

Trafficking of Human Beings within the Context of Turkey's Accession Process to the EU

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In the last decade with the end of the Cold War, Turkey has become an increasingly important country at the crossroads of migratory movements as a country of origin, transit and destination. Migration in Turkey reveals all the complexity of contemporary migration movements in Europe. The migratory flows reflects a mixed nature involving various types of people such as people in need of international protection or people in searching for better living conditions through legal and illegal means.

Geographic location of Turkey makes it vulnerable to these various types of human displacements and movements. This brings us to the point that one has to acknowledge the complex nature of this field. There is a direct link between irregular and illegal migration, human smuggling, trafficking, and organized crime. They constitute separate but not completely separable issues. Therefore, in order to reflect this complexity it is necessary to understand trafficking in human beings in a comprehensive framework.

Regulating the migration field is a contemporary concern. The end of the Cold War and the dissolution of the Soviet Union with the establishment of newly independent states were influential factors behind the emergence of this issue as a priority area. In addition, the persistence of ethnic and political conflicts all over the world accompanied the increasing numbers of refugees and asylum seekers. In this context, the perception of refugees in the West has changed from freedom fighters to a challenge which has to be dealt with as a threat to national security and stability. This brings the issues of asylum, immigration and irregular migration to a status of high politics throughout the Western world with this changing understanding of comprehensive security.

The increased numbers of victims of human trafficking added a critical dimension to the field of asylum seekers, refugees, legal and illegal migrants in the last decade. Human trafficking poses a great threat to social order, solidarity and democratic values of states that are exposed to such activities. It is an issue of global concern which has to be tackled regionally and internationally. Consideration of human trafficking solely as a national security issue will pose limitations to the understanding of its complex nature.

Finding common European solutions to common problems: Turkish Accession process to the EU

In order to respond to the increasing challenge of irregular migration, human trafficking and organized crime European governments aimed at achieving common policies. The developments regarding Justice and Home Affairs (JHA) field within the European Union (EU) in the last decade highlight the important intergovernmental cooperation through intergovernmental bargaining process. The treaty formation with the Maastricht and Amsterdam Treaties has transformed the area on immigration, asylum, and visa and border control towards further integration.⁶⁶ This led to an increased influence of European integration within the member states on policies regarding these issues. Through the enlargement processes of the EU the impact of European integration generates an increased pace of policy alignment with the candidate states. This process of alignment with the EU *acquis* creates legislative, administrative and ideational transformation in various policy areas.

The Turkish accession process to the EU explicitly reveals the impact of this comprehensive alignment process. Turkey, as a candidate state has accepted the transformation of its political and legal system with the adoption of the EU *acquis communautaire*. This is achieved through legislative and policy harmonization in its accession process. This process of alignment with the EU *acquis* generates legislative, administrative and ideational transformation leading towards a systemic

⁶⁶ For more details see also Lavenex, S. (2001), *Europeanization of Asylum Policies: Between Human Rights and Internal Security*, Hampshire: Ashgate.

transformation in several policy areas of the national governance systems. This process of alignment has accelerated with the official declaration of Turkey as a candidate state to the EU.

After the European Council Meeting in Helsinki on 10-11 December 1999, Turkey was declared as an official candidate for full membership to the EU. This decision reinforced the launch of a process of pre-accession including a transitional period of policy and legislation adoption and harmonization. During the Turkish pre-accession period, which covered the period from 1999-2005, several legal documents such as the Accession Partnership (AP), National Programme for the Adoption of the Acquis (NPAA), and the National Action Plan for Asylum and Immigration (NAP) were adopted.⁶⁷

After the Helsinki Summit of 1999, in order to comply with the Copenhagen political criteria Turkey entered a new period of democratisation with the adoption of several democratisation reform packages. During this process, the long run pursued Turkish Westernisation project turned into a more concrete project of Europeanization which is a more complex process of adoption of common values, transforming political and economic structures and governance systems. In the last couple of years the political practices, institutions and the general approach to political problems are dramatically changing in Turkey. This requires a major mental shift to think and act within the larger context of the EU.⁶⁸ Asylum and migration policies are not immune from that mentality change. Issues

