Toward a New Asylum Regime in Turkey?

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Abstract: Although Turkey is party to the 1951 Geneva Convention Relating to the Status of Refugees, it extends its protection only to refugees with ›European countries of origin.‹ Under this regulation, Turkey grants only ›temporary asylum‹ to non-European refugees until the United Nations High Commissioner for Refugees (UNHCR) resettles them to a third country. In this fragmented configuration, refugees in Turkey occupy ambivalent spaces in-between national and international bodies of law, while navigating both the multiplicity of asylum authorities and the sophisticated techniques meant to evaluate their asylum claims. In line with Turkey's European Union accession, the Turkish government has recently attempted to restructure the country's migration/asylum regime, aiming to provide better protection to refugees in accordance with international human rights standards. This article critically examines the recent changes towards a) standardizing and systematizing the legal and administrative asylum procedures, and b) civilianizing the migration/asylum management that used to be coordinated largely by the police. We argue that, on the one hand, Turkey's asylum regime continues to give rise to uncertainty, unpredictability, and improvisation and, on the other hand, it presents a striking continuity with the previous regime in that it prioritizes securitizing migration/asylum management over ensuring the rights and protections of refugees.

Keywords: migration/asylum management, securitization, uncertainty, state of emergency, Turkey

The asylum regime in Turkey is not a homogenous entity, but rather a complex constellation of local, international, and transnational actors, laws, and policies. As European countries have taken increasingly harsh measures to prevent migration from the Middle East, Africa, and Asia, Turkey has become both a) a transition country for displaced refugees who, trying to make their way West, are waiting in Turkey with unpredictable legal status for an undetermined time period, and b) a transnational legal and humanitarian hub where multiple asylum authorities operate simultaneously. Although Turkey is one of the original signatories of the 1951 Geneva Convention Relating to the Status of Refugees, it retains a »geographical limitation« (Kirişci 1991) to the Convention, applying restrictions on non-European asylum applicants' right to seek protection. In line with the ›geographical limitation,‹ which creates a so-called »parallel track« (Zieck 2010) or »dual« (Biehl 2009) asylum system, the Turkish authorities grant non-European asylum applicants the status of ›conditional refugee,«

enabling them to temporarily reside in Turkey; it is the United Nations High Commissioner for Refugees (UNHCR) that grants them the status of ›refugee,‹[1] which ensures their right to seek resettlement in a third country that is willing to receive them (Biehl 2009; Kirişci 1991, 1996; İçduygu/Yükseker 2010).

The breadth and complexity of actors, laws, and policies in Turkey's asylum landscape have substantially broadened in recent years. With support from the UNHCR, the Association for Solidarity with Asylum Seekers and Migrants (ASAM), was established in 1995; it is Turkey's first non-governmental organization (NGO) dealing solely with refugee-related issues (Kirişci 2012: 69). Since 2013, ASAM has worked as UNHCR's implementing partner, registering refugees and settling them into refugee settlement cities (known as ›satellite cities‹). Additionally, ASAM performs an intermediary role between refugee groups, Turkish authorities, and national and international NGOs.

Furthermore, in line with Turkey's European Union accession, the Turkish government has attempted to restructure the country's migration/asylum regime[2], aiming to provide better and more effective protection to refugees and migrants in accordance with international human rights standards. Accordingly, it has set up the Directorate General of Migration Management (DGMM), under the Ministry of Interior, to civilianize Turkey's migration/asylum management[3], which used to be coordinated largely by special police units called the Foreigners' Police. The DGMM has recently begun to implement Turkey's first asylum and migration law, the Law on Foreigners and International Protection (LFIP), which came into force in April 2014.

Although it is beyond the scope of this article, the ›temporary protection‹ procedures directed at Syrian refugees have further complicated Turkey's asylum terrain. Syrian refugees are neither registered by UNHCR nor offered ›conditional refugee‹ status by Turkey. Instead, the Turkish state grants them ›temporary protection,‹[4]

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1 | We have mostly used the term ›refugee‹ for both groups throughout the article partly in order to challenge the sovereign taxonomies created by the legal terminology of asylum regimes and partly because we believe that every human being has the right to protection regardless of the legal identification status they have.

2 | Although scholars have often distinguished migration and asylum both legally and analytically, we use ›migration/asylum‹ to indicate that the Turkish state does not have separate systems for migration and asylum.

3 | We use the phrase ›migration/asylum management‹ to describe how governmental bodies render the phenomenon of human mobility a problem that needs to be managed within a global system of power and control.

4 | For more details: goc.gov.tr.

which provides them access to public services such as education and health care. After they register with the newly established DGMM, Syrian refugees can live in any city that they like, or can settle in camps that are constructed specifically for Syrian refugees and run by the Disaster and Emergency Management Presidency (DEMP).

In this article, we will examine Turkey's recent attempts to reconfigure and consolidate its migration/asylum regime. In the first section, we will present a brief history of Turkey's contemporary migration/asylum regime. In the next section, we will chart Turkey's complex asylum landscape and introduce the dual asylum system that has shaped the terrain upon which refugees in Turkey file their asylum claims and wait until their resettlement into a third country. On the one hand, we will discuss how, despite the new law's aim to systematize and standardize migration/asylum management, Turkey's migration/asylum regime continues to be shaped by multiple asylum actors and their incomplete, unpredictable policies and practices; on the other hand, we will look at the novel indeterminacies and ambiguities the implementation of the new law has introduced. In the third section, we will analyze the recent attempts at establishing a civilian migration/asylum regime for providing better protection to refugees in line with international human rights standards. We will explain how the new migration/asylum regime is, quite paradoxically, emerging in tandem with the increased securitization of the transnational migration/asylum, severely undermining the new law's potential to improve the rights and protections provided to refugees and migrants. In the final section, we will explore how the current state of emergency, implemented in the wake of the military *coup* attempt of July 2016, has affected the migration/asylum regime in Turkey.

