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LEGAL ASPECTS OF IRREGULAR MIGRATION IN TURKEY

Ibrahim Kaya

CARIM Analytic and Synthetic Notes 2008/73

Irregular Migration Series

Legal Module

Cooperation project on the social integration
of immigrants, migration, and the movement
of persons (CARIM)

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CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

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This publication is part of a series of papers on the theme of Irregular Migration written in the framework of the CARIM project and presented at a meeting organised by CARIM in Florence: "Irregular Migration into and through Southern and Eastern Mediterranean Countries" (6 - 8 July 2008).

These papers will also be discussed in another meeting between Policy Makers and Experts on the same topic (25 - 27 January 2009). The results of these discussions will be published separately. The entire set of papers on Irregular Migration are available at the following address: <http://www.carim.org/ql/IrregularMigration>.

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CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - “*cooperation related to the social integration of immigrants issue, migration and free circulation of persons*” of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 12 countries observed by CARIM: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey and, since February 2007, also Libya and Mauritania. All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: www.carim.org

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Abstract

Turkey receives ever-increasing numbers of irregular migrants from its economically and politically unstable East and South trying to cross its territory towards Europe. Turkey has also experienced dramatic economic and social change. Therefore, with regard to international migration Turkey, once regarded as a sending country, has become a transit as well as a destination country.

There are various categories of irregular migrants which may overlap. A smuggled, even a trafficked, migrant may seek asylum in Turkey. An asylum seeker may become an irregular employee. An irregular employee may apply for asylum. Similarly, someone who was heading for Europe through Turkey may get stuck in Turkey and be forced to start employment without a valid work permit.

A rise in 'irregular' migration is an issue of concern in Turkey. Irregular migration has been perceived as having social, economic and security consequences. Restrictive legislation and reinforced control mechanisms have been introduced by Turkey over the years. International law and EU instruments are part of this legislation. 2003 was a milestone in coping with irregular migration since most of the legislation was adopted in that year and immediately afterwards. It should also be noted that despite Turkey's restrictionist stance an intensification of global and regional disparities has brought about more irregular migration and, given the magnitude of the problem, the solutions are beyond the control of a single country, requiring international cooperation and coordination.

Résumé

Le nombre de migrants irréguliers, en provenance de pays du Sud et de l'Est politiquement et économiquement instables, en chemin vers l'Union européenne ne cesse de croître sur le sol turc. Par ailleurs, la Turquie traverse une période de grande évolution économique et sociale qui favorise à la fois l'émigration et l'immigration.

Le statut d'un migrant peut être appréhendé sous le prisme de diverses catégories juridiques. Passé entre les mains de trafiquants, voire de réseaux de traite des êtres humains, il peut, une fois arrivé en Turquie déposer une demande d'asile. Un demandeur d'asile peut aussi être un travailleur irrégulier et un travailleur irrégulier peut demander l'asile...De même, un migrant en route vers l'Union européenne peut ne pas y parvenir et commencer à travailler sans permis en Turquie.

L'augmentation du nombre de migrants irréguliers est un sujet de préoccupation pour les autorités turques en raison des implications sociales, économiques et sécuritaires du phénomène. Dernièrement, les autorités turques ont adopté des mesures législatives plus restrictives ainsi que des mécanismes de contrôle renforcés. La plus part d'entre eux ont été adoptés en 2003, année phare pour la Turquie en matière de lutte contre l'immigration irrégulière. Ils intègrent les standards internationaux et les critères des instruments de l'Union européenne. Cependant, en dépit de ces mesures à caractère restrictif, la migration irrégulière n'a cessé de croître en raison d'une intensification, à l'échelle mondiale et régionale, des disparités économiques et politiques. Un pays ne peut à lui seul faire face à ces questions, les solutions sont à trouver dans la coopération et la coordination internationale.

