically and economically, the reasoning entails refugee system to transform in accordance to transformation in the political and economic conjuncture. This thesis studies refugee related policies specific to neoliberal period to understand the organic relation between the refugee system and neoliberalism. In this regard this thesis used the ‘externalization’ concept as the unique substance of the refugee policies in the neoliberal era. Hence the thesis investigates to identify and trace the development of the externalization policies to establish an international neoliberal refugee system framework. In this regard the thesis traced externalization process on the four different areas concerning policies regarding the sustainability, accessibility, determination procedure and legal structure. Established international framework will be used as basis to identify the development and harmonization process of the Turkish refugee system. The integration of the Turkish refugee system to European framework has been crucial to identify if Turkey has been part of the international externalization framework. Both the international and Turkish framework will be tested with the Afghan refugee crisis

in Turkey. Analysis of the Afghan refugee crisis will provide an answer to the question whether there is an existence of an externalization of the responsibility process. Furthermore if there is such a process, thesis will also provide how externalization in practice occurs in the Turkish and international framework.

Keywords: Refugee, Externalization, Turkey, International Refugee System, Afghan Refugees

ÖZ

MÜLTECİ SORUMLULUĞUNUN DIŞSALLAŞTIRILMASI: AFGAN MÜLTECİLER ÖZELİNDE ULUSLARARASI MÜLTECİ SİSTEMİNDE TÜRKİYE’NİN ROLÜ

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Bu tez neoliberal dönemde mülteci sisteminin dönüşümünü incelemektedir. Tez, modern mülteci sisteminin politik ve ekonomik olarak kapitalist sistemiyle yakın ilişkide olduğu düşüncesinden hareketle, mülteci sisteminin politik ve ekonomik konjonktürdeki dönüşüme paralel olarak bir dönüşüm içerisinde olacağı varsayımında bulunmaktadır. Bu tez mülteci sisteminin, neoliberalizmle olan organik bağı anlamak için neoliberal döneme özgün, mültecilerle ilgili politikalarını araştırmıştır. Bu bağlamda ‘dışsallaştırma’ kavramı mülteci sisteminin dönüşümündeki neoliberalizme ilişkisini gösteren özgün parçası olarak belirlemiştir. Dolayısıyla tez dışsallaştırma politikalarını tespit edip ve bu politikaların gelişim sürecinin izini sürerek, uluslararası neoliberal mülteci sisteminin çerçevesi de kurmaktadır. Bu çerçevede tez dışsallaştırma politikalarının izini mülteci sorumluluğunun dışsallaştırılması sürecinde mültecinin sürdürülebilirliği, erişimi, mülteci belirlenme süreci ve yasal alanlar olmak üzere dört farklı alanda olduğu belirledi. Bu oluşturulmuş uluslararası çerçeve bir temel olarak kullanılarak Türkiye’deki mülteci sisteminin gelişimi ve uyumlaştırma süreci irdelenecektir. Türkiye’deki mülteci sisteminin, Avrupa mülteci sistemine bütünleşmesinin analizi Türkiye’nin uluslararası mülteci dışsallaştırma sürecinin de bir parçası olması

yönünde önemli bir gösterge olmaktadır. Hem uluslararası hem de Türkiye çerçevesi Türkiye’deki Afgan mülteci krizi özelinde incelenecektir. Afgan mülteci krizinin irdelenmesi pratikte bir dışlanma sürecinin varlığını sorusuna cevap arayacaktır. Böyle bir sürecinin olması durumunda, bu dışsallaştırma sürecinin pratikte nasıl bir süreçte işlediği incelenecektir.

Anahtar Kelimeler: Mülteci, Dışsallaştırma, Türkiye, Uluslararası mülteci sistemi, Afgan mülteciler

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CHAPTER 1

INTRODUCTION

1.1: Objective of the Study

The main objective of this thesis is to investigate the "refugee" system in its relation to international political-economic system. One of the reasons for conducting a thesis in the field of migration that selected the refugee system as a problem to be investigated upon, lies in the nature of the hitherto studies around the field of migration in Turkey. There are three subjects of inquiry dominant in these studies; the first line of studies conducted in the field of migration, have been influenced by Turkey's dominant characteristic of being an emigration country. By virtue of this, these studies, which are generally focused on Turkish minority groups especially in Germany, France and Holland, rather display a conceptual framework focusing upon economic migration which has its historical roots within the Keynesian period. In the Turkish migration studies, the contribution of researches creating a debate on the refugees issue *per se* are rare cases. These rare cases can be narrowed down into two isolated perspectives; while one of the two studies approached refugees on individual or community level and discussed the challenges within the prevalent system rooted within sociological studies, the other drew upon studies which take 'state' as the essential component and constructs a discussion around issues of geographical limitations, securitization, and power relations in the context of Turkey- EU accession dynamics.

In the midst of fragmented migration studies, studies composed of "de-centred subjects", the refugee system in its relations to mode of production are not aspired to be put into a zealous critical analysis. Empirical analysis of the migration movements have categorized origins of the motivation behind movements on an economic or political basis. The clear cut categorical differentiation between these two categories also influenced the systemic structure of the refugee system. Categorical

differentiation of the political movements has been artificially established while both of the categories have been historically embedded. Different stages of a wealth accumulation processes influence the generation of different flows of migration in accordance to political economic regime. This claim depends upon the notion that the migration system didn't evolve today's understanding of modern migration system until the consolidation of the capitalist system at an international level which had its roots in the 1848 French Revolution (Sassen: 1988, 31). Separation between foreigners and citizens has shown itself in various forms in different capital accumulation processes. This could be extended to host-colonial country relations, guest workers-host country relations or today as irregular immigrants-host country relations. This thesis sets 'refugee system' to be part of the capital accumulation process and investigates the transformation of the refugee system through the worldwide consolidation of the neoliberal economic principals.

Today immigrants of third world countries in mainstream perspective and politics, are seen as one of the ultimate threats, in which public opinion of host countries claim that no policies or gates can keep them on the other side of borders, away from the richness and job opportunities of a host society. However, what has been acknowledged as an outsider, an alien or foreigner is in fact a partner of the nation state system and the single entity that is known as capitalism. Immigrants have been one of the closest forms to the "free" worker image that enters into exchange relations with the capital holders by having no rights when once having crossed the territories of different nation sovereignties, to this extent, migrants became the most exploited group within a host country. Migration can't be perceived as a mere result of an individual or communal decision of immigrants to maximize their economic outcome but has to be seen as a process in the intersection of the economic and geopolitical process which has to be considered historically. In this respect refugees became more important as their rights were recognized within the international order after the WWII period. However policies which were introduced after the 1980s, aimed to categorize those who could have benefitted from asylum rights. As such, the scope of the refugee concept was narrowed to a very specific definition and became something to be won.

This thesis emphasizes the relation between labour and the individual perceived as ‘foreigner’, investigation of this relation centres on the notion that being a non-citizen has the power to make potential labour capacity even lower than its original value in the host country. In this respect thesis investigates international refugee system in the neoliberal period to address if there is such a relation exists between labour-refugee. Since migration may result more from political reasons rather than economic reasons, ultimately there is no form of migration that transforms to labour and by that virtue is not exploited (Akalın: 2012). It can be argued further that in neoliberalism, asylum seekers became restricted in various means of conduct, so that they became equally or even more unprotected while entering into the same production relations in exchange for their labour. However, because of the artificial line placed between these two categories that shows them as two sides of the same coin, the implementation of policies is differentiated and vulnerabilities are achieved through different processes. Thus, the reaction and struggle of these two categories are differentiated as they are exposed to different categories of regulations. Modern refugee system has been the crucial pinpoint in the attempt of devaluation of the refugee status.

The historical development of the modern refugee system and how it proceeded to be established as a deadlocked system had been crucial in the analysis of the refugee system. Therefore, in contrast to the dominant trend prevailing in migration studies, from a Sassen framework¹, this thesis claims that migration has been a particular mode of movement varying from a country’s place within the international division of labour and the particular mode of specialization prevalent in a given time in the international order (Sassen: 1988, 27). In light of this framework, this thesis will examine the case of Afghan refugees in Turkish contemporary society. Set within a context of the “externalization of the refugee responsibility” and firmly rooted within a neoliberal political economy, it will set out to address to the question of whether Afghan Refugees are affected by ‘externalization’ policies introduced to Turkey under the harmonization of the EU Refugee framework. The answer of this question

¹ Thesis established the Saskia Sassen’s framework from her works in the field of migration studies especially from these three sources; *Guests and Aliens* (1999), *Globalization and Its Discontents* (1998), *The Mobility of Labor and Capital* (1988).

has been investigated through Chapter 4 and test out the parameters set out through Chapter 2 and Chapter 3.

The Afghan refugee crisis has been the most comprehensive case powered by its multidimensional level to analyse the international structure which aims to contain refugees in developing regions. The systemic and social contextual nature of hosting countries, push refugees out of the refugee system and they become irregular migrants entering a protected system. The Afghan refugee case also bears a personal motivation for me from my internship period in the ASAM. Afghan refugees in Turkey, much like other refugees, have been subjected to poor social conditions in practice, however their legal status has been the main problem specific to Afghan refugees. ASAM (Association for Solidarity with Asylum Seekers and Migrants) among other things has been responsible in pre-registration of the refugee coming into country. During my internship procedures for Afghan refugees were proceeding differently than rest of the refugees. Even though they were assigned to the satellite cities, their procedures were halted and weren't even given a first interview date with the UNHCR. To the extent that Afghan refugees started to protest against this discrimination. The problematic nature of the Afghan refugees was worth investigating as there were no official statements from the state or UNHCR. In the absence of any official statement, this thesis will try to provide an analysis for on what ground the refugee status determination process has been halted and attempt to provide, whether there could be a possible counter-measure to reinstate the determination process.

1.2: Theoretical Framework and Research Method

The economic dimension is important to acknowledge however it is not the sole determinant even though it predominates. To this extent, political, cultural, social and historical aspects, all contribute to the structure of the refugee system. This is the main reason why this thesis doesn't fall into trap of asserting an economic determinist position. Since it is important to acknowledge historical developments of relations and rights, which have been structured through particular modes of production, it continues to prevail in the subsequent capital accumulation processes. The immigration process of Turkish guest workers to Germany can illustrate this

point since the first flows of the immigration movements started in the context of a Keynesian system, through the principle of family reunification which started in the Keynesian period, and migration flows continued throughout the neoliberal period.² In this respect, social rights recognized in a particular period, remain as a source of legitimate immigration ground for future economic systems. In order to understand the nature of policy implementation through refugee systems in neoliberal era, it is crucial to understand what is specific about neoliberalism that influenced migration flows and what refugee system has inherited from the previous economic systems.

Through the consolidation process of the neoliberalism has been simultaneously accompanied with the destruction of the old economic system that has been known as Keynesian economic policies. Through Schumpert's analysis of capitalism simultaneous destruction and construction of new economic principals have been known in the literature with the "creative destruction" term. David Harvey used 'creative destruction' theorization to analyse the neoliberal transformation through the world by emphasizing transformation of policy areas unique to neoliberalism (Harvey: 2006). Main areas of the 'creative destruction' in neoliberal policy areas were analysed through the changes in the parameters of neoliberal economic principals known as; privatization, financialization, manipulation and management of crises and state redistribution. These main parameters showed the transformation of the role embedded to states in the economic and political field which has been drastically different from the Keynesian period.

In this new economic order the main role of the state has been shifted through financialization process which liberated capital to become transnational and no longer bounded to national borders. In return this process forced states to attract capital through privatization and state redistribution policies which led states to exercise their financial and political capacity for capital sided policies instead of investing on the labour sided policies. Transformation in the role of the state has not been limited to domestic scale but also included transformation of state role through

² In this thesis the term 'Neoliberal period' or 'Neoliberal era' has been used to specify the time interval specifically after the 1980s regarding to dissolution of the Keynesian economic practices and the consolidation of neoliberal economic practices through the world with the eventual end of the cold war period.

the international order. Even though capital was no longer bound to national borders it was not also independent from the country of origin or supported by the country of origin. In this respect, role of the states in the international economic order has been redefined in accordance with the new capital accumulation process.

The new international division of labour among states has been transformed in the new economic regime which led to transformation of the international migration system. Transnationalism of the capital had influenced the role of the states, in which led developing countries to be production centres in order to attract capital to the country. In this respect the new international migration system transformed and was enforced to become more regional which led to even further deterioration of the working conditions of migrants (Akalin: 2012). The classical perspectives to analyse international migration adhered increased transnational mobility from east-west to neoliberalism by claiming that liberal mobility has been one of the main features defining the neoliberal period. This theorization has been developed under narrowly constructed concepts of transnationalism, globalization claiming individualism has been the crucial component of neoliberalism while nation state and their borders have been diminished. On contrary to this claim, thesis suggests that in respect to human mobility through the neoliberal political regime, access to Europe has been in more restrictive nature in comparison to human mobility in Keynesian period which has been attributed to be stagnant. Through examining the transformation of the refugee system in neoliberal period, this thesis will prove that human mobility in the neoliberal period has been restricted.

In the neoliberal framework set out, 'externalization' emerged as a key concept that has been previously used in refugee studies to investigate the current refugee system. Through the investigation of the EU refugee regime, this thesis takes the concept of 'externalization' as a group of policies specific to particular mode of production which is neoliberalism. Externalization as a word has a vague definition that can be interpreted as externalization within the territory of the countries. The 'externalization' concept in this thesis set to be understood as a total of the design and application of policies mainly by EU countries (dominantly the traditional immigration countries), which aim to or result in movement of the asylum

application to third countries (Morgades: 2010; 5). This thesis argues that within the final stage of the harmonization process of the refugee policies through the EU accession process, Turkey became both the subject and the object of externalization policies aimed for refugees to be placed in third countries or contained within the Turkish territory in order to prevent access to EU. Through the examples of Syrian and Afghan Refugee crisis it has been observed that Turkey has been on both sides of the externalization process. In the Syrian Case Turkey has been object of the externalization process since Syrian refugees have been actively contained in Turkey. Through Afghan refugee case it will be seen that Turkey has been the subject of the externalization process in which through the Afghan Refugee Crisis, Turkey played an active role in externalizing the Afghan refugees in Turkey. In this respect, 'externalization' framework has been established through the international order and implemented through national legislations. Policies regarding externalization have been investigated in relation to four dimensions of the refugee issue; implementation of reform in regards to asylum status, access to country, outcome of the determination process and conditions of refugees within the country.

Through the neoliberal period, migration flows have been forced to transform into irregular migration and was perceived and declared to be a burden for host countries. Change of attitude towards migration enhances the nation states stricter control mechanisms in order to detain migration flows. In the irregular migration flows, the distinction between 'economic migrants' and 'refugee' became even more important than the previous periods. To this extent control mechanisms over the refugees started to emerge and became more challenging as to determine their intent for coming to host country. Externalization of the responsibility became intrinsic to the key principals of 'safe third country' and 'first country of asylum' which created the legal dimension for the restrictive control mechanisms. This thesis will use these key principals to show how the externalization of the refugees are legalized through the international system.

It was argued that "refugee status" became something that had to be won in the "global" world. (Zetter: 2007). It was no longer the responsibility of the state but the burden of the individual to earn refugee status. Beyond policy reforms regarding the

refugee field on a legal base, the social framework was also overhauled with restrictive measures put in place. Through the restrictive measures introduced, areas such as access to legal work, education and health systems emerged to be challenges that asylum seekers had to face. In addition to long and suspicious determination processes, the increased categories and statuses that refugees had to go through, created an ambiguous determination process. Intensive control over the asylum seekers, raises the question of what "refugee status" stands for. In order to understand refugee status and the control mechanisms around the refugee process, it is first crucial to analyse the term 'refugee' and 'statuses' which emerged around the refugee notion.

Turkey's geopolitical position and historical relations with the EU has been another motivation for carrying out a thesis in the refugee field. It has been argued that Turkey's special position in the refugee studies stems from its geographical position and also from the fact that Turkey has been one of the four countries along with Congo, Madagascar and Monaco, that still holds its reservation from the Geneva Convention on the 'geographical limitation'. As a result of holding such reservations on the recognition of refugees, non-European refugees became ineligible for gaining refugee status in Turkey. To this extent the refugees from the non-EU countries became temporary in the nature of their status. Furthermore contemporary refugee flows have been mainly generated within non-EU countries which made geographical limitation to be perceived as the biggest challenge within the Turkish refugee system. As the recognized non-EU refugees didn't have domestic legal ground for their residency, it was claimed that Turkey was tolerating those refugees during their stay. In the refugee studies focusing on Turkey and NGO reports geographical limitation Turkey upholds has been considered to be the biggest challenge in the Turkish refugee system. This thesis claims that geographical limitation, although an obstacle within the refugee issue in Turkey, is not the biggest obstacle, as international legal framework ensures the stay of refugees within Turkey through the non-refoulement principle. On the contrary, this thesis will argue that potential refugees accession to the refugee determination process and the social rights of refugees have been the main obstacles within the refugee system in Turkey.

The development of the refugee system in Turkey has been a particularly good example for analysing the externalization process of refugees. The Turkish case illuminates the changes within the international migration flows and also illustrates how policies regarding prevention of refugees have proceeded. Turkey's position within the refugee system cannot be taken as an isolated case otherwise this thesis will fail by conducting ahistorical study. In this regard the Turkish case has to be considered as a component of the international migration system, and studied in that context; where Turkey has been one of its integral parts since the 1960s. Turkey's position within the international migration system transforms in parallel to changes in the capital accumulation processes. In this regard, through the Cold War period, Turkey's position in the capitalist bloc has been another reason to conduct a study in Turkey because of its unique economic-politic position to pre-cold war period has the potential to establish continuities within the international migration system through different capital accumulation process. In comparison to other frontier countries of the EU refugee regime, Turkey has not been an ex-Soviet Bloc countries which integrated to capitalism world order after the consolidation of the neoliberalism.

Through the import substitution industrialization period, Turkey has been a component of the international migration system by mainly functioning as a labour force supplier. Intergovernmental agreements between Germany-Turkey has been one of the indicators of the Turkish position within the international migration system of the period. As the capital accumulation processes changed with neoliberal economic practices, Turkey's former role in the international migration system was abandoned. In the neoliberal period, the economic migration became unwanted and refugee system became crucial for migrants to stay in Europe this resulted with a swift increase in the refugee numbers. Hence as the economic migration was unwelcomed in the EU and refugee system was a glitch within the Fortress Europe, more control mechanisms were introduced to divert the refugee flows out of developed countries of Europe; mainly out of France, Germany and the U.K. In the first instance the Eastern European countries, then Turkey, became an important component to sustain Fortress Europe. In this regard the first notable refugee flows to

Turkey started in the 1980s and steadily increased in the following periods. Turkey was forced to adopt a refugee system which was a highly nation sovereignty prioritized system. Over the periods following 1990 through the EU accession negotiations and international cooperation, Turkey started to harmonize the refugee system with the EU. Although it has been thought that in the roots of these developments humanitarian concerns were the main motivations, in fact the main purpose was to create a functioning asylum system in Turkey so that refugees wouldn't force their way to Europe. In this regard the Turkish refugee history from 1980s shows how policies regarding the externalization of refugees were gradually developed within the Turkish case.

In the contemporary situation in Turkey with the 2014 New Law on Foreigner and International Protection, which has been the first national law regulating international protection, the legal framework on many topics regarding the subject of international protection has been harmonized with the EU framework and is discussed thoroughly in the third chapter. During the final stages of preparation and implementation of the new law, two important refugee flows have emerged from Syria and Afghanistan. The importance of the Syrian and Afghan refugee cases stems from the fact that they have been quantitatively the two largest refugee groups in the world and also stems from the political campaign embedded in these refugee flows. These two refugee flows illuminate the magnitude of the new cooperation established between UNHCR and Turkey through the new legal framework. In both cases, the main objective of the international community is to contain refugees of concern within the neighbouring countries around the country of origin. This cooperation functions so as to contain the Syrian refugee population in Turkey and other surrounding countries. Contrary to Syrian refugees, Afghan refugees in this cooperation were subjected to externalization out of Turkey to Iran while encouraging Iran to have a functioning refugee system for refugees to stay. This international cooperation functions through the externalization of the responsibility which became the essence of the modern refugee system.

Key concepts of 'safe third country' and 'first country of asylum' are the legal components of externalization of the responsibility structure. Through these legal

components, the Afghan refugee case will be examined in an attempt to understand if the externalization process of Afghan refugees in Turkey has a legal basis to be held upon. For this reason through the principles of ‘safe third country’ and ‘first country of asylum’, Iran will be examined in an attempt to understand the legal limbo Afghan refugees are stuck in. This study will use NGOs and UNHCR reports on human right violations and reports on the situation of Afghan refugees as main sources for the social structure analysis of Iran. The legal position of Afghan refugees in the Turkish refugee system has been the distinctive feature of the case, however the social structure in Turkey has been the main force driving vulnerable Afghan refugees out of the system. In this respect conditions of the Afghan refugees was an important part of the analysis to identify if there is an externalization process available. Since Afghan refugees have been registered to refugee system in Turkey, Afghan refugees are in a similar social structure to the other national refugee groups except for the Syrian refugees. Hence this thesis used Afghan Refugee Coordination report on the problems of the Afghan Refugees in Turkey and Zakira H. Frotan³’s interview as the main basis for identifying the problems of the Afghan refugees and support these claims through NGO reports, media research and parts of studies focusing on the problems of refugees in daily life.

³ Zakira H. Frotan is the main spokesperson in the protest of Afghan refugees in front of the UNHCR.

CHAPTER 2

INTERNATIONAL FRAMEWORK OF THE MODERN REFUGEE SYSTEM

2.1: Historical Development of the Refugee System

2.1.1: Geneva Convention and Regional Developments

The 1951 convention is the first convention that creates a fundamental framework in a step towards the institutionalization of the refugee system. As there are many important characteristics of the convention, two important features shape the basic fundamentals of the refugee applications which has been still preserved today. The first one is that the refugee system has shifted away from the collective application process to individual application processes. In fact this policy shift was firstly adopted by the International Refugee Organization (IRO) in 1946, which was established to deal with the remaining European population. In the pre-WWII period as refugee movements weren't internationally institutionalized nor had a legal framework, the period refugee movements main characteristic was its nature of being a collective process as can be seen from the 1864 Caucasian migration to the Ottoman Empire; whereby the process was handled by the state as it was an internal issue and attempt to control settlements of their refugee populations.

The second feature that shapes the fundamental characteristic of the refugee applications for the future is the description of the term "refugee" which is described on the basis of human rights concerns as stated in the first article of the Geneva Convention;

As a result of events occurring before 1 January 1951 and owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out- side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of

that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.(UNHCR: 1951)

The description above identifies the refugee on the basis of human right concerns, however in the current refugee system discussions, this narrow definition of the term refugee is argued upon on the basis of what is excluded from the description. Furthermore there are concerns raised around the subject of whether the refugee description is used as part of the hegemonic process. Refugee system can be seen as part of the conceptual apparatus that functions to consolidate the capitalist hegemony as it shapes around the political ideals of individual liberty and freedom (although they are narrowly constructed). As fundamental concepts such as “liberty” and “freedom” appeals naturally to people, in the case where these ideals are threatened, there is legitimate ground for intervention and for these people to save themselves (Harvey:2006; 126). In this manner, refugee system itself becomes a sacrosanct and international validity device to the point in which it could be used as a hegemonic weapon as did the U.S in the cold war period.

Another notion to point out in the debate around the refugee definition is the word choice of “persecution” which has been put deliberately by the international will to limit refugee flows. Although the word ‘persecution’ is open to interpretation, it falls within the rights of the state to grant or decline asylum based upon this vague description of the refugee. Therefore with the most fundamental understanding of “persecution” as a keyword, it allows a distinction between people who are victims of repressive political and economic regimes and those individuals who have been targeted by their government or political group and for whom state is unable to protect (Zolberg, Suhrke, Aguayo: 1989; 25). Regardless of the future interpretations and developments in different regions of the refugee definition, the convention was “Eurocentric”; at the time of its implementation, due to its designation as to fit in the range of the prospective beneficiaries who fell within the acceptable categories. In the following years, the scope of the international refugee system was developed at various rates in different regions however the liberal essence remained the same.

The period of the 1960s was important as the locus of the refugee issue changed its position to “Third World”. This led to de facto extension of those categories with international protection and was parallel to the formal changes in the refugee definition. One of the main characteristics of this period was the post-colonial insurgencies emerging through Africa and Asia producing more than 1 million refugees. One of the important features of these insurgencies was that refugees of the region remained in their area and didn’t make their way to Europe (Zolberg, Surhke and Aguayo: 1989). These regional emergencies needed to be addressed as the period’s refugee system didn’t include these people. In this scope, UNHCR was extended in 1961 to include vulnerable populations under the “good offices” doctrine.

However this extension in practice wasn’t enough to address the problems of the refugee system. The problem lay in the Geneva Convention’s main purpose which was to solve the refugee problem that emerged after WWII, therefore it was structurally unable to become universally applicable to the rest of the world’s refugee issues. The source of the inadequacy lies in the description of the term refugee which defines refugee within a limited timescale and geographical reach. In section B of Article 1, it defines this geographical and time limitation as follows;

- (1) for the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either
 - (a) “Events occurring in Europe before 1 January 1951”; or
 - (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

These issues were addressed with the New York Protocol of 1967; changes were made in time scale and geographical limitations by lifting these limitations. In the post-90s this became one of the most highly debated subjects in Turkey’s national agenda in its relation to EU-Turkey accession negotiations. Turkey declared in the Geneva Convention participation, to hold reservation in the limitations of time and geography which enabled Turkey to accept refugees from Europe in the events

occurring before 1951. Later in the 1967 Protocol, Turkey declared its participation without lifting the geographical limitation.⁴ Thus with the 1967 protocol, Turkey lifted time limitation and would only accept refugees from the European countries, whilst reserving its right from the 1951 Convention not to recognize *de jure* non-European refugees.

In the following years since the 1967 protocol, in the face of inadequate refugee definition, regional developments began to materialize. These regional progressions emerged specifically in Latin America and Africa. In 1969 the first regional development occurred in Africa with the “Convention on Refugee Problems in Africa” negotiated by the Organization of African Unity (OAU), in which the refugee definition was broadened. In the first article of the convention it restated the traditional refugee definition of the Geneva Convention. Later on it expanded with the regional circumstances by involving people within the war-like situations and civil insurgencies to the official refugee description.⁵ Similarly in 1984, Latin American governments adopted a similar extension to refugee definition with the Cartagena Protocol, in which it broadened the refugee definition by adding a statement that included people threatened by generalized violence or circumstances seriously disturbed public order.⁶ Both of these refugee definitions had a common development regarding extending the ground of the refugee situation to include “events seriously disturbing order” and “foreign intervention” could be understood as a collective claim of the Latin American and African countries to international

⁴ The instrument of accession stipulates that the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe

⁵ “2. The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

⁶ “Refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”

community. (Zolberg, Surhke and Aguayo 1989). Hence, regional definitions of “the refugee” start to emerge: It could be seen that regions whereas developing countries concentrated upon it could be seen that the refugee definition has been expanded, and the tendency in Western Europe has been in the opposite direction. (Sztuki: 1999; 68) Thus, as in the 1960s although Europe was stagnant in regards to refugee definition, to refugee-like⁷ processes started in Europe. On the other hand Goodwin-Gill’s observation concerning the UNHCR’s expanded role on the broadened definition of the refugee in the developing regions were self-serving. Through these definitions, acknowledgment of the refugees, without imposing “persecution” on anyone cloud the responsibilities of the OAU’s members in generating the flows. (Zolberg, Surhke and Aguayo: 1989; 29). It could be argued that with the regional development of the refugee definition, refugee became a localized terminology rather than a universal one.

This period’s importance concerning the international refugee system can be summarized with acknowledging the change of the locus of the refugee problem from Europe to developing countries. In addition to that, fundamental ground was laid which became the major challenge of the refugee regime today. The various regional definitions of the “refugee” definition created an ambivalent scope of international protection which led to *de facto* extension of the variety of persons suffering ‘relevant harm’ (Lavanex: 1999; 18). This challenge became more visible in later years as developing countries started to produce massive amounts of refugees who searched for political asylum in developed countries. In this sense there are no international homogeneous definition of “the refugee” and practices, regardless of Turkey’s position in the Geneva Convention and New York Protocol. The regional developments of the refugee term could be seen more as a historical indicators of early differences between Europe and the developing regions.

2.1.2: Indicators of Change in Refugee System

In the following years it will be seen that European countries start to implement

⁷ Refugee-like is a concept that has been used in the refugee studies to describe the cases where the traditional refugee definition is not applicable for the individual but has been considered as refugee as in the cases of civil insurgencies, wars.

policies that create “refugee” as a status difficult to obtain. The term ‘refugee’ is seen to be forced into a region specific concept and contained it in the regions where it’s generating. This process will be clearer in the post-Cold War period with the harmonization efforts of the European Union as well as the emergence of Fortress Europe⁸. In the beginning of the 1970s there were still refugee-sided policies which contained UNHCR's mandate to extend further to include people in refugee-like situations if no other agency were available to provide relief (Zolberg, Suhke and Aguayo: 1989; 29). However with the 1973 OPEC oil crisis and the economic crisis that followed, it was observed that the migration policies started to transform as well as the refugee policies with more administratively controlled structures in which prioritization of national interest over the humanitarian concerns become more evident.

The 1970s have been one of the turning points in the political economic order of the capitalist world which signifies abandoning import subsidized economic practices to neoliberal economic practices. Since import subsidized economic practices depended on the domestic labor force contrary to neoliberal economic practices in which production had become transnational. In this framework one of the first priorities of this new economic regime was to regulate immigration policies which in turn led to the abolishment and devaluation of the foreign labor force within the developed countries. As Lavanex argues this created two main challenges to refugee regime in the period, firstly generous migration policies created an environment where people escaped from persecution or other human right violations which didn’t require themselves to apply for political asylum in the host country as they could remain in the country in other ways. Similar infrastructure will be seen in the case analysis in early periods of Afghan refugees in Iran. Secondly, people who didn’t fulfil the Geneva Convention criteria were accepted under the immigration law, however with the new restrictions and enforcement of immigrants to return, created a risk of refoulement of the refugees. In the face of this, governments started to find alternative ways for their stay or had to find a new way to return them to their

⁸ In the modern period after the emergence of the European Union most common usage of the term “Fortress Europe” has been the pejorative description of immigration policies in reference to its restrictive policy implementations.

country of origin without breaking the non-refoulement principle (Lavenex: 1999; 18). Even though refugees were not under formal protection it didn't create a crisis in the early days since informal protection had been loosely applicable.

Another factor in this period was that asylum searches started to become international rather than focused upon the region from which they originated from. This created a fundamental base from which restrictions started to emerge. In this context where foreign labor force was no more regarded as a crucial part of the labor force, asylum started to become a burden on the host country. Thus new concepts such as 'b-refugees' and 'de-facto' refugees and such-like were used to differentiate those from the genuine refugee that falls within the criteria of the Geneva convention (Sztuki: 1999, 69). As categories of the refugee status expanded, the legal framework to secure refugee rights have been narrowed down in scope. Hence the formal protection became more broadened however it also decreased the social protection level of the refugees. This framework was crucial in regards to Europe's fundamentalist approach to refugee system which laid the ground for restrictive and complex bureaucratic procedures to follow.

