UNIVERSITÉ DE TOURS

ÉCOLE DOCTORALE : Sciences de la Société : Territoires, Economie et Droit – SSTED - 617

ÉQUIPE de RECHERCHE : EA 7496 - Institut de Recherche juridique interdisciplinaire François Rabelais

THÈSE présentée par :

Hümeyra YILMAZ

soutenue le : **4 février 2021**

pour obtenir le grade de : **Docteur de l'université de Tours**
Discipline/ Spécialité : DROIT PUBLIC

Évaluation des lois fondamentales sur les réfugiés en Turquie du point de vue du genre et de leur pertinence pour le droit international

THÈSE dirigée par :
Mme ROMAN Diane — Professeure de droit public, Université de Paris I Panthéon Sorbonne

RAPPORTEURES :
Mme KIVILCIM Zeynep — Professeure de droit international public, Université Humboldt,Berlin
Mme TAXIL Bérangère — Professeure de droit international public, Université d'Angers

---

JURY :
Mme ABEREMANE Karine — Maître de conférences en droit public, Université de Paris Sarclay
« P. » M. CAHN Olivier — Professeur de droit privé et sciences criminelles, Université de Tours
Mme KIVILCIM Zeynep — Professeure de droit international public, Université Humboldt,Berlin
Mme ROMAN Diane — Professeure de droit public, Université de Paris I Panthéon Sorbonne
Mme TAXIL Bérangère — Professeure de droit international public, Université d'Angers

INVITEE :
Mme GOYER Christine — Représentante du UNHCR, Agence des Nations-Unies pour les Réfugiés de Pologne

to Royem, Aram Ronî and all the children in exile

Acknowledgements

My PhD study originally started in Diyarbakır in 2013. However; due to some political reasons in Turkey, I have proceeded with my PhD in France. This study is a result of hard effort continued for 8 years. It is without a doubt, this study would not be complete without the contribution and support of numerous people I mention below.

I would like to thank my esteemed supervisor Pr. Diane ROMAN who accepted my project and made my necessary corrections by reading my thesis over and over again. She helped me every part of difficulties I experienced due to some different methods in writing thesis between Turkey and France; to Dear Zeynep KIVILCIM who has supported me in a strong friendship connect at every stage from determining the subject of the research to guiding me when I do not know how to proceed; to Dear Karine ABDEREMANE, who has always been with me throughout the entire doctorate process, from my project application to the thesis jury; to other valuable jury members Mme GOYER, Mme TAXIL, M. CAHN for accepting to take part in my jury; to Pr. Nil Özçağlar TOULOUSE for all her support, to the Ezidi Kurds, they are the core factor to choose my subject area via raising my awareness in difficulties forced migration process; to my dear friend Esra ERIN and Hayriye KARA who have worked hard to provide the necessary connections for me to conduct NGO interviews; to all NGOs and their valuable employees who accept the interview request and make a significant contribution to working with their experience, to my dear friend Serhat ÖZHAN for his help with technical obtacles, to my dear sister Hülya DOĞAN ELIBÜYÜK for her help whenever I needed support, to my dear friend Ruşen IŞIK for her moral support, to my dear husband Erkan YILMAZ, who has always gave me strength to continue my thesis and my life in exile conditions, and my dear children, Royem and Aram Ronî, to my dear brother Saygun Bektaş DOĞAN, who listens to me at every difficult moment and comes to me whenever he finds an opportunity, to all the valuable PAUSE Committee, and Academics for Peace, France members who contributed to my academic education in France with their efforts and struggle for academics under threat and the University of Tours and the region Centre Val de Loire which financed this research.

Hümeyra YILMAZ

Tours, 2020

Résumé en Français

Les différences dans les caractéristiques physiques, sexuelles, d'âge, culturelles, ethniques, de couleur et religieuses des personnes ont entraîné la discrimination et l'exclusion. Cette discrimination se manifeste dans les politiques de l'État ainsi que dans tous les domaines de la vie quotidienne. La discrimination a été un domaine important des études universitaires avec ses différentes dimensions et types. Dans cette étude, la discrimination à laquelle sont confrontés les LGBTI qui sont exposés à la discrimination en raison de leur orientation sexuelle et de leur identité de genre différentes et les femmes encore opprimées en tant que second sexe pendant la procédure d'asile sont examinées.

Le phénomène de la migration est une réalité sociologique multidimensionnelle. On peut dire que le groupe le plus touché par les causes et les conséquences de la migration sont les groupes de genre tels que les femmes et les LGBTI. Les personnes LGBTI sont exposées aux abus et à la violence dans différentes aspects, tels que les violences sexuelles, physiques, psychologiques et économiques, tant aux frontières que dans les pays de transit ou de destination. La Turquie est l'un des pays où ces groupes sont sérieusement confrontés à de tels problèmes. Bien que la Turquie soit un pays où le nombre de réfugiés dépasse les cinq millions, les droits et libertés des réfugiés sont obérés par des motifs politiques. Les organisations internationales et l'UE l'ignorent afin d'accueillir davantage de réfugiés en Turquie.

Dans cette étude, les réglementations et pratiques juridiques de base relatives aux réfugiés en Turquie ont été évaluées en termes de critères de genre et leur compatibilité avec les principes et exigences du droit international a été examinée, grâce à une analyse du droit positif. La recherche a été enrichie par des entretiens avec 7 ONG qui travaillent pour les femmes et / ou les réfugiés LGBTI. La recherche entend ainsi évaluer non seulement la norme applicable, mais également les conditions de son application effective, au regard de la protection des droits humains des personnes LGBTI et des femmes réfugiées en Turquie.

Mots clés : Migration, Réfugié, Asile, EDPI, DGAM, LGBTI, Femme, Genre, Intersectionnalité

Summary in English

Differences in people's physical, sexual, age, cultural, ethnic, color and religious characteristics brought about discrimination and exclusion. This discrimination manifests itself in state policies as well as in all areas of daily life. Discrimination has been an important field of academic studies with its different dimensions and types. In this study, the discrimination faced by LGBTIs who are exposed it due to different sexual orientation and gender identity and women still oppressed as a second sex during the asylum process are discussed.

The phenomenon of migration is a multidimensional sociological reality. It can be said that, the group most affected by both causes and consequences of migration are gender groups such as women and LGBTIs. LGBTI people are exposed to abuse and violence in different aspects such as sexual, physical, psychological and economic violence both at the borders and in transit or destination countries. Violations of rights and discrimination experienced by women and LGBTI refugees are seen in pretty much all aspects of the world. Turkey is one of the countries that these groups face such problems seriously. Turkey, despite being a country where the refugees with as high a figure of more than five million, the rights and freedoms of refugees are determined by political motives. The international organizations and the EU ignore it in order to accommodate more refugees in Turkey.

In this study, the basic legal regulations and practices relating to refugees in Turkey were assessed in terms of gender criteria and their compatibility with the principles and requirements of international law was examined through an analysis of positive law. The research was enriched by interviews with 7 NGOs working for women and/or LGBTI refugees. In this way the research intends to assess not only the applicable standard but also the conditions of its effective application with regard to the protection of the human rights of LGBTI people and refugee women in Turkey.

Keywords: Migration, Refugee, Asylum, FIPL, GDMM, LGBTI, Woman, Gender, Intersectionality

Summary

INTRODUCTION 1

Part 1: Basic Principles of Refugee Law and Gender Equality in International Law 10

Chapter 1: Basic Standards on International Protection and Feminization of Migration 10

Section 1: Principles of International Protection and Refugee Law 10

Section 2: Securitization of Migration and Increasing Gender Visibility in the Migration Process 67

Chapter 2: Gender Equality in International Law Regulations 104

Section 1: International Conventions to Ensure Gender Equality 105

Section 2: International Principles and Standards for Gender Equality 157

Part 2: Gender Based Assessment of Turkey's Refugee Law and Experiences of Ngos in This Subject 196

Chapter 1: Assessment of Turkey's basic laws on refugees in terms of gender 197

Chapter 2: Role of NGOs in Migration and Gender Problem 250

CONCLUSION 308

APPENDICES 318

Bibliography 368

Abbreviations

ASAM	Association for Solidarity with Refugees and Migrants
CEDAW	Convention on the Elimination of Discrimination Against Women
CoE	Council of Europe
GDMM	General Directorate of Migration Management
ECHR	European Convention on Human Rights (full name: European Convention for the Protection of Human Rights and Fundamental Freedoms)
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
Ed.	Editor
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
FIPL	Foreigners and International Protection Law
GDMM	General Directorate of Migration Management
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBTI	Lesbian Gay Bisexual Transsexual Intersex
NGO	Non-Governmental Organization
No.	Number
OHCHR	Office of the High Commissioner for Human Rights
p.	Page
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization

INTRODUCTION

1. Human beings, coexisting as societal beings, had been confronted with incidents such as starvation, poverty, oppression, violence, terror, warfare, genocide, conflict throughout history. Such difficulties led people to move constantly from one location to another. Human mobility, which is explained broadly by the concept of "migration", sometimes occurs within the boundaries of the same country; and other times takes place at an international extent. In addition, it comes into existence in different forms, such as short-term or permanent movements and individual or group movements. In general, the reason motivating people for migration stems from the desire to attain a better and safer life. Even though the reasons and forms of it differentiate, migration has various effects on individuals and societies as well as States. Due to those effects, the political approach of receiving countries towards immigrants is determined by the concern that immigrants would impose themselves upon the society for they might become a social, economic, political, and cultural burden. Especially in the 2000s, there was an extensive increase in overall migration movements and request for asylum because of the increase in conflicts across the world, and of the U.S.A.'s interference in Afghanistan, and of the civil war in Syria.[1] Besides this massiveness, it is possible to say that immigration has evolved into a character based on asylum. What this transformation actually refers is that unlike voluntary migration based on economic motives, asylum implies forced migration in which individuals, who are under persecution because of their racial, religious, social, political, national, and gendered identities, are forced to leave their home countries.

2. Countries of destination, in order to avoid being affected by mass migration, are prone to adopt deterrent and impediment migration policies that tighten the conditions of entry into the territory and aggravate the living conditions via providing limited sustenance for those who were able to enter. The implementation of such policies can be exemplified as tightening legal regulations and practices regarding immigration, asylum, visa, passport, and residence permit, establishing joint border security units to preserve international border security, supplying countries of origin with economic incentives in exchange for

[1] For detailed information, see BAKLACIOĞLU, Nurcan, Özgür, *Uluslararası Sınırların Gölgesinde Mülteci Kadınlar*, İstanbul, Der Publications, 2017, p. 32

influx prevention, and widening the expulsion precaution. National security became a major source of concern specifically after the 9/11 Attacks in New York in 2001. The fact that national security was situated at the core of international relations and politics resulted in misemployment of the threat factor towards foreigners in a hate and intolerance instigative manner without making any distinction among being immigrant, refugee, trafficker, and terrorist. [2]

3. However, the preventive policies aimed at immigrants not only have failed to repress the influx but also prompted them to seek illegal ways. On these illegal and insecure migration paths, migrants are exposed to various crimes such as migrant smuggling, human trafficking and sexual slavery. In addition to that, they are being deceived by crime gangs or are losing their lives in accidents occurring because of unsafe conditions. Women, children and LGBTI comprise the group which is the most blighted by both causes and effects of migration. These disadvantaged groups, which are characterized as "weak", "desperate", "victim "in migration and asylum studies, are exposed to various types of abuse and violence such as sexual, physical, psychological and economic at checkpoints on borders as well as in countries of transit and destination. Most of the time, the abuse and violence are practiced by public officials or attendants of relief organizations in exchange for transition insurance, sustenance procurement, procedure completion, and medical and social benefits. "International woman trafficking, which organizes sexual exploitation and abuse such as forced marriage, marital rape, pornography and sexual slavery, and which operates within the national borders, maintains its continuity fundamentally via bribes and commissions paid to border security and customs officials."[3] That those groups, especially refugee women and children, are exploited in the labor market by having been made work with low wages for long-terms constitutes another problematic field. Migrants being forced to work under harsh conditions sometimes have to face troubles, such as having been made work illicitly or uninsured, being paid late, short-changed or not paid at all. Besides, woman migrant

---

[2] For detailed information, see KAPUR, Ratna, «The Other Side of Globalization The Legal Regulation of Cross-Border Movements », *Canadian Woman Studies les Cahiers de la Femme*, [online], 2003, Vol 22, No 3-4, p. 6-11, [consulted on 15.07.2020], https://cws.journals.yorku.ca/index.php/cws/article/view/6408/5596; YOUSAF, Farhan, Navid, «Forced Migration, Human Trafficking and Human Security », *Sage Journals,* [online], November 23, 2017, p. 212, [consulted on 04.07.2018], http://journals.sagepub.com/doi/pdf/10.1177/0011392117736309,

[3] BAKLACIOĞLU, N. *Uluslararası Sınırların Gölgesinde Mülteci Kadınlar*, above, p. 32

workers also constitute a significant section included in the part of migrants providing services of domestic labor, eldercare and childcare, entertainment, tourism, or prostitution[4]. Those are exactly the reasons why the subjects of migration and asylum process should be taken into consideration not as genderless abstract individual beings but as identities with a gender that have to encounter authentic gender-based difficulties. "As in the other fields of law, the necessity of analysis on the subject of migration and asylum with a gender perspective is an admitted fact within the international academic literature."[5]

4. Some of these are international organizations' decisions and recommendations to guide states to prevent problems such as gender-based problems and violence experienced by refugees. One of the most important decisions on this subject is General Recommendation No. 32 of the CEDAW Committee. The scope and purpose of the general recommendation are beside the general purpose of the Convention to guide States parties on how to address all aspects of their obligations under the Convention and assume their obligations to respect, protect and fulfill the rights of refugee, asylum-seeking and stateless women to non-discrimination and substantive equality, in times of peace, in situations of international and non-international armed conflict and in situations of occupation.[6] In addition, the UNHCR Recommendations on the gender problems of refugees since 1976 include important regulations.[7] Since then, UNHCR has made significant progress from improving the situation of women refugees to equally treated all genders. ECHR also explained in many of its decisions that gender discrimination

---

[4]KAPUR, R., «The Other Side of Globalization The Legal Regulation of Cross-Border Movements », above, p. 9, [consulted on 15.07.2020], https://cws.journals.yorku.ca/index.php/cws/article/view/6408/5596;

[5] KIVILCIM, Zeynep, «Yabancılar ve Uluslararası Koruma Kanunu ile Geçici Koruma Yönetmeliği: Toplumsal Cinsiyet Perspektifiyle Bir Değerlendirme », *Ankara University SBF Magazine*, [online], 2016, Volume 71, No. 3, p. 920, [consulted on 15.07.2020], http://dergipark.gov.tr/download/article-file/220351,

[6]For the full text of the CEDAW/C/GC/32 Recommendation, see, *Refworld*, [online], [consulted on 15.07.2020], https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/No.s/Women/WRGS/Report/TreatyBodies/7CEDAW.pdf&action=default&DefaultItemOpen=1

[7] For more information about UNHCR's Recommendations, see, *UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation*, UNHCR Women's Commission for Refugee Women and Children, New York, May 2002, p.108, [consulted on 15.07.2020], https://www.refworld.org/pdfid/48aa83220.pdf; *UNHCR's Commitment to Gender Equality from Women and Development to An Age, Gender and Diversity Approach*, UNHCR, [consulted on 15.07.2020], https://www.unhcr.org/56b478939.pdf,

against refugees, gender-based violence is a violation of the Convention. In its judgments on immigrants, the Court treats lonely children, women and LGBTIs as vulnerable groups, addressing violations against them mostly under Articles 3, 5, 8 and 14 of the Convention.[8] The court assesses whether or not people are persecuted for their sexual identity in their country of origin in cases related to different sexual orientations and the criteria for the punishment of gay acts as a crime.[9] The Council of Europe and the European Parliament are other international organizations that have conducted many studies on refugees' gender problems and equality.[10]

5. Apart from the work of international organizations, many NGOs, Research Centers, academics, writers, human rights defenders are also concerned with gender-related problems of refugees. Although it is not possible to take all of them one by one, we can give a few examples; "Women Refugees at Risk in Europe" report which was published in March 2016 by The Nobel Women's Initiative draws attention to many problems of women refugees.[11] The report includes issues such as impact of the refugee crisis on women, ensuring the safe passage of refugee women through Europe, spotlight on groups supporting women refugees in Europe. In the Human Rights Watch's "World Report 2020 events of 2019", there are data on the status of human rights in each country.[12] The report provides important information on freedoms, conflicts, pressures as well as women's rights, sexual orientation and gender identity, asylum seekers and refugees, the

---

[8] For more information about ECHR's Decisions, see, COUNCIL of EUROPE, *Guide on the case-law of the European Convention on Human Rights*, [online], published by Council of Europe/European Court of Human Rights, 30.04.2020, p. 39, [consulted on 15.07.2020], https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf,

[9]For the criteria of the ECHR, see, EDAL, «*Finland: Supreme Administrative Courts overturns rolling on asylum application on grounds of sexual orientation and gender identity*», [online], August 20, 2019, [consulted on 15.07.2020], https://www.asylumlawdatabase.eu/en/content/finland-supreme-administrative-court-overturns-ruling-asylum-application-grounds-sexual,

[10] For detailed information about some of their work on the subject, see, CoE, *Council Of Europe Gender Equality Strategy 2018-2023*, [online], published by Council of Europe, June, 2018, p.53, [consulted on 15.07.2020], https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1; *Handbook on European non-discrimination law*, [online], published by European Union Agency for Fundamental Rights and Council of Europe, February, 2018 edition, p. 300, [consulted on 15.07.2020], https://www.echr.coe.int/Documents/Handbook_non_discri_law_ENG.pdf,

[11] For the full text of the report, see, NOBEL Women's Initiative's Assessment, «*Women Refugees at Risk in Europe*», [online], March, 2016, p. 20, [consulted on 15.07.2020], https://nobelwomensinitiative.org/wp-content/uploads/2016/03/Opening-Borders-Report_FINAL_WEB-1.pdf,

[12]For the full text of the report, see, HUMAN Rights Watch, , «*World Report 2020*», [online], New York, Seven Stories Press, 2019, p. 652, [consulted on 15.07.2020], https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf,

status of the camps. UNHCR's report which dated December 2015 and titled "Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees" addresses many issues related to LGBTI refugees.[13] The aim of the report is expressed to produce durable solutions to problems related to the recognition of LGBTI refugees' status and discrimination they face.

6. There are also many academic studies addressing different gender-based aspects of migration and asylum, such as violence against refugee women, gender-based asylum applications, and the rights of LGBTI refugees. It is possible to give some examples of these such as the articles entitled "Refugee Woman: a dangerous label: Opening a discussion on the role of identity and intersectional oppression in the failure of the international refugee protection regime for refugee women"[14] by Eileen Pittaway and Emma Pittaway; "Comparative Analysis of Gender-Related Persecution in National Asylum Legislation and Practice in Europe"[15], "Women and refugee status: beyond the public/private dichotomy in UK asylum policy"[16] by Heavan Crawley; "Refugee Women: a Gendered and Political Analysis of the Refugee Experience"[17] by Agnes Callamard; "Gender, Sovereignty and The Rise Of A Sexual Security Regime in International Law And Postcolonial India"[18] and "The Other Side of Globalization, The Legal Regulation

---

[13] For the full text of the UNHCR's report, see, NATHWANI, Nishin, *Protecting Persons with Diverse Sexual Orientations and Gender Identities*, United Nations High Commissioner for Refugees, Geneva, December, 2015, p. 35, [consulted on 15.07.2020], https://www.refworld.org/docid/566140454.html,

[14]For the full text of the article, see, PITTAWAY, Eileen and PITTAWAY Emma, «Refugee woman': a dangerous label: Opening a discussion on the role of identity and intersectional oppression in the failure of the international refugee protection regime for refugee women», *Australian Journal of Human Rights,* [online], June, 2004, No 20, [consulted on 15.07.2020], http://classic.austlii.edu.au/au/journals/AUJlHRights/2004/20.html

[15]CRAWLEY, Heaven and LESTER, Trine, *Comparative Analysis of Gender-Related Persecution in National Asylum Legislation and Practice in Europe*, Geneva, EPAU, May 2004, p. 185, [consulted on 15.07.2020], https://www.unhcr.org/40c071354.pdf

[16]For the full text of the article, see, CRAWLEY, Heaven, «Women and refugee status: beyond the public/private dichotomy in UK asylum policy», [online], in INDRA, Doreen (editor), *Engendering Forced Migration: Theory and Practice,* New York, Berghahn Books, 2008, p. 424, Chapter: 17, [consulted on 15.07.2020], https://www.berghahnbooks.com/title/IndraEngendering

[17]For the full text of the article, see, CALLAMARD, Agnes, «Refugee Women: a Gendered and Political Analysis of the Refugee Experience», [online], in Daniele Joly (editor), *Global Changes in Asylum Regimes*, London, Palgrave Macmillan Publications, 2002, p. 137-153, [consulted on 15.07.2020], https://link.springer.com/chapter/10.1057/9781403914149_8

[18] For the full text of the article, see, KAPUR, Ratna, «Gender, Sovereignty and The Rise of a Sexual Security Regime in International Law and Postcolonial India», *Melbourne Journal of International Law*, [online], December, 2014, Volume 14, No 2, p. 1-29, [consulted on 05.05.2020],

of Cross-Border Movements"[19] by Ratna Kapur; "The Continuum of Violence Gender Perspective on War and Peace"[20] by Cynthia Covkburn; "Refugee Women in London: The Experiences of Somali Women" by Rosemary Sales, [21]; "Law on Foreigners and International Protection and Temporary Protection Regulation: An Evaluation with Gender Perspective by Zeynep Kıvılcım[22]; "Feminist Approaches to the International Law"[23] by Christine Chinkin; "Gendering the International Asylum and Refugee Debate"[24], "Sexual and gender-based violence against refugee women: a hidden aspect of the refugee 'crisis'"[25] by Jane Freedman; and the books entitled "Gender, War and Conflict, Feminist Theory of War" by Laura Sjoberg[26]; "Gender in Refugee Law from the Margins to the Centre"[27] by Efrat Arbel, Catherine Dauvergne, Jenni Milibank;

http://dspace.jgu.edu.in:8080/xmlui/bitstream/handle/10739/1117/GENDER%2c%20SOVEREIGNTY%20AND%20THE%20RISE%20OF%20A%20SEXUAL.pdf?sequence=1&isAllowed=y

[19] For the full text of the article, see, KAPUR, R, «The Other Side of Globalization The Legal Regulation of Cross-Border Movements », above, [consulted on 05.05.2020], https://cws.journals.yorku.ca/index.php/cws/article/view/6408/5596;

[20]For the full text of the article, see, COCKBURN, Cynthia «The Continuum of Violence a Gender Perspective on War and Peace», [online] in GİLES, Wenona and HYNDMAN Jennifer (editor), *Sites of Violence Gender and Conflict Zones*, Los Angeles, London: University of California Press, pp.24-44, [consulted on 15.07.2020], https://california.universitypressscholarship.com/view/10.1525/california/9780520230729.001.0001/upso-9780520230729-chapter-2

[21]For the full text of the article, see, SALES, Rosemary and GREGORY, «Jeanne Refugee Women in London: The Experiences of Somali Women», *Refugee, Canada's Journal on Refugees,* [online], 1998, Vol 17, No 1, pages 16-20, [consulted on 15.07.2020], https://refuge.journals.yorku.ca/index.php/refuge/article/view/21956

[22] For the full text of the article, see, KIVILCIM, Zeynep, «Yabancılar ve Uluslararası Koruma Kanunu ile Geçici Koruma Yönetmeliği: Toplumsal Cinsiyet Perspektifiyle Bir Değerlendirme », *Ankara University SBF Magazine*, [online], 2016, Volume 71, No. 3, pages 920, [consulted on 15.07.2020], http://dergipark.gov.tr/download/article-file/220351

[23] CHARLESWORTH, Hilary and CHİNKİN, Christnea and WRİGHT, Shelley «Feminist Approaches to International Law », *The American Journal of International Law,* [online], October 1991, Vol. 85, No. 4, pp. 613-645, [consulted on 16.07.2020], https://www.cambridge.org/core/journals/american-journal-of-international-law/article/feminist-approaches-to-international-law/912D0F3051C6356EAB44261B6D94B72D

[24] For the full text of the article, see, FREEDMAN, Jane, «A Gendered Approach to Refugee and Asylum Studies», in *Gendering the International Asylum and Refugee Debate,* London, Palgrave Macmillan Publications, 2015, p. 1-20

[25] For the full text of the article, see, FREEDMAN, Jane, « Sexual and gender-based violence against refugee women: a hidden aspect of the refugee "crisis», *Reproductive Health Matters,* [online], May 2016, Volume 24, No. 47, pages 18-26, [consulted on 15.07.2020], https://www.sciencedirect.com/science/article/abs/pii/S0968808016300118

[26] SJOBERG, Laura, Gender, *War and Conflict, Feminist theory of war*, First Edition, AYDIN, Onur (translator) Altın Bilek Publications, 20 May 2015, p. 269

[27] ARBEL, Efrat and DAUVERGNE, Catherine and MILIBANK, Jenni, *Gender in Refugee Law from the Margins to the Centre*, 1 edition, Routledge Publications, February 29, 2016, p. 318

"Ethnicity, Gender and the Border Economy : Living in Turkey-Georgia Borderlands" by Latife Akyüz[28], ext.

7. Professor Jane Freedman, known for her work in the fields of gender, gender-based violence, refugees, asylum and immigration policies, has published important studies on gender and migration.[29] Freedman draws attention to the shortcomings of the analyzes of asylum and immigration, which do not see gender-based problems. For example one of in her work titled "Gendering the International Asylum and Refugee Debate" the forced migration process of refugee women is addressed in many ways, such as sexism in the practice of states and international conventions, gender-based violence in camps.[30] Another article of Freedman titled "Sexual and gender-based violence against refugee women: a hidden aspect of the refugee 'crisis'" draws attention to the gender and security problems experienced by women refugees due to the refugee crisis in Europe.[31] In the book "Gender in Refugee Law from the Margins to the Centre", published by Efrat Arbel, Catherine Dauvergne, Jenni Milibank the development of gender-based asylum is examined.[32]

8. While the area of this study was being appointed, Syrian woman, girl and LGBTI asylum seekers' problems in Turkey encountered had an important influence. In addition to the common challenges that immigrants from all other origins have been facing as well, Syrian refugees have been confronting with many peculiar troubles that are not reflected on the public or are hushed up. When those particular groups, who face the risks of abuse, sexual harassment, and rape in refugee camps of State, attempt to set up a decent life outside of the camps, they are under the same threats, but this time coming from landlords, employers, colleagues, or neighbors. Besides, it is known that to be able to meet their

---

[28] AKYÜZ, Latife, Ethnicity, *Gender and the Border Economy : Living in Turkey-Georgia Borderlands,* First edition, London, Routledge Publications, 2017

[29] For more information about FREEDMAN's articles, see, Cresppa, «Publications», [consulted on 15.07.2020], http://www.cresppa.cnrs.fr/gtm/equipe/les-membres-du-gtm/freedman-jane/?lang=fr,

[30] For the full text of the article, see, FREEDMAN, Jane, «A Gendered Approach to Refugee and Asylum Studies», in *Gendering the International Asylum and Refugee Debate,* London, Palgrave Macmillan Publications, 2015, p. 1-20

[31] For the full text of the article, see, , FREEDMAN, Jane, « Sexual and gender-based violence against refugee women: a hidden aspect of the refugee "crisis», *Reproductive Health Matters,* [online], May 2016, Volume 24, No. 47, pages 18-26, [consulted on 15.07.2020], https://www.sciencedirect.com/science/article/abs/pii/S0968808016300118

[32] ARBEL, Efrat and DAUVERGNE, Catherine and MILIBANK, Jenni, *Gender in Refugee Law from the Margins to the Centre*, 1 edition, Routledge Publications, February 29, 2016, p. 318

basic needs such as sheltering and nourishment or to support their families, Syrian women are obliged to consent unofficial and unpredictable marriages as being the second, and even sometimes as being the third wife especially in regions such as Urfa, Gaziantep and Hatay nearby Turkey-Syria border. Even the problems we have briefly illustrated here show the striking dimension of the asylum seekers' gender-based challenges and exploits. Of course, the reasons that cause these problems are multidimensional like political, economic, cultural, social, etc. However, deficiencies and inadequacies in legal regulations and practices also play an important role in continuing and unresolved of these problems. As a jurisprudent, I chose the gender and migration general title while determining my field of study in order to make a small contribution to the elimination of deficiencies in this field.

9. The article written by Zeynep Kıvılcım, which is about the Law on Foreigners and International Protection and Temporary Protection Regulation in effect in Turkey, entitled "Yabancılar ve Uluslararası Koruma Kanunu ile Geçici Koruma Yönetmeliği: Toplumsal Cinsiyet Perspektifiyle Bir Değerlendirme" (Law on Foreigners and International Protection and Temporary Protection Regulation: An Evaluation with Gender Perspective) has been the inspiration to determine the thesis subject of mine for its being quite a significant academic work in this field. In reviewing the brand-new legislation concerning foreigners in Turkey, Kıvılcım's aforementioned work keeps hold of great significance for being grounded on the fact that the subjects of that legislation are not genderless and abstract individuals. Another quite important issue in Kıvılcım's work is the emphasis on that the studies and works succeeding hers should evaluate both the laws and practices with a gender-sensitive approach. In a relevant article, Kıvılcım discussed that the Law on Foreigners and International Protection and Temporary Protection Regulation in force in Turkey prescind the fact that more than half of the migrants and refugees are women, and ignore LGBTI. [33]

10. What is aimed with this study is to introduce a systematical resource on asylum and migration to literature by approaching holistically with a gender perspective to both regulations such as international conventions, instructions, directives along with

[33] KIVILCIM, Zeynep, «Yabancılar ve Uluslararası Koruma Kanunu ile Geçici Koruma Yönetmeliği: Toplumsal Cinsiyet Perspektifiyle Bir Değerlendirme », above, p. 920

international court precedents, and legal regulations and precedents included in Domestic Law in Turkey and their applications. It is seen important to give place to the theoretical framework before evaluating or criticizing a topic. Therefore, within the first part of this study, it is deemed suitable to give place to the basic concepts about gender, feminism, feminist international relations. Then, the security phenomenon that guides the migration policies of the states and the migration policies of the security centers have been evaluated, and the general problems caused by this approach on refugees and their effects on gender groups have been examined. Afterwards, the basic principles of international protection and refugee law were addressed. In the second part of this chapter, basic international regulations aimed at ensuring gender equality in international law are examined. This part is covered in two separate sections as international conventions and recommendations of international organizations and court case law. In the evaluations, the contributions of these regulations to international law, the mechanisms of supervision and their effectiveness, incomplete and inadequate aspects are included. These regulations have been a guide in the evaluation of refugee law and implementation in Turkey, as well as their contributions to international law and the basis of the practices of states. In the second chapter, firstly refugee law in Turkey was evaluated in terms of gender sensitivity.

11. Turkey's basic law is still in force on this subject and the problems encountered in practice are examined with the method of examining such sources regulations, legislation, books, papers such as literature, NGO reports and studies, newspaper articles and so on. As well as this theoretical work to get more concrete information about my study seven interviews were made with the NGOs working studies on women and/or LGBTI refugee groups in Turkey. Interviews were made in Istanbul, Ankara and Izmir cities in February through pre-prepared questions, and only one interview was made on the internet via Skype. Thus, with the contributions of the NGOs, it is aimed to present criticism and suggestions on how to reach a gender-sensitive asylum system in Turkey.

Part 1: Basic Principles of Refugee Law and Gender Equality in International Law

Chapter 1: Basic Standards on International Protection and Feminization of Migration

12. In this chapter general issues related to refugee rights such as international principles and legal rules regarding international protection and refugee law, determination of refugee status, rights and freedoms that refugees should have and Turkey's asylum system are included. Before making a particular gender perspective assessment on refugee law, it is necessary to briefly include the general principles and principles and legal resources on this subject in order to form a basis for the study. In the second part of this chapter, the security-centered handling of migration and EU policies on this issue will be examined.

13. Today, the main determinants of migration policies are the security-based policies of European countries, which are still targeted as the destination country for hundreds of thousands of migrants and refugees, are the main determinants of migration policies today. This title also draws attention to the impact of the security approach on women and LGBTI refugee groups. It is then explained in terms of the causes and consequences of the phenomenon of increasing the visibility of the woman in the migration process. In this chapter, finally, feminist criticisms brought to the field of international relations and feminist perspective in international relations studies are touched upon.

Section 1: Principles of International Protection and Refugee Law

14. As a general principle, it is agreed that each individual should take advantage from the protection afforded by the state of which he/she is a citizen. But this is not always possible due to a variety of factors such as wars, conflicts, social, political, economic, religious, etc. International protection, which arises from the need to protect people in these situations, is a significant area of international law. The principles related to this are included in fundamental human rights documents as well as on the agenda of international organizations. In this part, international law sources including important regulations on

the right to asylum and refugee law are touched upon. In particular, the 1951 Geneva Convention and the Additional Protocol are considered the most basic source of international law in terms of refugee law. Many primary issues are regulated through this Convention, from the definition of refugee status to the fundamental rights and freedoms that should be granted to these individuals. Finally, the basic principles of determining the rights and freedoms of refugees and refugee status are discussed in this chapter.

§ 1) International Protection

15. The sovereign right of States upon their citizens also necessitates protecting their rights and freedoms, and security. In general terms, States bear the responsibility to take its own citizens under protection. "States' obligation of protection towards the persons bounded to it with citizenship bond requires a State to protect right holders from it and from third parties."[34] However, due to various reasons such as political, social, economic, cultural, gender-based, racial, this condition may change; and, States are not able to or refuse to protect their citizens. Or, individuals may not want to benefit from this protection because of the well-founded fear of persecution by the State. In order for the persons in this situation to be protected, the need for the formation of international protection mechanisms arises. "The term "Protection", in the strict sense, is to protect against human rights violations outside. In the broad sense, apart from protection against human rights violations, it involves the permit to stay in the State applied."[35]

16. "International protection, being a form of protection, which is temporary in essence by force of its character and is substituted for citizenship protection can be defined as the sum of the activities ensuring being taken of refugees and asylum seekers under protection."[36] As it would be understood from the definition, the basic element in international protection is that the individual is unable, or unwilling, to benefit from the protection of her/his State of citizenship. "Protection, in this sense, means using the legal instruments, including treaties and national laws, which prescribe or implement States' obligations and which are intended to ensure that no refugee seeking asylum is penalized, expelled, or refouled, that every refugee enjoys the full complement of rights and benefits

[34] SAFI, Sibel, *Mülteci Hukuku*, İstanbul, first edition, Legal Publications, 2017, p. 60
[35] ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku*, p. 58, above
[36] ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 221

to which he or she is entitled *as a refugee*, and that every refugee's human rights are guaranteed."[37] Protection is an end in itself, so far as it serves to ensure the fundamental human rights of the individual. The ultimate purpose of protection is not to ensure the remaining of refugees as refugees forever, and *voluntary repatriation* reflects the right of the individual to return to his or her country of citizenship.[38] "If the individual is able to benefit from the protection of the State to which she/he is bounded with citizenship bond, now the need for international protection will die out."[39]

17. International protection is closely associated with International Human Rights Law and Humanitarian Law. "It should be emphasized that International Human Rights Law, which aims at protecting human dignity and human welfare, is a discipline complementary to International Refugee Law, which directly aims at refugee protection."[40] In fact, when it comes to the protection of refugees, the issue of top priority is the protection of refugees' rights and freedoms. Another complementary branch of law for Refugee Law is International Humanitarian Law. The fundamental instruments regarding International Humanitarian Law are the Geneva Convention dated 1949 and the Additional Protocol dated 1977. Some of the regulations in these instruments involve the ones directly concerning with refugees. The advancements in the field of International Criminal Law as well are also effective as to refugees and to other international protection statuses. Especially with regards to the fight against crimes of human trafficking and human smuggling that are important problems all over the world, the developments in the field of International Criminal Law are significant. Again, the ruling of cases by the International Criminal Court in its jurisdiction, too, is effective on the issue of protection of the persons within the scope of international protection.[41] As ICJ stated in its Resolution concerning the wall construction in territories of Palestine, International Humanitarian Law and International Human Rights Law are two law branches that have

---

[37] GUY, S. and GOODWIN-Gill, «The International Law of Refugee Protection», in *The Oxford Handbook of Refugee and Forced Migration Studies,* FİDDİAN-QASMİYEH, Elena and LOESCHER, Gil and LONG, Katy and SİGONA, Nando (editors), June, 2004, [consulted on 29.11.2018], p. 2, http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021?print=pdf

[38] GOODWIN-GILL, G., S., «The International Law of Refugee Protection», p. 2-8, above

[39] DOĞAN, Vahit, *Türk Yabancılar Hukuku*, Second Edition, Ankara, Savaş Publications, October 2017, p. 139

[40] ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 232

[41] For detailed information, see, ÇİÇEKLİ, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 232, above

diacritical rules, yet, involve regulations that oblige the implementation of fundamental human rights in times of both war and peace.[42]

18. International protection intended towards persons seeking asylum is provided by, notably, the 1951 Geneva Convention and the Additional Protocol dated 1967, International Conventions, regional regulations, International Customs Law (principle of non-refoulment, etc.), jurisdictional decisions (ECHR, UN Human Rights Committee and Committee against Torture, etc.), and doctrine along with other non-binding regulations (UN Executive Committee Conclusions, etc.).[43] In this respect, it is possible to state the major forms of protection involved in International Protection Law as refugees, asylum seekers, temporary protection, and subsidiary protection.

§ 2) International Resources of Refugee Law

19. Refugee status is a form of protection upon which a compromise was reached as a result of the discussions on its various dimensions such as its definition, elements, and scope, the rights and duties it provides; and, was accepted in International Law. "Refugee movements are not new phenomena: as a result of wars, conflicts, and political struggles, it is as old as the history of humanity."[44] However, having been addressed of refugees' problems as issues of International Law had emerged along with the development of the principle of non-extradition for political offenses in the 19th century. The international community had recognized the common responsibility regarding the protection of refugees' rights at the end of the 1st World War. Modern refugee law is the product of the second half of the twentieth century. In the development of refugees' and asylum seekers' rights, the role of International Law is significant. "Like international human rights law, modern refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it." [45] There are four different disciplines of International Law resourcing this developing branch of law: 1) International

---

[42] For detailed information, see ÖZKAN, I., *Göç, Sığınma ve Mülteci Hukuku*, p. 37-38 above
[43] For detailed information regarding the sources of International Refugee Law, see, ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 227-232, above
[44] CASTLES, Stephen and de HASS, Hein, MILLER, Mark, J., *The Age of Migration International Population Movements in the Modern World,* 5th edition, London, Palgrave Macmillan, 2014, p.17, [consulted on 18.07.2020], http://migrationmatters.me/wp-content/uploads/2016/11/AgeOfMigrationChapter1and.pdf
[45] «Asylum &The Rights of Refugees» *International Justice Resource Center*, Juliet 16, 2020, [consulted on 18.07.2020], https://ijrcenter.org/refugee-law/

Refugee Law, 2) International Human Rights Law, 3) International Humanitarian Law, 4) International Criminal Law.[46]

20. The sources of International Law are accepted as the general sources as to Refugee Law as well. In that sense, human rights conventions, protocols, universal principles, and rules, general principles of law, conventions and protocols concerning refugees are primary sources of Refugee Law. BESIDES, there are also a great number of regional treaties and regulations concerning refugees' rights and freedoms and problems. The 1951 Geneva Convention with the 1967 Protocol is considered as one of the most important advancements regarding the development of refugees' rights. For the first time with this Convention, the universal definition of the concept of a refugee was made in an international convention that was composed of imperative provisions.[47] Right along with the Convention, regulations such as UDHR, ECHR and Additional Protocols to it, the Statute of the Court of Justice, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment together with precedents such as ECJ Resolutions, UNHCR Executive Committee Conclusions, ECHR Resolutions as well are important international implementations as to the protection of the rights and freedoms of the ones who seek for asylum or are under protection.

21. Regulations with respect to Refugee Law which is a dynamic field has been constantly developing; new principles and rules oriented towards refugees' current problems are being brought. Being able to come to life of these principles and rules is possible only if they are implemented by States. "As an issue of International Law, the standards applied to refugees are depended on States and on ratification of international conventions"[48]

22. One of the oldest dated international documents regulating the right to asylum is the Universal Declaration of Human Rights. The Declaration was accepted on December 10, 1948 BY United Nation General Assembly. The right to asylum is regulated in the article

---

[46]For detailed information, see, ÇİÇEKLİ, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku,* p. 226, above 6

[47] For detailed information, see, HURWITZ, Agnes, «The Collective Responsibility of States to Protect Refugees», *Oxford University Press*, [online], August, 2009, p.9, [consulted on 18, 07,2020], http://fdslive.oup.com/www.oup.com/academic/pdf/13/9780199278381_chapter1.pdf

[48] ÖZKAN, I., *Göç, İltica ve Sığınma Hukuku,* p. 135, above

14 as follow: "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."[49]

From the provision of the Article, it is understood that apart from the exceptional cases stated, everyone may make an asylum application to another country because of the threat of persecution. In the International Covenant on Civil and Political Rights adopted with Resolution No. 2200 A (XXI) dated 16 December 1966 of the United Nations General Assembly, an explicit provision regulating the right to asylum does not exist.[50] "For this reason, the view that Article 14 of UDHR would not ensure the adoption of the right to asylum as a civil right prevails."[51]

23. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly with Resolution 39/46 dated 10 December 1984. The Convention includes protection measures regarding return, deportation and extradition. With the regulation in Article 3 of the Convention that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, the principle of non-refoulment as to the threat of torture was referred. In the second paragraph of the article, it is stated that for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. Goodwin and Mc Adam evaluate that, with the system it forms in both national and international extent, this provision

---

[49] For the full text of UDHR, see,
«The Universal Declaration of Human Rights», Paris, General Assembly Resolution 217/A, 10 December 1948, [consulted on 15.03.2019], https://www.un.org/en/universal-declaration-human-rights/index.html
[50]For the full text of the Covenant, see, « International Covenant on Civil and Political Rights », General Assembly Resolution 2200 A (XXI), 16 December 1966, [consulted on 18.07.2020], https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[51] ŞANLI, Yeliz, *Küreselleşme Sürecinde İnsan Hakları: Sığınma Hakkı*, Master Thesis, Ankara University Graduate School of Social Sciences, Department of Public Law, Ankara, 2004, p. 73 [consulted on 18.07.2020], https://dspace.ankara.edu.tr/xmlui/bitstream/handle/20.500.12575/27632/586.pdf?sequence=1

forms a judicial evaluation mechanism together with a supplementary protection mechanism.[52]

A- 1951 Geneva Convention and 1967 Protocol

24. The most important international instrument underlying Refugee Law is considered as the Geneva Convention Relating to the Status of Refugees dated 1951 and annexed 1967 Protocol. The Convention that was signed in Geneva on 28 July 1951 is, thus, usually mentioned as the "Geneva Convention". Through the Geneva Convention, the concept of a refugee was defined and the international standards intended protecting refugees were determined. Moreover, it was stated in Convention that persons within the scope of the refugee definition should benefit from the rights such as non-discrimination, freedom of religion, exemption from reciprocity, property right, freedom of organization, right to free access to courts, right to work, education, health, social security, and social relief rights, right to reside and travel, guarantees against expulsion, providing convenience in naturalization. Besides, States' obligation of "non-refoulment", to not return these persons to territories where there is the risk of persecution, is another important regulation recognized by the Convention.[53] "It is necessary to state at this point that the rights within the scope of the Convention are effective not only for individuals whose refugee status is officially recognized; they may be valid for also individuals who made an application for asylum with claiming that she/he is de facto in a condition of a refugee but whose status determination process has not been concluded yet."[54]

---

[52] TANERI, Gökhan, *Mülteci Hukuku,* p.165, [consulted on 17.04.2019], https://books.google.fr/books?id=aVx_DwAAQBAJ&pg=PA165&dq=%C4%B0%C5%9Fkence+ve+Di%C4%9Fer+Zalimane,+Gayri+%C4%B0nsani+veya+K%C3%BC%C3%A7%C3%BClt%C3%BCc%C3%BC+Muamele+veya+Cezaya+Kar%C5%9F%C4%B1+S%C3%B6zle%C5%9Fme&hl=tr&sa=X&ved=0ahUKEwj23qPP0NbhAhVMrxoKHc-IDr4Q6AEIMjAC#v=onepage&q=%C4%B0%C5%9Fkence%20ve%20Di%C4%9Fer%20Zalimane%2C%20Gayri%20%C4%B0nsani%20veya%20K%C3%BC%C3%A7%C3%BClt%C3%BCc%C3%BC%20Muamele%20veya%20Cezaya%20Kar%C5%9F%C4%B1%20S%C3%B6zle%C5%9Fme&f=false

[53] For detailed information, see, ÇİÇEKLİ, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 224, above

[54] ÖZTÜRK, ÖVÜNÇ, Neva, «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», *Journal of Ankara University Faculty of Law*, [online], Year 2017, Volume: 66, No.1, p. 204, [consulted on 12/03/2018], http://dergiler.ankara.edu.tr/dergiler/38/2204/22871.pdf

25. While making the definition of refugee in the Geneva Convention, geographical and temporal restrictions were imposed. How these limitations would be applied is explained in sub-clause (B) of Article 1 in the Convention as follows;

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either: (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951" and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

26. According to the definition made in the Convention, the persons to be evaluated within the scope of refugee status must have four fundamental properties: "1) being outside the country of one's nationality, 2) being unable or unwilling to avail oneself of the protection of that country or being unable or unwilling to return to it, 3) that being unable or unwilling to do so has to be based on a well-founded fear of being persecuted, 4) the well-founded fear of persecution has to be due to the reasons of race, religion, nationality, membership of a particular group or political opinion."[55]

27. According to the initially adopted form of the 1951 Convention, only the ones who seek asylum because of the events that occurred in Europe before 1951 may be considered refugees within the scope of this Convention, and, each Contracting State should make a declaration specifying this scope. "Many rights regulated in the Refugee Convention are accorded only if a refugee is either duly staying or residing for a long term in that country. Some limited number of rights is recognized without stipulating those conditions."[56] The temporal and geographical limitation was reducing the scope of refugees; many people, even though they were in need of international protection, were not able to benefit from rights and freedoms accorded to refugees. The UN General Assembly adopted the 1967

[55] ÇİÇEKLİ, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 246, above

[56] ÖZKAN, I., *Göç, Sığınma ve Mülteci Hukuku*, p. 307, above

Protocol Relating to the Status of Refugees in order for those limitations to be withdrawn.[57] This issue was regulated in Article 1 of the Protocol as follows;

2. For the purpose of the present Protocol, the term "refugee" shall except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and…" and the words"…as a result of such events", in article 1 A (2) were omitted. 3. The present Protocol shall be applied by the States Parties hereto without any geographical limitation, save those existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

28. Thus, a temporal and geographical limitation that narrows the definition of a refugee was withdrawn. "1967 Protocol aims at ensuring the practicality of the refugee definitions adopted in the 1951 Geneva Convention on newly-emerging refugee movements at a universal level."[58] The Convention still maintains its importance today as being an essential instrument regarding the protection of refugees' fundamental rights and freedoms. But, as also emphasized by Gill, it remains quite "state-centric" with regard to respect, to protect or to accept the rights and benefits whose commitments and obligations are set and which are adopted between the Parties. Gill, moreover, evaluates that the Convention falls behind the "new" refugee groups emerging from ethnic violence and gender-based persecution, and, is apathetic to security concerns along with terror and organized crime.[59] In the Convention, there is not any explicit regulation concerning a woman and LGBTI refugees, oriented in peculiarities, problems, and needs of those groups which are stemming from their different gender identities and sexual orientations. It includes an open-ended category as "...membership of a particular group".[60] However, just as the States are given the initiative to decide on who would be included in this

[57] For detailed information, see, ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku* p. 228
[58] ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 228, above
[59] For detailed information, see, GOODWİN-GILL, G., «The International Law of Refugee Protection», p. 10-11, above
[60] BAKLACIOĞLU, N., Ö., *Uluslararası Sınırların Gölgesinde Mülteci Kadınlar*, p. 23, above

particular group; that whether or not persons struggling because of gender-based problems would be considered in this scope remains ambiguous.

B- UN Declaration on territorial asylum dated 1967

29. Declaration on Territorial Asylum was adopted by the UN General Assembly with Resolution 2312 (XXII) on 14 December 1967. Via the Declaration, as to asylum, refugees, and stateless persons, by paying regard to the regulations in preceding international instruments, some advice was given to States. "The most important aspect of the UN Declaration on Territorial Asylum is that it touches on the subject of asylum which was not touched at all in preceding Geneva Convention dated 1951 and, in the Protocol, dated 1967 concluded under the UN roof and that it propounds certain principles even if they are of advisory character for States."[61]

30. In the prologue of the Declaration, it was recognized that the grant of asylum by a State to persons entitled to invoke article 14 of the UDHR is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State. Concordantly, the regulations in the Declaration are stated as recommendations of the principles on which, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum.

31. In Article 1, that asylum granted by a State to persons entitled to invoke article 14 of the UDHR shall be respected by all other states, and that the determination of who would not benefit from the right to asylum along with the authority to evaluate the grounds for the grant of asylum shall rest with the State granting asylum are stated. In Article 2, the importance of international solidarity and co-operation for States who find difficulty in granting or continuing to grant asylum is emphasized. In Article 3, it is explicitly included that persons under threat of persecution would not be subject to rejection at the frontier, to expulsion, or to compulsory return to any State where she/he may be subjected to persecution. Yet, in the second paragraph of the article, it is regulated that the exception to the foregoing principle only for overriding reasons of national security or in order to

[61] ÖZCAN, M., *Avrupa Birliği Sığınma Hukuku: Ortak Bir Sığınma Hukukunun Ortaya Çıkışı*, p. 18, above

safeguard the population, as in the case of the mass influx of persons may be made. In Article 4 of the Declaration, the provision that States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations is given place.[62]

C- European convention for the protection of human rights and fundamental freedoms and protocols

32. Adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms and the establishment of the European Court of Human Rights is considered as the most important developments in International Law with regards to the protection of human rights. The Convention was signed in Rome on 4 November 1950, entered into force on 3 September 1953. Turkey signed the Convention on 04.11.1950 and ratified it with Law No. 6366 dated 10.03.1954. The Law and the Convention were published in Official Gazette on 19.03.1954. The Convention came into force in Turkey through the deposition of the instrument of ratification with the Secretary-General of the Council of Europe on 18.05.1954.[63] The signing and ratification procedure of the Convention composed of 59 Articles in total is regulated in Article 59 in detail. Accordingly, the Convention shall be ratified and deposited with the Secretary-General of the Council of Europe. As regards signatories ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification. In the article, it is stated that the European Union, too, may accede to this Convention. Even though the diction of the Convention is preferred as the name, it is accepted that, in technical terms, the regulation and protocols are of international treaty character.[64]

---

[62]For the full text of the declaration, see, «Declaration on Territorial Asylum», UN General Assembly, A/RES/2312(XXII), 14 December 1967, http://www.unicankara.org.tr/doc_pdf/metin_ant4.pdf

[63]For detailed information regarding UCHR dates of signature and enforcement, see, ÖNDÜL, Hüsnü, «Avrupa İnsan Hakları Sözleşmesi ve Eki Protokollerde Yer Alan Hak ve Özgürlükler», Ankara, *Human Rights Association*, 20, 04, 2011, [consulted on 17.04.2019], https://www.ihd.org.tr/avrupa-insan-haklari-sozlesmesi-ve-eki-protokollerde-yer-alan-haklar-ve-ozgurlukler/

[64]For detailed information, see, AYBAY, Rona, «Avrupa İnsan Hakları Sözleşmesi Konusunda Bazı Gözlemler ve 14. Protokol», *TBB Dergisi*, [online], Year 2010, No. 88, p.232, [consulted on 17.04.2019], http://tbbdergisi.barobirlik.org.tr/m2010-88-597

However, "The Convention clearly cannot govern the actions of states which are not parties to it."[65]

33. There is no article directly regulating the right of asylum in the ECHR. However, the case-law of the ECtHR and the standards of the Council of Europe has an important place in determining certain standards in applications related to asylum and ensuring that states respect the human rights of refugees. It is not the Court's duty to decide whether the decisions regarding asylum applications are correct. However, since there is no right to petition an international judicial body in the Geneva Convention and an international audit procedure, the decisions of the ECtHR become more important.[66] Although there is no direct provision on asylum in the ECHR, the ECtHR considers whether states violate the human rights of asylum-seekers in respect of the relevant arrangements in the Convention such as the right to life (article 2), the prohibition of torture (article 3), the right to freedom and security (article 5), the right to a fair trial (article 6), the right to respect for private and family life (article 8), effective the right to apply (Article 13), the prohibition of discrimination (Article 14), the prohibition of abuse of rights (Article 17).

34. According to the case-law of the ECtHR, which we will discuss with examples below, articles 2 and 3 of the Convention regarding the right to life and the prohibition of torture and ill-treatment require that refugees are not refoulement, deportation or extradition to a place where they are at real risk. In this regard, it is vital for asylum-seekers to request temporary measures from the ECtHR to prevent such an outside border pursuant to Article 39 of the Rules of Court.[67] Article 5 of the Convention, which regulates the right to liberty and security, is important in terms of preventing violations of rights, especially in cases such as arrest and detention of asylum seekers. Similarly, the provisions of Article 8 of the Convention, which regulate the right to respect for family and private life, provide protection for spouses and parents and children to stay together in cases of deportation,

---

[65] MOLE, Nuala, *Asylum and European Convention on Human Rights,* Strasbourg, Council of Europe Publications, 2003, p.10, [consulted on 10.06.2020], https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-09(2000).pdf

[66] For detailed information, see, MOLE, N., *Asylum and European Convention on Human Rights,* p. 9, above; «Sığınma», Courtalks Discours, Human Rights Education for Lawyers, Council of Europe, ECtHR, 2016, [consulted on 10.06.2020], p. 7, https://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_TUR.PDF

[67]For detailed information about article 39 and interim measures, see, «Interim Measures», European Court of Human Rights, March 2020, [consulted on 13.06.2020], https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf

extradition. ECtHR has also developed procedural guarantees in asylum cases under article 13 ECHR, the right to an effective remedy against breaches of the ECHR or its protocols, 3 and article 4 Protocol No. 4, the prohibition of collective expulsions.[68]

35. The Court has a broad case-law regarding Article 3 of the Convention. In the Sufi and Elmi United Kingdom Case (Applicants No: 8319/07, 11449/07, Decision Date: 28 June 2011),[69] the applicants alleged that their deportation to Somalia was a violation of Articles 2 and 3 of the Convention. The Court considered that the return of both applicants to Somalia would be a real risk for Article 3 due to the ongoing violence there. Therefore, The Court decided that the UK's return of the applicants to Somalia was a violation of Article 3 of the Convention. In addition, the Court has decided that Articles 2 and 3 of the Convention prohibit the indirect return of states. "Indirect refoulement means that a state expels immigrants to another place where they can be deported without properly assessing their situation."[70] In the Decision of M.S.S. vi. Belgium and Greece (Application No: 306969/09, Decision Date: 21 January 2011)[71], the Court considered it a violation of Article 3 of the Convention for both countries that sending the applicant Afghanistan-origin refugee from Belgium to Greece. The ECtHR, which also considered the Dublin Convention and its related practices in the decision, stated that according to EU law, Belgium had no legal obstacle to send the Afghan-origin refugee to Greece, but the Belgian government's lack of access to the applicant's asylum procedure, the risk of being sent back by Greek officials, concluded that the applicants had not adequately assessed their negative circumstances. In the evaluation made in terms of Greece, the applicant's conditions of detention and living conditions in Greece violated Article 3 of the Convention; it concludes that there has been a violation of Article 13 due to the deficiencies in the asylum procedure followed in the applicant's case and the danger of

[68] For detailed information, see, LAVRYSEN, Laurens, «European Asylum Law and the ECHR: An Uneasy Coexistence», *Goettingen Journal of International Law*, [online], Year 2012, Volume 4, No. 1, p. 197-242, [consulted on 13.06.2020], https://biblio.ugent.be/publication/2099327/file/6770103

[69] For the full text of ECtHR decision, see, «Case of Sufi and Elmi United Kingdom decision», Application No. 8319/07 and 11449/07, Council of Europe: European Court of Human Rights, 28 November 2011, [consulted on 10.06.2020] https://hudoc.echr.coe.int/fre#{"itemid":["001-105434"]}

[70] «Sığınma», p. 2, above

[71] For the full text of ECtHR decision, see, «Case of M.S.S. vi. Belgium and Greece decision», Application No. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, [consulted on 10.06.2020], https://www.refworld.org/docid/4d39bc7f2.html

the applicant's asylum application being subject to deportation to Afghanistan without serious examination and access to an effective application.

36. In its decision regarding Suso Musa v. Malta case (Application No: 42337/12; Decision Date: 23 July 2013),[72] it is seen that ECtHR has made evaluations regarding the violation of Article 5 of the Convention. In the instant case, the applicant made an irregular entry to Malta on 8 April 2011 and was subsequently arrested. As the ECtHR has also noted in the judgment, it draws attention to irregularities regarding the decisions when it comes to an administrative oversight, and also takes into consideration the Recommendation 5 (2003) of the Committee of Ministers, which states that the measure of "taking asylum-seekers under administrative detention should be applied only after careful consideration in each individual case". In the case of Suso Musa Malta, the Court concluded that the national system in Malta failed as a whole to protect the applicant from arbitrary administrative oversight and that the continuation of the administrative oversight of that person after the determination of the asylum application was not incompatible with the second subparagraph of (f) of Article 5/1 of the Convention.

37. The jurisprudence of the ECtHR regarding Article 8 of the Convention is particularly important in terms of preventing violations of rights in various situations such as the long-term evaluations and rejection of asylum seekers' asylum requests, the lack of family integrity, and the separation of children and parents due to their deportation decisions. Nada v. Switzerland (Application No: 10593/08; Decision Date: 12 September 2012),[73] Mengesha Kimfe Switzerland (Application No: 24404/05; Decision Date: 29 November 2010),[74] Abdülaziz, Cabales and Balkandali v. United Kingdom Decision (Application No: 9214/80, 9473/81, 9474/81, Decision Date: 12 May 1983)[75] constitute examples of

[72] For the full text of ECtHR decision, see, «Case of Suso Musa v. Malta decision», Application No. 42337/12, Council of Europe: European Court of Human Rights, 9 December 2011, [consulted on 10.06.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-122893"]}

[73] For the full text of ECtHR decision, see, «Case of Nada v. Switzerland decision», Application No. 10593/08, Council of Europe: European Court of Human Rights, 12 September 2012, [consulted on 10.06.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-113118"]}

[74] For the full text of ECtHR decision, see, «Case of. Mengesha Kimfe Switzerland decision», Application No. 24404/05, Council of Europe: European Court of Human Rights, 29 Octobre 2010, [consulted on 10.06.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-100119"]}

[75] For the full text of ECtHR decision, see, «Case of Abdülaziz, Cabales and Balkandali v. United Kingdom Decision», Application No. 9214/80, 9473/81 and 9474/81, Council of Europe: European Comission of Human Rights, 12 May 1983, [consulted on 10.06.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-73505"]}

the Court's judgments concerning persons seeking asylum under Article 8. In the case regarding the application made by Mengesha Kimfe of Ethiopia, the Court considered that it is not necessary for a democratic society not to live together with the spouses due to the measures taken by the Swiss State. The Court considered that there had been a violation of Article 8 of the Convention in that decision. Similarly, In the Nada v. Swiss Case, the Court held that there had been a violation of Articles 8 and 13 of the Convention, as the measure against the applicant's entry into Switzerland, or the banning of crossing from Switzerland, prevented the applicant from seeing her family, doctors, friends. Abdülaziz, Cabales, and Balkandali v. The UK Decision concerns the absence of permits for female applicants who remain legally and permanently in the UK to live with them. However, according to the immigration laws in force at the time, this does not apply to male immigrants. The ECtHR did not make a violation decision in its decision on the grounds that family unity does not mean that everyone lives in the country they want and that the applicants do not have sufficient reasons to not live in the country where the spouses live.

38. In the case of Hirsi Jamaa v. Italian (Application No: 27765/09; Decision Date: 23 February 2012), 11 Somalia and 13 Eritrea citizens filed an application against Italy. The applicants, who were among the group of 200 people in the three boats departing from Libya, were handed over to the Libyan authorities after being noticed by the Italian coast guard. In its decision on the case, the court held that there had been a violation of Article 3 of the Convention and Article 4 of the Additional Protocol No. 4, as the applicants faced the risk of ill-treatment in Libya. It further considered that the applicants' submission to Libya without any information, without convincing them that they had taken them to Italy and notifying them of the necessary procedures was a violation of Article 13.

39. In addition, the rights and freedoms in the Convention are extended by the Additional Protocols adopted later. Many regulations included in ECHR such as the right to life, the prohibition of torture, right to a fair trial, right to liberty and security, right to respect for private and family life, right to an effective remedy, the prohibition of discrimination, and prohibition of abuse of rights are of protective character in terms of refugees' rights, as well. Rights and freedoms included in the Convention were also enwidened via subsequently adopted amending or additional Protocols. "This Convention and Protocols constitute the most effective judicial inspection mechanism in the world within the field

of international protection of human rights."[76] Besides, ECHR precedents as well, alongside their legal bindingness, are of guiding character to States on the issues of determination of the scope and the limits of rights and protection of rights and freedoms. As we would address in detail in sample precedents mentioned below, the Court imposes a restriction on the extradition of persons who are in danger of being exposed to torture or suchlike ill-treatment in real terms.

40. Some of the rights and protections recognized within Protocols bring guarantees and circumspections for, in especial, asylum seekers or beneficiaries of international protection. It is possible to consider the regulations in Protocol No.4 and in Protocol No.7 as examples of this. Protocol No.4, which was opened for signature on 16 September 1963 and came into force on 2 May 1968, was signed by Turkey on 19 October 1922 and came into force by being published in Official Gazette dated 14 July 1994. Yet, since the instruments of ratification were not deposited with the Secretary-General of the Council of Europe, it did not give birth to international obligations. In Article 2 of the Protocol composed of 7 Articles in total, it was regulated that everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his residence. With Article 3, that no one shall be expelled, by means either of an individual or of a collective measure, from the territory of the state of which he is a national, shall be deprived of the right to enter the territory of the state of which he is a national is guaranteed. In Article 4, it is clearly stated that the collective expulsion of aliens is prohibited.[77]

41. Turkey signed Protocol No.7, which was opened for signature on 22 November 1984 and entered into force on 1 November 1988, on 14 March 1985, and published it in Official Gazette dated 8 April 2016. Since the instruments of ratification were deposited with the Secretary-General of the Council of Europe in 2016, Protocol came into force as to Turkey as of 1 August 2016. In Article 1 entitled "Procedural safeguards relating to expulsion of aliens" of the Protocol, that an alien lawfully resident in the territory of a

[76] AYBAY, R., *Yabancılar Hukuku*, p. 55, above
[77]For the full text of Protocol No. 4, see, « Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto», No.046, Strasbourg, 16/09/1963, [consulted on 25.06.2019], https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046

State shall not be expelled therefrom except in pursuance of a decision reached in accordance with the law and the rights of the person in this situation are included. In Article 2, subject of the right of appeal in criminal matters; in Article 3, that of compensation for wrongful conviction; in Article 4, that of the right not to be tried or punished twice; in Article 5, that of equality between spouses is regulated. In Article 6 and following, issues concerning territorial application, signature, ratification and entry into force of the Protocol were included.[78]

§ 3) Determination of Refugee Status

42. Issues such as the conditions under which refugee status will arise, to whom it will be granted, the rights and freedoms it brings, and the scope of responsibilities have been controversial throughout history. The developments related to this have been closely related to the developments in many other disciplines especially in political science, human rights, sociology and philosophy. Refugee status is a situation that arises when the conditions specified in the Convention are met. "In the sense of the 1951 Convention, a person is considered a refugee from the moment he or she meets the criteria specified in the definition." [79] For this reason, refugee status is considered to be a recognized situation, not a status granted or provided by states. "In other words, the person concerned is not a refugee because he/she has been granted refugee status; on the contrary, he/she is granted this status because he/she is a refugee."[80] A person is considered a refugee from the moment he/she meets the criteria specified in the refugee definition of the Convention. The refugee conditions referred to in Article 1 (A) 2 of the Convention are owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, being outside the country of his nationality and being unable or, owing to such fear, being unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his

[78] For the full text of Protocol No.7, see, «Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms », No. 117,
Strasbourg, 22/11/1984, [consulted on 25.06.2019],
https://humanrightscenter.bilgi.edu.tr/media/uploads/2016/08/26/AIHS_7.protokol.pdf
[79] *Handbook on Criteria and Procedures for Determining Refugee Status under 1951 Convention and 1967 Protocol relating to the Status of Refugees*, UNHCR, February 2013, [consulted on 09.28.2018],
http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=55fa66404
[80] ÇIÇEKLI, B., p. 253, above

former habitual residence as a result of such events, being unable or, owing to such fear, being unwilling to return to it.