We approach the new asylum law as a »semi-autonomous social field« (Moore 1973), actively produced, interpreted, and negotiated by various actors involved in asylum processes. Because refugees' everyday lives and their temporal experiences of waiting in Turkey are largely shaped by these multiple migration/asylum authorities and their shifting and, at times, contradictory policies and practices, we deliberately chose to present a »thick understanding« (Albahari 2015: 26) of relevant actors, institutions, and policies. In doing so, we keep in mind Maurizio Albahari's warning that in offering a meticulous account of migration, contexts, situations, relations, and mechanisms, they are »not accessory background and minor details,« but, rather, constitute the very fabric of sovereignty — be it national, regional, or transnational — and the human lives it claims to protect (ibid.: 10). Invoking Bruno Latour's insightful argument that the distinction between description and explanation is often a false dichotomy (ibid.: 137), Albahari argues that presenting a »rigorous and honest description [of contexts, situations, relations, and mechanisms] *is* analysis« (ibid.: 25). In the same vein, we contend that investigating the complex and shifting asylum

terrain in Turkey demands, before anything else, a ›rigorous and honest description,‹ which diachronically traces the old and newly emerging migration/asylum agencies, changing asylum laws, and ongoing reconfigurations of legal and administrative practices.

The data on the recent structural changes in Turkey's migration/asylum regime was obtained from our research trip to ASAM's headquarters in Ankara in December 2016, where we interviewed two coordinators and three experts from the Registration and Protection units.[5] In addition, we interviewed three asylum lawyers in May 2017 about legal changes after the implementation of the new asylum law. The data on the legal and administrative aspects of the asylum regime prior to these recent changes was gathered during our previous research trips to the UNHCR's headquarters in Ankara in 2014, and to local ASAM offices and the Foreigners' Police offices in Ankara, Kayseri, Denizli, and Van between 2014 and 2016. We both have been working on various aspects of the migration/asylum regime in Turkey since 2012. Therefore, our analysis also deeply benefits from our long-term engagement with different refugee and migrant groups (e.g. Syrian refugees, LGBTI refugees, unaccompanied minors, and migrant domestic workers) and multiple migrant rights and advocacy groups operating in different cities.

A Brief History of the Contemporary Asylum Regime in Turkey

Turkey is an original signatory to the 1951 United Nations Convention Relating to the Status of Refugees. In 1961, it ratified the Convention and later its 1967 Protocol by adding an optional »geographical limitation, extending its protection only to refugees from Europe.«[6] Until 1994, the UNHCR was singularly responsible for evaluating refugees' asylum claims and resettling them into third countries. In 1994, with the arrival of a considerable number of refugees fleeing Iraq, the Ministry of Interior passed Turkey's first national legislation pertaining to the treatment of asylum seekers. Accordingly, Turkey started to grant temporary asylum statuses to non-European refugees until the UNHCR would resettle them into a third country willing to receive

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5 | We had tried to conduct research at the UNHCR as well; we used our personal and official contacts and managed to reach to UNHCR staff. However, we never received any feedback, negative or positive, from them over the course of six months.

6 | In addition to Turkey, only two other states opted for this geographical limitation, specifically the Democratic Republic of Congo and Madagascar.

them, such as the United States or Canada (Kirişci 1991, 1996; İçduygu/Yükseker 2010). Scholars have pointed out that the 1994 Regulation was informed by the arrival of refugees from Iraq, which »accelerated [Turkey's] security concerns« (Biner 2014: 83). While Kirişci (1996: 294) states that it suggested Turkey's desire to hold control over refugee status determination, Biehl takes this analysis one step further, by arguing that the 1994 Regulation may be seen »as the first marker of the ›migration securitization‹ approach in Turkey« (2009: 4).

The 1994 Regulation has created a so-called »parallel track« (Zieck 2010) or »dual« (Biehl 2009) asylum system, which includes not only a double asylum seeking procedure, but also a double terminology (Biner 2014: 88). First, applicants are supposed to file their asylum claims with both the Turkish authorities and the UNHCR. Second, although they use the same criteria to evaluate asylum claims (i.e. whether there is a »well-founded fear of persecution« based on one or more of the five grounds stated in the 1951 Convention), the Turkish authorities grant non-European applicants ›asylum seeker‹ status (thus the right to temporarily reside in Turkey), while the UNHCR grants them ›refugee‹ status (thus the right to seek resettlement in a third country) (Biner 2014: 87).

At the 1999 Helsinki summit, Turkey »reached a turning point in [its] European Union accession bid« (Öner/Genç 2015: 27), and, as a result, started to implement new migration and asylum laws and policies in preparation for accession negotiations. Scholars argue that the post-Helsinki period can be described as the Europeanization or EU-ization of Turkey's migration/asylum regime (İçduygu 2007; Biehl 2009). In 2005, the Turkish government introduced a National Action Plan for Adoption of Acquis on Asylum and Migration, aimed at modernizing (i.e. Europeanizing) the existing legal structure of migration and asylum. The 2005 National Action Plan was first applied through the 2006 Implementation Drive, which »introduced references to the European Union (EU) Directives as legislation that needs to be incorporated into to the national legal system« (Biner 2014: 83). The 2006 legislation expanded the asylum seeking procedure timeline from the first ten days following the applicants' entry to an unspecified period of time. Moreover, it extended the Foreigners' Police units' legal authority, allowing them to process and evaluate asylum seekers' applications (ibid.: 83; Soykan 2014: 4).