There were still liberal attitudes in the refugee system with regards refugee application processes. In this period bureaucratic infrastructure started to become established in the developed countries. As Zolberg's book discusses, during the 1970s, there were still a quota basis acceptance from the selected refugee groups. However this process was deteriorated by the spontaneous influx of refugee applications and started to question the asserted internal sovereign right of the host countries. Hence from 1977, one of the main debated subjects of today's refugee regime emerged which was the questioning of a possible abuse of the refugee system (Lavenex: 1999, 19-20). Following the debates in the period, administrative procedures were introduced to relieve burden on the domestic asylum procedures.

In the face of possible abuse of the refugee system, limitations on space became more solidified. Refugees inside the boundaries, were exposed to an application process where the refugee definition became more blurry. In order to create a distinction between refugees and economic migrants, formal screening procedures

started to emerge (Szutki: 1999; 70). This was an indicator that the perspective on the refugee status determination was changing from an individually based, to a state based understanding. This application also reversed the burden of determination process onto the refugees. In this context asylum seeker as a distinct notion from refugee emerged in the 1977 EXCOM.⁹ “Asylum seeker” as a status is given to those people who are seeking asylum in the host country. In this new framework according to the outcome of the screening procedures on the asylum seeker resulted in a positive manner, he/she is recognized as a refugee. Whereas in the handbook of the UNHCR it defines Refugee as follows;

“A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.”

On contrary to the new definition, it suggests that a person is a refugee at the moment he/she fulfils the criteria as defined in the 1951 Convention, hence in its essence it is a declaratory procedure. However with the introduction of the notion “asylum seeker”, one cannot be a refugee as long as one is recognized by the state. As *de jure* refugee had grounds in international law and was recognized to have certain rights, the capacity of the state to manoeuvre them was affected.

By that reversed relationship, the grant of asylum was not defined as a right of the refugee but as a commitment of the receiving state (Lavanex: 1999; 12). Hence, the refugee status determination created a limbo in the period where the refugee is not recognized as a *de jure* refugee but as an asylum seeker without the same rights of the refugee. In addition to that this process was not limited to a particular time period so it became ambivalent as to how long the “asylum seeker” as a status would last

⁹ (b) Concerned, however, that according to the report of the High Commissioner cases continue to occur in which asylum-seekers have encountered serious difficulties in finding a country willing to grant them even temporary refuge and that refusal of permanent or temporary asylum has led in a number of cases to serious consequences for the persons concerned;

for. Emergence of the ‘asylum seeker’ status as a distinct category from the refugee status created an ambivalent ground for the rights recognized to the asylum seekers. Even though the rights of the asylum seekers changed across countries there has yet to be an international legal basis for guarantying them access to social rights.

One of the consequences of the limbo period in the determination of refugee application has the potential to drive asylum seekers could to leave the country either in the form of economic obstacles or by physical force. In this respect the introduction of the asylum seeker procedure is crucial in order to analyse the contemporary refugee system in Turkey, since the asylum procedures are the central elements of the system. It could be argued that asylum policies were started to reorient refugee sided policies to state sided policies in the 1970s. Thus while it is clear there were negative indicators for the subsequent periods, throughout the 1970s there were still relatively liberal policies functioning in favour of refugees.

2.2: Emergence of Neoliberal Refugee System

2.2.1: 1980s Transition from Asylum Interest to State Interest

Since the 1980s, two important developments in international order have had a major impact on the international refugee system. The first important development was the development of neoliberal hegemony throughout most of the world especially on the immigrant receiving countries. The consolidation of the neoliberal hegemony had a twofold impact on the refugee system. The first one, as discussed above; immigration policies and refugee system, has been closely related to the dominant capital accumulation process of the international political order. The changes in the economic system with the new neo-liberal economic principles created changes in the migration policies. Policies promoting the new economic system, in this instance neoliberal political economy, led to abandoning of pro-migration policies that concluded with administrative reforms in the refugee system as well. On the other hand, through the consolidation of the neoliberal practices, in some of the developing countries, military coup d'états and civil insurgencies emerged. As in the example of the Turkish military coup in 1980, it has been claimed that it was a first step towards

creating a suitable environment for neoliberalism to be established: Establishing neoliberal policies started with repression of the population by imprisoning working movements in the country, which created refugee flows to Europe.

The second development which reinforced the transformation was the end of the cold war period in 1991 with the collapse of the Soviet Union. The effect of the collapse on the refugee system can be summarized under two central points. The first was to do with the importance of the refugees in the cold war era; the ideological power that was embedded in the refugee status was used as an ideological weapon against the communist bloc. Thus with the end of the cold war, refugees were stripped down both from their symbolic and economic powers in general. On the economic side, UNHCR's global budget to fund refugee systems in developing areas was reduced drastically. The second important by-product of the post-cold war period was the emergence of new nation states which were embedded with internal conflicts. Due to the geographical position of the insurgencies, this led refugee flows from Eastern to Western Europe. As a result of these two developments, it could be argued that the center of the refugee flows destination became Europe. Considering that the decrease of the UN budget on developing countries led refugees in the developing world to move north into industrialized countries which was reinforced with the refugee influxes from Eastern Europe, this shifted the center of gravity of international refugee to 'north' (Zetter: 2007, 182). Therefore it could be argued that incoming refugee flows became a threat to national interest of the Western European countries.

In this period, Eastern Europe became one of the highest refugee generating regions of the World. Due to the nature of these civil insurgencies within the European borders region, this led to refugee flows towards Western Europe. As it can be seen from Table-1 below, two developments of the era created a huge influx of refugees into Western Europe. In addition to refugees from Asian and African regions, refugees from within European borders, amounted to a serious population of refugees. As a consequence of these two important developments, the refugee system in Western Europe became more challenging and restrictive in nature. The emergence of the EU regime and restriction measures are closely related and affect the position of Turkey in the international refugee system.

Table-1. Origin of asylum applications by regions in EU, 1980–99 (thousands)

1980–1999			1990–1999		
1	Africa	226.9	Africa		744.6
2	Asia	742.3	Asia		1349.3
3	Europe	432.4	Europe		1647.3
4	Latin America and Caribbean	40.9	Latin America and Caribbean		50.9
5	Other/unknown	109.8	Other/Unknown		118.1

Source: UNHCR (2001), Tables V.5 and V.14

In response to these developments, Western Countries developed a similar action plan by carrying out restrictive reforms through limiting access to their territory for asylum seekers and economic migrants (Lavenex: 1999; 20-21). Two important features in these new action plans are as follows; first was the national immigration policies in which restrictive measures were introduced to keep the country less desirable and to force immigrants to turn back. The second was to do with the international cooperation in the face of the asylum flows which later emerged into EU refugee regime.

By the end of the 1980s increased xenophobia in Western Countries lead to an increase in instating more restrictive policies starting with visa requirements, which entailed a list of countries from where visas were required. The list of countries which required visas were then expanded gradually. In the initial implementation of the visa requirements for the first set of countries, there were also refugee generating countries included in the list. (Sztuki: 1999; 72) This policy was reinforced by the imposition of fines to transportation companies that admitted people without the correct documents required. In this sense the first line of defense of Western Countries was to start from the refugee generating countries and policing immigration through the airline crew members. The refugees inside the boundaries of Western European Countries without the correct documents regardless of their intentions of being either immigrant or asylum seeker, could be detained (in prison also) while their application was processed. (Egan and Storey: 1992; 54) In this sense the separation between the asylum seeker and the refugee became more important as to determine state behaviour.

Immigrants who were caught entering illegally to the European Countries faced severe punishments. As the accession to territory was hardened, the immigrants and asylum seekers that managed to get into the country faced severe cutbacks to their stays in the country. In 1989 the migrant and refugee manifesto which was supported by many NGO's, addressed this issue by stating that the common conditions of asylum seekers and their social rights, had been reduced in significant areas such as; right to work, to settle, access to education, medical and social services and prevention of family reunion principal (Egan and Storey: 1992; 54). Another issue addressed in the manifestation was the harder access to the Europe. The 'fundamentalist' approach to the refugee definition influenced the evaluation of refugee application which became more rigid in the late 1980s compared to the early years of 1980s. This was illustrated with the fall of the recognition rates of the refugees: In the early 1980s, 50 percent of the refugee were assessed as "genuine" refugees. This rate fell to 20 percent recognition in the late 1980s (Loeschner: 1989, 621). This was an indicator of a more insecure position of the *de facto* refugees since they were faced with possible deportation because of the low recognition rates.

The second important response of the Western European countries was the harmonization of asylum policies and regulations in the continent of Europe. The first attempt was in harmonizing the refugee determination procedures by creating a common procedure within the national interpretations of the refugee definition which can be observed through the 1976 Parliamentary Assembly.¹⁰ In 1977, the international refugee issue created a common concern through the European states which led to a consensus on the need of obtaining a certain degree of harmonization of the legal framework (Hailbronner: 1989, 27). Hence, "Ad Hoc Committee of Experts on the Legal Aspects of Refugees" (CAHAR) was established which was formed by the governmental experts. The main responsibility of this group was to formulate legal instruments for discussion and adaptation by the Council of

¹⁰ Parliamentary Assembly Recommendation 787 (1976) [1] on harmonisation of eligibility practice under the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol 6) *b.* the creation for a limited period of an ad hoc committee of experts to examine the most appropriate means for the realization of the objective mentioned in *a* and for further work on the legal questions relating to international refugees.

Ministries. These harmonization attempts were designed to improve the conditions of asylum seekers and refugees. These attempts also aimed to include 'refugees in orbit' to the system. However this policies were introduced also to prevent readmission of asylum claims by the same asylum seeker to different countries which has been defined as asylum shopping. In 1981, The Committee of Ministers, adopted minimum standards for refugee status determination process, which included developments as following; permission of the applicant to remain in the territory of the state while his demand was examined; referral of the decision to a central authority; objective and impartial judgment; and clear instructions to immigration officers regarding non-refoulement (Lavenex: 1999; 31-32). In the assembly of 1985, there were attempts made in favour of the asylum receiving countries by introducing policy principles such 'first country of asylum' which are used to determine the responsibility of a specific member state to examine the claim. It was claimed that this policy would ensure an examination process for an asylum seekers, thus leading to reduction in 'refugee in orbits'. The roots of externalization of the refugee responsibility has been in the Europe which has been expanded to worldwide policy in contemporary refugee system.

The main motivation behind 'first country of asylum' was to relieve 'the asylum seekers burden' from the traditional migration countries by sharing the 'burden' with rest of the Europe. However 'first country of asylum' rule faced challenges from the transit countries due to fear that this responsibility would change the locus of the asylum burden onto them (Loescher: 1996; 628). Additionally during that time period Italy and Turkey still held their geographical limitations which was an obstacle in the implementation of the rule. Hence as the policies were in the favour of the tradition asylum countries, there were no incentives offered for the rest of the countries to adopt these measures. In the neoliberal political economic regime where the asylum seekers became a burden for the countries hosting them, international cooperation over the issue became a more challenging subject in which the resolution depend upon other factors. In this respect international cooperation among the asylum issue, became more effective under the framework established with Schengen Convention and Single European Act in which asylum was not an issue of its own

but as part of the EU framework.

2.2.2: Emergence of EU Refugee Regime and Externalization of the Refugee Issue

The intergovernmental agreements were less motivated by the refugee flows, as many countries were looking into their own situation which opened a distinction between the transit and asylum countries. Therefore, the emergence of the international framework of the EU refugee regime was made possible by the fundamental ground laid with the Schengen Convention and Single European Act of 1986 which came into force in 1992. This was reinforced with the 1990 Schengen Convention which was based on the 1985 agreement between the six member states. The crucial part of the agreements was the prospect of free movement in internal borders of Europe by abolition of the domestic border controls. In this context, particularly refugee receiving countries expressed their fears on the relative laxity of the Southern member states on their security of external border control (Lavenex: 1999; 32). This wasn't seen only as an immigration issue but also addressed mainly as a security concern because external borders were claimed to be vulnerable to international crime, drug trafficking and terrorism. Hence, as a counter-measure on the abolition of internal border controls, immigration and asylum seeking became a common problem of the EU. In this respect, stricter measures have been taken on entry provisions and the intensification of the border controls. To this extent, scope of the TREVI group has been expanded from the fight against Euro terrorism to cover of immigration threat. (Lavenex: 1999; 36) In exchange of the free movement within the European borders, it became more challenging for non-EU immigrants and asylum seekers crossing the border.

One of the main debated subjects within the EU on the asylum and refugee regime was the subject of 'asylum shopping' which was addressed in the Dublin Convention (1990). The concern arises from the fact that an asylum seeker can make its application in different countries because of the unclear jurisdiction on the matter. Thus in the 1990 Dublin Conference, it was determined that asylum claim would be dealt with by one state, specifically the state of first entry (Hatton: 2004). An exception to single country responsibility was made if a close family member of the

asylum seeker, had been granted with refugee status in another state (Lavenex: 1999). Although the Dublin convention was not officially recognized by all the states until it came into force in 1997, in practice its provisions applied before that time. It was claimed that the main purpose of the convention was to limit uncontrolled movement of asylum seekers and to limit their access to other member state's territories and asylum procedures (Marinho and Heinonen: 1998). In this sense the Dublin Convention main concern in the asylum procedure was again related to the border controls of Europe. In addition to that, the asylum procedures of the countries were not harmonized in respect to social services benefitted from as well as the determination process that an asylum seekers had to go through in which created an unjust treatment in between the asylum seekers in different countries.

Asylum policies that were addressed in the Dublin Convention and the Schengen Agreements mainly set the demarcation lines of the refugee issue. In the harmonization of asylum procedures in Europe there have been several developments which occurred with the Maastricht Treaty. One of the most important sets of regulations, produced in order to harmonize the asylum procedures throughout Europe, was a result of the London Resolution. Three important principles have been regulated (although not binding) which shaped not only the European refugee regime but also the international refugee regime as well. The London resolutions shaped asylum procedures through the introduction of concepts such as; manifestly unfounded claim, safe countries of origin and the safe third country. The common characteristic of all of these concepts is the aim of externalizing the asylum seeking procedures to the border countries and to beyond of Europe.

The manifestly unfounded refugee application procedure was developed in order to fight against bogus asylum applications. In this respect, the policy may operate under circumstances where 'there is clearly no substance to the applicant's claim to fear persecution in his own country' or in cases where 'the claim is based on deliberate deception or is an abuse of asylum procedures'. (Council of the European Union: 1992) The first basis of this concept depends upon the notion of 'no clear substance' which is defined on three levels; as if the applications base doesn't fall into the Geneva convention's definition of the refugee; the claims have their basis from the

economic reasons; or if the applicant's story doesn't indicate any fear of persecution or if the story doesn't have any circumstantial or personal details. Also in his story telling if the story is inconsistent or fundamentally improbable, this concept will apply. This introduction brought the bureaucratic level of the process much more open to the subjective interpretation of the interviewer. An interviewer in this ontological stance being in direct opposition to the asylum applicant. Thus, at this level of the interview, the interviewer works to question the credibility of the refugee. It has been argued that during the examination of the refugee there has been a criminalization process of the applicant and the cross examinations and further strict controls on the applicant seek to verify his/her story. Furthermore in cases where applicants could live in other parts of their country of origin do not recognized as a valid ground for refugee application in the Europe. Therefore the positioning of the displaced people even though they fall in the universalized refugee statistic is not regarded as legitimate case for seeking refugee status in Europe. This can be seen as a further example of how the EU asylum regime works to manipulate refugee flows by categorizing the refugee statuses.

The second basis of the manifestly unfounded asylum claims functions if there is a deliberate effort to misguide the official. This can be on the basis of forged documents, false representation of the claim, multiple applications in different countries and flagrantly fail to comply substantive obligation implied by the national rules regarding the asylum procedure. The application that fall into this category have to reach initial decision very quickly and it doesn't require a full investigation. In this sense, the manifestly unfounded claim concept was determined to seek out bogus applicants and detain them as quickly as possible. As such, the burden of the asylum procedures falls onto the applicant, who has to prove persecution as well as obey the national rules of the country regarding asylum procedure. This new restrictive nature of the asylum application process upon asylum seekers can be seen as a means of controlling the social unrest.

The second principle is the safe countries of origin concept in which provision is made for accelerated procedure in those countries regarded as "safe". Through the London resolution a set of criteria was agreed by which a country could be decreed

as 'safe' and accordingly should not generate any refugees (Lavenex: 1999). Each member state determines the countries it regards as safe and informs the other member states. However during the assessment of the 'safe' countries the drawing up of a common list was abandoned because of the fear of diplomatic tensions between countries it was decided to be determined via individual country assessment. However a general guideline has been established using the notion of 'safe' which depends upon several criteria;

- numbers of refugees and recognition rates over the last few years;
 - observance of human rights (adherence to appropriate international instruments and, above all, how the country meets those obligations in practice);
 - democratic institutions (elections, political pluralism, freedom of expression, legal avenues of protection and redress);
 - Stability (assessment of the prospect for dramatic change).
- (EU: 1992)

In the light of these indicators a country can be 'objectively' assessed as a 'safe' country and upon assessment the procedure of the applicant would be accelerated as in the manifestly unfounded asylum application. In this sense the burden of proof falls onto the asylum seeker who has to rebut the assumption that he/she is not under direct threat of persecution (Lavenex: 1999). In addition, it is the only ground for applying an accelerated procedure to an asylum claim which does not depend on an individual but rather a general factor in the case. However this still does not invade the Geneva conventions 'individual assessment principle' even though it is a superficial accelerated procedure to avoid potential human right violation.

The principle of "safe third country" has been the most important development regarding the Afghan refugees' situation in Turkey. This final version of the 'protection elsewhere' has its roots in the Dublin Convention in which the basic principle is the same. However the problem with the Dublin Convention's principle was that it did not allocate a responsibility to the host country where the responsibility of the applicant had been returned to. Since there were no mechanisms to protect the refugee, this may have led to refoulement of the refugee to the country of origin. These criticisms have been met in the London meeting of Ad Hoc Group

on Immigration in November/December 1992, there has been a common consensus on the resolution on 'safe third countries' in which the principal has a several differences than first country of asylum. The safe third country principle refers to claims in cases where applicants have passed through or spent time in, where the asylum seekers could have been expected to seek protection in. If there is such a "safe third country" "the application for refugee status may not be examined and the asylum applicant may be sent to that country" (Collinson: 1996). In principal 'safe third country' address to refugees who in the previous country of arrival have an informal form of protection even though the potential refugee has not lodged for an official refugee application to the country. This informal form of protection entails very minimal standards in which addressed with the non-refoulement principals criteria. However with regards protection of the non-refoulement concept, the following condition must be met in the safe third country;

- their life or freedom must not be threatened;
- they must not be exposed to torture or inhuman or degrading treatment
- they must already have been granted protection in the country in question or there must be clear evidence of admissibility
- They must afforded effective protection against refoulement.

One of the basic problems of the London Resolutions was in the establishment of the resolution on a unilateral basis of the traditional host countries. During negotiations of the resolution there wasn't any participation from transit countries that potential asylum seekers could have been sent back to.

The new principal brought the question of responsibility to be naturalized in the sense that there wasn't an international legal framework that guaranteed the readmission of these asylum seekers to the third country in question (Lavenex: 1999). Although the 'safe third country' principle wasn't a legally binding agreement, it carried the political weight of Western European countries and an assumption that its provision would be incorporated into national legislation of the Western European Countries (Collinson: 1996). As such neighbouring countries even without a legal framework in place, the provisions were functioning in practice. An example of this can be seen in the Germany-Poland relationship regarding asylum

seekers, in which the asylum seekers that were coming from Poland were turned back. Even though Poland wasn't a member EU state at the time, it was still *de facto* part of the Dublin Convention and London Resolutions (Phuong: 2003). This illustrates how a third country of asylum puts the burden of 'asylum' onto the transit country. The relationship between Germany and Poland strengthened through the readmission and bilateral agreements which offered financial incentives to the third safe country. Hence once again illustrates that how political responsibilities of the countries were transferred through the economic means and showing how political and economic aspect of the immigration policies are interrelated with each other.

Another dimension of the resolution has been on its ability to go outside of the European Union, by establishing a relationship procedure of 'safe third country' and the Dublin Convention, integrates it into emerging cooperation among the member states. (Lavenex: 1999). Thus even if a member state is considered under the Geneva Convention, it retains the right to send the applicant to the safe third country. So as it was seen in the Poland-Germany example, the externalization of the asylum seeker outside the EU became legitimized under the burden sharing norm of the Geneva Convention.

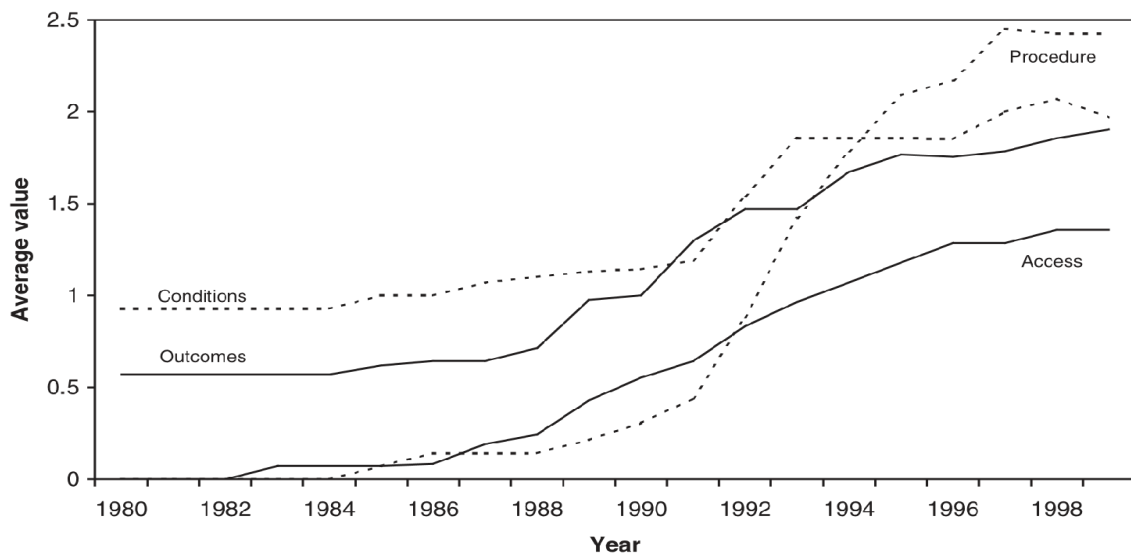


Figure 1 - (Hatton 2004)

In conclusion, it has been discussed what measures have been taken in order to discourage asylum claims by individual countries via nation policies or

harmonization of the refugee system across countries. As has been shown there are many ways to prevent the asylum claim, Figure 1 of Hatton has been quite useful as it illustrates, how applications were restricted on four levels. Figure 1 shows the how quickly the asylum system in Europe became such a deadlock, which has been discussed in detail in the above section. Hatton designed this table by measuring four criteria as following, restrict access to the country's borders by potential asylum seekers (Access); reforms to the procedures under which applications are processed (Procedure); those measures relating to the outcome of claims (Outcome); and changes in the treatment of asylum seekers during processing (Conditions). Figure 1 shows an averages across 14 EU countries, as variables that take a value of 0 before and 1 after the introduction of a restrictive measure (Hatton: 2004). Hatton's figure shows the swift implementation and increase in policies affecting all aspects of the asylum application can be seen from early 1980s to late 1990s and has been argued directly influencing access, outcomes and conditions of asylum seekers.

2.3: Concluding Remarks

In the beginning of the international framework chapter, there has been an analysis on the roots of the modern refugee system focusing on refugee system's relation to capitalism. In this analysis, a discussion on the fundamental basis of the 'refugee' term definition has been crucial to understand the historical position of the refugee system. Through investigating the development of the term within different regions and conservative approach of Europe to these developments opened a discussion of the refugee term which was an attempt to remove 'refugee' from its ahistorical dogmatic position. This has been an attempt to place the refugee system on the historical framework by exploring relation of the refugee term to international economic and political conjuncture. In this respect, the chapter tried to show that refugee term could be transformed or established in accordance with the capital accumulation process. On the other hand this part also established the refugee term as a resistance ground by showing there has been a conflict over the issue of who could be considered as refugees.

The historical development of the refugee system has been transformed in accordance to the changes in the international economic order. Through the

international consolidation of the neoliberal economic principals and the end of cold war period changed the economic and political conjuncture that refugee system was based upon. The new economic regime shaped modern refugee system to adopt the needs of the international order. In this regard the first indicator of the transformation in the refugee system was the alteration of the refugee status with the addition of the asylum seeker status as a temporary refugee status period. Through the addition of the asylum seeker status, being a refugee was no longer based upon the declaration of the individual which changed the relation between the host country and the applicant. In this respect it allocated the responsibility of protection from the state to refugee applicant. Since neoliberalism claims that wellbeing of the humans was through the individual liberty from the state action, it emphasizes the responsabilization of the individual. In the contemporary refugee system the traces of the neoliberal hegemony could be seen with the addition of the asylum seeker status. In the neoliberal refugee system, gaining protection was the responsibility of the individual to prove their refugeeeness to the state.

The second part of this chapter analysed the refugee system to display the uniqueness of the refugee system structure within the neoliberal period. Externalization has been set out as the central concept in the analysis of the transformation of the refugee system in the neoliberal period. In this regard parameters of the 'externalization' process has been identified on four main policy areas as following; access to territory, legal components of externalization, sustainability of the refugee status and the determination process. These four policy areas establish the pillars of the neoliberal refugee system which aimed to externalize the refugee responsibility.

In the chronological development of the externalization process, preliminary policy implementations were on the subject regarding the restrictions of accessibility to the territory. It was observed that restrictions on the international migration had impact on access of the refugee to the country. The execution of the visa policies and the usage of the carrier transportations as defence mechanism to protect illegal access to the country has been established as first line of defence. Furthermore, in the emergence of the European Union, establishing a control mechanism upon the flows of population within the domestic borders of the union and the inflows from the

external borders constituted an integral principle. These policy implementation supported the claim made in the introduction that the mobility in the neoliberal era has been in more restrictive nature in comparison to the Keynesian period.

Identification of the legal components were crucial in order to display the systematic nature of the externalization process. The legal components of the externalization process has been an arena in which the implemented policies and principals were focusing uniquely to regulate the international refugee arena. The legal instruments of the process have been established through safe third country, first country of asylum and safe countries of origin principals which has been explained through the second part. These three principals functions to allocate the responsibility of the refugee through different categories which derived with a view to protect the system in the traditional immigration countries especially Germany, England and France. The main discourse used through the implementation of the policies was ‘sharing the burden’ which reduced to a shallow understanding of the discourse as to offloading potential refugee population to stay in the local neighbours of the origin country. Hence the institutional and systemic nature of the externalization process provides a concrete evidence of the fact that there has been a deliberate externalization process aiming to allocate the responsibility of the refugees.

As a result of these new developments, it can be claimed that asylum regime has been determined through the political economic regime of the neoliberalism in which the introduction of the asylum seeking prolonged as to refugees in the process didn’t have any rights on the international basis and has the probability of deportation. On the other hand, the refugee as a status became devalued through repositioning the burden of the refugee problem from the traditionally immigration countries to the Middle East and transitional countries. In an attempt by the EU to externalize the refugee system to regions where refugee flows generated, Turkey became an integral part of the system. In this sense analysis upon the Turkish refugee system, must observe in relation to Turkey’s attempt to access in EU refugee system. Henceforth in the next chapter the parameters of externalization process established in the neoliberal era will be analysed through the development of the refugee system in Turkey. As sustainability of the refugee status depends upon the domestic

infrastructure of the host country, this part of the externalization process will be examined separately in the Turkish framework.

CHAPTER 3

LEGAL STRUCTURE OF TURKEY: EXTERNALIZATION OF THE REFUGEE ISSUE

3.1: Procedural Reforms and Accession Difficulties

The concept of “the refugee” had not been regarded as a particular subject in which had been emanated from socio-economic and political conjuncture of a particular period. In this respect even though refugee has not been discussed and regulated as a different subject it has been discussed within the general foreigner policies in the Turkish framework. In the above sections it has been discussed under which conditions “refugee” as a distinct category has been constructed within the Geneva Convention. What refugee conceptualization under the Geneva Convention did in the context of European countries, similar process can be observed in the Turkey’s early attempts of conceptualization of the citizenship the term refugee. Refugee concept can be traced down as a subcategory within this whole policy but has not been addressed as within the traditional understanding of ‘refugee’.

Refugee as a concept has been adverted within the framework of general policies towards citizenship which has been heavily influenced by the nation building process. Through the Turkish nation building process, the definition of refugee was defined on the basis of the Turkish descent or culture as it was stated in the Law on Settlement of 1934. According to Article 3 of the aforementioned Law, people and culture that is related to Turkish heritage has to be determined by an executive committee. In this sense there has been an ambiguity on who is to be counted as refugee or not. The definition of the refugee was limited only to those who were in Turkish soil for the purpose of temporary protection. In the case that refugees wanted to settle in the Turkey they would be treated as the immigrants of Turkish

nationalities. On the other hand they don't receive accommodation benefits if they weren't willing to settle in the first two year in Turkey. In this sense, this law functioned as the part of the Turkish nation state building process via attracting people from Turkish descent or culture and not on the universal concern of the human rights. Hence it can be deduced that refugee has not been a distinct category within the Turkish legal framework but has been mentioned within the legislation.

3.1.1: Early Refugee Experience of Turkey: Absence of National Refugee Regulation

Before the Geneva Convention, Turkish state accepted refugees in national territory was based either on culture or descent. Later with the 1951 Geneva Convention refugee definition was extended to people who came from Europe due to threat of persecution because of the events that had occurred before 1951. Later in the New York protocol 1967, the time limitation on refugee status determination was diminished while geographical limitations were still part of the refugee status. As Okyayuz argued, until the 1980s the "division of labor" between the UNHCR and Turkey didn't cause any troubles (Okyayuz & Angliss: 2014). Before the 1980s Turkey was functioning as a generator of immigrant labour force, and compacted to international migration system via intergovernmental agreements on the guest worker arrangements. As it was discussed in the previous chapter, with the beginning of the neoliberal economic practices and its effect on immigration structure, Turkey's role in the immigration system and by that its position in the refugee system was changed within the international order.

