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CIRCULAR MIGRATION AND TURKEY: A LEGAL PERSPECTIVE

Ibrahim Kaya

CARIM Analytic and Synthetic Notes 2008/37

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Legal Module

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CARIM
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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

In the EU, a new discussion on temporary migration is underway. In a 2005 European Commission Communication, circular migration was formulated as being mobility back and forth between sending and receiving countries. In 2007, the Commission issued a Communication specifically dealing with circular migration and mobility partnerships between the EU and third countries. Clearly, circular migration is something beyond the permanent settlement paradigm. Current legal framework and institutions have been shaped on the basis of permanent migration of workers from one country to the other. As it stands today, worker migration is part of broader migration policy. However, labour market imbalances are at the heart of circular migration. Therefore, new institutional and legal arrangements, both in countries of origin and destination countries, are needed.

This paper has made an attempt to examine the relevant Turkish legislation with the aim of pointing out the institutional changes needed to favour circular migration. EU legislation in this field has also been touched upon. With regard to circular migration, particularly, entry, stay and exit laws, rights to social benefits and their transferability, right to political participation, protection of temporary workers and rights under the current bilateral agreements have all been discussed. It is concluded here that the current legal framework is far from being favourable to circular migration. Some suggestions to bring it in line with the policy of the circularity of migrants have also been made.

Résumé

Dans l'Union européenne, un nouveau débat sur la migration circulaire est en cours. La Commission européenne définit la migration circulaire (Communication 2005) comme la possibilité d'aller et venir entre pays d'origine et pays d'accueil. En 2007, la Commission européenne a publié une nouvelle communication spécifique à la migration circulaire et aux partenariats pour la mobilité. La migration circulaire suppose le dépassement du paradigme de l'établissement permanent. Alors que les cadres légaux et institutionnels actuels ont été développés dans une logique d'immigration permanente d'un pays vers un autre. Aujourd'hui, la migration de travail implique un élargissement des concepts dans le cadre des politiques migratoires. En effet, la migration circulaire se propose de répondre au différentiel entre les marchés du travail des pays d'accueil et d'origine. Pour accompagner ce mouvement, une adaptation des cadres légaux et institutionnels est nécessaire. Ce papier tente d'identifier les modifications institutionnelles pour mettre en place et favoriser la migration circulaire, à travers une analyse des textes légaux en vigueur. Les réglementations européennes pertinentes ont également été envisagées. Dans la perspective de la migration circulaire, les législations relatives à l'entrée, au séjour et à la sortie du territoire, celles relatives aux droits aux avantages sociaux et à leur portabilité et aux droits politiques ont été analysées ainsi que les dispositions pertinentes des accords bilatéraux. .

A. Introduction

According to a Turkish official report, there are around three million of Turkish citizens living in Europe and nearly one million of them work in their host countries as of the end of 2005.¹ Turkish workers started to go to Europe in the early 1960s under bilateral agreements. Germany has been a main destination country.² Most of the workers had thought that they would work abroad for a while, possibly 3-5 years, earn a decent living and support their families in Turkey and then come back to Turkey. Turkish workers, indeed, are the classic *gastarbeiter*. And, though considerable numbers of them returned to Turkey, many of them have stayed for economic, social and political reasons.

Today, in the EU, a new discussion on temporary migration is underway and labour market imbalances are at the heart of circular migration. The current legal and institutional framework was not drawn up with the circularity of migrants in mind. Therefore, new institutional and legal arrangements, both in countries of origin and destination countries, are needed.

The Turkish experience and its shortcomings may throw a light on discussions of circular migration. The paper, therefore, contains information and discussions on entry, stay and exit laws, rights to social benefits and their transferability, rights to political participation, protection of temporary workers and rights under the current bilateral agreements. Finally, the paper makes some concluding remarks that might be taken into account so as to facilitate the circularity of migrants.

B. Circular Migration in the Turkish Legal Framework

1. Turkish Nationals Working Abroad

Entry & Exit Laws

The legal regulations concerning the entry and exit from the Republic of Turkey of Turkish nationals as well as non-Turkish nationals falls within the Turkish Passport Law number 5682 (dated 1950) which stipulates that all travelers, Turkish or otherwise, require a valid passport or travel document whenever they leave or enter the country.³ According to Article 12 of the Passport Law there are four types of passports issued to Turkish citizens, namely: diplomatic, special, service (official) and ordinary.

Ordinary passports are the passports which are also issued to Turkish workers abroad. Passports are generally issued in one day by police departments (officially called the Department of Security which is organized as a General Directorate within the Ministry of the Interior) in all provinces. Even online application is possible for most of these provinces. But the prospective passport holder has to appear in person and sign a document before the passport is handed over. Turkish nationals working abroad are entitled to a note in their passports stating that they work or that they will work abroad. This is important because only with this explanation in their passport they will be exempted from an “exit fee” which has, with some exceptions, to be paid by Turkish nationals leaving Turkey. Not only the worker but also his spouse and family members are exempted from the fee. The fee was originally 70 YTL (approximately 40 Euros). For a family with some children it was regarded as a real burden.