43. Although the fear of persecution is central to the definition of refugee, there is no clear definition of fear of persecution in the 1951 Convention. However, by interpreting the threats to life and freedom contained in Articles 31 and 33, the fear of persecution and the lack of protection can be considered to be related to these threats. Furthermore, Gill points out that a connection between fear of persecution and government authority is not required. According to him, as the persecution of persons can also be committed by non-state actors, protection should be provided in this case too.[81]

44. The 1951 Convention and its Additional Protocol are the basic regulations on which conditions and for whom the status of refugees shall be determined. However, the Convention does not contain a clear provision on how states determine refugee status. Therefore, it is accepted that the contracting countries are free to establish the procedures they deem appropriate to their legal, judicial and administrative structures in the light of these basic principles and regulations. However, this freedom leads to differences between the countries in the implementation of asylum and refugee procedure. "One of the major issues arising from different national legislation among EU member states is the different interpretation of the concept of refugee affecting both member states and asylum seekers."[82] Due to the different interpretation of the concept of refugee, some applicants' application to a country was rejected while their application, under the same conditions, could be accepted in another country.

45. In some states, refugee status is determined according to specific procedures for asylum, while in some other states it is based on general regulations on foreigners. Certain states have determined refugee status according to informal or provisional regulations.[83] Usually the first decision is made by an expert committee or office, and then interviews are conducted with the applicant. If the first decision is appealed, it is supervised by a review body or an administrative court. The determination of who will be identified as refugees is mainly carried out by the competent authorities of the states. In some cases,

[81]GUY, S. and GOODWIN-Gill, «The International Law of Refugee Protection», p. 4, above
[82]ÖZCAN, M., *Avrupa Birliği sığınma hukuku: ortak bir sığınma hukukunun ortaya çıkışı,* p. 98, above
[83]*Handbook on Criteria and Procedures for Determining Refugee Status under 1951 Convention and 1967 Protocol relating to the Status of Refugees*, paragraph 191, above

UNHCR examines the file, gives an opinion to the state concerned, may take part in the petitioner body and listen to the applicant whose request is rejected. In the US, for example, the constitution grants the right to a full and rightful hearing. In Canada, the applicant was granted the right to an oral hearing at each stage and was acknowledged that an interpreter could accompany him or her.[84] Various regulations have been introduced to eliminate such differences between states in terms of asylum and refugee practices. The European Parliament and the Council Directive of 2013, the Executive Committee resolutions and UNHCR efforts are key sources for setting general standards. "Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection"[85] is a significant binding regulation. It has been agreed that many substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005. According to the Directive, *the main objective is to further develop the standards for procedures in the Member States for granting and withdrawing international protection with a view to establish a common asylum procedure in the Union.* The scope of the Directive is regulated to cover all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection. Other main issues covered in the Directive are as follows: conditions for reviewing applications, guarantees for applicants, responsibilities of applicants, how to conduct personal interviews, first entry procedures, safe third country concept and appeal procedure, etc.

46. In its 28th session of 1977, the UNHCR Executive Committee proposed that some basic requirements for the determination of refugee status should be met. The decision, which was also approved by the Executive Committee, firstly stated that the principle of non-refoulment should be applied to the applicant who lives at the border or in the territory of the contracting state, and that the application must be forwarded to the higher authorities. The decision also requires the following: informing the applicant about the

---

[84] For detailed information on the determination of refugee status, see, *Handbook on Criteria and Procedures for Determining Refugee Status under 1951 Convention and 1967 Protocol relating to the Status of Refugees*, paragraph 189-191, above; ÖZKAN, I., *Göç, Sığınma ve Mülteci Hukuku*, p. 364-369, above; ÇIÇEKLI, p. 253, above

[85] For full text of the Directive, see, « Directive 2013/32/UE du Parlement européen et du Conseil du 26 juin 2013 relative à des procédures communes pour l'octroi et le retrait de la protection internationale», above

procedure to be followed, an authorized translator service and other necessary means to forward his application to the relevant authorities, and opportunity to contact a representative of the UNHCR. The decision referred to the need to examine the refugee status requests of states and to have a clearly defined authority with the responsibility of deciding at the first stage. Furthermore, it was stated that if the applicant was recognized as a refugee, he/she was informed and a document defining this was issued. According to the decision, if the applicant is not recognized as a refugee, he/she must be given reasonable time to apply for a review of this decision by the relevant judicial or administrative authority. If it is not established that the applicant has abused through the application, he/she should be allowed to remain in the country until a decision is taken about him/her.[86] The expiration of refugee status and persons to be excluded from protection are expressly stated in the Convention. The conditions under which the refugee status shall cease are set out in Article 1 (C) of the Convention and the persons to whom the status cannot be applied are specified in paragraphs (D), (E) and (F) of the same article. Accordingly, this Convention shall cease to apply to any person falling under the relevant terms of the Convention if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily re-acquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who can invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; (6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who can invoke

[86] For the full text of the decision, see, «UNHCR Executive Committee Decisions», p. 17, above

compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

47. The persons whose refugee status cannot be applied are as follows:

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled by the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country. F. The provisions of this Convention shall not apply to any person concerning whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge before his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations. Accordingly, the persons specified in paragraphs (D) and (E) have been excluded from the scope of international protection as they already have protection or citizenship rights. The persons referred to in paragraph (F) are stated as persons concerning whom there are serious reasons for considering that he has committed a crime against humanity outside of the country where they have taken refuge. It is stated that these persons shall also be excluded from international protection due to the severity of the crimes they commit.

48. Turkey is a party to the 1951 Geneva Convention and the 1967 Protocol. According to Article 90/5 of the Constitution which reads: *International agreements duly put into effect have the force of law*, these regulations have thus the force of law in Turkish law. However, since Turkey has accepted the Convention with geographical limitation, there is such a limiting distinction in terms of its implementation of the Convention. How to determine the status of refugees in Turkey domestic legal arrangements are set out under the paragraph titled “Types of International Protection and Exclusion from International

Protection" in the first part of the third chapter titled "International Protection" of the Law. According to the article 64 of the law, *the applicant shall be excluded from international protection if: receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; recognized by the authorities of the country of [former] residence as having the rights and obligations which are attached to the nationals of that country; there is strong evidence to believe that they are guilty of offenses specified in paragraph one of Article 1 (F) of the Convention.* The termination of the international protection status is regulated in Article 85, and the issues about the cancellation of the international protection status are regulated in Article 86 of the Law. Remarkably, that both the termination of refugee status and the issues regarding the persons whom refugee status cannot be applied are in line with the arrangements in the Geneva Convention.[87] Therefore, in order not to repeat the provisions of the article at great length, it is observed that in general, Article 85 states that the international protection status shall be terminated in cases such as acquiring a new nationality, re-availing themselves of the protection in their country of citizenship and the elimination of the circumstances on which the status had been granted no longer apply. In Article 86, it is regulated that the international protection status shall be canceled in cases where beneficiaries: by way of presenting false documents, fraud, deceit or, withholding facts that led to the granting of the status; following the granting of the status, are found to be among those who should have been excluded from the protection.

§ 4) Rights and freedoms of refugees

49. As with many other issues related to asylum and refugee, the 1951 Convention and the 1967 Protocol are regarded as fundamental documents in terms of defining the rights and freedoms of refugees "The rights and freedoms introduced by the 1951 Geneva Convention have different levels of applicability depending on the travel and residency status of the refugee in the country of asylum."[88] The refugee may be present in different forms in the territory of the Contracting States, including legal and illegal stay, and legal residence. Some of the rights and freedoms in the Convention are granted to all refugees, while some others are granted to persons who legally stay or reside in the territory of the

[87] For more information, see, ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 274-277, above
[88] ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 363, above

contracting state. For example, rights such as the prohibition of discrimination, non-refoulment principle, exemption from the reciprocity, property rights are the rights granted to all refugees regardless of their legal status. However, the right to self-employment and freedom of travel, and the guarantee for expulsion (non-refoulment) is exclusively for the refugees who are legally present in the relevant country. Those legally residing rather than legally staying in the territory of the Contracting State may also enjoy additional rights and freedoms of the Conventions, such as the right of association, wage-earning employment, the right to housing, the right to benefit from public relief, labor legislation, social security, and travel documents.[89]

50. It is widely accepted in international law that all refugees have the right to safe asylum. However, international protection requires more than the physical security of refugees in this way. Article 7 of the Convention regulates that *except where this Convention contains more favorable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.* According to the provisions of the article, the rights to be granted to refugees shall not be less than those enjoyed by foreigners. The refugees should thus be able to enjoy fundamental civil rights such as freedom of thought and expression, and freedom from torture and degrading treatment.[90] In addition to such fundamental rights, the Convention also includes provisions on the rights of habitation of refugees, and the right to employment, health and social assistance, education and training, integration and naturalization. Article 4 of the 1951 Convention states that the Contracting States shall accord to refugees within their territory's treatment at least as favorable as that accorded to their nationals concerning freedom to practice their religion and freedom as regards the religious education of their children. It is seen that the Convention deals with the rights and freedoms of refugees with an equality approach compared to other foreigners. The purpose of this approach can be understood given the restrictive laws and practices of states for refugees. However, a general perception of equality in the form of foreigners and refugees excludes situations that require legally positive discrimination and ignores the needs of vulnerable groups.

[89] For more information ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku*, p. 308-310, above; ÇIÇEKLI, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku,* p. 363,364, above

[90] For more information, see, «Mültecinin Hakları Nelerdir? », UNHCR, 19 February 2017, [consulted on 21.03.2019], https://www.unhcr.org/tr/11081-multecinin-haklari-nelerdir.html

On the other hand, it is necessary to evaluate the adequacy of the Convention within the conditions of the period in which it was signed and to respond to today's needs and problems. If we remember that the Geneva Convention defines refugees, people who are rightly afraid that they will be persecuted due to race, religion, nationality, membership of a certain social group or political thoughts it is seen that the groups referring to membership in a particular social group are not clear and that refugees with different sexual orientation and gender identities are not explicitly stated.

51. The rights and freedoms and obligations of persons enjoying international protection are regulated by law in Turkish legislation. Article 88 of the LFIP sets out the general principles regarding the rights and obligations of beneficiaries of international protection. According to this, *international protection beneficiaries shall not be subject to the reciprocity principle. The rights and benefits granted to applicants, persons whose application has been refused or international protection beneficiaries shall not be construed to provide more rights and benefits than those accorded to Turkish Citizens.* Article 89 of the Law regulates the rights that can be enjoyed by the applicant or members of his/her family with international protection status. What we have identified as important here is that, besides the beneficiaries of international protection status, those who have applied for this status, whose applications are being evaluated and who have a 6-month International Protection Applicant Identity Document, also benefit from such advantages.[91] Accordingly, the applicant or international protection beneficiary and his/her family members benefit from primary and secondary education services. They can be accessed to social assistance and services for those in need. Some or all of the premiums are requested from the Directorate General according to the payment difficulties of those who are not covered with any medical insurance and do not have financial means It is also stated in the article that for those who at a later date would be found to be in difficulty of payment, the expenditures related to the treatment and medication shall be reimbursed. Paragraph 4 of the article provides arrangements for access to the labor market for international protection beneficiaries. According to this provision, the principles and procedures governing the employment of applicants or international protection beneficiaries shall be determined by the Ministry of Labor and

[91] ÇELIKEL, Aysel and GELGEL, Günseli, Öztekin, *Yabancılar Hukuku*, Beta Publication, 23rd edition, March 2017, p. 168

Social Security in consultation with the Ministry. The scope of their rights to employment varies as per their status. For example, the article states that the refugee or the subsidiary protection status, upon being granted the status, may work dependently or independently, while the applicant or the conditional refugees are entitled to apply for a work permit six months after the date of the application for international protection. Finally, paragraph 5 sets out that other than those falling under Articles 72 and 79[92], an applicant that would be determined to be in need may be provided with an allowance with the assent of the Ministry of Finance, by the principles and procedures to be determined by the Ministry.

52. Article 90 of the Law provides for the obligations of applicants or international protection beneficiaries. According to the article, in addition to the obligations stipulated in this Part, applicant and international protection beneficiary shall report their most current employment status within thirty days, report their income as well as [possession of] any movable and immovable property within thirty days, also report any changes in their address, identity, and civil status within twenty workdays, fully or partially reimburse the costs of any services, assistance and other benefits provided, where it is determined to have been unjustly received, comply with the requirements of the Directorate General under the provisions of this Part. The second paragraph of the article regulates that save for the right of access education and right of primary health care, restriction to enjoy other rights may be imposed on those who do not abide by these obligations and on those whose international protection claim has been refused. Accordingly, such restrictions shall be evaluated on a case-by-case basis. The relevant decisions shall be notified in writing to specify the duration and procedures of appeal.

§ 5) Secondary protection - complementary protection (subsidiary protection)

53. The 1951 Convention and its Additional Protocol set out the main criteria and forms of international protection. Under this law, states are expected to act by the general principles of international law. However, some refugees may need protection even though they are not covered by the definition in the Convention. “The concept of subsidiary (complementary) protection is regarded as a kind of security mechanism for those who are considered to need of international protection, although they are not accepted as

[92] Article 72 of the YUKK (FIPL) regulates inadmissible applications and the Article 79 regulates accelerated procedure.

refugees under the Convention."[93] Since these persons, also referred to as de facto refugees, must also be protected, states recognize the rights that provide additional protection (complementary protection) in their domestic law. Subsidiary protection provides international protection to a wide range of people who have not yet gained refugee status.[94] UNHCR Executive Committee's Conclusion on the Provision on International Protection Including through Complementary Forms of Protection No. 103 of October 7, 2005, points out that there are protection needs in cases not included in the Convention. The document states that the complementary forms of protection that states will determine for those persons in need of international protection should be based on general principles consistent with the 1951 Convention and the 1967 Protocol.[95]

54. An important international regulation in terms of secondary protection is the Council Directive 2004/83/EC of 29 April 2004 on "Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted", which is superseded by the "Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and the content of the protection granted" (known as "Qualification Directive").[96] The Directive clarifies both the refugee definition and sets out the status of subsidiary protection and the rights granted to them. Before the directive, some countries, such as Germany and France, had made decisions referring that it was appropriate to grant refugee status only if the persecution specified in the 1951 Convention was carried out by state bodies. However, this led to the victimization of many applicants being persecuted by non-state organs. The Directive

[93] TANERI, G., *Mülteci Hukuku,* p. 284, above
[94] For more information, see, ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku*, p. 321, 322, above
[95] For the full text of the UNHCR General Conclusion dated October 7, 2005, see, «Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection», No. 103 (LVI) - 2005, 7 October 2005, [consulted on 03.22.2019], https://www.refworld.org/topic,50ffbce576f,50ffbce5772,43576e292,0,,exconc,.html
[96] For the full text of the Qualification Directive, see, «Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted», 2004/83/EC of 29 April 2004, [consulted on 03.12.2019], https://eur-lex.europa.eu/lexuriserv/lexuriserv.do?uri=oj:l:2011:337:0009:0026:en:pdf

expanded the scope of refugee status to include the persecution by non-state bodies by clarifying the issue.

55. The Directive adopted by the European Parliament Council decision 2011/95 of 13 December 2011, was regarded as a significant step in harmonizing the determination of the content and the criteria of the subsidiary protection. According to the definitions of Article 2 (f) of the Directive, person eligible for subsidiary protection *means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country"* "Articles 13 (refugee status) and Article 18 (subsidiary protection for those in need of international protection but not qualified for refugee status) of the Qualification Directive explicitly grant the right to refugee or secondary protection status."[97] The Directive contains regulations that give subsidiary protection beneficiaries many rights, such as residence permits, the right to freedom of movement, access to employment opportunities, health care and social assistance, and educational services. However, it is remarkable that the scope of some of these rights is more limited than that of the refugees.[98] For example, Article 24 of the Directive regarding residence permit regulates that the Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years and renewable, while the second paragraph of the same article states that the Member States shall issue to beneficiaries of subsidiary protection a renewable residence permit which must be valid for at least 1 year and, in case of renewal, for at least 2 years, unless compelling reasons of national security or public order otherwise require.

56. The definition of subsidiary protection in Article 63 of the LFIP is also consistent with the Qualification Directive. Subsidiary protection is defined in the said article as *a foreigner or a stateless person, who neither could be qualified as a refugee nor as a*

[97] *Handbook on European non-discrimination law*, p. 45, above
[98] For further information on the Subsidiary Protection and the Directive, see, ÖZCAN, M., *Avrupa Birliği Sığınma Hukuku: Ortak bir sığınma hukukunun ortaya çıkışı*, p. 214-218, above

conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would: a) be sentenced to death or face the execution of the death penalty; b) face torture or inhuman or degrading treatment or punishment; c) face serious threat to himself or herself because of indiscriminate violence in situations of international or nationwide armed conflict; and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.

A- Entry into country and non-refoulment principle

57. In international law, as a result of states' right to sovereignty over their own country, a state does not have an obligation to accept a foreigner to the country, but also has the freedom to determine any foreigner's entry and stay. For refugees, the top priority and the most urgent need is to be able to enter the country of asylum safely. States conduct passport and document control and require visas as a general practice to control entry into the country. Furthermore, it is remarkable that states also resort to policies and practices regarding refugees, such as return to the first country of destination or a safe third country, resettlement on their territory outside their own country, create an international zone at the airport, and stop at sea.[99] A clear regulation on the reception of refugees is contained in the Arab Convention on Regulating Status of Refugees in the Arab Countries. According to Article 8 (b) of the Convention, *a Contracting State shall accept a refugee should his expulsion or return (refoulement) threatens his life or freedom.*[100] Article 31 of the 1951 Convention stipulates that the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

58. The principle of non-refoulment is one of the most important complementary forms of protection for foreigners. In general terms, the principle of non-refoulment is a concept

[99] For further information, see: ÇİÇEKLİ, B., p.75-77, above; ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku*, p. 324-327, above; AYBAY, R., p. 105-107, above

[100] For the full text of the Convention, see, «Arab Convention on Regulating Status of Refugees in the Arab Countries», League of Arab States, 1994, [consulted on 21.03.2019], https://www.refworld.org/docid/4dd5123f2.html

that prohibits "*the return a refugee or asylum seeker to countries where his/her life or freedom is at risk on account of race, religion, nationality, membership of a particular social group, or political opinion."*[101] This issue is regulated in Article 33 of the 1951 Convention as follows:

"1. No Contracting State shall expel or return ("refouled") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

59. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

60. The principle of non-refoulment prohibits all actions that may lead to expulsion from the country or restraining of entry into country, of persons under threat or well-founded fear of persecution. Another important issue in terms of the protection provided by this principle is what the practice should be for the people who come to the border under well-founded fear of persecution. In the first paragraph of Article 33 of the above-mentioned Convention, the principle of non-refoulment is regulated for refugees. The debate arising from this wording in Article 33 of the Convention relates to whether the principle of non-refoulment is limited to refugees or it covers asylum seekers as well. "However, this controversial issue, which cannot be proved by the wording of 1951 Refugee Convention though there is no clear evidence for the contrary, has been elucidated by discussions in the doctrine and by state practices over fifty years after the conclusion of the Convention; in this regard, it is possible to rightfully assert that the non-refoulment principle should also be applied to asylum seekers at the border."[102] Therefore, contracting states should not return persons coming under well-founded fear of persecution to the country where this threat exists, irrespective of whether they grant refugee status. The concept of the

[101] ÇİÇEKLİ, B., p.271, above
[102]UZUN, Elif, «Geri Göndermeme (Non-refoulment) İlkesinin Uluslararası Hukuktaki Konumu Üzerine Bir Değerlendirme», *International Journal of Law and Policy*, [online], 2012, Volume 8, No. 30, p.31, [consulted on 31.03..2017], http://docplayer.biz.tr/1963253-geri-gondermeme-non-refoulment-ilkesinin-uluslararasi-hukuktaki-konumu-uzerine-bir-degerlendirme.html

place where the return is prohibited" should be understood as the "territory under which a person is threatened due to well-founded fear of persecution."[103] "The non-refoulment policy covers not only return the person to the country where he/she is at direct risk, but also return the person to the third country where he/she is at indirect risk.[104] The decisions of the Executive Committee confirm that the principle of non-refoulment should be meticulously applied in cases of mass asylum. It has been explicitly agreed in other international documents that the principle of non-refoulment applies to mass asylum cases."[105] The UNHCR handbook contains this principle as well. Accordingly, the United Nations recognizes that persons under well-founded fear of persecution should not be returned.[106]

61. Not having entered the country legally per se does not constitute an obstacle to the principle of non-refoulment. The approach here is that if a person enters another country legally or illegally while trying to avoid the conditions in which his fundamental rights, such as life and freedom, are under serious threat, this circumstance should not constitute an obstacle to the protection that he or she should enjoy. This is regulated in Article 31/1 of the 1951 Convention as follows;

"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

62. This arrangement makes it clear that the contracting states to the Convention cannot punish persons who have sought refuge in their countries under the well-founded fear of persecution, simply because they have entered the country illegally. The general conditions of the countries in which they come under threat constitute a presumption. The contracting states can distinguish between those who come illegally to stall themselves

[103] For more information, see, ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku*, p. 161, above
[104] ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku*, p. 163, above
[105] ÇİÇEKLİ, B., p. 278, above
[106] For more information, see, ÇİÇEKLİ, B., p. 276, 277, above

(i.e., the states) and circumvent procedures, and those who come in this way under the well-founded fear of threat.

63. We have explained that the principle of non-refoulment is applied to all persons who are legally recognized as refugees or who seek asylum under the well-founded fear of threat even if they are not refugees, regardless of whether they come legally or illegally. However, some exceptions have been made on the ground of security reasons concerning the implementation of this principle. These exceptions in Article 33/2 of the 1951 Convention are stated as follows:

64. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. Remarkably that the exceptional cases such as “danger to the security of the country” and “to the community of that country” in the Convention were stated in a way that whose boundaries and frameworks are nebulous and unclear. “The uncertainty of 'national security' and 'constituting danger' wordings requires the attentive application of the exceptions on the ground that the broad meanings to be attributed to terms and concepts may endanger the objective and functionality of the Convention.”[107]

65. “Today, the principle of *non-refoulment* is not only fundamental to international refugee law, but is also an integral part of human rights protection in most such rights and a rule of customary international law.”[108] This principle has been mentioned in the 1951 Convention as well as in many international regulations. Some of these can be listed as the following: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, International Covenant on Civil and Political Rights of 1966,Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War of 1949, Organization Of African Unity Convention Governing The Specific Aspects of Refugee Problems in Africa of 1969, American Convention on Human Rights of 1969, Cartagena Declaration on Refugees, UN Convention relating to the Status of Stateless

[107] UZUN, E., «Geri Göndermeme (Non-refoulment) İlkesinin Uluslararası Hukuktaki Konumu Üzerine Bir Değerlendirme», p. 32, above
[108] GUY, S. and GOODWIN-Gill, «The International Law of Refugee Protection», p. 5, above

Persons of 1954 (final declaration), Council Directive on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted of 2004. It is not wrong to say that these regulations are parallel to the 1951 Convention in general. The Cartagena Refugees Declaration covers a wider scope of refugees by accepting the rejection of asylum seekers at the border as a clear violation of the principle of non-refoulment. Hence, it can be said that the declaration extends the scope of the protection contained in the Convention in terms of such features. The Council Directive of 2004 had been vital in terms of the novelties it has introduced to harmonize the different practices in the determination of refugee status until 12/21/2013, when it was superseded.[109]

B- Temporary Protection

66.The temporary protection regime has played a significant role especially in the face of mass protection needs which arise in cases such as extensive armed conflict, war, internal conflict, and gross human rights violations. It is accepted that, in cases where it is not possible to determine individual status due to the massification of the need for protection, a temporary protection mechanism has been established to ensure these people urgent admission and their security and to take their fundamental rights, especially the non-refoulment principle, under protection.[110] It is obvious that, although it is controversial whether the mass situations could be suitable and realistic or not in terms of bureaucratic application processes, the temporary protection regime is more alluring for states because of its suitability in terms of labor and economic. [111] In fact, there is no regulation in the Geneva Convention that refugee status cannot be applied in mass asylum situations. However, in practice, the assessment of refugee and complementary protection

[109]UZUN, E., «Geri Göndermeme (Non-refoulment) İlkesinin Uluslararası Hukuktaki Konumu Üzerine Bir Değerlendirme», p.36- 41, above

[110] For further information about temporary protection, see, «Council Directive 2001/55/EC», 20 July 2001, [consulted on 15.10.2019], https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF ; «Temporary Protection», European Commission, [consulted on 15.10.2019], https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/temporary-protection_en; UNHCR Report, see, «A Comprehensive Response to the Humanitarian Crisis in the former Yugoslavia», 24 July 1992, HCR/IMFY/1992/2, [consulted on 15.10.2019], https://www.refworld.org/docid/438ec8aa2.html

[111] For further information, see, ÖZTÜRK, ÖVÜNÇ, N., «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», p. 204-206, above

status is made and decided on an individual basis. Due to this practice, it is generally accepted that refugee status and complementary protection are forms of international protection applied in individual applications.

67. The different approaches to what should be understood from the massification of asylum have been clarified with UNHCR's perspective "According to UNHCR, not only should the existence of a mass asylum phenomenon be decided based on but also whether a mass asylum exists or not be assessed according to the sources of the receiving country."[112] The criterion that should be considered here to determine whether asylum is mass or not, is whether the state encountering asylum will apply the individual status procedure to these people. In situations where an individual application can be applied, it will not be possible to mention mass asylum. It is seen that a similar definition has been made also in Temporary Protection Regulations in which Turkey's temporary protection regime is arranged. In the subclause (j) of Article 3 titled "Definitions" of the Regulation, the mass influx has been defined as *the situations realized from the same country or geographic region in a short time and high numbers, in which individually international protection status determination procedures are not duly applicable due to the high numbers in question*.[113] "The concept of temporary protection within the framework of this understanding, as an exception to situations of asylum seekers who escaped massively from armed conflict, widespread violence, or systematic or widespread human rights violations, can be defined as finding solutions under extraordinary circumstances and conditions and within a time limit."[114] The main function of temporary protection under this definition can be considered to ensure that people who had to abandon their countries in mass reach a safe place first and not to repatriate these people to the country of origin for different reasons such as armed violence, violation of rights, and natural disasters. These alternative characteristics of temporary protection came out in terms of meeting the need for immediate protection and should not be understood as an alternative status to refugee status. The temporary feature of protection stems from this reason too. "In other words, temporary protection is a protectionism that is outside the protected area

---

[112] ÇİÇEKLİ, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 311, above
[113]For the full text of the Regulation, see, «Temporary Protection Regulation», Council of Ministers, 13.10.2014, [consulted on 12.03.2018], https://www.resmigazete.gov.tr/eskiler/2014/10/20141022-15-1.pdf
[114] ÇİÇEKLİ, B., *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku*, p. 314, above

formed by the refugee status under the 1951 Convention and complementary protection status shaped by practice, however, which is in some respects still associated with this area and has its own unique characteristics."[115]

68. As one of the earliest known practices of mass asylum, it is possible to mention that Britain and France granted temporary asylum to those fleeing the Spanish Civil War in the 1930s. The protection provided by Indonesia, Hong Kong, the Philippines, Thailand, and Malaysia to more than one million people who fled human rights violations and economic woes in Vietnam within the framework of the Comprehensive Action Plan is another example of temporary protection. After the mass asylum crisis which emerged from the problems experienced in Vietnam, UNHCR emphasized the significance of at least providing temporary protection for asylum seekers in cases of such mass influx situations. (No: 19, dated 1980) [116] The term such as 'temporary refuge' and 'temporary asylum' was used before the concept of temporary protection, however with the establishment of the usage of the concept of international protection, the term "temporary protection" has begun to be used for such situations. [117] The realization of protection implementations with the name of temporary protection, however, was shaped following the crises of Yugoslavia and Kosovo in the 1990s.[118] In the UNHCR's report on approximately 850,000 people affected by the conflicts in Bosnia and Herzegovina, states are called to provide temporary protection to them. In the report, which emphasized the urgent and temporary nature of the need for temporary protection, it was stated that the implementation of the individual asylum procedure was not practical due to the large number. The report also states that although there are differences in national legislation, temporary protection should at least include the principles of admission, non-refoulment and respect for fundamental human rights.

---

[115] ÖZTÜRK, ÖVÜNÇ, N., «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», p. 207, above

[116] For the full text of the Executive Committee's decision No:19, see, «Temporary Refugee», No. 12A (S/35/12/Add. 1), Executive Committee of the High Commissioner's Programm, 16 October 1980, [consulted on 15.10.2019], https://www.unhcr.org/excom/exconc/3ae68c443b/temporary-refuge.html

[117] For detailed information on examples of Temporary Protection, see, İNELI CIĞER, Meltem, «Uluslararası Hukuka Uygun Geçici Koruma Rejiminin Unsurları Üzerine», *Journal of Migration Research,* Volume 2, No. 3, January-June 2016, p. 62-92, [consulted on 27.11.2018], http://www.gam.gov.tr/files/sayi3-3.pdf, p. 65,; ÖZTÜRK, ÖVÜNÇ, N., «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», p. 207-212, above

[118] For the full text of UNHCR Report, see, «A Comprehensive Response to the Humanitarian Crisis in the former Yugoslavia», above

69. As regards the rules and procedures of the temporary protection regime, there is no binding international regulation such as the 1951 Convention. However, the EU Temporary Protection Directive dated 2001, UNHCR Decisions and the International Law Association's Guidelines and Report on Temporary Protection are the primary non-binding international sources for temporary protection. "Even if these documents are not binding, the principles they contain are an important source of guidance for states implementing temporary protection policies."[119]

1) EU Temporary Protection Regime

70. Following the mass influx of asylum seekers in the 1990s, the first regulation issued under the name of 'temporary protection' and aimed at the creation of this protection regime is the EU Temporary Protection Directive. *The original name of the document is Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving 'temporary protection' in the event of a mass asylum of displaced persons and on measures promoting a balance of efforts between the Member States in receiving such persons and bearing the consequences thereof."* As stated in Article 1 entitled 'The Purpose of the Directive', this regulation aims to set minimum standards for providing temporary protection in the event of mass migration of displaced persons from third countries who are unable to return to their country of origin and to balance the efforts of Member States in this regard.[120] In the paragraph (d) of the Article 2 of the Directive; "mass influx" is defined as the arrival of a large number of internally displaced persons from a particular country or geographical region to the Community, whether their arrival was realized spontaneously or assisted such as an evacuation program. The duration of the temporary protection has been determined as one year, but it is stated that it may be extended automatically by six-monthly periods for a maximum of one year unless terminated.

71. The Directive has not been implemented to date due to the regulation contained in Article 5 on the implementation of the Directive. According to this regulation, the

[119] INELI, CIĞER, M., «Uluslararası Hukuka Uygun Geçici Koruma Rejiminin Unsurları Üzerine», p. 77, above

[120] For the full text of the EU Temporary Protection Directive, see, «Temporary protection if there is a mass influx of displaced people», Directive 2001/55/EC, [consulted on 05/04/2018], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0055

Directive will be applicable in the event of a mass influx of displacement of a group, only if the Commission's proposal for this mass influx is adopted by the Council by a qualified majority. Since the Directive cannot be implemented due to this procedure, it does not impose an obligation for the Member States. Besides articles of 24, 25 and 26, which is in Chapter 6 of the Directive entitled "Solidarity", regulates the cooperation between the Members on issues such as the reception of the persons who are eligible for temporary protection and their transferal from the requesting states. It seems, nonetheless, very unlikely that the Member States, which are not very affected by the mass migration influx, will vote for the implementation of the Directive. This may also be considered as another reason for the failure to implement the Directive.[121] In the third section entitled 'Obligations of the Member States towards persons enjoying temporary protection', the responsibilities of the states on issues regarding persons benefiting from temporary protection such as residence permits, admission to the country, visa procedures and fees, work and education, and their close relatives who will be considered as a family are determined. Regulations on children in different situations such as minors of the protected person or his/her spouse, unaccompanied minors, are also included in this section. The provision in Article 17, stating *Persons enjoying temporary protection must be able to apply for asylum at any time*, also provides an opportunity for getting access to the asylum procedure in the temporary protection process. However, it was later on concluded that the Member States may not be able to provide temporary protection simultaneously with the status of asylum seekers. The significance of the connection and cooperation of the Member States with the Commission and each other are also stressed in the Directive.

2) Some of important UNHCR's decisions and guidelines on temporary protection

72. UNHCR Executive Committee appears to have addressed the issues of temporary protection and mass asylum in its many resolutions. For instance, it is stated in the Committee's Resolution No.15 (f) taken at its 30th session dated 1979 that;

"In cases of large-scale influx, persons seeking asylum should always receive at least temporary asylum. States which because of their geographical situation, or otherwise, are

[121] For further information on the applicability of the Directive, see, İNELI, CIĞER, M., «Uluslararası Hukuka Uygun Geçici Koruma Rejiminin Unsurları Üzerine», p. 70, 72, above

faced with a large-scale influx should as necessary and at the request of the State concerned receive immediate assistance from other States by the principle of equitable burden-sharing. Such states should consult with the Office of the United Nations High Commissioner for Refugees as soon as possible to ensure that the persons involved are fully protected, are given emergency assistance, and that durable solutions are sought." The decision emphasizes the immediate recognition of temporary protection in cases of mass influx and the importance of responsibility sharing between states.

73. In Resolution no.19 dated 1980 and entitled 'Temporary Asylum', the committee reiterated that the principle of non-refoulment to the place where there is a risk of oppression should be observed in the case of large-scale influx and persons seeking asylum should receive temporary asylum all the time. In the Decision, in which it has been stated the importance of mutual assistance in solving the problem between states in line with the principle of equitable burden-sharing, it has also been expressed by emphasizing on the exceptional characteristic of temporary asylum that these people should benefit from basic human behavior standards. Also considering that temporary refuge was not adequately examined, the Committee stressed especially the need to address the issues in detail such as procedures for the reception of asylum seekers, statutes requiring permanent solutions, and responsibility-sharing.

74. Another resolution, which was taken by the Committee at its 32nd Session, dated 1981 and No.22, also concerns the Protection of Asylum Seekers in the case of a large-scale influx. In the Resolution, it has been stated that those requesting for mass asylum often face difficulties in finding durable solutions such as voluntary repatriation, local settlement or resettlement in a third country. It has been assessed that a large-scale influx causes problems also in terms of the states admitting this claim, and therefore states do not grant asylum seekers the right of permanent residence. In the resolution, which also included protection measures, it has been mentioned that States should primarily admit those seeking mass asylum and not to send them back to the place where there is a risk of oppression. Considering the provision in the Article 31 of the 1951 Convention concerning the treatments to be performed for refugees who have entered a country without authorization and whose situation in that country has not yet been regularized do not cover the details in terms of those with mass asylum status, the resolution emphasizes the treatment of asylum-seekers who have been temporarily admitted compatible with the

minimum basic human standards. Some of these standards, for example, non-discrimination against these persons; not being subjected to cruel, inhuman or degrading treatment; not being punished or mistreated merely on the grounds that their presence in the country is considered unlawful that their movements should not be restricted unless they are for the benefit of public health and public order; being able to benefit from the fundamental individual rights that are internationally-recognized; enjoying free access to judicial and administrative authorities; being respected for their family unity; that appropriate regulation should be made to protect minors and unaccompanied children; that the financial aid and sending and receiving of mail should be permitted; that the arrangements should be made, if possible, for the registration of births, deaths, and marriages providing all kinds of facilities for finding a satisfactory and durable solution; having the right to bring the assets they have brought to the land where they are located to the country where they found a durable solution, and that all necessary initiatives should be taken to ensure voluntary repatriation, are expressed in the resolution. The importance of the interstate division of responsibility and the necessity of cooperation with UNHCR were emphasized in this decision as well. The Resolution No.22 of the Committee is particularly significant in that it sets minimum standards to be applied to mass influx of asylum seekers.[122]

75. UNHCR's works regarding the temporary protection regime also intensified after the 1990s and as a result of these efforts, the Guidelines on Temporary Protection was adopted in 2014. The guideline has been arranged as a total of 29 items, consisting of the aim of the guideline, background, common understandings, scope, entry and reception, minimum standards of protection, transition to alternative status, solutions and termination, international cooperation, sharing of burden and responsibility, consultation and coordination, and implementation models. Although not legally binding, it is accepted as an important document in terms of its bringing an arrangement on many issues.[123] "In particular, it is significant to take the Guideline into consideration in terms

[122] For detailed information about decisions, «Resolutions of the UNHCR Executive Committee», see, [online], UNCHR, pages 32, 42, 48-51, [consulted on 12/17/2018], http://sorular.rightsagenda.org/Uploads/MULTECI%20MEV/BMMYK%20Y%C3%9CR%C3%9CTME%20KOM%C4%B0TES%C4%B0%20KARARLARI.pdf

[123] For the full text of the Guideline, see, «Guidelines on Temporary Protection or Stay Arrangements», [online], UNHCR, [consulted on 12/17/2018],

of determining the position of temporary protection within the international protection regime and evaluating it with regards to compliance with the 1951 Convention."[124]

76. These guidelines have been built on the results of, as well as other things, the Round Table meetings held in 2012 and 2013 and the International Expert Meetings for Cooperation in Burden and Responsibility Sharing held in 2011. Article 3 of the Guidelines states that temporary protection is complementary to the international refugee protection regime, in particular for non-Convention states, as well as filling gaps in the protection regime of the states. In the Article 7, temporary protection is considered to be applicable, in particular to the 1951 Convention and/or 1967 Protocol, or in regions where there are a small number of states that are not parties to which they are not applicable due to regional or other protection instruments or the character of the movements of these instruments. Article 8 emphasizes the time-limited and solution-oriented structure of temporary protection by stating that temporary protection is a humanitarian and non-political act. It is also noted that temporary protection constitutes a minimum limit while maintaining the implementation of more appropriate standards. The article makes it clear that temporary protection will not harm the international legal obligations of the states and is not intended to substitute for other protection mechanisms. Articles 9-11 describes in which situations temporary protection should be implemented. Articles 12-15 contain regulations on issues such as non-repatriation, reception, meeting urgent needs, and enrollment of asylum seekers, who have requested asylum in this way. Articles 16-18 are crucial in that they set the minimum standards of temporary protection. Mentioning the challenge of making a definitive determination of the duration of temporary protection, it is pointed out in Article 20 of the Guidelines that states can extend this period as long as conditions continue. Later on, the importance and necessity of international cooperation, solidarity, and burden and responsibility sharing in temporary protection have been addressed.

https://www.unhcr.org/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html

[124] ÖZTÜRK, ÖVÜNÇ, N., «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», p. 229, above

§ 6) A Short Reference to The Turkey Refugee Law

77. Turkey has gained a significant position throughout history as a transit or destination country for human mobility in both legal and unlawful means due to its strategic geographical location between Asia and Europe. This circumstance continues to be relevant as a result of the turmoil in the Middle East and the demands for the mass influx, especially stemming from the civil war in Syria. However, despite this intense human mobility, there was no legal legislation dealing with foreigners in Turkey until the Law on Foreigners and International Protection (LFIP) entered into force in 2014. This problem has always taken place a major title in Turkey's national action plans and programs prepared in the EU accession process. Thus, within the scope of efforts to harmonize with the EU acquis, the LFIP preparation was initiated in 2009 and the resolution was submitted to the Parliament in March 2012. The LFIP was accepted in the Parliament in April 2013 and published in the Official Gazette entering into force in 2014. The LFIP is the first legal regulation where many practices regarding foreigners and the rights and freedoms granted to them by Turkey have been systematically regulated.

A- EU harmonization program and national action plans related to migration and asylum

78. The harmonization programs and national action plans prepared during EU candidacy process of Turkey include assessments and recommendations on migration and asylum issues. The issue of migration and asylum has always been considered an important topic in these. Although adaptation programs and action plans prepared in parallel are not legally binding, they are necessary for the progress of the EU candidacy process. They are also the documents that create pressure on the states and direct the legal regulations and policies of the states. Therefore, it is thought that we should give some place to the important national programs and action plans on migration and asylum about Turkey.

79. “The Turkish National Program for the Adoption of the Acquis Communautaire of the European Union"[125], prepared in 2001, also included the issue of migration and

[125] For the full text of The Turkish National Program, see, «The Turkish National Program for the Adoption of the Acquis Communautaire of the European Union», 2001, [consulted on 09/25/2018], https://www.ab.gov.tr/195.html

asylum. The annex to the 2001 National Program entitled "The Turkish National Action Plan for the Adoption of the EU Acquis Communautaire on Migration and Asylum" includes the following topics: *"In the short term, "continue to strengthen the fight against illegal migration and negotiate a readmission agreement with the European Commission"; in the midterm, "adopt and implement the EU acquis and practices on migration (permit entry and re-entries and deport from the country) to prevent illegal migration and initiate alignment in the field of asylum and conduct the works on lifting the geographical restriction of the 1951 Geneva Convention, evaluate and finalize the asylum applications by strengthening the system, and provide asylum seekers and refugees with accommodation and social support".*[126] Turkey after the signing of the Accession Partnership Document in 2001, revised the document in 2003 and began to follow the national action program to comply with EU legislation. In this context "The, Asylum, Migration Action Plan Task Force" was established in which representatives of relevant Ministries, institutions and organizations took part. The legal arrangements and changements and as a result of preparations for the provision of institutional and physical infrastructure necessary for the harmonization with the EU legislation, in 2005. Accordingly, in 2005, "The Turkish National Action Plan for the Adoption of the EU Acquis Communautaire on Migration and Asylum" was adopted. "The National Action Plan, which can be said to draw Turkey's roadmap for asylum and illegal migration, aims to harmonize Turkish system and legislation on asylum, immigrant and foreigners' law with EU acquis and systems during Turkey's EU accession negotiations."[127]

80. Another regulation issued to designate the procedures and principles regarding the protection of foreigners is the Implementation Directive of the Ministry of Interior, which came into force in 2006.[128] Paragraph (f) of Article 1 of the Directive, entitled Definitions, reads:

---

[126] «The Turkish National Action Plan for the Adoption of the EU Acquis Communautaire on Migration and Asylum», [consulted on 02/16/2018], http://www.goc.gov.tr/files/files/turkiye_ulusal_eylem_plani(3).pdf

[127] ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku,* p. 437, above

[128]For the full text of the directive, see, « Ministry of Interior General Directorate of Security Application Instruction», Turkey, Ministry of Interior, Ankara, No. B.05.1.EGM.0.13.03.02/16147 71810–12/Gnl.D.6-6, 22 June 2006, [consulted on 03/22/2017], http://www.multeci.org.tr/wp-content/uploads/2016/12/57-Sayili-Genelge-2010-Degisikligi.pdf

Refugee: "A foreign national or a stateless person from European countries, who has been granted a refugee status by the Ministry of Interior because he/she meets the refugee criteria defined in Article 1 of the 1951 Convention, as specified in the second paragraph of Article 3 of the asylum / refuge regulation of 1994; and paragraph (f) reads:

Asylum seeker: "A foreign national or a stateless person from the countries other than Europe, who has been granted an asylum seeker status by the Ministry of Interior because he/she meets the refugee criteria defined in Article 1 of the 1951 Convention, as specified in the third paragraph of Article 3 of the asylum / refuge regulation of 1994."

81. As can be seen from the above definitions, the distinction between refugees and asylum seekers has been preserved in the 2006 Directive. Granting refugee status is based on coming from European countries and meeting other criteria specified in the Convention while the asylum seeker status is based on coming from countries outside Europe and meeting the criteria for refugee definition.

82. The lack of comprehensive legislation to determine the rights and freedoms and limitations of refugees was seen the most important deficiency for Turkey during the preparation of the Action Plan on asylum and migration. For this reason, the preparation and implementation of a comprehensive legal regulation on this issue is one of the main objectives of the Action Plan. Besides some other problems are mentioned such as in the law About Residence and Travel of Foreigners in Turkey, that political refugees just can reside in places permitted by the Ministry of Interior; denial of asylum-seeker's application for delayed to asylum procedure; rejection of asylum applications because of not submit official documents within 15 days from the date of application. Another important issue included in the plan is the speedy evaluation of the applications of the vulnerable groups specified as women, children and the elderly in asylum applications. While it is important to introduce positive discriminatory arrangements for vulnerable groups, it is lacking to specify the scope of these vulnerable groups as elderly, children and women only. People with different sexual orientations and gender identities should be mentioned among vulnerable groups and their applications should be handled accordingly.

B- LFIP and International Protection Forms

83. As detailed in previous chapters, Turkey needed a legal regulation organizing migration system and legislation. With this in mind, the works on the legislation about the foreigners' law initiated in 2009 and the draft Law on Foreigners and International Protection (LFIP) was submitted to the Parliament in March 2012. The Law was adopted in the Parliament in April 2013 and issued in the Official Gazette entering into force in 2014. In the general preamble of the LFIP, the main internal and external factors affecting the enactment of the law are mentioned. The first of these is that despite the rapid increase in the number of foreigners coming to Turkey, legal regulations are incomplete and inadequate. Accordingly, there was no basic regulation at the law level in the field of international protection in Turkey, just as the current arrangements were inadequate in the face of current problems and requirements in respect of the entry of foreigners outside the international protection to the country, their stay in and exit from the country, visa and residence permit procedures, their deportation/expulsion and their rights and obligations during their stay in Turkey. Another reason is that the legal arrangements to be put into effect for the harmonization of Turkey's migration system and legislation with the EU acquis as part of the EU negotiations, administrative restructuring and the completion of physical infrastructure became more of an issue. Another issue emphasized in the law's preamble is related to the adaptation of foreigners. Thanks to the regulations of the law, it is aimed that foreigners and the persons who have the status or the application of international protection should be adapted to the society and the works should be initiated to ensure that the society is in harmony with the foreigners, above all, by paving the way for this process. As the last factor, the determination of establishment, duties, powers and responsibilities, as well as of organizational and personnel structure of the Directorate General of Migration Management, which will be responsible for migration management are referred.[129] Some of the international jurists consider that the law fills the legal gap in Turkish legislation and meets current requirements.

[129] For the full text of the General Justification of the Law on Foreigners and International Protection, see, «General Justification of the Law on Foreigners and International Protection», Turkey, Grand National Assembly of Turkey, Ankara, No. 310, [consulted on 03/18/2019], https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss310.pdf

84. Rifat Erten (Professor of International Law), for example, comments that the Law, in general, has a nature in line with contemporary terminology and requirements with an understanding that respects today's trends and human rights.[130] However, some other jurists such as Zeynep Kıvılcım (Associate Professor of International Law) make a gender-based assessment by stating that the Law, with its material law and procedural provisions, do not take into account that more than half of the refugees and migrants are women, and virtually ignores LGBTI individuals who are persecuted for their sexual orientation.[131]

85.The Law on Foreigners and International Protection, which is systematically composed of five parts and 126 articles, regulates many issues such as foreigners' entry into Turkey, their stay in and exit from Turkey, the scope and application of the protection to be granted to foreigners who demand protection from Turkey, the establishment, duty, power and responsibility of the Directorate General of Migration Management (DGMM).[132] Remarkably, the distinction made in terms of foreigners' country of origin, i.e., of Europe or outside Europe is preserved. "*The Law on Foreigners and International Protection* also establish its dual asylum structure. According to the Law, refugees from Syria are granted 'Temporary Protection' status collectively, while asylum seekers from other countries can be granted one of three different individuals 'International Protection' statuses by DGMM."[133] These statuses are quoted in the section entitled "Types of International Protection, Exclusion from International Protection" of the Law as refugees, conditional refugees and subsidiary protection. According to this;

---

[130] For detailed information on Erten's assessment, see, ERTEN, Rifat, «Yabancılar ve Uluslararası Koruma Kanunu Hakkında Genel Bir Değerlendirme », *Gazi University Journal of Law Faculty,* [online], Year 2015, Volume XIX, No. 1, pages 46, [consulted on 03/18/2019], http://webftp.gazi.edu.tr/hukuk/dergi/19_1_1.pdf

[131] For detailed information on Kıvılcım's views, see, KIVILCIM, Zeynep, «Yabancılar ve Uluslararası Koruma Kanunu ile Geçici Koruma Yönetmeliği: Toplumsal Cinsiyet Perspektifiyle Bir Değerlendirme», above

[132] For further information, see, CANYAŞ, BAYATA, Aslı, «Yabancılar ve Uluslararası Koruma Kanunu Kapsamındaki Geri Gönderme Yasağının Uygulanma Koşullarının AİHM Kararları Çerçevesinde İrdelenmesi», *Hacettepe University Journal of Law Faculty,* [online], Year 2015, Volume 5, No. 1, p. 74, [consulted on 03.18.2019], http://www.hukukdergi.hacettepe.edu.tr/dergi/c5s1makale4.pdf

[133] «Güvenli Olmayan Sığınak Türkiye'de Sığınmacılar ve Mülteciler Etkili Korumaya Erişemiyor», Amnesty International, Year 03.06.2016, No: EUR 44/3825/2016, pages 13-14, [consulted on 03.18.2019], https://www.amnesty.org/en/documents/eur44/3825/2016/tr/

86. **Refugee:** A person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process (LFIP, Article 61).

87. **Conditional refugee:** A person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. It is also stated that conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country. (LFIP Article 62)

88. **Subsidiary protection:** A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would be sentenced to death or face the execution of the death penalty; face torture or inhuman or degrading treatment or punishment; face serious threat to himself or herself because of indiscriminate violence in situations of international or nationwide armed conflict; and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence (LFIP Article 63).

89. Another regulation which is not counted in the international protection types but is included in Article 91 of the Law on Foreigners and International Protection is related to Temporary Protection.

90. **Temporary protection** may be granted for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed our borders in a mass influx situation seeking immediate and temporary protection. Article 1 of Temporary Protection Regulation No. 2014/6883 regulates the scope of temporary protection similarly.

C- Temporary protection regulation

91. Turkey has faced mass asylum requests throughout history due to its geographical position. The most massive one, however, is the event of millions of Syrian citizens seeking asylum from Turkey due to the civil war experiencing since 2011 in Syria. The regulations regarding the temporary protection regime in Turkish law have been made after this mass migration. Regarding the temporary protection regime, which was first mentioned in Article 91 of the Law on Foreigners and International Protection (LFIP), a more detailed regulation was issued in 2014. According to Article 91 of the LFIP, *Temporary protection may be provided to foreigners who are forced to leave their country, cannot return to the country of origin, and who come to our borders or cross our borders to receive emergency and temporary protection.*

92. Temporary Protection Regulation, was adopted on 10/13/2014 and entered into force by being issued in the Official Gazette dated 10/22/2014. The purpose of the regulation is stated in the Article 1 as; to identify procedures and principles for temporary protection that may be granted to foreigners who have arrived at or crossed our borders seeking immediate and temporary protection, whose application for international temporary protection cannot be assessed individually; to demonstrate the rights and obligations of these persons; and to regulate the international cooperation on this mass influx. Temporary protection is defined in Article 3 (f) of the Regulation as follows;

Temporary protection refers to the protection granted to foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed our borders in a mass influx situation seeking immediate and temporary protection and whose application for international temporary protection cannot be assessed individually.

93. Non-refoulment is stipulated in Article 6 of the Regulation similarly in the LFIP and the 1951 Convention. A temporary protection is defined in Article 7 (1) of the Temporary Protection Regulation as *A temporary protection is applied to foreigners whose international protection status cannot be determined individually, who are forced to leave their country and cannot return to the country of origin, and who come to our borders or cross our borders massively or who come individually during this period of mass influx to receive emergency and temporary protection.* Unlike the definition in the FLIP, the Regulation also emphasizes that the persons who are covered by the application for temporary protection are foreigners whose international protection status cannot be determined individually. The main issues in the Regulation are; the prohibition of repatriation (art. 6); foreigners who will not be covered by temporary protection (art. 8); taking and termination of temporary protection decision (art. 9-15); procedures to be carried out within the scope of temporary protection (art. 17-25); services (art. 26-32) and obligations (art. 33-35) available to temporarily protected persons; Establishment, Management and Operation of Reception Centers and Temporary Accommodation Centers and Services to be provided in Temporary Accommodation Centers (art. 36-41); voluntary repatriation and depart to the third country (art. 42-45), and cooperation, assistance, special needs, and family reunification (art. 46-61).

94. As regards the termination of temporary protection, the Regulation has adopted two different arrangements such as termination of implementation and individually termination or cancellation. According to Article 11 regarding the termination of temporary protection, this protection can be terminated by the Council of Minister's decision. It was also concluded in the same article that, following the decision, it may be decided that the temporarily protected persons return to their country, that the status of which they fulfilled its conditions should be granted collectively or that the applications of whom applied for the international protection be evaluated individually or to allow them to stay in Turkey in the circumstances to be determined under the law. On the other hand, Article 12 regulates that, in cases in which temporarily protected person, leave voluntarily from Turkey, benefits from the protection of a third country, is admitted to a third country in the context of humanitarian reasons or resettlement or departs to a third country, and if he/she dies, the temporary protection will end up individually; furthermore, in case it is later understood that the provisions of the first paragraph of Article 8 should be excluded from the scope of temporary protection, temporary

protection shall be terminated by the General Directorate or the governorships. The regulation on the voluntary repatriation of temporarily protected persons is that those who will voluntarily return to their country, from foreigners covered by the regulation, will be provided necessary convenience and support within the bounds of possibility. Article 17 of the Regulation and the following articles set forth the works to be conducted under the temporary protection. The Ministry of Interior will, hereunder, decide the admission to the country, of foreigners arriving at Turkey's land borders and land waters seeking immediate asylum, by taking the opinions of the relevant public institutions and organizations. The registration of such persons will be made by the personnel of the Directorate General. The registered persons will be given a temporary protection identity document by the relevant governorship.

95. Regulation's 25th article on the stay of the temporary protected persons in the country states that temporary protection identity document will provide the right to stay in Turkey though it will not be considered equivalent to the documents corresponding to residence permit, that it will not grant the right to a long-term residence permit, that its period will not be taken into account when determining the sum of the residence permit, and that it will not grant the owner the right to apply for Turkish citizenship. Article 26 of the Regulation sets out that foreigners having temporary protection may be provided with health, education, access to the labor market, social services and assistance, as well as interpreting and similar advantages. The second paragraph of the same article states that other services can be offered within the means and capabilities of the facilities of public institutions and organizations.

D- Compliance of temporary protection regime with international law

96. It has always been controversial whether the status and rights granted to the protected people by the temporary protection regime conform to the principles and values provided by the 1951 Convention. “Within the framework of the two most elaborated sources of temporary protection, the EU Temporary Protection Directive (TPD) and the Temporary Protection Regulation (TPR); it is possible to examine the responsibilities that may be associated with the 1951 Convention in terms of temporary protection at the axis

of two issues: “access to international protection (access to refugee status)” and “benefiting from rights and guarantees towards asylum seekers”.[134]

97. Concerning the access of protected people to international protection, there are explicit provisions both in the EU Temporary Protection Directive (TPD) and the Temporary Protection Regulation (TPR) in Turkey. However, while the Directive enables access to international protection, the Regulation does not accept the individual application in contradiction to this. Article 17 of the EU TPD states that *Persons under temporary protection should be able to apply for asylum at any time*, which makes it clear that temporary protection does not constitute an obstacle to applying for international protection. Article 16 of the TPR in Turkey, however, stipulates that those under temporary protection cannot apply for international protection, by stating *During the period in which temporary protection is implemented, individual international protection applications of foreigners covered by this Regulation shall not be processed for the effective implementation of temporary protection measures*. An exceptional arrangement in this regard is provided in the provision 14/3 of the TPR. According to this, it is stated that, *if it is understood that those who have participated in the armed conflict in their country, from the foreigners mentioned in subclause (d) of the first paragraph of Article 8, permanently terminate their armed activities, they are provided to have access to individual international protection status determination procedures.* It is stated in article 8 (ç)as *those who participated in the armed conflict in their country but did not end these activities permanently.* According to this regulation, those who participate in armed conflicts in their country and then put an end to these activities are allowed to make an individual application for international protection. However, in this case, a distinction is made between those who live in well-founded fear of persecution and those who participated in armed activities, and this is criticized for violating the principle of equality.[135]

98. Although urgent and critical needs of asylum seekers are met with the temporary protection regime, these rights are not as comprehensive as those granted to refugees.

---

[134] ÖZTÜRK, ÖVÜNÇ, N., «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», p. 231, above

[135] For further information, see, ÖZTÜRK, ÖVÜNÇ, N., «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», p. 249, above

However, as it is less socially and economically burdensome for states, it is preferable to take those who took refuge in cases of mass influx, under temporary protection. How long this temporariness will last is an important criterion in determining the compliance of temporary protection with international law. The long-lasting of this period leads to the fact that asylum seekers who could not gain refugee status are not able to benefit from the full of the rights granted by the 1951 Convention. There is no universally predetermined period regarding how much the reasonable duration will be in the temporary protection regime. However, the EU Temporary Protection Directive and the International Law Association have adopted that temporary protection should last a maximum of three years.[136]

99. The temporary protection regime is significant as it protects in cases of emergency and mass asylum. However, as explained above, this protection should not be considered an alternative to the rights and protections granted to asylum seekers in the 1951 Convention and other international regulations, but rather as protection temporal and compatible with these.

E- Constitutional court decisions

100. The Constitutional Court in Turkey was first established by the Constitution of 1961. The establishment of the Court, its duties and powers, the procedure and the nature of its proceedings and decisions are regulated in the Constitution of 1961. The Court has been authorized to examine the constitutionality, in respect of both "form and substance", of laws and the Rules of Procedure of the Turkish Grand National Assembly, as well as to try persons listed in the Constitution for offences relating to their functions as the Supreme Criminal Tribunal, to hear the closure of political parties and examine their accounts, income sources and expenses, and to perform the other duties given to it by the Constitution. The 1982 Constitution, which is still in force, also includes regulations on the Constitutional Court. The duties assigned to the court by the Constitution are as follows: to examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the

[136] For further information, see, İNELİ, CİĞER, M., «Uluslararası Hukuka Uygun Geçici Koruma Rejiminin Unsurları Üzerine», p. 80,81, above

Turkish Grand National Assembly, to examine the constitutional amendments only in terms of a limited number of form deficiencies, as well as to try persons listed in the Constitution for offences relating to their functions as the Supreme Criminal Tribunal and to hear cases and handle the applications related to political parties. Article 153 of the Constitution states that the decisions of the Constitutional Court are final; however, in the course of annulling the whole, or a provision, of laws or presidential decrees, the Constitutional Court shall not act as a lawmaker and pass judgment leading to new implementation. After the article, it is regulated that decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding the legislative, executive, and judicial organs, on the administrative authorities, and on persons and corporate bodies. The decisions referred to here are the annulment decisions of the Court.[137]

101. Procedures and principles of the Court and its establishment have been redefined with the Law on Amendments to Some Articles of the Constitution of the Republic of Turkey adopted in 2010.[138] The Law on the Establishment and Trial Procedures of the Constitutional Court No. 6216 dated 2011 regulates the structure of the Court, its duties, the proceedings, the election of the President, the Vice-Presidents and the members, the disciplinary and personal affairs, the qualifications, appointment, duties and responsibilities of the rapporteurs and their staff, and the principles of the disciplinary and personal affairs. The Fourth Section of the Law entitled “Individual Application" regulates in detail those who have the right to individual application, the procedures and principles regarding how to make the application, the evaluation of the applications and the issues related to the decisions on this type of application. According to the Article 50 on “Decisions”, *at the end of the examination of the merits, it is decided either the right of the applicant has been violated or not. In cases where a decision of violation has been made what is required for the resolution of the violation and the consequences thereof shall be ruled. However, legitimacy review cannot be done, decisions having the quality of administrative acts and transactions cannot be made.* After the same article, it is

[137] For the text of the Constitution of the Republic of Turkey, see, «Constitution of the Republic of Turkey», above

[138] «Kuruluşundan Günümüze Anayasa Mahkemesi», Constitutional Court of Turkey, [consulted on 03/18/2019], https://www.anayasa.gov.tr/tr/mahkeme/tarihi/1/

regulated that if the determined violation arises out of a court decision, the file shall be sent to the relevant court for holding the retrial for the violation and the consequences thereof to be removed. In cases where there is no legal interest in holding the retrial, the compensation may be adjudged in favor of the applicant or the remedy of filing a case before the general courts may be shown. The court, which is responsible for holding the retrial, shall deliver a decision over the file, if possible, in a way that will remove the violation and the consequences thereof that the Constitutional Court has explained in its decision of violation.[139]

102. "After the individual application mechanism to the Constitutional Court has been incorporated into our legal system with the Law No. 5982 enacted in 2010, the Court increased its influence with its decisions on asylum and migration and began to be called together with the ECHR as a case-law court."[140] Accordingly, the Court examines the applications made against the final acts and decisions finalized after September 23, 2012. According to article 148/3 of the Constitution, everyone may apply to the Constitutional Court because one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. "With the right of individual of application adopted in the Constitution, it is supervised whether the state effectively protects the fundamental rights and freedoms of individuals."[141] The decisions of the Constitutional Court as a result of both the constitutionality of the legal regulations and the individual applications constitutes a legal precedent in terms of Turkish law. Given this importance, let us address some of the Court's judgments on asylum and refugee.

---

[139] For the full text of the Law No.6216, see, «Law on the Establishment and Procedures of the Constitutional Court», Law No. 6216, Turkey, Grand National Assembly of Turkey, Ankara, 22.04.1962, Official Newspaper No.11091, 25.04.1962, [consulted on 11.06.2019], https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc045/kanuntbmmc04500044.pdf

[140] TOKUZLU, Lami, Bertan, «Yabancılar ve Uluslararası Koruma Kanunu'nun Yasal Belirlilik İlkesi Konusunda Türk Uygulamasına Katkısı Üzerine Bir Değerlendirme », *Journal of Conflict Court,,* [online], Year 2016, No.7, p.1073, [consulted on 03/18/2019], http://dergipark.gov.tr/download/article-file/229932

[141] SEÇKİN, Mehmet, Beyhan, « Anayasa Mahkemesi'nin Bireysel Başvuru Kararları Işığında, Yaşam Hakkından Kaynaklanan Kamu Gücü İhlallerinin Değerlendirilmesi », *Journal of Ankara Bar Association*, [online], Year 2016, No. 2, p. 420, [consulted on 03/20/2019], http://dergipark.gov.tr/download/article-file/398529

103. The decision of the Court numbered 2015/18582 and dated 05/10/2017 relates to the alleged violation of the prohibition of ill-treatment of Uzbekistan's citizen Azizjon Hikmatov due to a decision to deport him to the country at risk of being killed or ill-treated. Hikmatov, who entered Turkey illegally in 2019, has requested international protection from Turkey for allegedly being threatened with persecution in his country because of his political activities. UNHCR granted him temporary protection on 06/30/2010. Hikmatov was arrested on 3/15/2015 in a vehicle with Syrian licensed plate that was stopped by law-enforcement officers from the Kilis Police Department. He was suspected of attempting to cross illegally into conflict zones in Syria with his entourage. Following the incident, the applicant's request for international protection was rejected by the Migration Management Directorate of the Batman Governorship. So, the applicant was banned from entering the country and deported on 05/14/2014 because he posed a threat to public security. The applicant's lawsuit against the Administrative Court for the cancellation of the administrative act was also dismissed. The relevant court decision did not assess of the allegations that the applicant could be killed or ill-treated in Uzbekistan if deported. Hikmatov then filed an individual application to the Constitutional Court with an injunction measure. Constitutional Court halted the deportation proceedings as an injunction measure. The Court considered that the obligation to investigate and evaluate the risks to which the applicant claimed to be exposed should he was deported to his country had not been fulfilled during the administrative proceeding. It, therefore, gave a ruling that the prohibition of ill-treatment set out in the Article 17 of the Constitution had been violated.[142] Although it has no direct effect, such as mandatory provisions decisions such as retrial, compensation or violation of rights are binding and effective both by the legislator and the courts. Considering the importance of the Court's decisions on asylum and asylum;

104. The Constitutional Court decision on the individual application of M.A., a citizen of the Russian Federation, appears to be based on a similar assessment. The applicant and his family, who had previously lived in Chechnya, illegally crossed into Syria through

[142] For the full text of the Hikmatov Decision, see, « Case of A. Hikmatov v. Turkey », Application No: 2015/18582, Council of Europe: European Court of Human Rights, 10.05.2017, [consulted on 03.20.2019], http://www.constitutionalcourt.gov.tr/inlinepages/press/PressReleasesofJudgments/detail/72.html

Turkey. The applicant, who tried to enter Turkey illegally with his children after his wife had been killed in a bomb attack in Syria, was arrested by law enforcement officers on 09/10/2015. The applicant was kept under administrative supervision at Hatay and Izmir Repatriation Centers, respectively. On 11/09/2015, the Migration Management Directorate of Izmir Governorship decided to deport the applicant on the ground that he had violated the "legal entry into and exit from Turkey" rule. The Applicant filed a lawsuit requesting the annulment of the deportation decision; however, the Administrative Court rejected the Applicant's request. The applicant then made an individual application to the Constitutional Court. The Court stated that if the applicant is deported to his country, he may face a danger to his life or material and moral integrity, thereby decided to halt the deportation proceeding as an injunction measure.[143]

105. Since there is no ordinary remedy against the decisions of the Constitutional Court on individual applications, the decisions are final in terms of form. It is possible to do an individual re-application where the court or institution has not enforced the violation decision. This is not contrary to the finality of the decision in terms of form. Similarly, applying to the ECHR against these decisions does not constitute an obstacle to finality in terms of form as it is not an ordinary domestic remedy. Decisions taken in the case of individual application are also final in terms of substance. The same person will not be able to re-claim a violation of the same right related to the same incident or administrative act. The Constitutional Court decisions are as binding as their annulment decisions. However, contrary to annulment decisions, these decisions do not have effective results for everyone. In other words, the Court's judgment does not have a general binding to resolve any subsequent disputes. Furthermore, it is observed that the Constitutional Court has interpreted the rights and freedoms broadly contained in the Constitution, taking into account the relevant provisions and the case-law of the ECHR while assessing these issues. Thus, the Court determines the scope, content and limit of the rights and individual application decisions.[144]

---

[143] For the full text of the M.A. decision, see, «M. A. Application Constitutional Court Interim Decision on the Measure», Turkey, Constitutional Court, Application No: 2016/220, Decision Date: 20.01.2016, [consulted on 03/20/2019], http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/dc1f5baf-97a1-4c82-b8f0-297176907fc2?wordsOnly=False

[144] For further information, see, KÖKÜSARI, İsmail, «Anayasa Mahkemesinin Bireysel Başvuru Kararlarının Anayasanın Genişlemesi ve Uluslararasılaşmasındaki Etkisi», *Constitutional Judgment*

F- Decisions of the council of state

106. The Supreme Administrative Court is the consultation and scrutiny authority, as set out in Article 155 of the Constitution and Article 1 of the Council of State Act. According to Article 155/2 of the Constitution, the duties of the Council of State are as follows: to try administrative cases, to give its opinion within two months on the conditions and the contracts under which concessions are granted concerning public services, to settle administrative disputes, and discharge other duties prescribed by law.[145] Thus, the Council of State has two different areas of duty as administrative and judicial, and its decisions differ accordingly. The functions of the Council of State are detailed in Part Four of the Council of State Act. Some many important administrative procedures and decisions directly affect the rights of refugees in the asylum process or deportation decisions. The decisions of the Council of State have an important role in controlling the lawfulness of these decisions in terms of procedures and principles. Thus, some important decisions of the Council of State should be included. Some of the Council of State's decisions on the subject can be exemplified as follows:

107. The subject matter of the case is the deportation of plaintiff Ruslan Kurkaev, a citizen of the Russian Federation, of Chechen descent, by the Ministry of Interior with the administrative transaction dated 07/19/2004 and no. 134693. The plaintiff filed a lawsuit in Ankara 9th Administrative Court, requesting the cancellation of the transaction. (Decision No: 2009/8048 dated 06/30/2010) Taking into account the plaintiff's arrival in Turkey via Azerbaijan, the court stated that he did not come directly to Turkey from the country he was under threat and that there was no extradition to the country where he claimed he was under threat. The Court further considered that it was not unlawful to deport the person concerned only to Azerbaijan or to a third country if he obtained a passport and visa, and thus decided to dismiss the case. Upon the appeal of the decision by the plaintiff, the appellate review of the case was conducted by the 10th Chamber of

---

Journal, [online], Year 2016, No. 33, pages 303-318, [consulted on 03/20/2019], https://www.academia.edu/33294712/Anayasa_Mahkemesinin_Bireysel_Ba%C5%9Fvuru_Kararlar%C4%B1n%C4%B1n_Anayasan%C4%B1n_Geni%C5%9Flemesi_ve_Uluslararas%C4%B1la%C5%9Fmas%C4%B1ndaki_Etkisi

[145] For the arrangements concerning the Council of State, see, «Consultant Law», Law No. 2575, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 17580, 20.01.1982, pages 5437-5456/3, [consulted on 03/29/2019], http://www.mevzuat.gov.tr/mevzuatmetin/1.5.2575.pdf

the Council of State. According to the relevant provisions of the Geneva Convention, the respective chamber of the Council of State stated that the legal status of refugees is governed by the laws of the state in which they have permanent residence or if they do not have permanent residence, is governed by the laws of the country in which they are located, that refugees entering their territory without direct threats from the country where their lives and freedoms are threatened shall not be punished for their illegal entry if they inform the competent authorities without delay, and that a reasonable time is allowed to ensure the admission of refugees to other countries. As a conclusion, the respective department of the Council of State considered that the plaintiff, a citizen of the Russian Federation, of Chechen descent and whose connection with any terrorist organization could not be established, was at risk of pressure and persecution if he was returned to his country, and thus concluded that the deportation procedure and the local court's decision on deportation were not lawful, while a residence permit had to be granted until his request for asylum was accepted by a third country. For these reasons, the Chamber accepted the plaintiff's appeal and decided to reverse the 9th Administrative Court's decision.