Turkey, after the 1980s, was seen as one of the important components of the EU refugee regime mostly because of its geographical position to be a potential buffer zone in between the Middle East and Europe. Two important refugee flows to Turkey have emerged during this period. The first of these refugee flows was a byproduct of the circumstances that emerged with the end of cold war period. In the Balkan region during this period, new nation states started to emerge and ethnic nationalist regimes came into ruling positions which generated refugee flows. The most significant among these flows relating to Turkey, was with the 1989 Bulgarian

refugee crisis, in which 310,000 Bulgarian nationals of Pomak¹¹ and Turkish origin had fled to Turkey (Kirişçi: 2012). In the new regime people of Turkish origin were under threat of persecution due to government policies restricting speaking the language Turkish in public and were also forced to take Slavic names (Haberman: 1989). The pre-1980 refugee system of Turkey was applicable for these refugees, as they came from Europe. Not only through the Geneva Convention but also according to Turkish law, Bulgarian nationals were recognized as refugees as they were declared to be descent of Turkish origin or culture. Hence, as a result of the integration process of the refugees were more accessible in which over 240,000 refugees from Bulgaria were integrated to Turkey during their stay. Despite having a close relationship with the refugees, Turkey decided to close its borders on August 22 of 1989. Turkish officials declared that it was an effort to force the Bulgarian government into a diplomatic solution, while other reports claimed that it was an economic necessity for reasons of high unemployment in the country and insufficient resources to housing and finding jobs for the incoming refugee flows (Haberman:1989). After the regime change and the EU accession of Bulgaria, there was a partial return of the refugees. This was a particularly distinctive case since Turkey was acting not on the international refugee standards but on the traditional citizenship structure.

In general state's inactive position to the convention refugee flows has been illuminating the period's characterization. Particularly refugee flows generated from Iran to Turkey has been indicating the changing role of the Turkey's position due to emerging restrictions in access to Europe. Turkey didn't respond to its changing role immediately as refugee flows quantitatively were in small numbers which didn't threaten the social and political order. Because of the state passive stance in controlling and policing of the refugee flows, the responsibility of the determination process was left to the UNHCR. In this regard through the period there were no conflict over the subject of sovereignty in the handling of refugee flows within the country. However this should not be misunderstood as Turkey and UNHCR were on

¹¹ It has been claimed that Pomak origins were ethnically Slavic originated however converted to Islam in the Ottoman period which made them suitable for refugee in the Turkish law due to proximity of their culture.

the same page on the subject of asylum processes. Since it was not a result of a close cooperation in between Turkish government and UNHCR concerning the refugee flows but mainly stems from Turkey's neglectful position to the refugees population within the territory. In the following years the contradiction between UNHCR and the government became evident with state's involvement in the refugee status determination.

3.1.2: Security Discourse on Asylum Application: State's Inclusion in the Refugee Issue

Until the 1980s the non-EU refugee influx was fairly low. However policies such as carrier sanctions regulations by the European countries, as it was discussed in the previous chapter restricted access to Europe, had direct influence on the number of refugees coming to Turkey as a means of transition route to Western Europe. In this context during a short time interval between 1981 – 1991 more than 1.5 million Iranians moved through Turkey while most of them trying to reach U.S by their own means without applying to UNHCR (Okuyuz & Angliss: 2014). The ones that stayed and applied for asylum in Turkey, were tolerated in cooperation with UNHCR. In this framework UNHCR was leading in the procedures of asylum seekers in Turkey and were responsible to resettle those whose application was granted, and those who were rejected were considered to be deported by the Turkish state. However this situation quickly worsened and challenged the cooperation on the basis that the numbers of refugees were increasing and the ones that were rejected stayed in Turkey (Kirişçi: 2012). On top of this situation and as a result of the Gulf War, large flows of refugees started to come from Iraq (Okuyuz & Angliss: 2014). Following the huge influx of refugees a security discourse emerged, claiming that among the asylum seekers coming from the Northern Iraq there were also Kurdish Workers Party (PKK) members.

In response to these security concerns, the Turkish State established a regulation in November 1994. This regulation was concerned mainly with the role of the state through the asylum application process. Even though the basic criteria that was established in the Geneva Convention was untouched, Turkey's role in the application processes was changed. With the introduction of the new regulation

asylum seekers were now accepted officially and had to apply to Turkish authorities as well as to the UNHCR (Official Gazette: 1994)¹². Turkey's introduction of the 1994 regulation was also seen as a step towards the burden sharing of the new global immigration system (Okyayuz & Angliss: 2014). However in practice it had a little impact and what was more important with this regulation was that access to Turkey's refugee regime became more challenging and created a potential violation for the non-refoulement notion. The concern and the criticism of the new regulation was centered on the imposition of short period time limitation for asylum seekers to appeal for their cases, applicants who exceeded this time limitation could be facing a deportation threat. Moreover, in relation to asylum application, criticism were concentrated upon asylum-seekers who had entered into territories without the official documents they were required to submit themselves to the police of the province through which they entered (Okyayuz & Angliss: 2014). This increased policing had created a difficult environment for asylum seekers to access the refugee system and furthermore created a danger of refoulement of those people. In this regard this application could be seen as an attempt to control and police refugees with the purpose of deportation.

1994 regulation has been one of the crucial pinpoints of the early exclusion practices and regulations targeting the asylum seekers on the Turkish territory. Government's inclusion into the asylum issue was based on the security discourse that aimed to enforce refugee to return or exit the premises of Turkish territory. As the regulation created a double headed process that has been conducted by the government and UNHCR created a much more difficult access into international protection. In the process of granting protection the basic social needs of the asylum seekers were not regulated in the premise of the regulation. Hence asylum seekers were enforced to move Europe or back to their country which was both voluntarily or involuntarily. The exclusionary policy of Turkey was not systematic or internationally approved as it force asylum seekers to move Europe which was not the envisioned international role of Turkey within the international asylum regime. It hasn't been systemic as it didn't proceed on a legitimate ground for projecting a safe movement of asylum

¹² No: 94/6169, The Official Gazette No: 22127.

seekers to certain territories that wouldn't contradict with the international migration system. In this regard the Turkish state's sovereign rights on its territory became a conflicted zone concerning the rights and process of the asylum seekers. This conflict advanced in the favor of the asylum seekers which UNHCR became more concerned with the asylum seekers in Turkey. Although the geographical limitations were the basis of Turkish authorities in the case of asylum seekers non-refoulement principle enforce Turkey to take action for protecting the right of asylum seekers' international protection.

3.1.3: Non-Refoulement as a Key Concept in Asylum Experience

In Europe even though from the establishment of the Geneva Convention the formal scope of the refugee definition was not broadened, nevertheless it was de facto expanded due to the principle of non-refoulement. This principle was established in Article 33 of the Geneva Convention which states that;

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. (Geneva Convention: 1951)

Therefore, the norm of non-refoulement was the central limit posed by human rights considerations against states' sovereign right to decide on the entry and stay of persons in need of protection (Lavenex:1999). As such Turkey's security concern on this issue, force state to act in a more restrictive manner by displaying the Kurdish Worker Party as a security threat whereby asylum seekers constituted a potential danger to the community. However this was a generalized policy in which it affected many other refugees and exposed applicants to state abuse and violations. Additionally, there have been cases in which people who needed protection were sent

back to places where war like situations persisted.

Over the years following the Geneva Convention, the non-refoulement principle became a part of customary international law in which regardless of their position to the Geneva Convention, the principle of non-refoulement was universally binding to all states (Goodwill-Gill 1995). Therefore it could be argued that one of the most important concerns in the international regime is not limited to Turkish State recognition of non-European refugees. The norm of ‘non-refoulement’ and the ‘right of asylum’ became the central principals since there are more people in refugee-like situation than officially recognized people. Hence the principle of non-refoulement became more crucial. As Lavenex argued the refugee system emphasizes that non-refoulement was not the right of the asylum seeker but the obligation of the state not to return those demanding for protection? Therefore in practice, Turkey’s position created a more debatable ground in regards to its regulation despite the fact that it was seen as an official move toward cooperation in asylum regime.

One of the challenges in respect to the new regulation was that now asylum seekers had to apply both to the state and UNHCR. This dual application brought more contradictions in the cooperation of UNHCR and the Turkish state regarding the sovereignty rights of the government. This contradiction was solidified on a legal basis with jurisdiction rights over the asylum seeker in the following years. Turkey has been applying the regulation on a strictly basis in which rejecting the refugees who didn’t apply to Turkish authorities in the specified time interval (Kemal Kirişçi: 2012). This created a contradiction in the cases Turkish authorities took deportation rulings of refugees while UNHCR had recognized them as genuine refugees. In this respect the contradiction between UNHCR and state was on the base of non-refoulement principal.

In 1997 the Ministry of Interior still conducted the refugee law with full restrictions, however local administrative courts created a cooperation zone in between the Ministry of Interior and the UNHCR. In this cooperation UNHCR played an important role by encouraging asylum seekers to approach and lodge application to the judicial appeal processes (Kirişçi: 2012). In this regard *Jabari v Turkey* case

clearly illustrates the main contradictions within a refugee case as it also changed the refugee applications in the Turkish system. Jabari is an Iranian women who entered Turkey illegally in November 1997 and travelled to France using a forged passport. Shortly after the entry she was detained by the French police on the possession of forged documents and sent back to Turkey. In the Turkish airport, she was detained by the police and was transferred to Foreigners Department in of Istanbul Security Directory. When the applicant realized that she was going to be sent back to Iran, she wanted to lodge an asylum application however it was rejected on the grounds that she had to apply in the first 5 days of her arrival. At this point, UNHCR by speaking to authorities, interviewed with the applicant about her asylum application and she was recognized as a refugee by the UNHCR. Regardless of the recognition, she was still facing a deportation threat and applied to Ankara Administrative Court against the deportation order. On 8 March 1998 the applicant petition was dismissed on the ground that she wasn't facing an irreparable harm in the case of her return.

Following the decision on 16 April 1998 at the appeal judgment the court ruled that she would not face because of the fact that she had been granted a residence permit pending the outcome of her application under the European Convention on Human Right (ECtHR) (Council of Europe: 2000). Jabari V Turkey case highlighted several important feature about the international and Turkish refugee regime. One of which is how easily an asylum seeker can be interpreted as an illegal immigrant and sent back to Turkey from another European country even without readmission agreements in place. A further feature highlighted was the ambiguity of the Turkish judicial process; there were two judicial judgments in which one supported the interior ministry's decision and the other one depended upon human rights concerns. Therefore the judicial process can be interpreted as long and ambiguous in character. The Jabari case was important as it displayed how the procedure of the 5 day limitation was inadequate for lodging an application for asylum. This case led to an extension to 10 days limitation for asylum seeker to apply for asylum (Official Gazette: 1999). This was also reinforced by ECtHR ruling on the Jabari v Turkey Case when they concluded that if the deportation took place it would be a violation of the Article 3. Therefore the recognition of the applicant by UNHCR creates an

international validity that surpass state sovereignty on the base of international human rights framework and the principle of non-refoulement.

Asylum seekers' right to stay within a country's territory has been more concerned with the obligation of the state to follow international law rather than toleration of state to asylum seekers. Turkey's instable exclusionist policy regulation concerning the asylum seekers based upon its sovereign right, in which as the geographical limitation suggest Turkey's refusal of the "refugee" out of the continent Europe. As geographical limitation became applicable in practice with the 1994 regulation, UNHCR and international community has responded this limitation on the basis of human rights and non-refoulement principal. Today many civil society organizations and NGO's had been addressing the geographical limitation as one of the biggest challenge in the asylum issue. However with the non-refoulement principal which has expanded over the years reinforced by ECtHR rulings against Turkey created a basis for the rights of the asylum seekers to stay in the country, thus diminishing the restriction on the geographical basis. In this regard the externalization of the asylum issue in Turkish case has to be analysed through its harmonization to EU asylum regime as Turkey's sole efforts on the sovereignty grounds to externalize the issue on its own has been contradicted by UNHCR which resulted in the favour of the asylum seekers.

3.1.4: Europeanization of the Asylum System in Turkey

In the following years, there have been indirect reforms that included seminars purposing to create easier access to the asylum system for refugees. These seminars were organized by the UNHCR, aiming at officials who involved with the asylum-seekers directly. (Kemal Kirişçi: 2012) Since gendarmes and foreigner departments of the police were the two important components of the refugee system, the early seminars were arranged for them to create awareness to differentiate between the illegal immigrants and the asylum seeker. The legal arm of Turkey which consist of prosecutors and the judges were the other crucial component of the system as police and gendarme brought illegal entries first to the local courts. These seminars were effective to enable Turkey to reach international standards by focusing awareness on what are the Turkey's obligations under the international law. As part of this close

cooperation, UNHCR once again became the *de facto* refugee status determination executer of the refugee application. Even though the 1994 Asylum Regulation designate Ministry of Interior (MOI) to be the body responsible for status determination, MOI officials came to rely increasingly on the judgment of the UNHCR (Kirişçi: 2012). The development in the practice resolved UNHCR's and Turkey's judicial conflict over the application process to some extent.

De facto increase of cooperation among officials was also reinforced due to the transformation of the legal framework into a more cooperative structure. EU accession negotiations have influenced Turkey's security perspective on the asylum applications and shifted its stand point towards a position that emphasized harmonization with the EU refugee system and human rights concerns. The turning point of this relationship was the December 1999 Helsinki European Council decision in which Turkey was approved as a candidate country. In the following years following the acceptance of Turkey identified with candidate country status, EU developed their relationship with an "Accession Partnership" strategy with Turkey. In response Turkey accepted the new strategy, through constituting the National Program for the Adoption Acquis (NPAA). The first item on the list of NPAA was the adaptation of 'visa requirements' that were laid out in the Schengen agreement. Even though this wasn't directly connected to the asylum system it did have indirect effect on the accession of refugees. To this extent Turkey needed to adjust its visa policies in line with the Schengen visa regime and to adopt the Schengen negative list.

The harmonization efforts of the EU started with the securitization of borders to be aligned in accordance with EU border policies. In this respect, Turkey's initial purpose was to end visa-free travel by the end of 2004 and seize the practice of issuing sticker visas at airports and border crossings by the end of 2005 (Kirişçi: 2005). The harmonization of the visa requirement and border controls were also considered as symbolical move to distance Turkey from the Pan-Arab regimes in the Middle East (Tolay:2012). Into this extent invoking the free-visa applications between these countries was seen as a part of the harmonization process to validate Turkey as a European country. However the initial process of implementation of visa

requirements to countries were stopped and eventually the process was reversed. Fulfilling the requirements of the process of the Schengen regime, had economic challenges to the Turkish economy and the fact that Turkey was on the negative country list, created a suspicion of the implementation process (Kirişçi: 2007). As in the previous examples of candidate countries, it was advised by the European Community that the implementation of the Schengen directives didn't have to be immediate but could be gradually implemented. This advice contributed to a shift created a change in Turkey's stand point regarding the visa regulations policy to the point of stagnation in policy development in this area. Furthermore from 2009 process of visa-free access agreements were implemented with different parts of the world including countries from Middle East (Tolay: 2012). However this did not mean that the Turkey-EU relations was challenged, on the contrary the harmonization process was still active in other areas within EU accession progress.

The introduction of Schengen visa requirements had potential impact on the asylum system in Turkey. As in the case of the post-1980 period, Iran had been one of the biggest refugee generating countries for the Turkish refugee system. Iranian refugees' access to Turkey was relatively easier because of a bilateral agreement between the Iran and Turkey on visa-free travel agreement implemented in October 1964. This regulation didn't change even after the Iran revolution which produced huge flows of refugees to Turkey. However with the potential introduction of the visa requirements, numbers of applications by the Iranian population in Turkey could increase. This number would have consisted mainly those who have benefited from informal protection in Turkey during their periodic visits before returning back to Iran.

Another important development regarding the Schengen requirements was the border strengthening measures. In addition to the visa requirements border control and stricter policing measures were also needed in order to fight illegal immigration. One of the most important control mechanisms was to establish a border control mechanism in the fight against illegal immigration to Europe. Preventative measures were taken in the Aegean and Mediterranean Seas to prevent departure of boats and vessels from Turkish ports. The numbers of vessels and boats carrying illegal

migrants and reaching to EU was 19 in the year 2000. This was decreased to 9 in 2001, 2 in 2002, and finally in 2003 there were no sea carriers reaching any of the EU countries. (Cicekli: 2006) Even though there were stricter border controls as EU requested to protect Fortress Europe, simultaneously criticisms were raised over the concerns that asylum seekers were victims of these implemented protection measures. In 2000 and 2001, the increased detentions of illegal immigrants by the law enforcements, correlated with the increase of the criticism of Turkey for violating the rights of asylum seekers and refugees (Tolay: 2012). In this regard, EU officials wanted border guards to be replaced with professional non-military border guards. As discussed by Kirişçi, this part of the harmonization process is the least developed one, as Turkey didn't show any improvement on the non-militarist border control structure. This has been mainly defended from a security perspective by Turkey via highlighting the threat of potential terror activities occurring on the eastern border.

Another by-product of the EU accession process, was the development in the fight against illegal immigration with the establishment of readmission deals with other countries. In this regard Turkey has signed readmission agreements with following countries; Bosnia-Herzegovina (2012), Kyrgyzstan (2003), Moldavia (2012), Nigeria (2011), Pakistan (2010), Romania (2004), Russian Federation (2011), Syria (2001), Ukraine (2005), Yemen (2011) Greece (2001) (MFA: 2014). Out of these readmission agreements two of them have been more important. These are the agreements between Greece and Syria which both have different dimensions to their importance. Bi-national readmission agreements regulate the sending back of migrants to their countries of origin or to the countries of their last place of stay (Okyayuz & Angliss: 2014). Among these countries Syria has been the most illegal migrant generating origin country. In this regard during the period between 2002 to 2006 Turkey has accepted 55 persons from Syria while Syria accepted 1,317 persons from Turkey (Kirişçi: 2007). However between Greece and Turkey's readmission deal, people of concern mainly from third country nationals became in more vulnerable positions. Because of the conflict over the borders controls between Turkey-Greece created tension between the two countries since they shared the

burden of immigrants. In the implementation of the readmission protocol both parties accused each other of stalling the process. On the other side, Turkish officials regularly complained about the fact that Greek officials were forcing small vessels back to Turkey before they entered into Greek territories (Kirişçi: 2007). As a conclusion of both parties reluctance to solve the immigration issue, immigrants suffered tragic casualties in between these territories.

One readmission deals, that hasn't yet been established which could potentially produce too many challenges for Turkey, is a readmission agreement between Iran and Turkey. In the absence of such an agreement, asylum seekers who had their case rejected by the authorities cannot be pursued easily, and they usually remained in the country illegally (Akcapar: 2006). The absence of a readmission agreement between Iran and Turkey not only presents challenges in dealing with Iranian nationals but third country nationals such as the Afghan refugees coming from Iran also.

In 2005 there were procedural developments that occurred on the asylum field following the 25 March 2005 Accession Partnership Document and National Program of Action for the Adoption of the EU Acquis. In the NAP that was prepared emphasized the non-refoulement principal with the following statement;

The application of the principle of Non-Refoulement should be disseminated applied with the same level of sensitivity within the framework of 1951 Geneva Convention, European Convention on Human Rights and other international standards (NAP: 2005)

The importance of non-refoulement and how it has been the central feature of the asylum regime has already been discussed. In the 2006 Implementation Directive, this notion has been expanded regarding situations that created a contradiction in between the international and domestic law. In cases where there has been contradiction between regarding national and international law, it was declared that international law decisions will prevail (Kaya: 2007). This implementation highlighted the importance and superiority of international law over domestic law over the subject of non-refoulement.

In respect to asylum procedures, important developments emerged through the 2006 Directive Implementation. This directive introduced progressive changes for the first

time with the right of asylum seekers to enter Turkish Territory without an identity card. Furthermore it established the process of identity determination process for asylum seekers (Kirişçi: 2012). In this regard, it created a more broadened approach to border flexibility for asylum seekers. Another improvement was the changes in time limitation for asylum seekers to enter the refugee system. This implementation initially was improved with the ECtHR ruling on the Jabari case, which was extended to “10 day limitation” of applying to the government for asylum. This exact time limitation was expanded with “within the shortest reasonable time” statement. Furthermore, the 2006 Implementation Directory also stipulated that in cases where an applicant “failed to apply within a reasonable time period” and “cannot provide any reasonable excuse,” asylum authorities were required to accept their applications “without prejudice.” (Helsinki: 2007). Resulting an easier access for irregular migrants to apply for asylum. This was also introduced to increase control and policing over potential asylum seekers before their departure to Europe. In addition to that the increase access to the refugee system has its influence over refugees who were aware that they were *de jure* refugee. Procedural difficulties and the suspicion over Turkish authorities potentially declining application lodges on the grounds of diplomatic relations with the country of origin, provided an atmosphere of insecurity which led refugees to seek asylum in Europe via illegal means (Özgür and Özer: 2010). In conclusion of these implementations potentially reduces the number of asylum seekers accessing the EU illegally and by that it could be argued that the EU has developed more effective measures for externalizing asylum application out of their borders to be contained in Turkey.

Another important development in the procedural applications was the introduction of accelerated procedure. This application had a twofold application function, the first was the notion that every person has a right to claim for asylum whereas before, there have been cases that individuals had been denied this opportunity thus creating a problem in the international area. The second function of the procedure, was to lift some of the burden that had been implemented on the refugee system. In this regard Article 6 of the 1994 regulation was amended in the 2006 Directive Implementation to establish accelerated procedure.

This revised provision has been stated as “An alien whose claim has not been accepted may appeal to the relevant Provincial Directorate within 15 days. The appeal date may be shortened by the MOI, when necessary, in order to accelerate the decision making procedure.” (Kaya: 2007). The accelerated procedures have been applicable under the following conditions as described in the Article 13.¹³ If the applicant first decision resulted with a negative result, the applicant still has a chance of appealing to the relevant Provincial Directorate within 15 days. This appeal date may be shortened on the initiative of the MOI, and will be regarded as urgent cases. In this respect the short time period granted to the appellant to prepare for their case wasn’t considered discriminatory as the decision had to be given in a specific short time interval. (Kaya: 2007). If this procedure resulted with a negative decision for the applicant, the ministry would reconsider the case on the grounds of non-refoulement and decided whether the applicant needed subsidiary protection and a residence permit. In this regard by accelerating the procedures, it gave the applicant a chance to prove that he is in fact a genuine refugee. As the refugee is the one that has to prove its case the burden of the procedure falls onto the applicant rather than the interviewer. On the other hand it also relieves the international burden on the Turkish state with state’s implementing all the necessary procedures on paper. This process could only function in the case that detention centres and the applicants were fully aware of the charges targeted against them. In the following section of this part will highlight how the conditions within the detention centres and the procedures within these facilities would deepen the unjust treatment of the process entails.

¹³ - After being required to leave Turkish territory due to the loss of conditions for legal residence such as the expiration of work permit, completion of education, expiration of residence permit, completion of education, expiration of residence permit, expiration of the visa exemption period

- After a deportation order has been issued due to conviction of a crime,
- After being apprehended due to illegal residence in Turkey
- Who had previously been deported due to involvement in illegal migration or other crime or prohibited from entry
- Who was apprehended in the course of illegal departure from Turkey
- While serving a sentence due to conviction of a crime committed in Turkey or having been released thereafter,
- Who had previously applied for asylum
- For whom the Governorship considers not to grant residence permit upon the pre-screening interview (Tokuzlu: 2007)

As it was seen in this section the first harmonization process in dealing with the EU accession was in regards to prevention of the asylum seekers access to EU countries. Through this harmonization it was aimed to ensure a determination process good or bad within the Turkish territory but during this period the central feature was to stop asylum seekers to access Europe through illegal means. In this respect the first list of actions have been in regards to border protection and in the following part how this externalization process developed within the legal framework of the refugee determination process. Another aspect that this part emphasizes has been the development within the refugee system. A functioning refugee system would decrease illegal attempts of potential asylum seekers to enter European borders. There have been attempts to establish such a structure started in this period with ensuring a determination process for people of concern.

3.1.5: 2014 New Law on Foreigner and International Protection

In the 2000s there have been reforms introduced in order to obtain a more humanitarian asylum regime however the security concerns over illegal immigration resulted with human right violation in many cases. One of the most important problem in the asylum procedures was the arbitrary detention of immigrants, some of which have been detained whilst already recognized as refugees. As *Jabari vs Turkey* case played an important role in the determination of the time limitation in future policies, *Abdolkhani and Karimnia v Turkey* has been one of the decisive cases in policy making of the asylum regime in Turkey. In the case of *Abdolkhani and Karimnia*, are two recognized refugees in Iraq who have been forced to leave Iraq due to war and came Turkey to seek asylum. Turkish authorities detained two refugees in guesthouses for one year (Council of Europe: 2009). Guesthouses are detention centres that were prepared in order to detain illegal immigrants and asylum seekers before their deportation. These detention centres across the country had been criticized for having very poor facilities and conditions such as restricted access to food, poor accommodation, lack of access to health care and sunlight and outdoor recreation (Levitan, Kaytaz and Durukan: 2009). Furthermore, many of the potential asylum applicants had difficulties applying for asylum and had been clueless on the

reason of their detention in the first place. ECtHR ruling on the *Abdolkhani and Karimnia v Turkey* case was ruled that Turkey was in violation of Article 5 of the Universal Declaration of Human Rights by stating that “Government contested the submission that the applicants were deprived of their liberty within the meaning of Article 5 of the Convention. The Court reiterates that, in proclaiming the right to liberty, Article 5.1 contemplates that physical liberty of the person and its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion...” (Council of Europe: 2009). As a compensation for the basic human rights violations to the applicants, the Turkish state was ruled to compensate the complainants with a substantial sum.

The *Abdolkhani and Karimnia v Turkey* ruling was a land mark as it was followed by twelve additional cases which concluded in favour of the applicants and accompanied with compensation to be paid to complainants (Kirişçi: 2012). The impact of these cases on domestic affairs had visible effects. Following the rulings, investigations have been constructed in order to understand the problems within the asylum system which resulted in major personnel change within the Department of Foreigner in Police Department. Furthermore, a new task office the Migration Unit, had been tasked with preparing a draft law on asylum system. However these developments were not enough to resolve ECtHR rulings, and in order to deal with these issues Turkey did not have any choice but to reform its asylum policies. (Kirişçi: 2012). In this background new draft legislation was prepared by the end of 2008 and opened to participation from civil society and international organizations. One of the unique features of the new legislation was that it was open to discussion and entails a transparent process of its establishment. Therefore it could be said that the new law was a product of a joint process which was embedded with heterogeneous language on common goal.

One of the main concerns during this process was the need of a holistic approach to the issue of asylum and migration policies and legislation. In this respect from a legal perspective ‘terms’ that were used in the legislation need to have a clear definition which are not subject to doubt in their meaning (Kaya: 2007). The Foreigner and International Protection Law was amended in 2014 as Law No: 6458 had a general

framework which aimed to extend protection to asylum seekers and refugees in addition to that reinforced through an administrative and physical infrastructure (Kirişçi: 2012, Okyayuz & Angliss: 2014). As it was discussed before, there have been works on asylum systems however these were on specific subjects which consist of secondary legislations which amended to regulate the policy field. In these, the 1994 Asylum Regulation which introduced the concept of ‘asylum seeker’ in the Turkish context and the 2006 circular of the Foreigners Department of the Turkish National Police which aimed to harmonize practice with the EU *acquis* have been notable developments (Açıkgöz and Ariner: 2014). In this sense, 2014 legislation has been the first national law regulating international protection. In this respect what has been *de facto* functioning in the asylum practices has been recognized and institutionalized with this legislation. There have been promising humanitarian developments in the legal framework which in the general consideration of the law there has been a transfer of concentration in responsibilities from national police to civil authority who are thought to be migration specialists (Okyayuz & Angliss: 2014). This was the biggest indicator that the asylum system was transforming into a more civilian system.

One of the particular issues that has been addressed with the new legislation is the void between Turkey’s recognition of refugees who are limited to a geographical position and asylum seekers. In this purpose, condition refugee has been defined as following;

ARTICLE 62 –(1) A person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself 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 temporarily until they are resettled to a third country.

Conditional refugee explanation was necessary for institutionalization process with determining social and political rights embedded to the status. Conditional refugees are the people who had already been recognized by UNHCR, and “tolerated” to stay in the country by the state. However this toleration has been reinforced by the non-refoulement principle which disable a country’s sovereign right to send these unrecognized people to their country. In this respect this definition acknowledges the rights of the refugee and is secured within a legal framework once again through domestic legislation.

Another issue that created a challenge in the international courts besides the ‘conditional refugee’ term was the ‘refugeelike situations’. Returning people in a ‘refugeelike situation’ was prevented in international law, under the notion of non-refoulement. To this extent the subsidiary protection has been defined as:

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 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.

In this regard recognition of a refugee is not the only criteria for seeking protection but also this legislation was expanded to include ‘refugeelike’ situations. As a result of recognizing the ‘refugeelike’ situations, people of concern were included in a legal framework in which secure their political rights and also their social rights in Turkey. This has been one of the most important developments as people within ‘refugeelike’ situations are higher in number than those in refugee situations. As Turkey broadened the legal framework to include refugeelike people, it also prevented a possible seek for international protection in Europe.

In addition to status determinations, there were serious changes on the legal

framework of policing controls. In these changes ECtHR rulings against Turkey had strong influences on the subject of determination of detention procedures. One of which was the establishment of criteria in order to prevent arbitrary detentions of people who had applied for international protection. These criteria were classified under four headings in Article 68 on the second paragraph as follows;

- a) For the purpose of determination of the identity or nationality in case there is serious doubt as to the accuracy of the information provided;
- b) For the purpose of being withheld from entering into the Turkey in breach of terms [and conditions] of entry at the border gates;
- c) when it would not be possible to identify the elements of the grounds for their application unless subjected to administrative detention;
- d) when [the person] poses a serious public order or public security threat.

Another aspect of the article was to regulate long detention periods in Turkey which before had resulted with condemnation to compensations on several cases. As it was discussed before in the *Abdolkhani and Karimnia v Turkey* case, they were detained for one year in which it was said that this was a violation of human rights. In the new legislation there were limitations on the length of the detention periods, on the fifth paragraph of Article 65 it states that;

- (5) The period of administrative detention for applicants shall not exceed thirty days. The actions related to applicants subject to administrative detention shall be finalised as soon as possible. Administrative detention shall immediately be ended when its conditions no longer apply

Thus the arbitrary detention that created challenges for Turkey in the international community had been addressed in this legislation. As the time period and criteria are determined in the legal framework, legal access for these people was also reassured. From a legal point of view the rights of the refugees were protected with clear directives through the case of detentions.

The inclusion of new international protection statuses and controlling the policing procedures have been signs of institutionalizing the asylum regime which are

positive developments and rooted in humanitarian concerns. However another aspect of the legislation was aimed at the externalization of the asylum seeker issue from Turkey to a regional context. These developments are not just executed in Turkey but it's the new international context of the refugee regime. In this regard the developments of these policies can be seen as a harmonization process of Turkey into EU asylum regime.