¹ Ministry of Labour and Social Security, 2005 Annual Report, p. 14. available at <http://www.diyih.gov.tr> (visited 01.10.2007).

² See, for a comprehensive analysis of Turkish immigration to Germany, Abadan-Unat, N, *Bitmeyen Göç: Konuk İşçilikten Ulus-Ötesi Yurttaşlığa*, Bilgi Üniversitesi Yayınları: İstanbul, 2002.

³ Official Gazette, 24.07.1950 no. 7564.

However, the fee was recently reduced to 15 YTL (approximately 8 Euros) by Law number 5597 (dated 2007).⁴ Although the new law does not specify Turkish migrant workers as an exception, they fall within the group of people with residence permits abroad who do not pay the fee.⁵

There is no difficulty for persons working or intending to work abroad to get passports. It is the same for men and women. Only certain persons are restricted from getting passports due to, for example, security concerns or tax-law violations. The Department of Security maintains a list of such people, and before issuing a passport the passport officer checks whether the applicant's name appears on the list.

Like students, Turkish nationals working abroad are registered with the relevant consulate which has jurisdiction over the place where they have residence. This is especially important for postponing compulsory military-service for males. Turkish male citizens working abroad are allowed to pay a sum of money in exchange for a reduced military service.

Border Control

In order to legally leave Turkey, a passport is needed.⁶ Turkish nationals are entitled to be issued with a passport. Only those whose exit is considered dangerous for security reasons by the Ministry of the Interior and those who are banned by the courts of law from leaving Turkey or owe a considerable tax debt to the government cannot be issued with passports.⁷

Turkey has 2949 km of land borders and 8330 km of sea coast. Nationals of Turkey and non-nationals may only enter and exit Turkey through places determined by the Council of Ministers under advice to the Ministry of Interior.⁸ Passport holders may leave the country at land, sea or air exit gates as designated for this purpose. When they leave, police authorities check whether their name appears in a list of persons who are banned from leaving the country, even if the person has been issued a passport previously. It is the police authorities too who control whether the passports are authentic. The police places an exit stamp on the passport stating the date and place of exit.

Illegal Turkish Workers Abroad

There are no legal sanctions taken against Turkish nationals expelled from receiving countries for illegal stay abroad or for public-order reasons. Turkish citizens and non-citizens are required to enter and leave Turkey at designated ports (gates) of entry-exit.⁹ As a general rule, Turkish citizens and foreign nationals must present a valid passport on entry to and departure from Turkey.¹⁰ There is no visa requirement for leaving Turkey.¹¹ Turkish citizens who arrived at ports of entry without a passport cannot be refused entry to Turkey. However, Turkish police check whether they are really Turkish citizens.¹² Anyone who manages somehow to enter Turkey without a passport is fined a symbolic administrative fine or imprisoned for 1-6 months or both. If this person is a non-national he

⁴ Official Gazette, 23. 03.2007 no. 26471.

⁵ Art. 1(3).

⁶ Art. 2 of the Passport Law.

⁷ Art. 22.

⁸ Art. 1.

⁹ Passport Law, Art. 1. See above.

¹⁰ Art. 2.

¹¹ Art. 7.

¹² Art. 3.

is, after the sentence has been carried out, deported.¹³ In no case can a Turkish national be deported or refused entry to Turkey. Anyone who leaves or attempts to leave Turkey without a passport is punished with a symbolic fine or up to three-months prison sentence or both.¹⁴ Also anyone who enters or departs from Turkey at any place except ports of entry-exit is fined a symbolic fine or 1-6 months imprisonment or both, even if he holds a valid passport.¹⁵

Coordination of Social Benefits in Turkey and Host Countries

Unlike Egyptian laws,¹⁶ Turkish laws on the mobility of Turkish workers inside and outside the country have always been very liberal and Turkey has had a tradition of sending workers abroad since the 1960s. And from the 1960s, the Turkish government has known that Turkish migrant workers would come back one day. Even the Constitution placed an obligation on the government to help returning workers. The Constitution provides that: “The state shall take the necessary measures to ensure family unity, the education of the children, the cultural needs, and the social security of Turkish nationals working abroad, and shall take the necessary measures to safeguard their ties with the home country and to help them on their return home”.¹⁷ Despite the fact that there are some inadequacies, Turkey established government organizations to this end as explained below.