Turkey's most recent attempt to reconfigure its migration/asylum regime in accordance with EU's migration and asylum laws was to prepare *The Law on Foreigners and International Protection* (LFIP),[7] which was enacted in April 2013 and has been

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7 | For English version: goc.gov.tr.

fully enforced since April 2014. Legal scholars, asylum experts, and human rights advocates alike cite the LFIP as the first law that regulates the asylum process and ensures the international protection of refugees in Turkey. The purpose of the law is to regulate the procedures on foreigners' mobility (entry, stay, and exit), as well as the scope and implementation of protection for asylum seekers (Article 1). More importantly, the law seeks to reform the entire structure of migration/asylum, as it aims to: provide better protection for refugees in accordance with international human rights standards; civilianize migration/asylum management, which used to be coordinated largely by the police; and standardize and systematize the legal and administrative asylum procedures.

A significant step towards the establishment of a standardized and civilian regime was the founding, in 2013, of a new migration/asylum authority, the Directorate General of Migration Management (DGMM), operating under the Ministry of Interior. The law recognizes the DGMM as the main authority charged with implementing the asylum law, registering refugees, and evaluating their asylum claims. The DGMM has, for now, taken over the responsibility of overseeing all matters related to asylum and migration from the Foreigners' Police. We should note here, however, that this new legislation has not yet managed to entirely eliminate the dual asylum procedures. Refugees still follow two asylum application processes — one with the UNHCR and its implementing partner, ASAM, and one with the DGMM. In the next section, we will describe the legal and administrative asylum processes in Turkey, while analyzing the efficacy of the recent attempts to systematize and standardize these processes.

›MAKE IT UP AS YOU GO‹: SYSTEMATIZING TURKEY'S ASYLUM REGIME

To become a recognized refugee in Turkey,[8] one needs to go through a lengthy and arduous process, which includes the stages of registration, refugee status determination, and resettlement. As regulated by the new asylum law, refugees entering Turkey need to apply to governorates, and they are informed about the date and place of the status determination interview during the registration (Article 69/5). At the same time as they register with state authorities, refugees must also apply to ASAM to file their

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8 | By using the term ›becoming,‹ we refer to a critical shift in refugee studies, through which scholars have turned the focus away from studying refugees as a generic, aggregate population, and refugeeness as an ontological given, to the *processes* and *relations* that generated a given group of refugees (Arendt 1951; Malkki 1995; Ong 2003; Peteet 2005).

cases. Since 2013, ASAM has worked as UNHCR's implementing partner, register-ing refugees and settling them in satellite cities. Any failure to register concurrently with both authorities jeopardizes a refugee's claim and can result in detainment and deportation by Turkish authorities. In Ankara, the first day at ASAM consists of a short ›pre-registration interview,‹ in which asylum applicants are assigned to one of the satellite cities, which are determined by the governorates. Although there are no formal grounds on which the governorates determine the list of satellite cities, one re-markable feature in determining satellite cities and distributing refugees among them is to settle refugees in small cities in the interior of the country. We were told at ASAM that settling refugees in the interior of the country rather than its coastal areas might be a way to prevent them from migrating ›illegally‹ to Europe. It should be added that, since most of the migration and refugee organizations are located in big cities like Istanbul and Ankara, settling refugees in small cities cuts also them off from support mechanisms and social networks.

After being assigned to their cities, refugees must register with the respective local DGMM; the DGMM has therefore becomes the ultimate Turkish authority in coordi-nating and monitoring all activities of the refugees in satellite cities.[9] Once relocated, refugees have to sign in regularly at the DGMM and cannot leave their city without travel permits issued by the DGMM. The main purpose of travel permits and regular check-ins is to regulate and control refugees' movements. Our previous fieldwork experiences with different refugee groups reveal that the issuance of travel permits and sign-in procedures are extremely arbitrary and unpredictable, since they differ not just from one city to another but also from refugee to refugee.

The settlement of refugees in satellite cities is just one form of compulsory disper-sal among many others used across the world, such as containing them in detention or deportation centers and refugee camps. Whether in the form of an isolated camp, a detention facility, or a satellite city, such dispersal policies serve to separate asy-lum seekers from support mechanisms and social networks, leaving them to survive on their own; and more importantly, they serve to control every aspect of refugees' daily lives (Agier 2011; Hynes 2011; Zilberg 2011). Although Turkey does not con-fine refugees in camps or detention centers, the strict control of refugees' freedom of movement in satellite cities through compulsory sign-ins and travel permits blurs the boundary between the camp and the city.