A. Introductory Remarks

A rise in ‘irregular’ migration is an issue of concern in Europe as well as in Turkey. Even the Turkish National Security Council (NSC), a body consisting of the highest-ranking military officers, the President, the Prime Minister and the most important ministers in the cabinet, looked at ‘illegal’ migration and adopted a resolution in 2002.¹ After the NSC resolution several measures were then taken to combat this type of migration in 2003. Migration is increasingly classified as illegal because states have opted to control migration by applying restrictive immigration legislation.² Turkey is no exception. Irregular migration has been perceived as having social, economic and security consequences.

The legal regulations concerning entry into and exit from Turkey fall under Turkish Passport Law, which stipulates that all travelers require a valid passport or travel document whenever they leave or enter the country.³ Foreign, as well as Turkish nationals, may only enter and exit Turkey through places determined by the Council of Ministers upon a proposal of the Ministry of the Interior.⁴ With some exceptions, a visa is needed to enter Turkey.⁵ For foreign nationals from certain countries, it is possible to obtain visas (sticker visas) at border gates.

Residence permits are regulated by the Law on Residence and the Travel of Foreign Nationals in Turkey.⁶ Article 3 (1) of the Law states that foreign nationals wishing to live in Turkey have to make an application to the local police within one month of their arrival and, in any case, before taking up employment. Under this law the Council of Ministers are allowed to make amendments to time limits. So in 2004 the “one month” clause was amended to “ninety days”.⁷ However, the “ninety days” clause is subject to the visa period. If the visa expires before ninety days, the person is required to apply for a residence permit before then. Residence permits are valid for a maximum of five years⁸ and for persons with valid residence permits who leave Turkey and want to enter again no visa is required.⁹

In the Turkish legal context, an ‘illegal migrant’ is anyone who enters or leaves Turkey or is present in Turkey while breaching migration law (passport, visa, residence and work-permit legislation). This definition is used by the Ministry of the Interior and the total numbers of ‘illegal migrants’ apprehended in the last ten years are shown below:

Table 1: Number of Illegal Migrants Apprehended:

Illegal entry, exit, presence and breach of visa and residence permits

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number	29426	47529	94514	92365	82825	56219	61228	57428	51983	64292

Source: People Movements Bureau

¹ Radikal, 29.06.2002

² S. COLLINSON, Europe and International Migration, London: Royal Institute of International Affairs, 1994, p. 12.

³ Official Gazette, 24.07.1950 no. 7564. Passport Law, Art. 2.

⁴ Passport Law, Article 1.

⁵ Passport Law, Article 5.

⁶ Law no. 5683. Official Gazette, 24.07.1950 no. 7564.

⁷ Official Gazette, 08.01.2004 no. 25340.

⁸ Article 9(1).

⁹ Article 13.

These figures also include Turkish nationals who left or entered Turkey breaching passport law. Their numbers are as follows: 2085 (1999), 3289 (2000), 5304 (2001), 6951 (2002), 5660 (2003), 3341 (2004), 2164 (2005), 2052 (2006) and 2476 (2007).¹⁰ The number of Turkish citizens reached its peak in 2001, 2002 and 2003. This could be due to economic crises and the hardship experienced by the country in 2001 and immediately afterwards. After 2003 the number steadily declines.

The principal legal bases applicable to irregular migration are the following:

1. The Passport Law (Law no. 5682);
2. The Law on Residence and the Travel of Foreign Nationals (Law no. 5683);
3. The Law on Work Permits of Foreign Nationals (Law no. 4817)
4. The Law Concerning the Fight against Global Criminal Organizations (Law no. 4422);
5. The Criminal Code (Law no. 5237);
6. The Labour Law (Law no. 4857);
7. The Law on Foreign Students Studying in Turkey (Law no. 2922)
8. The Turkish Citizenship Law (Law no. 403)
9. The Foreign Direct Investment Law (Law no. 4875)
10. The Law on Work Permits of Foreign Nationals (Law no. 4817)
11. The Regulations concerning International Road Transport of People and Goods;
12. The Regulation on the Inter-City Transportation of People;
13. The Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from another Country.