In order to deal with Turkish workers in Europe the first Turkish governmental organization was set up in 1967.¹⁸ Since 2000, the organization named “Foreign Relations and Abroad Worker Services General Directorate” (FRAWSGD) has been responsible both for the international relations of the Ministry of Labour and Social Security and for Turkish citizens working abroad.¹⁹ The Directorate was given, by a law of 1985, the task of protecting rights and the interests of Turkish citizens working abroad and coordinating the resolution of any problems encountered by Turkish workers in the countries where they work and also in Turkey upon their return.²⁰ FRAWSGD also helps provide coordination in preparation for social-security agreements signed by Turkey with a foreign government.²¹ There is also a branch which is called the Department of Services for the Workers Abroad within the Social Security Agency.²² FRAWSGD is divided into two sections namely the Department of Services for Citizens Abroad and the Department of International Relations: The first responsible for Turkish citizens working abroad. The organization of the governmental departments relating to Turkish nationals is somewhat chaotic. FRAWSGD is linked to a deputy-under-secretary within the Ministry of Labour and Social Security. The deputy is also responsible for the organization of the ministry abroad, which includes labour counselors and attaches. However, counselors and attaches are not under the authority of FRAWSGD. Moreover, the Department of Services for the Workers Abroad is established under the authority of Social Security Agency, which is linked to an undersecretary of the Ministry of Labour and Social Security.²³

Social-security agreements between Turkey and the country where Turkish nationals work set the criteria for the social-security benefits of Turkish citizens. To cite an example the Turco-British Social

¹³ Art. 34.

¹⁴ Art. 33.

¹⁵ Art. 35.

¹⁶ Mentioned in CARIM Annual Report 2005, p. 99.

¹⁷ Art. 62.

¹⁸ Law no. 864, Official Gazette 08.05.1967.

¹⁹ Art. 18, Statutory Decree (Kanun Hükmünde Kararname) no. 618, Official Gazette 04.10.2000.

²⁰ Art. 10 (a). Law no. 3146, Official Gazette 09.01.1985.

²¹ Art. 10 (i). For such agreements see below.

²² Art. 11, Law no, 4958.

²³ See http://www.calisma.gov.tr/bakanlik/teskilat_semasi.htm

Security Agreement of 1959 affirms the principle that nationals of the two parties receive, under the social-insurance legislation of the other, equal treatment to the nationals of the other.²⁴

To receive an old age pension the social-insurance authority of Turkey and of the UK will determine, in accordance with its own legislation, whether the person satisfies the conditions for receiving a pension. For this purpose the relevant authority takes account of all the insurance periods, contribution periods and equivalent periods completed by him under the legislation of the two parties as if they had been completed under its own national legislation.²⁵

The total period will be taken into account. Both parties are responsible for making arrangements for insurance periods completed under the legislation of the two parties to be added together for the purpose of determining any right to receive benefit. However, it is not possible to transfer insurance premiums (contributions to pension funds made in each country) paid to a social-security agency in another country. When calculating the amount of old-age pension, only the contribution made to the relevant country's social-security system will be taken into account. Turkey has legislated for Turkish nationals working abroad to pay their contributions for the period they worked abroad to the Turkish social security authority.²⁶ Therefore, they will be entitled to an old age pension in Turkey. Their payment will significantly increase the amount of pension to which they are entitled. This entitlement is also granted to housewives, who are resident abroad. There are two conditions for entitlement to a pension, namely: (i.) The age requirement, citizens must have reached a certain age; (ii.) Turkish residents of foreign countries must return to Turkey permanently.

Political Participation of Turkish Citizens Working Abroad

Under the Turkish constitution only Turkish nationals have the right to vote, to be elected and to engage in political activities: be these local or national. The 1982 Constitution did not make specific reference to people working abroad in its original form. Article 67 of the constitution, as later amended, allows, though, Turkish citizens abroad to vote. The relevant part of the article reads: "However, the conditions under which the Turkish citizens who are abroad shall be able to exercise their right to vote, are regulated by law". The Election Law no. 2839 has made no special arrangements for voting.²⁷ Today neither voting in consulates, in ballot boxes abroad, nor voting by mail is possible. Under Turkish law it is only possible for Turkish residents of foreign countries to vote at national exit points for 30 days in advance of elections. It is estimated that only 5 percent of eligible 'abroad' voters cast their votes in the previous elections of 2002.²⁸

All Turkish nationals may engage in political activities. Although political parties are banned from being organized abroad or from accepting donations from abroad, many political parties have established sister organizations overseas that support their ideological positions, especially in Europe. Some have also developed close ties with civil Turkish organizations functioning in Europe.

The Turkish constitution bases Turkish citizenship descent – by birth to a Turkish citizen parent in Turkey or abroad – regardless of the other nationalities a person might acquire at birth. Article 66 states that "The child of a Turkish father or a Turkish mother is a Turk... No Turk shall be deprived of citizenship...". The automatic acquisition of a foreign nationality does not affect Turkish citizenship.