The second — and the main — part of the dual asylum system in Turkey is the sta-tus determination process. Both the DGMM and UNHCR conduct their own refugee

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9 | Coordinating and monitoring all activities in the satellite cities was under the authority of the Foreigners' Police prior to the LFIP.

status determination (RSD) interviews, aiming to understand the reasons of asylum and assess the ›credibility‹ and ›authenticity‹ of the applicant. Even though both institutions recognize the right to asylum, the DGMM only grants non-European applicants ›conditional refugee‹ status, and thus the right to temporarily reside in Turkey, while the UNHCR grants them ›refugee‹ status, and thus the right to seek resettlement in a third country.[10] Waiting times for the UNHCR's RSD process vary depending on UNHCR's human resources as well as the categorization of refugees according to their recognized vulnerabilities. In line with international guidelines, the UNHCR expedites the RSD process for ›vulnerable and sensitive cases.‹ Among them are children who are unaccompanied or separated from their parents or primary caregivers, persons with serious medical and psychological needs, single parents, and survivors of human trafficking, torture, and sexually based and gender-based violence. While vulnerable asylum applicants are usually granted refugee status in ›the first instance interview,‹ for those who fall outside of vulnerability categories, RSD processes often last for years, during which time their claims are evaluated with increasing scrutiny. Our long-term engagement with refugees living in multiple satellite cities shows us that usually cases are not followed up on a regular basis and refugees lack transparent and reliable knowledge about their cases.

Asylum seekers who are finally granted refugee status by the UNHCR face yet another lengthy and ambiguous process, namely the ›resettlement process,‹ which often spans over a year or more. The waiting period for resettlement greatly varies among different refugee groups, again, according to their vulnerabilities. To give one example that illustrates differential resettlement policies, the UNHCR expedites LGBTI refugees' resettlement to a third country (one to three years), whereas it has indefinitely suspended Afghan refugees' asylum claims.[11] The unpredictability and ambiguity of the resettlement process comes also from the fact that the third countries are under no legal obligation to accept asylum applicants for resettlement and are free to apply their own criteria for selection. Once an applicant is deemed eligible for asylum, the UNHCR refers his/her file to the embassies of the resettlement countries. To qualify for the third country's asylum requirements, refugees must undergo additional interviews and medical examinations by the third countries. Therefore, as Biner aptly points out, »the applicant once again finds him or herself in the position of

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10 | It should be noted here that positive RSD outcome rates are remarkably low. For instance, between 1990 and 2010 there were almost 77,400 asylum applications and just over 39,000 of them were recognized as refugees (for more details, see Kirişci 2012).

11 | Although it is beyond the scope of this article, how particular refugee groups have become ›vulnerable and prioritized‹ have yet to be addressed.

an in/eligible subject and often tries to rearrange his or her personal and professional profile to suit those of the proposed resettlement countries« (2009: 31). Indeed, as we were informed by the UNHCR and different ASAM branch offices, in the exact same words, »resettlement is not a right.« Therefore, even after being granted asylum, refugees might not be eligible for resettlement into a third country.

Once refugees complete all these complicated processes and eventually gain the right to resettlement, they must obtain a so-called ›exit permit‹ from the Turkish authorities, allowing refugees to exit Turkey for a third country for the purpose of resettlement. To be eligible for an ›exit permit,‹ the applicant must be recognized as a ›refugee‹ by the UNHCR and as a ›conditional refugee‹ by the DGMM. Furthermore, he/she must complete all sign-ins with the DGMM in their satellite cities. Indeed, during our previous research trips, we met several refugees whose plane tickets were postponed due to missing signatures and who had to wait as many additional weeks as required to complete their missing sign-ins. Additionally, asylum lawyers mentioned that DGMM's recent caseload leads to delays in the issuance of ›exit permits,‹ even for those who completed all required sign-ins, suspending the determination of their travel date.

Having analyzed the timeframe before the implementation of the LFIP and the DGMM, Kristen Biehl argued that »protracted uncertainty,« characterized by indefinite waiting, limited knowledge, and unpredictable legal status, is a primary characteristic of Turkey's asylum regime, governing the everyday lives of refugees and shaping their future orientations (2015: 69). We contend that Biehl's argument continues to mark Turkey's asylum landscape despite its recent restructuring, since the above-described asylum processes are best characterized by their lengthy, arduous nature on the one hand, and their unpredictability and ambiguity on the other. The main reason for the continuous uncertainty is that the new legislation does not lift the »geographical limitation« that Turkey brought to the 1951 Convention (Soykan 2017: 69). Thus, the new regime continues to embrace the dual asylum procedures, in which non-European refugees' asylum claims continue to fall under the mandate of the UNHCR and its domestic implementing partner, ASAM; Turkey's new migration/asylum authority, the DGMM; and third countries' domestic migration/asylum laws. In this fragmented arrangement of the transnational asylum regime, refugees in Turkey still occupy uncertain spaces between national and international bodies of law, continuing to navigate both the variety of asylum authorities and the sophisticated techniques meant to evaluate their asylum claims.

It should be noted here that although it has been more than three years since the LFIP was passed, Turkey's migration/asylum regime has not yet been completely reconfigured, as the government's attempts to establish a standardized and central-

ized migration/asylum regime is ongoing. Our interlocutors at ASAM, along with asylum lawyers, all agreed on the necessity of a standardized and centralized migration/asylum regime in Turkey. Indeed, they argued that particularly the registration of refugees should be done by state authorities for an important reason: the Turkish government, the UNHCR, and ASAM's data on asylum seekers in Turkey do not always match, and this statistical confusion creates grave problems during the issuance of ›exit permits,‹ Furthermore, asylum lawyers we interviewed pointed out that there have been numerous asylum cases that were recognized by the UNHCR but had been rejected by the DGMM — leaving refugees stranded in Turkey for an undetermined time, with no clearly defined legal status and without proper rights and protections.