Exclusion of the asylum seekers to other regions was made possible by following the international legal framework. There have been three particular articles in the legislation that function to restrict the incoming refugee flows. "First country asylum" in this framework emerged as a notion in the domestic legislation in Article 73;

In cases where it is established that applicant has arrived from a country in which he or she has previously been recognised as a refugee and can still avail himself or herself of that protection or, has arrived from a country where the possibility to enjoy sufficient and effective protection including protection against refoulement, their applications shall be considered inadmissible and the actions for the applicant's removal to the first country of asylum shall be initiated. However, the applicant shall be allowed to stay in Turkey until the date when the removal takes place. This situation shall be notified to the applicant. In case the applicant is not admitted by the first country of asylum, the actions regarding the application shall be resumed.

In this statement, Article 73 specifically deals with recognized refugee or refugee-like situations. Its function is to return those who have been granted international protection by their prior country. In addition to that, Article 73 is also interrelated with the concept of "safe third country" which was defined in Article 74. Safe third country notion functions in a more expanded area in which safe third country has been defined as following "in which he/she (applicant) has lodged an [international protection] application or in which it would have been possible to lodge an international protection claim that could have resulted in the granting of appropriate protection in compliance with the Convention". As the international dimension was discussed under the London Resolutions safe third country process is a vaguer subject that has to be defined more thoroughly. As the "first country asylum" concept

functions in between the receiving and the last country of asylum, it mainly is an agreement in between two countries where the applicant in this sense is excluded from the process as he/she is already granted with international protection. However in the “safe third country” conceptualization the applicant is involved in the process as it was stated in paragraph 3 of the Article 74 as follows;

The assessment of whether or not a country is a safe third country for the applicant shall be made on case by case basis for each applicant, including the assessment of connections between the person and the country according to which it would be reasonable to return the applicant to the third country concerned.

Turkey’s “safe third country” determination process functions on an individual basis in which for each applicant, the process of whether their country of origin is safe or not will be determined. As in the London Resolutions the criteria of a country being evaluated as being a safe country, is determined under four criteria;

- a) the lives or freedoms of persons are not under threat on account of their race, religion, nationality, membership of a particular social group or, political opinion;
- b) implement the principle of non-refoulement with regard to countries where persons may be subjected to torture, inhuman or degrading punishment or treatment;
- c) provide the opportunity to apply for refugee status, and when the person is granted refugee status, the possibility to provide appropriate protection in compliance with the Convention;
- d) ensure that there is no risk of being subject to serious harm

The notions of “safe third country” and “first country of asylum” have been determined in respect to international norms to arrange a safe return of potential refugees. However there is a crucial difference in between Turkish law and EU legislative interpretation of these concepts. In the Turkish legislation there is the inclusion of those people who are defined under “subsidiary protection” as it was only limited to potential refugees in EU legal framework. In this regard the return process of the people of concern do not only include refugees but also those who benefit from the subsidiary protection.

In the establishment process of these concepts, Turkish officials were concerned that

by accepting these norms, Turkey could become a buffer zone for EU's unwanted asylum seekers/refugees (Kirişçi:2012). These concerns could be reinforced with the 2014 readmission agreement that is signed with the EU. Although this deal will come into full effect in 4 years time, Turkey has accepted that nationals of 'third countries' will be returned to Turkey if they attempt to illegally enter Europe through Turkey. In this respect with the notions of "country of first asylum" and "safe third country", reinforce the claim that EU's main purpose is to create a Fortress Europe and it was not motivated with humanitarian concerns. Furthermore these agreements will put a much higher burden on Turkey if it doesn't establish readmission deals with the countries of origin or the third countries that they come through.

Out of these concerns Turkish officials established a general policy that German officials had previously used for a period to return Turkish immigrants to Turkey. In the 1980s the German government had an active return policy which envisaged three basic instruments for this purpose. Among these instruments the most efficient instrument was the Programme for Financial Return Aids (Programm für finanzielle Rückkehrhilfen) (Mehmet Okayayuz: 2012). In this regard Turkey also implemented a similar policy in the Article 87 of the legislation;

- (1) Material and financial support may be provided to those applicants and international protection beneficiaries who would wish to voluntarily return,
- (2) The Directorate General may carry out the voluntary repatriation activities in cooperation with international organisations, public institutions and agencies, and civil society organisations

Article 87 shows how economic and political is embedded with each other and how ambiguous the forced and economic migration is in nature. As the refugee status and international protection is given on a political base, there is an economic base resolution that has been adopted in order to return these people to their country. Through this policy there is the acknowledgment that forced migration can transform into an economic migration.

The last procedure that has been introduced regarding restriction of access to the refugee system was the expansion of the accelerated assessment. The effects of the

accelerated procedures were debated under the international framework in manifestly unfounded claims. Under Article 79 the circumstances of the accelerated assessments were introduced;

- a) has never mentioned elements that would require international protection when presenting reasons while lodging the application;
- b) misled the authorities by presenting untrue or misleading information or documents or, by withholding information or documents that might negatively impact the decision;
- c) has destroyed or disposed of identity or travel documents in bad faith in order to make determination of identity or citizenship difficult;
- ç) has been placed under administrative detention pending removal;
- d) has applied solely to postpone or prevent the implementation of a decision that would lead to his/her removal from Turkey;
- e) pose a public order or public security threat or, has previously been removed from Turkey on such grounds;
- f) repeats the application after the [initial] application is considered to have been withdrawn

The purpose behind this procedure was to fight against bogus asylum applications. However as was discussed in the international framework this procedure transferred the burden of proof from the state to the asylum applicant. Under these proceedings the interview has to be conducted within three days and the decision on the application has to be finalised in the following five days from interview. If the result of the application is in favour of the applicant, the case will be removed from the accelerated procedure and returned to normal procedure. In this sense, this procedure isn't a determination of refugee status but to assess if the applicant is a potential refugee or not.

In conclusion the new law has been a serious step towards the institutionalization of the refugee system in Turkey. Furthermore it has been the most serious development in the harmonization process of the EU-MS legal framework. While the new law enhances the protection of refugees on an institutional basis, it also limits the accession to the system in accordance with the EU refugee framework. Thus as the depth of international protection awarded to refugees has been expanded, the scope of those who can benefit from the framework were limited. In this respect the transnationalism of the refugee system became limited to those who are neighbouring

the countries. As in the case of Turkey, refugees from Syria, Iraq and Iran in general benefitted from asylum system while rejected those third nationals coming from these countries. However this orientation can't be criticized upon the Turkish legal system solely but it's crucial to include EU exclusionist asylum regime and UNCHR as its instrument in this analysis.

3.2: Accommodation and Social Services

In the previous section, Turkey's development and the current legal framework regarding asylum seekers accession to territory and procedural processes has been discussed. Procedural reforms and access difficulties have been one aspect within the problem of externalization of the refugee issue. As it was discussed Figure-1¹⁴, measures that were introduced that affect the outcome of the decision have been another crucial component of the asylum system. These measures are mainly related to daily practices of asylum seekers. In this sense the length of the procedural processes is crucial as they highlight the importance of integration and daily practice of asylum seekers to be crucial in the asylum system. In the Turkish asylum system today there are three important components of the asylum procedures. The actors of the process has been, national agency, UNHCR and resettlement agencies. These agencies has been responsible for the process from the beginning of an asylum seeker's entrance to them exiting the country for resettling in a third country.

3.2.1: Length of the Procedure Process

As one of the three pillars of the asylum system, UNHCR's main responsibility is to conduct the refugee status determination. In the UNHCR mandated refugee status determination, the period between the first interview and registration is regarded as highly important. In this respect the first interview has to be conducted as early as possible. This time interval has been expressed to be within the first month of the applicants' registration. In addition to that, it also extends this period by stating that in the case that there have been huge influxes of refugees, this interview date could be extended to a longer period. Nevertheless these interviews have to be conducted within a 6 months framework (UNHCR: 2010). UNHCR also implemented policies

¹⁴ Hatton Figure-1

for more vulnerable cases in which an accelerated refugee status determination could be conducted according to their situation in the host country. These specific conditions has been described as to identify those in various level of discomfort or help.¹⁵ UNHCR function and productivity could be seen in the previous section as in the applicants to whom there was a threat of refoulement. UNHCR active policies have been influential which led Turkey to make necessary changes in the legal framework regarding these departments. There are concerns for the applicant in the host country, is not only particular situations for the asylum seekers, but also socio-cultural and economic problems within Turkish society this can't just be organized under the international protection agenda. Once again this shows that the refugee problem is not a subject of its own but interrelated with the migration and socio cultural and economic situations within and across the countries.

National directory and UNHCR's *de facto* harmonization on the decisions in the late 1990s has also been previously discussed. One of the legal developments was the legalization of the *de facto* harmonization between UNHCR and National Directory's application. In this respect it could be argued that the first conducted interview date can be seen as one of the most important elements of refugee system. Moreover establishment of the time interval has been stated in the Article 75;

(1) An in person interview shall be conducted with the applicant within thirty days from the date of registration, with a view to reach an effective and fair decision. The applicant shall be given the opportunity to express him or herself in the best possible manner while confidentiality shall be respected. However, where the presence of family members is required, the interview may be conducted with the participation of family members, upon consent of the applicant.

¹⁵ - Applicants who are manifestly in need of protection intervention, including persons who may be subject to immediate refoulement, arbitrary arrest or detention in the host country, or who may have other serious legal or protection needs;
 - Victims of torture or trauma (including victims of gender-based violence), who are suffering from ongoing mental or physical health problems;
 - Women who are at risk in the host country;
 - Elderly asylum-seekers who are without support in the host country;
 - Disabled asylum-seekers who are without necessary support in the host country;
 - Asylum-seekers who require urgent medical assistance;
 - Certain child Applicants, in particular children who are unaccompanied or otherwise separated from their parent. (Omid Advocates for human rights: 2010)

Upon request of the applicant, his/her lawyer may attend the interview as an observer.

Even though Turkey has adopted a closer procedure by adopting timelines in the legal framework, still UNHCR's determination process has been more detailed than the Turkish legislation as it doesn't include specific cases where applications can be accelerated in favour of the refugee. Following interviews, the decisions of cases have to be well investigated and conducted to result a conclusion in the soonest possible time. Article 78 has expressed the time period in which the decision on the application had to be made.

(1) The [assessment of the] application shall be finalised no later than six months as of the date of its registration by the Directorate General. Where a decision cannot be reached within this period the applicant shall be informed.

As a result of this decision process, those who gained conditional refugee status, had an opportunity to apply for resettlement in a third country. The process of the resettlement procedures have been operated mainly by the International Catholic Migration Commission (ICMC) – UNHCR partnership. However there aren't any time limitations in which the resettlement application should be concluded by. Furthermore in this process before the resettlement acceptance, there are other refugee status' procedures including medical examination and cultural orientation processes which prolong the resettlement procedures. In this regard the length of the refugee determination process is not only limited to the refugee system in Turkey but can be prolonged even without the challenges of the Turkish asylum system.

In Turkey, it was observed that asylum applications had been steadily accumulating on a yearly basis since the year 2000. In 2013 Turkey became the fifth most refugee receiving country among 44 industrialized countries and furthermore in these statistics Syrian refugees have not been included (UNHCR: 2014). It has been claimed that an increase in the asylum application has strained the asylum system, and as such forced the UNHCR to begin a cooperation with the non-governmental organization of ASAM (Association with Asylum Seekers and Migrants).

In the light of the latest refugee flows in a typical case, a potential asylum seeker

would come either to UNHCR or ASAM's office in order to register themselves to the asylum system in which they would obtain a first interview date with the UNHCR. The date for the first interview given, would depend upon the asylum seekers country of origin if the asylum seeker is coming from Iraq he can be given a later date in comparison to asylum seeker coming from Iran. Today an applicant from Iraq can be given a first interview date of up to 2 years or more after the registration date (ASAM: 2013). As Kılıç has been arguing, the application processes in average lasted for 4-5 years and in some cases with the appeal processes this period was extended to 7-8 years before the applicant became eligible for resettlement (Güsten: 2012). The applicants that are recognized as refugee have to go through resettlement processes which contains a separate interview process that could result with a negative decision. In those cases, refugees have to wait for another country to admit them as a refugee to resettle in their country. Through this process medical examinations and cultural integrations are also required in order for them to be admitted in the country. Thus in the resettlement procedures, agencies do not only investigate political criteria but also on the account that how they will integrate to system and working force. As OMID confirms medical reports document a deterioration in health status of refugees and argues is a direct correlation with long waiting period and stresses that is produced by the challenges in the interview process, as well as poor living and healthcare conditions (OMID Advocates: 2010). In this regard developments within the legal framework concerning the social needs and daily life of the applicants became crucial to be investigated upon.

3.2.2: Satellite Cities

Ambiguous and long waiting periods, highlight the importance of the spaces for the asylum applicants. The designation of space for asylum applicants has its roots in the 1950s with Article 17 of Law on Residence and Travel of Foreigners which states that "foreigners who seek asylum for political reasons shall reside at spaces assigned by the Ministry of Interior". Asylum seeker's current space was designated in the 1994 Regulation, and was considered as securitization response of the Turkish government to asylum flows. The states inclusion in the asylum procedures has been

discussed, but also with this regulation asylum spaces were used as a control mechanism regarding the incoming immigrants as well as the applicants inside the borders. Therefore the 1994 Regulation 6th article is crucial as it introduced a new practice which defines the space of applicants;

Those aliens whose applications are accepted shall be accommodated in a guesthouse deemed suitable by the Ministry of the Interior or shall freely reside in a place which shall be determined by the Ministry of the Interior.

The policy of settling asylum seekers to these certain cities is known in the migration studies as the satellite cities. Security and public order records have been the main criteria in the determination of 31 satellite cities. According to the regulation, the process of the applicant to settle in a satellite city was determined on the basis of the cultural attributes of the applicant. However during the interviews with the official personnel in foreigners department it was revealed that officials would primarily look at the population density of the satellite cities (Özgür and Özer: 2010). Security discourse once again was the primary concern in the determination of the satellite cities.

In the harmonization process of the EU-MS practices of Turkey, required stricter mechanisms to control immigration movements within Turkey and to Europe. In addition to that, increasing number of refugees enforced Turkey to take action in accordance with these flows. In the 2010 Implementation Directive one of the significant developments have been the increasing number of satellite cities. The number of cities in this status has been increased from 31 to 51. In 2013 this number eventually rose to 53. In parallel to this development restrictive and controlling measures have also been introduced with the 2010 Implementation Directive. The foreigner department of the national police force's role has been expanded, with introduction of the signature duty for the asylum seekers in Annex 1 of the Implementation Directive. Frequency of the introduced signature duty varies from every day to 1 day a week in accordance with the circumstances of the refugee as well as the city's circumstances.

Furthermore, asylum seeker's leaving the city are bound by receiving permission

from the foreigner departments. Thus asylum seekers became ineligible to leave the city even for neighboring cities. In this respect the natural movement of asylum seekers within a country was restricted as in this sense refugees were confined to local areas. Within the 2010 Implementation Directive, there have been developments regarding refugee rights in the process of assigning satellite cities. Refugees in this process are given the right to select the satellite city that they will reside in. Another important feature in this settlement process with regards 'satellite city' is that it functions with interactions to local governorates of the cities. In the case that a city is overflowed with applicants, there is a chance of closing the city to residency. However newly arriving applicants in country in which generally don't have an opinion about the cultural context or other relevant factors about the city. These circumstances could worsen for a potential refugee prior to their selection which illustrates once again how the state forces the asylum seeker into vulnerable position rather than providing security from the outset in case that a satellite city which housed a community of his/her country of origin concentrated upon was 'closed' to residency thus depriving a new applicant from the community support and experience that would otherwise have been offered.

Even though the process of the refugee application was envisioned to be an individual process in the practice it has been a collective one that depend upon the community that surrounds the refugee. In this respect the vulnerability of the asylum seeker has depended upon several circumstances such as; the host country's infrastructure to provide a security for the asylum seeker, the social context of the local population openness to the foreigners, the strength of the civil society organizations within the city and at last the community of the refugees to protect support and guide their way through the host country.

ASAM - UNHCR cooperation *de facto* improved the situation of the refugees. As the ASAM became more responsible for the pre-registration process, in which part of the police responsibility was also transferred to NGOs as applicants have the chance to select the satellite city during the pre-registration process under the supervision of ASAM. In this respect the transfer of partial responsibility of the satellite city process, illuminates the state's stance towards the asylum issue. As the settling of the

refugee was on the basis of the state security interest, by this transfer it partially reoriented from security to humanitarian concerns. As a result civil society specialist could help applicants in this selection process. The latest development regarding the situation of satellite cities has been discussed under the 2014 legislation in Article 82 as follows;

(1) For reasons of public security and public order, the Directorate General may require conditional refugees and subsidiary protection beneficiaries to reside at a given province and report to authorities in accordance with determined procedures and periods.

In the general framework there are many important developments in favor of asylum seekers. The situation regarding settlement of the refugees has been expanded to include subsidiary protection beneficiaries. However in Article 77 of the legislation (ç) paragraph legalized the restriction of the refugees as follows;

d) fail to comply with the reporting obligation three consecutive times without excuse, do not show up in the designated place of residence or, leave the place of residence without permission;

The following paragraph has been established within the conditions considered as withdrawal of the application. Thus leaving the premises of the satellite city without notice was considered as a fatal violation in the application that leads to repeal of the application. Hence in these latest development although the scope of people to be confined has been expanded, refugees have relative freedom in selecting the city that they are going to be in.

The public services and benefits that asylum seekers benefit from changes from city to city. (Erensu: 2014). In this respect, selection of the city became one of the most important decision for asylum seekers. The difference between each city in essence has its roots in the urban governance under neoliberal economic practices. The shift to entrepreneurialism in urban governance, resulted in city municipals acting as economic actors within the country (Harvey: 1989). Thus creating city management and social rights in favor of the capital holders. In this context the condition of the refugee in a satellite city became dependent on several conditions, such as production relations, social rights, civil society organization and the cultural context regarding

relations with the aliens within the city. These conditions became increasingly important as to how city governorate's approached the refugee population. Istanbul, Ankara and İzmir, the big metropolises of Turkey are not opened as satellite cities, even though in these cities, a bigger economy and multicultural environment exists. Furthermore the civil society organization are mainly focused in these metropolises including immigrant and refugee right based organizations. Therefore by excluding refugees from these cities, they became more vulnerable to national authorities exploitations. This void in the national asylum structure created a space for maneuver for local authorities to manipulate these forced immigrants for the sake of the cities and capital holders' interest.

3.2.3: Residence Permits

Applicants in the satellite cities became more vulnerable to exploitation due to lack of directives concerning the rights of the applicants. Thus a legal standard that determine the minimum standards for asylum seekers had to be established. Social rights of the refugees were defined and granted to people who were from Turkish descent or culture under the framework of the 1934 Law on Settlement. People outside of this definition were subjected to the legal framework designed to economic migrants. One of the biggest challenge was the residency fee that was imposed on asylum seekers and refugees. Following the settling of the asylum seeker, they were obliged to pay 275 YTL per person in order to reside in Turkey (Kırmızıgül: 2013). As the residence permit last for 6 months, every six months refugees needed to renew their residency permits. Refugees became indebted to Turkey upon the arrival to the city thus searching for a job opportunity in order to pay the debt became crucial.

Theoretically there has been an exemption clause for the residence tax however in practice it was unobtainable. According to the Act of Fees in Article 88(d), people who don't have the means to pay "residence tax" may be exempt from paying the fee. However in practice these exemptions are accepted in rare cases, as the existent legal framework gave great discretion to authorities (Helsinki: 2009). Thus the

burden of proving a need for exempting from residency tax falls onto the asylum seeker shoulders. As it was discussed before the implementation of policies in practice varies from city to city in accordance with authority refugee relations and in addition to that also civil society facilities within the satellite cities. In the 2010 Implementation Directive, EU concerns over the residency taxes were met with the 11th article. In this article it specifically state that those who applied for asylum in the country will be granted with 6 months residency in which at the end of the first 6 months, extension for 6 months will be granted to the applicant. In the cases in which at the end of the 1st year period they were still not resolved, upon the directive of the ministry, the situation of the applicant in the satellite city would be decided upon. In this respect there has been a relative transfer of authority from the governorates to ministry on the issue of residency. It could be claimed that this is indicative of a more national control mechanism that has been emerging.

In the new law residence permits have been classified under several categories. Among these categories a specific category concerning humanitarian reasons were established. The residence permits on humanitarian concerns are approved with a maximum duration of one year and renewed by the governorates without seeking the conditions for other types of residence permits. Residence permits are not given on the financial condition of the refugee but on the basis of principal. In this framework approval of residence permits on humanitarian concerns are described on conditions under the Article 46;

b) where, notwithstanding a removal decision or ban on entering Turkey, foreigners cannot be removed from Turkey or their departure from Turkey is not reasonable or possible;

d) throughout the removal actions of the applicant to the first country of asylum or a safe third country;

These are the two conditions among the humanitarian concerns that are related to international protection issues. In the (b) section of the particular article it extends the residency permit on the principal of non-refoulement. On the other hand the (d) section of the article is related to the vulnerable position of refugee applicants coming from ‘country of asylum’ and ‘safe third country’. Both articles are also

concerning refugees that are practically unable to be sent back because of the missing readmission agreements with the countries of concern.

Residency permits for asylum seekers and conditional refugees and beneficiaries of international protection have been separated in the new legislation. In the framework of law on foreigner and international protection, residency permits aren't a singular process separated from the asylum process as a whole. Identity cards in the new law functions as residency permits, as it was stated in Article 76 "The identity document shall substitute a residence permit and shall not be subject to any fee" also it was stated that the identity document would be valid for 6 months and extended for another 6 months. However those who gained the conditional refugee or beneficiary of international protection status, have a different process. The basic difference from that of the asylum seekers is that the identity card that has been given is valid for 1 year. One of the main demands from the international community regarding residence permits was met in the new legislation by removing the fees for extending the residence permits (Okyayuz: 2013). However considering the long process of asylum application and resettlement time periods, time intervals for validity of the residency permits falls short. In this respect either the authorities envisioned that the process of the refugee system would accelerate or couldn't foresee the inherited problematic infrastructure of the old system that created an environment in which asylum seekers, conditional refugee and subsidiary protected people would become more vulnerable in the asylum system.

3.2.4: Legal Access to Work

One of the key aspects in the daily life in the satellite city for asylum seekers has been regarding legal access to work. Under the 1994 Regulation as was in the case of residence permits, in the case of work permits, asylum seekers have been subjected to general provisions like other foreigners. Although theoretically Turkey has been one of the few countries that permits asylum seekers to work legally, in practice it has been nearly impossible to obtain a legal access to work. Part of the reason has been the heavy burden of taxes and social contributions that have to be paid by the employee (Kaya: 2007). Furthermore in order to obtain a work permit employee, has to prove that the specific job can't be fulfilled by a Turkish citizen and that the job is

not a threat to national security and order (Manap Kırmızıgül: 2013). On the other side, the asylum seeker has to submit the relevant documents to the Ministry of Labour and Social Security that he/she is capable and have the necessary education in order to do what the specific job entails. However this process is only valid for one job, and if the applicant wanted to change his/her employment, then they need to renew this application from the start. In this regard it becomes difficult to find an employee willing to face severe tax burdens as well as engage in the bureaucratic processes it entails. In addition to the asylum seeker in this bureaucratic nightmare became vulnerable in the face of the employee that has to accept the exploitive measures that the job demands. In the light of these however as Kırmızıgül and Kaya claim most of the asylum seekers are working illegally, therefore integrated into the work force as other economic migrants are. Refugees' problematic relation to enter into the work force can be seen as a further example of the 'nature of migration' even though it is rooted in economic or political basis, migration movement has been subjected to become labor and by that virtue has not been exploited (Akalin:2012, 90).

In the 2014 legislation, work permit procedures regarding the application for international protections were classified as an individual issue. In Article 89 of the legislation under the 'access to assistance and services' section the fourth paragraph was specified regarding the access to labor market. In this respect, international protection was separated under two headings on basis of the status of refugees' international protection category, as the work permits under the first heading was aiming policy process for the 'refugees' and 'beneficiaries of subsidiary protection'.

b) the refugee or the subsidiary protection beneficiary, upon being granted the status, may work independently or be employed, without prejudice to the provisions stipulated in other legislation restricting foreigners to engage in certain jobs and professions. The identity document to be issued to a refugee or a subsidiary protection beneficiary shall also substitute for a work permit and this information shall be written on the document.

People under the stated international protection were regarded as individuals who had been under the sole responsibility of Turkey and were not going to resettle in a

third country. In this sense permanent solutions were necessary to enable people of concern to legally access to the labor market. As the identity card also function as a work permit their access to legal work has been improved in the sense that it has become less bureaucratic. However in the c section of the fourth paragraph economic concerns of the state were identified by introducing temporarily restricting access measurements to some of the economic sectors. The second process introduced according the status was designed for people who were regarded as ‘asylum seekers’ and ‘conditional refugees’. This has been explained with following words; “an applicant or a conditional refugee may apply for a work permit after six months following the lodging date of an international protection claim.” Applicants have been regarded in this framework as people with uncertain status and temporary residents. To this extend the introduction of the six months period has been introduced to eliminate people who may potentially abuse the refugee system on economic grounds. On the other side conditional refugees are regarded in relation to America and the EU, as eventually resettling in those countries. Since the work permits were given on a 6 months basis and required a different process this creates a discomforting circumstance for the refugees, thus forcing resettling countries to act in haste or to sicken the conditional refugees. In this regard their access to legal work is as problematic as in the former framework.

3.2.5: Healthcare

Poor healthcare conditions for asylum seekers in Turkey has been one of the biggest concerns that has been repeatedly voiced by the international community. Asylum seekers and stateless people rights to health services have been regulated in the 2006 Circular and in the Rules on Application of Health Support Allowance Program (No.1262) which had been issued by Prime Ministry Directorate General of Social Cooperation and Solidarity. In these regulations it was clearly stipulated that an applicant has to pay for medical expenses. Only in cases where the applicant proves that he isn’t able to afford the expenses and UNHCR is unable to help, the state would step in. In this respect, the state has shown UNHCR as the primary body responsible for medical assistance. However UNHCR has very limited remit in these

situations: UNHCR limits their financial assistance to “recognized” refugees and “one-time special” assistance to applicants in vulnerable situations (Levitan, Kaytaz and Durukan: 2009). Since the UNHCR can only offer limited help to the applicants, the burden of proof once again falls onto applicants to prove that in fact he is unable to afford medical expenses to the state.

In this framework humanitarian civil society organizations such as ASAM and Caritas, have been using incentives to fill this void constituted by the UNHCR and the state. ASAM has been actively filling this gap by communicating with the local authorities, pharmacist and hospitals to provide medical support to asylum seekers (Mehmet Okyayuz: 2013) However provided help diminishes as the health problems of the asylum seekers becomes distant from metropolises to satellite cities (Levitan, Kaytaz and Durukan: 2009). This is mainly because aside from ASAM, humanitarian agencies are not active in the satellite cities where from asylum seekers have to get permission from the authorities to go to big cities to ask for help.

Responsibility of healthcare transferred from the asylum seeker to the state with the new legislation. Article 89 describes the assistances and services that applicants or international beneficiaries can benefit from in which paragraph three has defined the services in the healthcare.

a) are not covered with any medical insurance and do not have financial means [to afford medical services] provisions of the Social Security and Universal Medical Insurance Law № 5510 of 31/05/2006 shall apply. For the payment of the premiums on behalf of persons to benefit from the universal medical insurance, funds shall be allocated to the budget of the Directorate General. Persons, whose premiums are paid by the Directorate General, shall be asked to contribute fully or partially in proportion to their financial means.

In section (a) of the article, it shows that in the absence of the responsible organization concerning the medical expenses, the state takes on the primary role in ensuring applicants are covered with general health insurance which would be proportional to the financial situation of the applicant. As the UNHCR was responsible for the refugees, the state took over the role to cover the expenses of the people who here not yet refugees or conditional refugees.

b) those who at a later date would be found to already have had medical insurance coverage or the financial means or, to have applied [for asylum] for the sole purpose of receiving medical treatment shall be reported to the Social Security Authority within ten days at the latest for termination of their universal health insurance and the expenditures related to the treatment and medication shall be reimbursed from them.

In the stated section (b) of the paragraph three, it established the relation between the state and asylum seeker concerning health services. Upon this article it's seen that the state on the issue of the health system stands on a humanitarian basis as to prioritize the asylum seeker's application on the issue of health services. Into this extent the burden of proof is carried by the state as to investigate if the asylum seeker is financially able to pay for the medical expenses by itself. Legally, healthcare among the social services has been the most developed area with the introduction of the new legislation. As it initially prioritized the applicants' health over the interests of the state, but in other areas interests of the state has been prioritized over the needs of the applicants.

3.3: Concluding Remarks

Turkey's experience with the refugees has been relatively new since the first notable refugee flows started in the 1980s. The neoliberal framework set in the introduction chapter displays the transformation of the international division of labour. The Turkish framework illuminates the changes and continuities through the transformation of international economic order to neoliberal economic practices. In this new division of labour, Turkey has been assigned to be one of the production centres/buffer zones of the Europe. In this respect Turkey was needed to play a more active role in the international refugee system both for stopping access of the migration/refugee flows to Europe and also for having a foreign labour force that could have capacity to devalue the labour value in Turkey. This cooperation in the international level was not a peaceful process which could be seen in the chapter through the conflicts between Turkey and UNHCR on the refugee policies.

Establishment of the refugee policies in Turkey started with the 1994 Regulation which prioritized sovereignty and security over the humanitarian protection system. Through Turkish state involvement to refugee area, it was observed that state was reluctant to accept refugees and had dysfunctional protection mechanisms which pushed refugees away from the system. Therefore refugees who couldn't enter to refugee system within Turkey would force their way to Europe both for security and sustainability reasons. In the analysis of the early refugee experiences, it was seen that Turkey adopted exclusionary policies towards refugees however these policies didn't have a legal basis and more importantly was not in a systematic nature to push refugees away from Europe.

Turkey's independent externalization policies were discouraged through international court decisions. As it was claimed in the introduction chapter Turkey's reservations from the Geneva Convention has not been a major threat for the refugees in Turkey. This hypothesis has been propounded with the non-refoulement principal which have the capacity to overrule Turkey's reserved right to enforce geographical limitations to the refugee applications. In this respect Turkey's individual domestic attempts to legally externalize the refugee responsibility has been cut-off by the international mechanisms, therefore enforcing Turkey to become a component of the international refugee regime. In the latest national legislation Turkey accepted the recognized refugees as conditional refugees which was a sign of acknowledgment of the non-refoulement principle.

In the following parts of the chapter it was seen that European Union and UNHCR emerged as a crucial actors in the development of the refugee system in Turkey. Through the EU accession negotiations Turkey was enforced to harmonize the domestic refugee system to international refugee system. This harmonization process was established on two main grounds in which on the one hand there has been an effort to construct a functioning refugee system in Turkey while on the other side stricter border policies were implemented to restrict access to Europe.

The early harmonization directives from E.U also displays the priorities of the EU which was aiming to harmonization of the border control mechanisms and included

readmission agreements and stricter policing on the visa control standards to EU standards. This was later accompanied by directives to Turkey for establishing a functioning refugee system. It was seen that in the final stages of the harmonization process has been the implementation of the new law known as foreigners and international protection. Externalization policies set out in the international framework was adopted with the new law through the introduction of the safe third country, first country of asylum principles. Hence Turkey's cooperation to the European externalization of the refugee responsibility was completed with the new law.