²⁴ For the text see

www.diyih.gov.tr/sayisal_bilgi/ikili_anlasma_sozlesme/sos_guv_soz_doc/ingiltere_soz_ing.doc

²⁵ Art. 14(2).

²⁶ Law no, 3201. Official Gazette, 22.05.1985 no. 18761.

²⁷ Law no. 2839. Official Gazette 13.06.1983 no. 1876.

²⁸ Aksiyon, 25.06.2007.

Turkish law does not contain any provisions requiring Turkish citizens who are born with dual nationality to choose one nationality or the other when they become adults.

Under article 22 of the Turkish Citizenship Law number 403 (dated 1964 as amended in 1981), Turkish law requires that those who apply for citizenship of another country get a “permission document” from the Ministry of the Interior. These Turkish citizens have to have reached the age of consent; have to have the capacity to act; and have to be in a position to acquire foreign nationality. These conditions have to be supported by a Turkish identity document and proof showing that acquisition of foreign citizenship is possible.

Anyone who acquires foreign nationality by application (naturalization) may also apply for the retention of Turkish nationality. In this case, a naturalization certificate has to be provided.

Turkish law also allows Turkish citizens to give up their citizenship if they choose to do so. Citizenship law was amended in 1981 so this became possible. Some countries in Europe, for example, Germany, Austria, Sweden, Denmark and Norway demand the giving up of Turkish citizenship in order for a Turkish national to acquire their citizenship. Permission to give up Turkish citizenship can be given by the Ministry of Interior for those Turkish citizens who have reached the age of consent; have the capacity to act; and have acquired a foreign nationality or are in a position to do so. If the applicant has not acquired a foreign nationality the Ministry gives a “permission document to give up Turkish nationality”. If the person has been naturalized by a foreign state, in this case a “document to give up Turkish nationality” is issued.

The Republic of Turkey has a predominant claim on dual nationals when they are in Turkey. For example they are subject to Turkish tax laws. Also males of the age of 18 or over are subject to compulsory military service in Turkey. Turkish officials expect dual nationals to enter and leave Turkey on a Turkish passport.

Bilateral Mobility Agreements

Turkey has signed labour-force (*işgücü*) agreements with some EU states namely Germany, Belgium, France and the Netherlands; and also with non-EU states including Australia, Qatar, Libya, Jordan and the Turkish Republic of North Cyprus.²⁹ Turkey is also party to bilateral social-security agreements signed with several EU and non-EU states: Germany, Belgium, France, the Netherlands, Denmark, the UK, Austria, Czech Republic, Luxemburg, Romania, Sweden in the EU; Libya, Azerbaijan, Macedonia, Canada and Quebec, Georgia, the Turkish Republic of North Cyprus, Albania, Bosnia-Herzegovina, Norway and Switzerland among the non-EU countries.³⁰

The legal regime of association provides a privileged treatment for EU nationals with regard to employment-related rights. The regime was established by the Ankara Agreement (1963) and the Additional Protocol (1970) between the (then) EEC and Turkey. Decisions taken by the Association Council established under the Ankara agreement of 1963 are part of the legal regime. This legal regime was confirmed and enforced by the ECJ.³¹

As a starting point it must be noted that Article 41 of the Additional Protocol provides that “The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services”. Here the new restrictions phrase refers to the year 1972 when the Protocol entered into force. Article 6 of the Association Council combined with the Decision of 1/80 provides Turkish workers, who have been in ‘legal employment’ in a

²⁹ http://www.diyih.gov.tr/sayisal_bilgi/ikili_anlasma_sozlesme/isgucu_anlasma.html

³⁰ http://www.diyih.gov.tr/sayisal_bilgi/ikili_anlasma_sozlesme/isgucu_anlasma.html

³¹ For an analysis of this legal regime see Cicekli, B, *The Legal Position of Turkish Immigrants in the EU*, Ankara: Karmap, 1998.

member state for a certain period of time, with the right to have their permission to work automatically renewed and to have their right of residence renewed in line with the right to work.

Decision of 1/80 in combination with Article 7 provides rights of employment for family members of a Turkish worker. Since Turkish law refers to the principle of reciprocity EU nationals must be given the same employment rights in Turkey. Furthermore Article 11 of the Decision clearly recognizes that the rights given to Turkish nationals should be provided to EU citizens in Turkey. Under article 8(e) of LFWP nationals of EU states and their non-EU family members can be issued exceptional work permits. These work permits are not subject to time limits.