Our interlocutors believed that registration and RSD procedures headed by a single agency would put an end to these discrepancies between different asylum authorities. However, they were also deeply concerned that the DGMM would be unlikely to share its data with UNHCR and ASAM in an attempt to establish itself as the single national authority in managing displaced populations. Second, they mentioned that the DGMM has also sought to conduct RSD interviews itself, reducing UNHCR's scope of authority solely to the resettlement of refugees to third countries. ASAM staff and asylum lawyers found this problematic since, they argued, the DGMM suffers from technical incompetence, as it does not have qualified personnel. They drew attention to the fact that the DGMM recruits its employees based on the test scores they get in the Public Personnel Selection Examination. As a result, the majority of DGMM employees are young and incompetent civil servants, who have neither work experience nor knowledge in matters of migration and asylum, and who, most of the time, have language barriers. Asylum lawyers worried that the DGMM personnel would be likely to conduct unfair and ineffective RSD interviews, as they do not have expertise on the country of origin necessary to evaluate the five grounds of persecution — race, religion, nationality, membership in a particular social group, and political opinion — listed in the 1951 Convention.

In addition to lack of expertise, ASAM staff and asylum lawyers alike emphasized that DGMM personnel is not appropriately sensitive to the ›vulnerable refugee groups.‹ Although the UNHCR has held information and sensitivity trainings at the DGMM branch offices to explain its own guidelines for working with vulnerable refugees, it is not clear whether the DGMM will continue to implement UNHCR's guidelines or it will bring its own criteria to interpret ›vulnerability.‹ Of critical importance here is that the civil servants at the DGMM are likely to rely on their own everyday reasoning, affective reactions, practical concerns, and moral and political positions in RSD processes to decide who qualifies as an ›authentic‹ refugee, a ›vulnerable‹ case, or a ›victim‹ of violence to determine eligibility for asylum and aid

and support services. Second, since neither the Turkish constitution nor the LFIP legally recognizes gender identity and sexual orientation, another important question is whether and how the DGMM will conduct the RSD interviews with LGBTI refugees. Nonetheless, our interlocutors from ASAM believed that, if and once the DGMM becomes the sole authority, because the UNHCR will continue to resettle refugees to the third countries, it is likely that the UNHCR will still retain a certain amount of control over the RSD process, at least for ›vulnerable and sensitive cases.‹

The sole fact that all this insider information about the possible future of Turkey's migration/asylum regime relies on guesses, speculations, and rumors speaks to how the ongoing restructuring has indeed introduced novel ambiguities and uncertainties to the asylum procedures, not only for refugees but for the actors surrounding the asylum procedure themselves. An anecdote from our visit to ASAM headquarters is illustrative of this growing uncertainty: we were shown the hallway designated for RSD interviews. The layout of the interview rooms was in line with UNHCR's guidelines; the rooms were small and well protected with security cameras and panic buttons, and they were separated from each other to ensure that asylum seekers could communicate with ASAM staff in confidentiality. Our guide remarked that the DGMM plans to move into the ASAM's headquarters: »We don't know how we will all fit here when they come,« she said jokingly; »We don't know if they want to use some of these rooms for registration or for interviewing refugees. We don't even know what ASAM's role will be then.«

The lack of information and clarity about one's roles, duties, and responsibilities is not limited to the relation between the DGMM and ASAM; rather, our research reveals that it characterizes the entirety of the recent migration/asylum regime in Turkey. The new legislation holds responsible numerous state actors to provide refugees with more effective and better protection and access to healthcare, education, shelter, and legal assistance. Among them are Ministry of Health, Ministry of Education, Ministry of Family and Social Policies, and the Bar Association. However, ASAM staff and asylum lawyers alike noted that, although the LFIP passed three years ago, none of these actors have yet a clear idea of what their responsibilities and duties are in the field of migration/asylum. One lawyer pointed out that the government neither informed these actors about their new responsibilities, nor conducted any preliminary preparation for how to coordinate them or how to supervise if and how they implement the law. Another lawyer argued that the new law was enacted with the mentality of »make it up as you go« *(kervan yolda düzülür),* giving rise to improvisation, unpredictability, and irregularity. ASAM coordinators remarked, quite discontentedly, that in addition to its official roles, ASAM has had to play unofficial roles too in order to make this uncoordinated and fragmented asylum regime work.

First, ASAM must bridge these multiple actors by facilitating an all-encompassing coordination between them and by informing them about each other's operations. Second, ASAM must remind them of their duties and responsibilities as defined by the LFIP. The labor that ASAM's staff pours into this kind of bridging and informing work is striking; they seem to spend more time making phone calls to these actors to »push them to do their work,« rather than directly working on refugees' cases.

All our interlocutors were in favor of a more systematized regime, for they found the number of actors, their lack of expertise and experience, the lack of coordination between them, and the unpredictability of the roles they play (or fail to play) highly problematic. Taken together, this fragmented and ambiguous structure creates confusion, which, in turn, misdirects and/or misinforms refugees, sometimes even amounts to jeopardizing their asylum cases and hindering their access to rights and protections.

PROTECTING THE STATE(S) FROM REFUGEES

We passed through barbed-wired, fortress-like walls and took the entrance designated for staff and visitors at ASAM's headquarters in Ankara. Refugees who come to ASAM for registration take the other entrance gate on a parallel street, easily recognizable by the long queues, and sometimes by the demonstrations held by refugees, in front of it. Our guide offered us the ›package tour,‹ given to all visitors ranging from researchers to EU Human Rights Commissioners, walking us through all departments. As we climbed down stairs to the registration unit, we suddenly found ourselves in a spacious basement that lacked windows and was much colder than the other parts of the building. Here, refugees lined up on seats, waiting for lodging their first registration with ASAM.

