

TURKISH MIGRATION POLICY OVER THE LAST DECADE: A GRADUAL SHIFT TOWARDS BETTER MANAGEMENT AND GOOD GOVERNANCE

The EU integration process and single party rule have been instrumental in the past decade of Turkey's migration policy reforms. However, related changes started before AKP rule, and have continued beyond the period in which the EU process had momentum in Turkey, suggesting that this transformation has taken on a life of its own. The adoption of the law on Foreigners and International Protection in April 2013 is a case in point. The restructuring of the Turkish migration policy has been significant, however it is still at a very preliminary stage and many weaknesses still remain.

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The concept of “governance” is not new. It was first used in Sidney Low’s *The Governance of England* (1904).¹ The boundary between management and governance is still not clear and most of the time these two concepts are used interchangeably. The meaning of good governance varies from one institution to another and the word has different definitions in academic literature.² This paper will utilize basic defining elements of good governance. In doing so, the United Nations Development Program (UNDP) Policy Document, will be taken as reference in which the characteristics of good governance are defined as follows:

Good governance is, among other things, participatory, transparent, and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social, and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.³

This contribution is an attempt to analyze the case of Turkey in the field of migration through the main characteristics of (good) governance. The analysis is derived mainly from two sources. The first source is semi-structured interviews with former and current representatives of government, international and inter-governmental migration organizations, civil society organizations, experts from migration research centers and think tanks.⁴ The second source is the workshop that took place at the Istanbul Policy Center on 16 February 2013, entitled “Turkey’s Migration Policy from 2002 to 2012: An Assessment of the Justice and Development Party’s (AKP) Reforms.”⁵

Divided into six parts, the first section of this paper presents the background and context. The second section is a review of factors that triggered the process of

1 Fikret Başkaya (ed.), *Kavram Sözlüğü-1 Söylem ve Gerçek*, [Dictionary of Notion-1 Discourse and Reality] (Ankara: Özgür Üniversite Yayınları, 2007), p. 693.

2 Rachel M. Gisselquist, “Good Governance as a Concept, and Why This Matters for Development Policy, Working Paper, No. 2012/30,” *World Institute for Development Economics Research*, March 2012, http://www.wider.unu.edu/publications/working-papers/2012/en_GB/wp2012-030/_files/87241489663918216/default/wp2012-030.pdf

3 “Governance for Sustainable Human Development: UNDP Policy Document,” January 2007, <http://mirror.undp.org/magnet/policy/>

4 The empirical research was conducted within the framework of Mercator-IPC fellowship program as a part of Project entitled, “The Role of Migration in EU/German-Turkish Relations,” *Istanbul Policy Center*, <http://ipc.sabanciuniv.edu/en/people/secil-pacaci-elitok/>

5 “Turkey’s Migration Policy from 2002 to 2012: An Assessment of the AKP’s Reforms,” *Istanbul Policy Center*, 16 February 2013, <http://ipc.sabanciuniv.edu/en/event/turkeys-migration-policy-from-2002-to-2012-an-assessment-of-the-akps-reforms/>

change. The third section introduces steps towards good governance in Turkish migration policy. Subsequent sections outline drawbacks and concerns, before culminating the conclusion.

Background and Context

Due to its geographical closeness both to the EU area and the Middle East North Africa (MENA) region, Turkey is a crucial player in terms of migratory regimes. Turkey is a party to international agreements such as the UN Convention against Transnational Organized Crime and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

“Turkey’s migration policy has changed considerably since the early 2000s, motivated by a desire to fulfill the EU membership criteria.”

On a regional level, Turkey signed visa liberalization agreements with a number of its neighbors in the Caucasus and Middle East; (for instance; Syria (2009), Lebanon (2010), Albania (2009), Libya (2009), Jordan (2009), Tajikistan (2009), Azerbaijan (2009). Turkey also signed readmission agreements with various countries (such as: Syria, Kyrgyzstan, Romania, Ukraine, Greece, Bosnia, Herzegovina, Pakistan, Yemen, Russia, Nigeria, and Moldova) over the course of last couple of years so as to tackle the issue of illegal migration and to encourage states to fight against it. As an important regional actor in migration management, since 2006, Turkey has chaired the Budapest Process, which is an intergovernmental unofficial cooperation dialogue forum involving 53 countries’ governments and 21 international organizations including the European Commission. The process aims to create comprehensive and sustainable policies in the area of migration management. Turkey also leads the creation of the Silk Route Working Group in order to develop active cooperation with source countries for regular and irregular migration on the historical migration route to Eastern Europe and Turkey. The Budapest Process has adopted a new approach in the course of Turkey’s chairmanship: that the most effective way of preventing illegal migration is to lift the obstacles in front of legal/regular migration.