108. Another decision concerning the deportation proceedings relates to the plaintiff, Afghan national Golafghan Mirafghan. Mirafghan has sought asylum in Turkey. However, the plaintiff's request was not accepted because he entered Turkey illegally and sought asylum in a third country, and that the UNHCR tried to relocate him to another country by granting him refugee status. So, it was decided that the plaintiff be deported with the administrative transaction numbered 60589 dated 03/27/2009. Thereupon, a lawsuit was filed at Ankara 8th Administrative Court with the request for annulment of the transaction. The Administrative Court, on the other hand, considered that the transaction that allowed the expulsion of the plaintiff by rejecting his request for asylum was unlawful and thus canceled the proceeding. Upon appeal of the decision by the Defendant, the Ministry of Interior, the 10th Chamber of the Council of State, having examined the case, stated that the administrative court's decision was nonprocedural and unlawful, and rejected the appeal by deciding to affirm the judgment. (Decision of the 10th Chamber of Council of State no. E.2010/2346, K. 2010/5971 dated 07/13/2010)

109. In addition to the decisions on deportation proceedings, the Council of State established significant precedents on, for example, refusal of asylum and the residence

permit requests. The decision of the 10th Chamber of the Council of State can be shown as an example of this. In the background of the decision, the Iranian plaintiff filed a lawsuit requesting the cancellation of the rejection of his request for a residence permit; upon the rejection of his case, he filed an appeal with the Council of State. (Decision No. E. 2008/6039, K. 2012/1678, dated 04/20/2012) In this decision, the Chamber emphasized the significance of the 1951 Convention and made assessments using its related articles. The plaintiff entered Turkey legally and sought asylum, but this request was denied, claiming that the plaintiff did not meet the requirements. The plaintiff then filed a lawsuit in the 15th Administrative Courts of Ankara and requested the annulation of the transaction regarding the denial of his asylum request. The plaintiff also appealed to the European Court of Human Rights on 5/16/2008 and the ECHR issued injunctive relief that the plaintiff could not be deported. As a result of the application made to the United Nations High Commissioner for Refugees, it was decided on 01/14/2008 that the plaintiff be granted refugee status. The Administrative Court dismissed the case (Decision no. E: 2007/1528, K: 2008/147, dated 2/8/2008) and the plaintiff sought that the judgment is reversed on appeal. In the case, the 10th Chamber of the Council of State, referring to Article 31 of the 1951 Geneva Convention, stated that the applicant should be considered as an asylum seeker by providing the necessary convenience until the applicant settles in a third country. The Chamber, which therefore considered that the Administrative Court's rejection of the case was unlawful, accepted the appeal and decided to reverse the relevant judgment of the Administrative Court and to send the file to the relevant Court for re-trial.

110. It is seen that the Council of State takes into consideration the relevant provisions of the Geneva Convention, in particular, the regulations on non-refoulment and the principle of not being punished for entering the country illegally when deciding on cases involving asylum and refugee applications. It is also understood that the Council of State also complied with the injunction reliefs that the applicant could not be deported, as given in the above example. [146]

[146] For decisions of the Council of State, see, Council of State 10. Department, Application No. 2008/6039, Decision No. 2012/1678, [consulted on 04.24.2019], https://m.lexpera.com.tr/ictihat/danistay/e-2008-6039-k-2012-1678-t-20-4-2012; ÖZKAN, I., *Göç, Sığınma ve İltica Hukuku,* p. 451-465, above

Section 2: Securitization of Migration and Increasing Gender Visibility in the Migration Process

111. The fact that the immigration policies of states are security-centered is one of the most important factors determining the rights and conditions of refugees today. This approach causes refugees to be exposed to many problems both in the migration process and in and adaptation in the country of destination. In this section, first, a short theoretical reference will be made about the concept of security and security studies. Then, developments regarding the common border security and policies of EU countries, which started with the Schengen process on immigration and asylum, will be discussed. The Schengen Agreement, the European Border Security Policy, the European Union Neighborhood Policy, the Integrated Border Management, and Readmission Agreements are some important topics on this issue.

112. After that later, the effects of security policies on gender-based refugee groups will be discussed. It will be explained that refugeeism is not a genderless neutral situation, but rather a status that is experienced differently by different sexual orientation and gender identities. Then, feminist international relations studies that will develop in the face of masculine handling of basic concepts such as security, power, war, and peace will be included.

§ 1) Migration control policies and human smuggling

113. States' approach to foreigners has historically followed an egalitarian and friendly line of change from a separatist, hostile attitude. Nonetheless, it is not possible to mention that there are equality, adaptation, and harmony in its fullest sense, both in the positive law of the states and among the people. Especially with the massification of migrations, the social, economic, cultural, and political problems caused by it have also increased. Holding or considering foreigners liable as the source of such problems is one of the major factors triggering negative attitudes towards them. Another consequence of seeing foreigners as a source of problems also comes out in a manner of addressing migration as a fact that needs to be controlled. “The phenomenon of migration and its control, in terms of its impact, consequences, and necessity to be managed, became more

evident in the era of nation-states that emerged from the 19th century and became widespread in the last century."[147]

In addition to the mass increase in the number of those who migrated, terrorist actions experienced in the United States on September 11, 2001, are also considered to be an important milestone that reinforces the security-centered, restrictive, and preventive approach guiding immigration policies. "As of that date, the conditions of arrest have widened, exception rules have started to be implemented more stringently and relations between immigration, intelligence services, and enforcement of criminal law have been strengthened."[148] Thus, the implementation of more strict control mechanisms in both domestic and international law and policies has become widespread. Despite the ease of free movement of goods, capital, and commodities together with globalization, the exact opposite change has been experiencing in terms of the mobility of people. "Implementations such as x-ray devices, chip passports, and biometric visas which placed at airports, are just a few of the measures to prevent people from moving freely across borders."[149]

114. Implementations towards border mobility of foreigners can take place in the active or passive forms. "This treatment includes physical or active intervention (prohibition of ships), administrative or passive measures, stopping migrants or prevention of the movement of those arriving by air and preventive measures for the arrival of those traveling to transit countries with fraudulent or improper documents to the country of destination."[150] In addition to such preventive policies, border policies and expulsion practices are also used as a means of managing migration movements.

115. Such policies and practices adopted by states to control and prevent immigration do not stop immigration, even cause human mobility to be inclined to illegal ways. Human trafficking, migrant smuggling, and the victimizations caused by this are one of the most

---

[147] YILMAZ, Demirhan ve ASLAN, Seyfettin, «Türkiye'nin Sınır Ötesi Göç Politikaları ve Yönetimi», *Birey ve Toplum Magazine*, [online], Spring 2015, Volume 5, Number 9, pages 23-62, p.30, [consulted on 06.06.2018], http://dergipark.gov.tr/download/article-file/307114
DEMIRHAN, Y. and ASLAN, S., Türkiye'nin Sınır Ötesi Göç Politikaları ve Yönetimi, p. 30
[148] ÖZKAN, I. *Göç, Sığınma ve Mülteci Hukuku*, above, p. 145
[149] DANIŞ, D., «Demografi: Nüfus meselelerine sosyolojik bir bakış», above, p. 15
[150] ÖZKAN, I., *Göç, Sığınma ve Mülteci Hukuku*, above, p. 144

important problems of international law. “The growth of human smuggling is a result of the rich countries' policies intended to limit migration.”[151] The crimes of human trafficking and migrant smuggling are two different crime categories, although they have similar characteristics. In committing both crimes too, there is a movement of people from one place to another. “We can summarize the differences between the two crimes as follows; although both crimes are regulated in the section of international crimes, the crime of migrant smuggling is committed against the state's immigration, employment, and border security policies, while the crime of human smuggling targets the freedom of the person.”[152]Although migrant smuggling is stemmed from the state of necessity of persons, they have consent. The crime of human trafficking, on the other hand, is committed without the person's consent in ways such as repression, coercion, deception, violence, and threat. Both crimes too lead to gross human rights violations.[153] “The crime of migrant smuggling is considered to be the fastest-growing transnational crime today and it is estimated that the annual earnings of the organizations that committed this crime are between $3.5 billion and $10 billion worldwide.”[154]

116. Governments' policies and practices to prevent transitivity between borders cause millions of people to face many vital problems every year; such as loss of their lives on illegal roads, being defrauded by gangs that smuggle people, or being forced into prostitution, marriage, and low wages, and abuse in different forms such as harassment and rape. UNHCR's report entitled “Refugees and migrants arriving in Europe and at Europe's borders, January-December 2018” points out the deaths caused by the dangerous journeys of refugees and migrants. According to the report, although there has been a decrease in the number of deaths that occurred in the Central Mediterranean, the mortality

[151] For detailed information, see, CASTLES, Stephen, «Towards a Sociology of Forced Migration and Social Transformation», *Sociology Journal,* [online], Year: 2006, Sage Publications, Volume 37, No. 1, pages 13-34, p.15, [consulted on 07.06.2018], https://journals.sagepub.com/doi/abs/10.1177/0038038503037001384

[152] DEĞIRMENCI, Olgun, «Mukayeseli Hukukta ve Türk Hukukunda İnsan Ticareti Suçu», *Journal of Turkey Bar Assosation*, [online], Year: 2006, No.: 67, p. 59, [consulted on 03.07.2018], http://tbbdergisi.barobirlik.org.tr/m2006-67-272

[153] For detailed information, see, « “Avrupa ve Türkiye’de Göç Ağı” AB Politikalarına Göre İltica Prosedürleri Bilgilendirme Seminer Kılavuzu », 2017, [consulted on 18.07.2020], http://migrationnetworkproject.eu/wp-content/uploads/2017/06/Minaret_Izmir_Training_Manual.pdf

[154] CANCA, Hakan, Selim, «Examination of the framework of international law for the Prevention of migrant smuggling at sea within the scope of human rights and responsibilities of aid and rescue at sea», *Journal of Human Sciences*, [online], Year 2014, Volume 11, No. 1, p. 1302, [consulted on 18.07.2020], https://www.j-humansciences.com/ojs/index.php/IJHS/No./view/30

rate per capita trying to set out on a journey has increased sharply. Accordingly, during 2018 there have been significant changes in the model of routes taken by refugees and migrants going to Europe. In the first half of the year, more people came to Greece compared to Italy or Spain, however, in the second half of the year, more and more people went to Spain, the primary entry point, and tried the dangerous sea crossing through the Western Mediterranean. Approximately 2,275 people lost their lives in the Mediterranean in 2018, and these data indicate an average of six deaths per day. The report states that in order to prevent these deaths, greater responsibility should be shared in general, as well as a coordinated and foreseeable regional response to the emergency rescue at sea. For this reason, recommendations such as providing more rescue capacity, predetermined and predictable departure points, more solidarity and support to the countries where most refugees and immigrants come from, and more protection for safe and legal means (resettlement, family reunification, education, and work plans, etc.) have been made. It has been emphasized that tougher measures should be taken for unaccompanied minors and victims of sexual and gender-based violence.[155] UNHCR's recommendations in the report are significant for preventing the deaths of refugees and migrants on unsafe roads and other forms of abuse. As mentioned in the examples in the report, preventive attitudes such as complicating border crossing procedures, increasing wages, and tightening security and supervision lead to increases in illegal and unsafe routes, and this, in turn, endangers the lives of more refugees and migrants.

§ 2) Securitization of migration, security concept, and definitions

117. Together with capitalism and globalization, while the flexibility of borders is advocated by conducting the policy of free movement in terms of the mobility of knowledge, capital, and goods, the same flexibility is not shown for the mobility of people, in particular of the labor force. Even EU countries having the most intensive statistics in terms of the migrant population carry out preventive policies for limiting migration. In this changing political approach to reducing labor migration, economic developments in Europe since the 1970s have been determinative. Especially with the 1973 oil crisis, the European economy came to a standstill. Besides, the process of nation

[155] For the full text of UNHCR Report, see, «Refugees and Migrants arriving in Europe and at Europe's Borders January-December 2018», *UNHCR*, [consulted on 18.07.2020], https://www.unhcr.org/desperatejourneys/

otherization, which allows capital to shift production to countries where it can keep costs low, has made labor imports unnecessary.

118. Since the late 1990s, significant changes have occurred in the structure of migration. Due to diversified reasons such as discrimination and repression based on conflicts in many parts of the world, economic and political crises and uncertainties, ethnic, religious, gender, and so on; the influx of migrants has continued, and new types of migration have emerged. In addition to these factors leading to mass migrations, the legal and political approaches of countries receiving migration towards preventing migration, particularly in Europe and America, have led to an increase in illegal migration. Thus, facts such as refuge, asylum, illegal migration, human trafficking, and human smuggling have become more apparent and significant.[156]

119. Today, migration is defined on a legal basis and is seen as a security issue that needs to be controlled and restricted. In parallel, the immigration policy of the states is based on the control and supervision of migration. Therefore, before mentioning migration and border policies, it is necessary to touch upon the concept of security and securitization approach, which also guides these policies and is considered as one of the 'high policy' areas of the international relations. The concept of security is one of the most discussed topics in modern political theory. "Of course, the first thing that comes to mind when it comes to security is, by human nature, the desire to be free from dangers and to protect life."[157] Popular security questions are often related to the safety of whom/what, how to provide it, and how to balance between the limitations imposed on security and freedom. There is no single generally accepted definition of the concept of security. In addition, according to changing conditions such as historical, economic, political, social and philosophical, the content of the concept seems to have changed over time. "Security as an individual or a social-political value has no independent meaning, security is always concerned with a context and a particular system of individual or social value and its

[156] For detailed information about the new structure of international migrations, see: ADIGÜZEL, Yusuf, *Göç Sosyolojisi,* 2nd edition, Nobel Publications, 2018, p.223, p. 101- 107; YÜCEL, YÖNLÜ, Kübra, *Batı Eksenli Dünya Düzeni ve Türkiye'ye Gelen Dış Göç Dinamiği Göç Sosyolojisi*, İstanbul, Doğu Publisher, June, 2018, p. 240, p. 48- 74

[157] URAL, Sami Sezai and SHILIBEKOVA, Aigerim, «Uluslararası Güvenlik ve Yönetişim», in, *Uluslararası Güvenlik, Yeni Politikalar, Stratejiler ve Yaklaşımlar*, Editors: ÇOMAK, Hasret and SANCAKTAR, Caner and DEMIR, Sertif (Editors.), İstanbul, Beta Publications, 2016, pages 3-17, p. 3

implementation."[158] The concept of security in international relations studies was first defined by Arnold Wolfers. According to Wolfers, security is a state of being a threat and danger to the values that are owned and acquired.[159] It is defined as the state of the continuation of the legal order in the sense of dictionary, the fact that people can live without fear, and live-in safety.[160] The phenomenon of security was then tried to be explained by different thinkers by considering its various aspects. Many thinkers, such as Walter Lippmann, Bellamy, Luciani, Ullman, Wolfers, Ayoob, Booth, and Hough, have their own definitions of security and national security concepts.

120. Bellamy describes security as it is relative freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur. Wolfers states that Security, in an objective sense, measures the absence of threats to acquired values, in a subjective sense, the absence of fear that such values will be attacked. Ayoob explains as Security-insecurity is defined in relation to vulnerabilities, -both internal and external-, that threaten to have the potential to bring down or weaken state structures, both territorial and institutional, and governing regimes. Walter Lipmann describes the security of the nation as A nation has security when it did not have to sacrifice its legitimate interests to avoid war, and is able, if challenged, to maintain them by war. Smith, on the other hand, states that security is not only a social concept or topic to study or analyze, but also considers it as a problem that is regularly managed or controlled by human groups who want to maintain their existence. Kolodziej states that security…implies both coercive means to check an aggressor and all manner of persuasion (bolstered by the prospect of mutually shared benefit) to transform hostility into cooperation. Ullman defines threats to national security as an action or sequence of events that (1) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or (2) threatens significantly to narrow the range of policy choices available to the government of a state or to provide,

---

[158] BRAUCH, Hans Günter, «Güvenliğin Yeniden Kavramsallaştırılması: Barış, Güvenlik, Kalkınma ve Çevre Kavramsal Dörtlüsü», p. 2, above

[159] For more information, see: WOLFERDS, Arnold, «National Security as an Ambiguous Symbol», *Political Science Quarterly,* December, 1952, Vol. 67, No. 4 pp. 481-502, [consulted on 15.10.2019], https://www.jstor.org/stable/2145138?seq=1#metadata_info_tab_contents

[160]For the meaning of «Security», see, *TDK Dictionary*, [consulted on 18.07.2020], https://www.google.fr/search?q=s%C3%B6zl%C3%BCk&rlz=1C1GGRV_enFR751FR751&oq=s%C3%B6zl%C3%BCk&aqs=chrome..69i57j0l5.1009j0j8&sourceid=chrome&ie=UTF-8#dobs=g%C3%BCvenlik

nongovernmental entities (persons, groups, corporations) within the state. Luciani briefly describes national security as the ability to withstand aggression from abroad.[161]From different definitions and explanations on the concept of security, it is seen that the concept is mostly handled together with an element of counter-threat and danger such as being away from war, attack, or fear. Therefore, it is generally accepted that there is a linear relationship between the concepts of security and danger.

121. The debate on security is actually nothing new. The use of the concept as a political term dates back to the Pax Romana, namely the Roman Peace, adopted in the first century. Following the Treaty of Westphalia, states have been recognized as the most powerful representatives of political legitimacy in the international system. The security issue, on the other hand, has been assumed to be the main responsibility of the states.[162] "The Westphalian system of states, in general, indicates the framework of international authority that is state-centric, sovereignty-oriented, and confined to a specific territory."[163] In the social contract theories developed by Hobbes, Locke, and Rousseau in the 17th century, the phenomenon of security emerged as the basis of the legitimacy of the states having sovereignty. In the declaration of rights of humans and the citizen adopted during the French Revolution in the 18th century, security was one of the four fundamental human rights. With the gaining acceptance of law as the legitimacy of power in the 19th century, the phenomenon of the rule of law has been seen as the main characteristic of security.

---

[161] For definitions of the concept of security, see COLLINS, Alan, *Çağdaş Güvenlik Çalışmaları*, NASUH, Uslu (translator), 3rd Edition, Library of International Relations, Röle Akademik Publishing, Istanbul, September, 2017, p. 3

[162] For further information on security, see, BAYLIS, John, «Uluslararası İlişkilerde Güvenlik Kavramı», *Uluslararası İlişkiler*, [online], Summer 2008, Volume 5, No. 18, p. 69-85. p. 71, [consulted on 11.08.2018], http://www.uidergisi.com.tr/wp-content/uploads/2011/06/UIde-Guvenlik-Kavrami.pdf; NEOCLEOUS, Mark, *Güvenlik, Şiddet ve Savaş,* ÇORBACIOĞLU, Gül and EMBEL, Ersin (translators), Ankara, Dipnot Publications, 2011, p. 20-21

[163] AĞIR, Bülent, Sarper, «Güvenlik Kavramını Yeniden Düşünmek: Küreselleşme, Kimlik ve Değişen Güvenlik Anlayışı», *Security Strategies,* [online], Year 11, No. 22, p. 97-131, p. 99, [consulted on 16.01.2019], https://www.academia.edu/33022110/G%C3%BCvenlik_Kavram%C4%B1n%C4%B1_Yeniden_D%C3%BC%C5%9F%C3%BCnmek_K%C3%BCreselle%C5%9Fme_Kimlik_ve_De%C4%9Fi%C5%9Fen_G%C3%BCvenlik_Anlay%C4%B1%C5%9F%C4%B1_Rethinking_Security_Concept_Globalization_Identity_and_Changing_Security_Conception,

§ 3) EU Border Policies

122. Due to the social, economic, and political problems caused by mass migration, the European Union countries have been in a tendency to keep this migration out by taking security and politically centered move immigration and border policies. "The security concern triggered by global terrorist attacks, in particular, caused the tightening of border controls, the submission of pre-border controls and biometric identification systems that define the physical and behavioral characteristics of the user, increasing of international cooperation efforts in this regard, and the proliferation of intra-country controls in many countries, especially in the US and the EU countries."[164]

123. The section entitled "Area of Freedom, Security, and Justice" in Chapter V of the Treaty on the functioning of the EU is the legal basis of the EU's asylum and migration policies.[165] The determination of the title of the regulations on asylum and migration as a field of freedom, security, and justice indicates that the EU's approach to asylum is security-centric. As a matter of fact, the regulations addressed as five separate sections between articles 67 and 89 generally relate to border controls, operational cooperation, solidarity among members and fair responsibility-sharing, and legal, criminal, and police cooperation. Article 77 states that in terms of the common policy on asylum and migration, the Union's goal in border controls is to ensure that persons crossing internal borders are not subject to checks regardless of their nationality and to ensure that persons crossing external borders are controlled and effectively monitored. It has been agreed to gradually establish an integrated management system for external borders. The second paragraph of the article states that public policy on visas and other short-term residence permits in line with these objectives, controls subject to persons crossing external borders, conditions relating to the freedom of third-country nationals short-term travel in the Union, and all necessary measures for gradually establishing an integrated management system for external borders, shall be adopted.

---

[164] KILINÇ, Ayşegül, «Sınır Aşan Göçler: Mülteci Sorunu ve Göç Yönetimi», *Ombudsman Academic,* [online], Year 2018, No. 8, p. 82, [consulted on 19.10.2018], http://dergipark.gov.tr/ombudsmanakademik/No./38308/443450

[165] For more information, see, ÇAKRAN, Şebnem and EREN, Veysel, «Mülteci Politikası: Avrupa Birliği ve Türkiye Karşılaştırması»,, *Mustafa Kemal University Journal of the Institute of Social Sciences,* Year: 2017, Volume: 14, No. 39, pages 1-30, p. 15, http://dergipark.gov.tr/download/article-file/355090, 12/18/2018

124. Article 78 of the treaty is significant in that it makes clear that the Union's common policies on international protection must comply with the 1951 Convention and the 1967 Protocol and other relevant treaties. According to the regulation in 67/2, the union ensures the removal of controls at internal borders, while developing a common policy towards third-country nationals based on solidarity among members in the control of asylum, migration, and external borders. It is stated that stateless persons shall be subject to the same treatment as third-country nationals in respect of this title.[166]

125. Under EU law, asylum seekers are defined as those who applied for international protection. According to EU law, people applying for asylum cannot be deported until a decision on them has been made. Issues related to asylum applications are stated not only in the basic regulations and principles of international law but also in regulations such as Asylum Procedures Regulation, Admission Requirements Regulation, and Qualification Directive.[167]

126. "Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection" was adopted on June 26, 2013. The purpose of the Directive is to set out standards regarding the admission of applicants for international protection ("applicants") in member states.[168] The directive sets out regulations on such as the exchange of information between member states, the freedom of residence and movement of applicants, the principles of arrest and detention, and family, education, and working conditions.

127. Another development that reinforces the security-centric approach at external borders is that the EU enters into a process in which, together with the Schengen process, borders between member states are de facto eliminated. Together with the Schengen

---

[166] For the full text of the Treaty on the Functioning of the European Union, see, «Treaty on the European Union and The Functioning of the European Union», 1 January 1958, C 326/47, *Official EN Journal of the European Union,* [consulted on 19.07.2020], https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:EN:PDF

[167] For more information, *Handbook of European Law on asylum, borders, and migration*, Official Publications Office of the European Union, 2014, p. 278, p. 43 – 48, [consulted on 19.07.2020], https://fra.europa.eu/en/publication/2014/handbook-european-law-relating-asylum-borders-and-immigration#:~:text=The%20Handbook%20on%20European%20law,and%20the%20Council%20of%20Europe

[168] For the full text of the directive, see, «Directive 2013/33/EU of the European Parliament and of the Council», 26.03.2013, [consulted on 19.07.2020], https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0033

Agreement and subsequently, other legal and practical applications such as the Dublin Convention, the Tampere Summit, the Eurodac Regulation, and the Frontex Agency, the free movement of citizens of the Member States without visa approval and applications has been guaranteed in the Schengen Area. The apprehension that criminal organizations in these countries will also benefit from the removal of border controls, and that they will abuse it, has raised security concerns. "On the other hand, asylum seekers, refugees, unskilled migrants or those coming from poor and Muslim countries appear as the objects of the securitization process."[169]

128. However, these policies and practices of the European Union to prevent migration and the entry of migrants did not stop the entry of migrants, but only led them to tend to illegal methods. The trend of migrants and refugees to illegal methods in this way has been transformed into a dangerous and huge market by human trafficking and smuggling gangs. Migrants and refugees seeking to reach safe and developed countries are subjected to many forms of economic and sexual abuse on illegal migration routes, sometimes ending up with more severe dramas that result in death. Another consequence of the security-centric approach is the increase in anti-refugee, migrant, and asylum seekers, especially in developed countries. This antinomy negatively affects the harmonization and adaptation process of migrants and refugees who are able to reach the target countries, sometimes leads to their exposure to violence such as physical, psychological, economic, etc. Despite all these negative consequences, the EU continues to pursue politico-security-centric policies and practices, such as tightening visa policies in the fight against irregular migration and strengthening its enforcement authority with agencies such as Frontex.[170]

---

[169] TOĞRAL, Koca, Burcu, «Biyopolitika, güvenlik ve Frontex'in Türkiye-Yunanistan Sınırındaki Rolü», *Journal of Migration*, [online], October 2014, Volume 1, No. 1, pages 57-76, p. 60, [consulted on 22.10.2018], https://www.academia.edu/8791488/Biyopolitika_g%C3%BCvenlik_ve_Frontexin_T%C3%BCrkiye-Yunanistan_s%C4%B1n%C4%B1r%C4%B1ndaki_rol%C3%BC

[170] For more information, see, STRIK, Tineke, «The Global Approach to Migration and Mobility», *Groningen Journal of International Law*, [online], 2017, Volume 5, No. 2, p. 312, [consulted on 19.07.2020], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=31220848

A- Commonization of EU asylum and border policies neighborhood policy

129. As mentioned above, EU countries have shown a tendency to develop a common approach in the face of the rapid and mass increase in international migration and in particular, irregular migration. This common stance is political and security-centric and aims to keep irregular migration out of the Union borders. In this way, EU countries have developed a variety of policies and instruments, both to combat irregular migration and to communize the asylum procedure of member states. The most significant development in the EU common asylum system is the determination of common standards in the asylum process. Accordingly, it is stated how the asylum procedure will be, the identification of who will be authorized in international protection, and which social rights are communized with the protection status.[171] The "Schengen Agreement", the "EU Border Security Policy", the "European Neighborhood Policy", the "Integrated Border Management", and the "Readmission Agreement", which came into force at different dates within the acquis Communautaire, have become operational as a result of the Union's efforts in this direction.[172]

B- Schengen area process

130. The Schengen Area process began in 1985 when five countries (Belgium, France, Germany, Luxembourg, and the Netherlands) signed the Schengen Agreement in the Schengen region of Luxembourg. With the Agreement consisting of 33 articles, it was decided to remove barriers to free movement at the common borders between the signatory states; to observe the progress achieved among the European Communities in order to ensure the free movement of people, goods, and services, to gradually remove controls on the movement of citizens of the member states of the European Communities at their common borders, and to facilitate the movement of goods and services within these borders.[173] "The main issues of the agreement are the establishment of common external borders, police co-operation, International Legal Assistance, expulsion

[171] STRIK, T., «The Global Approach to Migration and Mobility», p. 311, above
[172]KILINÇ, Ayşegül, «Sınır Aşan Göçler: Mülteci Sorunu ve Göç Yönetimi», *Ombudsman Academic,* [online], Year 2018, No. 8, pages 75-102, p. 88, [consulted on 19.07.2020], http://dergipark.gov.tr/ombudsmanakademik/No./38308/443450
[173] For the full text of the Schengen Agreement, see, « *Schengen Agreement* », Official Journal L 239, 22/09/2000 P. 0019 - 0062 , 14 June 1985, [consulted on 19.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42000A0922%2802%29

procedures, and harmonization of legal regulations on drugs, weapons, customs duties, and visa policies."[174] In order to achieve these objectives set out in the Schengen Agreement, there was a need for making some other arrangements. Therefore, the agreement known as the Schengen Executive Agreement was signed in order to carry out the lifting of controls on human movements at the common borders and to facilitate the transport and movement of goods. Its full name "Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders" was signed on 19 June 1990 and came into force on 26 March 1995.[175] The convention also includes provisions for the examination of asylum applications. In articles 28-38 of the second section entitled "Abolition of Controls of Internal Border Controls and Human Movements", issues such as the responsibility to examine asylum applications, the criteria to be used in determining the state party to take this responsibility, the obligation to readmission, and the sharing of the necessary information about these applications are regulated.

131. With the Amsterdam agreement signed on 2 October 1997 and entered into force in 1999, the Schengen regime has become an EU practice. With the Schengen regime, border controls have been abolished in the Union and this enabled those who live 'inside' to have free movement and live without prior approval, and to work with the citizens of that country with equal rights. Thus, the distinction between internal and external borders and those inside and outside has become more obvious and legal. Common practices have been introduced in external border policies. In addition to these common policies at the internal and external borders, this includes also cooperation in visa, asylum, police, customs, and judicial systems, and the creation of the Schengen Information System.[176] With the Treaty of Amsterdam, the European Union has been qualified in the

---

[174]ÖZCAN, M., *Avrupa Birliği sığınma hukuku: Ortak bir sığınma hukukunun ortaya çıkışı,* p. 34, [consulted on 19.07.2020], above

[175] For the full text of the Implementation Agreement, see, « *Implementıng The Schengen Agreement*», Official Journal, 22.09.2000, L 239 , P. 0019 – 0062, [consulted on 19.07.2020], http://www.madde14.org/index.php?title=Schengen_Y%C3%BCr%C3%BCtme_Anla%C5%9Fmas%C4%B1

[176] For detailed information about Schengen System, see, ÖZGÜR, Ergün, « Genişleyen Avrupa Birliği'nin Göçmen İkilemi ve Yaşlanan İşgücü», July 2012, *Magazine of Marmara University,* [online], Volume.10, p.38, pages 73-85, p. 73, [consulted on 19.07.2020], http://dergipark.gov.tr/download/article-file/165712; KILINÇ, Ayşegül, «Sınır Aşan Göçler, Mülteci Sorunu ve Göç Yönetimi», p. 89, above

determination of residence and returns, as well as the rules to be followed in border controls and the entry of third-country citizens.

132. An important improvement in terms of the development of a common asylum procedure among EU countries is the Dublin Convention. Being signed on June 15, 1990, the full name "Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities", came into force in 1997. The Dublin Convention and the Schengen implementing Convention have been signed at very close intervals and contain parallel regulations regarding the asylum procedure. Unlike the implementing Convention, the Dublin Convention was signed in 1991 by all EC members, together with the signing of Denmark. Furthermore, the Dublin Convention has established objective criteria for which state party to examine the asylum application and agreed on defining the concept of political asylum seekers. Thus, not only have asylum seekers been prevented from applying to more than one state at the same time, but also prevented the possibility of claiming that the state party itself is not responsible. Another different provision in the Dublin Convention is about whether the person applying for asylum has one or more residence permits, which expired more than two years ago, or a visa, which expired more than six months ago, that he or she can apply for asylum if he or she has not yet left the territory of the European Community. In this case, the related country is obliged to review the application. The Schengen Convention does not include such a right. Finally, the Schengen Convention (29/2) also stipulates that the state party's obligation to review asylum applications does not mean to receive applicants in their country during this review process. The arrangement, which is controversial since it may have consequences contrary to the non-refoulment principle, is not enshrined in the Dublin Convention. [177]

133. Following the entry into force of the Dublin Convention, the Council of Europe formalized its determination to tackle EU irregular migration with the "Tampere Council Conclusions" adopted in 1999. The Tampere summit was held on 15-16 October 1999 in Tampere, Finland, with the aim of establishing cooperation in the field of freedom,

[177] For detailed information on the Dublin Convention, see, ÖZCAN, M., *Avrupa Birliği sığınma hukuku: Ortak bir sığınma hukukunun ortaya çıkışı,* p. 56,57, 58, above

security, and justice.[178] Paragraph 3 of the Conclusions Declaration states that the Union should develop common policies on asylum and migration, considering the need for consistent control of external borders to stop illegal migration, and taking into account the need to combat those who commit and organize related crimes.[179]

C- European border security policy

134. Following the establishment of the Schengen Area, the building of a common policy to ensure the security of its external borders has brought to the agenda. The Laeken Summit, which took place on 14-15 December 2001, also addressed the issues of asylum, migration, and border security. Title 4 of the summit's concluding declaration is stated as strengthening the areas of Freedom, Security, and Justice. An actual common asylum and immigration policy are contained in paragraphs under this heading. Paragraphs 37-41 provide the necessary instruments for establishing an actual common asylum and immigration policy, referring to previous Treaties and Summits. Paragraph 42, on the other hand, relates to more effective control of external borders. Accordingly, it has been stressed that the fight against terrorism, illegal immigration networks, and human trafficking will help better manage the Union's external border controls. The Council of Europe has proposed the establishment of a mechanism for cooperation between the authorities responsible for external border control of the Council and the Commission or a mechanism to serve collectively.[180] Five common policy areas were presented in the concluding declaration. These areas are indicated as common legislation, mutual coordination and implementation-based cooperation, common integrated risk analysis, common procurement of personnel and equipment, and sharing of responsibility between member states and the Union. [181]

---

[178] For detailed information on Dublin Convention, see, «*Tampere European Council 15 and 16 October 1999 - Presidency Conclusions*», European Parliament, [consulted on 19.07.2020], http://www.europarl.europa.eu/summits/tam_en.htm#c

[179] For more information, see, «*Tampere European Council 15 and 16 October 1999 - Presidency conclusions*», p. 3, above

[180] For the full text of the «*Presidency Conclusions European Council Meeting in Laeken 14 and 15 December 2001*», European Council, p. 11-12, [consulted on 10/22/2018], https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/68827.pdf,

[181] For more information, see, KAYA, A., *AB'nin Entegre Sınır Yönetimi Kurumu Frontex'in Rolü ve Türkiye'nin Uyum Süreci*, Master Thesis, Beykent Üniversitesi, İstanbul, 2005, p. 29

D- Eurodac regulation

135. For the effective implementation of the Dublin Convention, it was necessary to establish a common pool in which applicants ' information was collected and to determine which state was responsible for reviewing an application for asylum to one of its member states. The European automatic Fingerprint Identification System, called European Dactyloscopy (Eurodac), was adopted by the resolution 2725/2000 of the Council of Europe dated 12/11/2000 to meet these needs and to prevent applications to more than one state at the same time.[182] The Regulation was adopted by all countries that were members of the Union at that time (also Iceland and Norway)[183], except Denmark. The state of Denmark, in accordance with Articles 1 and 2 of the Protocol on Denmark's position attached to the treaty, is not involved in the adoption of this regulation and is therefore not bound by the regulation and is not subject to its implementation. [184]

136. "The Eurodac system is a biometric database designed to determine from where refugees/asylum seekers entered the EU territory, to make fingerprint comparisons, and to identify identities."[185] Under Article 6 of the regulation, it is mandatory and necessary to fingerprint anyone applying for asylum in member states if they are older than 14 and all foreign nationals caught illegally regarding crossing the borders of a member state. The data to be kept in the central database are stated in Article 5 of the regulation, as the member country of origin and the date and place of the application for asylum, fingerprint data, gender, reference number used by the member country of origin, the date the fingerprint was taken, the date the data were transmitted to the central unit, the date the data was entered into the central database, and details about the dates of the message/messages. The confidentiality of personal data and the punitive and

---

[182] For detailed information on Eurodac, see, ÖZCAN, M., *Avrupa Birliği Sığınma Hukuku: Ortak Bir Sığınma Hukukunun Ortaya Çıkışı*, p. 169-170, above;
BAYRAKLI, Enes and KESKIN, Kazım, «Avrupa'nın Mülteci Krizi», *Journal of Academic inquiries*, [online], Year: 2017, Volume: 12, No.: 2, pages 115-136, p. 115, [consulted on 10/19/2018], http://dergipark.gov.tr/download/article-file/355347; KILINÇ , A., «Sınır Aşan Göçler: Mülteci Sorunu ve Göç Yönetimi», p. 90-92, above

[183]ÖZCAN, *Avrupa Birliği Sığınma Hukuku: Ortak Bir Sığınma Hukukunun Ortaya Çıkışı* p. 174, above

[184]For the full text of the Eurodac Regulation, see, «Council Regulation (EC) », No 2725/2000, *Official Journal L 316, 15/12/2000 P. 0001 – 0010,* [consulted on 10/19/2018], http://madde14.org/index.php?title=AT_Konsey_T%C3%BCz%C3%BC%C4%9F%C3%BC_EURODAC,

[185]KILINÇ, A., «Sınır Aşan Göçler: Mülteci Sorunu ve Göç Yönetimi», p. 92, above

indemnification of the use of data contrary to purpose are also other arrangements explained in detail in the regulation.

E- Frontex agency

137. Frontex (European Border and Coast Guard Agency) is another key EU institution in the provision of common border management and asylum procedure. Frontex was established by Council Regulation (EC) no.2007/2004 of October 26, 2004, and took office on May 1, 2005. The agency's headquarters are in Warsaw, the capital of Poland. Frontex's founding goal is to ensure border security with the neighbors of EU member states, to cooperate among national border guards, and to establish risk analyses on borders. It is mentioned that Frontex has six main tasks related to supervision and management in its founding regulation. These tasks are listed as, "coordinating operational cooperation between member states in the field of external border management; assisting member states in training National Border Guards, including establishing common training standards; carrying out risk analyses; monitoring the development of researches on control and surveillance of external borders; helping member states in situations requiring technical and operational assistance at external borders, and providing the necessary support to member states in the regulation of joint repatriation operations."[186]

138. The regulation, which sets out Frontex's objectives and tasks, has subsequently been amended, attributing a more operational nature to the institution. It was decided to establish Rapid Border Intervention Teams with the Regulation 863/2007, adopted in 2007. Accordingly, Rapid Border Response Teams will provide support for a limited period of time in exceptional and emergency situations, when a member state encounters a third country citizen who attempts to enter its territory illegally and requires an immediate response, and where the deployment of a Rapid Border Response Team will contribute to an effective response. As a matter of fact, the Regulation clearly states that these teams are not for providing long-term assistance.[187] With the amendment made in

[186] For detailed information about Frontex, see, KILINÇ, A., «Sınır Aşan Göçler: Mülteci Sorunu ve Göç Yönetimi», p.92, above

[187] For the full text of the regulation on the creation of Rapid Border Response Teams, see, «*Regulation (Ec) No 863/2007 of The European Parliament and of the Council*», 11 July 2017, Official Journal of the European Union, L 199/30,

2011, the member states adopted to increase cooperation among border control authorities and to improve the integrated management of external borders. With the "The Regulation on European Border and Coast Guard" No.2016/1624 adopted in 2016, the founding and modifier regulations of Frontex have been repealed. With the new regulation coming into force on 6 October 2016, it was decided to extend the powers of the agency for better management of the external borders of the member states. In line with this decision, the name of the agency was changed to "European Border and Coast Protection Agency", while it was agreed to continue to use the name Frontex.[188]

F- Integrated border management

139. We have already mentioned that there is a need for free movement of the EU's internal borders, in other words, for the protection of external borders and for the development of a common border management policy, together with the establishment of the Schengen area. The resulting "Integrated Border Management" approach reflects the changing and evolving border management perspective of the EU. Integrated Border Management is defined as "national and international coordination and cooperation between all relevant institutions and organizations related to border security and trade facilitation in order to establish effective, efficient, and coordinated border management at external EU borders to achieve the goal of open but well-controlled and secure borders."[189] "Thanks to the integrated border management model, it is aimed to reach as open and transparent borders as possible in order to facilitate legal trade and to exercise people's right to freedom of travel in accordance with the law, on the other hand, to reach borders that are safe and well-controlled against illegal border crossings and illegal trade procedures."[190] Accordingly, the European Commission issued a Council Resolution

---

[consulted on 19.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007R0863

[188] For detailed information on amendments to the Frontex Regulation, see, BILGIN, A. Aslı, «GöçmenlereYönelik Deniz Operasyonlarında Frontex'in Müdahale Yetkisinin Uluslararası Hukuk Kapsamında Değerlendirilmesi», *Hacettepe University Journal of Law Faculty,* [online], Year 2017, No. 7(2), p. 59-60, [consulted on 22.10.2018], http://www.hukukdergi.hacettepe.edu.tr/dergi/C7S2makale3.pdf

[189] For the definition of Integrated Border Management, see, «*European Integrated Border Management*», European Commission, [consulted on 20.07.2020], https://ec.europa.eu/home-affairs/content/european-integrated-border-management_en

[190] AKMAN, Adem and KILINÇ, Ismail, «AB'de Entegre Sınır Yönetiminin Gelişimi ve AB Sürecinde Türkiye'nin Entegre Sınır Yönetimine Geçiş Çalışmaları», *Journal of Turkish Administration*, [online], June 2010, No.: 467, p. 9-29; p.9, [consulted on 23.10.2018], http://www.tid.gov.tr/Makaleler/467ademakman.pdf

dated 13 June 2002 adopting a Program of Action for Administrative Cooperation in the areas of External Borders, Visas, Asylum, and Migration. In the resolution, the issues of that effective protection and controls would be supported at the equivalent level at external borders, the promotion and enhancement of compliance and cooperation in visa applications and issuance, the promotion of the finalization of applications in the fields of asylum, and migration in accordance with common principles and standards, and the strengthening of the fight against illegal immigration networks are included.[191]

140. In addition, the Council made a definition of the approach to Integrated Border Management in its resolution dated 23 November 2006 and outlined the components of it. Accordingly, coordination and cooperation mechanism, Common Integrated Risk Analysis, common personnel, and equipment policy, building common legislation, and burden sharing between member states and the Union are stated as the components of the Integrated Management Policy of external borders. The resolution also highlighted the significance of cooperation between Union bodies and Border Guards, customs, police, and national security units in border management.[192]

G- Readmission agreements and EU-Turkey readmission agreement

141. One of the legal instruments that the EU has taken into the center in the fight against irregular migration is the Readmission Agreement agreements. "Readmission agreements (RAs) are agreements to ensure that irregular immigrants are sent from one state party to another according to the rules and procedures set out in the treaty."[193] Actually, the history of readmission agreements dates back quite a long time. In 1818-1819, for example, readmission agreements were signed between Prussia and other German states. The readmission agreement signed between Germany and the Netherlands in 1906 is considered to have introduced a similar method to those of today. Readmission treaties are dealt with in three different periods in terms of its historical

[191] For the full text of the Resolution, see, «Council Decision of 13 June 2002 » European Union Council Decision, 2002/463/EC, [consulted on 20.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002D0463

[192] For detailed information on integrated border management, see, AKMAN and KILINÇ, «AB'de Entegre Sınır Yönetiminin Gelişimi ve AB Sürecinde Türkiye'nin Entegre Sınır Yönetimine Geçiş Çalışmaları», p. 12, above; KILINÇ, A., «Sınır Aşan Göçler: Mülteci Sorunu ve GöçYönetimi, p. 934, above

[193] EKŞI, Nuray, *Türkiye Avrupa Birliği Geri Kabul Anlaşması,* 1st edition, Istanbul, Beta Publications, March, 2016, p.183, p. 3

development. The first group, referred to as 'First-Generation Readmission Agreements', were the agreements made by European states mostly among themselves in the 1950s and 1960s. It was particularly effective in terms of expulsion and readmission of members of the Benelux Economic Union and third-country citizens. During this period, border controls continued among members of the Community, and only workers and those engaged in economic activity benefited from the right to free movement. By the admission of third-country citizens, it was limited only to persons who had previously been legally present in the requested state.

142. In the wake of the collapse of the Eastern Bloc in the 1990s, the so-called 'Second-Generation Readmission Agreements' were signed following the intense migration to the EU from or through Central and Eastern European countries. With these agreements, irregular immigrants reaching the EU via Central and Eastern Europe have been targeted for repatriation. In second-generation readmission agreements, states undertake the readmission of third-country citizens and stateless persons as well as their citizens. The EU has provided such privileges as visa liberalization, speeding up the EU accession process, and commercial and economic support for state parties to sign these agreements.

143. 'Third-generation readmission agreements' are the readmission agreements signed since 2001. The first readmission agreement of this nature was signed with the Hong Kong Special Administrative District. Later in 2003, agreements were made with Sri Lanka and Albania. Later in 2003, agreements were made with Sri Lanka and Albania. The content of the readmission agreements is mostly
determined by the Council's negotiating guidelines.[194] "EU readmission agreements are based on mutual obligations and in order to facilitate the return of persons residing irregularly in a country to their country of origin or a transit country, they are concluded between the European Union and non-EU countries."[195] The responsibility of the

[194] For detailed information about the history of readmission agreements, see, BATIR, Kerem, «Avrupa Birliği'nin Geri Kabul Anlaşmaları: Türkiye ile AB Arasında İmzalanan Geri Kabul Anlaşması Çerçevesinde Hukuki Bir Değerlendirme», *Journal of Administrative Sciences,* [online], 2017, Volume: 15, Number 30, p. 585-604, [consulted on 24.10.2018], http://ybd.dergi.comu.edu.tr/dosyalar/Ybd/avrupa-birligi-nin-geri-kabul-anlasmalari-turkiye-ile-ab-arasinda-imzalanan.pdf

[195] LILIENKAMP, Marc and SALIBA, Susan «EU Readmission Agreements: Facilitating the return of irregular migrants», *European Parliament, Think Tank*, 14.04.2015, [consulted on: 20.07.2020], http://www.europarl.europa.eu/thinktank/en/document.html?reference=eprs_brı (2015)554212

agreement is very heavy in terms of the country of origin or transit countries at the position of receiving. Therefore, state parties are not very willing to sign the treaty. The EU tries to encourage third countries to sign readmission agreements through methods such as economic support, visa facilitation, improving trade relations. In return, the signatory countries undertake to accept immigrants who enter the EU illegally through their territories.

144. Although the agreement is formally based on the principle of equality of the parties, it is obvious that this is not the case in practice. As can be understood from mutual obligations, readmission agreements are essentially based on the purpose of keeping irregular migrants outside EU borders, so that the number of irregular migrants towards the Union countries is expected to decrease. Readmission agreements based on these objectives raise some concerns about at least three basic human rights. The first is that the agreements contain no guarantees that countries, where irregular migrants are repatriated, have an adequate protection regime. Second, it is likely that immigrants are subject to less protection in the transit country than a member country of the Union, leaving them in a difficult position in these countries. Lastly, readmission agreements do not guarantee that these countries, which receive irregular migrants without official documents, can meet the most basic needs of migrants, such as residence, health care service, primary education, working, or social assistance. All these threats menace the protection of human dignity, which is also sacred in terms of international law, of irregular migrants, especially those who cannot return to their country of origin.[196] "The UNHCR has listed the problems that arose during the implementation of readmission agreements as follows:

(1) Logistical problems experienced during readmission, including transit from country to the third country,

(2) That the person to be repatriated escapes, disappears or doesn't make a notice,

(3) Delays caused by bureaucracy,

(4) Lack of sufficient budget for repatriation costs,

(5) That the country of origin doesn't issue documents,

---

[196] For detailed information on the human rights violations that readmission agreements can lead to, see, STRIK, T., «*the Global Approach to Migration and Mobility*», p. 324-315, above

(6) Readmission procedures which should be fulfilled by the country of origin and which are not performed in accordance with the procedure,

(7) Denial or non-recognition of citizenship,

(8) Inadequate opportunities for admission or reintegration in the country of origin."[197]

145. As can be understood from the mentioned above, the problems caused by readmission agreements both in terms of the state parties and the receiving countries are multidimensional. Nevertheless, the EU treats burden-sharing in readmission agreements as more of an economic problem and therefore develops financial support-oriented 'solution' policies. Although these economy-oriented instruments please state parties, they are not enough to solve the problems undergone by immigrants. "The council has adopted 21 directives to finalize the readmission agreement between the EU and partner countries, while 17 readmission agreements have already come into force."[198]

146. Turkey has made readmission agreements with both the EU and some states such as Syria, Kyrgyzstan, Nigeria, Yemen, Moldova, Romania, Russia, Ukraine, and Vietnam. Among these, however, the recent readmission agreement with the EU has had a broad repercussion both within the country and around the world. Because the agreement was signed immediately after the heavy and mass increase in the number of irregular migrants due to the internal conflict in Syria. Negotiations on the agreement began in 2003, but talks were recessed after the start of full membership talks with the EU in 2005. After the accession negotiations came to a standstill in the subsequent years, making of readmission agreements and in return giving incentives such as visa facilitation and financial assistance to Turkey became a current issue again. Within this framework, the negotiations started again in 2009 and continued for a long period of time.[199] With its full name, the "Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization" was signed on December 16, 2013, and entered into force On October 1, 2014. However, article 24/3 of the agreement

---

[197] EKŞI, *Turkey-European Union Readmission Agreement*, p. 26, above

[198] LILIENKAMP, M., and SALIBA, S., «EU Readmission Agreements: Facilitating the return of irregular migrants", p.4, above

[199] For more information, see, ULUSOY, Orçun, «Geri Kabul Antlaşması, AB ve Türkiye», *Multeci.net*, 24 September 2013,[consulted on: 20.07.2020], https://multeci.net/2013/09/geri-kabul-anlamas-ab-ve-tuerkiye/

states that obligations for readmission of third-country citizens and stateless persons may apply three years after the date of entry into force of the agreement.[200] "The agreement aims to extradite someone who has entered EU borders illegally or Turkish citizens who have afterward become unable to meet the necessary conditions, or third-country citizens who have crossed into the EU via Turkey, to Turkey within the framework of the specified conditions."[201]

147. The entry section states that the agreement will not apply to those states due to the positions of the United Kingdom, the Kingdom of Denmark and Ireland with the EU. In this case, Turkey has assumed responsibility for hosting irregular migrants sent from twenty-six countries under the agreement.[202] In return, Turkey was promised to pay 3+3 billion Euros and again an economic-based incentive was offered. It is also guaranteed that in return for every Syrian asylum seeker sent back to Turkey, one EU member state will accept another refugee from Turkey for resettlement. This agreement with which Turkey has signed with the EU has brought controversy and criticism by many circles, especially human rights organizations, over the concern that Turkey cannot provide adequate protection for this mass number of migrants.

148. EMHRN (the Euro Mediterranean Human Rights Network) has summarized the human rights issues that the agreement and its implementation may cause, under three headings. The first is the lack of basic human rights protection mechanisms for the treatment of third-country nationals who have been deported or are likely to be arbitrarily detained, though they are eligible for refugee status or temporary protection from those accepted by Turkey. The second is related to the wide range of discretion given to EU member authorities regarding the conduct of the treatment of irregular migrants who are caught and faced with readmission in violation of international obligations and the

---

[200] For more information on the EU-Turkey Readmission Agreement, see, BATIR, K., «Avrupa Birliği'nin Geri Kabul Anlaşmaları: Türkiye ile AB Arasında İmzalanan Geri Kabul Anlaşması Çerçevesinde Hukuki Bir Değerlendirme», p. 596, 597, above

[201] ERCAN, Murat, «Mülteci Krizi Bağlamında Türkiye-AB İlişkileri ve Geri Kabul Anlaşması», *Regional Studies*, [online], Summer 2016, Volume 1, No. 1, pages 1-22, p. 1, [consulted on 25.10.2018], http://kaynakca.hacettepe.edu.tr/eser/24906000/multeci-krizi-baglaminda-turkiye-ab-iliskileri-ve-geri-kabul-anlasmasi

[202] For the full text of the Turkey-EU Readmission Agreement, see, « Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization», No. *OJ L 134, 7.5.2014,* Official Journal of the European Union, L 134/3, 07.05.2014, [consulted on 20.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0507%2801%29

examination of their protection demands. Finally, it has been stated that transparency, monitoring, and accountability lacked in the implementation of the draft agreement.[203]

149. In its report "a price of despair", Amnesty International indicates that as a result of the EU-Turkey Readmission Agreement, thousands of refugees were trapped in danger, desperation, and uncertainty on the Greek islands and thereby suffered serious human rights violations.[204] The report, which stated that all refugees and immigrants were automatically placed in detention centers upon the entry into force of the treaty, pointed out that they were forced into overcrowded camps under conditions of malnutrition, inadequate health care service, and poor hygiene. The report also included that women, in particular, were affected by security problems in the camps. The problems faced by the refugees in Moria camp on Lesbos in terms of basic rights such as security, shelter, nutrition, and health care on the agenda of the whole world today. Despite the average capacity of 2000-3000 people, the problems in the camp where more than 12,000 refugees are accommodated are detailed in the report published by Oxfam in 2019.

150. In the Oxfam's[205] report titled "Vulnerable and Abandoned" on January 9, 2019, addressed the issues where refugees live in Lesbos.[206] The report stated that two-thirds of the refugees living in the Moria camp on the island don't feel safe due to the violence, especially noting that women were fearful of sexual assault. The report states that there is a serious housing problem due to the refugee shelter, which is well above the capacity, and that the needs such as heating, nutrition, bathroom, and toilet are not adequately met. On the other hand, health services were considered as another important problem in the camp. It was noted that only one doctor works at the camp and this is not sufficient to provide health services, and frequent changes of procedures, causing confusion. In the

---

[203] For the full text of the EMHRN report, see, «AB – Türkiye Geri Kabul Anlaşması: Göçmenlerin, Mültecilerin ve Sığınmacıların Hakları Güvende mi? », EMHRN, [consulted on: 10.29.2019], http://www.euromedrights.org/eng/2013/06/20/an-eu-turkey-readmission-agreement-undermining-the-rights-of-migrants-refugees-and-asylum-seekers/

[204] For detailed information, see, « AB: Türkiye ile yapılan mülteci antlaşmasının ortaya çıkarttığı insan haklarının bedeli başka bir yerde tekrarlanamayacak kadar yüksek», *Amnesty International,* 14 February 2017, [consulted on 20.07.2020], https://www.amnesty.org.tr/icerik/ab-turkiye-ile-yapilan-multeci-anlasmasinin-ortaya-cikardigi-insan-haklarinin-bedeli-baska-bir-yerde-tekrarlanamayacak-kadar-yuksek

[205] For detailed information about OXFAM, see, «About Us», *OXFAM International,* [consulted on 20.07.2020], https://www.oxfam.org/en/about

[206] For the full text of the report see, «Vulnerable and abandoned», *OXFAM*, [online], 9 January 2019, [consulted on 20.07.2020], https://www.oxfam.org/en/pressroom/pressreleases/2019-01-09/pregnant-women-children-and-survivors-torture-abandoned-greek

report, it was pointed out that returning women to tents with their babies after four days is dangerous for the health of both mother and baby. In addition to the current problems, the camp became completely uninhabitable due to the fire on 8 September 2020. For this reason, no serious intervention has been made regarding the situation of the refugees who are literally on the streets, apart from the attempts of Germany and France to bring the unaccompanied children from the camp to Europe. In addition, COVID 19 disease, which poses a threat to the whole world, was seen in about 35 people in the camp, but no measures were taken to prevent the spread of the epidemic. Thousands of refugees on the island have been left unsolved, deprived of their most basic rights.[207]

151. According to the report of the UN Refugee Agency, which was published in July 2019, about 1,892 people have been sent back to Turkey from Greece within three years from the entry into force of the Treaty.[208] While the number of these people was 801 in 2016, it decreased to 86 in 2019. In parallel a decline is seen in the number of refugees, trying to go illegally from Turkey to Greece. Accordingly, in 2015, this number was 856,723, while it was 173,450 in 2016, 29,718 in 2017, 32,494 in 2018, and 17,180 in the first half of 2019. Thus, a serious decline is observed in illegal immigration from Turkey to Greece since the entry into force. %91 of refugees sent back to Turkey are men, % 5 children and %4 of them stated that the women, while rates according to nationality % 38 Pakistan, % 18 Syria the rest Algeria, Afghanistan, Bangladesh, ext. are given the knowledge. It is also noteworthy that 45% of repatriated persons do not apply for asylum in Greece or withdraw their application or claim for asylum in Greece.

152. EU Human Rights Watch Director Kenneth Roth wrote a letter to the government leaders of EU member states, assessing that the agreement would be a disturbing representation of disrespect for international law protecting the rights of refugees, asylum seekers, and immigrants. Roth noted in the letter that under EU and international refugee law, a request for asylum or secondary protection should be carefully assessed and that no one who needs such protection can be forcibly repatriated. The letter also mentioned that it was concerned about the fact that one refugee from Turkey would be exchanged

[207] For detailed information see, [consulted on 06.10.2020], «Fire in Moria refugee camp on Lesbos island», https://www.dw.com/tr/midilli-adasındaki-moria-sığınmacı-kampında-yangın/a-54861782

[208] For the full text of the report see, «Returns from Greece to Turkey», *UNHCR*, 31 December 2019, [consulted on 20.07.2020], https://data2.unhcr.org/en/documents/details/73295

for resettlement in place of every Syrian asylum seeker who would repatriate from Greece to Turkey. Thirdly, the fact that the EU's proposal to engage in joint initiatives to develop humanitarian conditions that would allow the local population and refugees to live in safer areas within Syria could be a death trap rather than a protected area has been highlighted.

153. Human Rights Association, Human Rights Agenda Association, Kaos Gay and Lesbian Cultural Research and Solidarity Association, Association for Solidarity with Refugees, and Amnesty International's Turkey Branch made a statement related to the subject on December 18, 2018, on the occasion of World Migrants Day. In the statement in question, drawing attention to the risks related to the rights of immigrants and refugees in readmission agreements, it has been expressed concern that countries without an adequate asylum procedure, such as Greece, Bulgaria, and Turkey, could send immigrants back to their countries, regardless of whether they need international protection through readmission agreements.

154. Pointing out another aspect of the agreement, Ercan mentions the risk that, by going from Turkey to EU countries for various reasons, people applying for asylum and refuge could be rejected for their applications and repatriated to Turkey within the framework of the Readmission Agreement. As a matter of fact, it is stated in the agreement that, without specifying any ethnic identity, whoever he/she is shall be returned to their country of origin (Turkey).[209]

155. As can be understood from the various assessments given above, the EU - Turkey readmission agreement is based on political-economic negotiations for Turkey to admit irregular migrants, by keeping them outside EU borders, rather than solving the problems of refugees, asylum seekers or irregular migrants. As can be understood from the various assessments mentioned above, the EU-Turkey Readmission Agreement is based on political-economic bargains for Turkey to receive irregular migrants by keeping them outside EU borders, rather than solving the problems of refugees, asylum seekers, or irregular migrants.

[209] For Ercan's opinion on the subject, see, ERCAN, M., «Mülteci Krizi Bağlamında Türkiye-AB İlişkileri ve Geri Kabul Anlaşması», p. 14, above

§ 4) Addressing security studies with a gender perspective

156. Since the early emergence of security studies, the question of 'the security of whom' has always been at the top of most frequently asked questions. The equivalent of the phenomenon 'whom' here has never been homogeneous, and the rights, freedoms, and thereby the security of people have always been interconnected to their identities such as language, religion, race, color, gender, class, and political. In this case, it is not possible to speak about the security of everyone in the eyes of the states. Sjoberg too underlines that individuals within states have divergent interests and considers that general expression such as 'interest of the state' and 'security of the state' are meaningless. "Not all people in a state have the same "unitary" interests in the security policy of that state because the security of some people (mostly the security of the elite class) is purchased at the expense of others (mostly the security of the marginalized groups)."[210] Gender, too, constitutes one of these different identities.