In conclusion the void between the national and local asylum regime has been relatively organized within the new legal framework. The assistance and services section of the legal framework was established to standardize the social rights of the applicants. The Afghan refugees' situation in Turkey on the subject of social rights falls in the grey zone; they have been admitted as asylum seekers in the process, which has been stalled indefinitely. In this regard the legal/political part of the asylum regime can only offer part of the picture. In order to understand the externalization of the refugees one has to look upon the practical side of the legal framework. The Afghan refugee case has been unique in the sense that it has been the first challenge for the Turkish asylum regime within the EU migration system. Furthermore it has been one of the biggest refugee flows not only to potentially threaten the externalization process of Turkey but also the existing EU asylum regime structure.

CHAPTER 4

EXTERNALIZATION IN PRACTICE AFGHAN REFUGEES IN TURKEY

In the last chapter, Turkey's integration to the EU asylum system was discussed. An important stage in the harmonization process of the asylum regime was achieved with the 2014 Legislation. The legal-political aspect has underpinned the whole process of the refugee system, practical aspects of the asylum process have been crucial to understand how much of these projected policies were effective in solving the asylum issue. Turkey's Asylum regime has been designed within a twofold process; the first process focused on the implementation of policies designed to create a healthy asylum process, so that applicants would not force their way to Europe. The second process parallel to this was the externalization of the asylum issue in Europe to include Turkey as well. Upon the framework of the asylum system designation by the EU, it was envisioned a close cooperation between UNHCR and Turkey. Into this extent, Turkey would have a functioning refugee system that wouldn't force refugees to seek illegal entry routes to Europe. In addition, this cooperation would also protect Turkey from a system breakdown as a result of refugee overflow.

Turkey's refugee experience in more recent years has been revealing of this cooperation. In this respect the traditional refugee flows from Iraq and Iran have functioned in the former procedural process, which was institutionalized within the new framework. However refugee flows from Syria and Afghanistan have been the two crucial refugee flows that show the magnitude of this new cooperation. Syrian refugee populations in Turkey quantitatively have been the largest refugee group in Turkey (Kirişçi: 2014). It has been estimated both from the UNHCR and Turkey that 900,000 Syrian refugees reside in Turkey, seeking protection. However, because of

the open border policy with Syria, the exact numbers of Syrian refugees cannot be known for sure. Among these, those refugees who have applied for international protection, has been assessed within the new legal framework and may have fallen under the category of beneficiary of 'subsidiary international protection'. Due to the new legal framework, Syrian refugee flows have been considered contemporary protection and Turkey has been the sole authority responsible for the process, although UNHCR assisted Turkey in this process. In this sense, Syrian refugees have been living under Turkish protection whereas their movement to Europe has also been interrupted.

The Afghan refugee issue can be considered to be the other side of the coin located in the externalization of the refugee in Turkey. The Afghan refugee case has two unique features in its essence. Firstly, it has been the first refugee case where Turkey and UNHCR work in cooperation to externalize refugee to their region. The second part of its uniqueness is that Afghan refugees among the world have been considered as the biggest refugee population. In this regard Turkey's first exclusion experience was with one of the biggest refugee population in the world, therefore this case is not only crucial on a Turkish level but also important in an international level. Therefore, the next part of this thesis will be to examine the 'Afghan Refugee Case' set within the context of the theoretical framework as outlined in the previous chapters. Due to the complexity embedded in the Afghan refugee case, a historical analysis of the Afghan refugee case is needed to analyse the multidimensional structure of the case. This process will frame the case in an international context with the historical structure it possess. The second part of this chapter will discuss the question of whether Afghan refugees could be positioned within the Turkish exclusionary asylum principles of 'safe third country' and 'first country of asylum'. In conclusion, the thesis will consider the argument of whether there has been an externalizing policy targeted against the Afghan refugees which results with violations of human rights within the Turkish framework.

4.1: Historical Background of Afghan Refugees

4.1.1: The Islamic Republic of Iran's Refugee Policies: Transformation from Open to Closed Door Policy

The complex nature of the Afghan refugee case lies in the continuous political and economic challenges that Afghanistan has been suffering from since the late 1970s. The prolonged political instability of Afghanistan started in 1978 with a coup that overthrew President Mohammad Daoud's government which was replaced by the Marxist government (PDMA). In the middle of the insurgency, civil war emerged due to the power struggle between fractions of the PDMA. The Soviet Union during this instability sent military forces to intervene in the civil war in December 1979 (Adelkah and Olszewska: 2002). As a result of these insurgencies there have been massive refugee flows to neighboring countries which resulted in 4 million Afghan refugees seeking protection in Iran and Pakistan accompanied by 3 million internally displaced people in Afghanistan.

The characteristics of the Afghan refugee flows in this period can be classified under two descriptions. The first one fits the traditional refugee description in which due to civil war, refugees fled out of the country for their own safety. The first flow has its roots within the established international refugee system on Geneva Convention. In parallel to general refugee flows, economic migration already existed in Iran and had also applied for refugee status. This shows that the migrations resulted from both political and economic necessity in which the boundary between economic and political motivations were embedded in one another. Thus it has been impossible to obtain a clear line separating both political and economic driving factors in the Afghan case. On the other hand through the emergence of the Soviet regime, a refugee flow occurred in response to a spiritual call for hijrah¹⁶. This was mainly motivated by the fact that people taking over the Afghan regime were not followers of Islam. Hijrah under Islamic migration law has been defined as a responsibility of the Islamic country to grant asylum for those Muslims who seek protection (Nicolson: 2007). In this respect Afghan refugees predominantly seek asylum in Iran

¹⁶ Hijra is an Arabic word defined as "flight" or "migration".

and Pakistan as those countries had a religious duty to protect them.

Although Pakistan and Iran's response to refugee flows from Afghanistan are not the subject of this thesis, it is important to acknowledge the difference between them. In Iran, contrary to Pakistan, the cultural and geographical proximity of the integration of the refugee has been easier. In Pakistan most of the refugees resided in refugee camps, unlike Afghan refugees who had relative freedom of movement within the Iranian borders. The good-willed reception of Iran was also related to the economic structure of the period. During the Afghan refugee flows, tension increased in the Iran – Iraq conflict which increased and resulted in war. This development in Iran resulted in the need of a labor force and Afghan refugees filled these roles. However the situation of the Afghan refugees in Iran has not been investigated thoroughly in this period mostly because of the Iran – Iraq war. In addition to that Afghan refugees were not contained in refugee camps rather integrated into Iranian social life and so access to such refugee groups for study was difficult to obtain. Differences between the reception policies for groups of refugees show that concerning control and policing, it has been relatively easier in Pakistan than Iran since Pakistan has isolated refugees to camps whereas Iran has a more suitable environment for Afghani people (refugee or economic migrant) to integrate in economic and daily life.

From the 1990s Iran's refugee policies shifted from open border to prevention and repatriation policies (Abbasi-Shavazi et al: 2005). This transformation in the refugee policies could be summarized as a response of the Iranian government to three important developments in the period. In 1989 as the Cold War came to its dissolution, Russia withdrew its forces from Afghanistan. Withdrawal of Soviet forces from Afghanistan, led the Najibullah regime to stand on its own which then preceded to a more religious regime. However the end of the cold war led to the fall of the Najibullah regime in 1991. Particularly for those who followed the hijrah call, the end of communist era resulted with the loss of the religious basis for stay when the Islamic regime once again became the ruling position in the country. The end of the cold war period also led to the political significance of the Afghan refugees to be diminished and to this extent humanitarian and other aid from UNHCR, WFP and bilateral donors were reduced (Hammerstad: 2014). Changing stance against the

refugees in the international communities was reflected in the financial aid to hosting countries. Iran in this conjuncture became more isolated economically for covering the financial burden of refugees in the country.

The Iran – Iraq war has been one of the determining factors towards the attitude of Iran in the reception of Afghan refugees which stems from the need of labor force in the period. After the war was over, economic and social concerns started to rise. Particularly on the subject of unemployment, refugees in the country were an excessive labor force which started to become a burden for Iran (Adelkah and Olszewska: 2002). In this respect the economic motivation on the refugee issue is not only related to the refugee population but also to host countries as well. Developments in the international community, host country and country of origin changed the overall stance over the issue of Afghan refugee. In this framework in 1992 Iran's first repatriation program was established by Tripartite Commission with the participation of Afghanistan and UNHCR. Throughout 1993, 600,000 Afghans returned to Afghanistan in which 300,000 of them were returned under the repatriation program (Abbasi-Shavazi et al.: 2005). Furthermore within the repatriation program, Afghan refugees ID cards had been confiscated in between 1992 and 1994 which were later replaced with a temporary permit that was valid for a month and was not supposed to be renewed (Foyouzat: 1996). In the same year of the repartition program, 500,000 temporary registration cards were issued for new arrivals and unregistered people. This was one of the first steps to temporarily allowing Afghan refugees to stay in Iran by the incentive of the government. These temporary registration cards were extended several times until 1996 when they were decreed as invalid. After the fall of the communist regime, between 1992 and 1996, new refugee flows were generated because of the civil war and due to the ambiguous political environment. Even after the Taliban regime came into a ruling position, the refugee generation didn't stop because of the extremist religious position of the regime. The UNHCR in this period was very active in Iran working to suspend repatriation actions till 1998 (Adelkah and Olszewska: 2002). During this period the most important prevention of UNHCR was observed in 1995 when Iran announced that all the Afghan population must leave the Iranian territory.

Afghanistan from the end of the 1970s following the subsequent events constantly generated refugee flows. Reaction to these refugee flows had been changing throughout the international community and Iran. In spite of the decrease of international financial support, UNHCR was still active in its policies to protect the Afghan refugees in opposition to the national interest of Iran. In this respect it was seen once again that the economic situation of refugees and the state influenced heavily on the actions of both the state and Afghan refugees. In the 2000s, the position of Afghan refugees in the international community will be exposed to some changes in respect to transformation in the political conjuncture, as the following section will examine in more detail.

4.1.2: International Unwanted Community: Afghan Refugees Situation in Post-2000

The movement of the Afghan refugees didn't stop after the Taliban regime came into power, on the contrary, refugee movements were increased especially after the American invasion of Afghanistan. Furthermore Afghans in the 2000s became more vulnerable to exploitations due to changes in the international context. The September 11th terror attacks on the World Trade Center and the Pentagon in the U.S has been regarded as one of the turning points within the immigration and asylum procedures. In the aftermath of the September 11th attacks, the locus of the Afghan refugee situation developed on two grounds; emergence of security discourse in the international community and resurgence of a repatriation process of Afghan Refugees.

Securitization as a discourse is not a new concept within the European agenda concerning immigration and asylum seeking procedures. Security has been debated among various schools of thought in which Copenhagen school described security as 'elusive' due to its nature of being socially constructed and essentially contested. The discourse of security is shaped through political economic practices which use a whole range subjects of survival concerns starting from the integrity of the borders to the social and cultural coherence of the country (Karyotis: 2007). In this framework, security as a discourse has been one of the publicized fundamental blocks through the externalization process of the asylum seeking procedure. On the case of

September 11th, terror attacks have been declared as an issue having absolute priority as an existential threat. Framing the issue on a security basis gave the state the right to ignore the human rights concern to deal with the issue by extraordinary means. In this respect security became a “self- referential practice, not a question of measuring the seriousness of various threats and deciding when they ‘really’ are dangerous to some object... It is ‘self-referential’ because it is in this practice that the issue becomes a security issue” (Waever: 1996; 106-7). In this framework Afghanistan, by that Afghan nationals, became the target of the securitization discourse which label them as potential terrorists.

Sustainment of security based policies rely heavily on social consent in which the construction of the “other” becomes crucial as to identify the existential threat to the country of concern. The fact that the attackers of September 11th were foreigners, created a focus on re-examination of the immigration and asylum procedures in the countries concerned. Furthermore in the United States, the declaration of “war on terror”, recognized the attack on the World Trade Organization not as an “act of terror” but as an “act of war”. To this extent, it was claimed that countries of authoritarian regimes specifically Iraq, Iran and Afghanistan were countries of havens for the terrorist. This was reinforced by a threatening social image of Middle Eastern countries, and of Islam being a religion of terror, thus in the establishment of the image of “other”, Afghan refugees were also criminalized.

In this framework the European Commission has met to investigate upon the relationship between the internal security and its obligation to international protection. The result of the commission was parallel to the security discourse in the period by picturing immigration and asylum as a part of the potential threat to a country. In this regard, restrictive reform implementation on the base of this security discourse was made possible by linking immigration and asylum with terrorism. The European Commission Paper introduced these measurements as follows

“pre-entry screening, including strict visa policy and the possible use of biometric data, as well as measures to enhance co-operation between border guards, intelligence services, immigration and asylum authorities of the State concerned, could offer real possibilities for

identifying those suspected of terrorist involvement at an early stage.”
(European commission: 2001; 2)

On that note accession to the territory of the EU became more hardened with these newly introduced measures. Practical impact of the measures have had a more direct effect on the Afghan refugee, as their countries image is directly linked with terror activities. Jayasuriya article states that this situation became a dominant agenda through the US, Britain, Australia and many other European countries, ruling coalition governments implied that Afghan refugees and Muslim immigrants were ‘terrorists’. While Afghan refugees started to become affiliated with terrorism, their accession to Europe was stopped within the frontier countries. This could be seen in practice in various countries; Afghan refugees who came to Greece received a hostile reception whereby they were refused to apply for asylum. In Hungary, all Afghan refugees were transferred from open reception centers to high securitized facilities (Freitas: 2007). Afghan refugees in the international context, particularly in Europe, became unwanted people and action against them was prioritized which concluded with extra measurements to prevent their access to the borders. In this respect the fate of the Afghan refugees was isolation to their region.

The repatriation process from the Islamic Republic of Iran concerning the Afghan refugee restarted in this period in which the process depended on the interest of three actors. The axis of the repatriation process revolved around the interest of the following actors; UNHCR/US, Iran and Afghanistan. The cooperation between UNHCR and US revolves around the UNHCR’s financial dependency upon the US’s financial power in exchange of UNHCR’s political power in US campaigns. In the post-2000 period the US contribution for the UNHCR’s financial budget was decreased, which led the UNHCR to transform their policies limiting to core issues. Since UNHCR’s expenditures mainly related upon the masses of refugee population in countries, their first policy action was to focus on the repatriation processes. This point was emphasized by EXCOM stating UNHCR is “encouraged to work towards a more achievable budget that emphasized core functions and clear priorities” (UNHCR: 2000: 3). Repatriation of the refugee has been one of the interests of the US as it would relieve the economic pressure from the UNHCR. Furthermore, in

relation to the ‘invasion of Afghanistan campaign’, the repatriation of Afghan refugees was also an important ideological weapon in the legitimacy of the Middle East campaign. As the war against Afghanistan started with ‘war on terror’ later it transformed into a component of a bigger campaign labelled ‘spreading the democracy’. This campaign led to other invasions of countries in the Middle East. In President Bush’s speech to the UN, he emphasized this democratic victory in Afghanistan with the following statement;

If we meet our responsibilities, if we overcome this danger, we can arrive at a very different future. The people of Iraq can shake off their captivity. They can one day join a democratic Afghanistan and a democratic Palestine, inspiring reforms throughout the Muslim world (Collins: 2002: CBS NEWS).

Bush’s statement shows how important the Afghan campaign has been while creating international legitimacy for the future operations of the U.S. In this respect one of the crucial components of this political victory was the repatriation of the Afghan refugees. The importance of the repatriation in this campaign was stated in the Congressional Research Service report;

The safe and voluntary return of refugees to Afghanistan is not only a major part of the U.S. reconstruction effort in Afghanistan, but also an important indicator of its success. To the extent that refugees continue to return, it can be seen that Afghans are taking part in the future of their country. (Margesson, 2007)

The repatriation process of Afghan refugees had continued its success until 2005. As it can be seen in Table-2, there is a sudden drop in the repatriation numbers to Afghanistan after 2005 which Hammerstad argues, was related to UNHCR concerns over the sustainability of the repatriations. By considering the increasing insurgencies in Afghanistan, he suggested, the situation might be worsened by the return of the refugees (Hammerstad: 2014). The other main determinant on the fall of the repatriation rates, it could be argued, is related to the reluctance of effort by the Afghan government in receiving refugees back to their country.

Table – 2. Voluntary Return to Afghanistan				
Year	Returns From Pakistan	Returns From Iran	Return From Other Countries	Total
2002	1,565,066	259,792	9,679	1,834,537
2003	332,183	142,280	1,176	475,639
2004	383,321	377,151	650	761,122
2005	449,391	63,559	1,150	514,090
2006	133,338	5,264	1,202	139,804
2007	357,635	7,054	721	365,410
2008	274,200	3,656	628	278,484
2009	48,320	6,028	204	54,552
2010	104,331	8,487	150	112,968
2011	48,998	18,851	113	67,962
2012	79,435	15,035	86	94,556
2013	30,388	8,247	131	38,766
2014	1,113	1,227	6	2,346
Total	3,807,719	916,631	15,886	4,740,236
Source: UNHCR (2014)				

The new government of Afghanistan after the fall of the Taliban regime was led by President Hamid Karzai who shared the same view as the US government on the case of the repatriation of the refugee, and this was to be the symbol of the new Afghanistan. From the Afghan government perspective there have been two important challenges in the voluntary return of the refugees. As it was discussed in the UNHCR report on the repatriation process, accommodation has been the primary reason for the return of the refugee, as it states;

74% on interviewed returnees from Iran indicated the Government land allocation scheme and/or UNHCR shelter program as the primary reason influencing their decision to return, followed by improvements of the security situation in some parts of Afghanistan (24%), none or reduced fear of persecution (1%) and UNHCR's assistance package (1%) (UNHCR: 2014).

Accommodation as it was seen in the report has been the most significant factor in the return of the refugees. However the government challenge was to sustain the ever increasing numbers within urban areas, which created a threat to the system. It was envisioned that refugees would return to the villages from which they originally came from. In reality refugees returned to urban areas in Afghanistan, which then cumulated with internally displaced people and then became a problematic issue for the government. One government official highlights the problem by saying that “the best thing for the wellbeing of Kabul is to clean the IDPs from the city” (Hammerstad: 2014). As it was seen in the report, one can deduct that with the improvement of housing, healthcare facilities and schools, the rate of people returning to Afghanistan would increase, however the government has been reluctant in establishing these urban projects.

Another main motivation of the Afghan government's reluctance to the repatriation process in addition to insufficient resources to handle incoming return refugees, was the economic input refugees in Iran provided with remittances. UN news in 2008 stated that “Afghans send two-thirds of their salaries in Iran back to Afghanistan... Also, monthly wages in Iran are four times higher than in Afghanistan, with an Afghan earning \$320 each month on average in Iran compared to \$80 back in their home country.” (UN: 2008). As the remittances create a big inflow to the financial account in the country, their return to the Afghanistan would become a burden to the government as there weren't enough jobs. In this respect although the Afghan government established a separate Ministry of Repatriations and Refugees (MORR), in practice, the Afghan government was slow to address the problems created by returning refugees, once they come across the borders (Hammerstad: 2014). Hence once again the boundary between the economic and political became embedded, since economic reasons became an obstacle of the political actions of the state when initiating the repatriation process.

The Iranian context of the Afghan refugees had been central in different periods. From the post-1990s with the withdrawal of the Soviet forces, Afghan refugees lost their legitimate ground in Iran's religious mission to take care of Muslims. Regardless of their political position within the Afghan insurgency, they were treated

as economic migrants and new policies concerning refugees were implemented on an economic basis. Workers in Iran have been welcomed to join the workforce within the sectors of oil and gas, agricultural and construction industries and have had the freedom to move around within the country (Hammerstad: 2014). However the rights of the refugees were gradually diminished over the following years. Economic factors of the Afghan refugees became the primary reason for their return. As was stated in the UNHCR report;

Among the 114 interviewed returnees from Iran, 83% stated economic factors in Iran as the primary reason for return, followed by fear of arrest and/or deportation (9%), alleged harassment by the authorities (5%), lack of school and health facilities (2%) and other reasons (1%) (UNHCR: 2014).

The first development following the Afghan invasion and new repatriation process was the Iranian government's adaptation of a new refugee system which has been known as the Amayesh. As the Amayesh system was implemented in 2001, its main purpose was to register refugees in orbit to the system. Similar processes have been discussed in the international framework and the Turkish context in the previous chapters. In this purpose refugees were attracted to this process through the provision of an entitlement to basic needs (health and education services) under the Amayesh system. However by registering the refugees within the refugee system it became easier to control their movements and access to work (ILO - UNHCR: 2008). In parallel to the introduction of the Amayesh system, working areas of the refugees were also determined in this process. As for those who employed illegal workers, they were heavily penalized. Furthermore, legitimate areas of work were reduced to only 16 categories of which included mostly manual labor (ILO-UNHCR: 2008). This example illuminates how Afghan refugees were mainly used as a cheap labor force where manual labor was needed.

Social rights that were introduced within the Amayesh system to include refugees were diminished over the following years. This reached a peak point in February 2004 with the loss of school fee exemptions and increased health care premiums. In early 2005, nominal taxes were also declared for Afghans (ILO-UNHCR: 2008). As the Iranian government worked in cooperation to repatriate refugees with the

UNHCR, on the other hand they exercised Amayesh registration processes to control and limit the social practices of refugees and practically enforce a voluntary return of the Afghan refugees back to their own country. Whilst the Amayesh system is the refugee process that the Iranian government upholds, it has been criticized of being “inconsistent, even negligent” (HRW: 2002). Although there have been nine Amayesh registration exercises, officials still continue to argue that Afghan refugees aren’t officially acknowledged refugees of Iran (HRW: 2013). The main problem of the Amayesh system concerning refugees has been the temporary nature of the practice, as the cards provided under this system vary in validity, starting from a period of three months. The renewal of the Amayesh cards created a refoulement risk even for the refugees of the early 1980s, as they only provided refugees with temporary stay permits (ILO-UNHCR: 2008). As it was stated by the HRW report, Afghan refugees expressed their distrust towards the Iranian government and to the Amayesh system thus lost their status by not registering in the system (HRW: 2013). This resulted with many refugees becoming illegal immigrants in the Iranian territory.

This part of the chapter has examined the development of the situation of Afghan refugees within the international and host countries. Afghan refugees have been criminalized in an international context, specifically in Europe where they have been labelled as terrorists and therefore in practice exposed to heavily restrictive measures. Similarly, enforcing refugees back to Afghan soils became the highest priority of the US due to its political goals. In this framework refugees became unable to find any dependable ground for their case. The host country’s position of the refugees was also introduced with a brief examination of the Ameyesh system. Conditions of the Afghan refugees in Iran will be examined in more details in the following chapter in an attempt to understand if Iran falls within the category of ‘first country of asylum’ or ‘safe third country’ principals.

4.2: The Externalization of Afghan Refugees

Ankara has been one of the centers of social movements, rallies and protests. However in April 2014, it was the first time a major protest was organized by the refugees in Turkey for their rights. The accompanying hunger (death) strike and the

symbolic action of the ‘sewing off of the lips’, attracted a degree of national attention to the situation of Afghan refugees.¹⁷ The address of the protests did not target the Turkish government, rather they were addressed to the UNHCR for their discriminatory behaviour through refugee status determination procedures. Frequently the protestors stated that their quarrel was not with the Turkish government but with the UNHCR, and were surprised when national police intervened and dispersed their protests. Discriminatory actions against them were not based on the poor social conditions of Afghan refugees since it has been perceived to be a social reality for all the refugees in Turkey. The unique problem that Afghan refugees experienced throughout the formal procedures they have undergone, is a distinctive feature of the UNHCR’s attitude toward them as it stands apart in its unwillingness and slow-paced conduct during assessment procedures.

The decision for halting the ongoing Afghan refugee applications and refusing to accept new refugee applications was the final drop that mobilized Afghan refugees to carry their protests to the streets. In April 2014, Afghan refugees held their protest in front of the main UNHCR building in Ankara. A petition raising many questions was addressed to the UNHCR containing over 5000 signatures. Clear questions around equality and human rights, to which the Afghan protesters were seeking redress, are stated in the following words “Around 5000 Afghan refugees living in 30 cities in Turkey, who signed this letter and just want clarity on the issue of whether we are equal to the seekers from other nationalities or not and don’t we have the same human right as the other nations have?”. Even though the protests lasted over after 2 months, neither UNHCR nor Turkey published any official statement as to the reason why the procedures of the Afghan refugees were halted. The lack of adequate UNHCR assistance and the fresh arrival of Syrian nationals in Turkey and the social conditions they lived in became part of the externalization process.

The other responsible party of the Afghan refugee crisis has been the Turkish state. Even though it was claimed that the Turkish authorities’ dialogue with Afghan

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http://www.radikal.com.tr/turkiye/afgan_multeciler_ankarada_agizlari_dikili_adalet_bekliyor-1194155

refugees had been in a positive attitude, they were unable to help them because of reservation from the Geneva Convention. In this framework, Turkey couldn't accept refugees from Afghanistan without resettlement support from the UNHCR. In this respect, the Turkish State relocates its responsibility for the protection of Afghan refugees to the UNHCR. In the following days of the protests, NGOs in Turkey responded to passive action of the state by publishing a declaration that Turkey needed to uplift its geographical limitations to resolve its domestic Afghan refugee crisis. However in practice this declaration is not specific to Afghan refugees' problems but written and aimed in a more general attitude towards the refugee issue in Turkey. In the current legal framework Turkey has the means to establish an international protection ground on the basis of 'subsidiary of international protection' status. In this respect political economic and cultural conjuncture of Turkey became increasingly important in the issue of Afghan Refugee case. The problems of the Afghan refugees are not particular to their nationality but related to their being in Turkey as refugee applicants.

In the midst of the responsibility crisis that ambiguate the position of Afghan refugees, the halt of the determination procedures have been a violation of 'right to asylum' of Afghan refugees. As it was discussed in the second chapter, the individual basis of the refugee definition holds a central place within the asylum system that has been established. In this respect, every Afghan refugee entails a determination procedure of its own. In the post-1980 period with the introduction of the new asylum determination process principles, the right of the asylum seeker could be halted. Although a reason for halting the determination procedures of Afghan refugees has not been publicly stated, there are two principal grounds these discriminatory procedures could be grounded upon which are 'safe third country' and the 'first country of asylum' on the basis of the peculiar position of Afghan refugees. These are the two principles that favour the rights of the state for not examining the refugee case and give the state the permission to send the applicant back. In addition to this, applicants can't pursue their rights within the international courts in these principals.

4.2.1 First Country of Asylum

The refugee status determination process regarding Afghan nationals within the Turkish territory started to become a problem from the end of 2012, with the incremental arrival of Afghan applicants from Iran. The domestic crisis in Syria and tension between Syria-Turkey increased the value of Syrian nationals in terms of their diplomatic value. Thus, Turkey had adopted more relaxed border control policies in the south and south-eastern border regions, as a result of which general accession to Turkey became easier than before. An unintentional by-product of policies adopted at border controls for Syrian nationals, was the affect they had on Afghan refugees in Iran, who now found it possible to force their way to Turkey. In this regard especially during the period 2012 to 2014, the number of refugees from Afghanistan has dramatically increased: The number of Afghan refugees in Turkey was documented at 4,713 in 2012, and this number rose to 21,924 by the end of 2013 (UNHCR, popstats). Such a dramatic increase in the numbers of refugees with Afghan origins can not only be explained through recent developments which have occurred in Afghanistan or Iran, in which also Turkey's positive attitude on the borders can be related to explain the rising numbers. In this regard, however unofficially stated, Afghan refugee spokesperson Zakira Frotan claimed that an UNHCR official told them that Afghan refugees in Iran were seen as a potential threat to the Turkish refugee system, that this was the main reason for halting the procedures as to discourage the movement from Iran.¹⁸ In this respect the position of refugees in Iran has been of crucial importance to Afghan refugees in their quest for a legitimate case. On the other side it will also dwell upon the controversy of the refugee applications from a country that has been known to be generating refugees.

Turkey and UNHCR's efforts to externalize the responsibility of Afghan refugees to Iran, has been functioning under the main suspicion that Afghan refugees were coming from Iran to Turkey. In this regard the current refugee policies, 'third safe country' or 'first country of asylum' became increasingly important. The development of these concepts in the framework of international and Turkish agendas, has been discussed under sections 2.2 and 3.1. The categorical difference

¹⁸ Zakira H. Frotan *Dünya'nın Nöbeti* on Kudüs TV aired in 02.06.2014

between these two concepts is that the ‘first country of asylum’ principle functions to restrict access of those enjoying formal protection from their previous country and the ‘third safe country’ functions to restrict those, who enjoys an form of informal protection from their previous country. As both of the categories stem from different categories, procedural processes differ from each other. The framework for ‘first country of asylum’ principal functions in between two countries in which a refugee, himself, is not part of the decision mechanism. As Article 73 stated, if the applicant can avail a protection from the country of his arrival then the procedure will be deemed as inadmissible and the return of the applicant will be initiated. In this regard refugee system within the Iranian borders needed to be investigated upon ensuring that an applicant in Turkey had previously applied for asylum in Iran. To this extent Afghan refugees’ position within the refugee system of Iran has to be investigated to ensure the stability and reliability and furthermore to assess any possible risk of refoulement in the particular cases of Afghan refugees.

The nature of the problematic relationship of the Afghan refugee with the Iranian refugee system had its roots in a political and economic context. Especially with the end of the cold-war era and the reign of the Soviet Union over Afghanistan was diminished, the ideological religious connotations of the Afghan refugees was reduced. In the aftermath of the deterioration of economic stability in Iran which followed, state intolerance to foreign labor force in the country increased. As previously discussed, this labor force heavily consisted of Afghan population. As a result of the transformations in the international and domestic context those of whom benefited from the formal or informal protection in Iran had an instable and insecure position. Iran’s hostile reception to Afghan nationals worsened after the international economic sanctions that were implemented on Iran in 2006. Establishment of the Bureau for Aliens and Foreign Immigrants’ Affair (BAFIA) in 2007 and the institute’s attitude towards Afghan foreigners highlights the instability of refugee system. In this regard after the establishment of BAFIA, it has been argued by the HRW report that lodging a refugee claim or requesting asylum or protection from deportation has been considered as ‘virtually impossible’ (HRW: 2013, 43). Considering the historical-cultural background of Iran – Afghan refugee relations,

new established BAFIA's attitude towards Afghan refugees shaped through their primary evaluation that Afghan nationals are in Iran on economic motivations. Thus the lack of acceptance of new applications could be explained on the basis of the political unwillingness of the Iranian state and structural inadequacies of BAFIA.