Turkey-UK The Experience of Circular Migration

To promote circular migration visa facilitation for short-term workers is highly desirable. Turkish nationals benefit indirectly from short-term temporary work schemes in the UK. Turkish nationals can apply for a visa as au-pairs and as workers in tourism/hotel industry. However, the visa fee is relatively high, 530 YTL (approx. 320 Euros). Moreover, many Turkish citizens apply for these kind of works through private-employment agencies which sometimes charge astronomical fees. In normal circumstances, UK visas are issued in a few days in Turkey.

In some sectors like construction, agriculture and tourism multi-entry and multi-annual visas might prove to be useful. After all, holders of this type of visas might be allowed to work only certain periods of the year, say in the summer.

The Ankara Agreement gives Turkish self-employed persons the right to set up and run business in the UK. However, owing to the high number of applications the British authorities have not been able to deal with the applications in a reasonable period of time. Some had even to wait a number of years before the visa was issued or rejected. Recently there has been an improvement in the speed of response. On average it now takes 4 to 10 weeks to get a response, positive or negative. To apply for a visa under the EC Association Agreement the applicant must be present in the UK legally.

2. Foreign Workers in Turkey

Short-Term Stay

In order to work legally in Turkey first a work permit must be obtained. Only then can an employment visa be issued by a Turkish consulate abroad. The foreign national with a work permit enters Turkey on an employment visa and applies for a residence permit for employment purposes. With this permit he may work legally in Turkey. The system is explained in more detail below. There is no provision in Turkish law prohibiting visas for short-term stay for seasonal- or temporary-work purposes. However, this does not mean that circular migration is facilitated by Turkish law. And foreign nationals wishing to work in Turkey, even in seasonal or temporary jobs, are required to follow the procedure for “normal” work.

Residence and Work Permits

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

1. First foreign nationals apply for a “work permit” through Turkish consulates abroad, then
2. They receive an “employment visa” from the Turkish consulate, and finally
3. When they arrive in Turkey, they obtain a “residence permit” for employment purposes from the police authorities in Turkey.

However, there are certain exceptions to this procedure. They will also be dealt with here, as they may be considered relevant for the purposes of this paper.

Work Permit

The Law on Work Permits for Foreign Nationals (LWPF) is the governing legal document in this area³² It is addressed to foreign nationals working either in a self-employed capacity or as employees.³³ Some categories of foreign nationals are left outside the scope of the Law, including those exempted from the work-permit requirement on the basis of reciprocity, international law and EU law.

With the exception of some government ministries, public agencies and institutions vested with statutory powers such as the Prime Ministry, the Ministry of Health and the Higher Education Council which can issue work permits or employ foreign staff, the Ministry of Labour and Social Security (MLSS) is the main authority for issuing work permits to foreign nationals.

As a general rule work permit applications are made to the Turkish consulates in the country of nationality or the country of residence of the foreign national. The Turkish consulates pass these applications on to the MLSS. The Ministry assesses the applications, having taken the opinions of the relevant government authorities, and issues work permits when deemed appropriate.³⁴ Foreign nationals with a valid residence permit in Turkey or their employers are entitled to make work-permit applications directly to the Ministry in Turkey.³⁵ Foreign nationals who enter Turkey on a visa for purposes other than employment or under a bilateral visa exemption regime and who do not have a residence permit have to apply for a work permit from abroad.

Employment Visa

A work permit is valid only when the required employment visa and residence permit have been granted. Foreign nationals, who have been issued work permits, are requested to apply for an employment visa to enter the country within ninety days and to apply to the Ministry of Interior Affairs for a residence permit within thirty days from entering Turkey.³⁶

Although no reference was made to the employment visa by the Passport Law – in its original form we find only entry, transit and exit visas – the European Convention on the Travel of Persons and bilateral visa agreements were invoked as the legal grounds for employment visas prior to the LWPF.³⁷ The Employment visa is simply stamped onto the passports of foreign nationals by Turkish consulates abroad, the stamp noting that the visa is issued for the purpose of employment in Turkey.³⁸ There are certain categories of foreign nationals that are exempted from employment visas, including those who are excluded from the scope of the LWPF.

Residence Permit for Employment Purposes

Foreign nationals who come to Turkey for employment must apply for a residence permit for employment purposes and their work permit is only valid if an employment visa and residence permit

³² Law no. 4817. Official Gazette, 06.03.2003 no. 2504.

³³ Art. 1.

³⁴ Art. 12(1).

³⁵ Art. 12(2).

³⁶ Art. 12(1).

³⁷ Çiçekli, B., *Yabancıların Çalışma İzinleri (Work Permits for Foreign Nationals)*, TİSK: Ankara, 2004, p. 26.

³⁸ *Ibid*, p. 27.

is granted. Residence permits are regulated by the Law on Residence and Travel of Foreign Nationals (LRTF) in Turkey.³⁹ Article 3 (1) of the Law states that they have to make an application to local police authorities within one month of their arrival and before taking up employment.