On a national level, Turkey has also been aligning its migration framework with the EU’s “Common” Migration Policy. In doing so, Turkey has been collaborating with international organizations like the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) in the field of asylum and

human trafficking. Turkey implemented Twinning Projects (on “Migration and Asylum” in 2004-5 with the cooperation of Denmark and England, and on Integrated Border Management with the cooperation of France and England), and signed bilateral and multilateral agreements.

“Due to its geopolitical significance, Turkey is the nexus of emigration, immigration, and transit migration.”

Turkey’s migration policy has changed considerably since the early 2000s, motivated by a desire to fulfill the EU membership criteria.⁶ Among the reforms harmonizing Turkey’s legislation on justice, freedom, and security with EU *acquis*, the most important step has been the adoption of the Law on Foreigners and International Protection, which was approved on 4 April 2013 by

Turkey’s Parliament. This law has introduced a new legal and institutional framework for migration and asylum. It is perceived as a clear sign of Turkey’s efforts to establish an effective migration management system in line with EU standards. The EU has recognized and appreciated Turkey’s adoption of these reforms, particularly in the middle of the Syrian refugee crisis.

Having briefly contextualized Turkey’s attempts to become involved in the global management of migration, to fulfill its role *via* bilateral and multilateral agreements at the regional level, and to align its legislation with the EU *acquis* at the national level, this paper now turns to evaluating the early signs of a transformation towards better governance in Turkish migration policy.

Triggering Factors Behind the Progress

The 2000-13 era has been characterized by restructuring of Turkish migration policy. Factors contributing to this shift range from internal factors, such as the migration profile of Turkey and the impact of the ruling party, to external factors such as the EU, which will be analyzed below.

The Changing Migration Profile of Turkey

Due to its geopolitical significance, Turkey is the nexus of emigration, immigration, and transit migration.⁷ Turkey is a typical emigration country. Turkish community

6 Seçil Paçacı Elitok, “Turkey’s Negotiations on Migration: One-on-One or One-on-Twenty Seven?,” *IPC-Mercator Policy Brief*, 2013, <http://ipc.sabanciuniv.edu/en/kind/1reports/?searchtype=searchauthor&searchquery=secil-pacaci-elitok>

7 Kemal Kirişçi, “Turkey: A Transformation from Emigration to Immigration,” *Migration Information Source*, November 2003, <http://www.migrationinformation.org/Profiles/display.cfm?id=176>

living abroad amounts to more than five million people, around four million of whom live in Western European countries, 300,000 in North America, 200,000 in the Middle East and 150,000 in Australia.⁸ Turkey is also an immigration country whose immigrant population was about 1,5 million in 2010, composed of skilled migrants such as professionals, expats, international students and European retirees.⁹ Moreover, Turkey is a land of irregular migration flows originating from Ukraine, Moldova, the Russian Federation, Georgia, Turkmenistan, and Uzbekistan. Turkey is also a transit zone for migrants from the Middle East, Asia, and Africa. Finally, Turkey is a country of asylum. The total number of refugees, asylum seekers, and stateless people in Turkey (excluding Syrians) was 35,785 in mid-April of 2013. According to the UNHCR, the number of registered Syrian refugees reached 293,385 in 2013.¹⁰ In addition, the Kurdish dispute led to forced migration of an estimated 950,000 to 1,2 million people in the 1990s.¹¹

The need to prevent illegal migration, provide support to the victims of human trafficking, and deal with asylum seekers forced Ankara to develop a new policy over the course of 2000s. The increase of new forms of migration flows such as seasonal workers, temporary migrants, circular migrants, high-qualified international migrants, retiree migrants, international students, etc. also necessitated a modern migration regime in Turkey.

The EU Anchor

One of the most important factors behind the developments in the rein of migration is the “EU anchor”. Without the EU’s pushing power, Turkey would not have been able to elicit these reforms in a few years. Questioning European standards in the migration field or discussing Turkey’s EU membership prospects is beyond the scope of this paper. However, the accession process itself definitely had a positive impact on Turkey in many areas, including migration.