The refugee system within Iran was traditionally established on religious grounds and this has been discussed in the previous part at length. Although Iran has been part of the Geneva Convention since 1976, Iran hasn't had an institutional body that has been functioning to assess refugee application in the international standards. A similar process can be observed in Turkey, yet the basic difference is that Iran has traditionally been a refugee receiving country and established its own system, which mainly stems from the cultural proximity and political interest of the refugees coming from Afghanistan in the Cold War period. In contrast to this, in Turkey, the lack of refugee population and the economic political structure of Europe at the time, did not require Turkey to establish such a refugee system until the 1990s. Changes in the political economic structure within Afghanistan and Iran led to abandon the refugee protection of the Afghan population and started to restrict its immigration policies. Similarly, contradictory Western attitudes emerged towards Afghan refugees during the same period, as it was in the political interests of Western countries to while on the other hand showed an unwillingness to take the burden of the Afghan refugee population from the Iran. This in turn, led UNCHR to become more active in domestic area. Although the establishment of BAFIA seems like a clear step towards institutionalization, the Afghan refugees' process has been still ambiguous and therefore endangered. To give credence to such a claim, in 2010, UNHCR reported on the following problem; "no information is available on the number of asylum- seekers undergoing RSD in the country, nor is there any data on newly recognized refugees, asylum-seekers, unaccompanied or separated minors and victims of trafficking who seek international protection. (UNHCR: 2010)". In the light of this assertion, it could be claimed that even though the apparatus of the refugee system had been changed, the core of the system remained intact since it preserved the uniquely hostile attitude towards the Afghan population.

In the years following the introduction of the Amayesh system, implemented policies

were aimed at restricting the movement of refugees. The first step in this direction, was the implementation of a residence card policy in 2003. This policy, much like in the Turkish example, decreed that refugees were to be permitted residence cards for certain cities in which they could reside and required laissez-passer cards from the authorities in order to travel to other cities (Farzin – Jadali: 2013). In this respect, theoretically, Turkey and Iran's policies resemble one another, although Turkey has expanded its residency range in a more tolerating way than Iran. However, control of the free movement of refugees is still restricted in both cases. This has been reinforced through allowing Afghan refugees only to work in the area that they reside in. The regulations restrictive nature was expanded in 2007, with the Supreme National Security Council of Iran's declaration of some provinces as 'No-Go Areas' which was constructed on the basis of Article 13 of the Law on the Entry and Residence of Foreign Nationals in Iran which also included Afghan refugees. The article states that the government has the sovereign right to announce No-Go Areas on the grounds of "national security", "public interest" and "health" (Farzin – Jadali: 2013). As in the case of designating the province of Sistan-Baluchistan as a "no-go area", 80,000 legal Afghan refugees were put at risk and many of those had been residing in the district for over 20 years (HRW: 2013). The initial No-Go Areas were designed to restrict residency border cities control of refugee flows to Iran. Restrictions were later expanded to 31 provinces, to the point which left only 3 provinces with no residential restrictions. As two thirds of the country was now under the No-Go Area Policy in 2007, reports stated that an estimated 120,000 refugees living in those areas were under the threat of deportation (HRW: 2013). The threat of deportation was evidence of the hostile structure of the Amayesh system which also created potential refugees and allowed them to stay under the radar. The economic and political atmosphere in Iran encouraged potential immigrants not to register themselves as refugees, as it was evident that long term arrangements to stay in Iran was questionable. As a result, illegal immigration started to raise and the marginalized refugees became illegal economic migrants whom could stay in the country for only a short period of time.

Under the discussion of the 'First Country of Asylum' principle it has become clear

that Turkey had insufficient evidence to declare that Iran was in fact applicable to become a first country of asylum. This argument mainly stems from the fact that Afghan refugees in Iran can't be provided with a formal protection processes due to lack of the asylum system reinforced with the fragile and arbitrary infra-structure of Iran. Furthermore even if there is such a protection available, neither Turkey nor UNHCR is able to obtain the information. Refugee system in Iran has been discussed and presented as non-hospitable and non-transparent. This analysis of the Iranian system concluded that because of the non-transparent proceedings it's nearly always impossible to ascertain if an Afghan national had previously lodged an application to the BAFIA. In the case that the research of a potential lodged application resulted with inconclusive due to lack of evident, benefit of the doubt should be given to an Afghan application as it should be assumed that no due process had been conducted in Iran in keeping with the reports of UNHCR and HRW on the shortcomings of the asylum process in Iran. However in the case that an asylum application from a previous country has been found, then Iran has to be willing to accept the returning refugees. In this regard countries international dynamics are a crucial component in the analysis of Afghan refugee crisis.

The second part of the process is to ensure the return of refugees to their first country of asylum. Diplomatic relations between UNHCR and Iran became more complicated due to the fact that Iran has been reluctant to take care of the refugees and requested to offload part of the burden. The diplomatic chaos of Afghan refugees has similarly started to become evident in Turkey. An analysis of such chaos, it is helpful to pose the question: why has the UNHCR been prioritizing Turkey's national interests over the Afghan refugees? Eastern Europe had already been established as the fence to protect Western Europe. In this regard the halt of procedures from UNHCR can be seen as a drastic attempt to stop the refugee flow which in turn, created a dangerous environment for the Afghan refugees. The main motivation behind the procedural halt, it could be argued, was related to the emergence of a Syrian refugee crisis in Turkey. The two biggest refugee crises in the world have involved the populations of Syrian and Afghan nationals, and Turkey had already become one of the biggest components in the Syrian refugee case. The

prediction of a potential rise in flows of refugees would pressure Turkey's social and domestic conduct and result in the potential breakdown of the refugee system. Because of the situation in Syria and the political interest it embedded, UNHCR resorted to protect the national interests of Turkey for the sake of the functioning refugee system. As Turkey became unable to take sole responsibility of the Afghan refugees and the fact that the current refugee system would not allow any other country to help Turkey, the situation led Turkey to find a solution within Iran.

Occasionally Afghan refugee applications in Turkey have been dealt with by the state or return of them to Iran has been relatively easy however as the applications reached a critical point diplomatic relations became more important. The importance of diplomatic relations can be observed in history such as in the case of Germany-Poland relations throughout the insurgencies within Eastern Europe. Through the period of the refugee crisis there were no legal arrangements between Germany and Poland, Germany was able to externalize the responsibility of the refugees coming from Eastern Europe to Poland. However the historical and political context was different since the main motivation behind the externalization process to Poland was financial funding and the diplomatic weight of Germany in EU (Lavenex: 1999). In the Iranian case the situation became much more complicated with regards the repatriation processes and the historical background of the Afghan refugees in Iran. One of the by-products of the failed repatriation process was the temporary situation of the Afghan population in Iran. As the international community funded Iran in order to create a more hospitable ground for Afghan refugees, it didn't have any leverage to uphold against Iran to take the responsibility of the Afghan refugees in Turkey. As financial incentives were not in question with regards the refugee crisis in Turkey, diplomatic incentives could be seen as a last resort. However as in the case of Poland, the EU was a strong incentive, contrary to the Iranian case there hasn't been such an important diplomatic incentive that can be offered from Turkey or the UNHCR. The diplomatic positioning of Iran in respect to Western countries also creates a difficult position to pressure Iran to uphold the values of the Western system. Therefore it could be argued that the Afghan refugees' problems were neglected within both the diplomatic and ideological campaigns.

4.2.2 Safe Third Country

The principle of 'First Country of Asylum' has been conducted concerning the formal refugee procedures by the hosting country. In this aspect it has been clear that the formal procedures concerning the refugee status determination has critical inadequacies in the case of Afghan Refugees coming from Iran to Turkey. On the other side 'Safe Third Country' principal functions to those who has been enjoying an informal form of protection within the former country. In its basic form this principal suggests that in the case that an individual could live in protection within the former country of its arrival, even though he has not lodged an application for asylum in that country, one has to return to that country to continue enjoying that protection. In this respect the question of the applicants being a refugee or not, is not the main criteria but the country's eligibility for being a safe third country has been the crucial component. The main inquiry for Afghan Refugees' position concerning the 'Safe Third Country' principle is to answer if Iran has been a safe country for Afghan nationals to have a form of protection to be benefited from. One of the most important criteria in the determination of a safe third country has been the applicability of the non-refoulement principle. Non-transparent refugee determination process and restrictions on lodging new applications illuminates one of the points of the thesis in which the line between political and economic migration has been blurred and determined through the economic political agenda. Given that the war in Afghanistan and political chaos still prevails, it could be assumed that Afghanistan is a war zone in which individuals have the right to seek for protection for their lives. In this regard whether an immigrant's reasons are politically or economically motivated the distinction between the two has been blurred since it is clear that war destroys economies as well as endangers those who try to make a living in its midst. In this respect immigration policies against the Afghan population in Iran has to be taken in a holistic measure as both economically or politically motivated Afghan nationals, can be identified as potential refugees and have the right to demand a judicial process before deportation.

Political and economic developments in Iran influenced immigration policies for the worse in particular for the Afghan nationals. Emergence of the Amayesh registration

system and prevention of movement over the borders became crucial components of the new refugee system. The Amayesh registration exercise has been described in the previous section. Further to the challenges imposed by the Amayesh registration system one can claim that the refugee system within Iran and Turkey both display the main characteristic of only awarding temporary protection to refugees. Both countries tried to maintain the temporary nature of the refugee process albeit through different means; Turkey used its position within the Geneva Convention claiming that refugees in Turkey are temporarily residing in the country. The Iranian government used the Amayesh system whereby identification cards which were distributed had a limited specific time span. Those Afghan refugees under the Amayesh registration system were required to renew their cards which resembled a residency permit. As it was discussed in the previous section, the system claimed to provide social benefits to refugees which in turn, encouraged refugees to obtain their statuses. Emergence of the Amayesh registration system started in 2003 and there have been nine re-registration processes to date, each with a different colour card provided each time. Much like in the former Turkish refugee system's residency fee, refugees in Iran have to pay for registration cards every renewal period. In the event that card holder fails to register for a new card in a short time interval since their old card has expired, they become irregular migrants and potentially subjected to deportation. The same criticism that had been made against Turkey can therefore be directed to Iran as Iran conditionally awards political protection to the refugees based on a financial criteria and awarding this protection to periodic economic charges.

The restrictive nature of the policies were not limited to the denial of new applications or the restriction on freedom of movement but also to the extent that refugees were living with the threat of being deported. One of the most striking examples of this was in the period following the "Nowrooz" (Persian New Year) holidays in Afghanistan and Iran, when the government of Iran started a massive deportation campaign of single adult males and family groups, reaching a total of 363,369 deportations in 2007 (ILO-UNHCR: 2008). However in the years following, the number of deportations decreased and didn't rise to the number in 2007 again. The rise of deportations were prevented mainly due to the efforts of

UNHCR and financial incentives which were given to Iran for cooperation. However there was still an imminent danger of deportation since in 2011, 211,023 Afghans have been deported which represents a deportation on average of 578 Afghans a day (Schuster: 2013, 225). Another important feature during 2012, in respect to refugee statistics, is that application numbers in Europe had reached its peaking point with 30,000 asylum applications (Schuster: 2013, 225). As the numbers show only those who applied for asylum, the real figures for those who seeks for protection informally has been estimated to be much higher. Through the European and Iranian experience it has been observed that being an Afghan refugee has an occupational hazard of being deported sooner or later. Such deportations could be based upon either a security or economic discourse but nevertheless, especially for those who have been deported from Europe refugees continue to be highly motivated to immigrate again. In particular, demographics show that single male Afghans have been the group most vulnerable to deportation. The main rationale behind this demographic is the perception that their motivation has been economically induced.

Such a sharp line between the economic and the political can be considered as the fatal flaw of the refugee system. The Afghan refugee case has been one of the most exemplary cases in which to show the blurry line between economic and political migration. Many studies which focused on Afghan refugees, conducted in Iran or in the context of the international framework as those by Schuster and Majidi highlight the economical and sociological motivations behind the immigration movement. These studies, among others, have uncovered valuable information regarding the position and desperateness behind the immigration, and in the international migration framework these have been labelled as economic-voluntary migration. The economic crisis as a by-product of the everlasting war environment had its toll on the population in Afghanistan which created limited working opportunities. Even though the Taliban reign had been officially overthrown, the cultural and organizational power of the Taliban in Afghanistan is still strong and has been one of the ultimate opportunities through which the young population could obtain a sustainable job and as such, considered to be essential for their survival (Rahmini: 2010). This was reinforced by the COI report stating that 70% of Taliban young fighters joined the

Taliban stated that the reason for joining the Taliban was not for ideological reasons but because of economic circumstances (COI: 2012). The deportations from Iran and Europe show how economic challenges did in fact have direct influence on political consequences. In Zerk's interview with an Afghan youth called Abdullah Jan aged 22, he showed the impact of such economic challenges. Jan has been repeatedly deported from Iran in three different times, he found the only solution in the aftermath of the deportations in joining the Taliban forces in Afghanistan to sustain a living. This example indicates how economic challenges have contributed to political insurgency in the country as well as to human right violations. He expanded his motivations with the following statement "I am the only breadwinner in our family of eight... I went to Iran three times to try to find work, but I was expelled. I was in debt, and my father told me to go to the city. I looked for a job for three weeks, but then my brother got sick and needed medical treatment. He later died. Two of my friends then suggested that I go to the local Taliban." In respect to the interview, it raises the question of whether Abdullah Jan could be considered as both the victim of neglect by the refugee system and concluded as one of the perpetrators of human right violations in Afghanistan. The freedom of individual choice has to be considered in accordance with the economic reality of the region and through this case it's evident that Afghan nationals are forced to enter the political insurgency.

The transformation of economic motivations to political actions has been one form that the negligence of the need of Afghan nationals resulted in, with further human right violations. A reverse relation of it could be seen in the remoter areas of Afghanistan where the central government is not strong enough and where the political atmosphere drives economic challenges. Especially in Chardara and Kunduz where Taliban forces have been the strongest, the government has little authority in the area. These regions are mainly controlled and taxed by the Taliban forces. In these regions families who have contributed one of their sons as a fighter to the Taliban, became exempt from paying taxes to the Taliban. Furthermore, Taliban forces have been demanding contributions to their campaign in the form of financial or weapon. In the cases that families can't pay their accumulated debt, they can be exempted from it by giving one of their sons to Jihad (Giustozzi: 2010). In

this respect working in Iran where wages are four times higher than in Afghanistan is essential for families to keep the Taliban away from them. In this regard it could be argued that what has been seen as economic migration is in fact necessary to live relatively free in the region. In this respect the political atmosphere has direct influence on the economic motivations of the Afghan families especially to keep away from the Taliban. In conclusion it could be argued that the economic and political motivations in the area have been often interrelated with each other hence can't be categorized in an isolated form. This has been mainly related to the single Afghan young men whom are considered to be the region's economic migrants. Therefore, in the analysis of the Afghan migrations flows, one has to evaluate through the background information about the civil insurgencies and the Taliban threat which has political impact on Afghan national's lives which highlights the emergency of needed protection. In this respect on the smallest scale of international protection standards, Afghan nationals deserved a fair protection determination procedure for evaluation of their international protection regardless of their motivations for their movement.

Safe third country principle in its main axis is to decide whether a country is safe for a particular group of population to live in without the threat of deportation. In this respect particularly young male Afghans can be considered as a group in danger. In the case that the principle of safe third country will be executed in Turkey or any other European country which they entailed to have an individual case it could be seen that there have been a strong argument that will allow them to stay in the country of destination. However not only Turkey but also other developed countries do not effectively execute the main premise of the safe third country conception. In 2006, research of the Edmund Rice Center (ERC) illuminated the hazards of deporting Afghan refugees with the Australian example. As the research focused on the 40 Afghan refugees in Australia that have been rejected along with refugees of other ethnic denominations. It was observed that Afghan refugees that were forced to return to Afghanistan were once again forced to seek for asylum in Pakistan and among these Afghan refugees, nine applicant lost their lives. Australia as a government may not have pulled the trigger but is responsible for endangering the

lives of the Afghan refugees by deporting them back to their country. In this regard, sending refugees back to a war zone and externalizing the responsibility has to be analyzed thoroughly without falling into the trap of shallow economic motivation or security discourse which would put the lives of the Afghan refugees into danger.

The determination of the safe third country has been established on an individual case basis in this regard as the non-refoulement principal acknowledges the rights of those who are in more ambiguous positions, it also structures it in the general framework. In this respect the Article 74 in the Law on Foreigners and International Protection defines that ‘safe country’ has to be determined on the individual case basis. In this regard the country especially has to ensure the freedom of the individual not to be in danger on the basis of race, religion, political opinion or social group. Afghanistan and Iran have been on questionable ground for decades in respect to human rights violations. There have been 75,000 recognized refugees from Iran in the world seeking protection. The total sum of the people of concern of Iranian origin have totalled 103,874. Iran with these statistics can be considered as one of the higher refugee generating countries and therefore there could be a legitimate argument if Iran could ensure the freedoms of individuals from Afghanistan. It is important to acknowledge the fact that Afghan nationals are not a homogenous group, rather a diverse group, in which there have been people of concern that need protection from both Afghanistan and Iran.

One of the most discussed human rights concerns in the region has been on the subject of LGBT cases. In the Islamic Punishment Code it is a crime to be a homosexual. This has been transformed in Iranian Law with the part called ‘The Hadd (Punishment) of Lavat’ which defined the acts of homosexuality and methods of proving sodomy. The punishment of sodomy defined in the law has been punishable by death. The state’s hostile attitude towards to LGBT community often led to asylum flows by the Iranian population. The particular group in this regard has not been the Afghan population but those of LGBT individuals of Afghan nationals. In Afghanistan there are also discriminative actions taken against the LGBT individuals which have been on a social level as well as there is a legal sanction in place in order to prevent LGBT actions. According to the Afghan Penal Code,

consensual same-sex relations are punishable by long term imprisonment. Even though there have been no death penalty executions in same-sex relations since the fall of the Taliban, social taboos and violence against LGBT individuals have increased significantly throughout 2012 which have been worse on a social level than in Iran (US Department of State: 2012). In this regard the UNHCR's consideration of the asylum-seekers from Afghanistan has been described in the eligibility guidelines; a consideration which emphasizes the situation of LGBT members by stating that in light of the strong social taboos, as well as the criminalization of same-sex relations, 'LGBTI individuals are likely to be in need of international refugee protection on account of their membership of a particular social group based on their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms'. The same statement can be given for the LGBT individuals in Iran regardless of their nation of origin because of the state repression. Even though the discrimination against LGBT individuals differs between Afghanistan and Iran on social and political levels, it has been reported as a dangerous environment in both of the countries for LGBT members.

Concerns of gender relations in Iran as well as in Afghanistan is not limited to LGBT individuals but includes women as well. Women have been the target of discriminatory actions through cultural and systemic frameworks. In Afghanistan although there are positive developments in the legal area which have been reported since the Taliban reign, a deeply rooted cultural reality and the slow development of women's rights, have been contributing to serious repercussions towards women. This could be seen as a result of an unwilling attitude, as HRW had stated that they had their doubt on the government's commitment to the protection of women rights. On the other hand, as a consequence of the weak central government and Taliban's power in the remote regions, violence against women has been common in the agenda on human rights violations in Afghanistan. The projected law aimed to protect women's rights violations and has been opposing many systemic human right violations against women; the law aimed to criminalize child marriage, forced marriage and 17 other acts of violence against women, including rape and domestic violence (UNHCR: 2013). The same systematic problem against women can also be

seen in Iran with the civil law in Iran which legalizes the age of marriage in Iran to 13 for girls and 15 for boys. In addition to that with the consent of the father legitimate marriage age could be lowered down. The traumatic effects of early age marriage for women can be seen through psychological problems and also reinforced by the physical damage in years following which could end with the death of the young brides. The low legal age for marriage is not the only violation against women or children but the systematic nature of the marriage has also proved to be problematic. According to the Civil Code of Iran stating the obligations of Tamkin, (obedience of women) which defines the obligations of wife to meet the sexual desires of her husband, which gives the husband right to perform marital rape. In the case that a woman fights against this, she could abandon her maintenance rights and find herself in an insecure position. This regulation has also been in force in the cases of domestic violence in which it is required that the woman stays at the husband's house even if she has been a target of domestic violence (Justice for Iran: 2013). In the light of these examples women could be considered as one of the most vulnerable groups in the refugee population and as such, their cases have to be handled with more delicacy. UNHCR in Turkey has been giving priority to the cases of 'alone women' as well as those accompanied by children to accommodate and resettle to a third country. However Afghan women have been exempt from this regulation, with the halt of the procedures and by that, the protection of women was also in danger. As the refugee system in Iran is not effective and the legal system reinforces the volatile environment for women suffering from domestic violence it could be strongly argued that Iran cannot be regarded as a safe third country for woman.

The framework for the 'Safe Third Country' principal functions through assessing the concept of safety in practice on several dimensions, to ensure the wellbeing of refugees once they are returned to a country. Considering the so forth put arguments against Iran's poor record on providing an informal protection, it suggest a strong potential argument against the safe categorization of Iran in the evaluation of the Afghan refugees' position. The most significant difference in the execution of 'Safe Third Country' principle from that of 'First Country of Asylum' is the individual basis determination of each case. In this regard, on top of the deportation threat that

endangers particularly young Afghan men which originates from either nationality, gender, or being a member of the LGBT, are inherent dangers both in Afghanistan and Iran which could be considered separately from the Afghan identity. Even if women or the LGBT acted indifferent from Iranian people, in the essence of the system in Afghanistan as well as in Iran, there is apparent a discriminative attitude prevalent. The legal possibilities of externalizing the responsibility of the Afghan Refugees in Turkey have been met with critical encounters. It could be argued that Afghan refugees' position even in the minimal standards of the international refugee system entails the right of protection both from Iran and Afghanistan.

4.3: Afghan Refugees in Turkey

The previous section discussed the legal shortcomings of the externalization prospects of the Afghan refugees. One of the most interesting elements of the Afghan refugee crisis is the contradictory role of the UNHCR in the region. Since The UNHCR's main purpose in Iran has been defined to include Afghan nationals into the refugee system and providing protection for them, yet on the other hand, in Turkey, the UNHCR has been actively excluding Afghan refugees from the Turkish refugee system. The difference in attitude towards the Afghan population between Iran and Turkey has been that Iran has been actively hostile towards the Afghan population to the point that deportations became a daily reality. In the case of Turkey, because of the legal structure and the efficiency of the non-refoulement principle to those who are in the system (even though the procedures have been halted, Afghan population has been registered to system) such groups can be considered as no threat to Europe. Turkey and UNHCR's position however, is neglecting the population's demands. It could be argued that Turkey has a passive hostile attitude towards the Afghan population which is clearly a 'grey ground' for responsibility. Through this passive attitude Turkey has been trying to force the Afghan population to 'voluntarily' return or force them to another destination which would mean abandonment of their refugee process. This passive hostile attitude can be analyzed through three important dimensions which are also interrelated with each other to some degree.

The first area to be investigated is directly related with the absence of any legal basis

on the Afghan refugee situation. The ambiguous and chaotic nature of the legal presentation of the Afghan issue has been empowering the negative effects of the other areas of concern. The second important dimension is directly related with the refugees in Turkey regardless of their origin. In this respect, the negative perception of the Syrian population in particular, has its tolls on the other refugee groups as well. However it's not only limited to the social perception but also the daily life struggles of the refugees with the system; an important basis to be looked upon. The third important dimension is the particular social group these refugees belong to other than their country of origin. Gender issues especially on the subject of LGBT identities had to be investigated through a broader aspect. Even though there is not a legal dimension to the problem it could be acknowledged as a systemic discrimination on its social relations to officials of the state and local people of the area. These three dimensions also bear the question of whether Turkey could be respected as a 'safe third country' or 'first country of asylum'. In this aspect could the Afghan refugees responsibility could be externalized to Turkey or not.

The legal void of the Afghan refugees' statuses has been one of the key determinants of the crisis. As it was mentioned before, Turkey currently has a big refugee crisis because of the insurgencies in Syria. The Syrian refugee crisis in Turkey had both a positive and negative impact on the Afghan refugees. The first as it was mentioned because of the Syrian Refugee crisis, was that the border controls became loosened in the eastern borders which better enabled the Afghan population to seek protection in Turkey through easier access to the country. Regardless of the political legal rights of the refugees, border controls frequently fall onto the grey side of the refugee rights. On the borders an immigrant can't get into the country and can be sent back before even having had the chance to make an asylum claim. In an inspection of close history before the Syrian refugee crisis, In 2009 Amnesty International Report Afghan nationals claim about the accession to Turkey has been stated as following; "they were punched and kicked in gendarmerie custody after their arrest while they crossed the border irregularly from Iran. They told Amnesty International that they crossed the border three times, each time being apprehended, beaten and returned to Iran before being able to cross the border area" (Amnesty International: 2009, 26).

Such examples of State using violence on the borders and forbidding refugees to enter Turkey for fear of them becoming a burden to country, can be seen as externalizing the responsibility on the basis of physical force.

The violence on eastern borders remains a question on the national and international agenda with a recent case which happened in Van. On 16 May 2014, Lütfullah Tacik, a 17 year old Afghan boy was apprehended by the police along with 21 other Afghan nationals in Iğdır and sent to Iğdır Foreigners Department Directory. As Lütfullah was under 18 year old, he and 6 other minors were sent to a Youth Center under the Family and Social Policies Ministry and one day later they were taken to a Deportation Center. In this center it was claimed that Lütfullah Tacik was beaten and hospitalized, two days later he died in that hospital from cerebral haemorrhage (Saymaz: 2014). During the investigation of the incident, other minors in the centre were released and it was claimed that they may have gone back to their country. Since there were no cameras working on that particular day, coupled with the disappearance of the witnesses, no conclusive evidence on whether the allegations against Tacik were true or not, could be found. This recent event illustrates how the absence of a refugee status in the border regions of Turkey has been dangerous and how the officials might have little respect for the human rights of these nationals who have every right to be protected. Even after the new law, detention centres and violence remain an issue that need to be addressed and effective control mechanisms need to be established in the closest time possible. Despite these particular cases, in general, the statistics indicate a sudden rise in numbers of refugees in Turkey and it could be argued that this rise is due in part, to Afghan refugees' accession to Turkey becoming relatively easier than before.

The different procedural process for the Afghan refugees has been the most striking difference than for any other refugee group in the world. The international position concerning statuses of Afghan refugees and the economic challenges faced by the countries have been the main obstacles for Afghan refugees in their quest to obtain a just determination process. The negative impact of the Syrian refugee crisis on the refugee system could be dominantly explained by the economic burden that it puts on Turkey. In particular, the European Union prioritization of the refugee system also

deepens the problematic nature of the crisis. This can be seen in section 3.1.3 in which through the early EU-Turkey accession discussions, the first subject of alignment requested was particularly related with the border controls including the routes leading to Europe. In addition to that, in 2012, €20 million has been issued to Turkey under the Instrument for Pre-accession Assistance for the purpose of strengthening the border surveillance capacity (Amnesty International: 2014). During this period the Syrian refugee crisis was in its early stages where 280,000 Syrians had been requesting protection in Turkey. The humanitarian aid to Turkey on this subject was only €3.8 million from the European Commission and €10.5 million from all EU member states. Through analysis of relevant financial data it could be argued that the domestic interests of EU and prevention of the refugee flows were more important than the wellbeing and proper care of the refugees. However it is also important to point out that early on in the Syrian refugee crisis, Turkey was reluctant to get help for the Syrian refugee crisis. Even though the humanitarian assistance aid has been increased substantially, it has been still relatively small in respect to the size of the refugee population. The Turkish Prime Ministry Disaster and Emergency Management Presidency (AFAD) reported, US\$2.5 billion has been spent starting from the beginning of the crisis to April 2014. In this period including the aid from EC, the international community's total contribution has been US\$200 million (Kirişçi: 2014). In this respect, Turkey through 2010 to 2013 became 4th largest donor in humanitarian assistance which in comparison to Turkey's GDP level is a relatively huge number¹⁹. Under heavy financial burden Turkey has been asking for more financial assistance from the international community. Considering the financial burden Turkey has been carrying, the Afghan Refugees' position became more of a liability to sustain the refugee system. Although there was no official statement, the probable scenario of UNHCR and Turkey, was the assumption that Afghan refugee flows from Iran to Turkey could lead to high numbers of refugees which could also threaten the refugee system in Turkey hence legitimizing the negligence of refugees and also the halt of the procedures.

The halt of the refugee status determination leads Afghan refugees to a more

¹⁹ Global Humanitarian Assistance Report 2013

ambiguous future. Lengths of the procedures have had a more severe impact on Afghan refugees than they have had on other refugees. Turkey's determination process has been a particularly long process as it first determines the refugee status and other countries are investigated as part of the process of resettlement. The psychological and physical effects of the long process and the effects of the ambiguity it brings with the process, have been discussed in Section 3.2.1. On top of the long status determination process, Afghan refugees are also faced with potential stoppage of the process. Even if the procedures are restarted quickly, the process awaits for the Afghan applicants remains long and ambiguous. However it is still crucial as in the best scenario on the possible restart of the procedures Afghan nationals who gained refugee status could regulate certain arbitrary social benefits from the state and UNHCR. One particular subject on the matter is the healthcare that UNHCR provides for the refugees. Related with the healthcare, one of the most peculiar developments on the subject of the status determination process has been that UNHCR in fact have been executing the Refugee Status Determination on a very small percentage of Afghan refugees. The system has not been upheld for everyone, and many Afghan nationals who are on the verge of death have been granted refugee status. However as has been mentioned, the perception of UNHCR is that the appellant is awaiting a certain death. This shows that UNHCR in fact can execute the determination process on will, however have been reserving its right for hopeless cases. An awareness of this attitude raises the question of whether UNHCR in Turkey has been purposefully attempting to break the hopes of the Afghan refugees by enforcing a voluntary return. It could be argued strongly that Afghan refugees have been constrained to this legal limbo, which bears to question that in accordance to the 'First Country of Asylum' principle Turkey could be qualified as a first country of asylum for the Afghan refugees.

The legal limbo Afghan refugees have been stuck into is the particular problem unique to Afghan nationals. This essential difference from other convention refugees has reinforced the negative impacts of their sufferings in daily life practices. The problems and obstacles refugees encounter have been described and analyzed in Section 3.2. Even though the new Law on Foreigners and International Protection

regulated social services, it has been relatively new and the problems are still very significant on the daily struggles of the refugees. Afghan refugees have been enduring the same daily life obstacles that asylum seekers/refugees faces every day. Even though Afghan nationals are in the legal limbo of the system and the process has been halted indefinitely, they are still compelled to live in the satellite cities which they originally selected from the limited options available to them. The limitation placed on their mobility has indirectly restricted their access to civil societies who campaign against the unfair treatment of Afghan refugees by the UNHCR and Turkey. As section 3.2.2 described through an analysis of the satellite cities, one of the outcomes to restriction of movement was the disabling big cities for the refugees. In this respect Afghan nationals that needed jobs or who couldn't sustain living in the satellite city were forced to get out of the system to go big cities to look for work or help. As civil societies in Turkey mainly concentrated their efforts on the big cities and provided assistance to immigrants in general, going out of the system to settle in a big city therefore offers very little comfort for those who would not qualify for assistance from the state or UNHCR.