157. As it is explained in the first section "[g]ender is not considered to become a member of one of the biological sex classes, but as a system based on the coming together of masculine and feminine characters, shaped in the social process and building hierarchies."[211] According to the roles assigned to gender identities in this manner, while the characteristics such as weakness, sensuality, non-rationality, submissiveness, docility, peacefulness, and protection are attributed to women by assuming that they are feminine, the characteristics such as physical strength, rationality, courage, independence, aggressiveness, autonomy, the ability to host and protect, moderation, power, and risk-taking are being associated with masculinity.[212] All superstructure institutions and higher policy areas of patriarchal power are built on the male identity that manages, conducts, is responsible, and protects. In parallel, concepts such as state, security, sovereignty, power, war, peace, and militarism, which are considered to be the fundamental concepts of international relations, have been formed with a male-dominated, sexist approach. "At

---

[210] SJOBERG, L., *War and Conflict, Feminist Theory of War,* p. 151, above

[211] KOYUNCU, Çiğdem, Aydın, «Kitap İncelemesi – Laura Sjoberg (derleyen), Cinsiyet ve Uluslararası Güvenlik- Feminist Bakış Açısı», *Journal of International Relations,* [online], Fall. 2011, Volume 8, No. 31, pages 120, [consulted on 16.11.2018], https://www.academia.edu/7158554/Kitap_%C4%B0ncelemesi_-_Laura_SJOBERG_Der._Cinsiyet_ve_Uluslararas%C4%B1_G%C3%BCvenlik_Feminist_Bak%C4%B1%C5%9F_A%C3%A7%C4%B1s%C4%B1

[212] For more information, see, SJOBERG, L., *War and Conflict, Feminist Theory of War,* p. 23-24

the heart of the relationship between woman and security lies a woman's fiction shaped in the powerlessness of a desirable opinion under the watchful and protective power of the man."[213] Therefore, the fulfillment of security has often been a duty given to men. Since the transition to settled life, women who have been deemed to be responsible for obligations such as domestic labor, childcare, and eldercare have also started to gain a place in the business world over time. However, as male dominance is still maintained in areas such as security and the military, it is exceptional that women are managers in security institutions. In addition, it is observed that women are employed in special intelligence agencies for roles such as agent and spy. Employing women in such tasks is consistent with sexist traits attributed to them, such as insidiousness, sexiness, cunning, and intrigue.[214]

158. Although traits such as 'heroism', 'courage', 'protection', 'defense' are associated with men, the research shows that women and children are most affected by wars and conflicts around the world. With men playing an active role in wars, women's responsibilities, and burdens increase. One of the most horrific realities of wars for women is the rape cases experienced during the war. Throughout history, there have been many examples of rape being used as a war tactic to humiliate and demoralize the enemy. In addition, in most wars, women are promised as a spoil of war to motivate men and offered to the victors in this way. Women and girls, in particular, are subjected to sexual violence by military groups and forced into prostitution. Conflict-related sexual violence takes place in many different areas, such as homes, fields, detention places, military sites, camps created for displaced persons, and refugees. In this way, sexual violence is more intense during periods such as population displacement and conflict and continues after the conflict.[215] One of the most horrifying examples of mass rapes against women in wars and conflicts was seen in the 1992-1995 war between Bosnia and Herzegovina and Serbia. Bosnian women were systematically raped in front of the eyes

[213] CIVELEK, Yaprak, «Feminizm ve Güvenlik», in *Uluslararası Güvenlik, Yeni Politikalar, Stratejiler ve Yaklaşımlar*, ÇOMAK, Hasret; SANCAKTAR, Caner; DEMIR, Sertif (Editors), İstanbul, Beta Publications, January 2016, p. 66

[214] For more information on the status of the woman in security, see, COLLINS, A., *Çağdaş Güvenlik Çalışmaları*, p. 118-123, above

[215] For more information, see, BASTICK, Megan and GRIMM, Karin and KUNZ, Rahel, *Sexual Violence in Armed Conflict Global Overview and Implications for the Security Sector*, Genava, Geneva Centre for the Democratic Control of Armed Forces, 2007, p.13, [consulted on 04.02.2019], https://www1.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full%5B1%5D.pdf

of their families until they got pregnant by Serbs. Another dire example, on the other hand, took place in Rwanda between 1990 and 1993. Around 5000 women were raped in clashes between the Hutu and Tutsi tribes, and nearly 5000 babies were born as a result of these rapes. In addition to rape cases, women were also subjected to torture such as being forced into HIV infection, sexual slavery, and female genital mutilation. [216]

159. According to UN reports, the rate of civilian casualties in wars and conflicts was 10% in the early 20th century and has now reached 90%. Most of these civilian casualties are women and children, however. Again, women and children account for about 80% of the 18 million people who became refugees between 1970 and 1994, mainly due to military conflicts. Women and children are most affected also by the boycotts imposed due to military problems. For example, throughout the U. N. boycott imposed on Iraq during the Gulf War, some women were punished for their obligations to ensure the continuity of the family and to care for children. [217] In addition to these, the researches of the Red Cross indicate that almost all women lost a family member due to wars and armed conflicts, 40 % lost contact with family members, 32 % were forced to abandon their homes, a relative of 9 % of them was raped, and 9 % were exposed to torture. These data differ according to time and country, as well as they do not fully reflect the actual figures because women are hesitant to express the truth for various reasons such as fear, hesitation, and social exclusion.[218] Women associated with peace because of their fertility have always been treated as victims because of the repression and violence they have been subjected to in wars. "But some research today has revealed numerous examples of women supporting the role of men in war and directly participating in civil war and war."[219] For this reason, women can be injured or even lost their lives due to their active position in armed conflicts.

---

[216] For more information, see, ÖZDEMIR, Özlem, «Değişen Uluslararası Güvenlik İnşasında Toplumsal Cinsiyet Meselesi» *Journal of Security Sciences*, [online], November, 2016, Volume 5, No 2, pages 44, [consulted on 04.02.2019], http://dergipark.gov.tr/download/article-file/264115

[217] TICKNER, J., Ann, «You Just Don't Understand: Troubled Engagements between Feminists and IR theorists», *International Studies Quarterly*, [online], 1997, Volume 41, No: 4, p. 625 - 626, [consulted on: 15.10.2019], https://www.jstor.org/stable/2600855?seq=1#metadata_info_tab_contents,

[218] For more information, see, «*The People on The War Report*», International Committee of the Red Cross, Geneva, October, 1999, p. 8-9, [consulted on: 15.10.2019], https://www.icrc.org/en/doc/assets/files/other/icrc_002_0758.pdf,

[219] COLLINS, A., *Çağdaş Güvenlik Çalışmaları*, p. 126, above

160. Children are also affected by wars and conflicts in both direct and indirect forms. Children are sometimes actively involved in or forced to take part in armed conflicts, even sometimes they are injured or lose their lives due to these conflicts. According to UNICEF's report entitled “those who were deracinated”, published in 2016, 31 million children, 11 million of them are refugees and asylum seekers, live in another country rather than where they were born. While one in every three children who are supposed to live in another country is a refugee, this rate indicates that one in every 200 children worldwide is a refugee. The number of child refugees has more than doubled in the period from 2005 to 2015, while the number of child migrants has increased by % 21 over the same period. Nearly half of these refugee children under UNHCR's jurisdiction are from the Syrian Arab Republic and Afghanistan. In addition to the mass increase in numerical data, the report noted that the majority of children forced to migrate also experienced severe abuse and deprivation during the journey. Migrant and refugee children, who are in the periods when they need basic services and protection most, also experience social exclusion and poverty in their destination countries more intensely than in other segments of populations. In addition to these, many other problems such as access to health, education, and other services, coexistence with their families, and xenophobia relate to these children.[220] According to the 2018 data of the Unicef Children's Aid Fund, the number of children who migrate to different regions around the world for war, instability, internal conflict, food shortage and a search for a better life is 28 million. 12 million of these children are refugees or asylum seekers.[221]

161. It is difficult to obtain accurate data on the status of LGBTI individuals in wars and conflicts. The inability of these people to live by expressing their gender identities openly is an important determinant in explaining this, on the other hand, the fact that the studies are mostly focused on women and children is another important factor, as well. Patriarchal powers based on heterosexual relationships have always struggled with sexual orientations, which they considered to be contrary to this, to maintain their order. This heterosexuality is significant not only in terms of population policy of nation-states but

[220] For the full text of the report, see, «Plucked from their roots», *Unicef*, [consulted on 04/02/2019], http://www.unicef.org.tr/files/bilgimerkezi/doc/Uprooted-ES-Turkish.pdf

[221] For more information about report, see, «Milyonlarca Çocuk Ülkelerinden Göç Ermek Zorunda Kalıyor», YILMAZ, Tuğçenur, Anatolia Ajans, Ankara, 30.09.2018, [consulted on 04/02/2019], https://www.aa.com.tr/tr/dunya/milyonlarca-cocuk-ulkelerinden-goc-etmek-zorunda-kaliyor/1268789,

also in terms of providing the military population needed in war or peace. In the US, for example, the postwar period is an important process in terms of policies towards LGBTI people. With the increasing need for employment in the public realm due to the war, LGBTIs became more visible in this area and began to keep living in major cities. But the ruling power, concerned over this growing visibility of LGBTIs, created disinformation aimed at homosexuals and quickly spread rhetoric that homosexuality was a disease and threatened society. Most homosexuals then lost their jobs, some were imprisoned and some were admitted to a mental institution. Such policies towards LGBTIs have led them to struggle and solidarity to achieve their rights.[222]

A- Feminist approach to security and the emergence of feminist international relations

162. The masculine structure of the discipline of International Relations has been criticized by critical theorists and post-modernists, particularly feminists.[223] The Feminist approach began to exert its influence in international relations since the 1980s, specifically feminist studies related to security have increased considerably. A special issue, "Women and International Relations" of Millennium magazine published in 1988, and the "International Feminist Journal of Politics", which started to be published in 1999, is considered to be the first study on this subject.[224] "Feminist researchers argue that, if the issue of gender is more explicitly included in security studies, not only will new issues and alternative perspectives be added to the security agenda, but at the same time, a different view of international security will emerge at the last stage."[225] Feminists have questioned the fundamental concepts of state-centric security, redefining security by including the influences of all structural inequivalence, particularly gender, class, and race. Enloe, one of the critical theorists, pointing out the male-dominated structure of

---

[222] For detailed information on Ruling power-LGBTI Policy, ERDOĞAN, Barış and KÖTEN, Esra, «Yeni Toplumsal Hareketlerin Sınıf Dinamiği: Türkiye LGBT Hareketi», *Marmara University Journal of Political Sciences,* [online], March 2014, Volume 2, No. 1, p. 93-113, [consulted on: 01.17.2019], http://dergipark.gov.tr/download/article-file/1167

[223] TÜR, Ö., and AYDIN KOYUNCU, Ç., «Feminist Uluslararası İlişkiler Yaklaşımı: Temelleri, Gelişimi, Katkı ve Sorunları», p. 7, above

[224] BODUR, Ün, Marella, « From guest editor», *Alternative Politica Feminist International Relations,* [online], October 2017, Volume 9, No. 3, p. ii, [consulted on 20.11.2018], https://docs.google.com/document/d/1gs9susuycqwtf8dzxm2h8hx1jgecqev3olk254g_jpq/edit

[225] BAYLIS, J., «Uluslararası İlişkilerde Güvenlik Kavramı », p. 82, above

privileges and controls that legitimize all forms of violence, noted the national security phenomenon put emphasis on the structure that protects states rather than protecting them from outside attacks.[226]

163. The masculinity of the discipline of international relations has elicited feminist studies of international relations from its opposite. The development of feminist International relations has undoubtedly followed a course that is directly proportional to the emergence and development of feminist thought. The concept of security has been re-explained by various feminist approaches with gender consciousness. "Within this framework, security includes only direct violence, such as war or rape, all forms of structural violence, namely poverty, gender discrimination, and even environmental issues."[227] Considered one of the most prominent theorists of International Relations, Ann Tickner questioned the main discourses and assumptions of international relations and criticized their masculinity in her works.[228] Tickner appraises that the current international system is considered a structure made up of states and that actors within the state are not considered. She examined the basic concepts of security work such as peace, security, war, conflict, with a feminist approach. And she explained that security should not be understood as just protecting the state from attack. Pointing out that the concept of security for women can be very different, Tickner emphasizes that women are often attacked not by a foreign state but by men they know. In contrast to the top-down macro-level perspective in international security studies, feminist studies have advocated that a

---

[226] See., TICKNER, J. Ann, «What Is Your Research Program? Some Feminist Answers to International Relations Methodological Questions», *International Studies Quarterly*, [online], March, 2005, Vol. 49, No. 1, pp. 1-21, p. 6, [consulted on 01.16.2019], https://www.jstor.org/stable/pdf/3693622.pdf; For detailed information on Enloe's views, see: «Interview: Cynthia Enloe», *E-International Relations*, [online], March 13 2013, [consulted on 15.10.2019], https://www.e-ir.info/2013/03/13/interview-cynthia-enloe/; KOYUNCU, A. Ç., «Feminist Uluslararası İlişkiler Yaklaşımı: Temelleri, Gelişimi, Katkı ve Sorunları», p.8, above

[227] KOYUNCU, A., Ç., «Kitap İncelemesi – Laura Sjoberg (Der.) », p. 120, above

[228] For more information see, TICKNER, J. A., *Gender in International Relations Feminist Perspectives on Achieving Global Security*, New York, Columbia University Press, 1992, [consulted on 15.10.2019], https://books.google.fr/books?hl=tr&lr=&id=8LtKx_vm6IUC&oi=fnd&pg=PP9&dq=ann+tickner+security&ots=THaocv_Bqe&sig=JrjNgZOqOr60YdQCl-6Hd7_rLlo#v=onepage&q=ann%20tickner%20security&f=false; TICKNER, J., A., «Feminist Responses to International Security Studies», *Peace Review*, [online], Mart, 2004, Volume 16, No. 1, pages 43-48, [consulted on 15.10.2019], https://www.tandfonline.com/doi/full/10.1080/1040265042000210148?scroll=top&needAccess=true; TICKNER, A., J., « Feminist Security Studies: Celebrating an Emerging Field», *Politics&Gender,* [online], December, 2011, Volume 7, No. 4, pages 576-581, [consulted on 15.10.2019], https://www.cambridge.org/core/journals/politics-and-gender/article/feminist-security-studies-celebrating-an-emerging-field/217878B4467BBAC0D64161CD88CD8A18

micro-level, in other words, a bottom-up method should be used. In this context, feminists have raised different gender-based questions, with the exception of global issues discussed in international relations, development, and human rights. Because, the fear experienced by each woman, and the threat perception differs according to her situation individually. For this reason, the gender experiences that will be gained by the analysis of the daily threat environments of each are significant for the determination of the individual insecurity of women.

164. Another important feminist thinker, Fred Halliday, pointed out that the study of international relations interested in gender issues later than the other social sciences.[229] Halliday who evaluated *to overcome the invisibility of women requires analysis of why the concealment takes place and of the several reasons that combined to enforce this occultation,* examined these reasons. She stated one of these reasons is the inertia in the discipline of international relations, namely the silence about gender, the tendency to ignore or discourage those interested in it. Halley shows as another reason, the selective isolation of international relations from developments in other social sciences. She explained this situation with the example that women's growth in the market has been neglected for a long time while examining the factors of production of the international political economy such as developments in money and technology. Halley also criticized that the discipline puts forward such phenomena as security, state, and power, which are considered high policy areas.

165. Christine Sylvester, who is known with her studies on feminist international relations and war, also criticized the sexist approach of international relations. Sylyester, who criticized the lack of women on the agenda of international relations, also addressed different issues in feminist international relations.[230] Feminists have argued that women's

---

[229]For the detailed information about Halliday's review, see, HALLIDAY, Fred, «Hidden from International Relations: Women and the International Arena», *Rethinking International Relations*, [online], 1994, pages 147-169, [consulted on 17.10.2019], https://link.springer.com/chapter/10.1007/978-1-349-23658-9_7; HALLIDAY, Fred, «State and Society in International Relations: A Second Agenda», *Millennium*: *Journal of International Studies*, [online], [June 1, 1987, Vol 16, No 2, [consulted on 17.10.2019], p.215, https://journals.sagepub.com/doi/pdf/10.1177/03058298870160022701

[230] For the detailed information about Sylyester's review, see, SYLYESTER, Christine, «Tensions in Feminist Security Studies», *Sage Journals,* Volume: 41 No.: 6, pp. 607-614, [consulted on 17.10.2019], https://journals.sagepub.com/doi/abs/10.1177/0967010610388206; SYLYESTER, Christine, «The Forum: Emotion and the Feminist IR Researcher», *International Studies Review*, March 2012, Volume

individual safety and threat perceptions should be assessed. They have also criticized the concept of human security because of the genderless human analysis on which it is based. "Looking from a feminist point of view, the concept of 'human' is considered gender-neutral, and just a world in which masculinity is internationalized and men build."[231]

166. Feminist studies referred to as '*Feminist security schools' approach*', have progressed in four theoretical frameworks since the 1990s. The first of these is the questioning of the sexist approach that ignores women in international security policies. The second relates to the questioning of whether women are safe in situations of war or peace, and whether they are adequately protected by states. The third is an assessment of why women are associated with peace. Finally, feminists, in the evaluation of security issues based on gender, have criticized that addressing only women's experiences in wars - high proportions of women in the applications of rape against women, civilian deaths, and refugees, and women's lack of participation in decision-making mechanisms, etc. - contributes to the development of masculinity in different dimensions.[232] The fact that feminist thinkers reconsidered fundamental concepts and theories of the field by questioning them with gender consciousness has contributed to the fact that women and other gender groups become more visible.

B- Feminization of migration and/or gender identities becoming visible in the migration process

167. Until the late 20th century, general assessments and researches on migration had been mostly male-centered. Women were assessed in a secondary position, acting in line with decisions made mostly by men during the migration process. According to this, the types of migration that are pertaining to women, in which most women are involved as a mother, wife, or daughter, are referred to as linked migration and marriage migration. The concept of linked migration is often used for female migrants who follow male family members who emigrate for reasons such as working, finding jobs, and appointment. Marriage migration, as it can be understood from its name, describes the migration of

---

14, No. 1, pages 687-708,_ [consulted on 17.10.2019], https://academic.oup.com/isr/article-abstract/13/4/687/1800241?redirectedFrom=fulltext

[231] ÖZDEMİR, Ö., «Değişen Uluslararası Güvenlik İnşasında Toplumsal Cinsiyet Meselesi», p. 35, above

[232] For more information on Feminist Security schools' approach, see, TÜR, Ö. and KOYUNCU, Ç. A., «Feminist Uluslararası İlişkiler Yaklaşımları Açısından Güvenlik Konusunun Analizi», p. 116, above

women by means of marrying someone.[233] These studies generally assessed that migration gave women greater autonomy and freedom, and enhanced women's voice and decision-making authority by increasing their employment. Besides, studies in the US claimed that with migration, women's awareness increased especially in terms of the rights they have to protect against violence, and women rejected the control and violence of men.[234] However, as a result of both the change in migration movements and being effective in the gender perspective in international law, the existence of women in the migration process has begun to be assessed within its own unique dynamics. With women becoming more involved in the labor market, particularly since the 1980s, the effectiveness, and visibility of migrant women has also enhanced. During these years, a rapid increase was experienced in the number of women migrating due to increasing poverty, inequivalence, and conflicts as a result of Neo-liberal policies. Thus, migration has become feminized. Castles and Miller explain the feminization of migration as women migrating independently of the family and becoming caregivers of the family.[235] Today, women also go to other countries for various reasons such as work, education, and internships, and they make up almost half of all migrants. Factors such as globalization, search for new opportunities, poverty, unemployment, cultural practices that they are exposed to because of gender in their own countries, violence, natural disasters, war, and internal conflict are the determinants of women who make up half of the world's immigrant population. In addition to these problems encountered in the country of origin, factors such as the spreading of the male-centered entertainment culture that increases the demand for women in the entertainment life in the immigrant countries, and the deepening of the gender-based division of labor in the formal/informal manufacturing industry and service sector are also effective.[236]

---

[233] For detailed information on migrations peculiar to women, see, İLKKARACAN, Pınar and ILKKARACAN, Ipek, in «1990'lar Türkiye'sinde Kadın ve Göç», in *Bilanço 98: 75 Yılda Köylerden Şehirlere*, Istanbul, History Foundation Publications, 1998, p. 3, [consulted on 04.02.2019], http://kadinininsanhaklari.org/wp-content/uploads/2018/06/kadin_goc.pdf

[234] For more information, see, FILIPPEN, Chenoa, A., and PARRADO, Emilio, «A., Migration and Gender Among Mexican Women», *American Sociological Review*, [online], August, 2005, Volume 70, pages 607, [consulted on 30.01.2019], https://journals.sagepub.com/doi/10.1177/000312240507000404

[235] For detailed information, see, CASTLES, Stephan. and MILLER, Mark J., «The Famile Face of Migration», 1998, [online], Caritas Internationalis, [consulted on 06.10.2020], http://www.caritas.org/includes/pdf/backgroundmigration.pdf

[236] For detailed information, see, «Kadın Göçmen İşçilerle İlgili 26 Sayılı Genel Tavsiye», 5 December 2008, CEDAW/C/2009/WP.1/R, in *Kadınlara Karşı Ayrımcılığın Önlenmesi Komitesi Genel Tavsiye*

168. The conditions in the countries they came from, the migration process, the educational and social status differences of the migrants, and differences in socio-economic and cultural structures of the migrated country have an impact on women's adaptation. However, despite all the differences, women's experiences gained in the migration process indicate that they have common needs and problems as well. Women are most affected by the isolation, poverty, adaptation, and increasing obligations that occur with migration. "Migrant women are involved in various sectors in the target countries, however, prostitution and home services among the sectors in which they work take the lead"[237] While women working in the sex trade sector are mainly exposed to problems such as social exclusion, catching an illness such as Aids, exposure to violence, and not getting paid, women working in housework experience problems such as long-term work, low wages, uninsured work, and being forced to work boarding. The similarities between the problems faced by migrant women in different situations have also led them to come together and voice their shared demands to solve their problems.[238] "The idea that women should be treated and examined in the migration process with their unique and separate status from men was first expressed in international conferences on women [World Conference On Women (1975, Mexico), World Conference of the United Nations Decade for Women (Copenhagen, 1980)]."[239] Studies from the 1990s show that the approach that positions women as victims of the migration process has been replaced by the approach that actively addresses her as an actor who shapes the process. The idea that an international migration law should be developed against gender inequivalence and violence in the migration process has come to the fore in this period's studies.

Kararları 1986-2013, pages 66-72, [consulted on 20.07.2020], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/tavsiye_kararlari/CEDAW%20Komitesi%20Tavsiye%20Kararlar%C4%B1_(1-29).pdf

[237] KAYPAK, Şafak, «Göçün Kadınlaşması: Göç Olgusuna Toplumsal Cinsiyet Perspektifinden Bakmak», in *International Kaysem 11, 28-30 September 2017 Proceedings Book,* YATKIN, Ahmet (editor), Elazığ, Fırat University, p.10, [consulted on 19.11.2019], https://www.academia.edu/36038980/G%C3%96%C3%87%C3%9CN_KADINLA%C5%9EMASI_G%C3%96%C3%87_OLGUSUNA_TOPLUMSAL_C%C4%B0NS%C4%B0YET_PERSPEKT%C4%B0F%C4%B0NDEN_BAKMAK

[238] For detailed information on the feminization of migration, see, KAYPAK, Ş., «Göçün Kadınlaşması: Göç Olgusuna Toplumsal Cinsiyet Perspektifinden Bakmak», p. 7-12, above

[239] ŞEKER, Betül Dilara and UÇAN, Gülten, «Göç Sürecinde Kadın», *CBU Journal of Social Sciences*, [online], March 2016, Volume 14, No. 1, p. 205, [consulted on 01/30/2019], https://www.researchgate.net/publication/301306537_GOC_SURECINDE_KADIN

169. All areas of life and all social processes bear the effects of the male-dominated character of the patriarchal system, even take shape in parallel to it. "Gender influences and manages the process of the exercise and sharing of power, directly the economic, political, and social life and, accordingly, the needs of men and women."[240] Therefore, one of the most important social forces shaping migration models is gender.[241] "Since women participate in the migration process with the responsibilities they assume in accordance with their gender roles, they experience the victimization of migration and of being a woman together, in this respect, they are a double disadvantaged and vulnerable group."[242] Şeker and Uçan spoke of three key issues that stem from gender roles and which should be dealt with as privileged by women in immigration studies. The first one is that, although more and more women face similar problems related to family reunification and other reasons for migration, this does not attract enough attention. The second one is the increase of women's exploitation in the labor market by preferring women for reasons such as flexible working in some lines of business and low wage pay. As the final problem, human trafficking, the vast majority of which are women and girls, has been expressed.

170. Preventive policies implemented against migrants' lead to consequences that lead women to become victims in terms of many practices such as family reunification, visa, and residence permits. Migrated women, in addition to the responsibilities such as unpaid domestic labor, child, and eldercare, which are assigned to them due to their gender roles, face the responsibilities of keeping up with the country to have been migrated, learning the language and culture of that country, protecting their own traditional values and culture, and conveying them to their children, as well. Due to the economic challenges posed by the migration process, women who also have to work are mostly employed in low-wage and unskilled jobs such as cleaning and waitressing. Being forced to carry all these responsibilities at the same time aggravates the conditions of women and causes them to wear out physically and psychologically.

---

[240] ŞEKER and UÇAN, «Göç Sürecinde Kadın», p. 204, above
[241] For more information, see, FILIPPEN, C., A. and PARRADO, E., A., «Migration and Gender Among Mexican Women», p.606, above
[242] SAM, David, L., «Acculturation of Immigrant Children Island Women», in BERRY, John, W., and SAM, David, L., (editors), *Acculturation Psychology*, Cambridge University Press, 2006, p. 408

171. LGBTI immigrants and refugees are affected by problems such as discrimination, xenophobia, abuse, oppression and violence in much more than other groups. LGBTIs, who have been forced to migrate because of economic, political, social, cultural reasons that lead or force people to migrate, as well as discrimination, oppression, and violence due to sexual orientation and gender identities, continue to face similar problems in the migration process and destination country. For this reason, the fact that gender groups, which are expressed in disadvantaged, sensitive, and key groups, are not exposed to discrimination due to sexual orientation and gender identities, is an important issue on the agenda of both international law and civil society.

General Conclusion Chapter 1:

172. It is seen that the international protection measure discussed in the first part of this chapter is an important agenda of international law, particularly in light of the massive asylum needs that emerged following the wars. Asylum and asylum request are generally caused by the threat of persecution due to factors such as race, religion, gender, nationality, political opinion in the country of inhabitants. Fundamental rights and freedoms must be ensured at least to a minimum, as well as ensuring that such persons are protected and not returned to the country where they are under threat. Therefore, it has been observed that many international regulations adopt assurances regarding the scope, conditions and principles of international protection. In the Geneva Convention of 1951, which is still considered the most important source of international refugee law today, the concept of refugees has been defined and international standards for the protection of refugees have been established. The convention is also important because it explicitly regulates responsibilities such as the rights and freedoms that should be granted to refugees and their obligation not to “non-refoulement “to places at risk of persecution.
173. Since then, there have been significant changes in both the nature of migration and the policies related to migration. One of the most significant consequences of this change is that migration becomes feminized, or in other words, that the woman is visible in the migration process. This concept refers to women migrating independently of their families and serving as a role of family caregivers. Indeed, women now account for nearly half of all immigrants who travel to other countries for a variety reasons including work, education and internships. Parallel to this, another development is the criticism of many concepts in international relations studies by questioning their masculinity. The

masculine structure of the discipline of International Relations has been criticized by critical theorists and post-modernists, especially feminists. With the feminist approach that has started to take effect in international relations since the 1980s, it is seen that the many problems, needs and related rights and freedoms experienced by the subject of migration due to sexual orientation and gender identity also is brought to agenda of international law

Chapter 2: Gender Equality in International Law Regulations

174. All of the issues that women and LGBTI refugees face as a result of their sexual orientation and gender identity are inextricably linked to the issue of gender inequality. Today, discrimination based on sexual orientation and gender identity still persists throughout the world, albeit in varying forms and intensity. The gender phenomenon, which we use to express this type of discrimination, was developed to explain unequal gender relations and to emphasize the fact that this inequality is unnatural. "Gender underlines that inequalities and hierarchies between the sexes on a global scale, inequalities and hierarchies between the sexes are not based on innate or creation in the broadest sense, but also facts that are learned, applied, transmitted, shared, expressed; discursive on the one hand, performance-based facts on the other".[243]

175. According to the 2017 data of the gender inequality index, Europe and Central Asia (0.270) have the lowest inequality while is sub-Saharan Africa (0.569) has the highest. Accordingly, the countries Switzerland (0.039), Denmark (0.040), the Netherlands and Sweden (0.044) had the lowest gender inequality while Yemen (0.834), Papua New Guinea (0.741), Chad (0.708) has the highest. In this index, Turkey is ranked 69th (0.317).[244] It is seen that European countries are at a relatively favorable level in global gender inequality data. The vast majority of EU member states have accepted that discrimination is one of the grounds for discrimination due to sexual orientation in line with international standards. However, only 20 of the Members openly accept

[243] BOZOK, Mehmet, «Toplumsal Cinsiyet ve Aile », in *Aileyi Anlamak Disiplinlerarası Yaklaşım*, Editors: OKTIK, Nurgün; REŞITOĞLU, ÜNAL, Halime, Nobel Publications, First Edition, March 2018, Ankara, p. 104

[244]For the full text of the Report, see, United Nations Development Programme, «Gender Inequality Index», [Consulted on: 12.05.2019], http://hdr.undp.org/en/composite/GII

discrimination based on gender identity in their anti-discrimination legislation with concepts such as sex and gender. This corresponds to even less than half of the Union members. The legislations of the remaining 27 countries either contain vague statements about sexual discrimination or contain no regulation at all. In this case, improving existing regulations and eliminating weaknesses is considered an important need for all states.

176. Gender-based discrimination, violence and inequality are also on the agenda of states, civil society and international law. Therefore, it is seen that many international regulations have been adopted in order to prevent gender-based discrimination and to ensure the equality and freedom of all sexual orientations and gender identities. Furthermore, international organizations, especially the UN and EU, are trying to contribute to achieving this equality through means such as recommendations, guidelines, action plans, projects and supports. These regulations are important for guiding the improvement of the laws and practices of states.

177. In the first part of this chapter, international conventions aimed at improving gender equality, their contributions to international law, their importance, weaknesses, control mechanisms, and the reports prepared by their bodies about Turkey are examined. In the second part, Yogyakarta principles, which are determined to guide the laws and practices of states and precedent decisions made by organizations and courts such as UNHCR, ECJ, EU Council of Ministers, Parliamentary Assembly and ECHR were evaluated. It is aimed to establish a basis for the evaluations in the second part of the study with these international standards and principles.

Section 1: International Conventions to Ensure Gender Equality

178. It is now a widely accepted principle in human rights law today that all individuals, regardless of gender identity, sexual orientation and gender characteristics, should be able to live freely and equally without being discriminated against. However, as we will discuss in detail below, even in the international human rights documents adopted until recently, it is seen that gender equality is extended to cover all sexual orientation and gender identities through means such as recommendations, principles, guidelines, court jurisprudence, when gender equality is expressed in forms such as equality of women with men or “gender”, “gender” equality. In these developments, feminists’ criticisms of issues such as gender-based discrimination in international human rights law texts and other sexual orientations are ignored by addressing rights in the form

of men and women, and the general and open-ended expressions have had a significant impact. Feminists argue that the principles of international human rights law should be updated with a gender perspective.

179. One of the most important gender-based international documents is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the "the Council of Europe Convention on the Preventing and Combating of Violence against Women and Domestic Violence" (Istanbul Convention). Both Conventions are legally binding on Turkish law because Turkey signed and enacted them. The CEDAW Convention is considered the most important international treaty governing women's rights. With both the Convention and the Optional Protocol, important regulations and control mechanisms have been introduced to end all forms of discrimination against women and to ensure equality between men and women. In addition to combating violence against women, the Istanbul Convention emphasizes gender inequality as the main reason behind this problem. In particular, the convention is considered an important development in terms of its provisions regarding refugee women and regulations such as the handling of gender-based persecution within the scope of the definition of refugees.

§ 1) Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), additional optional protocol and the reports of the committee

180. One of the most important developments in international law on gender matters is undoubtedly the CEDAW Convention and its Additional Optional Protocol. In the Convention, discrimination that states should prevent is emphasized as discrimination in both public and private spheres. "The Convention has played an important role in entering the problems of women's rights to the World agenda and has been a driving force."[245] The Optional Protocol adopted after the Convention has also regulated the control mechanisms including the right to a "personal application" and the "review authority of the Committee" that can be applied in case of violation of rights. Besides, the Committee on the Elimination of Discrimination against Women, through its Recommendations in various sessions, has both transformed the Convention into a living Convention and made recommendations to States to address current gender-based

[245] BÖRÜ, PARLAK, Şafak, «Kadının Korunmasına İlişkin Uluslararası Sözleşmeler ve Türkiye'nin Konumu», *Journal of TBB*, [online], Year 2017, Special No., p. 48, [consulted on 13.11.2019], http://tbbdergisi.barobirlik.org.tr/m2017-2017-1715

issues.[246] I will consider in detail the arrangements in both the Convention and The Protocol below.

A- Convention on Elimination of All Forms of Discrimination Against Women (CEDAW -1981)

181. The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) is the first legal and binding international instrument adopted to prevent discrimination against women. The convention aims to eliminate all forms of gender-based discrimination against women and its appearances, to take necessary measures to prevent this, and to ensure full equality between men and women. The discrimination that states should prevent is emphasized as discrimination both public and private in the convention. CEDAW emphasizes women's right to equality and prohibits discrimination against women, and outlines the actions each country should take to achieve these goals. CEDAW, has very important place in international law since it includes obligations to ensure equality in terms of rights as heritage, ownership, access to finance, etc. as well as to tackle problems such as violence, poverty and lack of legal protection.[247]

182. The implementation of the Convention has been monitored by the CEDAW Committee, which consists of 23 independent experts since 1982. With its functioning in this way, the Committee is separated from organizations such as the Women's Status Commission within the UN, the Human Rights Commission, or the Subcommittee on the Promotion and Protection of Human Rights.[248] States parties are obliged to submit regular reports to the Committee on how their rights in the Convention are exercised. The

---

[246] For detailed information about Recommendations of the Committee, see, «Kadınlara Karşı Ayrımcılığın Önlenmesi Komitesi Genel Tavsiye Kararları 1986-2013», [consulted on 07.11.2019], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/tavsiye_kararlari/CEDAW%20Komitesi%20Tavsiye%20Kararlar%C4%B1_(1-29).pdf

[247] For detailed information, see, «CEDAW 40 Years in: What Have We Learned and What has Improved», see, [online], *Heinrich Böll Stiftung,* 10 December 2019, [consulted on 18.06.2020], https://www.boell.de/en/2019/12/10/cedaw-40-years-what-have-we-learned-and-what-has-improved

[248]For detailed information, see, SCHOPP-SCHILLING, Hanna Beate, «The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation», [online], *International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference,* Budapest, Hungary, 22-23 October 2004, [consulted on 18.06.2020], https://www.legislationline.org/download/id/2887/file/Role%20of%20CEDAW%20in%20Promoting%20Pol%20Reprs%20of%20Women%20-%20IDEA.pdf

Committee considers each State Party report in its Sessions and conveys its concerns and recommendations to these States in the form of concluding observations. According to the Protocol of the Convention Committee is responsible to receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and initiate inquiries into situations of grave or systematic violations of women's rights. But these procedures are optional and are only available where the State concerned has accepted them.[249]

183. "The convention played an important role and was a driving force in bringing women's rights issues to the agenda of the World and keeping them on the agenda." With the Optional Protocol, adopted after the convention, control mechanisms that can be applied in case of violation of rights, are regulated. "With the CEDAW Optional Protocol's entry to force", new control mechanisms have been established, with the right to 'personal application' and having the "review" authority of the Committee. In addition to this, the Committee on the Elimination of Discrimination Against Women, through its recommendations in various sessions, has made the Convention a living one as well as advising States to address current gender-based issues.

184. In many ways, the Convention has the potential to contribute to a positive change in terms of women's equality. On the other hand, when the regulations related to the Convention are considered both general and articles, it is seen that various criticisms have been brought to the Convention. An important point that draws attention in the whole contract is women who are protected by rights and freedoms. Throughout the full text of the Convention, LGBTI groups that have suffered discrimination, social exclusion, abuse, harassment, oppression and attacks due to their different sexual orientation, gender identities, and gender characteristics are excluded by using phrases such as "men and women" and "both sexes". Besides, discrimination against women will not be solved only by theoretical and philosophical arrangements. Also, the preservation of the normative nature of international law, which allows States to put reservations on the treaty, which preserves State superiority, has been criticized for undermining the exercise of the rights

[249] For detailed information about Committee, see, «Committee on the Elimination of Discrimination Against Women», United Nations Human Rights, Office of the High Commissioner, [consulted on 18.06.2020], https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx

protected in the Convention.[250] However, it is necessary to consider each Convention within the historical reality and conditions of the period it is accepted. Considering a period in which both women and LGBTI's rights were fairly limited, or were not at all in terms of some rights, it is clear that the Convention contained positive developments, even though it was limited only to women. It was especially considered positive in the Convention that discrimination against women should be prohibited not only in the public sphere but also in the private sphere, and that indirect discrimination should be considered in this context, and that women's rights should be defined individually regardless of their marital status and controlling application are positive.[251]

185. The Convention was adopted by the Resolution 34/180 of the United Nations General Assembly dated 12/18/1979. The Convention, consisting of six sections and 30 articles, was opened for signature on March 1, 1980, and entered into force September 3, 1981. As of November 2019, a total of 189 states have become parties to the Convention. With this number the Convention is the largest participation document in international law.[252] Turkey endorsed the Convention by Law No. 3232 dated 06/11/1985 and ratified it with the Council of Ministers' decision No. 85/9722 dated 07/24/1985, and the Convention was published in the Official Gazette No. 18898 dated October 14, 1985, and became effective. Thus, the Convention has become binding in terms of Turkish domestic law as well.

---

[250] For detailed information, see, RADAY, Frances, «Gender and democratic citizenship: the impact of CEDAW», *International Journal of the Constitution,* [online], Volume 10, No. 2, 30 March 2012, pages 512–530*,* [consulted on 05.11.2019], https://academic.oup.com/icon/article/10/2/512/666068

[251] For detailed information on assessments related to the Convention, see, HANNA, BETERSCHAP-Schilling «The Role of the Convention on Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation», above; ARSLAN, Gulay, «Birleşmiş Milletler Kadınlara Karşı Her Türlü Ayrımcılığın Ortadan Kaldırılmasına Dair Sözleşme (Öngörülen Haklar ve Öngörülen Usuller) » *Journal of Istanbul University Faculty of Law*, [online], Year 2004, Volume LXII, No. 1-2, Pages 3-43, 2004, [consulted on 21.05.2019], https://dergipark.org.tr/download/article-file/95911; KALE, ÖZÇELIK, Fatmagül, «Kadınlara Karşı Her Biçimiyle Ayrımcılığın Ortadan Kaldırılması Sözleşmesi'nin Usule ve Esasa İlişkin Düzenlemeleri ve Türk Anayasa Hukuku'na Yansımaları», *Journal of the Court of Conflict*, Year 2016, No. 8, pages 317-340, [consulted on 21.05.2019], https://dergipark.org.tr/download/article-file/2712621; BÖRÜ, PARLAK, Şafak, «Kadının Korunmasına İlişkin Uluslararası Sözleşmeler ve Türkiye'nin Konumu», *Journal of TBB*, Special No., 2017, pages 43-63, [consulted on 21.05.2019], http://tbbdergisi.barobirlik.org.tr/m2017-2017-1715, 27.09.2019

[252] For more information, see UN Treaty Collection, « Convention on the Elimination of All Forms of Discrimination against Women», New York, 18 December 1979, United Nations, Treaty Series, Volume 1249, p. 13, [consulted on 21.05.2019], https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

186. In the first article of the first section of the Convention, the term “discrimination against women” is described as any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It is a positive development that a legally binding international Convention defines discrimination against women and that all women, regardless of their marital status, are identified in this context. However, the problem of gender discrimination does not only affect women, LGBTI individuals and girls are also exposed to gender-based discrimination. Therefore, in our opinion, it is more appropriate to express discrimination in the article in a way that covers all gender-based discrimination directed against all individuals regardless of their gender identity, sexual orientation, gender expression and characteristics.

187. The second article recognizes that States Parties undertake to take measures to prohibit and eliminate all forms of discrimination against women. It is seen that these commitments, both preventive, protective and sanctioned such as equality between women and men, the regulation on the prohibition of discrimination against women, the adoption of the necessary measures to change or abolish laws, traditions and practices involving discrimination against women, ensuring the effective protection of women against discrimination, taking necessary measures to prevent discrimination against women that happened by any person, institution or organization. The third article on the obligation to take measures is stated that States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women to guarantee them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. In the fourth article it is given place that temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. In both third and fourth articles, it is seen that the obligation of states is stated within the framework of equality of women and men. It would be more inclusive and accurate to say that the necessary measures and protections had provided for everyone,

regardless of gender identity and sexual orientation, rather than such dual sexist statements that exclude LGBTIs.

188. Article 5 titled “the elimination of prejudices and traditions” regulates that States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles for men and women. In second paragraph of the same article it is mentioned that the common responsibility of men and women should be accepted in the education of the child in the family and that the child's interests should be prioritized in every situation. The final article of the first section regulates the State Parties to take the necessary measures to end all forms of sex trafficking.

189. Articles 7, 8 and 9 of the second section regulate the necessary measures should be taken to ensure the equality of women and men concerning political rights such as voting, election, participation, representation of the government at international level and participation in the work of international organizations, citizenship rights and the citizenship of the child. In these articles, it is understood that the subject of rights is defined as only women, such as preventing discrimination against women and giving women equal rights with men. As stated in the previous articles, this determination is deficient as it excludes LGBTIs.

190. In the third section, it is mentioned that states should take all necessary measures to ensure that men and women benefit equal access to education, labor, health, and other economic and social rights, and to eliminate discrimination against women. For example in Article 10, on the right to education, measures such as the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas, access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality, the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods, the same opportunities to benefit from scholarships and other study grants, the same opportunities for access to programs of continuing

education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women, the reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely, the same Opportunities to participate actively in sports and physical education, access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning have been included.

191. Article 11 entitled “Right to Work”, recommendations are made to ensure equality between women and men and to eliminate discrimination against women in the field of employment. The second paragraph of the article contains important regulations aimed at preventing discrimination against women due to marriage or motherhood and protecting women's right to work. In this paragraph it is stated that States Parties shall take appropriate measures to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals based on marital status; to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; to provide special protection to women during pregnancy in types of work proved to be harmful to them. It is known that incidents such as marriage and birth in business life often led to practices against women. Although the regulation is positive in terms of measures to prevent this, it is incomplete in our opinion. Because family, marriage and child obligations are defined only within the responsibilities of women, it excludes that men should be equally responsible for these obligations. However, the real protection of the rights of women employees who are willing to continue working life except in cases of breastfeeding, physical and psychological problems after birth is possible only by giving them equal responsibility and rights. Therefore, it would be more accurate to state in the relevant provisions that rights can be granted to “any spouse”. At the end of the article, the establishment and development of child care institutions and encouraging the provision of the necessary supportive social services have been regulated so that parents can harmonize their domestic obligations with their responsibilities in working life and their participation in social life.

192. “The right to health”, as regulated in Article 12, is generally aimed at equal access to health services for women and men. The article states that women will be provided with the necessary services free of charge, if necessary, regarding pregnancy, birth and postnatal periods; it is also decided that adequate service would be provided during pregnancy and lactation. However, health services are an area where discriminatory and repressive practices based on gender identity and sexual orientation are common. Especially it is possible to mention about many different examples such as perceived spousal sexual intercourse as a condition requiring medical or psychological treatment and forced LGBTIs to be subjected to forced tests and treatments; sexual intercourse and pregnancy other than marriage are still negatively evaluated in many countries, so that women in this situation are subjected to oppression and ill-treatment and cannot benefit equal rights, the traditional practices such as female genital mutilation, the marriage of girls at an early age and their motherhood. However, the article only refers to the general equality of women and men and refers to the process of pregnancy and childbirth, indicating that the scope is very limited.

193. When we examine the Article 13, which regulates rights in other spheres of economic and social life, it is seen that it is also similarly general and limited. The first paragraph regulates that States Parties shall take all appropriate measures to eliminate discrimination against women to ensure that men and women profit rights equally in other areas of economic and social life. Besides, the right to family benefits; the right to bank loans, mortgages and other forms of financial credit; the right to participate in recreational activities, sports and all aspects of cultural life are noted specifically. In many countries of the World women and LGBTIs cannot participate in social and economic life equally with men because of law, belief, tradition or cultural practices that do not accept gender identities and sexual orientations equally. This area is directly related to awareness of the society on gender equality. Therefore, individuals should be educated on gender equality in many areas such as families, schools, public institutions and organizations, as well as regulations to ensure equality in the law.

194. In this section, the rights of rural women are discussed in a separate article, taking attention the specific problems, they live. The article 14, states that necessary measures will be taken to ensure the implementation of the Convention in rural areas. The second paragraph is as follows; States Parties shall take all appropriate measures to eliminate

discrimination against women in rural areas to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development. It is seen that the paragraph includes regulations on a wide range of issues such as to participate in the elaboration and implementation of development planning at all levels; to have access to adequate health care facilities, including information, counselling and services in family planning; o benefit directly from social security programs; to obtain all types of training and education, formal and non-formal; to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; to enjoy adequate living conditions, particularly about housing, sanitation, electricity and water supply, transport and communications. Women working in rural areas are more disadvantaged than women living in cities in many respects such as economic rights, living standards and educational possibilities. It is therefore positive that the rights to be granted to women in this group be regulated by a special article. However, this article does not address the situation of individuals with different sexual orientations and gender identities as in the Convention. It should also be included in the article for the elimination of discrimination and oppression of LGBTI people in rural areas, which are often more reactionary due to characteristics such as religion and culture.

195. In the fourth section, measures and rights regarding the right to equality of men and women in terms of the right to legal equality and rights related to marriage and family relations are regulated. Right to “equality before the law” regulated in Article 15, it is accepted that States Parties shall accord to women equality with men before the law; accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals; all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void. They shall accord to men and women the same rights about the law relating to the movement of persons and the freedom to choose their residence and domicile. It is positive to include provisions in the Convention to ensure the legal equality of women and men. However, the preference of dual gender expression in the article as women and men is an important deficiency in that it does not cover discrimination against people with different sexual orientations and gender identities. In our opinion, the article

should be regulated in such a way as to ensure equality before the law regardless of sexual orientation and gender identity.

196. Article 16 includes rights in the field of marriage and family relations. It is stated that women and men should have equal rights on issues such as free choice of marriage, marriage and divorce, the number of children, the right to decide freely and reasonably, custody, guardianship, trusteeship and adoption. Besides, the protection of the spouses' rights in terms of their surnames, occupational and employment rights is a positive regulation. It is important that regardless of their marital status the parents have the same rights and obligations in respect of children and that in any case the children's interests shall be given precedence, in addition to the couples having children apart from the unity of marriage. However, the lack of protection of the rights to marry, to have children and to adopt of LGBTI people in the Convention constitutes an important deficiency in terms of the article as this will lead to the continuation of discriminatory practices against them.

197. The fifth chapter of the Convention, regulates the establishment of the Committee for the Elimination of Discrimination Against Women to examine the developments arising from the implementation of the Convention. The Committee, which is set out in Articles 17-22 of the Convention, has been designed as a supervisory body. Article 17 regulates the establishment of the Committee, election of its members, term of office, remuneration, provision of necessary personnel and facilities. Article 18, entitled “State Reports”, obliges States Parties to submit reports within one year of the Convention's entry into force for that State, then at least every four years and at any time when the Committee so requests. Follows the Chapter, Article 19 regulates the internal regulations of the Committee, Article 20 regulates the Committee meetings, Article 21 regulates the annual report to be submitted to the General Assembly of the United Nations through the Economic and Social Council. Article 22 titled “Representation of Expert Institutions” states that expert organizations have the right to be represented when reviewing the implementation of the provisions of the Convention in their respective fields of activity. Also, it is regulated that the Committee may invite these expert organizations to submit reports on the implementation of the provisions within its field of activity. Since gender-based discrimination is a very wide-ranging problem in all areas of life, it is important to benefit from the views of specialized institutions in combating it. Because these organizations gain many important experiences during their work and thus, they can draw

attention to different problems that are not foreseen in theoretical documents and offer alternative solution suggestions.

198. States Parties are obliged to submit reports to the committee within one year from the entry into force of the Convention, and at least every four years in the following period. In this report which will be submitted to the Secretary-General of the United Nations, states shall describe the legal, judicial, administrative, and other measures they have taken to enable the provisions of the convention to be effective, as well as the progress made in this subject. The committee has adopted a method of evaluating these reports and making recommendations to the states as its only audit tool. However, since this method was not a deterrent for the states, the Optional Protocol added to the convention was adopted and the individual application and investigation-based audit method was approved. The states which ratify the Optional Protocol recognize the committee's authority to accept and evaluate individual applications. We will touch upon this method in more detail in the section below related to the Additional Protocol. In the later part of the same section, it is observed that procedural rules such as how to determine the members of the committee, their functioning, and principles, and their term of office are also included.

199. In the sixth and final chapter, the principles of interpretation of the convention, procedures of signature, participation, and ratification, commitments and reservations regarding taking the necessary measures in domestic law are included. The commitment to take the necessary measures in the domestic law regulated by Article 24 is one of the important provisions of the Convention. Accordingly, States Parties undertake at national level, to take all necessary measures to ensure the full realization of the rights recognized in this Convention. In Article 28 of the Convention, it is recognized that states may make a reservation to the Convention. The reservation, in short, is the expression of a person of international law who is a party to the convention by his / her unilateral declaration of will that he/ she will not adhere to the relevant articles.[253] Although Paragraph 2 of Article 28 stipulates that a reservation incompatible with the subject and purpose of the Convention cannot be accepted, there is no clarification as to which reservations will be

[253] For more information about reservations, see, PAZARCI, Hüseyin, *Uluslararası Hukuk Dersleri*, 11th edition, Ankara, Turhan Publications, 2011, p. 85

handled in this context. Many states have adopted the Convention with reservations. Turkey, too, made a reservation to Article 3 when it joined the Convention, because it was incompatible with the relevant provisions of the Civil Code in force at that time. The first of these reservations relates to paragraphs 2 of Article 15 of the Convention (having the same legal competence and opportunities in civil law issues for men and women, equal distribution of goods, and equal treatment in the judgement processes) and the fourth paragraph (having equal rights of men and women to travel, accommodation and housing).

200. The second reservation is the paragraph (c), (d), (f), and (g) of Article 16, which regulates that men and women have the same rights in the choice of family name and profession in cases regarding children, during the marriage of women and men and the termination of marriage, to eliminate discrimination against women in matters related to marriage and family relations. The last regulation to which Turkey has made a reservation is the first paragraph of Article 29, which stipulates that disputes should be brought before the International Court of Justice by the initiative of the parties. Turkey has made a declaration as well, in addition to its reservations to the convention. Accordingly, Turkey stated its opinion that paragraph 1 of Article 9 of the convention does not contradict paragraph 1 of Article 5 and Articles 15 and 17 of the Turkish citizenship laws. As such reservations and declarations of the states undermine the effectiveness and functioning of the Convention, following the 1993 World Conference on Human Rights, the Vienna Declaration and Action Program for the withdrawal of reservations incompatible with the aims and principles of the Convention were published. Turkey has withdrawn its reservations in Articles 15 and 16 of the convention in the following periods but declared that it will continue to implement its reservation and statement in Article 29.[254]

201. Article 29 regulates disputes concerning the interpretation of the Convention. Accordingly, any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from

[254] For detailed information about Turkey's reservations and statement, see, KALE, ÖZÇELIK, Fatmagül, «Kadınlara Karşı Her Biçimiyle Ayrımcılığın Ortadan Kaldırılması Sözleşmesi'nin Usule ve Esasa İlişkin Düzenlemeleri ve Türk Anayasa Hukuku'na Yansımaları», p. 322-323, above; "Convention on the Elimination of all Forms of Discrimination Against Women", above

the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. In the second paragraph it is said that each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph concerning any State Party which has made such a reservation. In the last paragraph, it is regulated that any State Party which has made a reservation by paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

202. If we need to make a general evaluation about the Convention after the evaluations made about the individual articles, the first thing that can be said is that CEDAW is accepted as the most important human rights treaty for women. The contract is entirely devoted to gender equality and many issues are discussed in detail such as legal, political, social, economic, etc. related to women benefiting equal rights with men and preventing discrimination against them. One of the most important features of the Convention that makes it so important is that States parties are legally obliged to eliminate all forms of discrimination against women. Also, Parties should ensure full development and progress in all areas of life [255]so that women can benefit their human rights and freedoms in the same way as men. Another important feature of the Convention is the examination of States parties' efforts to implement the treaty by providing regular reports to the CEDAW Committee. In addition to the report system, the individual application or investigation procedure introduced by the Additional Protocol is also important in making the Convention more effective. Thus, those who claim that their rights in the contract have been violated can apply for an individual application or an investigation. Before these ways the supervisory mechanisms included in the Convention didn't influence on the practices of States parties. The lack of any contractual enforcement procedures has been significantly improved. However, the monitoring procedures introduced by the Protocol

[255] For more information, see, SCHOPP-SCHILLING, Hanna Beate, «The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation», p. 1, above; «Women of the World, What is CEDAW? », *Australian Human Rights Commission*, [consulted on 22.06.2020], https://humanrights.gov.au/our-work/woman-world-what-cedaw

are likewise limited to the States Parties to the Optional Protocol, which lag far behind the number of States Parties to the Convention.[256] Another complementary mechanism for the CEDAW Agreement is the Committee's Recommendations. In this way, by making decisions, the Committee advises both new issues and needs that are not included in the Contract or need to be explained, developed, and current problems. "The Committee also makes recommendations on any issue affecting women to which it believes the States parties should devote more attention."[257] It is seen that the role of Non-Governmental Organizations in the Convention is actively defined using representation in the Committee reviews on their areas of expertise or preparing the reports requested by the Committee. In the face of a problem such as gender inequality and discrimination that create itself in every area of life, it should be seen as a very appropriate and important step to include the experiences of NGOs specialized in certain issues.

203. An important criticism of the Convention is that binary gender discrimination is preferred in the Convention in the form of equality of women with men and discrimination against women. Although the Convention is accepted as a milestone only in terms of contributing to the equality of women and men, it is an important deficiency to express it by reducing it to dual gender and to exclude different sexual orientation and genders. It is also incompatible with the purpose of the Convention to accept that States Parties can make reservations with Article 28 of the Convention. Indeed, many states have accepted the Convention with various reservations.[258] This leads to the violation of the rights that are desired to be protected by the Convention in practice. It is positive to include ways of supervision of States parties in fulfilling their obligations of the Convention. However, as mentioned above, it is up to the discretion of the Parties that the control mechanisms such as the report, individual application, and investigation brought by the Convention and the Additional Protocol can be effective in terms of the rights

[256] For detailed information, see, O'ROURKE, Catherine and SWAINE, Aisling, «Cedaw and The Security Council: Enhancing Women's Rights in Conflict», *International and Comparative Law Quarterly*, [online], January 2018, Volume 67, Number 1, p. 167-199, [consulted on 22.06.2020], https://www.cambridge.org/core/journals/international-and-comparative-law_quarterly/article/cedaw-and-the-security-council-enhancing-womens-rights-in conflict/41BC82165E5E2FD6B79899E1BCCCAA0A/core-reader

[257]«General Recommendations», CEDAW Committee, [consulted on 24.06.2020], https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx

[258]For detailed information on states making reservations to CEDAW, see, «Reservations to CEDAW», [consulted on 23.06.2020], https://www.un.org/womenwatch/daw/cedaw/reservations.htm

protected by the Convention. This undermines the effectiveness of the Convention in terms of fulfilling the Contractual obligations of the Parties. A similar situation is valid for general recommendations made by the Committee. Although the recommendations contain important determinations and suggestions in terms of preventing inequality and discrimination that women are exposed to in various fields, their implementation is appreciated.

B- Additional Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (22 December 2000)

204. Additional Optional Protocol to the Convention on the Elimination of all forms of discrimination against women was adopted by Resolution No.54/4 dated October 6, 1999, of the United Nations General Assembly and opened for signature on December 10, 1999. The additional optional protocol came into force on 22 December 2000.[259] Turkey signed the Optional Protocol on 8 September 2000. The law regarding the fact that the protocol was approved was adopted on July 30, 2002, and published in the Official Gazette of August 2, 2002. After having submitted the instruments of ratification to the UN Secretariat General on October 29, 2002, the Optional Protocol became effective January 29, 2003, for Turkey. The Additional Protocol is very important with that it introduces two further control procedures, "individual complaint application" and "investigation" to the CEDAW system.

205. In the introduction part of the Additional Protocol, it is emphasized that women should benefit full and equal access to all human rights and fundamental freedoms and that it is committed to taking effective measures to prevent the violation of these rights and freedoms. In the introduction part of the Protocol, although there are references to International Conventions that prohibit discrimination based on gender, it is seen that dual gender identity expressions are used such as "equality of women with men", "prevention of discrimination against women" gender. Such expressions are an important deficiency as they exclude LGBTIs, as in the Convention. The protocol consists of a total of 21

[259] For the full text of the Additional Optional Protocol, see, «Additional Optional Protocol to the Convention on Elimination of All Forms of Discrimination against Women», United Nations Human Rights Office of the High Commissioner, [consulted on 26.11.2019], https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx

articles. In the first 7 articles, the procedures and principles concerning the application of individuals or groups of individuals to the Committee for the elimination of discrimination against women are regulated. In Article 1, it is mentioned that states parties to the Protocol shall grant the Committee the authority to accept and review applications to be made under Article 2. This application referred to in Article 2 relates to an audit system called an "individual application". The article stipulates that, if the application is made on behalf of someone else, the justifiable reasons for making it with or without the consent of the relevant person are to be set out. Article 3 regulates that the application of a state which is a party to the Convention and is not a party to the Protocol shall not be accepted by the Committee. Article 4 relates to applications that are not acceptable. Accordingly, the Committee shall not consider an application made to itself unless it is certain that all existing domestic remedies have been exhausted, except in cases where the operation of domestic remedies is unreasonably prolonged or where the probability of giving effective outcomes is weak. In the second paragraph of the same article, in which cases the application will be considered an unacceptable application is explained. Article 5 stipulates that the committee may request from the state party to urgently consider taking temporary measures that may be necessary to prevent irreparable damage to the victim or victims of the alleged violation. This arrangement is significant in that it can prevent further harm to the related persons until the decision process is completed. Article six regulates that the committee shall apply to the state party in secret, except in the case of the applicant's consent or if it is found to be unacceptable. This confidentiality principle under the procedure is important to ensure the security of the related persons. In the second paragraph of the article, the state party is entrusted with the responsibility to inform the Committee about the clarifying statements or declarations regarding the application which have been served on itself, and if any, the corrective measures that it has taken in writing within six months. Article 7 describes how the committee will assess the application. Accordingly, the authority of the committee is determined to convey to the parties its views and assessments on the application and to request additional information from the State Party if it deems it necessary.

206. In the 8-10 articles of the Protocol, the second control mechanism, "the investigation procedure" is regulated. According to Article 8, if the Committee has received reliable information that the State Party seriously and systematically violates the rights under the Convention, it shall invite the State Party to cooperate in the examination of this

information and to submit its observations on that information. Article 8 sets out the procedure to be followed if the information is obtained regarding the serious and systematic violation of the rights contained in the Convention. In such a situation, the Committee shall invite the State Party to co-operate in the examination of this information and to present its observations on this information for that purpose. The Committee shall submit its findings, opinions, and recommendations to the State Party, and the State Party shall relay its observations to the Committee within 6 months. According to this regulation, the violation of rights should be serious and systematic. However, it is not specified in the Protocol that by whom reliable information will be communicated to the Committee. In this case, it should be acknowledged that reliable information can be communicated to the Committee by any person. Furthermore, since the term "rights in the Convention" is used in the article, it is understood that there is no limitation to certain rights, and any violation of any of the rights regulated in the Convention should be considered sufficient to initiate the investigation.[260]

207. Article 10 of the additional protocol regulates that States Parties may declare that they do not recognize the authority of the Committee set out in articles 8 and 9 at the stages of signing or ratification of the protocol or accession to the protocol; or that any state party that has made such declaration may withdraw its declaration at any time by notifying the Secretary-General. States Parties have thus been granted the right not to recognize the investigative procedure laid down in Article 8 of the committee, which strengthens the supervisory authority. This, in turn, is considered negative as it may weaken the supervisory mechanism that is intended to be strengthened by the protocol. Later on, in the Protocol, the annual report of the Committee, its functioning procedures, the principles of signature, ratification, and implementation of the protocol, and the issues related to reservations and withdrawal were arranged. By stating in Article 17 that *No reservations to the present Protocol shall be permitted*, it is not allowed to make reservations in respect of the Protocol. It is important to include such a provision to ensure the applicability and effectiveness of the Protocol.

[260] For further information on the investigation procedure, see ARSLAN, Gülay, «Birleşmiş Milletler Kadınlara Karşı Her Türlü Ayrımcılığın Ortadan Kaldırılmasına Dair Sözleşme (Öngörülen Haklar ve Öngörülen Usuller)», p. 42, above

208. With the CEDAW Convention and the Additional Optional Protocol, an important step has been taken to ensure equality between men and women and to end this discrimination by defining discrimination against women. “However, as with all international legal instruments, this is limited by the intentions and skills of the States parties and civil society to use the document more than anything.”[261] So these documents will have achieved its purpose just they not only stay on the paper but also when the necessary policies are implemented and legal, practical and cultural change is ensured. Besides, both the Convention and the Additional Protocol have significant deficiencies in terms of their narrow gender approach, the insufficient scope of the rights granted to women, and the lack of including very effective methods in terms of supervision and deterrence. Although the Additional Protocol allows for individual applications to individuals and groups, the number of applications and decisions made in this regard is very few. Furthermore, the Committee's rejection of many applications as a matter of procedure has been criticized because the applicants are disadvantaged groups. Despite the low number of decisions made in terms of supervision, the committee has many decisions of opinion and recommendation. Whereas these decisions are not directly binding, they are important for states due to their guiding nature.[262]

C- CEDAW Committee General Recommendation No. 32

209. Since 1989, the Committee has been published 37 recommendations on a wide range of topics, such as AIDS, female circumcision, violence against women, women with disabilities, protection of human rights for older women, discrimination in marriage and family life, women's situations in conflict and post-conflict situations, and gender-related aspects of refugee status.[263] The General Recommendation No. 32 of the Committee, dated 5 November 2014, on the gender aspects of women's refugee status, asylum, citizenship and statelessness, will be discussed.[264] Decision No. 32 which is very

---

[261] ACAR, Feride, «CEDAW ve İhtiyari Protokol», [consulted on 12.11.2019], https://www.turkhukuksitesi.com/showthread.php?t=2183

[262] For more information, see, KALE, ÖZÇELIK, Fatmagül, «Kadınlara Karşı Her Biçimiyle Ayrımcılığın Ortadan Kaldırılması Sözleşmesi’nin Usule ve Esasa İlişkin Düzenlemeleri ve Türk Anayasa Hukuku’na Yansımaları», above

[263]For all the Recommendations of the Committee, see, «General Recommendations», above

[264] For the full text of the General Recommendation No. 32 of the Committee, see, «General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women», CEDAW, C/CG/32, 12 November 2014, [consulted on 25.06.2020],

important in terms of the subject of our study contains important content that strengthens the international protection system for women and girls in status such as refugees, asylum seekers or stateless persons.

210. In the fourth paragraph the scope of the Recommendation is mentioned as guide States parties on how to address all aspects of their obligations under the Convention and assume their obligations to respect, protect and fulfil the rights of refugee, asylum-seeking and stateless women to non-discrimination and substantive equality, in times of peace, in situations of international and non-international armed conflict and in situations of occupation. In the fifth paragraph it is indicated that the general recommendation specifically addresses the application of the Convention to the right to asylum contained in article 14 of the Universal Declaration of Human Rights, the principle of non-refoulment of refugees and asylum seekers by existing obligations under international refugee and human rights instruments and the right to nationality contained in article 9 of the Convention and the protection against statelessness. Subsequently, in every process of the asylum applications, resettlement, citizenship, etc. it is necessary to ensure that women and men are deemed to have actual and real equality in all appropriate ways, such as taking primary responsibility for the violations of rights faced by women, taking all necessary measures to ensure that all actors behave accordingly in order not to be subjected to discrimination, and creating special and effective policies, programs are included.

211. The Recommendation noted that the criteria for refugees in the 1951 Convention are also important for identifying women in need of international protection. At the same time, the Committee accepts the definition of regional refugee documents and national laws given in the 1951 Convention, and needs international protection for various reasons such as international or internal / non-international armed conflict and occupation, events that seriously disrupt public order, serious human rights violations or widespread violence. It also expands this definition to include a large number of people. (see 12th par.) Drawing attention to the fact that gender-based persecution is not included in the 1951 Convention text, the Committee, the Current General Recommendation, states that

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/32&Lang=en

States should look from a gender perspective when interpreting these five reasons, and use gender as a factor in the recognition of membership in a particular social group for granting refugee status under the 1951 Convention and gender. and / or aim to ensure that they include other causes of persecution, called gender, in national legislation and policies related to refugees and asylum seekers. (see 13th par.) This regulation is of great importance in terms of expressing the gender criterion as a cause of persecution and emphasizing that states should respect this in their laws and policies regarding refugees.

212. In paragraph 15, gender-based forms of persecution are described as the forms of persecution for women because they are women or that affect women disproportionately. The continuation it is stated that violence against women, which is a prohibited form of discrimination against women, is one of the biggest forms of persecution that women face in terms of refugee status and asylum, and that such forms of persecution should be considered legal and legitimate reasons for international protection in practice. In paragraph 16, it is emphasized that asylum procedures should take into account the special situation and needs of women refugees. It is important to draw attention to this in the Recommendation, as the failure of states to take due care in this regard may cause women to fail to convey their claims and demands and to result in negative applications. Paragraphs 17 and 23 contain the Committee's views on the principle of non-refoulment. In paragraph 19, it is pointed out that the General Comment Number 2 of the Committee Against Torture is explicitly included in the context of the Convention against Torture. According to paragraph 21, there is no explicit provision in the Convention not to return it, but States parties are under the obligation not to extradite, deport, expel or otherwise remove a person from their territory to the territory of another State where there are substantial grounds for believing that there is a real risk of irreparable harm. In the 23th paragraph it is noted that States parties must ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence. It is stated in the same article that what would mean serious forms of discrimination against women, including gender-based violence, should be evaluated depending on the circumstances of each case.

213. In paragraphs 24 and 34, there are explanatory comments and recommendations regarding some articles of the Convention. In this section, many issues are emphasis states' obligations on issues such as not to discriminate women during the asylum process and to take necessary care in sensitive situations related to themselves or their children, but also to education, safe housing, employment, language education, psychological and medical support, translator assistance, etc. One of the topics that are highlighted in this section is states are under the necessary care and responsibility in cases of harm, persecution and threat that women are exposed to by non-state actors. Special recommendations of the Committee are included in the paragraphs 35-50. This section covers broad topics such as the removal of states' reservations about the Convention, the observance of the gender criterion in the legal legislation on refugees, and the training of personnel involved in practice, ensuring that women and girls who are victims of human trafficking have access to the asylum system without discrimination, establishing the necessary mechanisms for early detection of women in need of special protection and assistance. The paragraph 50 gives place that States parties should provide gender-sensitive procedural protection in asylum procedures to ensure that women asylum-seekers can express themselves based on equality and non-discrimination. It is also embodied how a gender-sensitive asylum process should be. Some of these recommendations, which are discussed in detail in terms of the whole asylum process, are given to the right of women asylum seekers to be able to apply independently, to receive a separate interview without family members, to provide the support of a woman during the interviews and translation, if necessary, to provide child care services during interviews, providing access to support and necessary legal information, making sensitive interviews in a timely and supportive manner, taking into account sensitive situations, providing psychological and social support opportunities before and after the interview, evaluating the persecution of the rightful reason for the application, in case the application is rejected, ensuring the right to explaining the reasons of the decision, the right to appeal against the decision and ensuring a safe return economically and socially. This regulation guides the issues that States should pay attention to and care about in terms of gender groups throughout the asylum process.