The multiple guarded doors and restricted gates we passed through, as well as the private security guards standing at every corner in the designated reception and waiting area for refugees, were perplexing: it seemed that the recent attempts to bring Turkey's migration/asylum regime in line with international human rights standards were taking place in a context in which refugees were subject to increasing policing and surveillance. Indeed, Turkey's new migration/asylum regime seems to prove true to Didier Bigo's critique that while states often pay lip service to recognizing their commitments in the field of international protection and human rights, they continue to manage asylum and migration matters primarily through policing refugees and migrants (2009: 584). In line with Bigo's analysis of the securitization of Europe's migration and asylum policies, in the context of Turkey too, it is important to

acknowledge the tension between the new law predicated on the protection of foreigners, on the one hand, and security-driven policing and surveillance that continue to control refugees' bodies and movements, on the other.

Obviously, our discussion on policing and surveillance of refugees is not only informed by the heightened and visually striking security measures we encountered in ASAM's basement. It is deeply rooted in the overall structural problems that mark the institutionalization of the DGMM. It is noteworthy that although the police are no longer in charge of asylum and migration matters, the act of policing refugees' movements itself has remained intact. Accordingly, it is the DGMM that now manages the registration of refugees and their regular sign-ins, as well as the issuance of permits they need to leave their respective satellite cities. This indicates that the attempts at civilianizing Turkey's migration/asylum regime do not necessarily put an end to the policing and securitization of asylum matters.

It would be highly misleading to assume that civilianization of migration/asylum regime would automatically bring better treatment of migrants and refugees. However, establishing a civilian migration/asylum institution is indisputably an important step in ensuring refugees' right to protection, since, first and foremost, it ceases to treat refugees and migrants as criminals. Yet, ASAM staff and lawyers drew attention to the continuing influence of the police in Turkey's new migration/asylum regime that claims to be civilian. First, since DGMM officials are not knowledgeable and experienced about migration/asylum management in Turkey, police officers from the Foreigners' Police have been temporarily assigned to the DGMM to offer training and consultancy to the new employees. One lawyer remarked that although police officers have lower ranks than DGMM officials (who started their positions as ›experts‹), they nonetheless act like chiefs and mentors, transferring former asylum practices to DGMM officials »as if [they are] passing on a tradition to the next generation.« However, these training and consultancy sessions have not been and are not supervised, and thus their quality remains entirely subject to individual police officers' knowledge and experience, as well as their personal and political stance on asylum issues.

Second, the asylum lawyers mentioned a worrisome development: some refugees are being assigned numerical codes, which are transmitted to the DGMM's database from the Directorate General of Security. Asylum lawyers did not know when, why, and by whom these codes were assigned, what they stand for, and what their purposes are; they came to learn about them only by coincidence while following up on several detention and deportation cases at the DGMM. They believed that these codes must have been determined through collaboration between Turkey's National Intelligence Organization, the Directorate General of Security, the DGMM, and the intelligence

services in the refugees' countries of origin. As lawyers have remarked, the main problem here is that these arbitrarily and surreptitiously assigned codes categorize certain refugees — even infants — as »security threats,« flagging them as »terror suspects,« and, thus, justifying their unlawful detention and deportation.

Indeed, one important change the new law brings for ensuring refugees' right to protection is to define and regulate the duration and conditions of detention, which were not clearly defined prior to the LFIP.[12] Recognizing the principle of *non-refoulement*[13] in the new law marks an important turn towards the protection of foreigners against the possible infringement of human rights violations. However, the LFIP includes legally ambiguous definitions in the parts that outline the conditions for deportation. For example, it states that those who »pose a threat to public order or public security or public health« (Article, 54/2) will be subject to deportation, but it does so without specifying who, and according to what criteria, will decide what counts as such threat. These empty and vague phrasings give enormous discretionary powers to the administrative units, which can detain or deport anyone (even those who have been granted international protection, by first canceling their statuses) (Görendağ 2016). Furthermore, judicial supervision over these decision-making processes is completely nullified by the LFIP. Judicial mechanisms only come into play during the appeal after the administrative units decide to detain or deport an individual.

It is noteworthy that the Foreigners' Police governed Turkey's migration/asylum regime for decades on the basis of administrative discretion and without proper institutional capacities or judicial supervision. It seems that although the new law replaced the Foreigners' Police with the DGMM, the DGMM's continuing collaboration with the Directorate General of Security indeed engendered a »mutant structure, civilian in itself, but at the service of the police force,« as one lawyer sarcastically commented. Furthermore, ASAM staff claimed that civil servants at the DGMM are »paid for implementing the international refugee protection law, and yet they think their job is to protect the Turkish state from refugees.« Therefore, the common conclusion at ASAM was that although the new system enlarged the scope of refugees' right to protection, the DGMM's alarming discretionary practices of detention and deportation in tandem with the lack of judicial supervision often violate this right.

Critical security scholars have long showed the mutually reinforcing relationship between detention and deportation of refugees and sovereignty — be it national, regional, or transnational (Albahari 2015; Bigo 2009; De Genova/Peutz 2010). Fur-

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12 | For more details, see Soykan 2017.

13 | Article 4 guarantees the protection of refugees from being expelled to places where their lives are in danger.

thermore, Albahari rightly argues that deterring, detaining, or deporting migrants and refugees without the need to document or justify such practices »stands as a measure and a constituent of sovereign power« (2015: 134). In the same vein, we contend that the arbitrarily assigned security codes, ambiguously codified deportation policies, and the lack of judicial supervision suggest that the new migration/asylum regime continues to be concerned more with consolidating Turkey's sovereignty than ensuring the protection of refugees.

