Situation for and of Refugees in the Republic of Turkey

Wojciech Trojan

Geographical limitation side effects
Turkey has acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, but maintains the geographical limitation. Terms of the 1967 New York Protocol allowed the Government of Turkey to maintain the declared geographical limitation in force, and the rationale to restrict its obligations on geographical grounds stays the same as in the past.

Turkey’s reluctance to accept full responsibility of refugee protection from the moment of accession until the present days has always been motivated by the fear of large influx of refugees from the neighboring countries. During the Cold War period, Turkey facilitated resettlements programs for non-European refugees jointly with UNHCR. With the collapse of the Communist Bloc and destabilization of the region the Turkish authorities retained the policy of accepting refugees coming from Europe, while leaving assessments and finding durable solutions for the non-Europeans to the competence of UNHCR operating in Turkey.

Lifting of the geographical limitation is part of the EU membership commitments Turkey has to satisfy in order to close successfully the negotiation process in the field of Justice, Freedom and Security (Chapter 24). The Turkish Government has set its plans for harmonization with the EU Acquis in the area - including lifting the geographical limitation provided that some conditions are met.

The road map towards establishment of conditions of change in the asylum system was outlined in the National Action Plan on Adoption of Acquis in the Field of Asylum and Migration endorsed by the Prime Minister on 25 March 2005. Lifting of the geographical limitation is conditional to the completion of "legislative and infrastructural measures" as well as “the attitude of the EU Member States in terms of burden sharing”. Lifting of the geographical limitation cannot be regarded separately from the progress of negotiations concerning full membership of Turkey in the European Union. On 30 October 2005, membership talks were opened to negotiate Turkey’s EU membership, but there are many obstacles on the road to the EU accession. Turkey has to show genuine progress in all negotiation chapters, including the Chapter on Justice, Freedom and Security.

The Turkish Government argued in 2008 that “the issue of geographical limitation will be addressed during the progression of EU accession negotiations of Turkey. The geographical limitation will be lifted in the accession process, on the condition that it should not encourage direct large scale refugee inflows to Turkey, upon the completion of the necessary legislative and infrastructural measures and in line with the sensitivity of the EU Member States on the issue of burden-sharing”.

Despite the geographical limitation restricting Turkey's obligations vis-à-vis non-European asylum-seekers under the terms of the 1951 Convention, the Government scrutinizes the material grounds for asylum in the individual claims upon which a temporary residence is granted to the individuals. As a consequence of the limitation, UNHCR has assumed the responsibility of deciding who is a refugee under its mandate in Turkey, and the Government accords the right of an asylum-seeker sojourning in Turkey pending resettlement to the third country.

Dual system – UNHCR and Government roles
Under the 1994 Asylum Regulation, European asylum-seekers may apply to the Government for refugee status under the Convention, while non-European refugees are eligible only for ‘temporary asylum-seeker status’. Few Europeans seek protection in Turkey, and the Government’s practice has been to treat them as ‘guests’ rather than formally recognizing them as refugees under the 1951 Convention.

Amendment of the 1994 Asylum Regulation in January 2006 can be considered as a positive development since the strict 10 day time limit for lodging an asylum application was removed. The amendment further stipulated the possibility of empowering selected Governorates to decide on asylum applications, whereas only the Ministry of Interior/General Directorate for Security (MOI/GDS) headquarters in Ankara has this authority.

The Implementation Directive which was enacted by the Government on 22 June 2006 stipulated more detailed asylum procedure provisions. The Implementation Directive gives comprehensive instructions to the administration in relation to the amended 1994 Asylum Regulation, the National Action Plan and other legal instruments, and attempts to bring the asylum procedure in Turkey closer to the EU Acquis. While early legislation was aimed at ensuring alignment of the existing asylum system to the EU Acquis, it is now recognized that further legislative initiatives are necessary. In this line, the Asylum and Migration Task Force was established to facilitate the inter-governmental consultations aiming at adoption of a comprehensive Governmental bill for the submission to the Grand National Assembly.