214. Chapter 5 of the Recommendation is also devoted to the explanations regarding the principle of "non-discrimination in citizenship determination processes and statelessness and the application of gender equality". It was pointed out that citizenship is seen as a

prerequisite for having human rights in practice, and it is stated that women's equality should be fully protected in citizenship issues. It is drawn attention to the suffering of women and children, especially due to indirect discrimination in matters such as marriage, divorce, birth and population registration of children and statelessness. It is recommended that removing existing barriers to easy enforcement of these laws by reviewing and restructuring the citizenship laws of states to ensure that women are equal with men in transferring their citizenship to their children and foreign spouses, to acquire citizenship, change and maintain them. It is also stated that these arrangements should be in full compliance with Articles 1, 3 and 9 of the Convention.

215. General expressions and recommendations such as observing gender equality, creating gender sensitive asylum systems and mechanisms have been included in the content of many international texts. However, CEDAW Committee's General Recommendation No. 32 has a special importance in terms of concretely expressing what needs to be done for this. In the decision, States were advised to look at them from a gender perspective throughout the asylum process, and all measures aimed at ensuring equality of women with men and preventing all forms of discrimination against women were included in all applications, processes and procedures regarding international protection. In particular, it provides a complementary and developing feature in terms of this deficiency, it should be clearly stated that states should use gender as a factor in the recognition of membership of a particular social group to grant refugee status under the 1951 Convention and include other causes of persecution and asylum-seekers in national legislation and refugee and asylum-seeking policies. Similarly, it is seen in the Decision that gender-based forms of torture are defined as the types of torture directed against women only because they are women, or are disproportionately affecting women. It is important to note that gender-based torture should be regarded as a legitimate reason for both its explanation and international protection. Across the recommendation, it is another important aspect that makes the decision positive and developers to be handled with the specificities that refugee women may need only because of being women, except in special situations such as violence, harassment, rape, abuse and human trafficking.

216. However, another remarkable issue is that the emphasis of the women refugee expressed in the Recommendations should be interpreted in an inclusive way for all gender groups in general. It is not only women and girl refugees who need to pay attention

to the states in the asylum process due to gender-based discrimination. LGBTI refugees, who are both subjected to various forms of persecution in their country of origin or their country of residence, and who are subjected to serious discrimination, pressure and threat throughout the asylum process, should also be considered as the subject of the support mechanisms set out in the Recommendation. Also, it should be noted that the Committee is intended to be an additional guide to assist governments in their implementation in this way and is legally recommended.

D- CEDAW Committee's recommendations about Turkey

217. As we have mentioned while reviewing the CEDAW Convention, Article 18 of the Convention obliges States parties to submit reports for review by the Committee. These reports should be submitted within one year from the date of entry into force of the Convention for the relevant state, then every four years and at the time requested by the Committee. Thus, the Committee, which examines the progress made by States regarding the Convention, can make proposals and general recommendations based on these reports. (see, CEDAW art. 21). In this context, Turkey's report which is submitted to the Committee; Second and Third Periodic Report, 6 September 1996, (CEDAW / C / TUR / 2-3)[265], Fourth and Fifth Periodic Report, 8 August 2003, (CEDAW / C / TUR / 4-5)[266], Sixth Periodic Report, 24 November 2008, CEDAW / C / TUR / 6[267], Seventh Periodic Report, 2 December 2014, (CEDAW / C / TUR / 7)[268]. In these reports, development and measures are included on legal, administrative, economic, etc. performed in terms of the requirements related to the articles of the Convention in the specified periods as well as

[265]For the full text of Turkey 2nd and 3rd Periodic Reports, see, « Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazirlanan İkinci ve Üçüncü Birleştirilmiş Periyodik Türkiye Raporu», Ankara, 6 September 1996, [consulted on 24.06.2020], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/ulke_raporlari/CEDAW%20Komitesi%27ne%20verilen%20TÜRKİYE%20RAPORU%202%20ve%203.%20dönem.pdf

[266]For the full text of Turkey 4th and 5th Periodic Reports, see, « Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazirlanan İkinci ve Üçüncü Birleştirilmiş Periyodik Türkiye Raporu», Ankara, 8 August 2003, [consulted on 24.06.2020], https://humanrightscenter.bilgi.edu.tr/media/uploads/2015/08/03/CEDAW:C:TUR:4-5.pdf

[267]For the full text of Turkey 6th Periodic Report, see, « Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazirlanan Altıncı Birleştirilmiş Periyodik Türkiye Raporu», Ankara, 24 November 2008, [consulted on 24.06.2020], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/ulke_raporlari/CEDAW%20Komitesi%27ne%20verilen%20TÜRKİYE%20RAPORU%206.%20dönem.pdf

[268]For the full text of Turkey 7th Periodic Report, see, « Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazirlanan Yedinci Periyodik Türkiye Raporu», Ankara, 2 December 2014, [consulted on 24.06.2020], https://humanrightscenter.bilgi.edu.tr/media/uploads/2015/08/03/CEDAW:C:TUR:7.pdf

projects and programs. It is seen that the reports also include developments and information on the issues such as early marriage, violence against women, female representation in management and politics, women's employment, etc. cited in the Committee's recommendations.

218. The Committee issued its concluding observations reports on Turkey after examining these reports. The concluding observations about Turkey of the Committee on Elimination of Discrimination Against Women, are 06.06.1990, (A/45/38 para. 284-324,)[269] CEDAW Concluding Observations 31.08.2005, (A/60/38(SUPP) para. 350-387,)[270] CEDAW Concluding Observations Turkey, 16.08.2010, (CEDAW/C/TUR/CO/6)[271], CEDAW Concluding Observations Turkey, 25.06.2016, (CEDAW/C/TUR/CO/7)[272]. Since improvements have been made regarding many of the issues in the first reports it is deemed appropriate to include only observation reports dated 2010 and 2016.

219. In the CEDAW Committee's 2010 observation report, it was evaluated Turkey's government has made positive developments on issues such as ensuring equality between men and women, through amendments to laws such as the Constitution, the Criminal Code, the Law on the Protection of the Family and the Law on the Protection of Children and measures to combat violence against women. In addition to this, acceptance of action plans such as Gender Equality National Action Plan, Sexual and Reproductive Health National Strategic Action Plan for Health Sector, National Action Plan for Combating Domestic Violence against Women, and the Second National Action Plan for Combating Human Trafficking and establishment of the Equality Commission were also discussed as positive developments.

---

[269]For the full text of CEDAW Concluding Observations, Turkey, 1990, see, «Report of CEDAW 38 (A/45/38)», New York, No. 38 (A/45/38), Ninth Session, 1990, [consulted on 24.06.2020], https://undocs.org/pdf?symbol=en/A/45/38

[270]For the full text of CEDAW Concluding Observations, Turkey, 2005, see, «Report of CEDAW 38 (A/60/38)», New York, No. 38 (A/60/38), Thirty-second, Thirty-third Session, 2005, [consulted on 24.06.2020], https://undocs.org/pdf?symbol=en/A/60/38(SUPP)

[271]For the full text of CEDAW Concluding Observations, Turkey, 2010, see, «Report of CEDAW/C/TUR/CO/6», New York, No. CEDAW/C/TUR/CO/6, Forty-sixth Session, 12-30 July 2010, [consulted on 24.06.2020], https://undocs.org/en/CEDAW/C/TUR/CO/6

[272]For the full text of CEDAW Concluding Observations, Turkey, 2016, see, «Report of CEDAW/C/TUR/CO/7», New York, No. CEDAW/C/TUR/CO/7, 25 July 2016, [consulted on 24.06.2020], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/TUR/CO/7&Lang=En

220. However, it has been stated concern that, there is no certain ban on discrimination against women in all areas of life under Articles 1 and 2 of the Convention. Committee has invited Turkey to keep a comprehensive anti-discrimination law development and acceptance consideration, including an explicit prohibition related to discrimination clearly defined and different forms of discrimination against women in all spheres of life for women in this regard. The Committee expressed its concerns in this regard the situation in Turkey is evaluated negatively in terms of sufficient visibility of the Convention, Optional Protocol and the Committee's overall recommendations. Failure to remove and amend all provisions containing discrimination in the Criminal Code and the Civil Code was seen as a negative situation preventing the full implementation of the Convention. One of the recommendations of the Committee is about to establish a legal culture that supports equality of women and non-discrimination within the country making The Convention, its Optional Protocol, the Committee's general recommendations and relevant national legislation as an internal part of legal education and training of judicial officers, including judges, lawyers and prosecutors. It was mentioned that Turkey should make the necessary legal changes to prevent the crimes against women and violence against women committed under the name of honor killings and take all measures to protect women and children at risk. Besides, the Committee expressed its concerns and recommendations on many issues such as wider implementation of temporary special measures, continuing patriarchal approach and rooted judgments that cause various discrimination against women, continuing traditional practices such as young, forced marriages, serious trafficking of human trafficking and prostitution, and victims' inadequate support, inadequate participation of women in political life and in public life, continuing inequalities between girls and boys in education at all levels, inequality experienced by women and girls belonging to various ethnic groups whose mother tongue is not Turkish, especially Kurdish women and girls, due to the disadvantages of rural girls, the worrying situation of disadvantaged women groups such as Kurdish women, immigrants, refugees, women with disabilities.

221. In Turkey monitoring report, dated 2016 the Committee were found in the assessment on various issues relating to discrimination and the progress towards equality between men and women about the continuing problems of women, consisting of 61 substances. Report is an important resource as to shed light on the gender- based problems

in Turkey and the issues of refugee women and girls encounter in Turkey, to include necessary measures in this regard. Therefore, we will consider the report in detail here.

222. The Committee's report firstly included the continuing positive developments that have been carried out by the government in Turkey. Later on, it evaluated the areas where various problems and inadequacies were experienced in terms of equality of women with men according to the topics. One of the most important developments recorded in the report was stated as the adoption of the "Law on Violence Against Women and Protection of the Family" numbered 6284 in 2012.[273] Although it is criticized in many respects such as the scope of the Law, preferred gender expressions, inadequate measures, it is an important development in terms of women and children having a legal guarantee against violence. As well as changes in the law at the national level it was also considered positive ratification of regional and international documents such as Additional Protocol to Torture and Other Cruel Contracts (2011); Council of Europe Convention on Prevention and Combating Violence and Combating Domestic Violence (Istanbul Convention), 2012. The Committee noted that it welcomed efforts such as the National Employment Strategy (2014-2023), Tenth Development Plan (2014-2018) and the National Action Plan for Empowering Rural Women (2012-2016) to eliminate discrimination against women. The topics like To prohibit the implementation of child marriages and strengthen sensitivity efforts on its harmful effects on girls' health and development; to apply temporary special measures in education, labor market, political and public life to accelerate the equality of women and men in all areas where women are not adequately represented or disadvantaged; Establish a clear timeframe for finalizing and adopting the draft National Action Plan to implement UN Security Council Resolution 1325 (2000) on women, peace and security are among the other topics that are evaluated positively in this section.

223. In the 9-11th paragraphs titled The Parliaments and NGOs it is stated that the government's increasingly restrictive and repressive policies became worrying. The Committee highlighted the pressure and lengthy detention measures on journalists and

[273] For the full text of the Law No. 6284, see, « Law on the Protection of the Family and Prevention of Violence Against Women», No. 6284, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 28239, 20.03.2012, pages 11541- 11550, [consulted on 26.06.2020], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6284.pdf

other activists, including Kurdish Parliamentarians and Local representatives, NGOs, women's organizations, women's human rights defenders, Kurdish politicians, and recommended Implement the Convention and other human rights instruments to promote the active participation of women's organizations and human rights defenders. In the 12th and 13th articles, it stated that the disadvantages of Kurdish women in terms of civil, political, economic, social and cultural rights and the discrimination they are exposed to gradually become more severe and take all necessary measures to prevent this.

224. Articles 14 and 15 of the report deal with refugee and asylum-seeking women. As it addresses current and concrete problems with our work, we will include these items as they are:

Refugee and asylum-seeking women

14. The Committee notes with appreciation that the State party has welcomed more than 2.5 million refugees, mainly Syrians, and allocated significant resources to catering for their needs. The Committee is concerned, however, about the precarious and insecure living conditions of female refugees, both inside and outside the refugee camps, who are often deprived of basic services and essential goods, education, economic opportunities, health care, clothing, food, heating and hygiene articles, and are at heightened risk of sexual and other forms of violence. The Committee is furthermore concerned about:

(a) The significant increase of prostitution in areas with high concentrations of Syrian refugees, particularly among girls and young women between 15 and 20 years of age, who often resort to prostitution to be able to gain access to food and other essential goods for themselves and their children;

(b) The pervasive underreporting of gender-based violence against refugee women, including sexual violence, and the limited availability of specialized services;

(c) Forced marriages of refugee women and girls to Syrian and Turkish men, often in polygamous marriages, for socioeconomic reasons or protection purposes. CEDAW/C/TUR/CO/7 4/18 16-12875

15. The Committee recommends that the State party take prompt measures to improve the security of women and girl refugees and asylum seekers, increase access to basic services and essential goods, including food, clothing and hygiene articles, for refugee

women and their children and ensure that they are not compelled into sexual or labour exploitation. It recommends that the State party: (a) Ensure access by refugee and asylum-seeking women and girls to education, training and livelihood opportunities and health care; (b) Provide capacity-building programs for law enforcement authorities on the strict application of the State party's laws, including international conventions to which the State is a party, to cases of gender-based violence, including sexual violence, against refugee and asylum-seeking women and girls; (c) Ensure that refugees and asylum seekers, in particular women, are informed about the national referral mechanisms for victims of sexual and gender-based violence and how to gain access to the formal justice mechanism.

225. Article 14 and 15 it is seen that Committee drawn attention to refugees and asylum seekers especially women and girl groups, encountered failure issues such as access to fundamental rights and services, protection against violence, safe shelter conditions in or out of camps. Besides, the fact that refugees and asylum-seeking women and girls, especially Syrians, have to prostitute only to provide their vital food and needs, is a shame for the government, which is obliged to protect these people. For similar reasons, the fact that these groups had to have forced and mostly polygamous marriages was found to be another worrying situation.

226. In the 16th and 17th paragraphs, the Committee positively assesses that the Convention is a part of the domestic law under Article 90 of the Constitution. It recommended translating the Convention, Additional Protocol and General Recommendations into local languages, informing women and girls about these texts and implementation mechanisms, and developing capacity building programs for lawyers, judges, prosecutors and law enforcement officers. In Articles 18 and 19 anxiety expressed about the regulations containing discrimination are still in force such as virginity testing, genital examination, regulation of abortion practices according to the population planning law, and the abortion of married women subject to the permission of the spouse. 20 and 21 stated that determining the members of Turkey Human Rights Institute by the president or the government prevents its independence and capacity for gender equality in this system and replacing members of the institutions and resources has been suggested that levy. Articles 22 and 23 address the problems faced by women, especially women with language barriers such as Kurds, refugees and asylum-seekers, in their access to the

judicial system and legal aid, and that these should be eliminated. In the 24th and 25th articles, it is criticized that the Ministry regarding the gender issues is represented in the form of the Ministry of Women and Family with an approach that defines them in the family. Similarly, the fact that the General Directorate of Women's Status does not include gender equality modules in their education is considered to be worrying and it is recommended that these deficiencies be eliminated with a gender equality approach.

227. 26-31. The articles included temporary special measures, concerns about the continuity of the stereotyped and discriminatory roles of women and men, and the recommendations in the Committee's Recommendation No. 31 on the prevention of discrimination against women, and Recommendation No. 18 on harmful practices against children. In article 32, it was seen as a worrying situation that the law number 6284 on gender-based violence against women does not include issues such as describing domestic violence as a crime, prosecution and punishment of perpetrators. In the paragraphs of the article, it has been stated to be alarming that such as discrimination and violence against women and penalty reductions for perpetrators of these crimes, killing of many women by ex-husbands, husbands or relatives, failure to maintain protection orders, insufficient shelters and negative conditions and practices in existing shelters, discrimination and violence against LGBTIs and the application of penalty reductions for perpetrators of these crimes. Article 33 is concerned with the recommendation to take the necessary measures for combating violence against women is still a major problem in Turkey to date. It is important to draw attention to issues such as careful monitoring of the protection decisions in the article and enforcement of their violations; investigating law enforcement officers and judicial personnel responsible for implementing decisions and holding them accountable in this article. Articles 34 and 35 addressed the murders of women committed under the name of tradition and honor. The Committee stated that efforts to increase public awareness are inadequate to reject the perception of honor underlying the murders committed in this way and it made recommendations to combat this, such as amending the relevant laws, investigating crimes effectively, and investigating well-suited murders. In Article 36 and 37, it has drawn attention to the human rights violations against civilians under the name of fighting terrorism, especially in applications such as curfew. And the Committee express its worry about Kurdish women being exposed to sexual violence, harassment, rape or being killed in operations in this way. Recommendations such as providing medical, psychological support,

compensation, rehabilitation, non-recurrence guarantee to the victims of women; providing shelter, education and health facilities for displaced women and girls. In article 39 and on, issues and concerns regarding discrimination and inequalities faced by women are included such as human trafficking and prostitution, women's participation in political and public life, education, health, working life, women living in rural areas, women detained, marriage and family relations, being a party to other international agreements, following up observations.

228. As it can be understood from the detailed information about the articles, the report prepared by the Committee includes many issues such as violence against women, discrimination, asylum, migration, internal conflict, custom, tradition, education, health handled with factors such as the legal, administrative regulations, law enforcement, concrete current policy and developments. These reports are important not only for the detection of current problems, but also for their recommendations for their solution. In the Articles 14 and 15 it is observed that the insufficiency of state mechanisms is emphasized in such issue's refugees and asylum seeker women and girls' access to security, basic rights and services, security in terms of gender-based violence and access to legal mechanisms against it. Besides, the information that refugee and asylum-seeking women and girls, especially Syrians, had to prostitute or forced into polygamous marriages to meet their basic needs is also coincides with the findings in the sources were examined books, articles, research, reports, newspaper articles etc. for the study. Failure to meet the minimum rights and needs of refugees or asylum-seekers who demand protection due to various persecutions in their country does not coincide with the needs of Turkey's law nor international law. Also, it would be more appropriate to express these problems, which are dealt with in terms of women and girls, in a way to include LGBTI refugee and asylum seeker groups.

E- NGO's shadow report on Turkey's seventh periodic report

229. The monitoring reports of the Committee show that Turkey doesn't provide necessary information on many subjects such as the situation of disadvantaged women groups, education, employment, equality in health, women's representation in political life and public life, early marriages, forced marriages. How objective the information given by government officials is also controversial. Here, alternative or in other words

shadow reports are prepared by women and LGBTI organizations to ensure that the Committee can obtain more information and to prevent the government from manipulating the real situation. “These shadow reports are used as an effective advocacy tool that provides a civil perspective on whether women's human rights have evolved as envisaged by CEDAW, and makes the CEDAW Committee's country-based review process much more transparent and participatory.”[274]

230. The shadow reports which were prepared by the women and LGBTI organizations in Turkey are dated in 1997, 2005, 2010, and 2016 CEDAW Shadow Report Turkey.[275] It is important to include the 2016 shadow report here since the timeliness of the report and it addresses the issues that are not included in the government reports.

231. Its full name “Shadow NGO Report on Turkey’s Seventh Periodic Report to The Committee on The Elimination of Discrimination Against Women” was submitted to the 64th Session of CEDAW in July 2016. The shadow report includes issues like as legal amendments, stereotypes and harmful practices, participation in political and public life and temporary special measures, employment, education, violence, women in rural areas, refugee, asylum-seeking, and internally displaced women. Under each title, the relevant articles are handled one by one and alternative suggestions are presented in the form of action requests. In the general evaluation at the entrance of the report, it was stated that the state's commitment to inclusive gender equality before the law was incomplete, reflecting the official discourse it sometimes demonstrated, sometimes reluctant, sometimes indisputable. Also, it is noted that the increasing conservatism in Turkey threatened the use of women's rights and freedoms.

232. In the title of legal amendments, it was pointed out that there is no development or legal regulation regarding anti-discrimination law, the basic amendments (eg: regarding “incest” and “honor” killings) to the Penal Code requested by the women’s organizations

---

[274]«Kadına Karşı Her Türlü Ayrımcılığın Ortadan Kaldırılması Sözleşmesi CEDAW», Kadının İnsan Hakları Yeni Çözümler Derneği, [consulted on 30.06.2020], https://www.kadinininsanhaklari.org/savunuculuk/uluslararasi-sozlesmeler-ve-mekanizmalar/cedaw/#:~:text=KADINA%20KARŞI%20HER%20TÜRLÜ%20AYRIMCILIĞIN%20ORTADAN%20KALDIRILMASI%20SÖZLEŞMESİ%20(CEDAW)&text=Kadın%20örgütlerinin%20CEDAW%20Komitesi%27ne,başlanan%20bir%20uygulama%20haline%20geldi

[275] For the full text of the reports see, «Raporlar», Kadının İnsan Hakları ve Yeni Çözümler Derneği, [consulted on 24.06.2020], https://www.kadinininsanhaklari.org/yayinlar/raporlar/

have not as yet been taken into consideration, through an amendment, which includes several contradictions, made in 2014, the penalties for some sexual crimes have been increased and the following negative alterations have been made. Some of the action requests on this title are revising the domestic laws and legislation by the international conventions, Turkey has signed, like CEDAW and The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention), making a new constitution based on gender equality, including sexual orientation and gender identity in the constitutional clauses on equality as well as in hate crimes legislation, giving women the right to use their surnames alone without having to use it with their husband's surname, changing the expressions that negatively affect women and girls in the criminal law.

233. In the title stereotypes and harmful practices, it was drawn attention that Turkey ranked 130 out of 145 countries in the World Economic Forum's 2015 Global Gender Gap Report. This is considered as a crucial data showing what is so powerful the patriarchal attitudes and ingrained patterns of behavior and the judiciary in Turkey and Turkey's failure to tackle discrimination against women. Besides, it was stated that Turkey hasn't answered the subjects which are also mentioned in the 7th report of the Committee, expressed in public speeches by high-level representatives of State authorities, the media, sports federations, who question the principle of equality between women and men by using derogatory language on women and/or relegating them to the exclusive roles of motherhood and caregivers, refusing them agency to make decisions as to whether or not to have children and, if so, how many. Especially President Erdogan's negative rhetoric that neglects their will on issues such as how many children women will have, and abortion prevent women from accessing sexual and reproductive health and rights. Action requests for this topic include fulfilling its international obligations of revising the domestic laws by international conventions to ensure the protection of women's rights – including lesbian, trans, and bisexual women's rights, implementing the Concluding Observations of CEDAW on stereotypes by considering further measures to combat the reinforcement of traditional role segregation, homophobia and transphobia as well as patriarchal norms and values at societal, policy-making and discursive levels, forbidding the conducting virginity tests, abolishing the need for authorization from 3rd persons (informing spouse, partner or father) for abortions performed on married women.

234. The title participation in political and public life and temporary special measures states that temporary measures and policies are not explicitly stated in the constitutional amendment package adopted in 2010. Also, it was pointed out that the participation of women in decision-making mechanisms in the academia, bureaucracy, and business world is very low. It was expressed as another aspect of the gender problem that political participation of LGBTIs is still a “red line” and has never been discussed in Turkey’s political agenda. No openly LGBTI politician has ever been elected as a member of the Turkish Parliament. Requests for action were taken, such as taking necessary measures to increase women's participation in politics and decision-making mechanisms, the participation of LGBTIs and women with disabilities in politics, and political representation.

235.In the employment heading it was criticized that the disadvantages and discriminations experienced by women in working life did not include regulations to increase women's employment in the government's programs to eliminate these inequalities. Some of these problems are such as not giving parental leave after the birth, insufficient regulations, and practices related to nurseries, supporting women employment with limited projects instead of encouraging them, directing women to precarious, temporary, low-paid jobs with temporary employment relations. In this section, creating a national women's employment strategy, making legal amendments to prevent gender discrimination in the recruitment process, preventing horizontal and vertical discrimination in the employment of women and the appointment of women to executive positions, recognition of the rights of workers who are mostly home-based and women who are discharged due to discrimination. requests such as the provision of legal guarantees to re-engage are proposed.

236. In the title of education, attention was drawn to the magnitude of inequality between girls and boys and geographical regions in education. Besides, it has been stated that there has been no development regarding the disadvantages experienced by different ethnic groups whose mother tongue is not Turkish, such as Kurdish women and girls, in the field of education. As a reflection of policies involving discrimination, it has been evaluated that LGBTI students' attempts are blocked and the resources they can get information about sexual orientation and gender identity are limited. The action requests in this section are as follows; living up to its commitments for Beijing and Beijing+5, undivining the

compulsory education for 12 years, providing gender equality education and comprehensive sexual health education at every level of education, and making free compulsory early childhood education, which has the potential to decrease the inequality between children, should be provided to all children, creating an action plan to cover disadvantaged groups such as disability, LGBTI, freeing textbooks and classroom materials from sexist items, providing education in local languages, raising awareness of teachers in all educational institutions by receiving gender education.

237. In the title of violence many of the issues concerning violence, against women noted that the urgent issues of data and the real figures announced by Turkey were reported to be much lower. Despite making complaints or making a protection order for the perpetrator, the killing of many women has been stated as a serious problem. This title also included other important issues such as women are afraid to complain or are afraid, police education is insufficient, Law 6284 on this issue is not in line with the Istanbul Convention, ŞÖNİM (Violence Prevention and Monitoring Centers) cannot provide support services due to its heterosexist structure as well as its inadequate conditions, Misdemeanors Law is used to discriminate against trans people, the number and capacity of shelters are far behind the need, there is just only one shelter for women victims of trafficking in Istanbul with a capacity of 6 people. In the action requests section, it seems that there are many concrete demands such as allowing the intervention of gender equality focused women's NGOs for all trials relating to violence against women and children, recognition and encouragement of the work of these institutions, replacing the term "custom killings" in the Penal Code with "honor killings" to be comprehensive and the application of the aggravated life imprisonment, which is the punishment of this crime, also for murders based on sexual orientation and gender identity, training of civil servants, police, soldiers, judiciary members on gender equality and violence against women, fulfilling the requirements of international conventions, improving the capacity and conditions of institutions such as ŞÖNİM, shelters, adequate support for women victims of human trafficking.

238. In the titled Rural Women, it is stated that although women living in rural areas work here, they do not have wage and social security rights. Also, women living in rural areas are also disadvantaged in matters such as education, health services, and access to family planning. According to the report, one of the most important consequences of this is the

inability of girls to continue their education and early and/or forced marriages. It was criticized that although the problems in this area were also addressed in the CEDAW 7th report, Turkey's focus on the more uncertain impact analysis projects. In the demands of action, such requests have been made to work on the empowerment of rural women, to establish a Department of Women's Farmers as a unit where women can get information, can easily be accessed and directed, establish mechanisms for the education of girls there, establish necessary mechanisms for seasonal women agricultural workers and their children and provide humane living conditions.

239. The last title of the shadow report concerns refugees, asylum seekers, and internally displaced women directly related to our topic. In this section, it was stated that according to UNHCR data, there are 229,161 asylum-seekers, 40,290 refugees and 51,375 of these are women and 34,968 are girls under 18 in Turkey. The number of Syrians under temporary protection is 2,744,915, of which 49.2% are women. The following information was given about the status of Syrian women refugees in Turkey referred to reports that were prepared by AFAD (Disaster and Emergency Management Presidency)[276] and Mazlum-Der[277]. According to the AFAD report, the conditions of Syrian women living outside the camps are not good, but only 9% of women stated that they want to live in camps. This rate shows how negative the camp conditions are, especially in cases such as harassment, rape, and abuse. Again, women living outside the camps said that all their needs were insufficient except for worship material. The stated needs are the basic and vital requirements such as clothing material, food material, fuel, drinking water, soap, diaper, hygiene products for women, access to medication.

240. In the report of Mazlum-Der, it was stated that 8-9% of the interviewed Syrian women were exposed to sexual abuse, especially girls under the age of 18 were forced to marry as a second or third spouse, and even some brokers arranged these marriages in border cities. The report includes information that smuggling, human trafficking, and

[276]For the full text of the AFAD report see, «Women Report of Syrians in Turkey in 2014», AFAD, 2014, [consulted on 30.06.2020], https://www.afad.gov.tr/kurumlar/afad.gov.tr/17934/xfiles/turkiye_deki-suriyeli-kadinlar_-2014_2_.pdf

[277] For the full text of the Mazlum-Der. Report, see, «Syrian Women Refugees Living Outside the Camp», Mazlum-Der. Women's Studies Group, May, 2014, [consulted on 30.06.2020], https://istanbul.mazlumder.org/tr/main/yayinlar/yurt-ici-raporlar/3/mazlumder-kamp-disinda-yasayan-suriyeli-kadin/1116

sexual slavery of women increased after the civil war in Syria, especially Syrian girls between the ages of 15-18 were forced to be sexually exploited by promising marriage and a better life. It is a serious problem that the Syrian women and girls are dragged into prostitution or polygamist marriages in this way by using the conditions of war. Some of these women are exploited in the agricultural and service sectors by working with low wages and without social security. In this section, it is stated that the problem of internal displacement continues and the war conditions in the Southeast have serious effects, especially on women and children. In the demands of action, it was stated that there is an urgent need for Turkstat to improve its statistics on refugees, asylum-seekers, internally displaced persons, and immigration to provide a comprehensive picture of the situation, that activities and projects should focus not only on basic needs but also on protection measures, and priority should be given to awareness-raising programs targeting both the public and Syrian women asylum-seekers in terms of immigration, asylum-seeker rights, basic laws, legal mechanisms, gender equality, and gender-based violence. To work on strengthening Syrian women asylum seekers, to address all the needs of asylum seekers with sustainable long-term solutions that take into account the language barrier, to investigate and prosecute the crimes against Syrian women asylum seekers (women's trafficking, young marriages, sexual abuse of children, etc.).

241. As can be understood from the detailed explanation of the topics covered, The Shadow Report prepared by NGOs provides important information about the problems that Turkey said it made progress or not responding but in reality, continues very seriously. Some of those are violence against women and murders of women, insufficient measures for victims of women, discounts on punishments for perpetrators of these crimes, inequality of women in education, health, employment, politics and decision-making mechanisms, discrimination and hate crimes to the LGBTIs due to their different sexual orientation and gender identity, insecure conditions and problems in accessing basic rights and services of refugee, asylum seekers or women and girls under temporary protection. For this reason, the CEDAW Committee needs to consider the reports of CSOs as well as government reports while assessing of the situation and developments in the country.

§ 2) The Council of Europe Convention on preventing and combating violence against women and domestic violence and GREVIO evaluation report Turkey-2018

242. Violence for gender-based reasons is an important problem that arises due to gender inequality and is mostly directed against women, children, and LGBTIs. Various documents, action plans, and studies were accepted at the national and international levels to prevent violence. It is possible to give examples of international documents based on combating violence against women such as 'Nairobi Strategies', (15-26 June 1985)[278] 'United Nations Declaration on the Elimination of Violence against Women' (20 December 1993)[279] 'The Convention on the Prevention, Punishment, and Elimination of Violence against Women' (Belem do Para) (9) June 1994)[280], Beijing Declaration and Action Plan (4-15 September 1995)[281]. However, such initiatives by states and international organizations have not been sufficient to combat violence, and the need to develop more effective means of struggle has continued. One of the most important documents accepted to meet this need is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Or as it called briefly Istanbul Convention. In this title, first of all, I will make a broad evaluation of the articles of the Istanbul Convention on my subject. Then I will discuss the "GREVIO Baseline Evaluation Report Turkey", was published on 15 October 2018.[282]

[278] For the full text of the Nairobi Strategies, see, « Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace», Nairobi, 15-26 July 1985, [consulted on 13.11.2019], http://www.5wwc.org/downloads/Report_of_WCW-1985.pdf

[279] For the full text of the UN Declaration see, « Declaration on the Elimination of Violence Against Women », proclaimed by General Assembly Resolution 48/104, 20 December 1993, [consulted on 13.11.2019], https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx

[280] For the full text of the Convention, see, « Inter-American Convention on the Prevention, Punishment and Elimination of Violence Against Women», Multilateral Treaties, [consulted on 13.11.2019], https://www.oas.org/juridico/english/treaties/a-61.html

[281] For the full text of the Beijing Declaration, see, « Beijing Declaration and Platform for Action», Beijing, The Fourth World Conference on Women, 4-15 September 1995, [consulted on 13.11.2019], https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

[282] For full text of the Report, see, « Grevio Baseline Evaluation Report Turkey», Grevio, Strasbourg, 15 October 2018, [consulted on 22.11.2019], https://rm.coe.int/eng-grevio-report-turquie/16808e5283

A- The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)

243. "The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" was opened for signature on 05/11/2011 in Istanbul. The Convention is therefore shortly referred to as the Istanbul Convention. The Convention, which came into force on August 1, 2014, consists of a total of 81 articles and 12 sections. According to Article 75, the Convention shall be open for the signature of the member states of the Council of Europe, the non-member states participating in the preparation of the Convention, and the EU. The same article states that the Convention shall enter into force on the first day of the month following the end of the three months after its signature by the 10 states, at least 8 of which are members of the Council of Europe, which declared that they are bound by the Convention. The Convention was opened for signature on 11 May 2011 and signed by 13 countries, including Turkey, France, Austria, Greece, Germany, and Finland, and also, Norway, Macedonia, and Slovenia signed the Convention on different dates in the same year. Turkey ratified the convention by Law No. 6251 dated 11/24/2011 and put it into effect by publishing in the official gazette dated 03/08/2012. Turkey was a party to the convention but did not make any reservations.

244. The Convention is the first document in which the establishment of an independent monitoring mechanism having a binding and sanctioning power is mentioned, explaining that the problem of violence against women is caused by inequality between men and women. Furthermore, the convention has particular importance as it is the first international convention in which the expressions “sexual orientation” and “gender identity” are used within the text of the Convention.[283] The Convention sets forth standards for the elimination of domestic violence and all forms of violence against women and combating them, regardless of whether partners have biological, legal, or family ties, or whether they live in the same household. Whether they take place in the public or private sphere, all acts of gender-based violence have been expressed as

[283] For detailed information, see, SALİH, ŞAHİN, *İç İşleri Bakanlığı için LGBTİ Hakları El Kitabı,* KÖYLÜ, Murat (editor),) 2th edition, Ankara, Kaos GL, 2017, p.10, [consulted on 06.06.2019], http://www.kaosgldernegi.org/resim/yayin/dl/icisleri_bakanligi_lgbt_haklari_el_kitabi.pdf

violence against women. In the Convention, it is emphasized the prevention of violence against women, the protection of women who are victims of all kinds of violence, and the effective prosecution and punishment of perpetrators of violence.[284] Besides, the Istanbul Convention contains important regulations in terms of implementation and responsibilities related to asylum and refuge. The Convention provides a clear provision for the recognition of gender-based violence as a type of persecution and a form of serious harm that requires complementary/auxiliary protection. Also, the Convention imposed regulations such as the non-refoulment of women who are victims of violence and in need of protection in any circumstances regardless of their status, taking legal and other measures to improve gender-sensitive asylum procedures, taking the necessary steps to stop the deportation proceedings of victims whose residency status is recognized by the spouse or partner, and granting autonomous residence permits to victims regardless of the duration of their togetherness or marriage in the case of the termination of the togetherness with the spouse or partner whom the residence permit depends upon.[285]

245. We will address some of the important articles of the Convention, which constitute an important resource for our study, both in terms of the regulations it contains and its legally binding feature, and what kind of responsibilities these regulations impose on the states.

246. The purpose of the Convention is expressed in the first article as protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence; contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women; design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic

[284] For more information see, BAKIRCI, Kadriye, «İstanbul Sözleşmesi », *Ankara Bar Association Journal*, Year: 2015, No. 4, p. 134, [consulted on 24.04.2019], https://dergipark.org.tr/download/article-file/398473; MOROĞLU, Nazan, «Nazan Moroğlu GREVİO Raporunu Değerlendirdi», *SES, Equality, Justice, Women's Platform,* 30 October 2018, [consulted on 03.05.2019], http://esitlikadaletkadin.org/nazan-moroglu-grevio-raporunu-degerlendirdi/; BAYRAKTAR, Tuğba, «İstanbul Sözleşmesi ve 2017 Türkiye Gölge Raporuna İlişkin Bir Değerlendirme», *Journal of Selcuk University Law Faculty*, [online], 2018, Volume 26, No. 3, pages 87-111, consulted on 03.05.2019], https://dergipark.org.tr/tr/download/article-file/610429

[285] For the full text of Convention, see, «Convention on the Elimination of All Forms of Discrimination against Women», UN Human Rights Office of the High Commissioner, New York, 18 December, 1979, [consulted on 24.04.2019], https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx

violence; promote international co-operation to eliminate violence against women and domestic violence; provide support and assistance to organizations and law enforcement agencies to effectively co-operate to adopt an integrated approach to eliminating violence against women and domestic violence. In the original text of the Convention, the term "domestic violence" was translated into Turkish as "violence in the family". Whereas in the explanations within the integrity of the Convention, it is understood that violence is not limited to the family. In contrast, to prefer to use the term violence in the family, Turkey has been criticized as a political stance. In the second paragraph of the article, it is stated that to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism. It is positive that the article provides different methods to eliminate violence against women. Establishing a monitoring mechanism for the adhibition of the Convention is also important in terms of ensuring the effectiveness of the Convention. However, it is an important deficiency to mention gender-based violence in the form of "violence against women" and "domestic violence" only to women and children. Gender-based reasons violence takes place against LGBTIs as well as women and children in both public and private spheres. Therefore, in our opinion, it would be more accurate to determine the purpose of the article to prevent any gender-based violence against all individuals regardless of their gender identity and sexual orientation.

247. In the second article, the scope of the Convention is determined to apply to all forms of violence against women, including domestic violence, which affects women disproportionately. The second and third paragraphs state that the Parties will be encouraged to apply this Convention to all victims of domestic violence and the Convention shall apply times of peace and in situations of armed conflict. Article 3, it is understood that this is not limited only to formal and ongoing togetherness, but is expressed as all acts of physical, sexual, psychological, and economic violence that occur between spouses or partners, former or present, who share or do not share the same residence. Inclusion of the expression of spouses or partners in the article can be interpreted to include LGBTI relations as well as female-male ones. In this article, it is observed that apart from physical violence, the Convention also mentions different forms of violence using the terms of sexual, psychological, and economic violence. It is stated in paragraph (c) of the same article that the concept of gender means the socially constructed roles, behaviors, activities, and attributes that the society considers suitable

for men and women. It is understood from this arrangement that the Convention is based on gender-based discrimination and violence. The Convention is also significant since it is the first international document that defines gender. However, despite this characteristic of the Convention, the names of lesbian, gay, transsexual, or transvestite individuals who are victims of violence due to gender-based discrimination are not explicitly mentioned in the context of protection, instead preferring to refer to women and children who are victims of domestic violence and women who are victims of violence outside the home. In this respect, whether LGBTI individuals are out of scope is left open to interpretation, but these persons should also be considered to be covered by protection since in the overall convention there are statements against all forms of gender-based discrimination.

248. The fourth article is about fundamental rights, equality, and non-discrimination. The first paragraph of the article stipulates that Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere. In the third paragraph of the article, it is regulated that the implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or another status. This provision is very inclusive and positive in that it explicitly expresses criteria such as sexual orientation, gender identity, immigrant or refugee status, or any other status, as well as the general criteria contained in human rights conventions in terms of discrimination criteria.

249. Articles 5-8 regulate the subject's obligations of governments, policies, data collection, and financial resources. Article 9 includes appreciation, encouragement, and support of the work of non-governmental organizations and cooperation with these organizations which play an important role in the struggle violence against women, it is positive that the role of non-governmental organizations is also emphasized by an article.

250. In articles 12-17 of the Third Chapter of the Convention, preventive measures such as training, awareness-raising, preventive intervention and treatment programs, the participation of the private sector, and the media have been regulated. Chapter Four

contains provisions on protection and support services. The subjects covered in this section include information, access to specialist support services, shelter, telephone helplines, support for victims of sexual violence, protection, and support for child witnesses. In the articles 33-43 that given a place in the fifth chapter of the Convention, describe the legal and criminal measures that states must take against various forms of violence against women, from psychological violence to female genital mutilation, and from a forced marriage to forced neutering. While Articles 43-48 clarified criminal procedures, Articles 49-59 regulated investigations, prosecutions, procedural law, and protective measures.

251. Chapter VII of the Convention, entitled "Migration and Asylum", is devoted to regulations concerning migrant women of asylum, refugee or the other status. We will consider Articles 59-61 in this chapter in detail as they are directly related to the subject of our study.

252. Article 59, entitled "Residence Status" is as follows:

1 Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognized by the internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.

2 Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated to a residence status dependent on that of the spouse or partner as recognized by internal law to enable them to apply for an autonomous residence permit.

3 Parties shall issue a renewable residence permit to victims one of the two following situations, or in both:

a. Where the competent authority considers that their stay is necessary owing to their situation;

b. Where the competent authority considers that their stay is necessary of their co-operation with the competent authorities in the investigation or criminal proceedings.

4) Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

253. The first paragraph of the article stipulates that states parties are obliged to provide independent residence permits to the spouse or partner who is the victim of violence, regardless of the duration of the relationship. In the second paragraph, it is mentioned that states must take the necessary legal or other measures to ensure the suspension of deportation proceedings against victims of such situations. The third paragraph includes the provision of renewable residence permits to victims where necessary, and the last paragraph contains the necessary legal and other measures to ensure that victims of forced marriage can regain their residence permits in the country in which they live. Article 60 of the Convention on gender-based asylum claims are as follows;

1 Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.

2 Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.

3 Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

254. The article gives States Parties the responsibility to recognize gender-based violence as a cause of persecution in the meaning of the 1951 Convention. While the first paragraph obliges to take the necessary measures to ensure that persecution is treated as

a form of damage that requires complementary or secondary protection due to gender-based violence, the second paragraph stipulates that the recognition of refugee status will be provided to applicants who are in danger of being persecuted for these reasons. In the third paragraph, it is mentioned that states shall take the necessary legal and other measures to establish gender-sensitive asylum procedures for asylum applications. These regulations stated in Article 60 are important in terms of the recognition of gender-based violence as all by itself a cause of persecution, thus filling a significant deficiency in the 1951 Convention. Besides, paragraph 3 gives states parties the responsibility to establish a gender-sensitive system for asylum applications, both in terms of legal regulations and related procedures and practices. The last article in this section is Article 61, entitled "Non-refoulment". The content of the article is as follows;

1 Parties shall take the necessary legislative or other measures to respect the principle of non-refoulment by existing obligations under international law.

2 Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who need protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

255. The first paragraph of the article is a general regulation on the principle of non-refoulment. In the second paragraph, it is mentioned that States Parties ensure that victims of violence against women shall not be returned under any circumstances to any country at risk of life or of torture or inhuman treatment or punishment. It is important here that the scope is regulated in the form of all women who are victims of violence, regardless of their status or residence status. In terms of non-refoulment, the choice of a general expression like "under any circumstance and to any country" should be considered positive in terms of keeping the scope of the guarantee broad.

256. Chapter 8, entitled "International Cooperation", provides for arrangements for international cooperation in matters such as the realization of the objectives of the convention, the sharing of the necessary information in its implementation, and data protection.

257. Chapter 9 of the Convention entitled "Monitoring Mechanism" regulates GREVIO, with its full name “Group of Experts on Action against Violence against Women and Domestic Violence”. As explained in detail in Article 66, GREVİO is designed as an independent and expert body to monitor the implementation of the Convention by the Parties. The members of this group of experts can be elected for a term of 4 years and among the citizens of the parties, which can be renewed once from the candidates proposed by the parties, with a minimum of 10 and a maximum of 15 persons. It is stated that members must represent relevant actors and bodies in the field of violence against women and domestic violence. Under Article 68, procedural regulations are included. According to the article 68, Parties shall submit to the Secretary-General of the Council of Europe, based on a questionnaire prepared by GREVIO, a report on legislative and other measures giving effect to the provisions of this Convention, for consideration by GREVIO. Paragraph 5 is important in that it provides information on the implementation of the Convention from national organizations responsible for the protection of human rights, as well as from civil society organizations and civil society. In this way, it will be possible to prevent States from concealing negative situations and developments. Following paragraphs 9 and 14 of this Article, GREVIO may visit the country for investigation, if necessary and with the consent of the Party concerned. In the article 69, it is stated that GREVİO may adopt, where appropriate, general recommendations on the implementation of this Convention. Lastly in the X, XI, XXII the part of the Convention the subject’s relationship with other international instruments, amendments, effects of the Convention, signature, and entry into force, accession to the Convention, territorial application, reservations are regulated.

258. As it is tried to be explained above, it is seen that the Istanbul Convention introduces multi-dimensional and comprehensive arrangements in terms of combating gender-based violence and discrimination. The most important feature of the Convention is that it is the first document that establishes standards in terms of preventing and combating all forms of violence against women and legally binding European countries.[286] In particular, the Convention has made significant contributions to international law in that the

[286] For more information see, BAKIRCI, Kadriye, «İstanbul Sözleşmesi », above; MOROĞLU, Nazan, «İstanbul Sözleşmesi », *Istanbul Bar Women's Rights Center,* [online], 8 March 2019, pages 7-10, [consulted on 14.11.2019], https://www.istanbulbarosu.org.tr/files/docs/khum/KH2019.pdf

involvement of non-governmental organizations, ensuring the effectiveness and implementation of the Convention through GREVIO, the emphasis on discrimination based on sexual orientation and gender identity, recognition of violence against women as a human rights violation, recognition of refugee status as a result of gender-based violence, and refugee status it includes gender-sensitive procedures and rules. Also, the empowerment of women to eliminate violence and discrimination against women, the necessity of the woman being seen as an individual rather than being defined in the family, and the approach that the problem arises due to gender inequality are other positive features of the Convention.

B- GREVIO evaluation report Turkey-2018

259. "GREVIO Baseline Evaluation Report Turkey " was published on 15 October 2018.[287] It is observed in the report that a comprehensive assessment of Turkey's legislative regulations and practices related to violence against women has been made. Accordingly, some developments in Turkey were found to be positive while others were evaluated as negative and some recommendations were made to Turkey. The main positive development among these is Turkey's adoption of Law No 6284 on Protection of Family and Prevention of Violence Against Women in 2012. Concordantly, the establishment of the Directorate-General for the Status of Women under the Ministry of Family and Social Policies to ensure the necessary coordination was also found positive. Turkey has prepared national action plans covering the years 2007-2020 (2007-2010, 2012-2015, 2016-2020) to combat violence against women. In these plans, the significance of developing a common approach to the elimination of violence against women in all segments of society has been emphasized, and it has been stated that prevention, protection, punishment, and policy dimensions should be included in the studies to be carried out. GREVIO considered Turkey to be doing such works and taking steps to ensure gender equality through the measures it has taken, as positive. Besides, however, the report draws attention to a series of negativeness seen as deficiency or hindrance in practice. It has been stated that Turkey does not base its policies on equality of men and women in general and thereby has not been evaluated the effects of this on

[287] For full text of the Report, « Grevio Baseline Evaluation Report Turkey», above

violence against women. Considering that inequality between men and women is regarded as one of the most important causes of violence, it is possible to mention that this situation is a significant shortfall for Turkey. Besides, it is seen in the report that the deficiencies in the measures taken to eliminate violence against women, legal regulations, and policies are met with concern. Some of these are mentioned as perpetrators of violence are not investigated effectively, continuous of the impunity, victims are not protected, protection decisions are often made for the short term, and the necessary attention and care is not taken in the decisions of measures to effectively protect victims during this period. The fact that independent women's organizations and related NGOs face increasingly restrictive conditions is one of the assessments set out in the report as another negative situation.[288]

260. A special assessment of gender data on migration and asylum is made in Chapter VIII of the report entitled “Migration and Asylum”. In this section, it is stated that the basic condition of the Istanbul Convention and the laws of residence status and asylum procedures are to ensure that the facts of women living in relationships where they are abused or who are subjected to sexual violence, exploitation, and other forms of gender-based violence are not thrown into the background. In parallel with this purpose and the light of the regulations in articles 59-61 of the Convention, the special case concerning migration and asylum in Turkey has been evaluated. Article 326 of the report stated that the number of registered Syrian female citizens in Turkey as of the end of March 2018 was 1,632,508, but the actual number is more than that. It is pointed out in the same article that Turkey has the highest number of refugees and is the fourth country in the world in terms of the number of refugees hosted according to the size of the national population. In Article 329, it is stated that Syrian asylum seekers in Turkey benefit temporary protection status, accepting that this status does not fall into "migrant” and asylum seekers ' area of responsibility, as set out in Section VIII of the Istanbul Convention. However, it has still been stressed that a contracting party must guarantee that all general and specialist support services for women victims of violence must be made accessible to all

[288] For detailed information about evaluation of the report, see, MOROĞLU, N., «Nazan Moroğlu GREVİO Raporunu Değerlendirdi», above; «Grevio Türkiye’ye İlişkin İlk Değerlendirme Raporunu Açıkladı»,, *İstanbul Bilgi University Human Rights Research and Application Center,* 15 Ekim 2018, [consulted on 22.11.2019, https://insanhaklarimerkezi.bilgi.edu.tr/tr/news/none-grevio_turkiye_raporunu_acikladi/,

women in its own country. The relevant article stated that GREVIO is concerned about the problem of access to services and that the difficulties were only exacerbated by the fact that the refugees are housed in a camp away from the urban centers where such services could be provided, albeit due to a language barrier, and in some cases because they remained dependent on the Syrian undocumented and exiled community in Turkey.

261. Under Article 330, for example, it is stated that women might be refused access to shelters for those who are subject to violence because of a fear that they are solely seeking accommodation and are not in fact victims. It has been pointed out that "such a refusal may mean that a woman is forced to return home where she may be at further risk of domestic and sexual violence." It is mentioned that during the meetings with GREVIO, the officials pointed out that Syrian women have shelters on equal footing with Turkish citizens, except for the unregistered Syrian women who have to apply to the DGMM (Directorate General of Migration Management) first. However, the report also included that NGO sources point out that Syrian women, due to the language barrier and a lack of information about the Turkish legal system, do not well known of the ability to seek support, and when they do, they may face some problems in accessing Violence Prevention and Monitoring Centers (VPMC) and are sometimes sent to temporary centers instead of to shelters. In the article 331, it is evaluated as the best option that Turkish authorities consider it best to leave issues such as violence against women to be dealt with by the leaders of the Syrian communities in the camps. GREVIO has nevertheless assessed that it is important to ensure women and girls have access to receive consultancy from experienced personnel and to get specialist service support.

262. In Article 332, it is mentioned that women refugees fleeing a war zone are especially vulnerable to violence, in particular, sexual violence, which is frequently used as a weapon in conflict situations, sexual harassment, especially when they are on the move, and forced marriage; unfortunately, often regarded by families as a means of protecting young girls. It has been pointed out that women under such circumstances are not likely to denounce or attempt to escape from domestic violence for fear that they are in an extremely sensitive situation and have nowhere to go. In the continuation of the article, it is stated that both government and NGO sources reported that early and forced marriages are common among the Syrian population, especially among those living in temporary centers. Also, in Article 333, it is emphasized that one area that is very significant for all

women refugees is that they benefit from gender-sensitive interviewing procedures by the DGMM. It is stated that in this way the persons at risk of violence can be identified and the necessary protection and services for them can be provided.

263. The assessments of Article 59 of the Convention, entitled migration, are contained in Article 334 under Section (B). In the article, it is stated that family residence permits are regulated by Article 34 of the LFIP and can be granted to the foreign spouses of Turkish citizens, persons within the scope of Article 28 of Law No. 5901 (rights granted to people who have lost their Turkish citizenship by obtaining permission to leave), and refugees and beneficiaries of subsidiary protection, as well as foreigners holding one of the residence permits. Paragraph 6 of the article regulates that in the event of divorce a foreigner married with a Turkish citizen may be granted a short-term residence permit provided that they resided on a family residence permit for at least three years. In the continuation of the same paragraph, it was ruled out that if the victimization of a foreign spouse on the grounds of domestic violence is fixed by the relevant court decision, the clause of the three-year term shall not be sought. GREVIO has stated that they welcomed this exception. However, this exception has been granted only for foreign female victims who stay married to Turkish citizens. Hence, in Article 335, GREVIO invited the Turkish competent authorities to expand the possibility of the victims obtaining autonomous residence permits in the event of a divorce, regardless of the nationality of the victim's spouse and the duration of the relationship.

264. Evaluations relating to Article 60 of the Istanbul Convention on “Gender-based asylum claims” are covered in the heading (C). In Articles 336-338, information about regulations and institutions relating to Turkey's asylum rules and procedures are included. Article 339 states that within the meaning of the Genova Convention relating to the Status of Refugees, Turkey's Law on Foreigners and International Protection (LFIP) does not explicitly recognize violence against women as a form of persecution, but that victims of such violence may be considered persons having a fear of being persecuted because of their membership in a “particular social group.” In Article 340, it is stated that Article 3 of the LFIP pointed out “persons with special needs” who take advantage of a general prioritization in all procedures, rights, and benefits include “unaccompanied minors, people with disabilities, elderly, pregnant women, single parents with minor children, victims of torture, rape and other forms of psychological, physical or sexual violence”.

Also, within the scope of the aforementioned provision, similar provisions shall apply to persons with special needs under Temporary Protection who are entitled to access to children's centers, women guest houses, or other appropriate places under the responsibility of the Ministry of Family and Social Policies (MoFSP), where victims of torture, sexual harassment or other serious psychological, physical or sexual violence have the right to receive any necessary medical treatment.

265. In Article 341 of the report, the main issue regarding the protection of victims as persons belonging to “a particular social group” and “special needs” is the assessment of their identification as victims. It is pointed out that the difficulties in identifying victims can be attributed to the important barriers preventing victims from coming forward on the one hand, and the absence of mechanisms screening victims for signs of violence on the other. According to GREVIO, asylum seekers face significant cultural and socio-economic barriers to complaining about any forms of gender-based violence they have been exposed to or they have the risk of, particularly for sensitive issues such as survival sex, domestic violence, and female genital mutilation. Besides, the related persons have a limited understanding of their rights, referral mechanisms, and available services in Turkey. Language barriers are also one of the major obstacles.

266. Under Article 342, it is stated that the development of gender-sensitive adoption procedures, including providing information to women and girls about gender-based violence and available assistance services, is of key importance in ensuring that victims have access to protection. Referring to the regulation in Article 70 of the LFIP on the informing of the applicant and interpreter, it is stated in the Article that there is little evidence that these procedures are intended to allow instances of violence against women to emerge. It is also noted that there is no data to clarify how often asylum requests have been met based on gender-based violence-related causes or how many such requests might have been refused.

267. In Articles 343-344, it is stated that the General Directorate of Migration Management (DGMM) is still in the process of consolidating its structure and working methods as a relatively new institution. It is therefore mentioned that the preparation and implementation of gender guidelines by DGMM are of paramount importance to help integrate gender-sensitive elements into developing practices and that the role of women's NGOs in providing relevant legal assistance and counseling services to victims should be

supported while these efforts are being carried out. Similarly, it is pointed out that authorities should consider building similar gender-sensitive mechanisms in different registration processes for people covered by temporary protection.

268. Under Article 345, "GREVIO encourages the Turkish authorities to develop, in co-operation with specialist women's NGOs, gender-sensitive procedures, guidelines, and support services to allow all women asylum seekers, including applicants under administrative detention, to disclose instances of violence against women." It is also stated that progress in this field should be measured by collecting relevant data on the number of allegations related to gender-based violence, and authorities have been urged to consider developing similar procedures and guidelines for registration procedures applying to people of Syrian or other origins under the temporary protection scheme.

269. In the title (D) of the report, assessments regarding the principle of non-refoulment were made. Article 346 of this section states that GREVIO could not verify the information that women, including pregnant women and women with disabilities, are arbitrarily detained in deportation centers and/or forced to accept their return to countries in which they are at risk of being tortured, inhuman or degrading treatment or punishment. In Article 347, it was made an assessment that the regulation in Article 17 of the Temporary Protection Regulation (TPR) on admission to the country does not grant the persons under the TPR's scope to access to Turkish territory and on the other hand, this regulation narrows the principle of non-refoulment, as it does not present a provision on whether persons approaching the borders without a valid travel document will be accepted or not at the discretion of the provincial administrations. It has also been noted that although Turkey generally maintains an "open-door policy" for people fleeing Syria, there have been reports of recent repatriations at the border.

270. About the arrangement in Article 61 of the convention on non-refoulment, article 348 states that the Turkish authorities are encouraged to "take all necessary measures to ensure that the principle of non-refoulment enshrined in the law is respected in practice, so that women victims of violence who are in need in protection, regardless of their status or residence, are not returned under any circumstance to any country where their life would be at risk or where they might be subject to torture or inhuman or degrading treatment or punishment." Article 349 shortly states that Turkey presents a mixed picture regarding violence against women for alarming reasons, where undeniable evidence of

progress coexists as well. In Article 350, it is also pointed out that Turkey's current problems are expressed in a similar way to the rhetoric of the state's official organs. According to that, following the failed coup attempt, some factors such as the draining of resources in the civil sector together with the mass dismissal of civil servants, counter-terrorism measures, and security operations in the southeast of Turkey are not propitious for the fulfillment of women's right to a life free from violence. In the subsequent articles 351-354, the importance of clear guidance and a faithful commitment to the principles of gender equality is emphasized, Turkey was encouraged to adhere to the principle of the gender-based nature of violence against women, and it is also requested that the report be translated into their official languages and distributed widely to relevant government agencies at all levels, as well as to NGOs and other non-governmental organizations working in the field of violence against women.

Section 2: International Principles and Standards for Gender Equality

271. In addition to the international conventions examined in the first part, other tools such as principle and recommendation decisions issued by international organizations and court decisions also play an important role in achieving gender equality. Yogyakarta Principles, which establish the principles of practice of international law in order to ensure equality for everyone in terms of sexual orientation and gender identity and to prevent discrimination against different sexual orientations, are one of the important documents to be based on this study. In these principles, human rights standards and their practices on sexual orientation and gender identity were established in a very broad framework and recommendations were made to the states. Yogyakarta principles are not a primary binding source in terms of positive law, but they are an important auxiliary source that will shed light on the laws and practices of states in terms of their content and contributions to international law. The principles first adopted at the expert meeting held in Yogyakarta, Indonesia on 6-9 November 2006 were then updated with additional principles and obligations set out at another meeting in Genevie on November 10, 2017. The scope determined in Yogyakarta principles that everyone regarding the right to asylum is entitled to asylum due to the threat of justified persecution of sexual orientation or gender identity and cannot be sent back to any other state where these threats are made, cannot be returned or deported. In addition, the 2002/5, 2007/17, 2010/10 recommendations of the Council of Europe on asylum and gender; some

important jurisprudence of the ECtHR, such as the decisions and guidelines of the UNHCRS, as well as legal sources are discussed in this section as other important sources to be considered in our evaluations.

§ 1) The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (2006-2017)

272. The Yogyakarta Principles were adopted unanimously by 29 experts from 25 countries with different experiences on human rights law at a meeting held at Gadjah Mada University in Yogyakarta, Indonesia on November 6-9, 2006. These experts appear to be composed of very different professional groups such as law and human rights professors, feminist lawyers, Supreme Court judges, representatives of different departments of the UN and human rights representatives. Its full name "The Yogyakarta Principles on the application of international human rights law concerning sexual orientation and gender identity", was drafted, developed and finalized by this group composed of human rights experts. The text was first set in the form of 29 principles in 2006 and a total of 38 principles were adopted, with 10 Principles added in 2017. [289] The principles are important both in the recognition of rights and freedoms and in respect of different sexual orientation and gender identities in the prevention of discrimination. The responsibilities of states in this regard are also regulated in detail and systematically.

A- Yogyakarta Principles 2006

273. What is meant by the concepts of sexual orientation and gender identity often used in the principles, is explained in the introduction part of the text. Accordingly, sexual orientation is expressed as "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." It is also stated that, "Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily

[289] For the full text of Yogyakarta Principles, 2006 and 2017, see, «The Yogyakarta Principles», 2006, [consulted on 13.05.2019], http://yogyakartaprinciples.org/principles-en/official-versions-pdf/; «The Yogyakarta Principles Plus 10», Geneva, 10 November, 2017, [consulted on 13.05.2019], http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech, and mannerisms." The concept of "gender identity" allows us to understand that the gender determined at the birth of a baby may not match the inherent gender identity that the child develops when he/ she grows up.[290] Thus, confusion in the use of the terms of gender, sexual orientation, and gender identity has been corrected. It has been emphasized that people can enjoy full human rights regardless of their sexual orientation and gender identity and that current human rights practices should take into account the special circumstances and experiences of people with different sexual orientations and gender identities. As regards children, it is stated that the high benefit of the child should be the primary priority in all actions and that any child with the age to form a personal opinion can freely express such views, and that these views should be respected according to the age and maturity of the child.

274. It seems that the first principles adopted in 2006 included fundamental human rights and freedoms in general, but emphasized the recognition and protection of these rights for each individual with all different sexual orientations and gender identity. The obligations to be fulfilled by the States are regulated separately in the articles of each principle. In the first principle titled as "The Right to The Universal Enjoyment of Human Rights" it is stated that "*All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights*". This expression of equality is an innovative and important development as it excludes all gender-based discrimination and emphasizes human dignity as well as human rights. Equality and the right to non-discrimination in the second article are dealt with from the same perspective. According to this *everyone is entitled to enjoy all human rights without discrimination based on sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.* The continuation to the second principal discrimination based on sexual orientation or gender identity is

[290] « Human Rights and Gender Identity Report», Commissioner for Human Rights, CommDH/IssuePaper (2009)2, Strasbourg, 29 July 2009, p. 3 [consulted on 16.05.2019], https://rm.coe.int/16806da753

determined as *any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.*

275. In the third principle which regulates the right to recognition before the law, it is stated that *persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life.* It is also important development that the principal notes that *no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.*

276. Another important regulation is the sixth principle on the right to privacy. It is regulated that everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including about their family, home or correspondence as well as to protection from unlawful attacks on their honor and reputation. The principle seven on the right to freedom from arbitrary deprivation of liberty regulates that no one shall be subjected to arbitrary arrest or detention. Arrest or detention based on sexual orientation or gender identity, whether under a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, based on equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence. It is important to evaluate that custody and detention based on sexual orientation or gender identity are arbitrary, even by court order. This is because gender-based discrimination, oppression and punishments are legally accepted by some states.

277. In the 8-11th principles, it is accepted that everyone is equal in terms of such rights like to a fair trial, the right to treatment with humanity while in detention, to freedom from torture and cruel, inhuman or degrading treatment or punishment, to protection from all forms of exploitation, sale and trafficking of human beings, without prejudice or discrimination based on sexual orientation or gender identity. For everyone to benefit all rights equally, it has also been pointed out some issues such as carrying out education and

awareness programs, amending the Constitutional law, penal codes and all other legislation in line with these principles, taking the necessary measures to eliminate discrimination against persons of different sexual orientation and gender identity, and taking the necessary administrative, and legal and other measures to ensure full recognition of these identities. Besides, it has been regulated that necessary training and awareness programs should be carried out for law enforcement forces, lawyers, judges, prosecutors, and other court officers, prison staff, relevant public and private sector employees in matters relating to the rights such as fair trial, not being exposed to arbitrary deprivation of liberty, torture, persecution, inhuman and degrading treatment, punishment, and inhuman treatment in custody. It is vital to raise awareness in the whole community, especially including the relevant officials, so that the principles determined theoretically can be applied in practice. It is important to note here that this situation has been taken into consideration in almost all articles of the Yogyakarta Principles.

278. In terms of rights such as employment, social security, education, adequate housing, and living standards, access to health standards, regulations have been introduced to ensure that everyone can enjoy these rights without discrimination based on sexual orientation and gender identity. Identification and recommendations to ensure that everyone has access to these rights, which are vital for individuals to attain minimum living standards, and for the prevention of gender-based discrimination are very important. Principle 18 is related to the right to protection from medical abuse. Under this principle, it is stated that no one can be forced to undergo any kind of medical or psychological treatment, procedure, testing or be confined to a medical center based on his/ her sexual orientation or gender identity and that even if there is any classification to the contrary; person's sexual orientation and gender identity is not a medical condition and shall not constitute a condition to be treated, cured or suppressed. Today, it is still known that many states continue to practice forced treatment and surgery, treating different sexual orientations and gender identities as heresy, disease. In the relevant article, it has been made a regulation that states shall "ensure that any medical or psychological treatment or counseling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed." Thus, it was intended to prevent gender-based rights violations.

279. The regulation entitled “the right to seek asylum”, which is included in Principle 23 of the principles, addresses "the right to seek asylum" through a gender-based approach. This principle is important in both clarifying the definition of the relationship between gender and asylum, and in having an impact on subsequent developments. The content of the Principle is as follows;

280. Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, based on sexual orientation or gender identity. States shall;

A. Review, amend and enact legislation to ensure that a well-founded fear of persecution based on sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum;

B. Ensure that no policy or practice discriminates against asylum seekers based on sexual orientation or gender identity;

C. Ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, based on that person’s sexual orientation or gender identity.

281. Hence, in the principle, the right to asylum based on gender persecution is explicitly recognized, and it is pointed out that states should adapt their legislation accordingly, and refrain from policies and practices that would include gender-based discrimination against asylum seekers. Under the principle, it is also significant to mention that no one can be sent, expelled or extradited to any state where they are in well-founded fear of persecution based on their sexual orientation and gender identity. This regulation is both a basis for determining international protection status and for other asylum processes and procedures.