In addition, the new migration/asylum regime also serves to fulfill EU Member States' desire to »externalize migration control tools and restrictive asylum policies to neighboring countries in order to raise the borders of the EU against irregular migration« (Soykan 2017: 73). Through its relationship to the EU, Turkey has become a buffer state that is responsible for protecting EU's external borders by keeping refugees — particularly Syrians — within its own borders. According to the EU-Turkey deal signed in 2016, Turkey agreed to guarantee that refugees would be registered, kept within its borders, and given access to public services. As of June 2017, Turkey has completed a three-meter high and 650-kilometer long wall on its border with Syria, and President Erdoğan has announced that similar walls would be constructed along the Iranian and Iraqi borders (Rudaw 2017). On the other hand, the EU side agreed to contribute to strengthening the Turkish Coast Guard and its capacity to prevent refugees from crossing the border to Europe. Furthermore, the EU also committed to dispatch a FRONTEX liaison officer to Turkey to enhance the exchange of information and experience (Ruhrmann/FitzGerald 2016: 13).

EU's and Turkey's security agendas, novel border control policies and technologies, and increased deterrence, detention, and deportation practices reveal that the new migration/asylum regime in Turkey is emerging, quite paradoxically, not in line with international human rights standards, but in tandem with national, regional, and international security concerns. Needless to say, this severely undermines the new legislation's potential to improve the rights and protections provided to refugees and migrants. Furthermore, these measures taken to increase the securitization of borders force refugees to attempt even more dangerous journeys, instead of protecting them.

ASYLUM MANAGEMENT IN THE STATE OF EMERGENCY

On 15 July 2016, select elements of Turkey's military attempted a *coup* against the country's elected Justice and Development Party (AKP) government. Five days after the foiled *coup* attempt, on 20 July, the government imposed a state of emergency to

crack down on a network supposedly linked to Fethullah Gülen[14], who was accused of orchestrating the military *coup*. The state of emergency, still in effect as we write this article, allows the government to bypass the parliament when drafting new laws and issuing emergency decrees. The emergency decrees written so far have resulted in the restriction of rights and freedoms, the arrest of over 40,000 people, 100,000 civil servants getting fired, and the shutdown of hundreds of media outlets and associations that allegedly have ties to terror organizations. While President Erdoğan emphasized that the state of emergency's sole purpose was »to remove swiftly all the elements of the terrorist organization involved in the *coup* attempt« (Yeğinsu 2016) the government seems to use the emergency rule to also criminalize, silence, and eradicate other opponents, including pro-Kurdish, Alevi, LGBTI, feminist, and leftist politicians, academics, journalists, and activists.

The targeting of civil society by the AKP government, particularly the shutdown of civil society organizations, has cut off asylum authorities like the UNHCR and ASAM from their prior civil society support and collaborations. For instance, two NGOs that were shut down by a November 2016 decree — the Children's Agenda Association *(Gündem Çocuk Derneği)*, which protects and advocates for children's rights and the Van Women's Association *(VAKAD)*, a local feminist organization aiming to eradicate discrimination and violence against women — were collaborators with ASAM, working to find practical solutions for children and women refugees. ASAM staff noted that in the absence of a well-established migration/asylum regime that would provide refugees with the necessary social, psychological, and financial support, such collaborations with rights-based civil society organizations have been one of the few available means to solve refugees' problems. By the same token, the shutdown of NGOs in the wake of the military *coup* attempt has made it difficult, if not impossible, for ASAM to provide refugees with various forms of help and the support they need. On the other hand, it should also be noted that ASAM has always closely collaborated with various state institutions and organizations, including the DGMM. After the enactment of the new asylum law, the DGMM and ASAM have run several joint capacity building and training workshops, and as we write this article, they have signed a »Cooperation Protocol,«[15] which is aimed to strengthen their relations and facilitate their collaborative works. It could be argued that its close relations and cooperation with state institutions have enabled ASAM to continue its

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14 | Gülen is the founder of the ›Hizmet‹ (Service) movement — a religious and social movement that has spawned think-tanks, businesses, and schools across the globe.

15 | For more details, see goc.gov.tr.

operations in the aftermath of the failed *coup* attempt, although losing its civil society partners have interrupted those operations to a great extent.

Given the lack of a coherent and standardized asylum regime with strictly defined roles and responsibilities, ASAM staff and lawyers used to primarily rely on their personal relationships and semi-institutional partnerships with particular individuals in units of the Foreigners' Police, the DGMM, governorates, and municipalities in satellite cities. However, many civil servants and police officers, with whom our interlocutors previously worked, were dismissed from their positions during the post-*coup* state of emergency. Losing these key personal contacts has significantly slowed down ASAM's and lawyers' works. ASAM coordinators argued that, because of the surveillance atmosphere created by the post-*coup* emergency rule, civil servants in key national migration/asylum institutions »have become afraid of their own shadows.« Since civil servants are afraid of and hesitant to take any individual initiatives and make decisions, certain legal and administrative practices have slowed down, if not completely stopped. Issuing identity cards for refugees is one of these practices that have been disrupted during the state of emergency. This, as ASAM staff have pointed out, has created a significant non-registration problem, which, in turn, has prevented refugees from accessing their already limited rights and benefits.