Turkey receives ever-increasing numbers of irregular migrants from its economically and politically unstable East and South trying to cross its territory towards Europe. Turkey has 2875 km of land borders with Syria, Iraq, Iran, Azerbaijan, Armenia, Georgia, Bulgaria and Greece and 6808 km of sea borders giving a total of 9683 km.¹¹ Therefore, it is not an easy task to control the borders all the time. Turkey has also experienced a dramatic economic and social turnaround which attracts foreign nationals to the country. Therefore, in terms of international migration Turkey has become a source, transit and destination country.

In this paper irregular migration will be examined in the Turkish legal context. It is known that a person becomes irregular when he/she loses his/her legal visa or residence status. To this end irregular migrants will, first, be categorized and a legal framework applicable to each group will be dealt with. Second, measures taken to cope with irregular migration will be examined. Legal texts, Turkish and international, as well as jurisprudence will be referred to. Literature on irregular migration will also be reviewed. Official statistics and the policy statements of various government agencies will be employed.

¹⁰ People Movements Bureau, General Directorate of Security.

¹¹ M. TERZIOGLU, "The Situation of Turkey Concerning Migration, Illegal Migration, Trafficking in Human Beings and Refugees", Conference On Migrants In The Transit Countries: Sharing Responsibilities In Management And Protection ,Conference Proceedings , Istanbul, 2004, p. 158

B. Typology of Irregular Migrants in Turkish Legal Context

1. Asylum

Turkey recognizes the right to asylum as envisaged in article 14 of the Universal Declaration of Human Rights and is party to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol which removed the time and geographical restrictions from the Convention.¹² Yet, Turkey maintains a geographical limitation under which “*it applies the Convention only to persons who have become refugees as a result of events occurring in Europe*”.¹³ In fact, Turkey does not accept *de jure* refugees from non-European countries. Turkey's convention obligations are only towards persons coming from the west. However, those from the east are given *de facto* status of asylum seekers and provided with international protection.

The Turkish parliament has not enacted a law comprehensively regulating asylum and related issues. These have been dealt with, instead, by a number of pieces of legislation such as the Passport Law, the Law on Residence and Travel of Foreign Nationals and the 1994 Council of Ministers Regulation¹⁴ which was amended in 1999 and 2006. In 2006, the General Directorate of Security, at the Ministry of the Interior prepared an Implementation Circular to stipulate the asylum procedure and the rights and obligations of refugees and asylum seekers.¹⁵

Turkey is in the midst of accession negotiations to the European Union and Turkey is obliged to respect EU *acquis* in the field. To this end the General Directorate of Security, at the Ministry of the Interior prepared an Action Plan for Asylum and Immigration which was endorsed by the Prime Minister in 2005.¹⁶ The Action Plan sets forth how Turkish national legislation should be made compatible with that of the EU and a time frame has also been set.

Under current legislation non-Europeans are not recognized as “refugees” since a refugee is defined as

“an alien who *as a result of events occurring in Europe* and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.¹⁷ [italics added]

However, people coming from non-European countries would be qualified as “asylum-seekers”.¹⁸ The only difference between a “refugee” and an “asylum seeker” is whether the events that caused

¹² Turkey became party to the Convention and Protocol in respectively 1962 and 1968.

¹³ Declaration made by Turkey. See UNHCR. www.unhcr.org

¹⁴ The official title is “Regulation On the Procedures and The Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from another Country”.

¹⁵ Circular No. 57. 22.6.2006.

¹⁶ 17.1.2005. The National Action Plan (NAP).

¹⁷ The 1994 Regulation.

¹⁸ “Asylum seeker” is defined as “an alien who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. 1994 Regulation.

flight occurred in Europe or elsewhere. The rights arising from the Geneva Convention such as international protection as well as other types of protection, and the non-refoulement principle, are also granted by Turkey to asylum seekers.¹⁹

Asylum seekers are issued with residence permits upon application for asylum. Persons who apply for asylum are required to live only in cities permitted by the Ministry of the Interior.²⁰ If Turkey is entered legally, residence permits are valid for six months after the expiration of visa. If Turkey is entered illegally, the residence permit is valid for six months from the date of arrival in Turkey. It is renewed by the police after six months until the asylum application is assessed.²¹

In line with international legal standards, illegal entry is not penalized in the case of asylum. It is observed that some asylum seekers who entered Turkey illegally never register and try to leave Turkey illegally. Some make an application only after they are apprehended by the police.