At the initial phase of its EU candidacy, which began in 1999, Turkey undertook various steps in order to fulfill EU criteria. Turkey subsequently internalized this progress, which gave it the impetus to further reform its migration policy. At some point, the process created its own dynamism. Turkey’s long-standing gaps coincided with the prerequisites of EU membership, and this combination caused an

8 “Turkish Citizens Living Abroad,” *Ministry of Foreigner Affairs of the Republic of Turkey*,

<http://www.mfa.gov.tr/the-expatriate-turkish-citizens.en.mfa>

9 According to Ministry of Labor and Social Security statistics, 16,890 work permits issued to foreigners in 2011.

10 “Syria Regional Refugee Response,” *UNHCR*, 6 May 2013, <http://data.unhcr.org/syrianrefugees/country.php?id=224>

11 “Migration and Internally Displaced Population Study in Turkey (MIDPST),” *Institute of Population Studies (IPS) of Hacettepe University*, 2006, http://www.hips.hacettepe.edu.tr/eng/dokumanlar/TMIDPS_press_release.pdf

evaluation of Turkish migration policy. Today, Ankara is in a position to negotiate and implement reforms for its own sake (with or without the EU), and put forward its own standards.

In relation to the pressure from the EU, the decisions of the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) are also crucial. The high number of adverse verdicts and high amounts of compensation had also an accelerating impact on Turkey's implementation of further improvements, especially in the case of asylum and forced migration.

The AKP Factor

In 2001, the AKP was founded under the leadership of Recep Tayyip Erdoğan and came to power with the general elections in November 2002. Since then, AKP has won every election – thus marking 10 years of single-party rule.¹² It is difficult both to measure the impact of a specific political party when looking at the migration policies of a specific period and to differentiate the AKP's approach to migration from other actors in the Turkish political spectrum. Yet, it is important to note that being a single-party government gave a significant advantage to the AKP in accelerating the process.

Instead of dealing with any coalition members, the AKP proceeded in an expeditious way in signing agreements, establishing new institutes, approving laws and the like. However, it is unclear whether this success was attributable only to the AKP government, or whether it was an expected outcome of institutionalized state bureaucracy. Ultimately most of the preparations for the reforms that took place in the post-2002 period began after the mid-1990s. This signifies a direct correlation between migration reforms and the continuity of the state apparatus. For instance, the 2003 Law on the Working Permits of Foreigners was formed in 1998, even before the AKP was founded. Hence, the noteworthy difference in Turkish migration policy is most likely the result of both the AKP's single-party rule and the continuity of already initiated efforts.

Steps Towards Better Management and Governance

Although migration has always been on the agenda of Turkey's relations with the EU, Turkey's candidate status in 1999 provided impetus for concrete acts to align migration policies with the EU *acquis*. Even though the Commission's reports

¹² In this paper, I only analyze the migration policies. My understanding of the period cannot be applied and overgeneralized to the other policy areas.

since the first one in 1998 rate Turkey's migration policy as poor and limited,¹³ in the last decade Turkish policy makers have introduced numerous new laws and policies in migration-related areas identified by the EU.

In 2005, in order to harmonize Turkish legislation with the EU framework in the field of justice, freedom, and security, Ankara prepared a National Action Plan. According to this plan, with the intention of modernizing the existing legal structure of Turkey in the area of migration, a new Law on Foreigners and International Protection was drafted. The Turkish Parliament approved the first part of the Law in April 2013 and the remaining part will go into effect in one-year following the date the law is published (11 April 2013).

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Both the creation of the Law itself and the new framework that it committed to introduce are rather “participatory”. For the first time NGOs and academics were not only observers of the process but active participants in the decision-making process. For instance, one of the NGO representatives mentioned that they managed to change the place of the “health access of migrants” part of the law to the section that will be approved and put into action first.¹⁴ Most migration-NGO representatives were quite satisfied with the government's changing approach to them, and appreciated that their opinions had been sought, regardless of whether they were going to be taken into account.

This increased involvement of multiple actors (both governmental and non-governmental organizations) in regulation shaping process helps them to internalize the system and motivates them to apply these regulations. Thus, government is no longer the sole actor of governance. Instead, other actors are involved, such as civil society organizations, migrant networks, and migration research centers. The Law is telling in many ways. As elaborated below, if it would be

13 For Progress Reports on Turkey, in Turkish see: “Progress Reports,” *Ministry for EU Affairs*, <http://www.abgs.gov.tr/index.php?p=46224&l=1>; For 2012 Progress Report see: “Turkey 2012 Progress Report,” *European Commission*, 2012, http://www.abgs.gov.tr/files/strateji/2012_Progress_Report_for_Turkey.pdf

14 “The part which is regulating the access of asylum seekers to health care was not included in the 5th chapter before. With our efforts, they incorporated it into chapter 5,” Voice recording from the workshop titled: “Turkey's Migration Policy from 2002 to 2012: An Assessment of the AKP's Reforms,” *Istanbul Policy Center*, 16 February 2013.

implemented in an orderly fashion, its participatory character will continue in the implementation stage as well.