The ambiguous time interval and the fixed geographical space for refugees determines the degree of the challenges that refugees have to face. As it was mentioned before, the assigned satellite city of a refugee is also determining what social opportunities one can benefit from. The social opportunities can be defined as the basic needs to sustain a living in a place such as healthcare, education and job opportunities. As these intervals determine the wellbeing of the refugee, on the Afghan refugees' position as there are no future prospects of resettlement they are also stuck in the place they were assigned to live in. In this respect the social perception that refugees live in could reinforce or discourage in their daily life struggles. Since the influx of Syrian nationals reached a critical level, refugees in general started to attract more attention from the media. In the media there have been two contradictory approaches in the portrayal of the refugees. On the one hand newspapers portray refugees as poor, weak, problematic people yet on the other hand they have been portrayed as thieves, murderers, rebels or rapists in short, as criminals (Erdoğan: 2014, 37). Media portrayals of the refugees have been reinforcing the

negative image of the refugees, especially those of the Syrian population. In the research it has been noted that 62.3% of the interviewers agreed on the argument that Syrian refugees were criminals that disturb the public order and morality.²⁰ This has been reinforced with the movements of local people in Gaziantep, Kayseri, Adana, Kahramanmaras and Şanlıurfa against the Syrian refugees. The main justification behind all of these lynch campaigns has been the alleged vulgar behaviour of the Syrian populations, as to a level that they can't feel secure for their wives and kids. Deterioration of the refugees' image in the eyes of the public, has been rooted in the economic challenges that the Syrian refugee population faces in their daily life struggles. This also negatively influenced other refugee groups as Syrians, Iranians, Afghans have been considered to be foreigners and little attention given to their nationality.

Negative images of the refugees in general had contributed to the inhospitable environment for the Afghan refugees. State and UNHCR restrictive attitudes with regards to meeting the needs of the Afghan refugees creating a problematic environment to an extent that Afghan nationals cannot sustain a living in Turkey. The Coordination Group of Afghan Refugees (CGAR) stated that, UNHCR has not met the adequate level on the issues of humanitarian assistance. One particular subject regarding humanitarian assistance has been the food aid programs, which have been reported to be scarce. The food assistance often consists of one warm meal a day and a box of pasta for a week (CGAR in Turkey: 2014). As Afghan families practically can't obtain a work permit,²¹ relying on such a poor diet for many years may result in health concerns. Another form of humanitarian assistance that refugees ideally rely upon is the monetary aid from the UNHCR. However the numbers of Afghan refugees receiving formal assistance has been insignificant in respect to the total Afghan population. Part of the reason for this, is the eligibility criteria for the aid has been too restrictive in manner and doesn't have the structure to measure the real situation of refugees. Before the halt process multeci.org undertook an interview

²⁰ Murat Erdoğan conducted a research on the social perception of the Syrian refugees by making in-depth interviews with 144 people, of which 77 of them have been Turkish nationals living in the the border cities Gaziantep, Kilis, Hatay and part of them have been living big cities as Istanbul and Izmir

²¹ See Section 3.2.4 Legal Access to Work.

with three Afghan women, two of whom were divorced from their husbands. They claimed that they repeatedly asked for financial assistance from UNHCR but were always turned down. One of them explained her personal story to show the superficial structure of the UNHCR Turkey visits. The Afghan woman claimed that she only had pieces of furniture that were given to her by neighbours and had barely bought a TV and a satellite with her money. The superficial inspection consists of taking photographs of the house and sending them to the UN claiming that the photographs were evidence of a family which was well off on their own and not in need of financial assistance. However during that period, the Afghan interviewee explained that she had a 6 months old baby and despite this, she worked every day till midnight and still couldn't sustain a living.²² This claim can be also reinforced with the arguments in the Coordination of Afghan Refugees report, which states that "Furnishing an apartment with discarded items from the street, such as a television or a rug, can be considered grounds for denial". The vulnerable situation of the Afghan refugees thus deepened with the lack of social aids from the UNHCR and Turkish government. The lack of humanitarian assistance could be replaced with informal relations in neighbourhood, however because of the rising tension stemmed from the Syrian populations existence, informal relations also were also now in jeopardy.

In the framework where formal and informal lines of assistance are limited for Afghan refugees, they became more vulnerable to exploitation as to an extent, employment became indispensable for survival. Challenges to legal access to work, has been discussed in Section 3.2.4, yet the developments stated in this part didn't change anything for the Afghan refugees in practice. Despite the inclusion of refugees to employment being enabled with the expansion of legal access to work, there have not been any developments in respect to the social reality of employment in Turkey. In this aspect through the AKP period, neoliberal policies became part of the government agenda with the increasing privatization and adaptation of provision as 4/C employment statuses. Since the government established the structure where exploitation of the worker became the new strategy of the economy, employers

²² http://www.multeci.net/index.php?option=com_content&view=article&id=241%3AAbir-bucuk-ay-darda-kaldk-bize-cadr-bile-verilmedi-ama-bizi-en-cok-birlemi-milletler-etkiledi&catid=41%3Aroportaj&lang=tr

started to exploit this situation. This led to an increase of employment through sub-contracting, which led contract laboring to become the main form of employment. Dominance of the precarious work also affected refugees to be in the most insecure position as they are more prone to exploitation without citizenship.

In this insecure working environment even though there has been legal structure for legal access, none of the middle or low-skill Afghan workers attained a work permit (CGAR: 2014). In general Afghan refugees can find jobs below the minimum wage and earn less than their Turkish co-workers for their equivalent labor. Zakira H. Frotan, spokesperson of the Afghan refugees, in an interview, talked about the working conditions of the Afghan refugees.²³ She stated that Afghan refugees on average, work in heavy conditions for 14-15 hours a day and earn 500-600TL a month. She referred to one specific case where an Afghan refugee worked for 200TL whereas the minimum wage²⁴ has been 810, 70 net as of July 2014. The claims of Zakira H. Frotan on the working environment has also been stated in other researches which emphasizes that wages of the refugees have been delayed at times for 6-12 months or more, and refugees later fired without/partial payment. This claim has been vocalized through different studies; one of the more recent studies addressed this issue as the ‘biggest injustice’ in the research (Toksöz, Erdoğan and Kaşka: 2012, 23). Afghan refugees’ vulnerability becomes more evident as refugees can’t go to the police to complain in cases where an employer does not pay the wage of the worker. The reason of this stems from the fear of deportation as the law on refugees is very strict on the illegal actions of the refugees and the current legal system carries heavy penalties for refugees, fining the employee amounts over 1000 TL which is equivalent to 2 months wage or more of an average refugee labour. The working conditions of refugees in Turkey needs to be dealt with in a more systematic approach rather than individual choices of the employers in which the problem of precarious work is a general issue in Turkey and can’t be narrowed to refugee or migration issue. However it is also important to acknowledge that being a refugee certainly creates a more vulnerable position than for other general members of the

²³ Zakira H. Frotan *Dünya’nın Nöbeti* on Kudüs TV aired in 02.06.2014

²⁴ One has to keep in mind that the minimum wage is not sufficient enough for a family to sustain living in Turkey.

workforce.

One of the upsides of the Syrian refugee case has been the development in the healthcare system which allowed other refugees to benefit from it. Although there have been recent developments occurred in healthcare system, the effects of it on Afghan refugees can't be measured yet. However observing past records there have been healthcare deficiencies because of financial troubles which have ended with the death of Afghan refugees. It has been reported that in 2013, six cases resulted with the death of a refugee because of the financial insufficiencies of the refugees to pay for the treatment of otherwise curable or controllable diseases (Hekmat: 2014). The developments and issues of the healthcare system cannot be limited to the physical health of the refugees rather must be broadened to include the mental health conditions which have been equally important for the survival of the refugee. There have been four cases in 2013 that illustrate the need for psychological help in the Afghan refugees' situation. Three of the four cases have been suicide attempts and the other one has also been a suicide after an Afghan murdered his parents and two sisters, though the reason behind the suicides have not been stated (Hekmat: 2013). In this regard one can question the circumstances which brought a refugee to flee their country to secure their life but then commit suicide in Turkey. Past traumatic experiences in Afghanistan, the despair that comes with the living conditions in Turkey and an ambiguous future can be described as serious precursors for mental health. There were several attempts to organize activities for Afghan minors to increase moral support which have been rejected repeatedly by the police (Hekmat: 2013). UNHCR and Turkey need to acknowledge the fact that Afghan nationals are coming from a war zone which supports the idea that psychological counselling is imperative to ensure sound mental health. In order to avoid such tragic deaths, Turkey and UNHCR need to acknowledge the highly vulnerable position of the Afghan refugees. This could only achieved through psychological counselling as a precaution to possible traumatic events and more specifically in the Afghan case to guide their situation through the halt process which bears many uncertainties leading to depression.

So far Afghan refugees in Turkey have been discussed as a homogenous group and

their problems have been discussed in general. Gender relations need to be investigated more comprehensively to understand that it is not a problematic issue in a particular country context but that Afgans are vulnerable and threatened in various nations systems and cultures. Gender related human rights issues have been identified by the social group of the person rather than their nationality. Contrarily through national refugee issues, particular social groups melted into the general framework. Although gender issues in Turkey and specifically in small cities is very problematic and needs to be analysed comprehensively, this thesis will briefly enter the discussion of gender relations to acknowledge the reality of these problems in the country and of the refugee system in general. LGBT refugees have been the most significant and distinctive group showing the vulnerability of the particular refugee groups challenges. In an interview with an Iranian refugee living in one of the more tolerant satellite cities (Eskişehir) talked about the social harassment in daily life; “There, it was the state that bothered us, not the people. And here, the state leaves us alone, but the people are harassing us. (Feldman: 2014)” These words have been used to describe the difference between living as LGBT member in Iran and Turkey. In Turkey generally there has been a serious threat of harassment and attack on LGBT members which has been tracked by NGOs most especially KAOS GL²⁵. In 2014 with the Bill for Amending Several Laws to Develop Basic Rights and Freedoms, hate crime and discrimination was regulated and became punishable by criminal law. It was demanded that discrimination against LGBT be included in the bill but on the contrary, the government choose to leave it out (KAOS GL: 2014). In this regard the state’s non-action can be interpreted as being discriminatory as it leaves LGBT unprotected. LGBT Afghan refugees have a similar experience to other LGBT members in satellite cities; in an interview a gay Afghan refugee claimed that one of his friends was stabbed in Nevşehir after being called a girl and the interviewee was also beaten afterwards because he was thought to be of Iranian origin like the others. After they reported the attack to the police, the attackers asked them to withdraw their complaint and told them that ‘they thought they were terrorists’ (Iren: 2014). This example illustrates how security discourse has been

²⁵ Further information and news on the subject visit KAOS GL internet site from the following link: <http://www.kaosgl.com/kategori.php?id=2-3>

used as legitimization for attacking refugees whereas they were insulted in the first instance with homophobic words. Hostile attitudes towards the refugees is not directly related to their foreign identity but stems from a general attitude towards LGBT members as well. However being a refugee enhances the effects of hostility towards LGBT members as they are confined to the limits of the satellite city.

Through the analysis of the three dimensions it could be argued that Turkey and UNHCR cooperatively reinforce or in some respects create inhospitable environments for Afghan refugees. This in turn, forces Afghan refugees out of the refugee system to become illegal immigrants in the country. This then creates a legitimate case for deporting Afghan nationals back to their country. In the previous chapter it was discussed that when the refugee system becomes unstable and unreliable, refugees start searching for other means to get protection in different countries. Given Turkey's position in the gateway of Europe, Afghan refugees started to take more action to change their fate by paying human smugglers to get in Europe. One of the most traditional routes to Europe by human traffickers has been through the Aegean Sea to Greece which has been subject to many issues in the past. Amnesty international reported that starting from August 2012 at least 210 people, including children, lost their lives or were reported missing feared dead. In addition to these reported statistics, another 24 lives were lost in Istanbul on the Bosphorus which heightens the gravity of the situation.²⁶ The route from Turkey to Bulgaria has also been a route of illegal trafficking to which the Bulgarian government responded by building a 30km long fences to ensure security of the borders. In 2014 there have been 6090 immigrants trespassing the Turkish border of whom 3,810 of them were Syrian, 575 Afghan nationals and 796 Myanmar nationals (TBMM report: 2014). As the statistics of Myanmar nationals posits an irregularity it is mainly because of the fact that it has been made up by the Syrian or Afghan nationals. It has been a tactic used by the refugees due to absence of Myanmar representation in the country and therefore couldn't be deported back to their country. Afghan refugees have the highest ratio to their population in Turkey trying to force their way out of the country

²⁶ The latest <http://haber.sol.org.tr/kent-gundemleri/istanbul-bogazinda-multeci-teknesei-batti-24-kisi-hayatini-kaybetti-haberi-99512>

but often at times find themselves beaten and pushed back to the country and in worst cases ended with the loss of their lives. Hence one can argue that due to the insufficient protection of the Afghan refugees resulting with loss of many lives, Turkey can't be regarded as a safe country for the Afghan refugees. This raises the question of whether it is enough to be in the refugee system even though the system itself doesn't proceed or protect. Furthermore in the case that state and the responsible international agencies passively force Afghan refugees out of the system by neglecting them, could that country still be regarded as a safe third country? If the safe third country principal in its minimal standards is applicable for Turkey, then the question of individual freedom in the core of liberalism and the refugee system is questionable since the value of the system is bigger and more important than the life and freedom of the individual. If no positive action is taken for the Afghan refugees, the situation it could be argued, could become more drastic in the following years.

CHAPTER 5:

CONCLUSION

This thesis aimed to examine the transformation of refugee policies in Europe specifically throughout the neoliberal period. The peculiarity of the refugee policies in the neoliberal period is in the additional policies implemented to externalize the responsibility of the refugees. It is suggested that this externalization process, cannot be explained through an isolated approach which only focus on the diversifications within the refugee studies. In order to conduct a comprehensive analysis of the externalization process, this thesis examines the nature of hitherto externalization applications on three main grounds; limitation of refugees access through international borders, international legal components of the externalization policies and the sustainability of the refugee status in the host country.

The first ground of post-cold war externalization process was related to the restriction and qualification of the access of refugees to the territories of host countries. Throughout the examination of the international framework it was seen that the first line of actions regarding the restrictions on refugees started with the execution of the visa policies and the usage of the carrier transportations as defence mechanism to protect illegal access to the country. In the emergence of the European Union, establishing a control mechanism upon the flows of population within the domestic borders of the union and the inflows from the external borders constituted an integral principle. Throughout the discussion of the Turkish framework it was also emphasized that EU border policies and the implemented visa criteria influenced the immigration flows which directly contributed to the prioritization of Turkey in the new immigration system. In the EU accession directives the first instruction for Turkey- was concerning its border control mechanisms and included readmission agreements and stricter policing on the visa control standards. In the Turkish framework and the Afghan refugee case, it was once again emphasized that border

controls had been an integral part of the established refugee system. These cases suggested that the European community inclined more to funding border control mechanisms than investing on the refugee system in Turkey. Another practical reality witnessed in the Afghan refugee case was rejections of the refugees on the borders. The same issue was also discussed in the Turkish framework regarding the illegal return of the refugees. On the borders between Bulgaria-Turkey and Greece-Turkey there had been many rejections without a proper investigation of the cases. Therefore the responsibility of the refugees has never been taken by the host country by means of neglecting the refugees' right to lodge an application to official responsible body. Physical abuse, illegal imprisonment and the violation of non-refoulement records have taken place off the records in this areas and many refugees without getting into the system suffers from the neglect of the countries to take responsibility of these people of concern. In comparison, during the early period of the refugee system throughout 1960s-70s, mainly as a result of the global effect of Keynesian policies refugees could access to the countries even in cases of inadequacy of the legal components of the refugee system and the countries still could provide refugees with a form of informal protection by permitting them to stay in the country. In this respect subsequent restrictive policies regarding the borders made conspicuous the structural inadequacies of the ongoing refugee system.

Throughout the externalization process, accession to host country has been the part of the problem of externalization of the responsibility of refugees that drew attention to legal components of the refugee system. Especially in the post-1980 period, specific strategies has been adopted to ensure limiting the access of potential refugees to the refugee system in the countries. These strategies comprises the unique features of the externalization process pertaining to the refugeeeness of a particular individual. The fundamental basis of the refugee status and its expounded development establishes the ground for the implementation of the restrictive policies. In this regard the regional developments of the refugee definition and European conventionalist response to the expansion of the refugee definition created a suitable environment for the pullulation of the restrictive policies. One of the most important development that influenced the future of restrictive policies was the emergence of

the term “asylum seeker” which also led to a transformation in the definition of the refugee concept.

The term ‘asylum seeker’ created a grey area in which despite a refugee becomes a part of the system she couldn’t benefit from the rights those which system provides. This fundamental change that came forward with the emergence of the term ‘asylum seeker’ ambiguate the ground of the refugee status. It altered refugee status into a “recognizable” status rather than being a “declaratory” status. The difference in between current and previous terms is that being a refugee was no longer based upon the declaration of the individual which changed the relation between the host country and the applicant. The state’s responsibility to provide a security is also changed when refugee status was qualified to be recognized by the state. Hence the system shifted the obligation to individual with regard to ensuring the means to stay in the system by proving her being a refugee and her condition of vulnerability to the officials in the host country. Henceforth, this became an integral part of the present refugee system. The state’s obligation to provide a security for the refugees transformed into an issue of credibility since the determination of the procedure was no longer on a declaratory basis and it was asserted heretofore that the claim of the applicant, as a norm, is taken on a suspicious ground by the authorities. In this framework the claim of bogus asylum application became the basis of the new restrictive policies which later on expanded with the claims of asylum shopping and manifestly unfounded asylum application. These refugee principals became the new fundamental stones of the refugee system that shaped the new international refugee system.

The transformation of new international refugee system had its effects on the Turkish refugee system. In this new refugee system Turkey became one of the primary receiving country of asylum seekers mainly because of its geopolitical position. In an isolated observation of the international refugee system, this international cooperation appear to be a new field that connects Turkey and EU. Nevertheless Turkey’s position in the international migration system have had a historical continuity which is transformed only with regard to its role with the new international migration system. Since the previous international system prioritized

domestic foreign labour, Turkey was mainly functioning as a country of generating labour force to industrialized western countries. In this regard Turkey was characterized as a country of emigration; an image established mainly over the guest labour agreements especially with Germany. Whereas in the new system Turkey's role transformed to be an immigration country for refugees coming from the Middle East. This new cooperation protects EU countries from unwanted refugee flows by using Turkey as one of the buffer zones between refugees and western countries. The Turkish framework showed how this cooperation was adopted by Turkey with the enforcements of international law and cooperation towards the EU accession process.

In the beginning of the cooperation of Turkey-EU, state sovereignty right on domestic arena had been one of the main problems in the determination process in addition to the restrictive nature of policies adopted in Turkey. Challenges in the determination process had its roots in the contradictory verdicts on the asylum applications in between Turkey and UNHCR. This was overcome by means of international court decisions in favour of the UNHCR's decisions on the cases against Turkey. One of the important result of this contradiction was the empowerment of the non-refoulement principal in Turkey which has been accepted to be on a higher ground than the domestic law. Therefore in this thesis it is propounded that the non-refoulement principal overrules Turkey's reserved right from the Geneva Convention which enforce geographical limitations to the refugee applications. In this respect one of the most discussed subjects in the refugee studies, the geographical limitations, is not the biggest practical challenges of the refugees in Turkey.

The EU refugee system in its essence can be characterized as an exclusionist system. The early experiences in Turkey was similar since it have adopted exclusionist system as well. Turkish system also functioned to allocate the refugee responsibility to another institute and by enforcing poor refugee regulations it created an unwelcoming environment for potential refugees to lodge their applications. However the problem emerging in accordance with EU refugee system logic was that the externalization of the refugees by Turkey was not in a controlled and institutional manner. The refugees enforced out of Turkey are spread internationally through

illegal methods of transportations. Distrust to the refugee system in Turkey has been one of the reasons for refugees to force their way to Europe. In this regard EU and Turkey had contradiction over the refugee subject not out of a responsibility with regard to human rights but because of the private interests.

On legal part the EU accession process functions to motivate Turkey to adopt a functioning refugee system that is to become a part of the international refugee system. This was achieved with the new 'Law on Foreigners and International Protection' by creating a legal framework for the first time which regulated the international protection standards. In the projected Turkish refugee system's the depth of international protection entitled to refugees was expanded, nevertheless the scope of those who can benefit from the framework was limited. In this respect with the new law Turkey became both the victim and the perpetrator of the externalization of the refugee responsibility process. This could be observed on the basis of the two refugee populations in Turkey. As the Syrian refugee case shows, Turkey became a victim of the international refugee system as she was one of the main receivers of the emerging Syrian refugee flow. On the other hand, through investigating Afghan refugee case it was set forth that Turkey was the main perpetrator of the externalization process.

Within the international refugee system the practice of externalization of the responsibility of the refugees became legitimized with the principal of sharing the burden of refugees. The new legal applications derived with a view to protect the system in the traditional immigration countries especially Germany, England and France. Sharing the burden in this regard reduced the shallow understanding to offloading potential refugee population to stay in the local neighbours of the origin country. The legal fundamental framework of the externalization process was established through two main principals known as 'first country of asylum' and 'safe third country'. These two concepts became the pillars of the refugee flow regulation in their capacity to reject the responsibility of potential refugees and send back to a third country. Among these two concepts, 'First country of asylum' principle functions to regulate the potential refugee applicants who officially entered in the asylum system in the antecedent country In this respect the whole process is

determined and settled in between two countries in question and the person of concern -the refugee- is not involved in the process. On the other hand 'Safe Third Country' principle functions to regulate potential refugees who has been assumed to have an informal protection in the previous country of stay. In this regard 'safe third country' is a more complicated principal as the stay in the previous country became a question to be investigated. Hence in this principal for each case a separate determination procedure is required and the person of concern is included in the determination process.

Afghan refugee crisis in Turkey is under the suspicion that these two principals can be executed to send the Afghan refugees back to Iran. The suspicion of such externalization process stems from the fact that Afghan refugees' determination procedures were halted and new applications are no longer accepted. Unofficial claim explaining the reason behind the halt of the procedures on the basis that Afghan refugees were coming from Iran have created the emphasis that the legal action requires 'safe third country' or 'first country of asylum' principal to function in the systemic refugee system. In the investigation whether it was possible for these principals to function in the Afghan refugee crisis in Turkey, it was observed that there has been strong evidence advocating that Iran cannot be qualified as 'safe third country' or 'first country of asylum'. In the analysis on the basis that Iran could qualify as 'first country of asylum' it was seen that the refugee system in Iran has not been institutionalized and have serious defects as to provide a determination procedure for every potential applicant. Reports on Iran's refugee system has accused Iran of not being transparent and not accepting refugee claims. In this regard the probability of Afghan refugees in Turkey to be in the formal protection system in Iran has been fairly low. as regards to I her record on the refugee policies, Iran publicly stated that refugee population in the country has been overwhelming and asked for international cooperation to offload her refugee population. This suggest that Iran would not cooperate for the return of the Afghan refugees in Turkey. In this regard even if Turkey or UNHCR applied to execute 'first country of asylum' principal they still wouldn't have legitimate ground to send these refugees back to Iran.

As to whether Iran could qualify as 'safe third country', it could be argued on the basis of Iran's poor human right records, especially on the LGBTT and Gender issues, that these created a strong argument against Iran. Besides, let alone evaluating Iran's capacity to protect these people of concern, Iran has been one of the higher refugee generator countries in the world especially LGBTT members and women. Another interesting conclusion reached through the analysis was the ambiguous line between the economic and political labelling of the migration movement. Afghan nationals especially young single adults in Iran has been labelled to be economic migrants by virtue of Afghan population's historical experience in the country and the economic struggles emerging within Afghanistan. Moreover it was seen that the economic reasons had direct political results in Afghanistan which led to human right violations and particular groups became exposed to more vulnerable situations in these areas and in return became destitute for a proper determination procedure to ensure their wellbeing. Since Iran cannot provide such a determination process and refoulement is a direct threat to these groups 'safe third country' principle would not be applicable in these cases. Because of individual case determination process it could be argued that most of these cases would not be qualify to have a legitimate ground for their return to Iran. In addition to the Iran's qualification of being 'safe' for the refugees, Turkey with the halt of the procedure also might put into question as a 'safe' country for the Afghan refugees.

The last component of the externalization of the refugee responsibility process has been the sustainability of refugee status in the host country in question. It was observed in the thesis that the determination process of the refugee application has been an ambiguous period which contributes extensively to the deterioration of the psychological and physical conditions of the applicants. In addition to long waiting period, refugees in Turkey has also need to apply for resettlement process leading to the extension of the ambiguous period. Hence the applicant's sustainability in the city she was assigned to became essential to acquire refugee status. The problem of sustainability of the refugees can be explained through different variables especially on the subjects of accommodation, working conditions, activity of local civil society organizations, social acceptance of foreigners in the area and variables changing

through the social group they belong to. In this regard sustainability is a multidimensional ground that is in the intersection of the refugee rights recognized in the country and the domestic conditions of the subject matter. Working conditions can be seen as an example given in the thesis in which even though legal access to work has been recognized in the legal framework, in practice Afghan refugees have been working illegally. The issue of working conditions can't be explained through the refugee system but can be explained through its relation to domination of precarious work in Turkey. LGBT and woman refugees in Turkey can't be analysed only through the refugee problems. This has to be discussed in relation to the problems of LGBT members and women in Turkey.

Afghan refugee crisis in Turkey has been a very illuminating case that provides an insightful analysis on the international refugee system of the neoliberal period. It's not only important because it shows the externalization of the responsibility process in Turkey but also its crucial historical relation to Iran makes it possible to draw continuities and contradictions in between the periods on the "dispositions of reception" of the Afghan refugees. In addition to the observational value of the case, Afghan refugees in Turkey in their resistance in Ankara also provided a possible solution to externalization of the responsibility of the refugees. UNHCR was the main address of the protests in Ankara for its contradictory and discriminatory action in the country. Since UNHCR functions, as an instrument in the externalization of the responsibility of refugees, can be transformed through the refugees' resistance. UNHCR established foundation discursively is not to protect the national or international interest of the countries which UNHCR has its legitimacy grounded on providing protection for the refugees. The refugees' protest over the lack of protection can shake the legitimacy of UNHCR, and in return could force UNHCR to adopt more refugee sided policies in the expense of its being a promoter of the national interests. However refugee issue is not only limited to rights of the refugees but also interrelated with other subjects which sets a cooperation on a bigger scale as a necessity to overcome these challenges. Through this cooperation, integration of the refugees to the host countries and their social acceptance will become possible. Therefore 'refugee' phenomenon both as a study subject and as a

resistance front should not be isolated to its own arena but had to be worked on collectively with other areas.

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APPENDICES

APPENDIX A

LIST OF TERMS

Asylum Seeker: Asylum Seeker is a term used to define the temporary status given to an individual who claim to be a refugee while the claim has been evaluated by the state or UNHCR. It is often mistakenly confused with the refugee term.

Fortress Europe: In the modern times, Fortress Europe has been a common term that has been used as a negative description to Europe's attitude towards immigration policies. The term has been used as in reference either to Europe's strict policing on border controls and detention centres to prevent illegal immigration or to general strict immigration system restricting access to Europe.

First Country of Asylum: First country of asylum is a principle adopted in the London resolution under the norm of sharing the burden. A country can be considered to be a first country of asylum for a particular asylum applicant/refugee if the applicant applied for an official protection from that country. The principle is applicable given that the applicant will be re-admitted to the country of question. The principle functions in between two countries without the participation of the particular person of concern. This principle has been applicable for the refugees who has been under official protection from the previous country.

Safe Third Country: The safe third country principle refers to claims in cases where applicants have passed through or spent time in, where the asylum seekers could have been expected to seek protection in. If there is such a "safe third country" "the application for refugee status may not be examined and the asylum applicant may be sent to that country". In that third country, the applicant must not be at risk of persecution, refoulement or treatment in violation of Article 3 ECHR. This principle has been applicable for applicants who has been under an unofficial form of protection in the previous country of visit.

Safe Countries of Origin: Safe countries of origins has been a principle applicable to refugee applicants who has been presumed to be from a 'safe' country. In the cases that this principle has been applied to cases, the applicant has been taken to accelerated procedure. Each country determines the countries it regards as safe. Even though the assessment of the 'safe' differ from country to country, the minimum standards has been set in which a country has to meet these conditions to be regarded as a safe country.

Manifestly Unfounded Claims: The manifestly unfounded refugee application procedure was developed in order to fight against bogus asylum applications. In the cases that manifestly unfounded claims are applicable, the application will be regarded as accelerated procedure. There are two basis for this principle to be applicable in the cases. The first basis for this principle is applicable in the cases if there are 'no clear substance' for the applicant's story. The second basis for the manifestly unfounded claims principle applicable is in the cases that the applicant has been in a deliberate attempt to deceive in the refugee application.

Accelerated Procedure: Accelerated procedure is principle to accelerate the decisions on the cases to resolve in the shortest time period. Accelerated procedures has been a procedure that has been applicable in cases under the suspicion of the manifestly unfounded claims and safe country of origin. In the Turkish framework the circumstance in which the accelerated procedure has been applicable has been defined within the New Law of Foreigners and International Protection. Accelerated application is used if the applicant is applicable to determination process and resolve the suspicion of their applicability. In this regard it is not a procedure that can determine the applicant as a refugee.

APPENDIX B

TÜRKÇE ÖZET

Bu tez modern mülteci sisteminin neoliberal dönemdeki dönüşümünü incelemeyi amaçlamıştır. Mülteci politikaların neoliberal dönemdeki özgünlüğü mülteci sorumluluğunun dışlanmasına yönelik oluşturulan ek politikalardır. Bu tez, mülteci sisteminin ekonomik sistemle olan organik bağının olduğu öngörüsünde bulunmaktadır. Bu anlamda tez öncelikle Türkiye’de ve uluslararası çerçevede mülteci sisteminin köklerini incelemesi gerekmektedir. Bu temel üzerinden uluslararası ekonomik ve politik konjonktürün dönüşümü ekseninde modern mülteci sisteminin dönüşümü incelenecektir. Dolayısıyla mülteci sisteminin neoliberal dönemdeki etkilerini irdelleyebilmek için, bu dışsallaştırma sürecinin mülteciliğe özgün yasal bileşenleri incelenmelidir. Ancak unutulmamalıdır ki dışsallaştırma süreci sadece yasal bileşenler üzerinden okunması sistemik bir analizin önüne geçip izole edilmiş ufak bir parça üzerinden büyük bir varsayımda bulunur. Bu anlamda dışsallaştırma sürecinin sistemik yapısına bakılabilmesi için farklı alanlardaki politikalarla ilişkisi üzerinden de bir analiz yapılması gerekmektedir. Tez mülteci sorumluluğunun dışsallaştırma sürecinin yasal bileşenlerin haricinde iki farklı alanla ilişkili bir şekilde geliştiğini gözlemektedir. Bu bağlamda mülteci sisteminin sınır politikalarının genelini belirleyen ve mültecilerin ülkeye erişimleri zorlaştıran göç politikaları, mülteciliğin ülkede devamlılığını etkileyen neoliberal dönüşüm sosyal devlet bağlamındaki etkilerine bakılacaktır.