Article 27 of the 1994 Regulation provides that “within the general provisions, possibilities for education and work, limited to their period of residence in our country, are to be accorded to refugees and asylum seekers.” Under Turkish law, anyone who holds a residence permit for six months or more is allowed to apply for a work permit.²² It is stated in the 2006 Circular that asylum seekers be encouraged to get a job. However, it must be noted that the cities where they live do not have abundant job opportunities. It is also known that an important number work unregistered in Turkey. It is observed that many asylum seekers leave their assigned cities for bigger and more industrial cities such as Istanbul and Antalya where they find jobs more easily. Once the asylum seeker leaves an assigned city in this way, he is regarded as an “escapee”. Escape can result in prosecution (monetary fine and/or imprisonment) and only reasonable grounds that satisfy the police prevent prosecution.

With regard to health care, in principle health care has to be paid for by the asylum seeker. When the asylum seeker is not able to pay for it, which is the case most of the time, the government pays as required for by the Implementation Circular.²³ Therefore, currently health services are provided free of charge to those who are in need.

According to the Turkish Constitution primary education in Turkey is compulsory and provided for, free of charge, by the government.²⁴ Compulsory schooling covers the ages 6 to 14.²⁵ Under the National Action Plan (NAP) the education of asylum seekers, refugees and other alien children is mandatory and the Ministry of National Education has the duty to ensure that children attend school. To this end, pilot schools have to be selected in some provinces for the mandatory education of said migrant children.²⁶

With regard to the deportation of asylum seekers the general rule of the Residence and Travel of Foreign Nationals Law applies: “Foreign nationals whose residence in the territory is deemed to be contrary to public order or political or administrative *requirements shall be invited to leave Turkish territory by the Ministry of the Interior within a fixed period of time. Those who remain in Turkey*

¹⁹ Y. ACER, I. KAYA, and M. GUMUS, Turkey’s Refugee and Asylum Seeker Policy under the EU and International Law, TUBITAK, Ankara, 2008.

²⁰ Article 17.

²¹ See for details I. KAYA, Turkey and Iraqi Refugee Crisis: Legal Aspects, CARIM , 2008.

²² Law no 4817.

²³ Implementation Circular.

²⁴ Article 42.

²⁵ Law no 222. Law on Education and Training. Article 2.

²⁶ NAP, p. 45.

beyond such period may be deported".²⁷ The action taken by the Ministry of the Interior is obviously an administrative one and can be challenged in courts. An individual application may even be made to the European Court of Human Rights against the decisions of the Turkish national authorities, including the Turkish courts.²⁸

If the application for asylum is rejected, the applicant has 15 days to leave Turkey or to file a case in the administrative courts. If no appeal is made to the administrative court or the applicant does not leave the country then he or she becomes an illegal resident in Turkey subject to deportation.

2. People Smuggling and Trafficking

Until 2002 there was no direct reference to people smuggling and trafficking in the Turkish Criminal Code (hereafter TCC). In August 2002 the Parliament inserted Articles 201/a and 201/b to the Criminal Code to supplement Article 201.²⁹ In line with the EU *acquis* a brand new Criminal Code was adopted in 2005 replacing the old one altogether. Article 79 of the TCC, entitled "migrant smuggling", stipulates penalties of three to eight years imprisonment and significant monetary fines for migrant smugglers. If the crime is committed by perpetrators acting as an organization, the penalty imposed will be increased by half.³⁰