Domestic NGOs and public institutions, however, are not the only ones adversely affected by emergency rule. The AKP government has emphasized from the beginning that the *coup* attempt was not executed just domestically, but rather orchestrated by ›the foreign powers.‹ As our interlocutors at ASAM stated, in tandem with the use of ›the foreign powers‹ rhetoric, a widening web of suspicion towards international organizations has started to dominate the migration/asylum regime in Turkey. The first observable impact is the marginalization of international non-governmental organizations (INGOs). Since January 2017, the Turkish government has ended the activities of four INGOs operating in Turkey on issues concerning refugees on the grounds of ›national security,‹ including the US-based Mercy Corps and Business Software Alliance Incorporation, the Italy-based Coordination of the Organizations for Voluntary Service, and the UK-based International NGO Safety Organization. The government has further scrutinized domestic NGOs' collaborations with foreigners, such as restrictions on employing foreigners and making international money transfers (Stockholm Center for Freedom 2017). As a result, ASAM staff reported, like the loss of domestic partners and collaborators, emergency rule has made it difficult for ASAM and the UNHCR to continue their collaborations with INGOs.

The state of emergency has also further heightened the securitization of migration and asylum matters. With *Decree Law No. 676,* in October 2016, the government expanded the scope for deportation. Accordingly, anyone who has applied for in-

ternational protection in Turkey, including even those who have received refugee, conditional refugee, or temporary protection status already, can be deported if they are a »leader, member or supporter of a terrorist organization, or of a benefit-oriented criminal organization,« or »related to terrorist organizations defined by international institutions and organizations« (Görendağ 2016). Moreover, even if the person in question lodges an appeal against a deportation decision, the deportation will be executed without having to wait for a trial.

We argued in the previous section that although the new asylum law aims to safeguard refugees' right to protection, the DGMM's discretionary power in detaining and deporting refugees and the lack of judicial supervision indeed serve to protect Turkey's national interests, consolidating the state's sovereignty, while severely undermining refugees' right to protection. The frequent invocation of the ›national security‹ rhetoric under the state of emergency has exacerbated and justified these often-unlawful practices. Within this context, similar to other dissent elements of society in Turkey, migrants, asylum seekers, refugees and national and international bodies fighting for their rights have also been marginalized, criminalized, and ultimately silenced.

CONCLUSION

In this paper, we examined Turkey's recent attempts to establish a standardized and civilian migration/asylum regime, by exploring both the potentials and the limits of the new law, the LFIP, and the new migration/asylum authority, the DGMM. The LFIP did not lift the ›geographical limitation‹ that Turkey had brought to the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol (Soykan 2017: 69). Thus, the current regime continues to embrace the dual asylum procedures, in which non-European refugees' asylum claims continue to fall under the mandate of the UNHCR and its domestic implementing partner, ASAM, as well as with Turkish authorities, and third countries. In this complex and fragmented terrain, refugees in Turkey must continue to navigate a variety of asylum authorities, sophisticated techniques meant to evaluate their asylum claims, and numerous legal ambiguities ingrained in all stages of the asylum seeking process. Second, we argued that Turkey's ongoing attempts to restructure its migration/asylum regime have indeed littered the migration/asylum landscape with novel uncertainties and ambiguities. In the absence of properly defined roles and responsibilities, qualified and experienced personnel, and effective networks of coordination and information among

different actors surrounding the asylum process, Turkey's current migration/asylum management is marked by unpredictability, improvisation, and irregularity.

Furthermore, we suggested that while the new system replaced the Foreigners' Police with a new civilian institution, the DGMM, in an attempt to ensure refugees' right to protection, it has not put an end to the act of policing as such. We showed how, on the contrary, the new asylum law (the LFIP) and the new migration agency (the DGMM) treat foreigners as an administrative problem that should be dealt with through administrative measures, on the one hand, and as a security problem that should be controlled through harsh security measures, on the other hand. A careful analysis of the LFIP's implementation reveals that while the LFIP is meant to overhaul and reform Turkey's migration/asylum regime, current asylum management presents a striking continuity with the previous regime in that it prioritizes securitizing asylum matters over ensuring refugees' rights to education, health care, full economic, social, and political participation, and freedom from violence. We argued that, on the one hand, the DGMM's discretionary detention and deportation practices and strict border controls aim to consolidate the Turkish state's sovereignty by serving Turkey's national security interests; on the other hand, they aim to fulfill EU Member States' desire to externalize migration to neighboring countries and securitize its borders.

Finally, we examined how the ongoing state of emergency in Turkey has accentuated the ›national security‹ rhetoric and, in turn, both exacerbated and justified the often unlawful and violent practices of detention and deportation. It is important to emphasize that while the government has aimed to standardize and systematize asylum laws and procedures, emergency rule has created quite paradoxical consequences; the widening atmosphere of fear, surveillance, and suspicion, the marginalization and shutdown of existing important actors in the migration/asylum regime, and the imposition of radical changes in the governing structures have all exacerbated the existing unpredictability, ambiguity, and arbitrariness of Turkey's migration/asylum regime.

The enactment of a new asylum law and the establishment of a civilian asylum organization are undoubtedly important steps in standardizing Turkey's asylum procedures, bringing them in line with human rights standards, and safeguarding refugees' right to protection. However, it seems that refugees in Turkey continue to be caught between national and international bodies of law, pursuing their asylum claims under multiple authorities' highly arbitrary and scrutinized terms. Cut off from access to transparent and reliable knowledge about their asylum cases, refugees often establish alternative support and solidarity networks to inform each other about changing asylum laws and procedures, and prepare each other for RSD and resettlement interviews. Nevertheless, no matter how skilled they may be in navigating the law, the

variety of asylum authorities and the ambiguity built into the foundation of the entire migration/asylum regime make asylum laws and procedures elusive to refugees, ultimately obscuring their access to rights and protection.

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