282. In the 24-28th principles, the rights to found a family, to participate in public life, to participate in cultural life, to promote human rights, to effective remedies and redress are regulated. Finally, in principle 29, which addresses accountability, it is stated that

everyone whose human rights, including rights addressed in these Principles, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. And it is emphasized that there should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.

283. It is observed that various recommendations are made to states to ensure equality of rights to all sexual orientation and gender identities and to prevent discrimination. Drawing attention to the role and responsibilities of the international community, additional recommendations were made in the additional recommendations set out at the end of the Yogyakarta Principles. In this section, international organizations such as the UN High Commissioner for Human Rights, the UN Human Rights Council, the UN Economic and Social Council, the World Health Organization have been advised to do what is necessary to ensure the approval, integration, and implementation of these principles. In addition to these organizations, institutions such as regional and sub-regional inter-governmental organizations with a commitment to human rights; regional human rights treaty bodies; regional human rights courts; NGOs working on human rights at the national, regional and international levels; national human rights institutions; professional organizations; commercial organizations; mass media; governmental and private funders are mentioned one by one in the document and it is stated that all these organizations must take responsibility for the implementation of the principles specific to their respective fields.

B- Additional principles and state obligations on the application of international human rights law concerning sexual orientation, gender identity, gender expression, and sex characteristics to complement the Yogyakarta Principles (The Yogyakarta Principles Plus 10 – 2017)

284. At a meeting of experts held in Geneva, Switzerland, on 18-20 September 2017, it was stated that Yogyakarta Principles had been reassessed and should be regularly reviewed according to the existing human rights law. These principles which are expressed as "State Obligations on the Application of International Human Rights Law Concerning Sexual Orientation, Gender identity, Gender Expression, and Sex

Characteristics to Complement the Yogyakarta Principles" are called shortly "The Yogyakarta Principles plus 10". It is stated in the “introduction” section of the text that since 2006, when the Yogyakarta Principles were adopted, there have been developments in international human rights law and also gained experience on discrimination and violations of different sexual orientations and gender identities have been experienced. It is stated that the new principles were adopted together with the previous 29 principles to document and advance new developments. It includes important arrangements for people with different sexual orientations, gender identity, and gender characteristics to be able to live their identities openly and freely and to enjoy equal benefits from a wide range of rights and freedoms such as information and communication technologies, health and protection from poverty. These principles, which are advisory to states and other international individuals, are an important resource for our study as they shed light on current gender problems and needs. These principles are set out as follows;

285. By the principle 30, "the right to state protection", it has been recognized that everyone, regardless of sexual orientation, gender identity, gender expression or gender characteristics, has the right to enjoy state protection from violence, discrimination, and harm from government officials or any individual or group. It is advised in this principle that states should take appropriate and effective measures against all forms of discrimination, violence and hate crimes on sexual grounds. The article also addresses issues such as providing support services to victims of sexual assault, providing access to solutions for effective investigation and compensation of these actions, and training of relevant officers.

286. With Principle 31 called “the right to legal recognition”, it is recognized that everyone has the right to legal recognition without the need for a reference to gender, sexual identity, sexual orientation, gender identity, gender expression or sex characteristics. Everyone, regardless of sexual orientation, gender identity, gender expression or gender characteristics, has the right to obtain identity documents, including birth certificates. It has also been noted that everyone has the right to change the gendered information in such documents. According to the article, it should be ensured that "no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third-party opinion, shall be a prerequisite to change one’s name, legal sex

or gender." It is also advised by this principle that a person's criminal record, immigration status or another status cannot be used to prevent a change of name, legal sex or gender.

287. Principle 32, "the right to bodily and mental integrity" principle, recognizes that everyone has the right to bodily and mental integrity regardless of sexual orientation, gender identity, gender expression, and gender characteristics. According to this principle, everyone has the right to be free from torture, inhuman, humiliating and cruel treatment based on gender identity, sexual orientation, gender expression, and sexual characteristics. This principle also states that no one shall be subjected to invasive or irreversible medical procedures without prior notice and consent, unless necessary to prevent serious, immediate and irreparable harm to the concerned person.

288. With Principle 33, namely "The Right to Freedom from Criminalization and Sanction based on Sexual Orientation, Gender Identity, Gender Expression, or Sex Characteristics", it is recognized that everyone has the right to be free from any direct or indirect punishment or sanction because of their actual or perceived sexual orientation, gender identity, gender expression or characteristics. Thus, it is stated that states should ensure that all regulations, such as legal regulations, customary and religious rules, which treat and punish different sexual identities and sexual orientations as crimes, and are still present today, should be changed. Besides, this principle states that law enforcement forces or other individuals and groups should be held accountable for acts such as intimidation, violence, abuse that they perform based on criminalization of the individuals ' sexual orientation and gender identity; and responsibilities such as ensuring effective access to legal aid and justice systems for those affected by punishment because of their sexual orientation, gender identity are also laid down in this principle.

289. With the Principle 34 entitled "The right to protection from poverty", it is stated that everyone has the right to protection from poverty and social exclusion and that no one can be discriminated against due to sexual orientation, gender identity, gender expression and gender characteristics in respect of equal rights. Under the principle, in which it is pointed out that states should take the necessary measures to prevent forms of poverty worsened by gender-based reasons, also recognized that effective measures should be taken against human rights violations, which result in poverty and exclusion, caused by non-state actors.

290. With the Principle entitled “The right to sanitation”, it is recognized that everyone has the right to fair, adequate and safe health and hygiene, in circumstances appropriate to human dignity, without being discriminated against for reasons such as sexual orientation, gender identity, gender expression or gender characteristics. Access to the right to sanitation is essential, as it can be vital in some situations. Also, in this principle, it has been regulated that in many areas such as schools, public and private workplaces, entities offering services to the public, places of detention, everyone should be able to access health-related services and rights without discrimination based on gender identity, sexual orientation, gender expression and gender characteristics.

291. Principle 36 entitled "The Right to the Enjoyment of Human Rights concerning Information and Communication Technologies", regulates that everyone is granted to the same protection of rights online as they are offline and that everyone has the right to access and use information and communication without discrimination due to gender identity, sexual orientation, gender expression, and gender characteristics. It has been advised that states should take all legislative, administrative, technical and other measures necessary to ensure the elimination of online hate speech, harassment, and technology-related violence.

292. Principle 37 entitled " The right to Truth” states that victims of human rights violations based on sexual orientation, gender identity, gender expression or gender characteristics have the right to know the facts about facts, reasons, and circumstances related to the violation. According to this principle, the right to truth includes effective, independent and impartial investigation and all forms of compensation recognized by international law, to determine the facts. It has also been pointed out that the right to truth is not subject to the statute of limitations, and that its dual nature, both in the form of an individual and a social right, should be taken into account. When looking at the content of the concerned principle, it is seen that detailed regulations have been introduced in terms of the adoption and full implementation of procedures for determining the relevant truth; access to legal means in case of violations, compensation for damages and making what is necessary to prevent repetition; and commemorating the suffering of those whose rights have been violated through museums, social and cultural activities.

293. Principle 38 entitled “The Right to Practice, Protect, Preserve and Revive Cultural Diversity”, states that everyone, individually or together, has the right to preserve and

revive cultures, traditions, languages, rituals, festivals consistent with international human rights law, and to protect areas of cultural importance related to sexual orientation, gender identity, gender expression, and gender characteristics. In this principle, it is pointed out that states should ensure equality in respect of human dignity and respect for the rights of all based on gender in the provision of these rights.

After the additional principles, there is a section on additional state obligations set out in the initial principles. In this section, additional assessments and recommendations were made to the Yogyakarta Principles 2, 6, 9, 10, 16, 17, 19, 20 23, 24, 25, and 27.

294. As with the first principles adopted in 2006, the 2017 principles emphasize throughout the whole text, unlike previous conventions, that persons with different sexual orientation, gender identity, gender expression, and gender characteristics should not be discriminated against and should enjoy rights and freedoms on an equal basis with other individuals. The principles make significant contributions to asylum law in terms of gender with the regulations such as the clear recognition of the right to asylum due to gender-based persecution, the adaptation of legislation by states, and the avoidance of policies and practices that would include gender-based discrimination against asylum-seekers. The Yogyakarta Principles, therefore, form a basis for law and practice as an up-to-date and important document in its way of expression and scope on gender, in addition to the principles and recommendations it contains.

§ 2) UNHCR's, ECHR's and ECJ's resolutions and case law on gender-related problems

295. Resolutions, guidelines of UNHCR, European Council and case law of ECHR and ECJ on international protection for refugees are extremely important resources in the creation and development of refugee law. The role of such international institutions in meeting current problems and needs, especially on a dynamic issue such as gender is very important. Therefore, I will include some important decisions and recommendations of these institutions below.

A- UNHCR's gender-related resolutions and guidelines

296. UNHCR's decisions on international protection for refugees are extremely important resources in the creation and development of refugee law. Although the

decisions are not legally binding on states, it is accepted that they provide an international agreement on certain issues relating to refugees and make a positive contribution to the development of international refugee law. Also, states should use their discretion in good faith and take into consideration their practices. [291]

297. In a study published in 2012, the UN Human Rights Office of the High Commissioner analyzed human rights convention bodies and special procedural mechanisms for human rights violations suffered by LGBTIs [292]* and states' compliance with international human rights law. Accordingly, it has accumulated its recommendations for the states under five main headings to help them in taking necessary steps to meet their basic human rights obligations to LGBTI people. These recommendations, drafted by the UN, are essential for states to ensure an egalitarian regulation and implementation by international human rights law. These five steps are stated as "protect, prevent, repeal, prohibit, and safeguard." To briefly explain these steps; "Protect" is the protection of people from homophobic and transphobic violence. "Prevent" is the prevention of torture or cruel, inhuman and degrading treatment of LGBTI people in detention through the prohibition and punishment of such acts, and compensation of victims. "Repeal" is the revocation of all laws that criminalize homosexuality, including laws that prohibit private sexual conduct between consenting adults of the same sex. "Prohibit" is the prohibition of discrimination based on sexual orientation and gender identity. "Safeguard" is the binding over the rights of LGBTI and intersex individuals to freedom of expression, association, and peaceful assembly. It seems that in the concluding part of the book “Born Free and Equal”, which contains the UN recommendations, there is also an assessment of the legal nature of these recommendations. Thus, States' obligations to protect LGBTI persons from human rights violations have become official and are binding on all UN member states. [293]

---

[291] For more information on the legal nature of UNHCR decisions, see «UNHCR Decisions», UNHCR, [consulted on 25.11.2019], http://sorular.rightsagenda.org/Uploads/MULTECI%20MEV/BMMYK%20Y%C3%9CR%C3%9CTME%20KOM%C4%B0TES%C4%B0%20KARARLARI.pdf

[292] * In the relevant UN book, these groups are referred to as «LGBT». Intersex groups were added by me into the study to maintain the integrity of the conceptual expression preferred in our study and to avoid confusion.

[293] For more information about UNHCR’s review on LGBTIs, see, «Herkes Özgür ve Eşit Doğar, Uluslararası İnsan Hakları Hukukunda Cinsel Yönelim ve Cinsiyet Kimliği», p.13, for the conclusion section, see, p. 61, UN High Commissioner for Human Rights, 2013, [consulted on 25.07.2019],

298. UNHCR, has drawn attention to the unique gender-based problems experienced by women and girl refugees and made recommendations to states to provide better protection to these groups in its many decisions and guidelines since 1985. In this way, it has been contributed to the development of a gender-sensitive approach in states ' policies and practices regarding refugees. The Executive Committee has adopted many resolutions addressing the problems of women, children, and LGBTI refugees. Since it is not possible to handle each decision one by one, we will consider these containing important comments and recommendations, which also have an impact on the other next ones "Refugee Women and International Protection" (18 January 1985), Resolution entitled "Women Refugees" (1988), "Guidelines on the Protection of Refugee Women" (1991), "Guidelines on International Protection No.1 relating to Gender-Related Persecution (May 2002)", "Guidelines on International Protection No. 2 Relating to "Membership of a Particular Social Group" (May 2002), "Guidance Note On Refugee Claims Relating to Sexual Orientation and Gender Identity" (November 2008), "UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention relating to the Status of Refugees"(Reprinted, Geneva, 2011), "Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity" (October 2012).

299. The Committee's Resolution No. 39, entitled "Refugee Women and International Protection", dated 18 January 1985, pointed out that refugee women and girls were exposed to special problems in the field of international protection. [294] In the Resolution, it is stated that necessary measures must be taken urgently to ensure the physical safety of refugee women and girls and to prevent them from being subjected to sexual abuse. For this reason, the importance of collecting the necessary statistical, sociological and other data to recognize and implement the appropriate mechanisms has been addressed. In the relevant resolution, it was stated that female asylum seekers who face harsh or inhuman treatment because they violated the social traditions of the society in which they live may be considered as a "particular social group" in terms of the refugee definition

https://www.ohchr.org/Documents/Publications/BornFreeAndEqual_Turkish.pdf

[294] For the full text of UNHCR Decision, see, «Refugee Women and International Protection», UNHCR, No. 39, 18 October 1985, [consulted on 25.11.2019], https://www.unhcr.org/excom/exconc/3ae68c43a8/refugee-women-international-protection.html

contained in Article 1 A (2) of the 1951 Convention. However, States Parties have been given the initiative and are free to decide on this matter.

300. The Committee's Resolution No. 54, entitled "Women Refugees", which was adopted in the 39th Session took place in 1988, pointed out that there were experienced situations such as physical security threats and sexual abuse in the meaning of the international protection of women refugees.[295] It has therefore advised both UNHCR offices and host governments to increase support for activities that will improve the security of refugee women. The resolution also called for effective measures to include women and gender issues in the programming and planning activities of the UN Office of High Commissioner at all stages, and that all project documents for funding purposes should include a paragraph on problems and the special needs of women refugees, and that periodic explanatory reports should include this issue.

301. The UNHCR's "Guidelines on the Protection of Refugee Women" of July 1991 has been a catalyst for assessments and recommendations on refugee women and has also influenced subsequent decisions.[296] In the Guidelines, refugees are identified as a double disadvantaged group, since they are potential victims of human rights abuses and attacks in general and are stayed outside their own homes. Besides, it is stated that women and girls who share these problems of refugees should be also protected against sexual or physical abuse and exploitation due to their sexual identity, as well as against gender-based discrimination in the provision of goods and services. It is also mention that, in addition to the 1951 Convention and the Additional Protocol, other relevant international instruments such as the 1966 Human Rights Covenants, the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict; the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; the Convention on the Nationality of Married Women; and the Convention on the Rights of

[295]For the full text of UNHCR's Decision 54, see, *Conclusions Adopted by The Executive Committee on the International Protection of Refugees 1975 – 2009* (*Conclusion No. 1 – 109*), Office of the United Nations High Commissioner for Refugees Division of International Protection Services, December, 2009, p.72-73, https://www.unhcr.org/en-my/578371524.pdf

[296] For the full text of the Guidelines, see, «Guidelines on the Protection of Refugee Women», Office of the United Nations High Commissioner for Refugees, Geneva, July, 1991, [consulted on 25.11.2019], https://www.refworld.org/docid/3ae6b3310.html

the Child set international human rights standards for providing protection and assistance activities related to refugee women, if the states are parties to all these instruments. Pointing out that there is much more to do for the protection of refugee women and girls than just being bound by legal regulations, the section entitled" Beyond legal measures " emphasizes the importance of implementing common-sense programs that support the safety of these groups. Then, the purposes of the guidelines have been elaborated as; to help UNHCR staff and its implementing partners identify the risks and special protection issues faced by refugee women, identify the various measures that can be taken to improve their protection, and offer recommendations to help women whose rights have been violated. In the continuation of the Guidelines, it was made assessments regarding some issues such as; physical problems experienced by refugee women and girls, access to services, access to legal status and legal system, access to necessary information, how to deal with physical and sexual assault and abuse carried out by people such as pirates, border guards, members of the army and resistance, and other male refugees during the journeys; the situation of vulnerable groups such as the elderly, women with disabilities and unaccompanied girls, principles of granting refugee status to women, possible problems and requirements related to the camps. In the section entitled "Reporting" stating that the protection report does not mention refugee women in a specific section but rather call for including this issue throughout the report is also significant in terms of providing a comprehensive approach.[297] In the recommendations and resolutions of the High Commissioner's office in 1993-1999, The High Commissioner was wanted to develop criteria and prepare guidelines to support and encourage the efforts of states concerning the persecution of women.[298] It has been stated that these guidelines should recognize women who claim refugee status as refugees because they are rightly afraid of being persecuted for reasons set out in the 1951 Convention and the 1967 Protocol, including persecution through sexual violence or, more generally, gender-related persecution. It seems that UNHCR's guidelines after 2000 have been shaped according to

[297] For the full text of Guideline, see, «Guidelines on the Protection of Refugee Women», [consulted on 09.05.2019], https://www.refworld.org/docid/3ae6b3310.html,
[298] For the full text of the Conclusions, see, «Conclusions Adopted By The Executive Committee On The International Protection of Refugees 1975 – 2009 (Conclusion No. 1 – 109) », pages 111-137, above

these principles and recommendations.[299] In its many decisions, the Executive Committee has stated that those who face harsh or inhuman treatment among women seeking asylum may be considered a "particular social group" because it opposes social traditions. [300]

302. The Guidelines issued by UNHCR on 23 October 2012 provided important updates to its approach to the assessment of asylum applications based on sexual orientation and gender identity.[301] It seems that the resolutions and guiding principles up to this date contained regulations aimed at preventing violence, abuse, discrimination, and inhuman treatment experienced by mostly women and girl refugees. However, in parallel with the increasing visibility of different sexual orientations and gender identities over time, the problems and needs of refugees in these groups have also been reflected in UNHCR documents. To interpret the definition of a refugee contained in the 1951 Convention in conformity with the guidelines No. 9 of 2012, it is stated that fundamental and procedural guidance on the determination of refugee status based on individuals' sexual orientation and/or gender identity would be provided. In the document, which emphasizes that the Yogyakarta Principles set the framework for protection of human rights applicable in the context of sexual orientation and/or gender identity, both the right to seek and enjoy asylum against persecution related to sexual orientation and/or gender identity, and the explanations contained in these principles in terms of terminological concepts related to gender and sexual orientation, are included. In the section of "Substantive Analysis" of the Guidelines, a well-founded fear of persecution in the applications of LGBTI refugees, laws criminalizing same-sex relationships, the concealment of sexual orientation and/or gender identity, the causal relationship between persecution actors and the threat of persecution due to reasons in the Convention, procedural issues, credibility and the

[299] For the full text of the Conclusions 2000-2009, see, «Conclusions Adopted by The Executive Committee on The International Protection of Refugees 1975 – 2009 (Conclusion No. 1 – 109) », pages 137-201, above

[300] For the reviews on UNHCR's conclusions, see, «Mülteci Kadınların Durumuna İlişkin Bir Değerlendirme, Hem Mülteci Hem Kadın: Mülteci Kadınlar Ne Yaşıyor? Ne Yapmalı? », *Mülteci-Der.,* 09.03.2018, [consulted on 06.05.2019], http://www.multeci.org.tr/haberler/multeci-kadinlarin-durumuna-iliskin-bir-degerlendirmehem-multeci-hem-kadin-multeci-kadinlar-ne-yasiyor-ne-yapmali/; EDWARDS, Alice, «Age and Gender Dimensions in international refugee law», p. 51, [consulted on 06.05.2019], https://www.unhcr.org/419c74784.pdf; KARA, Hayriye, «Türkiye'deki Sığınma Sistemi ve LGBTİ Mülteciler», Ayrıntı Journal, 11 August 2017, [consulted on 13.05.2019], http://ayrintidergi.com.tr/turkiyedeki-siginma-sistemi-lgbti-multeciler/

[301] For the full text of the Guidelines, see, «Guidelines on International Protection, No 9», UNHCR, HCR/GIP/12/09, 23 October 2012, [consulted on 25.11.2019], https://www.unhcr.org/509136ca9.pdf

determination of the applicant's gender identity were broadly discussed. In all these issues, the principles and sensibilities that should be considered were tried to be identified. In this section (p.12) it is stated that a proper analysis as to whether a LGBTI applicant is a refugee under the 1951 Convention needs to start from the premise that applicants are entitled to live in society as who they are and need not hide that. 16th paragraph regulates that the term "persecution" though not expressly defined in the 1951 Convention, persecution will depend on the circumstances of the case, including the age, gender, opinions, feelings and psychological make-up of the applicant. In this way gender was also referred to as a cause of persecution. The continuation the causes of persecutions such as threats of serious abuse and violence, laws criminalizing same-sex relations, concealment of sexual orientation and/or gender identity are explained. In this section, it is very important to make direct reference to gender, gender identity, sexual orientation criteria and to give specific explanations about LGBTI refugees in terms of guiding governments in practice.

303. The "Reports of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity prepared by independent expert Vitit Muntarbhorn" was adopted July 19, 2017, by resolution 32/2 of the UN Human Rights Council.[302] The theme of the report was identified as "embrace diversity and energize humanity." It was identified six underpinnings to be elaborated in the report: "The decriminalization of consensual same-sex relations and gender identity and expression; effective anti-discrimination measures; the legal recognition of gender identity; destigmatization linked with depathologization; sociocultural inclusion; and education with empathy." Working as a volunteer, the expert stated that key elements of his task are the implementation of international instruments by identifying good practices and gaps; awareness of violence and discrimination and connection to fundamental causes; interview, consultation and cooperation with states and other stakeholders; and the support of international cooperation and similar services to assist national efforts.

[302] For the full text of the Independent Expert report, see, «Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity», United Nations General Assembly, A/72/172, 19 July 2017, [consulted on 22.05.2019], http://www.kaosgldernegi.org/resim/yayin/dl/bm_lgbti_haklari_uzman_raporu.pdf

304.” The report, significant developments in human rights law and practices at both national and international levels are covered under a separate heading. In this section, the resolutions and practices of international organizations such as the UN High Commissioner for Human Rights and the Human Rights Committee, which include positive developments in terms of gender-based discrimination, are exemplified. It is also included the positive contributions of regional regulations such as the Inter-American human rights system, the Arab Charter of Human Rights, and the Declaration of human rights of the Association of Southeast Asian Nations (ASEAN), which constitute regulations for the protection of persons discriminated against due to sexual orientation and gender identity. In this section, as an example of national developments, it has been addressed current developments such as that the Canadian Parliament has adopted a new law extending the scope of the Canadian Human Rights Act to include trans people, including protection from hate speech, and that Germany and China have taken steps to recognize same-sex marriage in Taiwan.

305. The report highlighted the discrimination, violence, oppression, and tyranny that children and young people are subjected to in the family environment, school and other areas because of their different gender identities and sexual orientations. It also covered some of the statements made on May 17, 2017, at the International Day Against Homophobia, Transphobia, and Biphobia by an independent expert and several United Nations Human Rights Convention bodies, special procedures and regional mechanisms for the protection of such children and young people.

306. Following the statement, the Independent expert gave examples of different activities and organizations conducted in cooperation with human rights and non-governmental organizations in many parts of the world and emphasized the significance of the role of such foundations and organizations working on sexual orientation, gender identity and expression and gender characteristics

307. The report, in which it is stated that 25 countries more have taken some steps in the past 20 years to decriminalize consensual relations, noted that more than 70 countries still consider it a crime. Due to these regulations, it has been noted that in addition to custody and practices of arrest, capital punishment has also been implemented in some countries. Concerning the criminalization of same-sex relationships in different parts of the world,

examples of reform between 2012 and 2016 were mentioned and positive developments were also noted.

308. In the section entitled “Effective anti-discrimination measures” of the report, it is stated that people having different sexual orientation and gender identity can sometimes be at the target of violence and discrimination and that violence can be seen extensively in many environments. In the continuation of the report, examples of legal regulations and practices adopted in many different countries for the prevention of such discrimination and violence are mentioned. At the end of the report, there is a section entitled "Conclusions and Recommendations". In this section, it is stated that the first report draws attention to, in particular, the decriminalization of homosexual relations and gender identity and expression and effective anti-discrimination measures to prevent and eliminate violence and discrimination. It has been stated that the Independent Expert would investigate, in its reports to be prepared in 2018, issues such as legal recognition of gender identity, non-stigmatization of it in connection with not considering as a disease, socio-cultural inclusion and the encouragement of education and empathy. Many suggestions and recommendations have been made to address gender-based discrimination, in particular, to encourage states to ratify and fully implement basic international human rights conventions, including those relating to sexual orientation and gender identity. For example, it has been pointed out that states should amend laws, policies, and practices that criminalize consensual same-sex relationships, laws that criminalize transgender persons concerning gender identity and expression, and other ambiguous laws that arbitrarily detain and harass LGBTI persons. The report, in which it is emphasized that states need to take effective measures to combat discrimination, includes the need for various stakeholders to implement training and capacity building measures on sexual orientation and gender identity to improve empathy for diversity specific to humanity from a young age.

309. The Independent Expert Report has systematically addressed both reactionary and negative regulation and practices and positive developments in terms of gender-based discrimination at international and national levels. Besides, it provided important advice on measures that states should take at both legal and practical levels to prevent hate crimes and discriminatory policies experienced based on different gender identity, gender expression, sexual orientation or gender characteristics, all of which are exemplified by

practices in different areas of life. In this respect, it is regarded as one of the essential documents in terms of guiding the states.

310. As can be seen in the above-exemplified resolutions and guidelines, it is understood that the UNHCR's approach is that gender-based discrimination and the well-founded fear of persecution by women and girl refugees and LGBTI refugees should be addressed in the context of the 1951 Convention under the definition of a refugee. The Committee also drew attention to many important issues that states should consider in law and practices, including, in particular, the recognition of refugee status, the identification of gender identities without violation of their privacy, and experiencing sexual identities freely.

B- Resolutions of the Council of European Union, the Committee of Ministers and the Parliamentary Assembly to Prevent Gender Discrimination

311. The Council of the European Union determines that many LGBTI people still suffer discrimination, violence, exclusion and suffering from sexual orientation or gender identity. The Council which takes attention to this discrimination on grounds of sexual orientation or gender identity considers it is not compatible with Council of Europe standards. Since the early 1980s, it has been recognizing and combating various human rights violations against LGBTI people. The Parliamentary Assembly, the Committee of Ministers and the Congress of Regional Authorities also have many recommendations and texts addressing the combat against gender-based discrimination. The Parliamentary Assembly's first recommendation on this issue is the Resolution numbered 924 and dated 1 October 1981 on "Discrimination against Homosexuals".[303] The recommendation stressed the persistence of oppression and discrimination against homosexuals and called on states to ensure the equality and security of these people. The Council's Recommendation numbered 2010/5 and dated 31 March 2010 on measures to combat discrimination based on sexual orientation and gender identity is also an important source of international law.[304] In the Recommendation it is defined that specific provisions that

[303] For the full text of the Parliamentary Assembly's Recommendation 924, see, « Recommendation Discrimination Against Homosexuals», Parliamentary Assembly, REC 924, 1981 - 33rd Session - Second part, 01.10.1981, [consulted on 29.11.2019], https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=14958&lang=EN,

[304] For the full text of EC 2010/5 see, *Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity Council of Europe Standards*, Strasbourg, Council of Europe Publishing, June, 2011, p.7-46 [consulted on 29.11.2019], https://rm.coe.int/168047f2a6

will be adopted and effectively implemented by member states to combat gender-based discrimination, to ensure respect for the rights of LGBTI people and to promote tolerance towards them. The Parliamentary Assembly's Recommendations 1728/2010[305] and 1915/2010[306], entitled "Discrimination based on sexual orientation and gender identity", are other similar decisions. There are many other decisions such as The Committee of Ministers' reply to Recommendation 1470 (2000) – Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe[307] and the Council of Europe Local and Regional Authorities' Recommendation 211/2007 on the freedom of assembly and expression of lesbian, gay, bisexual and transgender persons, are guiding texts in combating gender-based discrimination.[308]

312. Recommendation CM/Rec 2010/5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity was accepted on 31 March 2000 at the 1081st meeting of the Ministers' Deputies. The Recommendation stresses the Committee's commitment to the principle of equality of all people without discrimination. It is recognized that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalization, marginalization, social exclusion and violence – on grounds of sexual orientation or gender identity. Thus, it is stated that specific action is required to ensure the full enjoyment of the human rights of these persons. The Committee declared its recommendations to the member states as 5 articles:

1. Examine existing legislative and other measures, keep them under review, and collect and analyze relevant data, to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

---

[305] For the full text of Parliamentary Assembly's Recommendation 1728/2010, see, «Discrimination based on sexual orientation and gender identity», Resolution 1728, Parliamentary Assembly, 29 April 2010, [consulted on 29.11.2019], https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17853&lang=en

[306] For the full text of Parliamentary Assembly's Recommendation 1915/2010, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», p. 51-52, above

[307] For the full text of the the Committee of Ministers' reply to Recommendation 1470 (2000), see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», p. 99-100, above

[308] For the full text of Council of Europe Local and Regional Authorities' Recommendation 211/2007, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», p. 105-107, above

2. Ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

3. Ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

4. Be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. Ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

313. It is important that with these recommendations, states should be invited to be responsible for various issues such as combating and preventing discrimination based on gender identity and sexual orientation, following up the developments on this issue, making and compensating victims for legal remedies, and considering these principles in laws, policies and practices. In addition to the resolution, the measures to be taken by the states against discrimination based on sexual orientation and gender identity in terms of various rights and explanatory memorandum (diplomatic note) are included. some of these rights are seen as the right to o life, security and protection from violence; freedom of association; freedom of expression and peaceful assembly; right to respect for private and family life; employment; education; health; housing; seek asylum. In this way, it is explained that necessary measures should be taken to create awareness about discrimination against different gender identities and sexual orientations in terms of rights and freedoms dealt with separately, to prevent, punish discriminatory actions and to ensure equal benefit of all rights. In the articles 42,43,44 that are given placed in section 10th on right to seek asylum states are advised on the rights to be granted based on different gender identities and sexual orientation. According to article 42, in cases where member states have international obligations in this respect, they should recognize that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law. It is

important here that the fear of persecution based on sexual orientation and gender identity is recognized. In the article 43, it is regulated that member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity. Today, it is known that homosexual relations are still accepted as criminal and subjected to severe penalties such as imprisonment or even death penalty in many countries. Therefore, it is important to emphasize the non-refoulment principle based on different gender identities and sexual orientations for the safety of LGBTI asylum seekers. Finally, Article 44 is as follows: Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation. This article is particularly important to prevent the abuse, oppression and violence suffered by both women, children and LGBTI asylum seekers during the asylum process, both by civil servants and other civilian and other asylum seekers. With this recommendation, the Council of Europe has not only determined principles and recommendations for equality of different gender identities and sexual orientations. It also called on all executive committees and other committees involved in intergovernmental co-operation in the Council of Europe to ensure that member states, in their present and future activities, show the necessary attention to the laws and practices in this regard.

314. The Explanatory Memorandum was prepared as appendix to the Council of Europe Decision by the Secretariat in cooperation with the Chairperson of the Committee of Experts on Discrimination on Grounds of Sexual Orientation and Gender Identity (DH-LGBT).[309] At its 1048th meeting, on 16 February 2009, the Committee of Ministers approved the terms of reference thus entrusted to the Committee of Experts on Discrimination on Grounds of Sexual Orientation and Gender Identity (DHLGBT), under the authority of the CDDH. The CDDH decided that an appendix to the recommendation should set out the principles deriving from existing European and other international

[309] For the full text of Explanatory Memorandum, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», pages 14-45, above

instruments, with particular emphasis on the European Convention on Human Rights, in the light of European Court of Human Rights case law. The CDDH approved the proposed text of the present recommendation at its 69th meeting (24-27 November 2009) and transmitted it to the Committee of Ministers, which adopted it on 31 March 2010, at the 1081th meeting of the Ministers' Deputies. In the Memorandum it is stated that, unlike the Recommendation, member states' governments would be invited, through the Committee of Ministers, to review the implementation three years after its adoption concerning the monitoring of the recommendation. Thus, it has aimed to strengthen the effectiveness of the principles and recommendations identified. The Memorandum makes recommendations on twelve headings, ten of which are related to rights and freedoms, similar to the Council's decision. However, it is seen that these titles are covered in a much wider way and the issues that should be observed by the states in both their legal arrangements and in practice are explained. For example, in the first article titled "the right to life, security and protection from violence" on hate crimes it is seen that many issues such as the definition, scope of these crimes, how the investigation and sanction processes should be followed, the approach of the ECtHR on the issue and the measures to be taken by the states are included. In this way, the duties and responsibilities of states can be stated more clearly and uncertainties that may occur in practice can be prevented. Besides, all the relevant decisions and texts of the European Union institutions such as the Committee of Ministers, the ECHR, the Parliamentary Assembly have been included in terms of all rights.

315. In addition to the decisions given above, The Message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on "equal rights and dignity of lesbian, gay, bisexual and transgender persons"[310]; Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech"[311]; Recommendations 1915 (2010) and 1728 (2010) of the Parliamentary Assembly on "Discrimination based on sexual orientation

[310] For the full text of the Message, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», pages 46-47, above
[311] For the full text of the Message, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», pages 47-51, above

and gender identity"[312]; "Discrimination based on sexual orientation and gender identity Report" by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly[313] are the other important sources on gender equality and prevention of discrimination.

C- Decisions of the ECHR on gender-related problems

316. As mentioned in Chapter One, the decisions of the ECHR are binding for the state party to the case. However, the court's statements, recommendations, and comments while evaluating the application are precedent to be considered for other states as well. The role of the Supreme Court is also significant in resolving current issues that are not included or not explicitly stated in conventions and laws. The Court has determined since the early 1980s that human rights of LGBTI people have been violated in different ways. Dudgeon v. United Kingdom case (ECHR Decision Reference No: 7525/76, 22 October 1981, Strasbourg) is considered, as the court's first important decision on sexual orientation and gender identity.[314] In the decisions of the ECtHR immediately after that 1988 Norris Irish decision (Application No: 10581/83, Decision Date: 26 October 1988)[315] and 1993 Modinos Cyprus decision (Application No: 1507089, Decision Date: 22 April 1993)[316], it is seen that criminality of based gay relations is a violation of the

---

[312] For the full text of the Recommendation, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», pages 51-56, above

[313]For the full text of the Report, see, «Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity», pages 56-88, above

[314] For detailed information about evaluations of the decision, see, ARNARDÓTTIR, Oddný Mjöll, *Equality and Non-Discrimination Under the European Convention on Human Rights*, New York, Martinus Nijhoff Publishers, 2003, [consulted on 02.07.2020], p.170, https://books.google.fr/books?id=0-7ijEFOS80C&pg=PA170&lpg=PA170&dq=.+Dudgeon+v.+United+Kingdom+case+is+very+important&source=bl&ots=8bLKUyBFTA&sig=ACfU3U2inth5tridnyX5PCepLr4MGGKAgA&hl=tr&sa=X&ved=2ahUKEwiw4oOnlq7qAhWP2hQKHQyMDpU4ChDoATABegQIChAB#v=onepage&q=.%20Dudgeon%20v.%20United%20Kingdom%20case%20is%20very%20important&f=false; *Kurtuluşumuz İçin Bize Bir Yasa Gerek, Türkiye'de Toplumsal Cinsiyet, Cinsellik ve İnsan Hakları*, Human Rights Watch Publishing, May 2008, New York, p.95, [consulted on 02.07.2020], https://books.google.fr/books?id=QJ4y_HoLkvUC&pg=PA95&lpg=PA95&dq=Dudgeon+v.+Birleşik+Krallık+davası+kararı+cinsiyet&source=bl&ots=TT5fh8VdjT&sig=ACfU3U317gPHisjCGy54S9UwT_nkbwdUww&hl=tr&sa=X&ved=2ahUKEwjGhu3sla7qAhXQDmMBHc0VCScQ6AEwAHoECAoQAQ#v=onepage&q=Dudgeon%20v.%20Birleşik%20Krallık%20davası%20kararı%20cinsiyet&f=false

[315]For the full text of the Case of Norris v. Irish Decision, see, «Case of Norris v. Ireland», Application No. 10581/83, Council of Europe: European Court of Human Rights, 26 October 1988, [consulted on 02.07.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-57547"]}

[316]For the full text of the Case of Modinos v. Cyprus Decision, see, «Case of Modinos V. Cyprus», Application No.15070/89, Council of Europe: European Court of Human Rights, 21.03.2000, [consulted on 02.07.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-57834"]}

right to privacy protected by Article 8 of the ECHR. The High Court accepted that the Article 14 titled "Protection from Discrimination" includes sexual orientation, too in the decisions of Salgueiro da Silva Mouta v. Portugal [317](Application No: 33290/96, Decision date:21 December 2001) ve Karner v. Austria'nın (Application No: 40016/98, Decision Date: 24 July 2003 [318]. As the Court's decisions regarding violations of gender equality in this way play an important role in combating gender-based discrimination, it will be mentioned some of the highlights in the literature.

317. In the Dudgeon Decision, police obtained some evidence that the applicant was homosexual during a police search of the applicant's home in January 1976 due to a criminal charge against Jeffrey Dudgeon[319]. Based on the regulation of the Northern Ireland Criminal Code which considers the act of men consenting to same-sex relations to be a "shameless act and a crime", an investigation has also been launched against the applicant. The Supreme Court considered that the same-sex relationships experienced in the applicant's residence were within the scope of his private life, and therefore stated that the relevant provisions of the Criminal Code lacked a legal basis. In its decision on the matter, the ECHR stated that the Criminal laws of Northern Ireland were disproportionate to the objectives intended to be achieved due to their restraint, broadness, and ambiguity. The Supreme Court considered that the same-sex relationships experienced in the applicant's residence were within the scope of his private life, and therefore stated that the relevant provisions of the Criminal Code lacked a legal basis. As a result, the ECHR judged that Northern Ireland's criminal code prohibiting same-sex relations violated the right to respect for private and family life enshrined in Article 8 of the ECHR.

---

[317]For the full text of the Case of Salgueıro Da Sılva Mouta V. Portugal decision, see, «Case of Salgueıro Da Sılva Mouta V. Portugal », Application No.33290/96, Council of Europe: European Court of Human Rights, [consulted on 25.11.2019], https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58404%22]}

[318] For the full text of the Case of Karner V. Austria Decision, see, « Case of Karner V. Austria », Application No. 40016/98, Council of Europe: European Court of Human Rights, 24.10.2003 [consulted on 25.11.2019], https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61263%22]}

[319] For the full text of the Case of Dudgeon v. The United Kingdom Decision, see, « Case of Dudgeon v. The United Kingdom », Application No. 7525/76 , Council of Europe: European Court of Human Rights, 24 February 1983, [consulted on 25.11.2019], https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61263%22]}

318. The ECHR, also made assessments regarding gender equality-based violations in the Baczkowski v. Polish Case (Reference No:1543/06, Date of the Decision: 09/24/2007).[320] The applicants in the mentioned case are the Equality Foundation (Fundacja Równości) and the members of the foundation, Tomasz Bączkowski, Robert Biedroń, Krzysztof Kliszczyński, Inga Kostrzewa and Tomasz Szypuła. The applicants aspired to organize a march on June 10-12, 2005 in Warsaw, in the context of equality days, to draw public attention to sexual, national, ethnic, and religious discrimination, as well as discrimination against women and the handicapped. The mayor made a statement to a newspaper that propagandizing homosexuality was not considered to be part of freedom of expression. Then, on June 3, 2005, the foundation's application for the march was rejected because it had not submitted a traffic organization plan. However, for the other demonstrations to be held on June 12, a decision for a permit was made on June 9. During the permitted demonstrations, themes such as "Christians are citizens compatible with God's and nature's orders," demanding harsher punishments for pedophilia prisoners against adoptions of homosexuals were featured. The Equality Foundation conducted its action despite not being allowed and appealed to the Domestic Court for the claim that the decision against them was discriminatory. Following the adverse decision of the domestic court, they brought the issue to the ECHR, claiming that the decision of not allowing a march was contrary to the ECHR. In its decision on the issue, the court gave examples of its many previous decisions and addressed the importance of democracy and pluralism. For this purpose, the court stated that requests to be made through democratic means are not determined by the law and cannot be restricted in a democratic society unless necessary and that Article 11 of the Convention on freedom of association was violated. Besides, the court decided that Article 13, which regulates the right to taking effective legal action, and Article 14, which regulates the prohibition of discrimination, had also been violated.

[320] For the full text of the Case of Baczkowski and Others v. Poland Decision, see, « Case of Baczkowski and Others v. Poland », Application No. 1543/06 , Council of Europe: European Court of Human Rights,, 24.09.2007, [consulted on 20.05.2019], https://hudoc.echr.coe.int/tur#{%22fulltext%22:[%22B%C4%85czkowski%20poland%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-80464%22]}

319. In the S. L. v. Austrian Case (Application No: 45330-99; Decision Date: January 9, 2003),[321] the applicant claimed that it was discriminatory to be by the existing national legislation that according to consent between men, when one of the parties is under the age of eighteen, it is accepted as a crime, it constitutes a crime for women (both lesbian and heterosexual) as 14 years old. In its decision on the case, the ECHR found that this practice in Austria created discrimination based on sexual orientation.

320. It is seen that the ECHR protects state interventions related to sexual orientation under its protection scope of Article 8 of the Convention on the right to respect for private and family life.[322] The Court's Karner v. judgment of Austria Case (Application No: 40016/98; Decision Date: 24 July 2003)[323] can be given as an example of the approach that state interventions on this issue should not be discriminatory. The applicant applied to a violation of the national legislation that stipulates the right of a relative or "partner" to become a successor to the tenancy agreement if the principal tenant dies. In the application, it was claimed that it was a violation of the Convention that the law was interpreted as not including homosexual couples, although it may include unmarried heterosexual couples. The Austrian government acknowledged that the practice involved different treatment based on sexual orientation. However, it argued that this was a just practice for protecting those living in traditional families from losing their home. The ECHR stated that protecting the traditional family may be considered as a legitimate aim in the decision, but "the margin of appreciation is limited when there is a difference in treatment based on sex or sexual orientation". It also considered that it was not enough to demonstrate that a particular measure was in principle appropriate for achieving the desired goal, as required by the principle of proportionality, but also that it was necessary to exclude people in certain categories. As a result, the ECHR ruled that there was gender-based discrimination since Austria's measures to protect the traditional family are not used in a way that does not harm homosexual couples.

---

[321] For the full text of the Case of S.L. v. Austria decision, see, « Case of S.L. v. Austria », Application No. 45330/99, Council of Europe: European Court of Human Rights, 09.04.2003, [consulted on 03.07.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-60877"]}

[322] For more information, see, *Avrupa Ayrımcılık Yasağı Hukuku El Kitabı*, European Union Agency for Fundamental Rights, 2010, p. 98, [consulted on 03.07.2020], https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_TR.pdf

[323]For the full text of the Case of ECHR's Karner v. Austria decision, see, « Karner v. Austria », above

321. The ECHR's decision on Jabari v. Turkey case (Application No: 40035/98; Decision date: 11/07/2000) relates to the evaluation of the decision made by Turkey to deport the woman applicant who is Iranian.[324] The applicant, Jabari, was detained in Iran on suspicion of having sexual relations with a married man but was later able to escape with the help of his family. To reach Canada via France, she went to France by passing through Istanbul. However, it was understood at passport control in France that she had a fake passport and was then sent back to Istanbul. The applicant applied for asylum because she was at risk of being stoned and killed in Iran if deported from Turkey. Turkey rejected the applicant's request because she did not apply for asylum in Istanbul or Paris and that she missed the 5-day application period set out in the 1994 regulation, and it was decided that Jabari should be deported. Jabari then applied to the UNHCR and was granted refugee status. Also, the applicant appealed to the ECHR as a precautionary measure. The ECHR ruled that the deportation of the applicant woman would be a violation of Article 3 of the Convention on the Prohibition of torture. Following this decision, Turkey extended the 5 days period set by the 1994 regulation to 10 days to apply for asylum. However, this period is specified in such a way as to preserve its feature of lowering rights. [325]

322. The OM v. Hungarian decree of the ECHR (Application No: 9912/15, Decision date: 05/07/2016) relates to the application of an Iranian citizen to the alleged violation of the convention of the arrest of a homosexual applicant in the process of seeking asylum in Hungary.[326] The applicant secretly crossed the Hungarian border through Serbia on 24 June 2014. He was later captured by a Border Guard patrol and arrested because he could not prove his identity and show any evidence of his legal right to be in the country. The applicant had requested asylum and explained that he had fled Iran because of his homosexual identity and had been forced to enter Hungary illegally. It was later decided by the Immigration and Citizenship Office to arrest the applicant because he entered the

[324] For the full text of "Case Of Jabari V. Turkey" Decision, see, « Case of Jabari V. Turkey », Application No. 40035/98, Council of Europe: European Court of Human Rights, 11.10.2020, [consulted on 25.11.2019], https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58900%22]}

[325] For the evaluations of the decision, see, ÖZKERIM, GÜNER, «Neslihan, Avrupa İnsan Hakları Mahkemesi'nin Mültecilerin Haklarının Korunmasındaki Rolü», *Journal of Migration Research,* [online], July-December 2016, Volume 2, No. 2, p. 222-223, [consulted on 13.05.2019], http://www.gam.gov.tr/files/neslihan-ozkerim.pdf

[326]For the full text of Case of OM v. Hungary Decision, see, « Case of OM v. Hungary », Application No. 9912/15, Council of Europe: European Court of Human Rights, 5 July 2016, [consulted on 02.07.2020], https://www.refworld.org/cases,ECHR,577b7dcf4.html

country illegally and did not have identity documents. His asylum confinement continued until 22 August 2014. As of this date, the prison sentence against the applicant has been abolished and the applicant has been given an opportunity to a safe residence. The applicant applied to the ECHR for infringement against Hungary, stating that the arrest of him was not legal and that even so, other mitigating measures had not been considered. The Supreme Court's decision on the matter stated that detention of asylum seekers may only be possible in some specific circumstances, but this did not include the requirement to provide documentary evidence about the identity or nationality of an asylum seeker. The Supreme Court also pointed out that states should consider the circumstances that compel LGBTI individuals to flee their country, and their situations, such as whether they will be safe in custody. As a result, considering that the detention decision against the applicant was a violation of the right to freedom and security set out in Article 5 of the ECHR, the Court decided that 7,500 euros in non-pecuniary compensation should be paid to the applicant.

323. For the Court to consider any application within the scope of the prohibition of discrimination under Article 14 of the ECHR, the situation that is the alleged source of discrimination must be related to a right guaranteed in the Convention or Additional Protocols.[327] In the application of this principle, regardless of whether it is brought up by the parties of case or not, judges and prosecutors should apply the protection measures envisaged under the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Union (EU) non-discrimination directives. Another basic regulation on the prohibition of discrimination is Protocol No. 12. It is possible to say that the Protocol has a wider scope, since in the definition of discrimination specified in the Additional Protocol, discrimination is prohibited in terms of "the exercise of all rights regulated by law". The ECHR stated that the Convention imposed a general prohibition of discrimination and that the 12th Protocol established an independent right against discrimination.in its case under Article 1 of Protocol No. 12 (see Sejdic and Finci Bosnia and Herzegovina Case: Application No: 27996/06, 34836/06, Decision Date:

[327] For detailed information, see, BAKIM, Sevi, «Avrupa İnsan Hakları Mahkemesi (AİHM) Kararları Çerçevesinde Cinsiyet Ayrımcılığı », Marmara University Faculty of Law Legal Studies Journal, [online], Year 2016, Volume 22 , No. 3, p. 3199, [consulted on 02.07.2020], https://dergipark.org.tr/en/download/article-file/373743

December 22, 2009).[328] It was stated that the meaning of the term discrimination is the same as in article 14, in the decision that it is stated that any rights created by national legislation or practice or that can be obtained by inference will fall within the scope of this Protocol. "The Court has established an analytical framework in its case-law on Article 14. This analytical framework enables the definition of functional discrimination concepts of the Convention."[329] It appears that the Court adopted an expanding interpretation when determining the scope of the Convention's rights.[330] For example, In the EB v. France Decision (Article No: 43546/02; Date of Judgment: 22 January 2008)[331], the Court notes that it is important not to have such a request, as Article 8 did not grant a right to found or adopt a family. However, it pointed out that even if the matter in question is not linked to a special right afforded by the ECHR, a complaint of discrimination can fall within the scope of a particular right. The Court considered that the application was strictly within the scope of Article 8, as the right to adoption was regulated in the French national legislation. In the relevant case, the Court stated that the sexual orientation of the applicant had played a decisive role in the rejection of his willingness to adopt by the authorities, and the court found that the applicant had been discriminated against compared to other single people who had the right to adopt according to national law. In the same decision, the ECHR's approach to the scope of Article 8 was explained as follows: *The concept of "private life" in the meaning of Article 8 of the Convention is a broad concept that includes, among other things, the right to establish and develop relationships with other people, the right to "personal development" or self-determination. It includes the elements that fall into the personal sphere protected by*

[328] For the full text of the Case of ECHR's Sejdic and Finci Bosnia and Herzegovina Decision, see, « Case of Sejdic and Finci Bosnia and Herzegovina», Application No. 27996/06 and 34836/06, Council of Europe: European Court of Human Rights, 22 December 2009, [consulted on 03.07.2020], https://hudoc.echr.coe.int/fre?i=001-96491 S.L. v. Austria

[329] ARNARDÓTTIR, Oddný Mjöll, « Non-Discrimination Under Article 14 ECHR - The Buden of Proof », p. 14, above

[330] For detailed information, see, « European Non-Discrimination Law Handbook », p.11-85, above; MCCRUDDEN, Christopher and PRECHAL, Sacha, « The Concepts of Equality and Non-Discrimination in Europe: A practical approach», European Network of Legal Experts in the Field of Gender Equality, June 2, 2009, [consulted on 03.07.2020], http://webcache.googleusercontent.com/search?q=cache:6YzZ7I6lu1MJ:ec.europa.eu/social/BlobServlet%3FdocId%3D4553+&cd=1&hl=tr&ct=clnk&gl=fr&client=opera

[331]For the full text of the Case of ECHR's EB v. France Decision, see, « Case of EB v. France », Application No. 43546/02, Council of Europe: European Court of Human Rights, 22 January 2008, [consulted on 03.07.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-84571"]}

Article 8, such as gender determination, sexual orientation and sexual life, and the right to respect for not giving or not making children. (see p. 43)

324. Cases related to gender discrimination are mostly in the way that women are treated less favorably than men. However, there are exceptional examples of this situation for men.[332] Although the expressions of gender, different sexual orientation and gender identities are not explicitly stated in the ECHR, the ECtHR states that sexual orientation and gender identity are among the legal interests protected in Article 14, and that the state should not intervene in the individual cases. [333] As an example, we can show decisions Christine Goodwin v. England (Application No: 28957/95; Decision Date: 11 July 2002)[334] and I. V. England (Application No: 25680/94, Decision Date: 11 July 2002)[335] that are very similar. In both cases, the applicants who switched from male to female with a sex-change surgery, applied due to the government's refusal to make changes in birth certificates. The applicants stated that they had been subjected to discriminatory treatment such as embarrassment and humiliation when they had to explain their legally recognized male gender due to the fact that their previous sex was still used in some such documents. The ECHR decided that this practice of England is a violation of the right to respect for private life and the right to marry in its decisions regarding these cases, and didn't made an examination whether or not there has been a violation of Article 14.

325. As shown in the examples of the above decisions, it is understood that the Court considers discriminatory laws and practices based on gender identity and sexual orientation as a violation of the Convention. In terms of the asylum process, the Court considers that in the procedures and decisions to be followed regarding LGBTI asylum seekers the reasons that force them escape from their country and their security should be evaluated individually. In its decisions on this issue, it seems that the Supreme Court

---

[332] For sample decisions on this see, « Case of Defrenne Sabena Belgium », Application No. 149/77, Council of Europe: European Court of Human Rights, 15 June 1978, [consulted on 03.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61975CJ0043&from=EN; «Case of Unal Tekeli Turkey », Application No: 29865/96, Council of Europe: European Court of Human Rights, 16 November 2004, [consulted on 03.07.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-67482"]}

[333] « European Non-Discrimination Law Handbook », p. 93-98, above

[334]For the full text of the Case of ECHR's Christine Goodwin v. England Decision, see, https://hudoc.echr.coe.int/eng-press#{"itemid":["001-60596"]}, 03.07.2020

[335]For the full text of the Decision, see, «Case of I. V. England» Application No. 25680/94, Council of Europe: European Court of Human Rights, 27 May 1997, [consulted on 03.07.2020], http://www.pfc.org.uk/caselaw/I.%20v.%20England.pdf

considered regulations such as the *prohibition of torture* regulated in Article 3, *right to liberty and security* in Article 5, *right to respect for private and family life* in Article 8, *freedom of expression* in Article 10, *freedom of assembly and association* in Article 11, *right to an effective remedy* in Article 13, and *prohibition of discrimination* in Article 14. The ECHR assessed that persons who are under the threat of persecution in their countries in the form of discrimination, oppression, assault, exclusion, arrest, execution, and others for gender-based reasons should not be sent back to countries where they would be persecuted, and decided that the decisions concerning the repatriation and deportation of such persons were a violation of Article 3 of the Convention. Also, in some other decisions, it asserted that organizations established for gender equality should be granted freedom of association, assembly, and expression and that the decisions and practices contrary to this were inappropriate to the regulations in Articles 10, 11 and 14 of the Convention. It considered the practice of investigating and punishing persons of different sexual orientation and gender identity in their private areas as being contrary to Article 8 of the Convention. The Supreme Court does not rule on the compensation penalty solely to states in infringement decisions related to the matter. In such decisions, it makes assessments of the unlawful legal arrangements and practices of states, thus guiding for the correction of gender-based discriminatory laws and practices.

D- Decisions of the European Court of Justice (ECJ) on gender-related problems

326. The Court of Justice of the European is the judicial unit of the Union. The purpose of the Court of Justice is to ensure that EU legislation is interpreted and applied in the same way in all member states. This will prevent the State parties from making different decisions on the same issue and ensure that the laws are equal for everybody. The particularities such as the units of the Court of Justice of the European Union, how the judges would be chosen, their period of office, which cases they would rule are regulated in Article 19 of the Treaty on European Union.[336] In paragraph 3 of the relevant Article, it is enacted that the CJEU shall, by the treaties;

[336] For the full text of EU Convention, see, « Treaty on European Union and the Treaty on the Functioning of the European Union», *Official Journal C 32 , 26/10/2012 P. 0001 – 0390,* [consulted on 04.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT

a) rule on actions brought by a Member State, an institution or a natural or legal person;

b) give preliminary rulings, at the request of courts or tribunals of the Member States on the interpretation of Union law or the validity of acts adopted by the institutions;

c) rule in other cases provided for in the Treaties.

327. There are many important decisions made by ABAD on gender discrimination, which examines applications in various fields. For example, The Court's decision on Gabrielle Defrene v. Sabena Belgian Case (Case No: 149/77; Decision Date: June 15, 1978), is about the equal conditions of women and men in working life.[337] Considering the claim that the applicant was paid less than men who did the same job, the Court decided that this practice was gender discrimination, stating that the principle of equal pay is a basic human right.

328. Another example examined by ABAD is Maruko (Case Number: C-267/06, Decision date 1 April 2008) Germany Case, which relates to the rejection of the widow's salary request for the gay applicant, whose partner died.[338] The applicant requested from the insurance company due to the death of his partner, who had a life partnership before his death. However, the company refused this request because widow wages were paid only to spouses and that the plaintiff did not marry the deceased. In its assessment of the case, ABAD found that the "life partnership" institution in Germany brought many of the rights and responsibilities of spouses for life partners, particularly in terms of state pension schemes. While partnerships were in a situation similar to their spouses, The Court decision to reject the applicant's request as discrimination based on sexual orientation.

329. ABAD's Römer, Germany case (Case No: C-147/08; Decision date: May 11, 2011) likewise relates to the assessment of whether or not practices related to retirement rights

[337] For the full text of ECJ's Decision, see, « Case of Gabrielle Defrene v. Sabena Belgian », Application No. 149/77, ECJ, 15 June 1978, [consulted on 04.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?isOldUri=true&uri=CELEX:61977CJ0149

[338]For the full text of ECJ decision, see, «Case of Maruco Germany», Case No. C 267/06, ECJ, 1 April 2008, [consulted on 03.07.2020], http://curia.europa.eu/juris/document/document.jsf;jsessionid=DE860C47F300FAAAA7A2EACE40E31385?text=&docid=70854&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7857885

of non-married people are discriminatory in terms of gender.[339] The applicant who works in the city of Hamburg lives in a civil partnership with his partner. He wanted to take advantage of the retirement calculation right of married employees. However, the legal regulations of the state of Hamburg include more disadvantageous practices for unmarried couples. These arrangements, which deal with people living with civil partnership in the same scope as those who are not married, indicate that they cannot benefit from the pension rights that married people have. The Court assessed whether there is a comparable situation in this case as in Maruko law. Accordingly, The Court decided that the application should be comparable, if not the same, with married people, so that the applicant could be entitled to the same pension, this practice was directly discriminatory.

330. P. and S. Cornwall County Council, England Case (Case No: C-13/94; Decision date: April 30, 1996) is related to the applicant's dismissal due to sex-change surgery.[340] Accordingly, the applicant was dismissed by her employer while she was in the process of changing sex from male to female. In its decision ECJ, considered that the applicant's dismissal from his job because of his desire to change sex or that he had changed had undesirable treatment compared to those of his previous gender and decided that there was discrimination.

331. As can be understood from the decisions exemplified above, it is seen that ECJ evaluates the applications of women or people who are treated with discrimination due to their different sexual orientation and gender identities by comparing their cases with a different sex or married situations. As a result of this evaluation, it is understood that in the case of unequal and discriminatory treatment due to its gender, the Court has made decisions regarding discrimination. However, the Court also has decisions regarding the homosexual relations that these people cannot benefit from gender-based discrimination. For example, in its judgment of Lisa Jacqueline Grant v South-West Trains Ltd. (Case

[339]For the full text of ECJ's decision, see, «Case of Römer Germany», Case No. C 147/08, ECJ, 10 May 2011, [consulted on 04.07.2020], http://curia.europa.eu/juris/liste.jsf?language=en&num=C-147/08

[340] For the full text of ECJ's decision, see, «Case of P. and S. Cornwall County Council, England», C 13/94, ECJ, 30 April 1996, [consulted on 03.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0013&from=EN

No: C-249/96; Decision Date: February 17, 1998),[341] the Court considered that Article 8 of the ECHR did not cover homosexual couples. The applicant woman Grant requested that her female partner, with whom she had been together for two years, to benefit from the privileges that the workplace gave for the spouses. However, SWT has refused this request because travel privileges for non-married people can only be made for a partner of the opposite sex. Grant applied to ECJ on the claim that this employer's decision constitutes gender-based discrimination. ABAD stated in its decision that transsexuality is a biological and physical problem, but homosexuality is preferred by free will. For this reason, it admitted that the other spouses would only benefit from their travel privileges if they were a family with the opposite sex. As a result, the Court decided that the practice did not constitute gender-based discrimination, nor was it in violation of Article 14 on the prohibition of discrimination. However, as discussed in the previous heading, it is seen that the ECHR interprets the Convention more broadly in similar situations and accepts gender-based discrimination (For example, see Karner v. Austria decision, Application No: 40016/98; Decision Date: July 24, 2003).[342] There is a similar difference between ECHR and ECJR decisions regarding family reunification.[343] It is seen that the problem of inconsistency of ECHR and ECJ case law is frequently mentioned in the literature. In this difference, the different legal scopes of the two courts, such as their objectives and powers, play an important role. For example, while the ECHR interprets the scope of rights more broadly, ECJ limits itself to Union objectives.[344] This may lead both Courts to make different interpretations in similar situations. [345]

---

[341] For the full text of ECJ's Decision, see, « Case of Lisa Jacqueline Grant v South-West Trains Ltd. », C 249/96, ECJ, 17 February 1998, [consulted on 05.07.2020], http://curia.europa.eu/juris/liste.jsf?&num=C-249/96

[342]For the full text of the ECHR Decision, see, « Case of ECHR Karner v. Austria», above

[343] For more information, see, ÖZKAN, Işıl, « Avrupa İnsan Hakları Mahkemesi ve Avrupa Birliği Adalet Divanı Kararları Işığında Avrupa Birliği'nin Göç ve Sığınma Politikası», *Ankara Bar Association Journal,* [online], Year 2011, No. 69, p. 171-173, [consulted on 05.07.2020], http://www.ankarabarosu.org.tr/siteler/1944-2010/Dergiler/AnkaraBarosuDergisi/2011-1.pdf#page=165

[344] For detailed information, see, BESSON, Samantha, «Gender Discrimination under EU and ECHR Law: Never Shall the Twain Meet?», *Human Rights Law Review,* [online], 2008, Volume 8, No. 4, pages 647–682, [consulted on 04.07.2020], https://doi.org/10.1093/hrlr/ngn023; ÖZKAN, Işıl, «Avrupa İnsan Hakları Mahkemesi ve Avrupa Birliği Adalet Divanı Kararları Işığında Avrupa Birliği'nin Göç ve Sığınma Politikası», above

[345] For example, for different comments on evaluating calls made in workplaces within the context of privacy, see, «Case of Hoechst v. Case», Case No:46/87, ECJ, 21 September 1989, [consulted on 04.07.2020], http://curia.europa.eu/juris/liste.jsf?num=46/87&language=en; «Case of Niemitz v. Germany», Application No: 13710/88, Council of Europe: European Court of Human Rights, 16 December 1992, [consulted on 04.07.2020], https://hudoc.echr.coe.int/rus#{"itemid":["001-57887"]}

Conclusion Chapter 2:

332. As can be seen from the historical development of the international human rights instruments mentioned above, gender-based discrimination and the fight against it is an area where ever-changing, developing and new forms of discrimination are added.[346] In this respect, it is understood that while especially in the human rights documents up to 1980s, gender-based problems were dealt with based on women and/or children, in the more recent documents discrimination based on different sexual orientation, gender identity, and is included in the law. However, even more, recent documents such as the CEDAW Convention and the Istanbul Convention, which are the most important international legal instruments for the fight against gender discrimination and gender-based violence, appear to be based on dual-gender identity as male and female. Although some articles refer to different sexual orientations and gender identities, it is considered an important deficiency to act from the dual-gender identity throughout the Conventions. Despite such lack in the international Conventions, it is considered a positive development to emphasize all kinds of discrimination based on sexual orientation and gender regardless of gender identity in documents such as Yogyakarta Principles, UNHCR Guidelines, Council of Europe Committee of Ministers Decisions, ECHR decisions. The documents, such as guidelines, recommendations or court jurisprudence, which are mostly adopted by international organizations, are important sources in terms of guiding the states in the elimination of problems and needs that arise in a constantly changing and differentiated field such as gender.

General Conclusion Part 1

333. After the emergence of migration and asylum, international protection has also been on the agenda of states and international law. However, neither the so-called state nor the asylum-seeking individual is abstract and non-identity. As well as the individual to whom the state protects its rights and security has the identities such as class,

---

[346] For more information on this, see, BORA, Aksu, «Toplumsal Cinsiyete Dayalı Ayrımcılık: Çok Boyutlu Yaklaşımlar», *Istanbul Bilgi University Sociology And Education Studies Unit*, [consulted on 12.11.2019], https://cws.emu.edu.tr/tr/PublishingImages/sbsb-203-secmeli-ders/Toplumsal%20cinsiyet%20ve%20Hukuk_Aksu%20Bora.pdf

religion, gender, ethnicity, and social status, asylum-seekers have different identities in terms of the same criteria. For this reason, international law and practices of patriarchal powers are also addressed based on gender criteria, and it has been seen as an important problem by feminist studies. It is understood that until these studies both the basic concepts of international law and the issues related to migration and asylum are handled from a male dominant point of view, while women and other genders are kept in secondary position.

334. However, in the changing socio-economic world conditions, women and other genders have become more visible and have started to exist in all areas of social life, including business and social life. This existence also manifested itself by the activation of the role of gender groups other than men in the migration process. Over time, women also started to migrate for reasons such as get a better job, education, etc., instead of immigration for marriage or family unity. It is seen that LGBTIs are moving towards the migration path by expressing their demand for an equal and free life in the face of pressures and discrimination in their countries besides reasons such as business, economy, education. In the face of increasing immigration, along with the fact that states are based on security in border policies, has brought other problems. It has been seen that having to resort to illegal ways of the immigrants especially in forced migration for asylum, cause different negativities and problems in terms of gender. These groups, which are the target of abuse and rape in war, occupation and conflict, are also exposed to various oppression, harassment, abuse and attacks by human traffickers and gangs in illegal migration routes. It is understood from the studies included in this part that gender-based problems faced by women and LGBTI refugee groups continue in both countries by public officers and civilian citizens.

335. In parallel with the increase in awareness and rights struggle based on sexual orientation and gender identity, it is seen that this issue has been on the agenda of both academic studies and international law. In this respect, the CEDAW Convention and the its Optional Protocol, which brings important regulations and control mechanisms to end all forms of discrimination against women and ensure gender equality between men and women, are regarded as the most important international document regulating women's rights. In the Istanbul Convention, which was later adopted, it is a positive development to emphasize gender inequality as the main reason behind this problem as well as the fight

against violence against women. In addition, the Istanbul Convention has an important place for our work in terms of the provisions of the refugee women and regulations such as the handling of gender-based persecution within the scope of the definition of refugees. In addition, it is seen that the main criteria for the protection of LGBTI people and the protection of their rights and freedoms are determined in addition to the gender-based problems of women, especially in the arrangements such as ECHR, ABAD decisions, UNHCR guidelines, EC Recommendations issued since the 1980s.