⁶⁷ European Communities (2001), Accession Partnership with the Republic of Turkey: Adopted by the General Affairs Council of the European Union, Official Journal, 2001/235/EC, L85/13, 24.03.2001; European Communities (2003), Revised Accession Partnership with the Republic of Turkey: Adopted by the General Affairs Council of the European Union, Official Journal, 2003/398/EC, L85/13, 12.06.2003; Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (2003), Turkish National Program on the Adoption of EU Acquis Communautaire, No.25178, 24.07.2003; Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (2001), Turkish National Program on the Adoption of EU Acquis Communautaire, No. 24352, 27.03.2001

⁶⁸ Eralp, A. (2005), Turkey and the Enlargement Process of the European Union, in Nikolov, K. (ed.), The European Union After 1 May 2004: Is There a Shock from Enlargement?, Sofia: BESCO Publications, pp. 129-146.

which have not previously discussed transparently and openly such as the status of refugees, illegal migration, border control and asylum policy started to be discussed openly in legal documents which are exchanged between Turkey and the EU.

In terms of practical changes there has also been some developments. The Accession Partnership process established eight sub-committees to discuss the harmonisation process to the EU. The 8th sub-committee is dealing with JHA issues. These sub-committee meetings bring actors which are involved in the asylum and migration policy field. Traditionally these actors did not have the opportunity to come together to discuss these matters transparently. These actors are the Turkish Ministry of Foreign affairs (MFA), the Directorate Security under the Ministry of Interior (MIO), the European Commission Representation to Turkey, the Coastal Security Command, the Gendarmerie General Command, and the Chief of Command for Border Controls. The Secretariat General for European Affairs (EUSG) has the coordination function in these activities. These discussions stimulate fundamental changes in sharing information, discussing possible solutions for common concerns among these various actors.

Accelerated Legislation Changes with the EU Accession Process

The EU Commission prepared the Accession Partnership Document (AP) for Turkey on 8th November 2000. This document identified short and medium term political and economic priorities that the accession partnership should rely on. Turkey was expected to adopt its National Program on the Adoption of the Acquis (NPAA) on the basis of the short and medium-term political and economic priorities set forth in the AP. The JHA component of the AP document covers three issues relating specifically to immigration and asylum. These can be specified as the lifting 'geographic limitation' on the 1951 UN Geneva Convention, illegal immigration and border controls.

As a response to the priority descriptions mentioned in the AP, Turkey adopted its National Programme in March 2001.⁶⁹ Accession Partnership triggered a reform and democratisation process in the Turkish legislative, administrative and political system. The goal to meet the Copenhagen political criteria made Turkey to take a number of steps to address EU concerns. While it took some time after the AP to prepare certain legislative changes, the Turkish Government introduced a number of measures to improve the implementation of constitutional and legal guarantees in the sphere of political criteria, between October 2001 parliamentary session and the 3 November 2002 early general elections. In that period, the Turkish Grand National Assembly (TGNA) passed a series of reforms aiming to reduce restrictions on certain political rights and fundamental freedoms.

With the changing context of pre-accession after various constitutional reform packages, the Commission reconsidered the priorities to be given in the pre-accession process. The European Council adopted the Revised AP document of 2003 following the NPAA of 2001. The Revised AP involved adjusted priority areas to reshape the road map of Turkey's accession towards membership.⁷⁰ It dismissed certain priority areas from the list of priorities assuming that they were fulfilled. However, it further emphasised certain areas where more progress has to be made to fulfil the priorities of the Union.

As a response to the Revised AP document, Turkey prepared and adopted its Revised National Program (RNPA) in June 2003. It was prepared under the coordination of the Secretariat General for EU Affairs with other ministries. Reconsidering the revised priorities of the new AP document, it was understood by the Turkish government that the process of harmonisation needs to be intensified.