The smuggling of migrants is defined as assisting foreign nationals to enter or stay illegally in Turkey,³¹ or assisting foreign nationals or Turkish citizens to leave Turkey illegally³² with the intention of directly or indirectly obtaining material gain. Human trafficking differs from migrant smuggling. According to Article 80 of the TCC human trafficking is committed with the intention of making a person work or serve, subjecting a person to prostitution, persuading a person to give up their bodily organs through threats, pressure, coercion, use of force, use of undue influence or to secure their consent by deception or by exploiting the despair of such individuals. Those who make a person enter or leave Turkey, supply, kidnap, take from one place to another, transfer or provide shelter will be sentenced to eight to twelve years imprisonment and a considerable monetary fine.³³ If the person in question is younger than eighteen, even if the means mentioned i.e. threat, pressure, coercion, use of force, use of undue influence are not used, the sentence will be applied.³⁴

Due to her unique geographical position, with regard to human smuggling Turkey is a transit country joining east and west. But with regard to human trafficking Turkey is a destination country.³⁵ Victims of human trafficking are mostly from old Soviet Republics and human trafficking is closely connected to sexual exploitation in Turkey.³⁶

²⁷ Article 19.

²⁸ For a collection of Turkish case law see UNHCR, *The Collection of Turkish Jurisprudence on Asylum, Refugees and Migration*, second edition, Istanbul: Bogazici University Foundation, 2000.

²⁹ İCDUYGU, A., *Irregular Migration in Turkey*, Research Series No: 12, Geneva: IOM (International Organization for Migration), 2003, pp. 59-61 and 77-78.

³⁰ Article 79 (2).

³¹ Article 79 (1) (a).

³² Article 79 (1) (b).

³³ Article 80 (1).

³⁴ Article 80 (3).

³⁵ For human trafficking see S. ERDER. and S. KASKA, *Irregular Migration and Trafficking in Women: The Case of Turkey*. Geneva: International Organization for Migration, 2003.

³⁶ Ministry of Foreign Affairs (MFA).

According to official statistics the numbers of apprehended human smugglers are as follows: 850 (2000), 1155 (2001), 1157 (2002), 937 (2003), 957 (2004), 834 (2005), 951 (2006) and 1241 (2007). As can be seen there was a considerable increase in 2007. There seems to be a correlation between the number of illegal migrants and smugglers apprehended. In 2006 51983 illegal migrants were apprehended and the number climbed to 64290 in 2007.³⁷ Since 1995 almost 70,0000 illegal migrants were apprehended in Turkey. It is noteworthy that human smuggling is carried out mainly by organized networks.³⁸ The recent figures on human trafficking are as follows:

Table 2: Human Trafficking

	Victims rescued	Victims voluntarily returned	Victims accommodated in shelters	Traffickers apprehended
2004	239	61	18 (only last 2 months)	227
2005	256	220	142	379
2006	246	197	190	422
2007	148	117	114	308

Source: Ministry of Foreign Affairs

Although the numbers of migrant smugglers and human traffickers are provided by officials, no information is available on the numbers prosecuted.

3. Irregular Labour

In Turkish law a foreign national wishing to work in Turkey must follow a three-stage procedure:

1. The foreign national applies for a “work permit” through Turkish consulates abroad. As an exception a foreigner may apply for a work permit in Turkey if he is issued at least six months residence permit beforehand.
2. The foreign national receives an “employment visa” from the Turkish consulate.
3. The foreign national obtains a “residence permit” for employment purposes from the police when they arrive in Turkey.³⁹

In 2003, a new Law on Work Permits for Foreign Nationals was enacted. The Ministry of Labour and Social Security (MLSS) is authorized by this law to issue all types of work permits to ensure better management of the process. The law prescribes administrative penalties both for an alien working without a work permit and for an employer who recruits said alien. Since most of the time foreign workers have not got adequate knowledge of Turkish language and legislation, it is argued that the new law provides legal protection for foreign nationals, defending them from exploitation in labour markets and extending legal and administrative safeguards to private services.⁴⁰

Employment inspectors at the Ministry of Labour and Social Security and those of the Social Security Agency as well as the inspecting and supervisory staff of other public departments are

³⁷ http://www.mfa.gov.tr/turkiye_nin-yasadisi-gocle-mucadelesi-.tr.mfa. See Table 1.