Part 2: Gender based assessment of Turkey's refugee law and Experiences of Ngos in This Subject

336. The first chapter included more theoretical and conceptual titles such as gender, international protection and forms, refugee status, rights and freedoms of refugees, security phenomenon and security policies, feminist perspective in international relations and increased gender visibility in the migration process, international conventions and other regulations aimed at achieving gender equality. The first part of the second chapter included the titles of gender equality and the appearance of different sexual orientations and gender identity in Turkey that law to be clarified how the current situation in terms of Turkish citizens. Afterwards, Turkey's primary laws and regulations regarding refugee law were evaluated from a gender perspective. Refugee law is a very comprehensive whole related to all areas of life from working life to residence and housing, the combination of partners, social and health services. Therefore, it is possible to find content related to refugees in every regulation and practice in the legal system. However, it is necessary to accept that it is impossible and unrealistic to evaluate all legislation and practices of a country. For this reason, the study is limited to the evaluation of the relevant provisions affecting the rights and freedoms of refugees in the basic laws and regulations in force such as the YUKK, regulation on the Implementation of the Law, Temporary Protection Regulation, and some other legal regulations, which include systematic regulations on foreigners and asylum law.

337. In the second part of this chapter, interviews with 7 NGOs with activities for refugees in Turkey are included. These interviews were held in February, March 2020 in Ankara, Istanbul and Izmir, Turkey. All interviewing organizations have been selected from organizations that have work for women and/or LGBTI refugee groups. The request for interviews has been forwarded to other organizations that have work on a national and international scale. However, only 7 institutions that responded positively to the request could be interviewed. Thanks to the interviews conducted through the pre-prepared questions, very important data about the problems encountered by women and LGBTI refugees in Turkey were obtained. Thus, it was possible to evaluate the practical equivalent of the rule of law, which is theoretically examined in the first part. In this chapter, finally by analyzing the data obtained from the interviews, it was able to evaluate

in a whole how the regulations and practical implementation are in terms of gender-based refugee groups in Turkey.

Chapter 1: Assessment of Turkey's basic laws on refugees in terms of gender

338. Persons who seek refuge in Turkey, during in detention, repatriate or while continuing to live shelter centers, satellite cities where they have been settled, or in homes in which they have been accommodated with their means are subject to many violations of human rights, oppression, and discrimination by both public officials and civil persons or groups. This is the case in general for refugees; however, women, children, and LGBTIs living alone are at even higher risk of being subjected to oppression, violence, and discrimination. Due to the heteronormative structure, LGBTIs in Turkey also live under discrimination and oppression, and often because of this fear, they are unable to freely live through their sexual orientation and identity. It is, therefore, possible to state that only women, children and LGBTI refugees may be considered the most vulnerable among the groups taking refuge in Turkey. These people, fleeing the oppression, discrimination, and attacks they experience in their countries of origin, are also exposed to serious security threats in Turkey, as well as having challenges to live their sexual identity explicitly and freely.

339. One of the most essential shortcomings in the Turkish asylum system is the lack of a regulation on the fact that asylum applications made due to sexual orientation and gender identity will be considered under the criteria of “membership of a particular social group” in compliance with international law. Besides, there is no clear regulation regarding the scope and how to handle LGBTI applications. Although the gaps in asylum law and its implementation have been attempted to be filled out by the LFIP (Law on Foreigners and International Protection) and its Implementing Regulation, no clear provision has been made also in these current regulations regarding sexual orientation and gender identity. The fact that LGBTI is not mentioned among the persons with special needs, as well as the acceptance of an asylum application due to gender-based persecution, is also regarded as another significant shortcoming in asylum law. Also, there are serious gaps in issues such as informing and educating state officials especially immigration experts conducting status determination interviews, the Directorate General

of Migration Management and its affiliated organizations, UNHCR, law enforcement personnel, social service organizations, health services personnel, and interpreters about gender, sexual orientation, gender identity, and intersex situations; and controlling and supervising whether or not they act based on their personal opinions and prejudices. Indeed, during the implementation of the application procedure, employees of institutions such as the Ministry of Interior and DGMM have been known to treat these persons negatively, including discrimination. These persons, who wait an average of one year or even longer to conclude their asylum applications in Turkey, reside in small cities where gender-based discrimination is common, and during this period they are subjected to pressure and discrimination, which sometimes amounts to violence, and have difficulty even accessing in essential social services such as health care and social security services in these places. Then, UNHCR mostly provides the settlement of these people into the third country.[347]

§ 1) Gender equality and view of different sexual orientation and gender identities in Turkey law

340. Banning gender-based discrimination and gender equality are guaranteed in the constitution and other laws in Turkey. According to the 10th article of the Constitution regulating the principle of equality; *Everyone is equal before the law without discrimination because of language, race, color, gender, political thought, philosophical belief, religion, sect and similar reasons.* It is seen that legislative amendments have been made to ensure equality between women and men within the framework of the program of harmonization with the EU acquis since the 2000s and the requirements of being a party to international conventions such as CEDAW and Istanbul Convention. With the amendment made in 2004, "the State is obliged to ensure the implementation of this equality and in; 2010, "the measures to be taken for this purpose cannot be interpreted as contrary to the principle of equality" paragraphs were added to the constitution. Thus, equality between men and women was clearly stated, the state's responsibility was emphasized in achieving this equality and it was stated that measures that included positive discrimination in favor of women could not be interpreted as contrary to this

[347] For more information, see, «LGBTİ + Mültecilerin, Mülteci Statüsüne Kabul Edilmesi», Support to Life Association, [consulted on 11.06.2019], https://www.hayatadestek.org/4670/ ; «Emniyetsiz Sığınak», Helsinki Citizens Assembly and ORAM, above

equality. Besides, various regulations such as the Civil Code, Labor Law, Penal Code, etc., which see women as second-class, subject women's work to the permission of the man, preventing women from taking custody of the child, see the representation of the family belong to the man, and make it possible for her to marry with her rapist were amended.[348] "Considering the legislative arrangements concerning women in recent years, it is possible to determine that they raised the women's human rights standards."[349] However, regulations on many issues, such as taking measures to increase women's participation rates in politics and decision-making mechanisms, taking measures to increase women's labor force participation rates, abolishing the regulations on discrimination based on sexual orientation and consent based sexual relations, the principle of sharing the acquired goods during marriage, increasing the number of women's shelters to adequate levels and taking measures to effectively protect women and children in danger of violence both in the Constitution and related laws, are still incomplete and insufficient to ensure gender equality.[350] One of the most important consequences of gender inequality is undoubtedly gender-based violence. According to the Platform for Stopping Women's Murders, 474 women were killed in 2019.[351] The Violence against Women Report 2019 of the Foundation for Combating Violence (HEGEM), shows that every minute more than six women are subjected to physical

---

[348] For detailed information about gender equality in Turkey Law, see, «Türkiye'de Kadın », Ministry of Family, Labor and Social Services, June 2019, [consulted on 19.11.2019], «Türkiye'de Kadın Hakları Alanında Kaydedilen Gelişmeler», Ministry of Foreign Affairs, [consulted on 19/11/2019], http://www.mfa.gov.tr/turkiye_de-kadin-haklari-alaninda-kaydedilen-gelismeler.tr.mfa; KAYPAK, Şafak and KAHRAMAN, Mehmet, «Türkiye'de Kadının İnsan Hakları ve Anayasal Yansıması», above; MOROĞLU, Nazan, «Uluslararası ve Ulusal Hukukta Kadının İnsan Hakları », *Yeditepe University Journal of Law Faculty,* Year 2018, Volume: 13, No.1, [consulted on 19.11.2019], https://nazanmoroglu.com/wp-content/uploads/2018/11/Uluslararas%C4%B1-ve-Ulusal-Hukukta..-Yeditepe-%C3%9C.-Hukuk-makale..20.2.2018-Beykent-%C3%9C..pdf

[349] KAYPAK, Ş. and KAHRAMAN, M., «Türkiye'de Kadının İnsan Hakları ve Anayasal Yansıması», p.313, above

[350] For detailed information, see, «Cinsiyet Eşitliği», [consulted on 19/11/2019], https://www.ilo.org/ankara/projects/gender-equality/lang--tr/index.htm; «Türkiye'de Toplumsal Cinsiyet ve Kadın Algısı Araştırması, 2019» , Kadir Has University, [online], İstanbul, Gender and Woman Studies Center, 2019, [consulted on 19.11.2019], https://www.khas.edu.tr/uploads/pdf-doc-vb/toplumsal-cinsiyet-ve-kadin-algisi-arastirmasi-2019-sonuclari-2.pdf; «Kadın Örgütlerinden Kadına Yönelik Şiddeti Önlemek İçin 50 Acil Önlem», [consulted on 19.11.2019], https://www.morcati.org.tr/attachments/article/449/golge-rapor-50-acil-onlem.pdf

[351] For the full text of the report, see, «Kadın Cinayetlerini Durduracağız Platformu 2019 Raporu», The Platform of We Will Stop Women Murders, 05.07.2019, [consulted on 13.10.2020], http://kadincinayetlerinidurduracagiz.net/veriler/2889/kadin-cinayetlerini-durduracagiz-platformu-2019-raporu#:~:text=2019%20yılında%20kadınlar%20en%20çok,inin%20nasıl%20öldürüldüğü%20tespit%20edilememiştir.

violence and every three minutes a girl is sexually assaulted.[352] Although hate crimes based on homophobia and transphobia widely seen in Turkey, legal and other measures are not taken to combat these crimes.[353] The regulation on "hate and discrimination crimes" was brought to the Turkish Penal Code in 2014, but it does not appear that hate crimes stemming from gender identity and sexual orientation differences are not stated in this regulation.[354] The article states that anyone who interferes with a person's rights due to language, race, nationality, color, gender, disability, political thought, philosophical belief, hatred arising from religious or sectarian differences will be sentenced to imprisonment of from one to three years.

341. As can be seen from the equality regulation in the Constitution, gender-based equality means the equality of women with men and the expressions of sexual orientation and gender identity to cover LGBTIs are not used in Turkey law. Considering Turkey's historical, political and cultural structures, it is always seen that Sunni Islamist, traditional, Turkish, hetero-normative and patriarchal approaches are dominant. Therefore, both the understanding that men are superior to women and the different sexual orientations and gender identities as disease, heresy and sin are quite common. It is seen that women are defined within the family rather than being seen as an individual. The family, which is defined as "the foundation of Turkish society" in the Constitution (art. 41), is understood only as formal, heterosexual marriage associations. This approach makes LGBTI invisible to the law and protects women in situations such as spouses and maternity. Equality of women with men, although it is included in legal texts, is far from being de facto equivalent.

342. Although women are disadvantaged in equal access to rights, discrimination against LGBTIs is even more pronounced. People with a different sexual orientation or gender identity in Turkey are exposed to discrimination and exclusion to have access to many rights, such as housing, employment, access to health and other rights, military service,

---

[352]For the full text of HEGEM's report, see, DAĞISTANLI, Sorel, «2019 Şiddet Raporu: Türkiye'de her üç dakikada bir kız çocuğu cinsel saldırıya uğruyor », *Tarafsız News Agency,* 28.08.2019, [consulted on 19.11.2019], https://www.tarafsizhaberajansi.com/2019/08/28/ozel-haber-2019-siddet-raporu-turkiyede-her-uc-dakikada-bir-kiz-cocugu-cinsel-saldiriya-ugruyor/

[353] For detailed information, see, «2018 yılında Türkiye'de Gerçekleşen Homofobi ve Transfobi Temelli Nefret Suçları Raporu », Kaos-GL, April 2019, Ankara, [consulted on 19.11.2019], http://www.kaosgldernegi.org/resim/yayin/dl/nefret_suclari_raporu_2018_web.pdf

[354] For the full text of the article 122, see, Turkish Criminal Code, above

and security. by state officials as well as society. Because of these pressures, LGBTI individuals are often unable to explicitly live their sexual identities. Apart from the general principles on equality in the Constitution, criminal laws, civil code, and other relevant legislation, except for the arrangements in the international conventions to which Turkey is a party; there is no legal regulation guaranteeing the rights of different sexual orientation and identity, nor is there a clear provision to eliminate hate crimes against LGBTI people. However, inter-adult, non-consensual heterosexual sexual orientations are not defined as 'crime'. Nevertheless, considering the legal regulations, policies, and practices, as well as the general acceptance of society, it is possible to say that a very heteronormative structure prevails in Turkey. Heteronormativity means that " [h]etherosexuality is seen as the only normal sexual orientation, and social values, rules, and policies are accepted and imposed as if everyone is heterosexual."[355] LGBTIs in Turkey are treated with negative expressions such as "heresy", "disease", "immorality" by a significant part of the society, and they are subjected to exclusion from society and verbal, physical or psychological forms such as oppression, harassment, and aggression. It is also known that there are similar problems and discriminatory approaches in terms of benefiting from official, public services under the responsibility of the state. On the other hand, some factors such as widespread Sunni Islamic faith in the country and using religion as a political tool by the ruling powers, and the pressure and fundamentalism brought about by underdevelopment in socio-economic terms, further strengthen this heteronormative order. On the other hand, in parallel with the worldwide struggle to eliminate gender-based discrimination and provide equality, the LGBTI movement has started to develop also in Turkey and the problems of these persons have become more visible. Since the first public LGBTI action in Istanbul in 1987, the gender-based struggle for rights and freedoms has diversified and grown. [356] With the military coup occurred in 1980, all opposition movements were disrupted. The LGBTI movement, too, was influenced by this process similarly. The establishment of Lambda Istanbul in 1993 and the publication of Kaos GL magazine on September 20, 1994, are considered the developments in Turkey regarding the organization of different sexual orientations and

[355] KARA, H. and ÇALIK, D., «Tekin Olmayı" Beklerken: LGBTİ Mültecilerin Ara Durağı Türkiye», p.7, above
[356] GÜNEŞ, Ahmet, «İlk eylemden bugüne LGBTİ hareketi», Platform 24, [consulted on 24.05.2019], http://platform24.org/objective/365/ilk-eylemden-bugune-lgbti-hareketi

gender identities. Later, on September 27, 1998, the first meeting of Turkish homosexuals was held in Istanbul, with the participation of Lambda Istanbul, Kaos GL, Sappho's Daughters, Bursa Spartacus and Germany Turkish gay.[357] However, as a result of the homophobic and transphobic approach of the government and judicial officials, many of these associations have been prosecuted for closure because they are contrary to general morality and protection of the family. Besides the activities and social media activities of LGBTI associations and other organizations are wanted to be prevented for similar reasons.[358]

343. Women and LGBTI asylum seekers are also negatively affected by the heteronormative structure in Turkey. The fact that asylum seekers in Turkey face various problems such as gender-based discrimination, oppression, abuse, and harassment is also reflected in the public through media reports, researchers or studies by non-governmental organizations. For example, a field study conducted by KAOS GL Association in Mersin entitled "While waiting to be auspicious: The way station for LGBTI is Turkey" provides data on the problems these groups face through interviews carried out with Iranian LGBTI asylum seekers in Mersin province.[359] In this study, the challenges LGBTI asylum seekers face in terms of housing and finding a job, victimizations experienced due to economic inadequacies, problems and discrimination in access to health care, and case explanations and assessments of incidents such as taunts, insults, harassment, abuse and violence carried out by government officials or other groups are included. In the book titled "Gender in Exile, Syrian Women and LGBTI Refugees in Istanbul" published by Zeynep Kıvılcım and Nurcan Özgür Baklacıoğlu, the legal and structural reasons of violence and

[357]For detailed information, see, GÜNER, Umut and KALKAN, Pelin and ÖZ, Yasemin and ÖZSOY, Elif , Ceylan and SÖYLE, Fırat, «Türkiye'de Cinsel Yönelim veya Cinsiyet Kimliği Temelinde Ayrımcılığın İzlenmesi Raporu» 1 Ocak – 30 Haziran 2010",
Istanbul Bilgi University Human Rights Law Research Center, Istanbul, February, 2011, p. 13, [consulted on 05.06.2019],
https://webcache.googleusercontent.com/search?q=cache:wM2GuIzRTNQJ:https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/02/24/Cinsel_Yonelim_veya_Cinsiyet_Kimligi_Izleme_Raporu.doc+&cd=6&hl=tr&ct=clnk&gl=fr

[358] For more information, see, «2001'den 2015'e AKP'nin LGBTİ Tarihi», BIA News Center, İstanbul, 26 September 2015, [consulted on 10.10.2019], https://m.bianet.org/biamag/lgbti/167837-2001-den-2015-e-akp-in-lgbti-tarihi; AVCI, Onurkan, «Lambda İstanbul Kapatıldı», Birgün Newspaper, 30.05.2018, [consulted on 10.10.2019], https://www.birgun.net/haber/lambda-istanbul-kapatildi-40793

[359] For the detailed information see, KARA, H. and ÇALIK, D., «Tekin Olmayı" Beklerken: LGBTİ Mültecilerin Ara Durağı Türkiye», above

abuse affecting the lives of Syrian women and LGBTI refugees living in Istanbul have been tried to be revealed through interviews made with these people.[360] From the practical experiences obtained one by one by the relevant persons, it is understood how severe the discrimination and oppression experienced by asylum seekers having different sexual identities and sexual orientations in Turkey is. From some interviews stated in the book, for example, it is understood that women, children, and LGBTIs do not want to live in the camp because of fears of harassment, abuse, rape, and they face similar problems when they want to rent a home. And when they want to work, it is seen that no one wants to employ them, even if they do, they have difficulty even in meeting the most basic rights and needs such as housing, nutrition and working because they are uninsured and employed in low paid work. Harassment and abuse by the boss, other employees or customers in the workplace is another important problem encountered in working life.

344. Another important study on the problems of LGBTI refugees is "Unsafe Haven: The Security Challenges Facing Lesbian, Gay, Bisexual, Transgenders Asylum Seekers and Refugees in Turkey" that published by Helsinki Citizens Assembly and Organization for Refuge, Asylum and Migration.[361] Also, the data obtained by the Helsinki Citizens Assembly and the Organization for Refugee, Asylum and Migration (ORAM) through interviews made with LGBTI asylum seekers is significant in that it shows strikingly the problems experienced by LGBTI asylum seekers and refugees. The results of the study show that almost all interviewees were constantly harassed, beaten, sexually assaulted, threatened with knives and other weapons, offered sexual relations, followed to their homes by native populations and other asylum seekers and refugees. LGBTI asylum seekers state that due to the oppression, violence, and harassment arising from other asylum seekers and refugees, they are also unable to attend language and occupation courses. The inability of the police in providing security in the face of these situations is another important issue mentioned in the study. Some of the LGBTI asylum seekers expressed that they were subjected to harassment or violence when they went to police stations to sign. It is seen that many of the interviewees are uncomfortable with being forced to reveal a lot of details about their privacy, especially during the proceedings at

[360] For the detailed information see, KIVILCIM, Zeynep and BAKLACIOĞLU, Nurcan Özgür, *Sürgünde Toplumsal Cinsiyet, İstanbul'da Suriyeli Kadın ve LGBTİ Mülteciler*, Istanbul, Derin publications, 2015
[361] For the 2009 report see, «Emniyetsiz Sığınak», above

police stations and in interviews on the status determination. On the other hand, in the mentioned study, it is important to stress that the attitudes and decisions of UNHCR officials have changed positively in favor of LGBTI people, as it shows that UNHCR's recommendations on this issue brought about positive changes in practice as well.

345. There are no regulations in Turkey that contain explicitly discriminatory statements against LGBTI other than the Turkish Armed Forces legislation and the Criminal Enforcement legislation. However, discriminatory practices against different sexual orientations and gender identities are made through non-explicit expressions such as "the general morality of society", "conformity to the Turkish family structure", "obscenity", and the equal use of the rights and freedoms of these people is prevented. Moreover, this prevention and discrimination are sometimes done systematically through the government, the judiciary and state officials themselves. Regulations and practices in many different areas such as health, social security, social service, civil code, criminal and execution law ignore different sexual orientations and identities and turn a blind eye to the rights of these people. Furthermore, Turkey does not have a legal arrangement or social policy to eliminate discrimination and hate crimes against different sexual identities.[362] As the state's approach to different gender identities and sexual orientations is visible, it is necessary here to briefly address the gender-based discrimination in military regulations and practices.

346. Article 153 of the Military Penal Code No. 1632 entitled “Those who marry or live with an unchaste person” ruled that, military persons who intentionally marry a person whose unchastity is known or who insist on continuing his/her bonds of matrimony or keeping such a person with him/her, or who persistently live together with any person without marriage, such as husband and wife, shall be sentenced to expulsion from the Turkish Armed Forces and taking back of the ranks of the privates. It has been brought an arrangement that, even if their actions are considered to be another crime, regarding the military persons who are engaged in an unnatural relationship with a person or who make this act to happen with his/her consent, also, that the penalty of expulsion from the

[362] For more information, see, KARA, Hayriye, «Türkiye’deki Sığınma Sistemi ve LGBTİ Mülteciler», Ayrıntı Journal, 11 August 2017, [consulted on 13.05.2019], http://ayrintidergi.com.tr/turkiyedeki-siginma-sistemi-lgbti-multeciler/

Turkish Armed Forces for commissioned officers and the penalty of taking back the rank of privates is imposed. "Unnatural " sexual intercourse means non-heterosexual sexual intimacy and relationships. [363]

347. It is seen that situations relating to different sexual orientations and gender identities are defined as diseases in the Turkish Armed Forces Health Capability Regulation No. 6405 and its annex. In Paragraph (d)/4 of Article 17 of this document, in the section entitled “Mental Health and Diseases”, an explanation regarding recurrent adjustment disorder is provided. In this section, sexual identity and behavior disorder expression is mentioned among the cases, in which the military service does not provide the required adaptation skills, whose presence in the Turkish Armed Forces poses or would create a significant psychiatric risk, and in which the deterioration in the adaptation process is evaluated with mental examination findings and/or psychometric evaluation and/or military functioning documents. This statement has been explained as the cases in which sexual attitudes and behaviors create or are considered to create problems of harmony and functionality in the military environment.[364]

348. It is observed that the issue of "unnatural relationship" is dealt with similarly in many military laws and regulations, especially in matters such as education, promotion, and appointment. For example, among required qualifications for getting seniority of education set out in Article 36 of the Turkish Armed Forces Personnel Code, and for being appointed assistant professor set out in Articles 4 and 8 of the law on Contract Officers and Non-Commissioned Officers to be employed in the Turkish Armed Forces and in Article 19 of the law on contract officers and noncommissioned officers and Gülhane Military Medical Academy, a requirement of not to being convicted of unnatural relationship is also included. In Article 13 of the law on Contract Officers and Non-Commissioned Officers to be employed in the Turkish Armed Forces and in Article 12 of the law of Specialized Sergeant entitled those who are not successful and those who

[363] «Mukarenet», Dictionary of Turkish Language Society, [consulted on 28.11.2019], https://sozluk.gov.tr/; «Mukarenet», Audio Dictionary [consulted on 05.06.2019], https://www.seslisozluk.net/mukarenet-nedir-ne-demek/

[364] For the full text of Regulation, see, «Turkish Armed Forces Health Talent Regulation », Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 29885, 11.11.2016, [consulted on 05.06.2019], http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20158136.pdf

are punished, among the reasons for termination of the contract, being convicted of unnatural relationship is included. [365]

349. The Court of the Appeals 1st the Military Court of Cassation applied to the Constitutional Court for alleged violation of Article 153 of the Military Criminal Code. However, the Constitutional Court refused the objection in its decision dated 29.11.2017 (Article No: 2015/68, Decision No: 2017/166).[366] It is seen from the evaluations in the decision that the Constitutional Court thinks that it may impose different obligations by emphasizing the difference of the military profession from other public duties. The Court noted that by choosing this profession, military persons had accepted certain limitations for themselves. For these reasons, it decided that the relevant regulation was not contrary to the Constitution.

350. In addition to discrimination in military laws, regulations and legal proceedings, gays who do not want to serve in military service because of their gender identity and sexual orientation have also been facing quite serious problems. For these reasons, the persons who claim exemption are asked to do a health check by undressing naked, sometimes it is appealed to their family's statements by interviewing them, and if all these are not deemed sufficient, they are requested to stay in the psychiatric department of military hospitals called 'pink ward' for some time. In the process related to the request for exemption from military service, although it is not legally stated in the regulations, it is required in practice to prove the same-sex relationship through methods such as photographs or videos taken during the relationship. In interviews throughout the process, both applicants and their families are often subjected to humiliating discourses. Such practices cause severe damage to people's emotions and psychologies and violate the

[365] For the full text of related regulations, see, « The Law About Contracted Officers and Petty Officers will be Employed in Turkish Armed Forces», Law No. 4678, Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 24439, 21.06.2001, [consulted on 10.10.2019],http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4678.pdf ; «Gülhane Military Medical Academy Law», Law No. 2955, Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 18226, 19.11.1983, [consulted on 10.10.2019], http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2955.pdf; «Turkish Armed Forces Staff Law», Law No. 926, Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 12670, 10.08.1967, page 2352, [consulted on 10.10.2019], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.926.pdf

[366] For the full text of Constitutional Court decision see, «Constitutional Court Decision», Application No. 2015/68, Decision No. 2017/166, 29.11.2017, [consulted on 10.10.2019], http://kararlaryeni.anayasa.gov.tr/Karar/Content/6e55c0b8-bb09-480f-9737-57c9b0199fa0?excludeGerekce=False&wordsOnly=False

principle of privacy. Besides asking families opinions poses a serious threat to those who do not/cannot disclose their sexual identity to their families.[367] In the process of military examination and exemption of these gay people, the pressures and degrading practices they were subjected to due to their different gender identities and sexual orientation have begun to get reactions as a result of the reflection of these problems on Turkey and the world public opinion. Consequently, some adjustments were made to the Turkish Armed Forces Health Capability Regulation in 2013. The title of the article on the subject of different sexual orientations previously stated as "psycho-sexual disorders (homosexuality, transsexuality, transvestitism)" has been changed to "sexual identity and behavior disorders" and the requirement that "homosexuality should be extremely noticeable in all their lives" has been removed. Thus, it was explained that the practices which were criticized in the past regarding the proof of homosexual relations would no longer be carried out and that the behaviors of homosexuals during the military examination would be sufficient to give them an "inconvenient for military service" report.[368] However, it is not possible to state that practices contrary to law and human rights have completely disappeared. Furthermore, after taking over the military hospitals to the Ministry of Health, it has become even more difficult to detect the illegalities experienced during examinations and the control of interventions to them. It is observed that doctors in provincial hospitals, in particular, behave negatively during examinations due to homophobic approaches.[369]

---

[367] For detailed information, see, «Türk Silahlı Kuvvetleri Sağlık Yeteneği Yönetmeliği'ne Göre Eşcinsel ve Translar için "Askerliğe Elverişli Değildir" Raporu Alma Süreci», Kaos-GL Association, [consulted on 05.06.2019], http://www.kaosgldernegi.org/resim/yayin/dl/tsk_escinsel_ve_translar_iin_askerlige_elverisli_degildir_raporu_alma_sureci_.pdf ; CESUR KILIÇASLAN, Seher and AKKUŞ, Pınar, «Türkiye'de Heteropatriarkal Sistem Baskısı Altında Lgbti'lerin Sosyal Hizmet İhtiyaçları», *Education, Science and Society Magazine,* [online], Fall 2016, Volume 14, Number 56, pages 28-54, , [consulted on 07.06.2019], http://egitimsen.org.tr/wp-content/uploads/2017/01/28-54_hakemli-makale.pdf; «'Pembe Tezkereye' Koğuş İşkencesi», Cumhuriyet Newspaper, 15 Nisan 2012, [consulted on 07.06.2019], http://www.cumhuriyet.com.tr/haber/diger/335136/_Pembe_tezkere_ye_kogus_iskencesi.html

[368] For detailed information, see, «Asker adayları artık soyunmayacak», Sabah Newspaper, 13.11.2015, [consulted on 05.06.2019], https://www.sabah.com.tr/gundem/2015/11/13/asker-adaylari-artik-soyunmayacak; GÜRGEN, Murat, Ankara, Haber Turk, 06.02.2013, «'Sakıncalı' eşcinseller askere gitmeyecek", [consulted on 05.06.2019], https://www.haberturk.com/polemik/haber/817610-sakincali-escinseller-askere-gitmeyecek

[369] For example, information about applications, see, TAR, Yıldız, «'Askerliğe elverişli değildir' raporunu nasıl aldım? », Kaos-GL, [consulted on 07.06.2019], https://kaosgl.org/sayfa.php?id=25399

§ 2) The Assessment of Law on Foreigners and International Protection (LFIP) with a gender perspective

351. The LFIP, which was adopted and became effective in April 2013, regulates the entry of foreigners into Turkey, their stay, and their exit from Turkey, as well as issues related to international protection procedures and principles.[370] The code is the first resource to be applied in the procedures and principles regarding the refugees in Turkey law. Therefore, the prominent ones in terms of gender sensitivity and/or insensitivity will be evaluated below.

352. According to Paragraph (A) of Article 3 which makes the definitions, family members are described as *the spouse, the minor child, and the dependent adult child of the applicant or the beneficiary of international protection.* The fact that there are no statements in this article, such as "regardless of sexual orientation, gender identity, and whether or not there are bonds of matrimony between them, is a significant shortcoming. This may lead to LGBTIs, who took refuge in Turkey with their partners, to not to be together with their partners both in the application process and later in the process of being settled into the third country. This situation, however, hurts the emotional and psychological conditions of these people.

As *"persons with special needs"* are defined in Paragraph (1), LGBTI persons are not included in this group. However, because of the oppression, violence, and persecution they are subjected to, based on their different sexual orientation and gender identity, LGBTIs should also be considered to be among those with special needs.

353. In Article 4, entitled "Non-refoulment", it is regulated that no one shall be returned to a place where he/she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom will be under threat due to his/her race, religion, nationality, and membership in a particular social group or political opinion. As it is seen, the article does not explicitly state that LGBTIs whose life and freedom are threatened because of their sexual orientation and gender identity are among those who cannot be repatriated. The expression of "membership of a particular social group" stated

[370] For the full text of the 6458 FIPL, see, «Foreigners and International Protection Law », No. 6458, Turkey, Grand National Assembly of Turkey, Ankara, 04.04.2013, Official Newspaper No. 28615, 11.04.2013, [consulted on 11.06.2019], https://www.resmigazete.gov.tr/eskiler/2013/04/20130411-2.htm

in the article is an ambiguous explanation, which is not clear and provides a wide range of discretion to practitioners.

354. Article 6, entitled “Document Checks", relates to the control of travel document or document of foreigners in transit areas at airports, border crossings, or where the comprehensive check is required. During such controls, it is known that some of the LGBTIs are subjected to discriminatory, inhuman, and degrading practices and treatments because of their different appearance. Therefore, the relevant article should include a statement that document checks will be carried out “without discrimination to anyone due to his/her sexual orientation or gender identity” and “without exhibiting degrading, inhuman, and cruel behavior”.

355. Articles 34, 35, and 36 of the law relating to “family residence permit” do not state that the relevant regulation applies to all partners without discrimination on account of their sexual orientation and gender identity and regardless of whether or not there is a formal bond of marriage between them. This makes it impossible for the partners who are not married and LGBTI to get family residence permits.

356. Article 55, entitled "Exemption from removal decision", mentions foreigners who shall not be returned, even if they are considered within the scope of the expulsion decision. Paragraph (A) of this article includes a general statement such as *when there are serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned to.* The article does not explicitly include the statement that LGBTIs who are in danger of torture, inhuman treatment, imprisonment, or capital punishment in their countries of origin shall not be deported. Despite all these oppression and dangers, in practice, it is sometimes seen that the decision of expulsion is made against them.[371] For this reason, the article should be revised as such that, no decision shall be made to deport anyone if there is a serious indication that he/she may be subjected to the death penalty,

[371] For more information about deportation practices to LGBTIs , see, «Mültecilerin sınır dışı edilmelerini durdur», *Kaos-GL,* 21.04.2017, [consulted on 26.11.2019], https://www.kaosgl.org/haber/multecilerin-sinir-disi-edilmelerini-durdur; KARAKAŞ, Burcu, «Eşcinsel Turistler İzmir’de gözaltına alındı, gerekçesiz sınır dışı edildi», *Journo,* 20 October 2017, [consulted on 26.11.2019], https://journo.com.tr/escinsel-turistler-sinir-disi-edildi; «İranlı mülteci LGBTİ’ler: Ötekileştirilenlerin Ötekisi», *T 24,* 23 May 2017, [consulted on 26.11.2019], https://t24.com.tr/haber/iranli-multeci-lgbtiler-otekilestirilenlerin-otekisi,405409

torture, inhuman or degrading punishment or treatment, without discriminating in terms of sexual orientation and gender identity.

357. Article 59, entitled "Services provided in removal centers" sets out in general the services to be provided to foreigners. It should be added to this article a statement that these services shall be provided without any discrimination, including sexual orientation and gender identity. Indeed, the urgent and basic needs of everyone held in these centers should be determined according to their situations, and the needs of LGBTI people arising from their gender identity should be considered based on their special circumstances.

358. In Article 61of the law, entitled "Refugees", it is stated that A person who as a result of events occurring in European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process. Although adopted in the international conventions and principles, it is seen that the article does not include the statement that persons who have a well-founded fear of being persecuted because of their “sexual orientation, gender identity, gender expression or gender characteristics” may be considered refugee, nor does it even refer to the term “gender” in general. In the article, the only general reference regarding the granting of refugee status is the statement of “membership of a particular social group”. However, there is no clarity regarding who this social group refers to and on what basis it can be identified. Letting practitioners’ comment on the identification of these groups increases the risk of being discriminated of LGBTI people. Therefore, it should be added to the article that people who have a well-founded fear of persecution on account of their sexual orientation and gender identity may also be granted refugee status.

359. It is mentioned foreign or stateless persons, in Article 62 entitled "conditional refugees", as determining the scope of the status, who have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, who is outside the country of his/her citizenship and is unable or, owing to such fear, who is unwilling to avail himself or herself of the protection of

that country. Also, this article does, not explicitly mention people who have a well-founded fear of persecution for reasons of their different sexual orientation and gender identity. The ambiguous statement of "membership of a particular social group" has been repeated, as same as stated in the article on refugees.

360. Article 63, which defines subsidiary protection status, stipulates that secondary protection may be granted to persons who are not considered refugees or conditional refugees but who, if returned to their country of origin or habitual residence, would be sentenced to the death penalty or be executed; subjected to torture, inhuman or degrading punishment or treatment; who may face serious threats to their personality due to indiscriminate acts of violence in international or nationwide armed conflict. This article should clearly state that “anyone”, who is at risk of being subjected to threats such as discrimination, oppression, torture, inhuman treatment, and imprisonment or the death penalty in their country “for whatever reason”, can benefit from subsidiary protection after status determination process.

361. In paragraph 3 of Article 65 of the application procedure, it is stated that the applicant can apply on behalf of the family members who have come with him/ her based on the same grounds. The provision of the article should be amended in a way that prevents discrimination against LGBTI as “everyone, regardless of gender identity and sexual orientation, everyone can apply on behalf of their partner who comes with them.” Indeed, the statement "family members" is often interpreted to cover heterosexual relationships only for which there is a union of marriage between them. However, everyone, whether officially married or not, should have the right to seek asylum with their partners in line with their sexual preferences.

362. Article 66, entitled "Unaccompanied Children", regulates the status of unaccompanied children applying for international protection. In the article, it is emphasized that the child's best interests shall always be considered in proceedings relating to children in this circumstance, and it is stated that by taking into account the opinion of the unaccompanied child, he/she shall be placed in an appropriate accommodation facility or in the care of his / her adult relatives or a foster family. It has been arranged that those who have reached the age of sixteen can be housed in admissions and housing centers if appropriate conditions are provided. Because of their sexual preferences, LGBTI children are always at greater risk for threats such as abuse,

oppression, harassment, rape, and violence. Regardless of their gender identity, placing these children in accommodation centers, with adult relatives or a foster family by the relevant ministry, could have consequences that could jeopardize their safety. Therefore, it should be added to the article that in the event of the settlement of “unaccompanied children with different sexual orientation and gender identity”, places or individuals with that they shall be safe in compliance with their sexual preferences will be taken into consideration.

363. Article 67 relates to “persons with special needs”. As we mentioned above, in Article 3 of the law in which the definitions are made, LGBTI is not explicitly stated among persons with special needs. Also, Article 67 does not include a statement on LGBTIs and their special and urgent needs. This leads to the disruption of treatment for LGBTI people, especially in terms of treatments such as hormone and sex change, or causes financial difficulties because they spend all their financial resources on these treatments. Disruption of treatment could also have some other serious consequences, such as the risk of a heart attack.

364. In Paragraph 4 of Article 69 entitled "Registration and Control", it is regulated that at the time of registration, the reasons of the applicant to leave his/her country of origin or habitual residence, the events that he/she went through after leaving his/her country and which caused him/her to apply for, the way he/she entered Turkey, the routes he/she used and the means of transportation; if he/she has previously applied for or are a beneficiary of international protection in another country, the information and documents relating to that application or protection, shall be taken. In the article, however, there is no explanation for the fact that no one shall be discriminated because of their language, religion, race, political opinion, gender identity, and sexual orientation, and that the specific circumstances and needs of sensitive groups should be taken into account during providing and recording of such personal information and documents about applicants. On the other hand, it is needed to educate and raise awareness of the personnel responsible for carrying out these proceedings on issues such as trauma and gender, as well as to ensure that everyone will be treated equally during the proceedings. In addition to the oppression, violence, and persecution they have experienced in their countries, being exposed to negative treatment of officials or questions that damage their privacy affects the psychologies of the applicants very badly.

365. In Paragraph 2 of Article 70 entitled "Information and translation services provided to applicants", it is stated that, if requested by the applicant, translation services shall be provided during personal interviews at the application, registration, and interview stages. In practice, however, it is known that due to the interpreters' lack of awareness and education about gender, LGBTI applicants have difficulties in explicitly and accurately expressing themselves and their situations. Therefore, it should be stated in the provisions of the article that everyone, regardless of their gender identity and sexual orientation, can have equal and free access to the interpretation service when necessary.

366. In Article 71 relating to the "residence and reporting obligations", it is arranged that the applicant may be imposed administrative obligations such as the obligation to reside in a reception and accommodation center, a specific place or a province, and the obligation to give notice in the requested forms and periods. However, no explanation has been made as to whether these reception and accommodation centers and designated provinces or places are safely eligible for residence for LGBTI people. It is also observed in the regulation that applicants are required to reside in the designated place. As can be witnessed in practice, LGBTI asylum seekers are often sent to small and conservative cities in Central Anatolia, such as Eskişehir, Niğde, Isparta, Nevşehir, Kayseri, or placed in reception and accommodation centers where all asylum seekers of different characteristics are held together. As a result of the determination of these places without regard to their sexual orientation and gender identity, they may be subject to negative behavior and attitudes, such as harassment, abuse, oppression, and violence, both by local people and other asylum seekers and refugees in the region.[372]

367. Article 74, entitled "Applicants arriving from a safe third country", relates to cases where the applicant has applied for international protection, which may result in protection in compliance with the Convention, or where it is understood that he/she has come from a safe third country in which he/she has the opportunity to apply. According to the article, the application of these persons is considered unacceptable and proceedings are initiated to send them to a safe third country. It is also mentioned in a general statement that the persons concerned will be allowed to stay in the country until the repatriation

[372] For more information about the problems of LGBTI refugees face in their place of residence, see, «Sığınmacı ve Mülteci, Lezbiyen, Gey, Biseksüel, Trans Bireyler», Kaos- GL, 4 April 2012, [consulted on 14.06.2019], http://kaosgldernegi.org/haber.php?id=7476

process takes place and that if the country which is qualified as a secure third country rejects the application, the proceedings related to the application will resume. In the second paragraph of the article, the qualifications that countries considered as a safe country must have, are stated as follows:

(a) The lives or freedoms of persons are not under threat on account of their race, religion, nationality, membership of a particular social group or, political opinion.

b) Implement the principle of non-refoulment concerning countries where persons may be subjected to torture, inhuman or degrading punishment, or treatment.

c) Provide the opportunity to apply for refugee status, and when the person is granted refugee status, the possibility to provide appropriate protection in compliance with the Convention. ç) Ensure that there is no risk of being subject to serious harm.

(3) The assessment of whether or not a country is a safe third country for the applicant shall be made on a case-by-case basis for each applicant, including the assessment of connections between the person and the country according to which it would be reasonable to return the applicant to the third country concerned.

368. It is a positive development that the article states whether a country is safe or not will be assessed one by one for each of the persons applying for asylum. However, it is a significant shortcoming that among the criteria set out in Paragraph (A), the state of being under threat due to gender identity and sexual orientation is not explicitly stated and is just satisfied with mentioning the unclear description of “membership of a particular social group”, as is the case throughout the law. Because, whereas a country may be safe for an applicant who is under threat from political considerations, it may not be safe for applicants in terms of gender-based threats.

369. Article 75, entitled "Interview", relates to the procedure of interviews to be conducted with the applicant. In the third paragraph of the article, the regulation, *Special circumstances of applicants with special needs shall be taken into consideration during interviews with them. Interviews with minors may be conducted in the presence of a psychologist, child development specialist, social worker or, parent or legal representative*, which has been introduced. However, since LGBTI asylum seekers are not listed among those with special needs, there is no regulation appropriate to their

special circumstances in the interviews to be conducted with them. Therefore, LGBTI asylum seekers also need to be clearly stated among persons with special needs, and arrangements relating to the interviews should include issues to meet their unique situation and needs. In particular, ensuring the training and awareness of the persons who will conduct interviews with these people over gender issues, is important in terms of conducting interviews in compliance with the guidelines and principles of international law.

370. In article 76 entitled "Identity document for international protection applicant", it is stated that, upon completion of the interview, the applicant and, if any, accompanying members of his family, shall be issued an International Protection Applicant Identity Document valid for six months indicating the international protection application and bearing foreigner identification number. The content of the article does not include a statement that would allow partners of LGBTI asylum seekers with different sexual orientations and preferences to be a beneficiary of international protection and prevent discrimination against them. Hence, LGBTI asylum seekers are not able to stay with their partners, and then they have the problem of being separated by resettlement in different countries. Since the unity of the family is regarded also in practice as heterosexual relations in which marriage exists, to protect the unity of both unmarried and non-heterosexual couples; it must be clearly stated in the regulations that international protection applicant identity document will also be provided for the partners of all applicants, regardless of their sexual orientation and gender identity, without requiring a union of marriage between them. Similarly, the second paragraph of Article 78, entitled "Decision", states that decisions shall be made individually, that applications made on behalf of the family members shall be made in whole and that they shall cover all members of the family. The shortcoming we mentioned in the assessment of Article 76 on the scope of the family concept applies to this article as well.

371. Article 82, entitled "Residence of conditional refugees and subsidiary protection beneficiaries", states, for reasons of public security and public order, the Directorate General may require conditional refugees and subsidiary protection beneficiaries to reside at a given province and report to authorities by determined procedures and periods. Here, however, what is meant by stating “public order or public security" is not indicated; it should also be mentioned that the Directorate-General, while determining this obligation,

shall ensure the security of conditional refugees and subsidiary protection beneficiaries in respect of their differences such as religion, language, race, sexual orientation, and gender identity. Otherwise, these people are at risk of being subjected to oppression, harassment, violence, abuse, and discrimination in the determined places of compulsory residence.

372. In the second paragraph of article 89 entitled "Access to assistance and services", it is stated that Access to social assistance and services may be renewed to applicants or international protection beneficiaries who are in need. However, it is understood that there is no statement in the article that would eliminate discrimination against issues such as race, religion, language, color, sexual orientation, and gender identity. LGBTI asylum seekers face severe discrimination and have difficulties in accessing social assistance, and state that they are often unable to get assistance due to the reactionary attitudes of the workers in these organizations on gender issues. The third paragraph of the article deals with access to health services for those having no health insurance and difficulty in payment. It is known that the costs of treatment and gender reassignment surgery for asylum seekers are not covered by the state. Therefore, these people, if any, have to use all the financial resources they have available for treatment or are obliged to discontinue their treatment. The interruption of the treatment process creates serious risks to these people's state of health and affects negatively their psychology. For this reason, whatever their status is, it is necessary to include in the article that the state shall cover the costs of treatment and gender reassignment surgery for asylum seekers in this situation. [373]

373. Article 95, entitled "Reception and Accommodation Centers" sets out the principles for the residence of applicants or international protection beneficiaries. In the first paragraph of the article, it is stated that these persons will meet their needs for residence themselves. In the second paragraph, it is stated that the Directorate General can establish reception and accommodation centers to meet the residence, nutrition, health, social and other needs of these people. It is understood here that the law does not address the opening of accommodation and reception centers as a mandatory situation even for asylum seekers in need, giving it to the initiative of the Directorate General. Furthermore, although the

[373] For more information on gender change treatment and access to social helps, see, «Sığınmacı ve Mülteci, Lezbiyen, Gey, Biseksüel, Trans Bireyler», Kaos- GL, above

third paragraph states that *priority shall be given to the accommodation of persons with special needs*, LGBTI asylum seekers are not included in this scope as they are not stated among "persons with special needs". The content of the article does not include any other regulation that the residence and other urgent needs of persons with different sexual orientation and gender identity will be provided in conditions appropriate to their unique situation. Furthermore, the fifth paragraph of the article states, *Applicants or international protection beneficiaries and their family members residing outside of the reception and accommodation centers may be availed of the services provided at such centers*; and the seventh paragraph sets out, *the unity of families staying at the centers shall be preserved to the extent possible*. However, as we mentioned in the previous articles since the family concept is not defined to include LGBTI asylum seekers and their partners, the regulation in this article is also applied in a discriminatory manner in respect of LGBTI asylum seekers.

374. The first paragraph of Article 96 states, The Directorate General may, to the extent that Turkey's economic and financial capacity deems possible, plan for harmonization activities to facilitate mutual harmonization between foreigners, applicants, and international protection beneficiaries and the society as well as to equip them with the knowledge and skills to be independently active in all areas of social life without the assistance of third persons in Turkey or in the country to which they are resettled or in their own country. For these purposes, the Directorate General may seek the suggestions and contributions of public institutions and agencies, local governments, non-governmental organizations, universities, and international organizations. However, it is known from the statements of LGBTI asylum seekers that other asylum seekers and refugees, for these purposes, cannot attend courses such as language and vocational training due to the discriminatory, bad attitudes exhibited towards them by local people or employees of the institution. Or the challenges women and girls face in attending these courses due to the reasons such as partner and family pressure, poverty, having to work can be considered as another example of making it difficult for gender-sensitive groups to adapt and comply.[374] Therefore, while determining policies and legal arrangements for

[374] For more information, see, ŞENKAYA, Dilara, «Türkiye'deki LGBTİ Mülteciler Anlattı», *BIA News Center,* 19 May 2017, [consulted on 28.11.2019], https://m.bianet.org/bianet/lgbti/186636-turkiye-deki-multeci-lgbti-ler-anlatti; RAU, Simon, «Türkiye: Sığınmacıların Eğitime Erişimleri Önündeki Engeller»,

the adaptation and harmony of asylum seekers and refugees, it should be stated that everyone shall enjoy these opportunities equally, regardless of race, language, religion, color, gender identity, and sexual orientation. For this equality to be reciprocated in practice, necessary studies should be carried out to educate and raise awareness of the gender identity of employees or volunteers working in the relevant institutions and organizations.

375. The fifth chapter of the law entitled "Directorate General of Migration Management" was abolished by Article 703/1 of the decree-law dated 07/02/2018. With Article 121 of the sixth section, it is arranged that the procedures and principles relating to the implementation of the law will be determined by the regulations to be issued. Under the provision of this article, the "regulation relating to the implementation of the law on foreigners and international protection" was published in the Official Gazette dated 17 March 2016 and entered into force. We will address the assessment of the regulation in detail below.

376. The assessments we address through the contents of the articles above one by one indicate that in the determination of international protection status, LFIP has not included regulations in compliance with international conventions and principles in terms of protection of persons who are under well-founded persecution due to their gender identity and sexual orientation. LGBTI asylum-seekers are not expressed clearly in items such as vulnerable groups, special needs, family residence permits, will not be repatriated no decision to expel, which constitutes serious threats to violation of their right to life. Besides, they are exposed to discrimination in terms of the use of many rights such as housing, health, work, social assistance, and access to services, both because they are not expressed among special needs and sexist practices. They explained in the interviews made with them that they have difficulties to find a home to stay, they experience exorbitant prices or harassment when they find it, finding regular jobs, they are excluded from various training and courses, and they are exposed to words and behaviors such as mockery, insult, harassment in public institutions and charities.[375] In the overall of the law, it is observed that such expressions as foreigners, applicants for international

[consulted on 28.11.2019], *Human Rights Watch,* 31 May 2017, https://www.hrw.org/tr/news/2017/05/31/304376

[375] For detailed information, see, «Unsafe Haven», Helsinki Citizens Association, ORAM, above

protection status, and international protection beneficiaries are used. This situation, as has long been criticized by feminist and LGBTI circles, shows that people are considered abstract, genderless individuals. Therefore, it is possible to speak out that in LFIP, gender awareness has not been shown both in the explanation of status, rights, and freedoms, and in the regulation of procedures and principles. Also, it is seen some statements in the law that are not enough specified and clear such as; "foreigners who are considered undesirable for reasons of public order or public security" (Article 15); "Who pose a threat to public order, public security or public health" (Article 57); "When [the person] poses a serious public order or public security threat" (Article 68); "An applicant who is assessed to be posing a public health threat shall undergo medical screening" (Article 69); "Documents relating to the protection of national security and public order and prevention of crime cannot be examined and handed over" (Article 94/2). Such ambiguous statements may be interpreted in a way to lead to discriminatory practices against LGBTI asylum seekers and refugees and may lead to behaviors and attitudes towards them in the form of degrading and cruel treatment. Therefore, it should be preferred to use clear statements in the relevant articles rather than expressions to be given the initiative to the practitioners.

§ 3) Assessment of the regulation relating to the implementation of the Law on Foreigners and International Protection (LFIP) with a gender perspective

377. The Regulation concerning the Implementation of the Law on Foreigners and International Protection (LFIP) was published in the Official Gazette No. 29656 dated 17 March 2016 and has become effective. As mentioned above, this Regulation has been drafted based on Article 121 of LFIP to regulate the procedures and principles regarding the foreigners' entry into Turkey, stay in Turkey, exit from Turkey, and the scope and application of protection to be provided to foreigners requesting protection from Turkey. Comprising of five parts and 163 articles, the Regulation covers the status of stateless persons, the principle of non-refoulment, the procedures, and principles of expulsion, the rules and principles of international protection and its forms, the process to be applied to such persons, interviews, the rights and obligations of applicants, the termination of the status, the immigration policy board and its duties, as well as general practices for foreigners such as entry into Turkey, visa, residence permit, and work permit.

378. While the concepts in Article 3 of the Regulation are described under the heading of “definitions,” it is observed that a similar approach with that of the law is followed. For example, in paragraph (a), family members are described as *the spouse, minors, and dependent adult children of a foreigner, applicant, or person who is granted international protection status.* Emotional relationships between people whose sexual orientation and gender identity are different and the relationships experienced by people who do not have formal marital relations have not been covered within the context of family. In paragraph (V) of the Regulation, the person with special needs is defined as *an unaccompanied child, disabled, elderly, pregnant, single mother or father accompanied by a child or person who has been subjected to torture, sexual assault, or other serious psychological, and physical or sexual violence.* It is also understood from this explanation that people exposed to discrimination because of their different sexual orientation and gender identity are not mentioned among those with special needs.

379. Furthermore, within the definitions of the subsidiary protection (in paragraph L), which is a form of international protection, refugee (in paragraph U), and conditional refugee (EE); the situations of persons under the threat of well-founded fear of persecution due to their different sexual orientation and gender identity are not included. In the context of refugees and conditional refugees, it has been preferred to use the general and ambiguous expressions such as "membership of a particular social group." Also, while defining subsidiary protection status, no clear statement has been made regarding the protection of persons subjected to oppression, persecution, and discrimination for reasons of different sexual orientations, gender identity, or who are under threat of torture and degrading punishment or death penalty for these reasons.

380. In the second paragraph of Article 4 concerning the principle of non-refoulment, it has been regulated that the Governorate shall investigate whether foreigners who do not have the right to stay in Turkey *could be threatened with their life or freedom due to their race, religion, nationality, and membership of a particular social group or political opinion* before they are deported or returned. It seems that in this article, the general expression of "membership of a particular social group" is preferred and that foreigners whose life and freedom are threatened due to their different sexual orientation and gender identity are not included.

381. In paragraph 3 of Article 22 of the Regulation entitled “Evaluation and concluding of residence permit applications,” it is arranged that a foreigner can be interviewed during the evaluation process of the residence permit application. However, no clarification has been made regarding in what circumstances the interview would be conducted and the measures to be taken to ensure that this interview is carried out in compliance with the characteristics of persons such as language, religion, sexual orientation, and gender identity. The statement in paragraph 4 of the same article, *if deemed necessary, whether there is an inconvenient situation in terms of public security shall be investigated*, is an ambiguous statement that gives the initiative to evaluate what this requirement and the uncomfortable situation is to the officials. This statement holds the danger that it may lead to discriminatory practices, particularly for individuals with different sexual orientations and gender identities.

382. It is understood that in Article 30, entitled "family residence permit," the scope of the concept of family is determined in a similar way to that of the LFIP. In the second paragraph of the article, foreigners who can get a family residence permit are referred to as the sponsor's foreign spouse, the sponsor's or his/her spouse's minor and his/her adopted child, the sponsor's or his/her spouse's dependent adult child. In Paragraph (d) of the same article, it is stated that refugees and holders of subsidiary protection status can also benefit from this right. In this case, regardless of gender identity and sexual orientation, partners who have an emotional relationship between them and those who do not have a formal union of marriage have not been included in the scope of the family residence permit. Couples who are in this situation face many different problems, such as physical, emotional, sexual, psychological, economic, caused by the inability to get together with their partners. The third paragraph of the article relates that only one of the spouses shall be granted a family residence permit, in respect of foreigners who have a polygamous marriage in the country of their nationality. The phenomenon of polygamous marriage is a sociological situation created on religious, social, and cultural grounds, which presents multidimensional problems for women and children. It is, of course, not reasonable to justify or affirm a polygamous marriage community, which led both women and children in this kind of polygamous marriage to suffer and leave them vulnerable to issues such as social security, economic, oppression, abuse, and violence. However, from a factual and legal point of view, we believe that in this case, the exclusion of one of the women from the scope of the unity of the family will solely lead to the further

victimization of this woman and her children. Also, the provision in the continuation of the article, "*family residence permit may be granted to the children of the sponsor who are not eighteen years old and to their dependents even though they are already eighteen years old"*, enables the man to take his children from the spouses who are not within the scope of the permit, letting these spouses be completely alone. It is evident in such a situation how vital the psychological, emotional, social, and economic problems of abandoned women could be. This regulation, in this case, recognizes a polygamous marriage in respect of the man, and gives the man the option of choosing whom he wants from these wives and children, and leaving behind whom he doesn't want. Paragraph 8 only grants to the foreign spouse that *a short-term residence permit can be granted without considering three years requirement provided that she submits the court's decision that she is the victim of this act because she has suffered domestic violence.* The content of this article, which may lead to the victimization of women, children, couples without marriage union or having a polygamous marriage, and individuals with different sexual orientations and gender identities, need to be amended.

383. Article 34 of the Regulation on applications for a family residence permit through a marriage of convenience relates to investigations and decisions to be made in case of existing reasonable doubt as to whether the marriage was performed solely to get a residence permit. Some of the cases that would be deemed to be reasonable doubt are indicated by subjective statements such as the fact that the spouses do not live in the same residence or the marriage does not continue in the family togetherness, or there is an unreasonable age difference between the spouses. Indeed, individuals may have relationships with people having age differences, or they may prefer to continue their relationships by living in separate residences. It is controversial here, according to whom or what, the criterion of reasonableness is to be determined. Besides, it is a problematic issue in many respects, whether or not the unity of the family continues to be dependent on complaint and reporting. They may also report and complain in this way due to disagreements experienced among individuals or their negative or social and cultural perceptions or hateful approaches to foreigners. Because of these arrangements, foreigners who stay with a family residence permit may feel under constant pressure to prove themselves to the community that they are a “real” family. Or, due to this fear, they may have to put their relationship into a pattern in compliance with the general acceptance and norms of the society in which they live, regarding the family. Stating that, within the

scope of the investigation referred to in the second paragraph of the article, disturbing and degrading behavior of people shall be avoided, necessary measures shall be taken to ensure that the right to privacy and inviolability of domicile shall not be violated, are optimistic in terms of considering the sensitivities in such situations. Nonetheless, it is also stated that during the investigation, methods such as getting information from the close neighbor, surroundings of the address, and local units could be performed. As we mentioned above, it is dubious whether the individuals who provide the information will act with personal motives. Furthermore, how much knowledge or say could any individual have about how a couple's relationship is, just because he/she is a neighbor or relative? As far as we concerned, this issue is also controversial. The article has also pointed out that law enforcement personnel may be requested to accompany the investigation. Considering social and historical experiences, individuals may be afraid of law enforcement officials or abstain from them. For this reason, the involvement of law enforcement officials in the investigation of such a sensitive issue can have negative consequences. Paragraph 3 states that a commission shall be established to determine whether the marriage was performed just because of getting a residence permit. However, it has been determined that the members of the commission, under the chairmanship of the Provincial Directorate, shall be selected only from the official institutions, with one representative from each of the Provincial Directorate of Family and Social Policies, the Provincial Directorate of Population, and Citizenship and the Provincial Directorate of Security. On the other hand, the absence of a UNHCR representative or NGO representative in such a commission to directly control the rights and conditions of foreign couples can be considered as a significant shortcoming. In paragraph 4 of the article however, it is arranged that even after the family residence permit has been granted, the Governorate can supervise whether the marriage is a marriage of convenience or not. However, it has not been clarified as to by which units, and how, the Governorate will conduct this inspection, and this issue has been given entirely to the initiative of the Governorates.

384. Articles 51 - 64 of the fourth section of the Regulation are related to expulsion. When examined these regulations in general, it is observed that the essential approach here is security-centric, ensuring the implementation of the expulsion decision made about foreigners, by preventing them from escaping or disappearing. It is also possible to understand this approach from the following regulations made in many articles in this

section. *The required number of general law enforcement personnel is assigned by the Governorate during the proceedings such as the transfer of foreigners to be deported, to removal centers or border gates or, from the removal center where they are located to another removal center. Governorates may also assign general law enforcement personnel without consideration of the area of responsibility when necessary. The transferring of foreigners to the consulate, hospital, court, etc., is provided under the escort of law enforcement (55/3).*

The assigned general law enforcement personnel take all measures to prevent the escape and disappearance of foreigners, as well as security measures in the transfer of foreigners (55/4).

If it is decided to continue the administrative detention, the status of the foreigner shall be notified to the general law enforcement unit by the provincial directorate. General Law enforcement units perform the risk assessment of the escape and disappearance of the foreigner, including security, and accordingly determine and implement the nature of the measures to be taken (55/5(B)).

385. The law enforcement officers assigned for the transfer process take all kinds of measures to prevent the escape and disappearance of foreigners, as well as security measures in the transfers to the border gates (62/2 (ç))

However, it is observed that the sensitivity displayed regarding security is not shown in terms of the particular situations and needs of foreigners who are placed under administrative detention or returned to removal centers. It is stated in the relevant articles (53, 54, 55, 62, and 63) that, if the capacity is available, only those who will be deported will be transferred to the removal center. However, in this Regulation, there is no statement as to whether the law enforcement personnel assigned to this issue have been trained and experienced enough to show enough care and sensitivity to the differences of foreigners such as sexual orientation, gender identity, religious, ethnic and political views, or how to provide a suitable environment for their differences at the removal centers. In all articles related to the transfer to removal centers, it is stated that after receiving information about the capacity of the center from the Provincial Directorate, the transfer of the foreigner shall be carried out. In this case, relating to foreigners to be transferred to the removal center in which there is not enough capacity, they can either be

sent to another removal center or to the border gates, or other than that, it is not clear if another alternative is offered.

386. In Article 59, it is stated that from foreigners whose residence permits are deemed inappropriate or canceled, those who are found to be using fake or false documents or posing a threat to public order, public security, or public health shall be placed under administrative detention. Also, in terms of administrative detention centers, there is no regulation to taking into consideration the sensitivities of foreigners regarding their differences such as sexual orientation, gender identity, ethnic, religious, and political views. Such missing issues not only give the rights of foreigners to be treated fairly and equally, to the initiative of officials; but also push vulnerable groups into a position where they are vulnerable to oppression and abuse from other foreigners and officials who stay in these centers. Therefore, some arrangements are needed in the relevant articles to meet the particular situations and needs of sensitive groups.

387. In the continuation of the regulation on expulsion, there is a third section on international protection. In the first article starting with Article 65, the general principles are mentioned. In the regulation on international protection implementations and related statements, it is pointed out that the statement shall include issues such as reasons for arriving in the country and special needs. It is optimistic and important that the applicant is allowed to make a statement in a language in which he/she can best express himself/herself. However, any statement has been made in the article regarding the fact that the personnel in charge have the appropriate qualifications and are trained enough in a way to get the statements of the persons with special needs.

388. Article 68, which regulates applications made on behalf of family members, states that the applicant may also apply on behalf of family members who accompany him/her on the same grounds. As we could easily remember, the concept of "family" described in the definition's sections of the law and regulation covers only the spouse, minor, and dependent adult child of a foreigner, applicant, or person with international protection status. Since there is no further statement in the provision of the article, the application for international protection on behalf of the family may not be possible for the partners of individuals with different sexual orientation and gender identity or couples without a formal unity of marriage between them.

389. Article 70 of the Regulation entitled “The issues to be considered during registration” contains the procedures and principles for how to register for an application. In paragraph 5 of the article, it is stated that *if the applicant is a person with special needs, information about his/her special needs shall be recorded.* However, to get this information in line with the sensitivities of persons with special needs, no regulation has been put in place on how to determine the appropriate officials and how to enable the proper environment for that. Since persons with special needs are sensitive groups, they should be able to contact personnel who are qualified and equipped to look after their situation, and if they need, they should be supported by specialists in the fields of psychology and social services. However, the absence of any regulation regarding this in the relevant article is a significant shortcoming.

390. Another important arrangement in the Regulation is related to the identification of a safe third country and the sending of the applicant to that country. The provisions of Article 77 describe what conditions shall be required for a country to qualify as a safe third country. The third paragraph of the article states that whether or not a country is a safe third country for the applicant shall be evaluated separately for each applicant. Since whether a country is safe or not varies according to the applicants' personal, cultural, political, economic, social, and sexual characteristics, it has been an appropriate choice for each applicant to be evaluated separately. In terms of guiding the individuals and institutions to make this determination, however, it should be clearly stated that the suitability for these different characteristics of the applicants should be considered. Otherwise, it may be decided that the applicant will be returned to the country where the relevant persons and institutions will consider it safe with their subjective approach.

391. In the continuation of the Regulation, Article 81 arranges the general principles related to the interview. The second paragraph of the article states that the personnel who will conduct interviews with the applicant must have been trained in the fields such as interview techniques, Refugee Law, Human Rights Law, and knowledge of the law of origin. In addition to the mentioned areas, it should also be stated that the relevant personnel should be trained on issues such as gender, trauma training to communicate properly with people of different sexual orientation, gender identity, and groups such as victims of abuse, harassment, and rape. As it can be understood from the subsequent articles, the claims and demands of the applicants and their documents will be discussed

and evaluated during this interview(s) and the decision will be made in this direction. Indeed, the training, qualification, and quality of the personnel affect the ability to make fair and right decisions significantly. A special provision related to this situation is that "*considering the specific circumstances of the applicant in terms of the interview process and the country of origin or previous country of habitual residence and country culture, it is communicated with him/her, and the behavior and attitudes that would prevent the applicant from providing information shall be avoided* (85/2), and *the special circumstances of the persons shall be taken into consideration in interviews with the persons with special needs (85/3)".* However, we have already mentioned that the law and regulation do not explicitly refer to people with different sexual orientations and gender identity in this group, as identifying those with special needs. The "special circumstances" of the applicant and the statements in which the country of origin or previous country of permanent residence and country "culture" will be taken into account seem to be very general and ambiguous expressions. Accordingly, what situation would be considered "special" is being left to the interpretation of the officials.

392. Article 91, entitled "Request for leave permit outside the province of permanent residence and leaving the province of permanent residence", is significant both for individuals with different sexual orientation and gender identity, as well as for people who have problems fitting in with the people living in the province of permanent residence designated to them due to their religious and ethnic characteristics. The cities of residence, referred to as "satellite cities" for the applicants, are mostly conservative and relatively small or medium-sized cities such as Kayseri, Isparta, Burdur, Konya, Denizli, and Eskişehir. In these cities, where social control mechanisms and supervision are fast due to such characteristics, the differences between refugees become more visible, and this creates new areas of conflict. [376] In paragraph 6 of the Article, it is stated that *those who do not go to the provinces where they are going to reside, or who leave these provinces after arriving, contrary to the rules set out by the governorates, may be*

[376] For more information, see, KAHYA, Nizam, Özlem and SALLAN, Gül, Songül, «Türkiye'de Mültecilere Yönelik Yerleşim Politikaları ve Uydu Kentler Güvenlik Kıskacında Yaşamlar», *Süleyman Demirel University, Journal of Faculty of Economics and Administrative Sciences*, [online], Year 2017, Volume 22, Special Number on Migration, p. 1385- 1410, [consulted on 13.09.2019], https://www.researchgate.net/publication/322505224_TURKIYE'DE_MULTECILERE_YONELIK_YERLESIM_POLITIKALARI_VE_UYDU_KENTLER_GUVENLIK_KISKACINDA_YASAMLAR; «Kaos GL Sığınmacı ve Mülteci LGBT Bireyler», Kaos-GL, above

restricted of their enjoyment of other rights, except the rights to education and primary health care. However, applicants who do not aspire to live there or who are unable to live safely against their will due to discrimination, oppression, and violence in the indicated provinces of residence should be able to be placed in another safe area of residence without losing any rights.