One of the Government’s transition priorities is the establishment of a central authority competent in the asylum matters in order to enhance the implementation of the current provisions. The new asylum institution will be in charge of coordination of adoption of the Asylum Law which would incorporate fully the current EU legislation in force in the area of asylum.
In addition to the legislative steps, the Turkish authorities submitted projects to the European Commission to sustain the reforms. The European Union and its Member States got involved in the Twinning arrangements with Turkish counterparts in the area. The projects assist the national capacity in the field of reception conditions and the establishment of the decision making support system including the country of origin information data base. The Ministry of Interior assigned around 50 national decision-makers to attend the refugee law training course combined with the on-the-job training component mastering the skills required for the adjudication in the asylum matters.

While the Government endeavors to conceptualize the legal framework for the asylum administration in Turkey, UNHCR is still receiving applications for refugee status under its mandate from non-European asylum-seekers. Owning to the temporary nature of asylum in Turkey, UNHCR tries to resettle those determined to be the mandate refugees.

UNHCR shares the results of its determinations of all non-European asylum-seekers with the Government. Whereas the Government gives UNHCR views great weight in its decisions on whether or not to grant temporary asylum-seeker status in Turkey, occasionally the authorities deviate from UNHCR’s mandate assessments or make decisions before the finalization by UNHCR of the assessments of the claims.

The process of communication of reasons of individual decisions between UNHCR and the Government is sometimes complex. The dissenting opinions and interpretations are not only the result of different interpretations but have roots in the different legal traditions related to the administrative and criminal law. The Turkish Government learns from the troublesome experiences of UNHCR to establish fair and efficient asylum adjudication system in order to pragmatically validate the know-how and UNHCR jurisprudence.

The system of UNHCR’s mandate refugee status determination (RSD) procedure in Turkey was analyzed in bitter terms by the practitioners of the Istanbul Helsinki Citizens’ Assembly in their evaluation report based on own advocacy experience. In truth, it is entirely clear that the shortcoming of the RSD determination by UNHCR with its “lack of basic safeguards of fairness” is a global issue, not only restricted to the operation in Turkey. The Joint Open Letter of Legal NGOs submitted to the UN High Commissioner for Refugees, Antonio Guterres, and released on 8 August 2005 was not the only non-governmental intervention concerning the treatment of asylum applicants by UNHCR.

It was publicly admitted in course of public consultations by UNHCR that “… Still, more needs to be done, not only to build the capacity of field offices to ensure full respect for procedural standards in RSD operations, but also to respond quickly to the unforeseen. An example here is when States – for lack of will or capacity – withdraw from processing asylum claims under their national procedure and UNHCR is required to engage, “by default”.

Feller continues, “…Progress will only result from complementary efforts of UNHCR, NGOs and refugee advocates in the area of RSD, and we encourage a constructive dialogue with UNHCR field offices on any additional measures that may enhance the fairness of RSD procedures”. As put by Erika Feller, Director of UNHCR Department of International Protection, these recommendations have validity of a wide respect for all UNHCR Offices including BO Ankara.

As a result of understanding between UNHCR and the civil society representatives in the spirit encouraged by the UNHCR Headquarters, Department of International Protection, the legal counsels from the Istanbul Helsinki Citizens’ Assembly were granted “access to UNHCR detailed reasons for rejecting applicants”, rightly necessary for preparation of an effective remedy against rejection of an asylum claim. However, such practice is not yet observed in the Government’s procedure.
Lifting of the geographical limitation by the Republic of Turkey will terminate the responsibility of the UNHCR in the area of the refugee status determination in this country. Then the role of UNHCR will be a matter of negotiations between UNHCR and Turkish Government under Article 35 of the 1951 Geneva Convention. Establishing the legal basis in the national legislation of supervision mechanism for UNHCR over the application of international conventions guaranteeing refugee protection will require gradually more detailed elaboration in the Implementation Directive and other national legal sources. The Turkish authorities will gradually involve in their practice the EU interpretations, which reflect the 1951 Geneva Convention without any geographical limitation.

Turkey as a “waiting room” for resettlement for Non-European refugees

As of 31 July 2008, 14,388 non-European persons of concern are registered with UNHCR, including 8,674 refugees and 5,714 asylum-seekers waiting for a decision on their applications.