⁶⁹ Official Journal (2001), Turkish National Program on the Adoption of EU Acquis Communautaire, No.24352, 27.03.2001.

⁷⁰ European Communities (2003), Revised Accession Partnership with the Republic of Turkey: Adopted by the General Affairs Council of the European Union, Official Journal, 2003/398/EC, L85/13, 12.06.2003.

On the way towards finding the critical points in the field of asylum, an “Asylum and Migration Task Force” was set up in 2002 involving various state agencies responsible for border control, migration and asylum. This special task force produced an EU acquis alignment strategy “Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey’s Accession to the European Union (Asylum Strategy Paper)” with the help of EU experts in October 2003.⁷¹ This strategy paper was submitted to the European Commission in December 2003.

With the purpose of mapping the gap areas in this field three working groups in fields of borders, migration and asylum are established for developing an overall strategy in this field. These working groups became operational from 18th June 2002 onwards. These working groups met in order to prepare national strategy papers for three of these three complementary fields. These strategy papers aimed at bringing the important issues to the attention and preparing a national action plan in the area of immigration and asylum.

In order to utilize the findings of the Strategy Paper the EU funded Twinning project on Asylum and Immigration commenced on 8th March 2004 and ended on 31st March 2005. The result of the Twinning project on asylum and immigration was the acceptance of a National Action Plan on Asylum and Migration (NAP). The NAP envisaged the establishment of a specialized, civilian unit for migration and asylum issues under the MOI, which will be responsible for migration management and for receiving and deciding on requests for residence permits of foreigners and asylum applications in the first instance. The NAP also commits Turkey to prepare a new asylum law in conformity with the relevant international conventions and the EU acquis in the process of accession to the EU.

The comprehensive harmonisation process with the EU acquis has also generated legislative, administrative and ideational transformation

⁷¹ Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey’s Accession to the European Union (Asylum Strategy Paper), Ankara, limited access document.

involving a policy aspect with respect to human trafficking. In terms of legislative change the NAP argues that the system related to victims of human trafficking is in harmony with the EU acquis. On the other hand, the European Council Parliamentary Assembly calls for an alignment with Schengen Agreement in Turkey.

In the area of trafficking in human beings Turkey has undertaken national legislative changes while adopting several international documents. Turkey signed the UN Convention on transnational organized crime and its two Protocols regulating migrant smuggling⁷² and human trafficking which are also referred as Palermo Documents in 2000. These Protocols are ratified at the TGNA in 2003. In addition to those documents, sixty seven security cooperation agreements with various countries in combat against organized crime and terrorism are undersigned by Turkey. These legislative efforts are inline with the aim to improve Turkey's border-control capacity and align its visa system with that of the EU and concluding readmission agreements with source, transit and destination countries of irregular population movements. In that respect, readmission agreements with source and destination countries such as Greece, Syria, Romania, and Kyrgyzstan are signed. The readmission agreement with the European Commission is still under negotiation. Several other readmission agreements were proposed to Pakistan, Bangladesh, India, People's Republic of China, Tunisia, Mongolia, Israel, Georgia, Ethiopia, Sudan, Algeria, Morocco, Nigeria and Kazakhstan.

With respect to national legislative changes on human trafficking several domestic laws are amended. One of the examples of these amendments was on the Citizenship Act No.403. In order to avoid marriages of convenience Citizenship Act was amended in 2003. Under afore mentioned arrangement, aliens marrying Turkish citizens may be involved in the naturalization procedure three years after the marriage

⁷² The UN Convention Against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

contract has been concluded, provided the investigations prove that “the alien in question does not have a profession inconvenient for marriage, the spouses do not live with other partners but together, and have no connection with human trafficking”. Likewise, the Law on Work Permits of Aliens No. 4817 has been drafted by the Ministry of Labour and Social Security and ratified by the TGNA in 2003 in order to avoid illegal employment and to regulate the labour market with work permits. One of the critical turning points in fight against human trafficking was the explicit definition given for “human trafficking” as a criminal act under the Turkish Penal Code. In 2002 human trafficking defined as a crime in Turkish Penal Code. It brought the punishment of heavy imprisonment to the perpetrators ranging from five to ten years. In June 2005 a New Turkish Penal Code is accepted by the TGNA which brought the punishment of heavy imprisonment of eight to twelve years to traffickers.