³⁸ Ibid.

³⁹ See I. KAYA, Circular Migration and Turkey: A Legal Perspective, CARIM, 2008.

⁴⁰ MFA.

authorized to examine whether employers who employ foreign nationals or foreign nationals themselves meet the criteria to work legally under article 20 of the Law on Work Permits of Foreign Nationals and article 58 of the Application Regulations for the Law on Work Permits of Foreign Nationals.⁴¹ Apart from fulfilling the required conditions, there is also a duty to notify the relevant authorities with regard to the employment of non Turks. The Law provides for administrative sanctions in order to discourage the illegal employment of foreign workers in Article 21. When the duty to notify the Ministry is not respected there is an administrative fine. The more foreign nationals employed illegally the greater the fines. In addition to the administrative fine, the employer and the agents are obliged to cover the accommodation expenses of the foreign national and any spouse or children, the expenditure required for them to return their home countries and their health expenses.⁴² When there is a repeated failure to notify or respect work regulations, fines can be doubled. Currently, the maximum fine to which employers are subject for employing irregular migrant workers is around 1,500 Euro per worker.

Once a foreign worker is granted a permit they are entitled to same rights as Turkish citizens, since under the Turkish constitution economic and social rights are applicable to everyone not only Turkish nationals.

In Turkey irregular employees are those who travel to Turkey on a tourist visa for a short visit, but during that visit, which may last several months, work in Turkey without a valid work permit. The typical irregular workers are those who work in domestic service as cleaners, house-keepers, and care-takers.⁴³ Sometimes people with tourist visas are employed in the tourist sector or the entertainment industry as dancers, interpreters or shop assistants.

It is also quite common for foreign students to work irregularly while they study, though they have no right to work. Some students prefer to study on their holidays in the Aegean and Mediterranean coasts or in big cities like Istanbul. Some others take up employment while in the city where they study.

4. Transit Migration

It is arguable whether transit migrants form an independent category of irregular migrants. The above mentioned categories of irregular migrants overlap some of the time. A smuggled, even a trafficked migrant may seek asylum in Turkey. An asylum seeker may become an irregular employee. An irregular employee may apply for asylum. Similarly someone who was heading for Europe through Turkey may get stuck in Turkey and be compelled to seek employment.⁴⁴

It is widely known that, due to its geographical position, Turkey is a transit country for migrants towards Europe and the Americas. Some people who managed to get to Turkey may fail to obtain a European visa. If the person is a visa country national and entered Turkey on a visa they may be an irregular transit migrant when their visa expires. If not a visa country national they become irregular when the permitted period of stay expires. If they entered Turkey illegally then they are an irregular migrant from the offset. The above rules of employment apply to this group of immigrants.

⁴¹ Official Gazette, 29.08.2003 no. 25214. For details see I. KAYA, *Circular Migration and Turkey: A Legal Perspective*, CARIM, 2008.

⁴² Article. 21(3).

⁴³ For domestic workers see S. KASKA, "The New International Migration and Migrant Women in Turkey: The Case of Moldovan Domestic Workers", Research Report, *MIREKOC*, 2006.

⁴⁴ For an excellent analysis of transit migrants in Turkey see A. ICDUYGU, "Transit Migration in Turkey: Trends, Patterns, and Issues", *CARIM RR (2005/04)*, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2005.

C. Coping with Irregular Migration in Turkey: Legal Framework

Irregular immigration is deemed a threat in Turkey; not only for security reasons, but also for economic and social reasons and not only to the country and population, but also to the migrant in the case of human trafficking. Therefore, restrictive legislation and reinforced control mechanisms have been introduced over the years. International law and EU instruments are part of this legislation.