Modern mülteci sistemi, II. Dünya Savaşı sonrasında yerinden edilmiş Avrupa nüfusunu sistematik bir şekilde yer bulmak için 1951 Cenevre Konvansiyonu ile birlikte kurulmuştur. Modern mülteci sisteminin çerçevesi politik ve ekonomik konjonktürden etkilenecek yapılandırılmıştır. Özellikle soğuk savaş politikaları, mülteci teriminin şekillenmesinde kendisini göstermiştir. Cenevre antlaşmasında, “ırk, dini, tabiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasi düşünceleri yüzünden zulme uğrayacağından haklı sebeplerle korktuğu için vatandaşı olduğu ülkenin dışında bulunan ve bu ülkenin korumasından yararlanamayan ya da söz konusu korku nedeniyle yararlanmak istemeyen her şahıs” olarak tanımlanmıştır. Mülteci teriminin tanımı özelinde iki farklı tartışma noktası vardır, bunların ilki

mülteci statüsünün bireysel bazda oluşturulması vardır. Mültecilik tarihine bakıldığında, mülteci akımlarının kolektif bir hareket içerisinde olup ülkelerin gelen mülteci akımına dair genel politikalar oluşturduğu görülmüştür. Bu tanım ‘bireyciliğin’ önemi ve hegemonyasını pekiştirmek amacı ile bireysel temelde yapılmış ve Sovyetler Birliğinin tepkisiyle karşılaşmıştır. Mülteci tanımı içerisindeki ikinci önemli tanım ise ekonomik koşulların ve tabii ettiği insanların bu mültecilik tanımı kapsamına girmemesidir. Bu tanım aynı zaman liberal hegemonyanın özündeki özgür bireyle yakından ilişkilidir. Bireylerin özgür bir şekilde işe girdiklerinin ve seçtikleri varsayımı üzerinden bakıldığı için kötü çalışma şartları bazen kölelik düzenini anımsatan üretim koşulları mültecilik tanımı içerisine sokulmayarak meşrulaştırılmıştır.

Tez, mültecilik sisteminin ekonomik yapı ile ilişkisini oluşturduktan sonra neoliberal döneme kadar nasıl geliştiğini irdelemiştir. Bu süreçte mültecilik tanımını bölgesel olarak gelişmesine karşılık Avrupa’nın muhafazakar tutumu dikkat çekmiştir. Bu süreçte Avrupa’da terim özelinde bir değişim olmamakla beraber, farklı koruma alanlarının da yolu açılmıştır. Türkiye, Avrupa’da oluşan ve gelişen bu mülteci sisteminin yasal olarak bir parçası olmakla beraber erken dönemde kayda değer bir mülteci akımı olmadığı için Türkiye’de mülteci sistemi ve politikaları bu dönemde yoktu. Bu anlamda Türkiye’nin mülteci sisteminin bir parçası olarak neoliberal dönemde çıktığı iddia edilebilir. İthal ikameci dönemde, misafir göç politikaları çerçevesinde Avrupa’nın işçi rezervi olan Türkiye, neoliberal politikalar ekseninde uluslararası rolü de değişmiştir bu yeni sistemde Türkiye, Avrupa’nın tampon bölgelerinden birisi olarak karşımıza çıkmaktadır. Tez içerisinde incelenen Afgan mültecilerin tarihine bakıldığında soğuk savaş dönemine uzanan bir geçmişleri olduğu görülüyor. Bu anlamda mülteci sisteminin iki dönem arasındaki farkını ve devamlılığını göstermek için Afgan mültecilerin süreci analiz için daha değerli kılmaktadır. Sovyetler Birliğinin Afganistan’ı egemenliği altına alması ve Afganistan’da komünist bir rejimin yönetime geçmesinden sonra Afganistan’dan İran’a büyük mülteci akınları olmuştur. Burada dikkate değer bir öge, Afganistan gelen bireylerin modern mülteci sistemi kapsamında değerlendirilmeyip İran’ın dini bir vazife olarak Afgan mültecileri kabul ettiği görülmektedir. Bunun en büyük

sebebi Afghanistan’da ‘dinsiz’ bir yönetimin başa gelmesi dolayısıyla İran’ın mültecileri kabul etmesi dini bir vazife olarak görmesi kadar aynı zamanda İran-İrak savaşı sırasında ihtiyaç duyulan iş gücünü de Afgan mültecileri kullanarak doldurmuşlardır.

1970’li yılların sonlarına doğru hem ithal ikameci üretim sürecinin krize girmesi sonucunda neoliberal politikaların filizlenmeye başlaması hem de soğuk savaşın yarattığı politik gerilimin çözülme aşamasına gelmesi, mülteci politikalarının da oluşan bu yeni ekonomi-politik düzene paralel bir dönüşüm içerisine sokmuştur. Bu bağlamda, mülteci sisteminin içerisine ‘asylum-seeker’ (sığınma-arayan) tanımının eklenmesi bu dönüşümün ilk göstergelerinden biri yapmıştır. Bu çerçevede asylum-seeker tanımının mülteci prosedürü içerisine dahil olması, devlet-mülteci ilişkisini tersine çevirmiştir. Mültecilik beyana dayalı bir statüs iken, asylum-seeker statüsünün dahil olması ile birlikte artık mültecilik devletin tanınmasına bağlı bir prosedüre dönüşmüştür. Bu anlamda mültecinin koruması yeni çerçevede mültecinin inandırıcılığına ve böyle olduğu ölçüde koruma devletin sorumluluk alanında çıkıp mültecinin sorumluluğu olarak kurulmuştur.

Mülteci sorumluluğunun dışsallaşma sürecinin yasal bileşenleri, neoliberal dönemde mülteci yükünün paylaşılması ve sığınma alışverişi (asylum shopping) söylemleri ile yapılandırılmışlardır. Bu meşruluk söylemlerinden asylum-shopping, mülteci sisteminin istismar edilmesine işaret ederken, mülteci yükünün paylaşılması söylemi mültecilerin gelişmiş ülkelere yüklediği yüke işaret etmektedir. Bu söylemler temel olarak alındığında mülteci sorumluluğunun uluslararası bir iş bölümü içerisinde paylaştırılması ve sorumluluğun büyük bir bölümünün gelişen ülkelere (Doğu Avrupa, Ortadoğu, Afrika, Güney Amerika) paylaştırıldığı görülmektedir. Bu söylemler çerçevesinde düzenlenen politikalardan hızlandırılmış karar mekanizması, sığınma alışverişi gibi sistemi istismar eden mültecilere yönelik bir prosedürdür. Hızlandırılmış karar mekanizması bilinçli veya bilinçsiz bir şekilde sistemi kandırmaya yönelik başvuruları değerlendiren bir prosedürdür. Bu tarz davalar en hızlı şekilde sonuca bağlanıp sistem üzerindeki mülteci yükünü azaltmayı amaçlar. Davalardaki dikkat çeken en önemli özellik, mültecinin mülteci olduğunu kanıtlama yükümlülüğüdür. Bu anlamda sistemin yükümlülüğünde olan mültecinin mülteci

olmadığını kanıtlama mecburiyeti, hızlandırılmış prosedürlerde mültecinin mülteci olduğunu kanıtlama mecburiyetine dönüşmüştür. Mülteci, yaptığı başvurunun meşru zeminde olduğunu kanıtlarsa başvuru hızlandırılmış prosedürden çıkartılıp, normal mülteci değerlendirme süreci içerisinde tekrardan değerlendirmeye alınır. Hızlandırılmış prosedürlerin hangi mülteci başvurularında işleyebileceği ise ‘kabul edilemez başvurular’ başlığı altında listelenmiştir.

Mülteci yükünün paylaştırılması söylemi ise ‘ilk iltica ülkesi’ ve ‘güvenli üçüncü ülke’ ilkeleri çerçevesinde mülteci sorumluluğunu dışsallaştırmışlardır. Bu iki ilke birbirinden farklı alanları organize etmekle beraber aynı zamanda birbirini tamamlayan iki ilkedir. ‘İlk iltica ülkesi’ ilkesi mültecinin başvurusunun değerlendirildiği ülke ile vatandaşı olduğu ülke arasındaki üçüncü bir ülkede resmi bir koruma talebinde veya altında ise bu başvuru ilk mülteci başvurusu yapıldığı ülkeye geri gönderilir. Bu prosedür mültecinin geri gönderileceği ülkede geri gönderilme riski ve ülkenin bu mülteciye sağladığı korumayı devam ettireceğini kabul etmesi koşuluyla gerçekleşir. Bu süreçte prosedür iki devlet arasında gerçekleşmekte olup mülteci bu sürecin içerisine dahil olmaz. ‘Güvenli üçüncü ülke’ ilkesi ise başvuru ülkesi ve vatandaşı olduğu ülke arasındaki üçüncü bir ülkede zaman geçirmiş olan ve burada mülteci başvurusu bulunması beklenen başvuru sahipleri için geçerlidir. Bu anlamda üçüncü bir ülkede gayri-resmi bir koruma altında olan kişiler için geçerlidir. Güvenli üçüncü ülke prosedürü kapsamına giren başvurular bireysel bazda değerlendirilir ve başvuru sahibi için geçerli olan ülke güvenli olduğu değerlendirilmesine varılırsa başvuru sahibi güvenli üçüncü ülkeye gönderilir. Bu ilke kapsamındaki başvurularda başvuru sahibi sürecin içerisinde ve değerlendirme sürecinde yer almaktadır. Bu anlamda güvenli üçüncü ülke ve ilk iltica ülkesi üçüncü ülke üzerinden her türlü mülteci başvurusunu kapsayan bir koruma kalkını olarak görev yapmaktadır.

Türkiye özelinde ‘ilk iltica ülkesi’ ve ‘güvenli üçüncü’ prensipleri Türkiye’nin mülteci sisteminin Avrupa ile uyum sürecinin en son kısmında uygulamaya koyulmuştur. Neoliberal dönemde, uluslararası iş bölümünde Türkiye’nin rolü Avrupa ve Ortadoğu arasında göç özelinde bir tampon bölge olmasıdır. Türkiye’nin yeni rolü çatışmasız bir süreç olarak gelişmemiştir. 1980 yılları itibariyle ile Türkiye

mültecilik Türkiye’de bir gerçeklik olarak kabul edilmeye başlamış ve devlet güvenlik endişeleri ile birlikte bu sürece müdahil olmaya başlamıştır. Türkiye’deki mülteci sistemi içerisinde iki başlı bir mülteci değerlendirme süreci işlemektedir. Türkiye’de coğrafik sınırlandırmalardan dolayı oluşan boşluk sebebiyle mülteci başvurusu değerlendirme süreci sorumluluğu 1990lardan sonra hem Türkiye devleti hem de UNHCR Türkiye ile birlikte iki ayrı süreçte değerlendirilmektedir. Bu anlamda 90lı yıllarda mülteci sistemine bakıldığı zaman Türkiye ve UNHCR arasında bir egemenlik çatışması bulunduğunu gözlenmiştir. Bu süreçte özellikle Türkiye’nin Cenevre sözleşmesinden hakkı olan gelen coğrafik sınır ile birlikte geri-gönderilmeme ilkesi arasındaki çatışma dönemin karakteristiğini belirlemiştir. Coğrafik sınırlama Cenevre antlaşmasında temellenen ve Türkiye’nin Avrupa dışından gelen mültecileri tanımamasını sağlayan hakkını koruması olarak tanımlanabilir. Geri gönderilmeme ilkesi ise modern mültecilik sistemi kurulması sonrasında sonra uluslararası bir norm olarak belirlenen ve sonrasında bunun uluslararası yasal bir ilke olarak belirlenen bir prensiptir. Bu bağlamda Türkiye UNHCR tarafından tanınan mültecilere karşı aldığı sınır dışı etme kararı uluslararası geri-gönderilmeme prensibi ile birlikte iptal edilmiştir.

Türkiye’deki mülteci sistemi sağlıklı bir sistem olmaması ve Türkiye mültecilere karşı güvenlik söylemi ile birlikte hoş karşılamaması Türkiye’ye gelen potansiyel mültecilerin sisteme girmesini engellemiştir. Türkiye’de mülteci sistemine girmeyen potansiyel mülteciler illegal yöntemler ile birlikte Avrupa’ya göç etme yolları aramaya başlamıştır. Bu bağlamda Türkiye’de mülteci sistemi, Avrupa’dakine benzer bir şekilde dışsallaştırma karakteristiğine sahiptir ancak bu dışsallaştırma sürecinin yasal bir olmaması ve daha önemlisi Avrupa’ya girmelerini engelleyecek bir sistemik süreç olmaması sorun teşkil etmeye başlamıştır. 2000li yıllar itibari ile birlikte Avrupa Birliği görüşmeleri ekseninde Türkiye’nin mülteci sisteminde belli iyileştirmelere gittiği görülmüştür. Türkiye’deki mülteci sisteminin Avrupa ile uyumlu hale getirilmesinin en son aşamasında, mülteciliği düzenleyen ilk kanun olarak oluşturulan Yabancılar ve Uluslararası Koruma Kanunu ile birlikte uluslararası neoliberal mülteci sistemiyle uyumlu hale getirilmiştir.

Afgan mülteciler özelinde bakıldığı zaman 1990lar başından itibaren İran’da

istenmeyen misafir olarak bakılmaya başlanmıştır. Bu süreçte hem ideolojik zeminin kaybolması (Afganistan'da yeniden yönetime geçen İslami otorite) hem de savaşın bitmesi ve ekonomik krizin gelmesi ile birlikte Afgan mülteciler birer yük olarak bakılmaya başlanmıştır. Bu bağlamda dini temeller üzerinden mültecilik sağlanan Afgan mültecilerin meşru zeminleri de İran'da kaybolmuştur. Bu sırada Afganistan'da oluşan rejim çatışması sonucunda ortaya çıkan mülteci akınları İran'a gelmeye devam etmesine rağmen kısıtlayıcı politikalar ve geri gönderilme süreçleri de uygulanmaya koyulmuştur. 2000'li yıllarda gerçekleşen 11 Eylül saldırıları ve bu saldırıların El Kaide kaynaklı olması Afganistan'da başlayacak olan yeni bir krizin de habercisi olmuştur. Amerika'nın Afganistan'ı işgali sonrasında oluşan yeni mülteci hareketliğinin hedefi yine İran olmuştur. Bu süreçte UNHCR, Afgan mültecilerin İran'da kalmasıyla uğraşmaktayken aynı zamanda Amerika'nın siyasi hedefleri doğrultusunda geri dönüş politikalarına da çaba harcamaktadır. Uluslararası düzlemde 11 Eylül saldırıları ve buna paralel olarak Avrupa'da gerçekleşen saldırıların faillerinin Müslüman olması bir algı politikasının da başlangıcı olmuştur. Avrupa'da güvenlik söylemleri ile birlikte sıkılaştırılan mülteci politikaları ve oluşturulan algı yönetimi ile birlikte bütün Afgan mültecilerin potansiyel terörist olarak kabul edilmelerine yol açmıştır. Bu bağlamda Afgan mültecilerin sürekli tehdit altında oldukları ve sürekli geri dönüşe zorlandıkları İran ve Pakistan dışında sığınabilecekleri üçüncü bir ülke bulamamışlardır. Farklı yöntemlerle batıya göç etmeye zorlanan Afgan mültecileri ise sıkılaştırılmış mülteci prosedürleri sebebiyle hapishaneye benzeyen misafirhanelerde tutulmuş ve geri gönderilmişlerdir.

Türkiye'de Afgan mülteci krizi 2014 yılında Afgan mültecilerin, UNHCR önünde yaptıkları protesto ve açlık grevi eylemi ile birlikte ulusal medyada görünürlük kazanmıştır. Afgan mültecilerin protestosunun arkasındaki sebep mülteci başvuru süreçlerinin belirsiz bir süre için durdurulmuş olmasıdır. Yeni gelen Afgan mültecilerin, mülteci belirlenme süreçleri hiç başlatılmayıp, UNHCR ile ilk görüşme tarihi verilmezken diğer tarafta sürecin ortasındaki Afgan mültecilerin ise prosedürleri durdurulmuştur. Bu süreçte aynı zamanda Türkiye de UNHCR ile birlikte Afgan mültecilerin statü belirleme prosedürlerini durdurmuştur. Afgan mülteciler bu durdurma sürecinden UNHCR'ı sorumlu tutarak, eylemlerini UNHCR

Ankara ofisi önünde gerçekleştirmeye başlamışlardır. Durdurma kararının ardından UNHCR veya Türkiye’den herhangi bir resmi açıklama yapılmamış olması Afgan mültecilerin geleceği konusunda da bir belirsizlik yaratmaktadır. Bu bağlamda Afgan mültecilerin bu yasal belirsizliği tez kapsamında incelenmiştir. Afgan mültecilerin durumu hakkında Afgan mültecilerle konuşan bir UNHCR görevlisi bu sürecin İran’daki Afgan Türkiye’ye girişlerini engellemek için yapılan bir düzenleme olduğunu söylemiştir. Tez Afgan mülteciler kapsamında bu durdurma sürecin analizinde bu sürecin yasal zeminlerini incelemiştir. Resmi bir açıklama olmaması sebebiyle dışsallaştırma sürecinin yasal zemini üzerinde irdeleme yapmıştır.

Türkiye’deki Afgan mültecilerin dışsallaştırma süreci Afgan mültecilerin, İran üzerinden Türkiye’ye gelmeleri varsayımı üzerinden kurulmuştur. Bu bağlamda Afgan mültecilerin yasal zemini daha önce Türkiye ve Uluslararası çerçevede kurulan ‘ilk iltica ülkesi’ ve ‘güvenli üçüncü ülke’ prensipleri üzerinden kurulmuştur. İran bu prensipler üzerinden değerlendirildiğinde ‘ilk iltica ülkesi’ çerçevesinde ilk olarak İran’da güvenilir bir mülteci sistemi olup olmadığına bakılmıştır. İran’ın geçmişindeki dini temel üzerinden kurulan mülteci sistemi uzun bir süre modern mülteci sisteminde bir değerlendirme prosedürü oluşturmamıştır. Yapılan incelemede çıkarılan sonuç İran’da sağlıklı bir mülteci sistemi olmadığı ve bunun temeli olarak da sistemin şeffaf olmaması ve kalıcı bir mülteci statüsünün kazanılmasının imkânsız olması gösterilmiştir. Bu bağlamda Türkiye’deki Afgan mülteciler bu prensip içerisinde değerlendirilse bile İran’da böyle bir başvurunun olup olmadığı konusunda bir bilgi yoktur. Eğer ki böyle bir bilgi olan davalar düşünüldüğünde bu sefer İran’ın bu mültecileri geri kabul etmesi gerekmektedir. İran’ın uluslararası mülteci sisteminden beklentisi ve Afgan mültecilere bakış açısı düşünüldüğünde bu prosedür sürecinde kritik ihlaller doğurabileceği beklentisi oluşturmıştır. ‘Güvenli üçüncü ülke’ üzerinden bakıldığı zaman ise İran’ın Afgan mültecilere ekonomik göçmen olarak bakmasının ve bunun sonucu olarak da karşımıza geri gönderilmeme ilkesinin riskte olduğu gözükmektedir. Bunun yanı sıra incelemeler Afganistan’da tehlikede olan kadınların ve lgbtt üyelerinin aynı dini temel üzerinde olan İran’daki mevcut düzen içerisinde de tehlikede olduğunu belirlemiştir. Bu bağlamda tez ‘güvenli üçüncü ülke’ prensibinin bireysel bazda yürütüldüğünü göz önüne alarak bu kapsama

giren davaların güvenli üçüncü ülke üzerinden Afganistan'a geri gönderilemeyeceği tezinde bulunmuş ve kolektif bir geri döndürme yürütülemeyeceği savında bulunmuştur. Tez 'güvenli üçüncü ülke' ve 'ilk iltica ülkesi' çerçevesinde Afgan mültecilerin incelendiğinde bu dışsallaştırma politikaları ile Afgan mültecilerin statüsünün durdurulmasının yasal bir zemini olmadığını ve bu prosedürler uygulamaya koyulsa bile yasal bir çözüm olmayacağı sonucuna varmıştır. Afgan prosedürlerin durdurulmasının yasal zeminde uzun süre devam edilemeyeceği varsayımında bulunursak dışsallaştırmanın diğer boyutları daha önemli hale gelmiştirler. Ülkeye erişimin ve mülteciliğin devam edilebilmesi sadece Afgan mültecileri ilgilendiren politikalar olmamakla beraber ilişkisel olarak mülteciliği etkilemektedir.

Mülteci sorumluluğunun dışsallaştırılmasının bir ayağı olan sınır politikaları neoliberal dönemde geçirdiği dönüşümle beraber Avrupa'da daha katı sınır politikaları uygulamaya konulmuştur. Klasik neoliberal söyleminde, neoliberal politikalar sonucunda küreselleşen ve globalleşen dünyada hareketliliğin arttığı ve ulus devlet sınırlarının kaybolduğunu iddia etmektedir. Tez göç politikaları ve mülteci politikaları arasındaki ilişkiye işaret ederek, neoliberal dönemdeki hareketliliğin ithal ikameci döneme göre daha çok kısıtlandığını iddia etmektedir. Uluslararası ekonomik sistemin değişimi, uluslararası iş bölümünü de yaratmıştır. Üretim merkezlerinin mekânının değişmesi, göç hareketlerinin de bu bölgelere doğru yönlendirmesine sebep olmuştur. Bu anlamda hareketlilik bölgeler içerisinde artarken Avrupa'ya göç engellenmeye çalışılmıştır. 1980lerle başlayan ve mültecileri etkileyen ilk kısıtlayıcı politika uygulamaya konulan vize politikalarıdır. Vize politikaları aynı zamanda mülteci üreten ülkelere de uygulanmaya başlanmıştır, dolayısıyla ithal ikameci dönemde sözleşme tanımına girmeyen ancak korumaya ihtiyacı olan mülteciler geniş göç politikaları sayesinde enformel bir koruma sağlanırken neoliberal dönemdeki katı göç politikaları sebebiyle ülkeye giriş yapamamaktadırlar. Bu anlamda teorik olarak değişmeyen mülteci politikası göç politikalarındaki değişimin sonucunda daha katı ve kısıtlayıcı bir sistem haline gelmiştir.

Bu uygulamalar sonucunda Avrupa'ya giriş sağlamayan mülteciler, Türkiye'yi

transit bölge olarak kullanarak Avrupa'ya giriş yolu aramaya başlamıştır. Dolayısıyla Türkiye'nin mülteci bölgesi olarak kurulması aynı zamanda Avrupa'daki göç politikaları ile de yakından ilişkilidir. Avrupa, Türkiye ile uyum çalışmalarında ilk önerilen konu başlığı vize standartları ve sınır kontrollerinin sıkılaştırılması üzerinedir. Bu örneğe bakıldığı zaman Avrupa için Türkiye'deki mülteci sisteminin birincil önceliği Avrupa'ya girişin engellenmesi üzerinedir. Bu savı destekleyen bir diğer örnek ise Avrupa'nın Türkiye'deki mülteci sistemine ve sınır kontrollerine ayrılan bütçelerde gözlemlenmektedir. Afgan mülteciler özelinde sınır politikalarına bakıldığı benzer bir katı politika gözükmemektedir. Özellikle Ege'de Yunanistan'a geçişlerde ve Meriç üzerinden Bulgaristan'a giriş yapmaya çalışan mültecilerin gördükleri şiddetli müdahale ve insan hakları ihlalleri sınır üzerinde olduğu için belirsiz bir konuma itmektedir. Benzer bir konu olarak Türkiye'de doğu sınırlarında mültecilere yapılan müdahalelerde de görülmektedir.

Tezde incelenen mülteci sorumluluğunun dışsallaştırılmasının son alanı ise mülteciliğin yaşanabilirliğidir. Tez mültecinin koruma aldığı veya alacağı bölgedeki yaşam koşulları olarak betimlenir. Yaşam koşulları farklı sosyal alanların bir bileşimi olarak kurularak mülteci olan bireyin bölgede hayatını sürdürebilir olmasını inceler. Neoliberalizm ile birlikte devletin rolünün değişmesi ve aynı zamanda mekan üzerindeki politikaların da buna paralel şekilde sermaye odaklı yatırımlara dönüşmesi ülke içerisindeki iş gücünün değersizleşmesini beraberinde getirmiştir. Bu anlamda yaşam koşulları ülkeden ülkeye değişkenlik gösterdiği için özellikle Türkiye özelinde yasal zemin incelenmiş sonra Afgan mülteci örneği üzerinden pratikteki dışsallaştırma süreci incelenmiştir. Bu bağlamda mültecilere özgün en önemli gelişme 94 yasasıyla uygulanan 'uydu kent' düzenlemesidir. Bu düzenlemeye göre mültecilik başvurusunda bulunan başvuru sahibi ilk dönemlerinde devlet tarafından uygun görüldüğü bir yere yerleştirildi ilerleyen dönemlerde belirlenen uydu kentler içerisinde kendi tercihini yapma hakkına sahip oldu. İstanbul, Ankara, İzmir gibi büyük şehirlerin uydu kentlere dahil olmaması küçük kentler ve yerel yönetimi daha önemli hale getirdi. Bu anlamda küresel olarak mülteciler çıktıkları bölgelere kapatılırken, Türkiye özelinde ise gelişmiş şehirlerden uzaklaştırılıp daha az sivil toplum faaliyetlerinin olan küçük şehirlere kapatılmışlardır.

Türkiye’de mültecilerin yaşam şartları yerel, ulusal olmak üzere iki düzlemde analiz edilmesi gerekmektedir. Ulusal düzlemde yapılan politikalardan bahsedilirken uydu kent düzenlemesi haricinde sağlık, eğitim, çalışma izni, ikamet harcı gibi ulusal bazda düzenlenmiş aynı zamanda mültecilere özel yasaklar ve izinlerle geliştirilmiş bir boyuttan bahsedilir. Bu bağlamda yeni yasada Türkiye’deki mülteci sistemini çekici hale getirip potansiyel mültecileri sisteme dahil etmek sebebiyle iyileştirilen politikalar mevcuttur. Türkiye’deki mülteci sürecinin ana karakteristiği olan geçici statü olması ve bu sürecin belirsiz, uzun sürmesi yaşanan bölge ve tanınan haklar mülteciliğin devam edebilmesi için önemli koşullar olarak karşımıza çıkmıştır. Teorik olarak ulusal düzlemde düzenlenen yasalar, yerel düzlemde uygulamadaki işlevselliği Afgan mülteci örneğinde görülmüştür.

Yeni kanun içerisinde düzenlenen eğitim, çalışma izni konularında büyük çelişkiler Afgan mülteci özelinde de olmak üzere bütün mültecilerin ortak problemidir. Uydu kent ve üniversite arasındaki geçişin izni olmaması ve bürokratik problemler mültecilerin eğitim hakkından yararlanmalarına engel olurken. Aynı zamanda yerel bölgelerde çocuk mültecilerin dilinde eğitim olmaması da pratikte yaşanan sorunlara örnektir. Çalışma iznine bakıldığında ise Afgan mülteciler özelinde böyle bir yasal imkan varken Afgan mültecilerin bunu kullanmaması araştırılması gereken bir sorun olduğunu göstermektedir. Ülke çapında neoliberalizm ile yaygınlaşan güvencesiz çalışma koşulları sadece Türkiye vatandaşlarını değil daha ağır koşullarda mültecileri de etkilediği görülmektedir. Bu anlamda sadece mülteci koşullarına bakarak iyileştirme koşullarının pratikteki gerçekliğe uygun olup olmadığı da araştırılması gerekiyor. Bu anlamda mülteci politikaları sadece kendi içerisindeki değil ülkenin diğer koşulları ile birlikte incelenmesi gereken politikalar bütünüdür. Buna benzer bir şekilde gerçekleşen UNHCR yardımları da belli paralellikler göstermektedir. Yardımların kağıt üzerinde bir olasılık olması ve çok kısıtlı koşullar altında verilmesi mültecilerin kötü çalışma koşulları ve yaşam koşullarına da mecbur bırakmaktadır. Bu bağlamda mülteciler uydu kentleri terk edip büyük şehirlerde gayriresmi bir koruma altında hayatını idame etmeye zorlanmaktadır. Fakat mültecilerin sistemden çıkması aynı zamanda sınırdışı edilme tehlikesini beraberinde getirmektedir.

Yaşam kořulları altında bulunan bir dięer analiz ise Trkiye’de yeterli korumaya sahip olamayan lgbt yeleri ve yalnız kadınlardır. Farklı sosyal gruplar zellikle kk kentlerde istismar edilme olasılıkları yznden daha fazla risk altındalardır. UNHCR bu farklı sosyal grupları hızlandırılmış ve erken bir tarihte ilk grřme tarihi vererek bu korumasızlıkların nne gemeye alıřmıřtır. Ancak Afgan mlteci meselesinde srelerin dondurulması bu sosyal grupları daha fazla risk altına sokmaktadır. Bu baęlamda Trkiye’nin de gvenli nc lke veya ilk iltica lkesi olarak stats de soru iřareti olarak bırakılmıştır. Bu sosyal gruplar daha derin arařtırmaların konusu olmakla beraber bu tez bu grupları da tanımak iin zellikle vurgu yapmıřtır.

Sonuç olarak tezin vardığı sonuç neoliberal dneme zgn bir mlteci sistemi vardır. Bu sistemin temel karakteristięi ise mlteci sorumluluęunu dıřsallařtırılmasıdır. Bu dıřsallařtırma sreci yasal olarak geri gnderilme, bazen zorunlu bırakılarak mltecinin sistemin dıřına ıkması veya geri dnmeye zorunlu bırakılması son olarak da mltecinin lkeye giriř yapmasını engelleyerek gerekleřmektedir. Aynı zaman tez Afgan mtecilerin direniřini anlamlı bulduęunu belirtmektedir. Sadece duruma verdikleri tepkiden dolayı deęil aynı zamanda hedef olarak UNHCR setikleri iin. UNHCR’ın dnřtrlmesi ve mtecilere nerilen korumanın saęlam temelde olması, mtecilerin hem lkeye entegrasyonunu kolaylařtırır hem de farklı sosyal alanlarda da hak mcadelesi vermesinin temelini oluřturur. Bunun iin gerekli olan temel UNHCR’ın yapısını deęiřtirerek dıřsallařtırma srecine karřılık mtecileri korumasını saęlamaktır.

APPENDIX C

TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü

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YAZARIN

Soyadı : Ünlüer

Adı : Erkan

Bölümü : Siyaset Bilimi ve Kamu Yönetimi

TEZİN ADI (İngilizce) : Externalization of the Refugee Responsibility: The Role of Turkey within the International Refugee System with Special Regard to Afghan Refugees

TEZİN TÜRÜ : Yüksek Lisans

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