Articles 8 and 9 of the LRTF regulate the duration of residence permits. Under article 8, residence permits are issued for a period which is determined on the basis of relevant legislation, international agreements and the applicant's request. As a general rule residence permits are issued for a period of five years.⁴⁰ However, article 9 allows the Ministry of Interior to set a longer or shorter term in accordance with the principle of reciprocity after consulting the Ministry of Foreign Affairs. Duration of residence permits are closely linked to the type and duration of the work permit.

Types of Work Permits

Under the LFWP there are four types of work permits: definite, indefinite, independent and exceptional ones. Definite work permits are issued for a specific duration and for a certain workplace or company so as to work in a certain profession.⁴¹ The permits are valid for a maximum period of one year. After the expiry of the one-year work permit, the work permit may be extended for three years for the same workplace or company and in the same profession and, after that, in the same profession for the same occupation, for any employer the foreign nationals prefers to work for six years.⁴²

Foreign nationals who have resided in Turkey for a period of eight years legally and uninterruptedly and foreign nationals who have worked legally for six years in Turkey may be issued work permits of indefinite duration, not restricted in terms either of profession, geographical area or administrative type.⁴³ This kind of work permits is 'indefinite'. The conditions prevailing in the business world or developments in labour are not to be taken into account while issuing such work permits.

In Turkey foreign nationals are not entitled to apply directly for an independent work permit which allows them to work in a self-employed capacity. In order to be able to apply for this kind of work permit a foreign national first must have resided in Turkey for at least five years legally and uninterruptedly. Therefore, an independent work permit cannot be issued from abroad or before a worker comes to Turkey.

Article 8 of the LFWP lists some categories of foreign nationals who may be issued exceptional work permits regardless of the duration requirements envisaged by the Law itself. The list is a limited one and includes, *inter alia*, EU nationals and their non-EU citizen spouses and children.

Although work permits may be restricted for a certain time in the sectors of agriculture, industry or service, for specific occupations or for administrative area or for locality, such restrictions cannot be imposed when issuing an indefinite work permit.

In the case of definite work permits, the period of residence permit for employment is determined and extended in accordance with the work permit. When a foreign national with an indefinite or independent work permit has applied for a residence permit, the duration of his residence permit is determined by taking into account the legislation on residence and travel of foreign nationals. The foreign national may be issued with a residence permit for up to five years. However, the period cannot exceed the renewal period of his passport.

³⁹ Law no. 5683. Official Gazette, 24.07.1950 no. 7564.

⁴⁰ Art. 9.

⁴¹ Art. 5.

⁴² Art. 5(2) and (3).

⁴³ Art. 6.

Illegal Employment

Employment inspectors of 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 authorized to examine whether employers who employ foreign nationals or foreign nationals themselves are able 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.⁴⁴ Apart from fulfilling the required conditions, there is also a duty to notify the relevant authorities with regard to the employment of foreign nationals. The notification obligation is imposed on both independent workers and employers of foreign employees. Under article 18(a) the independently working foreign national is obliged to inform the MLSS within at most fifteen days, after the date they have started working and before the end of their work. Article 18 (b) requires employers who employ foreign nationals to notify the Ministry within at most fifteen days after the employee has started to work, in case the employee has not started working within thirty days from the date when the work permit was given and from the date when the service contract was terminated for any reason.

The Law provides for administrative sanctions in order to discourage the illegal employment of foreign workers by Article 21. When notification to the ministry is overlooked there is an administrative fine of 250 YTL (approx. 150 Euros). The fine can be enforced both for the independently working (self-employed) foreign national and the employer of foreign workers.

In the absence of a work permit, a foreign national working independently will be fined as much as 1,000 YTL (approx. 590 Euros) and the work place is closed.⁴⁵ There is also a 2500 YTL (approx. 1480 Euros) administrative fine for each illegal worker, a fine that given to the employer or agents employing foreign nationals: as can be seen, the more illegal foreign nationals employed, the more fines to be paid. In addition to the administrative fine, the employer and the agents are obliged to cover the accommodation expenses of the foreign national and his spouse and children, the expenditures required for them to return to their home countries (if necessary) and their health expenses when required.⁴⁶ When the notification duty or work-permit regulations are breached repeatedly (more than once), fines can be doubled.

Turkish Labour Law and Non-Nationals

Four pillars supporting the objective of decent work have been envisaged by the ILO.⁴⁷

- work and employment itself
- rights at work
- security and social protection
- representation and dialogue

The first pillar means that people have to earn a living by working. The second, rights at work, include the freedom of association, the freedom from discrimination, the freedom from forced labour and the freedom from child labour. These rights were acknowledged and given a global scope at the 1995 UN Copenhagen Social Summit and subsequently in the 1998 ILO Declaration of Fundamental Principles and Rights at Work.