Policy Implementation Transformation in the Field of Combat with Human Trafficking

The legislative arrangements are also supported by policy implementation measures in this field. A circular was accepted in conjunction with the identification of the victims of human trafficking. It ensured the application of the relevant legislation by the Provincial Directorates of Security, the Gendarmerie General Command and the Coastal Security Commands. This circular regulates the delivery of health care and psychological rehabilitative support to the victims of human trafficking. It also allows for the temporary residence of the identified victims according to their consent without resorting deportation from Turkey. These temporary residence permits aims to provide the necessary time required for the treatment and rehabilitation of victims. At the same time it allows for a period to identify and apprehend the interest oriented and organized individuals or networks committing such crimes and to initiate the legal/administrative process against these individuals or networks. These issued residence permits cover a six months period and these periods can later be extended for another six months if trial periods for the accused individuals require an extended time span.

Several cooperation protocols were signed with the Directorate General for Security, the Gendarmerie General Command and the Human Resource Development Foundation (HRDF). In line with these protocols a shelter has become operational in Istanbul for victims of human trafficking through the cooperation of the HRDF and the Istanbul Metropolitan Municipality. This shelter accommodates victims of human trafficking for a temporary period while their safe voluntary returns to their home countries are arranged in cooperation with the International Organisation for Migration (IOM).

IOM, in close cooperation with the Turkish government promoted a “Helpline” for victims of human trafficking. The Helpline is operational and it can be reached through toll free number (157). Currently the Helpline is operated by IOM and its operation will be transferred to a NGO which will be selected through an open tender process. This Helpline is a positive development in fight against human trafficking for providing help for individuals who may be at risk of trafficking and for emergency rescue. The project aims to target victims in their home countries before their arrival to Turkey. In that respect, Turkey can be regarded as a leader in the Balkans region with a proactive approach to the victims of human trafficking.

Adding to these activities, under the scope of the Turkey-EU Financial Cooperation the “Building Institutional Capacity in Combating Human Trafficking” project has been prepared. The aim of this project is to adopt a strategy to prevent human trafficking and to pave way for its implementation by sectoral action plans in line with the targets of attaining minimum standards to decrease human trafficking and strengthening relevant institutions operating against human trafficking. Raising public awareness is another fundamental aspect in fight against human trafficking. Two panels on “Combating Human Trafficking” were organized. The first one was organized in collaboration with the UN Population Fund in 2002 and the second one was organized in 2003 by the Directorate General for Women’s Status and Problems in Turkey. There were also awareness raising campaigns targeted at officers who were working in the field of combating human trafficking.

Adding to the institutional and administrative changes, one has to acknowledge the ideational change in this field in Turkey. The acceptance of human trafficking as a problem can be considered as a fundamental step in Turkey. Defining human trafficking as a criminal activity and imposing heavy penalties for the perpetrators can be regarded as a fundamental step in search for combating this crime. The willingness to involve international cooperation and active collaboration in this field is a new development. The IOM regards the international cooperation initiated by Turkey to involve several countries for a multi-country campaign as a pioneer activity of its kind. The willingness to involve NGOs working this field is explicitly expressed in the NAP.⁷³ The Plan foresees an enhanced involvement of civil action to provide help and services for the victims, to raise public awareness and to apprehend traffickers. This mentality change can be attributed to the EU accession process which has systematized these transformations in Turkey.