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In 2008 the Asylum and Migration Bureau and the Border Management Bureau were formed under the Ministry of the Interior. This development was followed by the formation of the Committee Against Irregular Migration, which was tasked with the coordination of the precautionary measures and protectionist activities. This represents a fundamental adjustment at the administrative and institutional levels, since a new civilian authority, the General Directorate of Migration

Management under the Ministry of Interior, has been established to coordinate the overall asylum and migration issues.

In addition to its existing involvement with IOM and UNHCR, the Turkish government will also interact with civil society organizations working in the field of migration. Signals of this participatory approach are found in the recent establishment of a Migration Policies Council which is responsible for developing strategies and action plans, and taking necessary measures in case of mass migration. The new Council is composed of representatives of related ministries as well as representatives of local and international organizations, providing active cooperation of all stakeholders in a participatory process.

Before the Law on Foreigners and International Protection (YUKK), there were circulars regulating international protection, asylum, and migration. Existing laws were based on the Passport Law (No. 5682) and the 1950 Law on Sojourn and Movements of Aliens (No. 5683), which is derived from the 1924 Constitution. This multipartite structure of legal regulation led to arbitrary and *ad-hoc* situations in implementation. The YUKK is expected to put an end to the lack of a comprehensive legal structure that has persisted for the past 63 years. It is also reassuring in terms of departing from a long-term lack of policy. With the YUKK, instead of providing case-by-case solutions in a flexible manner, migration-related issues will be fixed and ruled by a single immigration administration and by a single Law. In this sense, it brings a broad and long-term perspective.

The Parliamentary Affairs Commission unanimously adopted the Draft Law on Foreigners and International Protection in June 2012. The Law was referred to the General Assembly of the Parliament where it was approved on 4 April 2013 and sent to the President Abdullah Gül. It has been ratified by the President on 10 April 2013 and published in the Official Gazette on 11 April 2013. Being one of the few laws that has been accepted unanimously, the new legislative framework is based on consensus.

Under the framework of YUKK, most of the information is expected to be on-line under the new electronically established system. For instance, applicants for Turkish citizenship will have the chance to follow their admission process online. The YUKK, if well-implemented, can be more “transparent” in the sense that information is freely available and easily accessible to those who will be affected by rules, regulations, decisions and their enforcement in the field of migration.

There have also been some attempts lately to ensure related processes are equitable and inclusive. So as to support Turkish citizens living abroad, the “Turks Abroad and Relative Communities Department” (*Yurtdışı Türkler ve Akraba Topluluklar Başkanlığı* in Turkish) was established in 2010.¹⁵ In 2001, the Homeland-Advice Bureau (*Yurt-Danış Bürosu* in Turkish) under the Foreign Relations and Workers Abroad Services General Directorate was established to provide legal support to and preserve the fundamental rights, freedoms and obligations of Turkish expatriates.

On the immigrants' side, in 2003, the new Law on Work Permits for Foreign Nationals eliminated previous restrictions to foreign nationals holding various occupations. According to the YUKK, allocation of visas is based on the labor shortages in the Turkish labor market rather than on the nationalities of the workers. In addition to these items, YUKK introduces the new status of “conditional refugee” that eases refugees' access to their basic rights. Similarly, “integration” for the first time came into discussion and took place in the YUKK, fostering the conditions in which Turkish society and foreigners can coexist.

The reforms of the 2000s have brought about more effective and efficient solutions to handle challenges in the migration domain. For instance, in 2002, new legislative revisions concerning the Citizenship Law had positive implications for combating irregular migration and protecting immigrants' rights. Moreover, in 2010, changes in Article 79 of the Turkish Criminal Code increased the deterrent effect of the penalty for the human traffickers.

¹⁵ Özge Bilgili, “Turkey's Multifarious Attitude Towards Migration and Its Migrants,” *Migration Policy Center, Robert Schuman Centre for Advanced Studies*, 2012, <http://cadmus.eui.eu/handle/1814/23498>

Drawbacks and Concerns

Despite the reforms undertaken, a few critical issues remain unresolved: visa policy, asylum policy, and border management.