Turkey is party to the United Nations Convention against Transnational Organized Crime. Its additional protocols against migrant smuggling and human trafficking were also be ratified by Turkey in 2003. Articles 79 and 80 of the new TCC⁴⁵ were put into force on 1 June 2005, respectively criminalizing migrant smuggling and trafficking. On 19 December 2006 “forced prostitution” was included in the definition of human trafficking in article 80 of the TCC.⁴⁶ Thus, forced prostitution, the most important feature of human trafficking, will be punished with this article.

The Law on Work Permits for Aliens was adopted in 2003. The Ministry of Labour and Social Security is authorized to issue all types of work permits for foreign nationals as explained above. Employment in domestic service is also made possible by this law.

The Turkish Citizenship Law was amended, again, in 2003.⁴⁷ With this amendment, a probation period of three years was required for acquiring Turkish citizenship through marriage. This was a step taken against marriages of convenience. Before this law the spouse of a Turkish citizen was given the right to choose Turkish nationality in addition to his/her nationality and she had the right to become a Turkish citizen immediately.

The Road Transportation Law came into force on 19 July 2003 and the Road Transportation Regulation became effective in 2004. The regulation states that transportation permits shall not be renewed for three years and the vehicle used will be seized if the owner or user is sentenced for migrant smuggling.

Turkey readmits her own nationals in accordance with the Constitution and Passport Law. Turkey also readmits aliens having valid Turkish residence permits. If it is proved that illegal third-country nationals have departed from Turkey, they will be readmitted if returned on the same or a subsequent flight in accordance with ICAO rules and practices.⁴⁸

Readmission agreements are deemed to be effective instruments in combating irregular migration and encouraging states to take serious measures. Indeed, it is stated that Turkey considers readmission agreements with source countries as a priority issue. To this end, Turkey signed readmission agreements with Syria, Kyrgyzstan, Romania, Ukraine and Greece to fight illegal migration, and is in the midst of negotiations with Pakistan. The first round of talks for a Turkey-EU Readmission Agreement were held on 17 October 2005 in Ankara.⁴⁹ Negotiations to conclude a readmission agreement with the EU are moving ahead at only a slow pace, just four meetings were held in 2005 and 2006.⁵⁰

⁴⁵ Law No:5237

⁴⁶ Law No: 5560 Article 3. 06. 12. 2006.

⁴⁷ Law No: 4866 Article 1. 4.6. 2003.

⁴⁸ Ministry of Foreign Affairs.

⁴⁹ Ibid.

⁵⁰ B. CICEKLI, *Recent And Progressive Developments Of Harmonising Turkish Immigration And Asylum Law With European Legislation*, Conference on Turkey and EU: Negotiations Process: Chapter 24: Migration and Asylum, Istanbul, 17 June 2008.

Within the framework of Turkey aligning her asylum and migration strategy with EU legislation, “Migration and Asylum” Twinning Projects and the “National Action Plan on Migration and Asylum” were approved by the Prime Minister’s office and submitted to the EU Commission.⁵¹

Turkey became a member of the International Organization for Migration (IOM) on 30 November 2004. In addition to migration issues, Turkey is also cooperating with the IOM in combating human trafficking.⁵²

The entry and exit of victims of people trafficking are exempted from any charges or penalties and “temporary entry restriction to Turkey” is not applied. “Humanitarian visa and short term residence permits” are issued to victims in order to enable them to stay in Turkey legally during their rehabilitation period. Victims receive free medical treatment.⁵³

D. Concluding Remarks and Suggestions

When an irregular migrant is apprehended in Turkey, a written statement is taken by the law enforcement officials under the authority of a prosecutor. The reasons for leaving the home country and reasons for choosing Turkey are asked. In practice, if the person apprehended is willing to return home voluntarily, a deportation decision is not taken. If the migrant is undocumented, i.e. without a valid ID card and passport, police contacts his/her consular mission in Turkey. As soon as a valid travel document and airline tickets are provided the irregular migrant is deported.