The population of concern to UNHCR (refugees and asylum-seekers combined) is becoming more diverse. From 2001 to 2003, 88 percent of all new arrivals were Iranian (70 percent) or Iraqi (18 percent). During 2004 and in 2005, Iranians have accounted for 50 percent and Iraqis 22 percent, while refugees and asylum-seekers from African countries such as Somalia, Sudan, Ethiopia and Eritrea accounted for 20 percent. During 2006, Iranians accounted for 47 percent, Iraqis for 30 percent and Somalis and Afghans represented 9 percent and 4 percent respectively of the total population of concern. In 2007, 38 percent were Iranians, 32 percent were Iranians, 12 percent were Somalis and 7 percent Afghans. So far in 2008 (until 31 July), Iraqis are 43 percent, Iranians are 30 percent, Somalis are 9 percent and Afghans are also 9 percent.

In 2005, the newly arrived asylum-seekers (3,914 persons) included 40 percent Iraqis, 37 percent Iranians, 8 percent Afghans and 8 percent Somalis. During 2006, 50 percent of the 4,548 newly arrived asylum-seekers were Iranian, 16 percent Iraqis, 15 percent Somalis, and Afghans were 5 percent. In 2007, 7,640 persons applied for asylum. Of them, 48 percent were Iraqis, 22 percent were Iranians, 15 percent were Somalis and 9 percent were Afghans. So far in 2008 (until 31 July), 5,847 persons have approached UNHCR to apply for asylum. Among them, Iraqis are 55 percent, Iranians are 20 percent, Afghans are 10 percent and Somalis are 6 percent.

The Iranian refugees include some 1,047 persons who entered Turkey from Iraq where they earlier had found protection as refugees. Unable and unwilling to return to Iraq, their fate remains tied to developments in their first country of asylum. One of the biggest challenges for UNHCR is search for durable solutions for this group. There is no possibility for safe return to Iraq. The Government of Turkey is unwilling to allow UNHCR to process these refugees for resettlement, fearing that this would induce thousands more to cross the border from Iraq in search of a durable solution. Refugees are growing increasingly frustrated and dependent on UNHCR limited assistance.

In 2005, UNHCR resettled 1262 refugees. During 2006, 1609 were resettled. In 2007, 2667 refugees have departed to resettlement countries, 2,040 of them to USA. So far in 2008 (until 31 July) 2059 refugees have been resettled. The main countries of destination are USA, Finland, Canada and Australia.

European refugees

Turkey has already obligations under the 1951 Convention toward refugees uprooted by events occurred in Europe, although Europeans have received protection without being granted formal Convention refugee status or the rights it entails. Refugees from Bosnia-Herzegovina and Kosovo, for example, were treated as “guests” under a series of administrative instructions. Also Chechens from the Russian Federation benefit from such informal ad hoc arrangements. The presence of several hundred Chechens in Turkey is tolerated while their living conditions are difficult. Recently, the Government admitted the applications which have been lodged by some Chechen nationals in Turkey.

According to the information received from the Ministry of Interior, there are currently 25 European refugees recognized by the Turkish Government: 3 refugees from Azerbaijan, 1 refugee from Bulgaria, 15 refugees from the Russian Federation, 4 refugees from Serbia and 2 refugees from Greece.

Turkish authorities are issuing upon the request of the recognized refugee the Convention Travel Document in a format prescribed by the Annex to the 1951 Geneva Convention.

Reception conditions in the satellite cities of Central Anatolia

In Turkey, lack of affordable accommodation remains a major problem in the cities where the asylum-seekers are directed for their residence during asylum procedure. For the State facilities, there is only Yozgat Refugee Guest House with a limited number of places for the persons with special needs. When the asylum-seekers are sent to the designated cities for registration, they are expected to find their own housing. In some cities (Bilecik, Karaman) the police has even told the refugees that a housing contract is needed in order to be able to get registered in the city. In Konya, Kutahya, and Isparta, for example, the Governorship has stepped in to organize accommodation. However, the living conditions are often reported to be improper: overcrowded and unhygienic due to financial constraints, sustainability is difficult to reach. Asylum-seekers are required not to leave the city without the permission of the Foreigners Department.

In line with the Implementation Directive, refugees and asylum-seekers have a right to apply for assistance for medical care and other needs from the Social Assistance and Solidarity Foundation in the designated cities. According to the Government sources, the expenditures for direct social relief to asylum-seekers and refugees amounted to 550,000 USD in 2007, compared to the 135,000 USD spent in 2006. There are still disparities between different cities in how the Governorates’ criteria for assistance are applied and assistance for medication costs has been difficult to obtain. Coordination of the State’s and NGOs’ assistance in the field of health, education, vocational
UNHCR phased out its medical assistance as of summer 2006, but it continues to allocate limited resources to address the basic needs of the most needy non-European asylum-seekers and refugees.