The subcommittee meetings bring together institutions working in this field which traditionally have difficulties in sharing information. This opened up a process of transparency and increased collaboration between these institutions. Thus, it is possible to argue that the EU pre-accession process boosted the necessity to work on the JHA issues. In this framework, training activities involving law enforcement officers, judges and public prosecutors contributed to the change in the formation of perceptions and ideas. The NAP foresees the adoption of a strategy to prevent human trafficking with a long-term policy planning.

In order to establish a long-term strategy to combat human trafficking a comprehensive framework encompassing the issues of irregular and illegal migration, organised crime and humanitarian protection has to be established. In this framework, a balanced approach safeguarding the rights of states on controlling their borders, protecting their citizens, providing security and solidarity to their societies has also have to reflect

⁷³ Turkish Ministry of Interior (2005), General Directorate of Security, Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration, 17.01.2005

safeguarding of the protection of the rights of the individuals who are or will be the victims of trafficking.

Conclusion

Illegal migration, human smuggling and human trafficking are all separate but not solely separable issues. Their link with organised crime and criminal networks makes the study of this subject far more complex. Human trafficking poses a great threat to social order, solidarity and the democratic values of both the source and the destination countries. It poses a threat to the source and the destination country as a result of its link with organized crime, drugs and weapons smuggling. The criminal networks make it more difficult to fight against traffickers in a single country. A multilateral approach is necessary in combating against this crime.

Increased multilateral collaboration between law enforcement officials is necessary for an effective multilateral action. Sharing information on this field will inevitably provide means and sources for increased collaboration on combating organized crime and terrorism. The humanitarian aspect of this field can generate a strong impetus for multi-state cooperation. This cooperation can be supported by technical cooperation programs. The funding for these cooperation programmes can be generated from various sources including EU funding. Moreover, training the personnel working on the combat on human trafficking can provide a long-term investment in human capital specialized on these topics. Trained human resources dimension can shape and support the establishment and implementation of a long-term policy planning with national and regional strategy on human trafficking.

Increasing public awareness has a critical position for raising public interest. In that respect, media can play a role in the public awareness raising campaign. In this regard, the fundamental issue is defining the target group and specifying the result targeted at the end. Such as targeted result can be raising awareness for defining who is a victim or a trafficker, the result can be helping the victims or alternatively it can be making trafficker activities easy to identify by ordinary citizens.

Fight against human trafficking in that respect has to be a civilian project. Combating cannot be achieved solely by security officers. The involvement of national or international NGOs is essential. National or international NGOs are the watchdogs for the implementation of certain legislation or policies in the countries of origin and destination. They provide the push factors for better implementation of certain policies while endorsing better practices. Promoting projects to involve NGOs can provide the necessary means for the NGOs to have greater role in this field. These NGOs will have to be financial supported by national and international sources or by donors to build up their capacity in terms of human resources and technical infrastructure. Strengthening the NGOs operational capacity will provide the necessary means to sustain their financial resources as they will be able to apply for specific EU funds. The critical point in this aim has to be that promoting projects for building up the institutional capacity of the NGOs with a goal oriented rather than a project oriented approach. Establishing the NGO networks with an aim to establish “networks of networks” can also increase the capacity of action of the NGOs while avoiding the duplication of work.

Social integration programmes in countries of origin with social assistance projects can help the victims to start their new lives more easily. In that respect, projects that can provide simple financial resources for the victims can constitute an elementary step to create a basis for financial sustainability of their households. This can break the vicious circle for the victims who can be targeted by the traffickers for a second time. In conclusion, it may be argued that Turkish accession process to the EU fundamentally altered the nature of fight against human trafficking. The process of alignment with the EU *acquis* generates legislative, administrative and ideational transformation. Human trafficking poses a threat to human security which makes multilateral action inevitable. In this process, increased role of national and international NGOs can make this issue a civilian project. Sustainability of the NGO efforts can only be possible with sustainability of their financial resources. In general, it can be argued that the overall fight against human trafficking is also a fight against organized crime. A concrete result in this field can only be achieved through acknowledging this dimension.