2003 was a milestone in coping with irregular migration since most of relevant legislation was adopted in 2003 or immediately afterwards. The Turkish Constitution recognizes social and economic rights. As opposed to political rights which can be used only by “citizens”, social and economic rights apply to “anyone” notwithstanding if the person is a Turkish national or alien either ‘regular’ or ‘irregular’. As pointed out above, especially with regard to asylum seekers, some important rights, such as the right to work, the right to health care and the right to education are protected by legal instruments.

Turkey is party to the important United Nations, ILO and Council of Europe conventions which include the 1951 Refugee Convention and its 1967 Additional Protocol, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the European Social Charter. According to the Turkish Constitution, article 90, international agreements have the power of national laws and are to be implemented directly by courts. Moreover, in case of contradiction between an international agreement and domestic law, the provisions of international agreements will prevail as long as the subject matter is human rights.⁵⁴ Therefore, there is nothing to prevent the Turkish authorities from applying the provisions of international agreements. A migrant can also demand that his/her rights should be protected in a court of law in accordance with international legislation. This means that they are directly effective.

It should also be noted that in contrast to Turkey’s restrictionist stance, an intensification of global and regional disparities has brought about more irregular migration and, given the magnitude of the problem, the solutions are beyond the control of a single country, requiring international coordination and cooperation. Providing shelter, food, medical treatment as well as bearing the return costs of such a high number of irregular migrants is a heavy burden on the Turkish budget.

⁵¹ Text available in CARIM database. www.carim.org

⁵² Ministry of Foreign Affairs.

⁵³ Ministry of Foreign Affairs.

⁵⁴ New article 90 as amended in 2001.

Bibliography

- ACER, Y., KAYA, I and GUMUS, M, Turkey's Refugee and Asylum Seeker Policy under the EU and International Law, TUBITAK, Ankara, 2008.
- CICEKLI, B., Recent And Progressive Developments Of Harmonising Turkish Immigration And Asylum Law With European Legislation, Conference on Turkey and EU: Negotiations Process: Chapter 24: Migration and Asylum, İstanbul, 17 June 2008
- COHEN, S., No One is Illegal: Asylum and Immigration Control, Stoke-on-Trent: Trentham Books, 2003
- COLLINSON, S., Europe and International Migration, London: Royal Institute of International Affairs, 1994
- ERDER S. and KASKA S. Irregular Migration and Trafficking in Women: The Case of Turkey. Geneva: International Organization for Migration, 2003
- ICDUYGU, A., Irregular Migration in Turkey, Research Series No: 12, Geneva: IOM (International Organization for Migration), 2003
- ICDUYGU, A., Transit Migration in Turkey: Trends, Patterns, and Issues, CARIM RR (2005/04), Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2005
- KASKA, S., The New International Migration and Migrant Women in Turkey: The Case of Moldovan Domestic Workers, Research Report, MIREKOC, 2006
- KAYA, I., Circular Migration and Turkey: A Legal Perspective, CARIM AS (2008/37), Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2008
- KAYA, Turkey and Iraqi Refugee Crisis: Legal Aspects, CARIM, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2008
- KIRISCI, K., Informal 'Circular Migration' Into Turkey: The Bureaucratic and Political Context, CARIM AS (2008/21), Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2008
- MANNAERT, C., Irregular Migration and Asylum in Turkey, UNHCR Working Paper no. 89, Geneva: UN Refugee Agency, 2003
- Ministry of Foreign Affairs, www.mfa.gov.tr (last visited 1.6.2008)

People Movements Bureau, Number of Illegal Migrants Apprehended: Illegal entry, exit, presence and breach of visa and residence permit. (As of the end of 2007) (on file with the author)

RADIKAL Newspaper, 29.06.2002

TERZIOGLU, M., The Situation of Turkey Concerning Migration, Illegal Migration, Trafficking in Human Beings and Refugees, Conference On Migrants In The Transit Countries: Sharing Responsibilities In Management And Protection, Istanbul, Conference Proceedings, 2004

UNHCR, The Collection of Turkish Jurisprudence on Asylum, Refugees and Migration, second edition, Istanbul: Bogazici University Foundation, 2000.