The third pillar concerns security and social protection. A job can be considered insecure, *inter alia*, because it is irregular, because income varies, because it is physically dangerous or generates

⁴⁴ Official Gazette, 29.08.2003 no. 25214.

⁴⁵ Art. 21(5) of the LWPF.

⁴⁶ Art. 21(3).

⁴⁷ <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2002/moscow.htm>.

vulnerability to disease. Security is a powerful need, and it can be achieved through formal social insurance systems and also through investment in workplace safety; and through labour-market institutions and policies which protect workers against fluctuations in employment.⁴⁸

The Final pillar concentrates on representation and dialogue. The ways in which people's voices can be heard are a crucial aspect of decent work. For workers, the route to representation and dialogue is through trade-union organization.

Under the 1982 Constitution one characteristic of the Republic is that it is a social state and this cannot be amended away.⁴⁹ Article 48 states that everyone, including non-nationals, has the freedom to work and conclude contracts. The Constitution contains a group of provisions relating to labour. Here the right to work is also emphasized by Article 49 where it is stated that everyone has this right. The state is under an obligation to “take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace”.⁵⁰

There is also a minimum wage in Turkey. The government is to take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits. In determining a fair wage the living conditions of the workers and the economic situation of the country will be taken into account.⁵¹

Article 50 of the Constitution sets forth the basic principles with regard to working conditions and the right to rest. Under this article “No one shall be required to perform work unsuited to his age, sex, and capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions. All workers have the right to rest and leisure.”.

The Turkish Constitution also recognizes unions,⁵² collective bargaining⁵³ and the right to industrial action.⁵⁴

If the Constitution spells out the basic principles, the details of working life are regulated by laws passed by the parliament in accordance with the Constitution. Labour Law No. 4587 (dated 2003) regulates “the rights and obligations regarding working conditions and the work environment of employers and workers employed based on a labor contract”.⁵⁵ There are also regulations issued by the relevant government ministries to regulate specific issues. To cite an example, working hours in Turkey are regulated on the basis of Law no. 4857 by the Regulation on Working Time Relating to the Labor Law, adopted by the MLSS in June 2004. Article 63 of Law 4857 limits weekly-working hours to 45 hours, unchanged from Law 1475, with several exceptions and exemptions, whereas the Regulation on Working Time limits daily-working hours to 11 hours.

It must be pointed out that the rights and guarantees provided by the Turkish Constitution and legislation are applicable for “all” workers. This definitely includes foreign workers.

⁴⁸ *Ibid.*

⁴⁹ Art. 2 of the Constitution. Article 4 under the heading of Irrevocable Provisions states that characteristics of the Republic cannot be amended nor any amendment be proposed.

⁵⁰ Art. 49.

⁵¹ Art. 55.

⁵² Art. 51.

⁵³ Art. 53.

⁵⁴ Art. 54.

⁵⁵ Art. 1. The new Labor Law replaced the Labour Law of 1971, no. 1475.

Exceptional Favourable Treatment of Turkish Nationals

There are two general grounds upon which a request for a work permit or an extension thereof may be refused:

(i.) In the case that the conditions prevailing in the business world, developments in the labor environment, variations in a given sector and economic conditions concerning employment are not suitable for issuing work permits.⁵⁶

(ii.) In the case that the employment of a foreign national constitutes a threat to national security, social structure, public order, moral values or public health.⁵⁷

These grounds can be used by the Ministry of Labour and Social security to favour Turkish against foreign nationals. More specifically the request of work permits for a foreign national may be refused where a person who has the same qualification is found domestically for the relevant job within a period of four weeks.⁵⁸

Under a law passed in 1932 pursuance of some occupations was possible only by Turkish nationals. The Law on Arts and Services Allocated to the Turkish Citizens No. 2007 enumerated some jobs which could be taken up only by Turkish nationals. In the list provided by the law foreign nationals could not be employed as, inter alia, barbers, porters, waiters and others. The LFWP abolished this law under article 32. However, there are provisions in certain special laws allocating jobs for Turkish nationals only. The nationality requirement has then been introduced and maintained on the grounds of public security, public health, public order and public interest. To give a few examples, foreign nationals cannot work as medical doctors,⁵⁹ nurses,⁶⁰ pharmacists,⁶¹ attorneys,⁶² civil servants,⁶³ notaries,⁶⁴ justices or public prosecutors.⁶⁵

C. Concluding Remarks And Suggestions

With regard to the coordination of social benefits in the EU and Turkey only time spent in employment in Turkey and a foreign country can be taken into account for determining old-age pension entitlement. However, social insurance premiums are not transferable. In principle, social benefits would be transferable to the country where the person has his main residence. To this effect, necessary bilateral agreements between the EU and sending countries like Turkey should be negotiated.