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With regards to EU visa policy towards Turkish citizens, a Readmission Agreement and a visa facilitation scheme are under discussion. In June 2012, Turkey and the EU finalized the Readmission Agreement. However it has yet to be signed into practice due to Turkey’s rightful concerns of unfair burden sharing. The agreement is expected to regulate procedures on illegal migration flows between EU and Turkey. Illegal migrants transiting through Turkey to reach EU destinations

and are caught in EU member states will be repatriated to their home countries after temporary stays in Turkey.

With respect to asylum, Turkey applies a geographical limitation to the UN 1951 Geneva Convention, only recognizing the status of refugees from non-European countries.¹⁶ Accordingly the UNHCR intervenes to identify third country resettlement opportunities for non-European asylum seekers in Turkey. Without the guarantee of full membership, Turkey is reluctant to lift the geographical limitation because of the fear of becoming a buffer zone between Turkey and Europe and a magnet country for asylum seekers.¹⁷

Finally, especially in the aftermath of Syrian migration to Turkey, the EU’s fear of illegal migration flows through Turkey has considerably increased. According to the 2012 Progress Report, the number of third country nationals detected in 2011 by EU Member States’ law enforcement forces when entering or attempting to enter the EU illegally and coming directly from or transiting through Turkish territory amounted to 55,630.¹⁸

16 Kemal Kirişçi, “Turkey’s New Draft Law on Asylum: What to Make of it?,” in Seçil Paçacı Elitok, and Thomas Straubhaar (eds.), *Turkey, Migration and the EU: Potentials, Challenges and Opportunities* (Hamburg: Hamburg University Press, 2012), p. 100.

17 Seçil Paçacı Elitok (2013).

18 “Turkey 2012 Progress Report,” *European Commission*, 10 October 2012,

http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf

In addition to the aforementioned three challenges, Turkey's most problematic issue in its migration policy is the concept of "Turkishness". Within the nation-building process of the Republic of Turkey, migration policy has served the needs of an ethno-nationalist understanding of citizenship. The intention of establishing a homogeneous (Turkish speaking and Muslim) identity is still the backbone of Turkey's approach to migration.¹⁹ This traditional concept of national identity is very much in contradiction with Turkey's ambition to become a full member of the EU.²⁰ According to the 1934 Law of Settlement (which was revised in 2006), Turkish descent is still the main element in the definition of "migrant".²¹

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Since most of these reforms took place with the motivation of possible EU membership, possibility/danger of Turkey limiting its migration policies to the EU's needs is a main concern. Linking reforms to the EU accession process carries the risk that reforms come to a halt if and when the EU target is lost.

Most of the skepticism is centered around the actual implementation of the YUKK. Turkish legislative, institutional, and administrative structure has been reshaped according to the EU and international standards. However, the application of the YUKK will be mostly determined through by-laws and secondary legislation. In contemporary Europe, the migration-security nexus is quite strong and is a dominant factor shaping justice, freedom, and security pillar. Immigrants are subject of internal politics and issue of migration is misused for votes at the hands of populist leaders. Migrants are perceived as a threat to the internal security and danger to social harmony. Against this approach (securitization of migration), migration could be approached from a right-based perspective as well. According to this view, protection of migrants and provision of their access to basic rights have the priority. The success of the new legislation very much depends on the actual implementation and whether it finds a balance between a humanitarian approach and the security perspective.

19 Ahmet İçduygu and Deniz Sert, "Turkey," *Focus Migration Country Profile*, No.5, April 2009, <http://focus-migration.hwwi.de/Turkey-Update-04-20.6026.0.html?&L=1>

20 Kemal Kirişçi (2003).

21 "İskan Kanunu," [Settlement Law], *Law No.2510*, 1934,

http://mirekoc.ku.edu.tr/sites/mirekoc.ku.edu.tr/files/tr_leg11.pdf

In this respect, there will be a heavy burden on the shoulders of the personnel who will be the practitioners of this transformation. The General Directorate on migration will employ a staff of 3,500 in local and international duties. The lack of academic programs in the field of migration and the financial burden of providing training to staff who is going to work with asylum seekers, illegal migrants, and victims of human trafficking do not inspire optimism. Enhancing the capacity to fulfill the promises of the new institutional structure may be one of the difficulties. While institutional harmonization with the EU is being achieved, infrastructural adjustment is lagging. For instance, Turkey opened detention centers without having a proper asylum regulation.

Finally, for the most part, the success of reforms is perceived as the personal achievement of couple of outstanding bureaucrats. There are concerns about the possible decrease in the pace of change in their absence. Hence, the alteration in the migration policy is perceived positively but its sustainability is under question.



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