Overwhelmed with the abovementioned problems, asylum-seekers and refugees (including European refugees) are also required to pay from their own pocket a regular fee for their residence permit ('ikamet'). During 2008, each adult person (above 18 years) has to pay 355 YTL for a 6-month valid 'ikamet' including the 'ikamet' booklet. Children between 15 and 18 pay for the same period 137 YTL. Failure to meet this duty can result with denial of exit permission until the accrued outstanding fiscal debt is to be paid by the departing refugee.

It should be noted that a valid 'ikamet' is required for any category of an alien in order to apply for jobs, to get married, to receive medical treatment etc., and above all, to prove the legality of stay in the territory of Turkey.

Border and the human rights from the Turkish perspective

Turkey strives to work out a policy agenda on migration and asylum and these efforts were materialized in the National Action Plan towards the Implementation of Turkey’s Integrated Border Management Strategy. The implementation of reform measures planned by the inter-agency groups has not been progressing according to the set time table.

Before lifting the geographical limitation, Turkey ideally would strive to have the illegal migration safeguards in the form of operating readmission agreements with Iran and Iraq to facilitate the returns of nationals and the third country nationals who had transited these countries before entering the territory. Ministry of Foreign Affairs in Ankara is also seeking possibilities to sign a readmission agreement with Afghanistan.

Turkey concluded so far bilateral readmission agreements with Syria (2001), Romania (2004) and the Ukraine (2005). Negotiations on bilateral readmission agreements with Bulgaria, the Russian Federation, Pakistan, Sri Lanka, Jordan, Uzbekistan, Lebanon and Libya are in progress. No real breakthrough was made in the negotiations with the EU-Turkey readmission agreement, which is mainly in the interest of the European Union.

The efficiency of the Greek-Turkish Readmission Protocol of 2001 is a subject of difficult evaluation as the relevant authorities and register themselves. Persons entering the country through irregular means and who are apprehended by the authorities before contacting UNHCR and/or State asylum authorities do not always have access to the asylum procedure and can be subject to deportation measures. Those asylum-seekers who manage to contact UNHCR after having been arrested for their illegal entry, presence or attempted departure from Turkey, are perceived by the authorities as having applied for asylum in bad faith. However, such view is not without reason with regard to safe third countries only; an asylum-seeker admitted conditionally pending examination of asylum application to part of the territory would lose his lawful status if he breached the conditions of temporary admission. Such breach of the conditions can be reflected, for instance, by an attempt to exit the host state illegally. This view is upheld by the European Commission on Human Rights.

The big concern for border management in Turkey is the large number of secondary movements of persons in search of international protection towards the European Union (mainly to Greece and the Republic of Cyprus). UNHCR was urging the Governments - without positive outcome - to start the cross-border cooperation on migration management between Turkey and Greece to avoid push backs and the orbit situation in the Aegean Sea risking the lives of persons distressed at the sea.

The known figures are significant in this respect. According to the statistical reports of the Turkish General Staff, 104,574 irregular migrants apprehended in Turkey during the period of January – December 2007 as a result of 1,075 interventions conducted by the Gendarmerie or by the Coast Guards.

According to the sources of Headquarters of the Turkish General Staff, 1,024 irregular migrants were apprehended while trying to depart from Turkey by sea (Aegean Sea) in 582 interventions conducted by the Turkish Coast Guard during the period of 1 January – 2 December 2007. The reported countries of origin of the persons apprehended are Afghanistan, Bangladesh, Eritrea, Iran, Iraq, Ivory Coast, Mauritania, Nigeria, Palestinians, Rwanda, Somalia, Sudan, Syria, Turkey, Uganda, and Ukraine.

In 2007, the Turkish authorities forcibly returned 194 persons who wanted to apply for asylum after being apprehended by the security forces while trying to leave Turkey illegally. A key issue is ensuring prompt and unhindered access to asylum applicants, refugees, returnees (including in detention and borders) by UNHCR representatives, as well NGOs helping refugees. This is a prerogative of UNHCR that must be respected by the Government of the Republic of Turkey in the joint efforts of protecting refugees within the broader migration movements. The practice in this respect requires dramatic improvement.