As examined in detail above, though the constitution of Turkey was amended to allow Turkish citizens working abroad to cast their votes in elections in Turkey, necessary arrangements to facilitate their participation in Turkish elections while they are abroad have not been made and Turkish election law has not been amended. Therefore, in practice, Turkish workers abroad cannot vote in Turkish elections without coming home. The only exception to this is the right to vote at the border when they

⁵⁶ Art. 14(a) of LFWP.

⁵⁷ Art. 14(e) of LFWP.

⁵⁸ Art. 14(b) of LFWP.

⁵⁹ Art. 1. Medicine Law (1928). Official Gazete 14.04.1928, no. 863.

⁶⁰ Art. 3. Law of Nurseship (1954). Official Gazete 02.03.1954, no. 8647.

⁶¹ Art. 2. Law on Pharmacists and Pharmacies (1953). Official Gazete 24.12.1953, no. 8591.

⁶² Art. 3. Law of Attorneyship (1969). Official Gazete 07.04.1969, no. 13168.

⁶³ Art. 48. Law on Civil Servants. Official (1965). Gazete 23.07.1965, no. 12056.

⁶⁴ Art. 7. Law on Notaries (1972). Official Gazete 05.02.1972, no. 14090.

⁶⁵ Art. 3. Law on Justices and Public Prosecutors (1983). Official Gazete 24.03.1983, no. 17971.

leave Turkey. Votes cast at the border have no significance though in Turkish elections. First Turkey has to bring its legislation in line with its own constitution to let Turkish nationals abroad vote by amending the election law. Then the necessary arrangements may be made with the host countries. Although Turkish citizens cannot currently vote for Turkish elections while abroad, Turkey has made some arrangements to allow foreign citizens to vote in Turkey for their own elections. To cite an example Iraqi citizens and Bulgarian citizens living in Turkey can cast their votes in ballot boxes in many cities around Turkey.⁶⁶

With regard to the protection of temporary workers Turkey has signed social-security agreements with both EU and non-EU states. EU states with which Turkey signed such agreements include Germany, Belgium, France, the Netherlands, Denmark, the UK, Austria, Czech Republic, Luxemburg, Romania and Sweden. Such agreements provide for the equal treatment of nationals of both countries with respect to social-security matters.⁶⁷ Therefore, there is no discrimination between a national of the host country and a Turkish national working abroad. Although these agreements have not been made specifically for circular migration, there is nothing to prevent them from being applied to temporary non-national workers. The EU could sign these kind of agreements with sending countries and thereby all member states could be brought under an obligation to provide equal treatment.

Under the LFWP foreign nationals exempted from the work-permit requirement on the basis of the principle of reciprocity, international law as well as the principles of EU law are excluded from the full scope of the application of said law.⁶⁸ This allows the MLSS to leave some categories of foreign nationals without any requirement for a work permit. By article 55 of the Application Regulation issued by the MLSS those who are exempted from any need for a work permit by bilateral or multilateral agreements to which Turkey is party are under no obligation to apply for a work permit. Here is a way of facilitating circular migration. Turkey may conclude such agreements so as to accept, and also to send, temporary or seasonal workers on the basis of treaty provisions.

It seems that the national laws of the EU states brought in to combat illegal employment do not obstruct access to temporary labour markets. However, if employers cannot find the necessary workforce for temporary jobs, they may employ illegal workers. To prevent such illegal employment, temporary workers have to be made available. If there are no such workers available locally, then a foreign workforce must be relied upon and short-term temporary worker visas have to be issued.

From the Turkish legal perspective it could be said that there is no legal barrier for circular migration. But it could be facilitated by taking certain necessary steps and making new arrangements. The following might be taken into account in order to facilitate the circularity of migration:

- i. Long-term multiple-entry employment visas should be issued.
- ii. Temporary workers should be exempted from visa fees or at least fees should be reduced to reasonable levels,
- iii. Decent work conditions should be maintained.
- iv. Illegal employment should be discouraged in receiving countries.
- v. The social benefits of migrants in Turkey and receiving countries should be coordinated.

⁶⁶ In the last Bulgarian elections there were 76 ballot boxes in Turkey. *Milliyet*, 25.06.2005.

⁶⁷ For an example see the Turco-British agreement above.

⁶⁸ Art. 2 of LFWP.

- vi. Since circular migration is, by definition, temporary, social contributions should be made to the relevant home institution.
- vii. A new institutional arrangement relating to temporary Turkish workers, as well as other Turkish workers, should be made in Turkey.
- viii. The political participation of Turkish workers in Turkey should be allowed in accordance with the constitution.