There is also a visible problem of secondary movement of asylum-seekers from Turkey towards the Republic of Cyprus through the territories of the self proclaimed
North Cyprus controlled by the Turkish army. As visible in the Illegal Immigration Statistical Data released by the Republic of Cyprus (Department of Aliens Police and Immigration) for the period of 01 May 2007 to 30 April 2008 there were 5,710 documented illegal entries through the Green Line dividing the Republic of Cyprus. There were 3,470 persons among apprehended foreigners who applied for asylum entering in the territory controlled effectively by the Republic of Cyprus. According to Cypriot Police there were 2,683 asylum-seekers recorded whose access to the Green Line was possible due to the Turkish entry regulations (entry/exist stamps for Turkey, eventually visas issued for the North by the Turkish consular missions abroad). The European Parliament’s Committee on Civil Liberties, Justice and Home Affairs urged Turkey to undertake responsibility regarding the problem of illegal immigration in the Republic of Cyprus18.

Combination of pull and push factors
It is an obvious reality that the Republic of Turkey is regarded by many refugees as a place where they can take advantage of the resettlement programs administrated by UNHCR19. The period of 01 May 2007 to 30 April 2008 statistically is more likely to protect asylum-seekers and Refugees in Turkey. UNHCR, 27 August 2008. A separate unit created in 2004 at UNHCR Turkey which is only responsible of national capacity-building and asylum transition support. This unit was in charge of implementation of the refugee law courses. The project was realized in 2005 -2008 under financial support of the UK Migration Fund. A separate unit created in 2004 at UNHCR Turkey which is only responsible of national capacity-building and asylum transition support. This unit was in charge of implementation of the refugee law courses. The project was realized in 2005 -2008 under financial support of the UK Migration Fund.

Regrettably, the national asylum system is not synchronized with the resettlement programs of UNHCR. Persons, who do not qualify for resettlement and cannot return to the country of origin, are in the desperate factual and legal conditions in Turkey. Such individuals may be pushed by reality to attempt to leave the country illegally to seek asylum in the EU Member States.

The irregular departure scenario is embarked by some refugees who do not meet the criteria of the receiving countries and at the same time have no prospects for legal integration in the Turkish society. The bad reception conditions and lack of hope for any dignified solutions through the institutions responsible for asylum policy in Turkey is at the heart of irregular secondary movements phenomenon.

1 In 1967 Turkey announced that “The instrument of accession stipulates that the Government of Turkey maintains the provision of the declaration made under section B of Article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights then those accorded to Turkish citizens in Turkey.” www.unhcr.org

2 Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration, March 2005; Assessment of Progress Made towards Specific Agenda for Protection Objectives, MOI document, 15 August 2008.

3 ibid

4 Background Note on Protection of Asylum-Seekers and Refugees in Turkey, UNHCR, 27 August 2008.

5 A separate unit created in 2004 at UNHCR Turkey which is only responsible of national capacity-building and asylum transition support. This unit was in charge of implementation of the refugee law courses. The project was realized in 2005 -2008 under financial support of the UK Migration Fund.

6 Turkish administrative law system shows significant influence of the French system. There is still no uniform administrative procedure. However the general principles of the administrative law are being defined in the concrete manner by the administrative courts. See more in: Esin Orucu, Conseil d’Etat: The French Layer of Turkish Administrative Law, published in The International and Comparative Law Quarterly, Vol. 49, NO. 3, (July, 2000) pp. 679 - 720.


10 Source: Background Note on Protection of Asylum-seekers and Refugees in Turkey. UNHCR Representation in Turkey, 27 August 2008.


15 Paramanathan v. Germany – Application No. 12068/86.

16 Source: Turkish General Staff Official Web Site http://www.tsk.mil.tr

17 Background Note on Protection of Asylum-seekers and Refugees in Turkey. UNHCR Representation in Turkey, 27 August 2008.


19 [http://cts.vresp.com/c/?AsylumAccess/4108b60ee9/019ccbf1b7/741924e0c4], UNHCR statistically is more likely to protect asylum-seekers than governments.