393. In Article 96 relating to administrative detention of applicants, no regulation has been introduced regarding how these detention places and conditions shall be for applicants with different characteristics such as ethnic, religious, gender identity, sexual orientation, political opinion, etc. To ensure the equal and safe detention of persons about whom administrative detention has been decided, the individuality and sensitivity of different identities and groups must be taken into consideration.

394. Article 106 of the Regulation arranges the issue of access to social assistance and services. The article sets out the criteria for determining who is needy from applicants or persons having a beneficiary of international protection status and their access to social assistance and services. Accordingly, social assistance and service support shall be provided according to the procedures and principles to be determined by the Ministry of Family and Social Policies under the specified criteria. In the first paragraph of the article, it is observed that the general criteria such as accommodation opportunity, state of regular income, number of dependents of family members, movable and immovable property are included. However, LGBTI individuals have different needs, especially in terms of treatment and healthy controls. Because these medical expenses are not covered under social security, LGBTIs are often either unable to continue their treatment or are running out of cash by spending all their money on medical expenses. Also, during KAOS-GL's interviews with LGBTI asylum seekers, interviewers expressed that some individuals and NGOs who provide in-kind aid and cash do not want to help them because they are homophobic and transphobic. In addition to this, it has also been reported during the interviews that assistance such as coal assistance made by some Governorates is granted to families so that they are not able to benefit from that. The problems arising from the fact that assistance and support for asylum seekers are family-oriented have also been

noted at meetings organized by Syrian LGBTI refugees at Social Policies, Gender Identity, and Sexual Orientation Studies Association (SPOD). [377]

395. In the continuation of the Regulation, Article 107 sets out the health coverage of the applicant or persons with international protection status. The Regulation states that the General Directorate shall determine the matters concerning the general health coverage of these persons in cooperation with the Social Security Institution and that those who have not the ability to pay shall be subject to the provisions of the Social Insurance and General Health Insurance Law. It seems that such general regulations made concerning health services are considered adequate. However, LGBTI refugees and applicants need different health services and medicines because of their particular circumstances. It is, therefore, necessary to determine the procedures to be followed and who is responsible in this regard, to meet the needs of sensitive groups and persons with special needs.

396. In Article 108 entitled "Employment", it is observed that only applicants and persons with international protection status can work according to the relevant articles of the LFIP and the procedures and principles determined by the Ministry of Labor and Social Security. The absence of preventive and protective regulations, by which people with international protection and applicants are not subject to any discrimination due to their language, religion, race, sexual orientation, and gender identity during their participation in the labor market and working life, is a critical shortcoming. So indeed, immigrants are known to suffer many problems such as low wages and illegal employment, inability to get their salaries, as well as harassment, abuse, and rape at work. LGBTI people, however, are being excluded from work because of their different sexual orientation and gender identity, and they are not wanted to be employed by their employers.

397. The first paragraph of Article 113, entitled "persons with special needs", mentions the people to be included in this group as; *unaccompanied children, disabled, elderly, pregnant, single mother or father with a child or person who has been subjected to torture, sexual assault or other serious psychological, physical or sexual violence.* It is a significant shortcoming that applicants with different sexual orientations and gender

[377] «Kaos GL Sığınmacı ve Mülteci LGBT Bireyler», Kaos-GL, above; «Türkiye'de iki ayrı hayat yaşıyorlar», [consulted on 16.09.2019], https://www.dw.com/tr/t%C3%BCrkiyede-iki-ayr%C4%B1-hayat-ya%C5%9F%C4%B1yorlar/a-41837359

identities are not mentioned among persons with special needs. LGBTI people also need to be included in the content of this article to fill out this gap.

398. Article 122, on the issues to be considered in the processes of children, and Article 123, relating to unaccompanied children, did not include any specific wording to show the required sensitivity and care for the situations of children with different sexual orientations and gender identity tendencies. The absence of a particular regulation relating to these children leaves them unsafe in the face of cases such as abuse, oppression, and discrimination. In paragraph (f) and (g) of Article 123, however, the regulations that; "interviews of children shall be conducted in the most appropriate environments for them; psychologists, child development consultants, social workers, their parents or legal representatives may be present and all interviews shall be conducted by qualified personnel who have sufficient knowledge of the psychological, emotional and physical development of children", are important in terms of meeting children's sensitive situation in general.

399.The second section on the General Assembly of Migration Policies includes regulations on issues such as the establishment, duties and authorities, functioning, and decisions of the council. This council, tasked with determining and following the implementation of Turkey's migration policies and strategies, should take all necessary measures to ensure that migrants have equal access to all rights and services without any discrimination due to characteristics such as language, religion, color, race, political opinion, sexual orientation, and gender identity. However, it appears that no arrangements have been brought about this issue in respect of the duties of the council.

§ 4) Assessment of the Temporary Protection Regulation with a gender perspective

400. The Temporary Protection Regulation drafted based on Article 91 of the LFIP and promulgated in the Official Gazette dated 10/22/2014 and enacted, arranges the procedures and principles related to the temporary protection status. Because the number of refugees reaching millions after mass influxes from Syria to Turkey is residing in Turkey under temporary protection, the importance of these regulations would be even more evident. In Article 3 of the Regulation entitled “Definitions,” the definition of the concept of family is explained as in the LFIP. According to this, unmarried couples and LGBTI partners have been considered out of scope, mentioning that family members

mean *the spouse of a foreigner, the minor, and the dependent adult child.* Why the scope of the family is repeatedly emphasized, both in the laws and other regulations, is because it directly affects the process of the acceptance of the protection applications made by the spouses for each other. This approach, which considers the concept of family to consist solely of spouses and minors, ignores other togetherness and paves the way for partners to be victimized in many respects, such as social, psychological, and economical. A similar problem with the legal arrangements we previously addressed is related to the identification of persons with special needs. According to the Regulation contained in Paragraph (l) of the same article, *a person with special needs is defined as, among the foreigners covered by this Regulation, an unaccompanied child, disabled, elderly, pregnant, single mother or father with a child or person who has been subjected to torture, sexual assault or other serious psychological, physical or sexual violence.* It is favorable that the groups mentioned here are qualified as persons with special needs and that they are privileged and prioritized in the matters referred to in the Regulation. However, it is a significant shortcoming that people with different gender identity, sexual orientation, or gender characteristics are also not identified within this group.

401. The third paragraph of Article 8 of the Regulation arranging the status of foreigners who cannot receive temporary protection points out that, such persons may be accommodated in a special section of the existing temporary accommodation centers or separate temporary accommodation centers or places designated by the Governorates until their return to their country. However, it seems that there is no mention of how to ensure that these accommodation centers become suitable for people with different languages, religions, political opinions, gender identity, and sexual orientation. Because this missing point can cause problems and victimizations for different groups, the Regulation needs to be amended to ensure equality and safety for all. In the following, it has also been stated that these foreigners could be accommodated in the same place at the request of their family members, regardless of their temporary protection status. The content of the article, allowing foreigners to stay with family members only, as we have emphasized above, excludes unmarried and LGBT couples. Therefore, the article should be amended in a way that the partners of these foreigners, regardless of the unity of marriage between them, shall be able to accommodate together.

402. Article 17 of the Regulation arranges the procedures and principles of admission to the country. According to the third paragraph of the article, foreigners who arrive or cross Turkish borders for temporary protection shall have security checks on them, their belongings, and their vehicles; by the Land Forces Command Border Units at the border, authorized law enforcement units at the border gates, and by the Coast Guard Command in the maritime zones. During security checks to be carried out in this way, the sensitivity of the situations of persons with special needs, such as women, girls, and LGBTI groups, who are victims of harassment, violence, and rape, should be taken into consideration. However, no specific regulation has been introduced for these persons in the Article. On the other hand, there have been incidents and examples where, unfortunately, asylum seekers in these situations have been subjected to harassment, violence, or abuse by law enforcement personnel. It is, therefore, essential that the persons to be assigned during these activities have the necessary training and qualifications. In the seventh paragraph of the article, it is stated that those within the country who are under temporary protection shall be referred to the nearest reception center if they apply to the Governorates in person, and if these persons are identified by the competent authorities, they shall be taken to the nearest reception center under the escort of authorized law enforcement officers. It appears that those who are under temporary protection in this scope are dealt with as a genderless, abstract human figure, as is the case throughout the Regulation. Indeed, no special provision has been introduced regarding how, and in which reception center, those who are in a sensitive state under temporary protection will be placed.

403. Article 19 regulates the first procedures to be performed in these reception centers. The second Paragraph regulates that in case of the inadequate capacity of the reception centers, the proceedings of these foreigners can also be carried out in places to be determined by the Governorates. By abstracting from all identity characteristics in this way, it is stated that only persons called “foreigners” can be sent to places designated by the governor in case the capacity of the reception centers is insufficient. However, no explanation has been made as to how the means and capabilities of these places will be, and how the equal and safe accommodation for persons with different identities will be ensured. For this reason, the content of the article should be rearranged in such a way as to address these shortcomings and to consider differences such as language, religion, color, race, gender identity, and sexual orientation.

404. Article 20 is related to health controls. The second paragraph of the article states that: Foreigners, who are within the scope of this Regulation, and who are observed to endanger public health, shall be undergone a medical examination according to the procedures and principles to be determined by the Ministry of Health and, if needed, the necessary measures shall be taken regarding the issue. But the expression "observation that it could endanger public health" is an ambiguous statement given to the initiative of officials. Due to such open-ended comments, persons with different gender identity, sexual orientation, and gender characteristics may be subjected to the irrational and negative behaviors of officials. Therefore, the determination of such situations needs to be more explicit.

405. The procedures and principles of registration processes are also regulated in Article 21. Accordingly, it is stated that the registration of foreigners who are within the scope of the Regulation shall be carried out by the staff of the General Directorate who have been trained in the procedures and requirements of registration in a separate place in a way to ensure that the registration procedures are completed without interruption. This statement shows that it is adequate that the staff in charge should be trained only on registration procedures and requirements. However, there are also groups whose situations require to be considered sensitive, such as women and children who are victims of harassment, rape, abuse, and people with different sexual orientations and gender identity. The officials who will perform the proceedings of these persons at each stage must be determined by the persons having the necessary training and qualifications.

406. Article 23, which includes the provision for the transfer to temporary accommodation centers, indicates that; while the transfer to temporary accommodation center is executed, issues such as the request of the foreigner, his/her family situation, and whether or not he/she is with special needs shall be taken into consideration. Despite the provisions of the article, we have criticized above, it is favorable that the article states the issues such as the demand of the foreigner, the family situation, and whether or not he/she is with special needs will be taken into consideration in the referral processes. However, if we consider that in the Regulation, people with different sexual orientations and gender identities are not defined among persons with special needs and unmarried partners are not specified in the context of the family, in practice, these people are likely to encounter problems.

407. The provision of Article 24 entitled "granting those who are under temporary protection the right to stay in the provinces" is as follows: *(1) those who are under temporary protection may be allowed to stay in the provinces designated by the Directorate General in cases where no harm is considered in terms of public order, public security or public health. The procedures and principles related to this are determined by the General Directorate. (2) Those with a need and under temporary protection apart from those staying in the temporary accommodation center may also be accommodated in places to be determined by the Governorates within the bounds of possibility.* The question of who is considered undesirable, in terms of public order, public security or public health, as stated in the first paragraph of the article, is open to interpretation. Such statements may pave the way for arbitrary interference and behavior by the officials. It is favorable to state in the second Paragraph that persons with special needs can also be accommodated in places determined by the Governorates. On the other hand, besides, there is no statement that these places should be suitable for the circumstances of the persons with special needs, this issue is also given to the initiative of the governors within the bounds of possibility. Keeping the scope of persons with special needs narrow will also lead to the exclusion of LGBTI asylum seekers from the scope of this article.

408. It is apparent that Article 27, which regulates health services, is related to general health services within and outside temporary accommodation centers. Since there is no specific regulation on trans refugees in the article, the treatment of persons who are in the process of gender transition or who wish to initiate this process is not covered by health coverage. Therefore, many trans refugees are unable to initiate their treatment, continue their treatment, and are exposed to the problems caused by that.

409. Article 29 is related to services for access to the labor market. It regulates the procedures and principles related to the studies of persons under Temporary Protection. It is known that people who are under protection, with different status in Turkey, are more precarious in their working life than Turkish citizens in general, and are employed in low-wages or without insurance. Especially women, children, and LGBTI people are affected even worse by these adverse market conditions.[378] For this reason, the article should

[378]For the detailed information, see, ÇIRAKOĞLU, Okan, Cem and ALTINEL, BAYSAL, Gözde, «Türkiye'de Nefes Almak (mı?): Mülteci ve Sığınmacı LGBTİ Bireyler», in ONUR, Aras (editor), *Direnç, onur ve dahası: Disiplinler arası bakışla LGBTİ*, 1st edition, FİSA Publications, 2019, Chapter 8,

include that everyone who is under temporary protection, regardless of race, religion, political opinion, gender identity, and sexual orientation shall enjoy equal work permits and conditions.

410. Article 30 of the Regulation arranges social services and assistance. According to this, those with special needs among persons under temporary protection can benefit from the social services and support set out in the relevant laws. In this context, it is promising that the diverse needs of people under temporary protection, such as social, psychological, and economic, should not be ignored. In practice, for everyone to enjoy these rights equally without discrimination, a statement should also be included related to this issue. Indeed, we have already mentioned that both public officials and persons working in NGOs could exhibit discriminatory and exclusionary attitudes in the disbursement of these services and aids.[379]

411. In the third paragraph of Article 38 relating to services to be provided in temporary accommodation centers, it is stated that necessary arrangements will be made for assigning places for families and those with special needs. This provision is favorable for taking into consideration the situation of family and persons with special needs in the assignment of place. However, the definitions in the Regulation that exclude unmarried couples and LGBTI asylum seekers from this scope also have exclusionary consequences in terms of this article.

412. It is seen that in Article 41 concerning personnel to be assigned at removal centers and temporary accommodation centers, only the procedures and principles for the assignment of such personnel are specified. The absence of an expression in the article regarding the necessity of the personnel to be assigned in these centers to have the required training, experience, and characteristics is a significant shortcoming.

---

pages 149-166, [consulted on 02.10.2019], https://www.researchgate.net/publication/327263415_Turkiye'de_Nefes_Almak_mi_Multeci_ve_Siginmaci_LGBTI_Bireyler; GÜL, Ezgi and ER, Tolga (translators), «Suriyeli LGBTİ Mülteciler: Türkiye'de Eşcinsel Olmak Hayatı Daha da Zor Hale Getiriyor», *Newspaper Karınca,* 14 July 2017, [consulted on 02.10.2019], http://gazetekarinca.com/2017/07/suriyeli-lgbti-multeciler-turkiyede-escinsel-olmak-hayati-daha-da-zor-hale-getiriyor/; GÜNAYDIN, Enis, «CHP Raporu: 1 milyon Suriyeli kayıt dışı çalışıyor, 200 bini çocuk», euronews, 05.08.2019, [consulted on 02.10.2019], https://tr.euronews.com/2019/08/05/chp-raporu-1-milyon-suriyeli-kayit-disi-calisiyor-200-bini-cocuk

[379]«Kaos GL Sığınmacı ve Mülteci LGBT Bireyler», Kaos-GL, above

413. Persons with special needs are addressed in detail in Article 48 of the Regulation. According to this Article;

(1) All kinds of assistance and support; primarily, health services, psycho-social support, and rehabilitation, to be given for foreigners in the scope of this Regulation to those with special needs, are provided with priority and free of charge within the bounds of possibilities. (2) In all proceedings concerning children, the provisions of the relevant legislation shall be applied in consideration of the great benefit of the child. (3) Within the scope of the Law No. 6284 dated 8/3/2012 on the protection of the family and the Prevention of violence against women and the related Regulation, preventive and protective measures shall be taken against foreigners who are considered to be victims of violence immediately. (4) The necessary steps shall be taken for those who are considered to be victims of human trafficking from foreigners under this Regulation. The content of the article is favorable in terms of issues such as stating that the priority should be given to those with special needs and that the necessary measures should be taken for vulnerable groups such as children, women victims of violence, and victims of human trafficking. However, since this particular provision, too, does not include LGBTI asylum seekers, it is a significant shortfall, as it would let them be vulnerable in the face of discriminatory laws and practices.

414. Article 49, which regulates family reunification, states that foreigners under this Regulation may request for family reunification to be reunited in Turkey with their spouse, minors, and dependent adult children still being in another country. In this case, LGBTIs who are under temporary protection and other asylum seekers who are not officially married shall not be able to request for their partners in another country to come to Turkey. The fact that these people are also forced to be separated from their partners makes the asylum process, which already involves many difficulties, even worse. For this reason, the Regulation on family reunification should be granted to all partners without seeking formal unity of marriage and without making any discrimination in terms of gender identity and sexual orientation.

415. Regulation 57 is related to inspection. Accordingly, actions and operations carried out within the provincial administrative boundaries under the Regulation shall be regularly supervised by the governor or a state employee to be appointed by him/her. A temporary protection is a multidimensional process such as decisions to be taken in this

context, actions to be carried out, rights and services to be provided to those who are under temporary protection. Having an effective control mechanism plays an essential role in ensuring protection standards. In the relevant article, it is stated that this supervision will be carried out by the governor or the state official appointed by him/her. However, it would be much more appropriate for such a multifaceted and dimensional process to be supervised by a commission/board to be made up of representatives of individuals and organizations with experience and expertise in different fields.

416. By Article 61 of the Temporary Protection Regulation, "Regulation on the procedures and principles to be applied to individual foreigners who have asylum in Turkey or who have requested a residence permit from Turkey to find asylum in another country, as well as to foreigners arriving at our borders for mass asylum and any possible population movements" was repealed, which was put into effect by the Council of Ministers Decision No 94/6169 dated 1994. In the Regulation dated 1994, which is no longer in force, we have therefore no detailed assessment on it; some arrangements included gendered statements on many issues such as settlements, interviews, qualifications of staff involved in these operations, and health services, or that disregarded the status of asylum seekers with different gender identities and sexual orientations.

§ 5) Assessment of the provisions of some other laws and regulations relating to refugees with a gender perspective

417. In Turkish Law, the essential regulations concerning refugees are included in the LFIP and its Implementing Regulation. The Temporary Protection Regulation, too, is another primary regulation adopted on the immediate and mass influx needs of the millions of refugees who took refuge in Turkey from Syria. Besides, there are provisions in many other laws that directly relate to the rights and freedoms of refugees. Apart from these legal regulations on refugees, all legal legislation, from health care, social security services to the right to employment, from the rules of civil law to the duties and functions of law enforcement officials, sets a general legal basis for everyone living in Turkey. For example, the logic of law, which defines the family in civil code and determines the rights and obligations bound to it, acts on the same family basis also for refugees. Nevertheless, it does not seem possible to make an assessment covering all legal legislation in an academic study. Therefore, it is a practical requirement to address the legal arrangements directly related to refugees in our study.

418. Apart from the legislation mentioned above comprehensively, in the other laws and regulations as well, some arrangements can lead to gender-based problems for refugees. One of the most critical issues in this issue can be observed in the use of the right to accommodation. LGBTI refugees, who have to hide their identities to find a house to live in, are worried about their security due to homophobic approaches and pressures. If their identity is exposed, they state that they are exposed to problems such as pressure, humiliation, harassment, threats and evictions from their neighbors or landlords. It is seen that when they want to apply for complaint, they often do not want to use their rights because they are subject to similar behaviors of law enforcement officers.[380] Refugee camps, removal centers, refugee guest houses are the places where these problems occur on an institutional basis, except for the residence in which the refugees are placed individually. In addition to the provisions mentioned related to this issue in general laws, the "Regulation on the Units Responsible for Carrying out the Proceedings Concerning the Refugee Guest-houses and their Services" refers to the procedures and principles of the refugee guest-houses. For the management and supervision of the refugee guest-houses, which are defined as the temporary accommodation places of the refugees, the competent institution is designated as the General Directorate of Security and its affiliated Foreigners-Passport-Border-Asylum-Migration-Citizenship Department. In Turkey, law enforcement officials are often known to be a side of incidents, such as maltreatment, abuse, violence, torture, even death. For this reason, it is not reasonable that all duties and authorizations regarding the administration of the guest houses of refugees should be given solely to the law enforcement agency. In our opinion, it would be more appropriate for sharing this authority with other institutions and organizations, such as the Social Services Agency. Performing of various tasks included in the Regulation such as; determination of the refugees to be taken to the guest-houses (Article 5/e), inspection of guest-houses, execution of procedures related to overcoming of troubles and inadequacies to be identified (Article 5/ı), resettlement of refugees in the guest-house (Article 6/e),

[380]For more information, see, «Emniyetsiz Sığınak», Helsinki Citizens Assembly and ORAM, above; «Türkiye'nin LGBTİ Mültecilerle İmtihanı», Kaos- GL, 12 April 2019, [consulted on 02.07.2020], http://www.kaosgldernegi.org/yayindetay.php?id=271

ensuring that the contacts and behaviors of refugees with each other are kept under control (Article 6/g), requires training and expertise in many areas.

419. Article 10, entitled "Duties and responsibilities of the guest-house manager," contains arrangements that may adversely affect LGBTI refugees. For example; in paragraph (c) monitoring and getting monitored the contacts and behavior of the accommodated refugees; in Paragraph (d), taking care of the family matters and psychological problems of the refugees and making use of their spare time; in Paragraph (j), nationalities of the refugees to be accommodated, preparing and implementing a settlement plan considering their family and social status, are mentioned. It appears that the guest-house manager has been given a broad power of discretion in these matters. This discretion has the risk of being used against refugees. For example, how will a possible emotional togetherness among LGBTI refugees be judged according to the patterns of contact and behavior that will be pursued in the Regulation? It has been mentioned that the family and social status of the refugees will be taken into consideration while the settlement plan is being made. But there is no statement related to the sensitivities of LGBTI refugees. This situation could result in LGBTI refugees being subjected to disturbing treatment such as harassment, abuse, oppression, exclusion, violence by other refugees and officials. A similar assignment on the contacts and behavior of refugees has been given to the Security Bureau. According to Paragraph 13/d of the Regulation, the security bureau officials about whom there is a doubt that they have the necessary qualifications and training to understand the situation of refugees and to communicate with them healthily will control the refugees' contact and behavior with each other. This arrangement is not appropriate as it can lead to arbitrary interference and behavior by security officials.

420. According to Article 17, which regulates the placement in the guest-house, this process is performed by taking into account the family and social status of the refugees and their nationality. Refugees cannot claim an assignment of space other than the place allocated to them. Spaces allocated to refugees may be changed by the guest house manager if necessary. According to the article, there is a significant shortcoming in the resettlement of refugees, by not taking into account other characteristics such as language, religion, gender identity, sexual orientation, gender characteristics, and political opinion. Besides the fact that there may be problems due to contradictions such as disregarded

religion and political opinion, the placement of homophobic and transphobic refugees' side by side with LGBTI refugees can also cause a variety of problems, in particular, security. The statement that refugees cannot claim another assignment of space will, however, lead to the desperation of refugees, who may have severe problems in the guest-house. The provision stated in the second Paragraph that the change of place can only be executed by the guest house manager, if necessary, is also inaccurate due to the ambiguity of which conditions will be deemed "necessary" and giving the initiative to the manager entirely. It must also be taken into account the demands of refugees in the face of problems with the settlement and clear revelation of the limits of powers.

421. We can also find another ambiguous expression in Article 31 entitled "restrictive measures." It is stated in the relevant article that refugees, who do not comply with the rules set out in this Regulation and the Guest-house Internal Service Regulation, who disrupts the order of the guest house or who exhibit attitudes and behaviors that may be considered dangerous to the security of the country, shall be notified to the Ministry and taken the necessary measures by local authorities. It is not clear, however, in which circumstances the order of the guest-house will be considered to be disrupted, or which attitudes and behaviors will be deemed to be threatening to the security of the country. The determination of these situations has again been given to the initiative of the officials.

422. The "Regulation on the Establishment, Management, Operation, and Inspection of Reception and Accommodation Centers and Removal Centers" promulgated on 04/22/2014 has been adopted to arrange the procedures and principles related to the establishment and operation of these centers, the types and quality of services to be provided at the Centers, and the duties and responsibilities of employees working in these centers. The definitions are mentioned in Article 3 of the Regulation. Paragraph (K) refers to persons with special needs, applicants, and those granted international protection status as; *unaccompanied children, disabled, elderly, pregnant, single mother or father with a child, or persons subjected to torture, sexual assault or other serious psychological, physical or sexual violence.* It seems that in this Regulation as well, LGBTI asylum seekers are not mentioned in the scope of persons with special needs. This would deprive LGBTI of the privileges and rights to be granted to persons with special needs.

423. In Article 4, entitled "Operating Principles of Centers," principles such as a people-oriented approach, looking after the high benefit of the unaccompanied child, giving

priority to the persons with special needs, providing services to the residents without making any discrimination for reasons such as language, race, color, sex, political opinion, philosophical belief, religion, sect, and so on, are included. It is positive to base such principles and values while running the centers. Although the Paragraph does not explicitly state that there shall be no discrimination in terms of different sexual orientations and gender identities, it is reasonable to handle the concept of gender in general in this context.

424. Article 6 and subsequent ones regulate that the centers can be operated by the institutions referred to in Article 8 by signing a protocol. Accordingly, apart from the administrative tasks, services such as health, nutrition, accommodation, and cleaning, social-psychological support, education, providing internal and external security can be operated by organizations such as state institutions and organizations, Turkish Red Crescent, and organizations working in the public interest and those with expertise in the field of migration. In this way, it is seen that many jobs and services related to the centers are allowed to be transferred. In such a regulation, it must be clearly stated that activities and services should be carried out equally and fairly for all who stay in the center and that the personnel assigned in this regard should be determined from among the persons with the necessary training and qualifications. Besides, some public interest associations with expertise in the field of migration are based on ideologies and beliefs such as ideological, religious, and carry out their work in line with this. Or through many institutions and organizations, known for its political closeness to the government, these protocols could be turning into an economic rant. In this case, rather than providing the best and equal rights and services to refugees, the financial gain that will be achieved through the protocols may come into prominence, and discriminatory and exclusionary practices may arise in the fulfillment of these services. To be able to eliminate such adverse risks, a clear identification of the criteria for by whom the services can be operated and effective supervision must be carried out.

425. Article 16, in which the inspection of the Centers is regulated, points out that the Centers shall be inspected every year continuously by the Directorate General and every three years by the Inspection Board of the Ministry, and that the Governorates can always call for an inspection from the Ministry. In the second Paragraph, it is arranged that a commission shall be constituted in the Directorate General and that the operating

procedures and principles of this Commission shall be determined by the Directorate General. Stating that the inspection shall be carried out through the Commission has been an appropriate expression.

426. In addition to these regulations in the relevant legislation, a development regarding the deportation transactions has been realized with Decree Law No: 676 of 29 October 2016. With the Articles 35, 36 and 37 of the Decree Law the scope of cases to be deported for international protection applicant or persons holding international protection status has been extended and it is regulated that appealing against the deportation decisions for these reasons will not stop the deportation process.[381] Accordingly, it is regulated that for those "the terrorist organization manager, member, supporter or a criminal organization executive, member or supporter of the terrorist organization", "public order or public security or public health threats" and "those associated with terrorist organizations defined by international institutions and organizations" a deportation decision may be taken at every stage of international protection procedures. This provision introduced by the Decree Law is contrary to both the Constitution and the provisions of the 1951 Geneva Convention. In particular, the regulation that the judicial remedy against deportation will not halt execution may pose a life-threatening threat to many refugees. It is also unclear how to determine whether a person is a member or a supporter of a terrorist organization or a criminal organization of interest. Indeed, it is also subject to criticism that the scope of the legislation on crimes such as membership and support of terrorist organization is kept wide and definitions are left open for interpretation in the Turkey's law such as Turkey's Penal Code, Anti-Terrorism Law. Similarly, statements such as "public order", "public security" and "public health" are quite vague and open to interpretation. In an arrangement with such serious consequences, the use of vague expressions may lead to arbitrary practices on refugees. LGBTI refugees will also be affected by these arbitrary practices.

[381] For the full text of Decree Law No. 676, see, «Making Some Arrangements Under the Extraordinary Carpet
Decision on The Provision of Law», No. 676, 03.10.2016, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 29872, 29 October 2016, [consulted on 03.10.2019], http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm

§ 6) General assessment in terms of implementation

427. Status determination interviews and evaluation of applications are conducted by the Directorate General of Migration Management (DGMM). The applicants submit their application requests through the Provincial Directorate of Migration Management (PDMM) in the province where they reside. Another application process, also called parallel application, is conducted through the UNHCR registration center in Ankara, in the form of the registration of UNHCR.[382] At the UNHCR registration center, asylum seekers are notified about which Provincial Directorate of Migration Management (PDMM) they should apply to; and asylum seekers apply to the PDMM in their designated province no later than 15 days after this registration and then complete their application for international protection. The Ministry of internal affairs evaluates the issues related to the residence permits of applicants, while UNHCR deals with the problems related to the granting of refugee status and their settlement in a third country. The evaluations of UNHCR and DGMM are generally similar; however, it is not typical for decisions to contradict each other.[383] "However, recognition by the UNHCR as a refugee under the 1951 Convention is not considered a guarantee of granting conditional refugee status in Turkey. Because, the UNHCR resolutions are not binding on the administrative authorities in Turkey."[384] Besides, the long waiting period in Turkey following the decision made for the refugees to settle in another country causes many problems, especially for both female refugees living alone and LGBTI refugees. The cases of harassment and abuse suffered by Syrian girls and women residing in Turkey, for example, have been reflected in public opinion many times. Or the experiences of women, who are forced to marry whom they do not want to be together because they are fed up with such negative behavior and aggression; as well as the experiences of women who are forced to marry men as second or third spouses, appear in various data such as

[382]For the detailed information on application for international protection, see, «Law of FIPL», above
[383]For the detailed information, see, KARAKAŞ, Burcu, «Türkiye'de İki Ayrı Hayat Yaşıyorlar», İstanbul, 18.12.2017, [consulted on 03.10.2019], https://www.dw.com/tr/t%C3%BCrkiyede-iki-ayr%C4%B1-hayat-ya%C5%9F%C4%B1yorlar/a-41837359; KARA, Hayriye and ÇALIK, Damla, «Tekin Olmayı" Beklerken: LGBT Mültecilerin Ara Durağı Türkiye», Kaos-GL, Temmuz, 2016, [consulted on 03.10.2019], http://panel.stgm.org.tr/vera/app/var/files/t/e/tekin_olmayi_beklerken_lgbti_multecilerin_ara_duragi_turkiye.pdf,
[384]KARA, Hayriye, «Türkiye'deki Sığınma Sistemi ve LGBTİ Mülteciler», *Ayrıntı Journal*, above

news, interviews, research, and reports. Some of these women, on the other hand, have tried to pass to Europe by illegal means, risking death because of these necessities.[385]

428. Although access to the UNHCR system is challenging, it is known that LGBTI refugees feel more comfortable expressing their sexual identity in applications made through UNHCR. UNHCR indeed assesses LGBTI asylum seekers and refugees in the context of sensitive groups and plans the interview appointments for these applications to close dates. In this process, applicants can get psychological and legal support from NGOs in Turkey, such as the Foundation of Women's Solidarity (KADAV) and the Foundation for Human Resource Development (IKGV), which are the implementation partners of the United Nations. This support in the application process is essential for both LGBTI and other refugees with special needs. Yet there are still examples of LGBTI refugees being subjected to discriminatory, nasty, bad behavior and attitudes by some of the officials of both from DGMM and UNHCR. Another area where officials maltreat LGBTI refugees has been taking place in their contacts with security forces. LGBTI refugees; during the application process of asylum procedures, in which law enforcement officials involved, or when they wish to report complaints about violence, threats or attacks directed at them; suffer from degrading, offensive, insulting words and behaviors intended to reveal their gender identity by the law enforcement officials.

429. Current homophobia and transphobia in Turkey affect all areas of the lives of LGBTI refugees. During the application process for protection, applicants are subject to discrimination due to their different gender identities and sexual orientation in many subjects such as accommodation, employment, health and social services, application for assistance, registration and participation in language courses; and even sometimes, this tendency can turn into violence against them. Following incidents such as the brutal killings of Syrian gay Mohammed Wisam Sankari and Syrian sex worker trans woman Sendi in Istanbul, LGBTI refugees are seriously concerned about their safety of lives in

[385] « Suriyeli kız kardeşler taciz yüzünden 100 iş değiştirdi», T 24, 6 August 2915, [consulted on 04.10.2019], https://t24.com.tr/haber/suriyeli-kiz-kardesler-taciz-yuzunden-100-is-degistirdi,305346; EVIN, Mehveş, «Suriyelilerle evlilik ticarete dönüştü», Milliyet Newspaper, 27 January 2014, [consulted on 04.10.2019], http://www.milliyet.com.tr/yazarlar/mehves-evin/suriyelilerle-evlilik-ticarete-donustu-1828673; «Suriyelilerle evlilik ticarete döküldü: 'Hemen bir kadın bulurum, birkaç ay evli kalabilirsin», Diken, 09.09.2014, [consulted on 04.10.2019], http://www.diken.com.tr/suriyelilerle-evlilik-ticarete-dokuldu-hemen-bir-kadin-bulabilirim-birkac-ay-evli-kalabilirsin/

Turkey. [386] Different sexual orientation and gender identity criteria are not mentioned both in the equality regulation in Article 10 of the Constitution and in Article 122 of the Turkish Criminal Code (TCC), which regulates discrimination and hate crimes.[387] This lack of legislation leaves LGBTIs even more vulnerable to the security problems they face.

430. Accommodation and employment are two areas of vital importance for LGBTI refugees to be able to sustain their lives. Accommodation facilities for refugees in Turkey are wholly inadequate compared to the demand for them. The state mostly sends LGBTI refugees to conservative and small satellite cities such as Kayseri, Nevşehir, Denizli, Isparta and Konya. In such places dominated by closed society and conservative culture, LGBTIs are struggling to live their lives under the threat of oppression, assault, and abuse. Refugees who wish to meet their shelter needs through their means, however, may be subjected to economic, physical, sexual, psychological oppression and abuse by their landlords. Especially women living alone and LGBTI refugees state that they are not asked to rent a house, and they face similar attitudes in hotels and hostels as well. Another widely encountered problem is that landlords demand one year's rent cash in advance. In this case, refugees who cannot afford the big sums of money are becoming homeless, or have trouble accessing their other needs by investing all the money they have in rent. Unfortunately, the problems do not end even after the house is rented out. Refugees, especially women and LGBTIs, may be facing harassment and abuse from neighbors or landlords. LGBTI refugees are forced to hide their gender identity, stating that when their identity is not hidden, the landlords do not want to rent their house or; if they did, they take them out. LGBTIs who are obliged to hide because of fear of social oppression and abuse, go on even their domestic lives quietly and fearfully. [388] Another problem with the

---

[386] «İstanbul: Suriyeli eşcinsel mülteci 'başı kesilmiş halde bulundu'», BBC News, 4 August 2016, [consulted on 03.10.2019], https://www.bbc.com/turkce/haberler-turkiye-36972793; «Suriyeli trans kadın İstanbul'da öldürüldü», İleri News, 21.12.2016, [consulted on 03.10.2019], https://ilerihaber.org/icerik/suriyeli-trans-kadin-istanbulda-olduruldu-65099.html

[387] For detailed information about Article 10 of the Constitution, see, «Constitution of Turkey», Law No. 2709, 18.10.1982, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 17863, 09.11.1982, [consulted on 03.10.2019], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf; Article 122 of the TCC, see, «Turkish Criminal Code », Law No. 5237, 26.09.2004, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 25611, 12.10.2004, [consulted on 03.10.2019], https://www.resmigazete.gov.tr/eskiler/2004/10/20041012.htm#1

[388] For the detailed information about LGBTI's shelter problems, see, «'Tekin Olmayı' Beklerken: LGBTİ Mültecilerin Ara Durağı Türkiye», above

right to accommodation is related to the phrase “making it unbearable” in the Law of Property Ownership. Under Article 25 of the law, *the arrangement "*if one of the property owners violates the rights of the other property owners by not paying their debts and fulfilling obligations according to this law to the extent that it becomes unbearable for them; they, too, may ask the judge to transfer the property right on the independent part of that property", has been using against LGBTIs. Referring to this article, LGBTI's homes are sealed, and their rights to accommodation are prevented from benefiting.[389]

431. Ensuring that refugees have access to the right to employment is one of the top priority requirements in terms of meeting the minimum living standards. As a country that is home to millions of refugees and asylum seekers, Turkey's official unemployment data ranges from 14.7% to 12.8% for 2019. Although official data indicate that the unemployment rate is around 13.75%, the actual percentage is estimated to be much higher than that.[390] These data point that Turkey is even incapable of providing employment opportunities for meeting the demand of its citizens. In these labor market conditions, there are many disadvantages such as longer hours working than stated in the law, unregistered or uninsured employment, non-recognition of economic and social rights, non-payment of wages. Indeed, for 2019, the officially determined unregistered employment rate has been reported as 35.2%. Groups such as women, children, and LGBTIs are more affected by all these negative conditions in working life. In the regulations of the legislation, it is clearly stated that there shall be no discrimination based on language, race, color, sex, disability, political opinion, philosophical belief, religion, sect, and similar reasons in the labor relationship; however, it is known in reality that the situation is far from this egalitarian approach.[391] For refugees, on the other hand, the situation is even more complicated. In addition to the current labor market problems, the fact that they do not know Turkey's official language, labor law regulations, as well as the unfriendly attitudes of society towards foreigners, further limit their employment

[389] For the detailed information, see, GÜNER, Umut, «LGBT’ler ve Barınma Hakkı ve İhlaller», Kaos-GL, 16.02.2013, [consulted on 03.10.2019], https://www.kaosgl.org/haber/lgbtrsquoler-ve-barinma-hakki-ve-ihlaller

[390] For TUIK’s 2019 unemployment statistics, see, «İşgücü İstatistikleri, Haziran 2019», Turkish Statistical Institute, No. 30686, 16 September 2019, [consulted on 04.10.2019], http://www.tuik.gov.tr/PreHaberBultenleri.do?id=30686

[391] For the Article 5 of the Labor Law see, «Labor Law», Law No.4857, 22.05.2003, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 25134, 10.06.2003, [consulted on 04.10.2019], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4857.pdf

alternatives. Because of all these disadvantages, refugees are often either unable to find proper jobs or forced to work unregistered with low wages. LGBTI refugees, on the other hand, are not asked to be employed because of the homophobic, transphobic approaches. Women, children, and LGBTI refugees are probably becoming the first targets of harassment, abuse, and even rape at work, and sometimes violent attacks, especially against LGBTI, are known to happen.[392]

432. According to the LFIP, the applicant or persons with international protection status who do not have any health insurance or who could not afford health expenses shall be subject to the provisions of Social Insurance and General Health Insurance. These people shall be charged the full or a certain proportion of the premium according to their ability to pay. When it comes to persons under temporary protection, it has been ruled that patient share will not be taken from essential and urgent health care services as well as treatment and medicines in this scope. People in this scope will also be able to benefit from other health services in a way that does not exceed the price specified for general health insurers. Refugees and asylum seekers who wish to benefit from health assistance must first register to with the Security Unit of the foreigner's branch of the satellite city where they reside and pay the residence fees and registry fees. Furthermore, to benefit from health services, premiums or payments determined according to the relevant laws must be paid. Refugees and asylum seekers who cannot afford these costs are unable to benefit from health services and cannot get their medicines. Due to the broad discretion granted to organizations such as the Governorate, Directorate of Foreign Affairs, Social Assistance and Solidarity Foundation, the shortage of integrity in practice is another point that both refugees and NGOs draw attention to. The inability to adequately provide interpreter services, or the fact that interpreters exhibit negative approaches to refugees, such as gendered, degrading, discriminatory, etc., is a significant problem that hinders access to health care services. To address this problem, it is essential to popularize the use of interpreting services, as well as to be chosen these tasks among persons who are qualified and equipped to consider the sensitivities of the refugees. Also, some problems related to health services may arise from the fact that hospital staff do not know the

[392] For the detailed information, see, «Kaos-GL Sığınmacı ve Mülteci LGBT Bireyler», above; «'Tekin Olmayı' Beklerken: LGBTİ Mültecilerin Ara Durağı Türkiye», above

necessary legal procedure for refugees or do not rightly implement it. In some hospitals, for example, bills related to the treatment of refugees are prepared under the health tourism circular letter. Since these circular letters are for foreigners who prefer to be treated in Turkey at their requests, they are billed far above the standard treatment fees. In addition to the general issues that refugees face in benefiting from health care, LGBTI refugees are known to be exposed to many unique problems. In the studies such as interviews and reports published on this issue, it seems that LGBTI refugees have been subjected to gendered, degrading or even abusive behavior and treatment by hospital staff due to their different gender identities and sexual orientations, they have difficulty in paying treatment and medication costs for general health problems, and their treatment costs for the gender transition process have not been covered. The fact that LGBTI refugees are often unable to express themselves freely and explicitly during the support services they receive due to their psychological problems is also another problem they point out. In some cases, these problems can have serious impacts, leading sometimes to life-threatening consequences. For example, when hormone therapy necessary for the gender transition process is disrupted, or when it is not performed under the supervision of a doctor, it can cause negative consequences such as heart attack.[393]

Conclusion Chapter 1

433. It is seen that no regulation, even the Turkish Constitution, which is the highest norm in which the right to equality is guaranteed in terms of the assessment of gender equality in Turkey, includes different sexual orientations and gender identities. Similarly, in Article 122 of the TCK, which regulates hate and discrimination crimes, it is understood that discrimination and hate crimes based on sexual orientation and gender identity are not explicitly defined in the article. Therefore, although homosexual relationships are not considered a crime (except for the regulations mentioned in military laws), it is possible to say that their rights and protection against threats against them are not guaranteed by not being legally defined. Equality between men and women is clearly

[393] For more information about health services for refugees, see, «Türkiye'de Mültecilerin Kabul Koşulları, Hak ve Hizmetlere Erişimleri, Uydu Kentler İzleme ve Raporlama Projesi Raporu», Mülteci-Der, İzmir, 2015, [consulted on 04.10.2019], http://www.multeci.org.tr/wp-content/uploads/2016/10/Turkiye-de-Multecilerin-Kabul-Kosullari-Hak-ve-Hizmetlere-Erisimleri-Uydu-Kentler-Izleme-ve-Raporla.pdf; «Kaos-GL Sığınmacı ve Mülteci LGBT Bireyler», above

regulated in Article 10 of the Turkish Constitution. In its article, it is clearly regulated that men and women have equal rights. However, in various national and international reports on criteria such as social, economic, political rights and violence against women referred to in the study, it is seen that Turkey is at the back of the world's rankings on equality between men and women.

434. Applications for asylum in Turkey have made according to the procedures and principles in the Law on Foreigners and International Protection since 2014. Although legal regulations are quite new in terms of the date of adoption, they are far behind their age in terms of achieving gender equality. It is understood in the detailed assessment of the basic laws and regulations concerning refugees that some rights in terms of gender are limited based on the criteria of women or child refugees, whereas LGBTI refugees are ignored. Neither the law nor the regulations have ever mentioned the criterion of gender identity and sexual orientation, women are identified and protected by identity and situations such as mothers, spouses, pregnant, married, victims of sexual abuse or violence. However, in Article 60 of the Istanbul Convention which Turkey is a party, too, is organized for asylum based on gender. In the "Asylum and Migration" section of the Convention, it is stated that States parties will do what is necessary for gender-sensitive asylum procedures. However, there is a violation of the obligations arising from the contract without observing the relevant legislation in this respect Turkey. Another violation of the Istanbul Convention concerns Article 59 regulating residence permit. Accordingly, the Parties shall take the necessary legal or other measures to ensure that, in case of deterioration of the marriage or relationship, the residence permit is independent of the spouse, regardless of the duration of the marriage or relationship, upon the application, to victims, whose residence status is recognized by the domestic law, to the victims or spouses. Turkey's regulations on this issue are inadequate as it only covers foreigners married to Turkish citizens and excludes other nationalities. Indeed, The Grevio 2018 Turkey Assessment Report also made emphasis that should be extended to cover all nationals of that provision.

435. Another important problem is that LGBTIs are not identified in vulnerable groups. It also leads to the exclusion of these groups in terms of many rights and freedoms. It is seen that the necessary arrangements and guarantees are not provided to ensure that LGBTI refugees have equal access without discrimination to many basic rights such as

housing, working, education, social assistance, health care. Also, those working in international protection applications and centers for refugees, should be chosen from among those who have taken the necessary education on issues such as gender, human rights, trauma, communication, and who are suitable to fulfill this duty in terms of personality traits and experiences. However, it is understood that this requirement is not adequately explained in the legal regulations regarding the appointment of personnel and training. This may cause vulnerable groups and LGBTI refugees to encounter negative, discriminatory treatment and not be able to express their status and identity easily.

436. As a result of all these assessments it is possible to say that regulations and practices concerning refugees in Turkey are not compatible with the international regulations in terms of gender sensitivity. Gender-based deficiencies make women, children and LGBTI refugees vulnerable to discrimination, as well as being vulnerable and unprotected against oppression, violence, abuse, harassment, rape and murder. To create a gender-sensitive refugee law where no one is exposed to discrimination, both international law and the laws and practices of states need to be developed in a way that guarantees the rights and freedoms of everyone regardless of their gender identity, gender characteristics and sexual orientation. For the implementation of laws in life it is considered as important as positive regulations that the development of social awareness and the training of officials.

Chapter 2: Role of NGOs in Migration and Gender Problem

437. In the second chapter of this part it is given place to interviews with Civil Society Organizations (hereinafter referred to as NGOs) carry out studies on gender-based refugee groups in Turkey. With these interviews, the theoretical evaluations made in the first part were wanted to be determined in practice thanks to the experiences of NGOs. Civil society is regarded as one of the important actors of democratization and social development with its presence and studies reaching both national and international dimensions.[394] Civil society have a leading role in many respects on preventing violations

[394]For more information, see., KEYMAN, *Fuat, Avrupa'da ve Türkiye'de Sivil Toplum*, Istanbul Bilgi University Civil Society Organizations Education and Research Unit, KARAMANİ, Arzu (editor), Civil Society and Democracy
Conference Articles No. 3, 2004 [consulted on 07.01.2020],
http://scholar.google.fr/scholar_url?url=http://www.academia.edu/download/32605890/avrupadaveturkiy

of rights and developing democracy. Studies such as developing social awareness, supporting the legal, tangible, medical, psychological and more of the same needs of the victims, forcing political officials to produce troubleshooter policies for the problems, announcing the problems to the country and the World by various methods such as project, research, interview, and reporting can be stated as some of these.

438. In this part, a brief mention was given about NGOs that primarily work for women and/or LGBTI refugee groups in Turkey. Then there were the interviews with 7 NGOs who were able to communicate from these institutions and accepted the interview request. These meetings were held in Ankara, Istanbul and Izmir, Turkey, in the form of one-to-one meetings in February 2020. Since only one institution could not be interviewed at that time, the meeting with this institution was conducted via Skype program in March 2020. Through the 15 questions prepared in advance, rich results were reached on similar subjects through the questions posed to the institutions. These results were then analyzed in line with the scope of the study.

§ 1) The reality of civil society in migration areas of Turkey

439. Migration in Turkey, as a current and historical reality, always took place on the agenda of the academy, politicians and civil society. However, when the Syrian civil war intensified after the spring of 2011, massive and long-term realization of migration to Turkey, undoubtedly, has increased the interest towards the area. This interest has reached an international dimension in terms of academy, civil society and the interest of governments today.

440. Surely, the concerns and goals of different structures that carry out studies for immigrants and refugees are also seen distinctly. For example, in terms of states, the refugee agenda is mostly political and security centered. Especially for the European states that are exposed to massive migrations, due to the reasons as increase in illegal immigration directed towards them, the effects of these migrations in terms of economic, social, political, cultural integration, immigrant deaths caused by illegal unsafe trips and its reflection in the world public opinion, the center of the immigration policy is to prevent

edesiviltoplum.doc&hl=tr&sa=X&scisig=AAGBfm13WQYSLiICYRTJkprx2MAaokBKUA&nossl=1&oi=scholarr

illegal immigration and to keep this mass influx out of bounds. From the civil society perspective, it is seen that the number of both national and international institutions and organizations that are engaged in migration and refugees, is constantly increasing. Some of these organizations are based on needs, solidarity, and cooperation, while others are both claim-based and demand-based institutions. Some of the non-governmental organizations are related to political, religious and economic environments, while others are distant to the state or political structures. Again, while some of the non-governmental organizations are related with circles such as political, religious and economic; some are distant from the state or political structures.

441. Apart from the shortcomings in the law, the fact that rights and freedoms are only legally recognized, does not lead to the conclusion that they can be used. This, sometimes, may be due to the lack of knowledge in the access to law; sometimes can be caused by many different reasons such as not having sufficient command of the language, cultural, religious, economic, social, gender identity and sexual orientation. "Here, civil society comes in at this point and acts as cement in filling the cracks in the bridge between non-governmental actors and institutions, rights and people." [395] There are many non-governmental organizations in Turkey; rights-based, service-based or trying to fulfill both. Especially after mass migrations from Syria, a significant increase has been observed both in associations and local or regional organizations, organizations such as voluntary solidarity groups related to migrants.

§ 2) NGOs operating in the fields of migration and gender in Turkey

442. Although the qualitative conditions of associations and other civil initiatives in Turkey, such as political independence, potential and effects, are controversial; quantitatively, it has become quite massive. This section will focus on some of the non-governmental organizations which are engaged in permanent or periodic activities for refugee groups such as women, LGBTI and sex workers. Today, many NGOs in the field of migration are working on women and child refugees. However, it is not possible to make the same assessment for LGBTI refugees. Because different sexual orientation and

[395] MACKREATH, Helen and SAĞNIÇ, Şevin Gülfer, *Türkiye'de Sivil Toplum ve Suriyeli Mülteciler*, 1st edition, Istanbul, Zer Publishing, March 2017, p. 25, [consulted on 27.01.2020], https://www.hyd.org.tr/attachments/article/216/turkiyede-sivil-toplum-ve-suriyeli-multeciler.pdf

gender identities are still met in a homophobic way by many NGOs in Turkey. It is not possible to include all of these institutions in the study. In this section, therefore, the institutions that I have benefited from the campaigns, projects, fields, reports and similar studies, which have important presence and influence in the fields of gender and migration, will be mentioned. These institutions are national and international organizations such as: KAOS Gay and Lesbian Cultural Research and Solidarity Association (KAOS GL), Solidarity Association with Refugees (Multeci-Der), Refugee Rights Turkey, Social Policies Gender Identity and Sexual Orientation Studies Association (SPOD), Human Resource Development Foundation (HRDF), Red Umbrella Sexual Health and Human Rights Association, Positive Living Association, Young LGBTI Izmir Association, Women's Solidarity Foundation (KADAV), Hevi LGBTI Association, Citizens Assembly, The Association for Solidarity with Asylum Seekers and Migrants (SGDD-ASAM), Organization for Refugee, Asylum & Migration (ORAM), The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and United Nations High Commission for Refugees (UNHCR).

443. **Kaos-GL Association**, which is still actively operating, led the way for many important things in Turkey, in terms of both strengthening solidarity and togetherness among homosexuals and increasing the visibility of homosexuals in the public sphere. The first formation discussions of the association extend to home conversations held in 1990. Kaos-GL, which published its first magazine under the name of "Kaos-GL" on September 20, 1994 and made its voice heard to the public, had an important influence with this breakthrough. By opening its cultural center in the fall of 1999, both a library (Turkey's first gay library), and also an opportunity was created to make it possible for LGBTI individuals to socialize, research, produce and increase their common sharing. Thus, Kaos-GL, which officially became an association on July 15, 2005, once more brought in something new as being the first association founded in Turkey in the field of sexual orientation and gender identity. This is how Kaos-GL summarizes its fields of activity today: providing legal and psychological support services through volunteer lawyers and psychologists-psychiatrists, struggling to uncover and end homophobic practices for homosexuals, struggling against violations of rights caused by pressures and prejudices against homosexuals in all areas of social life such as law, work life and education and striving for homosexuals to be "visible".

444. In addition to all these efforts, the Association provides legal and social counseling to LGBTI+ refugees through the medium of "Refugee Rights Program", through lawyers and social workers working within the program. Also, trainings and social events are being organized within the scope of the program, and it is aimed to facilitate LGBTI+ refugees' access to basic rights, official bodies and social networks in their cities. Kaos-GL carries out its works for LGBTI+ refugees under six headings, which are as follows: consultancy activities, social activities, human rights training and sexual orientation gender identity training for refugee rights workers, assessment meetings with LGBTI+ refugees, discovery meetings with LGBTI+ refugees and written production. Report studies of the association such as "Waiting to be Auspicious: Way Station of LGBTI Refugees in Turkey"[396], "Turkey's Trial with LGBTI Refugees" [397], offer important data about problems faced with both legal and enforcement aspects in the light of the data obtained as a result of one-to-one interviews with LGBTI refugees. [398]

445. **Association for Solidarity with Asylum Seekers and Migrants (ASAM),** was established in 1995, Ankara to carry out studies for refugees and asylum seekers living in Turkey. ASAM, which provides services to all asylum seekers and refugee groups regardless of their language, religion, race, gender, sexual orientation and political views; conducts studies such as social and legal, psycho-social supports and various courses and activities to adapt to social life. The studies of the association have reached at a very important entity level with its 60 offices located in approximately 40 provinces. It is possible to say that ASAM, which opened its first representative office in Athens, 2016; evolved towards an international structure with its activities for the asylum seekers and refugees outside Turkey. [399] ASAM, in addition to many projects and activities for refugees in general, also conducts special projects for gender-based refugee groups such as women and girls. ASAM, together with other ASAM (Association for Standardization of Automation and Measurement Systems), within the scope of the project "Strengthening

[396] «Tekin Olmayı Beklerken: LGBTİ Mültecilerin Ara Durağı Türkiye», Kaos- GL, 29 August 2016, [consulted on 13.01.2020], http://www.kaosgldernegi.org/yayindetay.php?id=154
[397] «Türkiye'nin LGBTİ Mültecilerle İmtihanı», Kaos- GL, 12 April 2019, [consulted on 13.01.2020], http://www.kaosgldernegi.org/yayindetay.php?id=271
[398] For more information about Kaos-GL, see, «Tarihçe», [consulted on 10.01.2020], http://www.kaosgldernegi.org/belge.php?id=tarihce
[399] For more information about Sığınmacılar ve Göçmenlerle Dayanışma Derneği, see, «Biz Kimiz? », [consulted on: 17.01.2020], https://sgdd.org.tr/who-we-are/

the access of asylum seeker women and girls to health services" provide services such as information and support on sexual and reproductive health issues for women and girls in Gaziantep and Istanbul, struggle with sexual and gender-based violence and support the empowerment of women and girls by making them realize their rights, distribute hygiene and mother kits. The target group of the project are Syrians under temporary protection, non-Syrian asylum seekers applying for International Protection and women, girls and babies from the local community. With the "SADA – Women's Empowerment and Solidarity Center Project", it is aimed to increase the access of Syrian women and girls in livelihood opportunities in Gaziantep, to ensure their social and economic stability and to make them self-sufficient. For this purpose, Turkish language courses, computer management and hairdressing courses are provided to women and girls. Besides, by providing anti-violence services, psycho-social support and legal counseling; it is aimed to strengthen the adaptation of women and girls to economic and social life in Gaziantep. Another gender-based project implemented by ASAM is "Safe area for women and girls". The project is carried out with the support of UN Population Fund UNFPA, in three different regions in Istanbul, in Migrant Health Centers in Izmir and Antakya. With this project, the fields established to provide health counseling, psycho-social counseling, and reproductive and women's health training for women and young girls are also intended to be a counseling and case tracking centers for health educators, psychologists and social workers, sexual and gender-based violence cases. With the "Al Farah child and family support centers project", in 2016, Child and Youth Friendly Areas included Family Support Centers, were established in Ankara, Adana, Gaziantep, Izmir and Istanbul, to create a safer environment for refugee children and their families and to carry out studies to improve the mental, emotional and psycho-motor development of children. With child protection officers, social workers, psychologists, family counselors, medical educators, nutritionists, youth workers, mobile field teams, translators, disabled specialists, volunteers, support teams and administrative staff present in these centers; language courses and studies are carried out to encourage children to go to school and continue with activities aimed at improving children's life skills and providing psycho-social support, while providing counseling in the field of social, legal, health and nutrition. Also, within the scope of this project, a Training Center was opened in Gaziantep as of February 2017, to organize regular Turkish courses for children, information activities and field studies to increase schooling, and studies for better follow-up of the children attending

school. If children with special needs are identified, these children are directed to Gaziantep Al Farah Child and Family Support Center and necessary consultancy and protection services are provided.[400]

446. **The Association for Solidarity with Refugees (Multeci - Der)** was officially established on January 31, 2008, following the initiatives of various non-governmental organization representatives who came together in İzmir, June 2017. [401] In the second article of the association regulation it is expressed as follows, *a human rights and humanitarian organization working on the problems of people who can enter secondary protection procedures and people with international protection needs, aimed to seek temporary asylum for refugees, asylum seekers, migrants, who have left their country, regardless of language, religion, race, gender, sexual orientation, gender identity, age, disability, differences in political views and other reasons.* [402] Again, in the continuation of article 2 of the regulation, the topics and forms of study to be continued by the association are stated in which subjects the association will carry out studies. Some of these are as follows, carrying out informing, awareness raising and sensitivity studies to understand the problems faced by refugees, asylum seekers, immigrants, people seeking temporary asylum and who may enter the secondary protection procedure; to carry out studies to meet the basic human needs of these people such as nutrition, shelter, health, education, and work; organizing aid and support activities; establishing and operating facilities such as meal center, social market, social service, education and health support units, rehabilitation centers to meet these needs; to inform and raise awareness of national and international legislation for individuals to enjoy basic human rights, to fight for the evolution of legislation in line with universal law, to issue publications, to establish legal aid and / or advisory units; to determine the medical, psycho-social, cultural, environmental and economic problems of the people listed in the Second Article and constitute the target audience of the association, to conduct scientific researches, to develop and implement projects to draw attention to these problems and to produce

[400] For more information about projects of SGDD, see, «Projeler», [consulted on: 17.01.2020], https://sgdd.org.tr/projeler/
[401] For more information about Mülteci-Derneği, see, «Hakkımızda», [consulted on: 13.01.2020], http://www.multeci.org.tr/hakkimizda/
[402] For the full text of Charter, see, «Charter of Solidarity Association with Refugees», [consulted on: 13.01.2020], http://www.multeci.org.tr/wp-content/uploads/2016/10/Tuzugumuz.pdf

solutions; to engage in informative and educational activities against any racist and discriminatory practices that may be exposed to, and the social pressure that may arise in this direction; organizing dinner meetings, concerts, ballrooms, theater, exhibitions, sports competitions, excursions and other events to develop and continue human relations between members and refugees and migrants. In addition to various organizations such as panels, conferences, meetings related to different problems faced by refugees, Multeci-Der also contributes significantly to both refugees and the literature through many publications such as educational brochures, study and observation reports.[403]

447. The first studies of the **Refugee Rights Center** for refugees is based on the legal support study initiated by a group of lawyers and refugee rights advocates under the name of "Legal Support Program for Refugees" between 2003-2005. Later on, under the roof of the Helsinki Citizens Assembly, as of March 2015, the studies under the name of "Refugee Support and Advocacy Program" have continued under this legal personality with the establishment of the Refugee Rights Center Association. [404] As disclosed in the specified Regulation, Association carries out studies for purposes as follows: for refugees who have left their country because of war and persecution and other people in need of international protection and immigrants who are vulnerable and other foreigners, to be able to access their rights in Turkey arising from international law and national legislation and national protection mechanisms; development of legislation, policies and practices in the field of asylum and migration in line with international human rights standards, good examples in the world and state of law requirements; raising awareness and sensitivity of the public, non-governmental organizations, political parties and other relevant institutions and organizations regarding the protection needs of refugees, migrants and other vulnerable foreigners; and Turkey to contribute to the development of information and support activities for these groups, conducts studies for the purposes. Studies of Refugee Rights Center are realized sophisticatedly as following: in addition to information, counseling, legal support services for asylum seekers, preparation of workshops, seminars, consultancy services, reports, brochures and similar resources for

[403] For detailed information about Refugee Association's publications, see, «Publications of Solidarity Association with Refugees», [consulted on: 13.01.2020], http://www.multeci.org.tr/yayinlar/
[404]For detailed information on the Refugee Rights Center and its work, see, «Hakkımızda», [consulted on: 16.01.2020], https://www.mhd.org.tr/tr/hakkimizda

non-governmental organizations and lawyers working on this subject; about the various aspects of the asylum system and practice in Turkey, legislation, policies and processes for evaluating proposals and solutions offering to organize events and reports, preparing position papers; providing information, counseling and support services for persons seeking asylum while under administrative detention and unaccompanied child asylum-seekers under government protection. The association has booklets on the issues as following: application ways, procedures, education, health, work for asylum seekers from Syria; application ways, education, health, work issues for asylum seekers from other countries, except Syria; rights and procedures for persons under administrative detention, legal aid services for asylum seekers, marriage and divorce, rent and property acquisition. All of these books have translations in Turkish, English, Arabic, and some in languages such as French, Persian, Somali, and Urdu. Also, there are also publications in the form of enlightening books, opinion reports and brochures on different topics; asylum seekers, refugees and migrants report on the various problems they encounter in Turkey.[405]

448. Initiatives for the establishment of the **Positive Life Association** started with the participation of a group of doctors, activists and people from institutions such as UNAIDS, who came together in 2003 and lived with HIV. First of all, this group, communicating over the internet via the HIV Positive email group, established the Positive Life Association in June 2005. The main objectives of the Association are to defend the basic rights of individuals living with HIV, to strengthen and solidarize them by organizing, to increase their knowledge, to fight prejudices and to raise awareness of HIV. [406] In 2006, a Positive Life Support Center was established within the scope of the HIV / AIDS Prevention and Support Grant Program created with the protocol signed between the Global Fund and the government. Positive Life Support Center today, the only physical center of support services to individuals living with HIV in Turkey, is the center that provides consultancy services to individuals face-to-face, over the phone and via the Internet, where training / seminars and all meetings and events are organized, and

[405]For detailed information on publications, see, «Publications of Refugee Rights Center », [consulted on: 16.01.2020], https://www.mhd.org.tr/tr/yayinlar/raporlar-ve-gorus-belgeleri, https://www.mhd.org.tr/tr/yayinlar/bilgi-kitapciklari, https://www.mhd.org.tr/tr/yayinlar/referans-kaynaklari

[406]For detailed information about the Positive Life Association, see, «Hakkımızda», [consulted on: 17.01.2020], https://pozitifyasam.org/hakkimizda/

constitute the headquarters of all projects of the association. Positive Life Association carries out various projects for refugees as well as projects and works for individuals living with HIV. Within the scope of "HIV Consultancy Project for LGBTI + Refugees" conducted between February 2017 and December 2017, Arabic and English services are provided for subjects as increasing HIV awareness of LGBTI + refugees who are more vulnerable to HIV due to their sexual behavior, facilitating their access to protection materials, providing free test services in privacy, providing counseling and facilitating access to treatment for individuals diagnosed with HIV. Started in January 2018, still ongoing, "Key Refugee Population Protection Service to Access Reducing the barriers Project" is carried out by altogether with the UNFPA Turkey, Positive Life Association and the Red Umbrella Sexual Health and Human Rights Association, the Association of Social Policy, Gender Identity and Sexual Orientation Studies. Within the scope of the project financed by European Union Civil Protection and Humanitarian Operations (DG ECHO), 7 service units in 6 provinces, including Ankara, Eskişehir, Istanbul (x2), Mersin, Denizli and Yalova, provide specialized services for Key Refugee Groups. The Refugee Support Line (0850 888 0539) provides 24/7 service in 4 languages: Arabic, Persian, Turkish and English.[407]

449. **Social Policies Gender Identity and Sexual Orientation Studies Association (SPOD)** was founded in 2011 by a group of academics, lawyers and activists who came together. SPOD, established to produce permanent and comprehensive solutions to the problems experienced by LGBTI + s and to prevent the pressure, violence and discrimination they are exposed to, carries out studies on many issues such as, legal, social, psychological counseling; litigation; mental health, training for social workers, lawyers, institutions, municipalities; academic research, seminars, panels, Politics and Activism Schools; organizing election campaigns; creating support groups for trans people, disabled people and refugees, organizing advocacy meetings.[408] SPOD, principally in line with the principles of justice and equality, states that it follows a rights-based social policy and understanding against heterosexism, patriarchy, militarism,

[407]For detailed information about the projects of the Positive Life Association, see, «Projelerimiz», [consulted on: 17.01.2020], https://pozitifyasam.org/projelerimiz/
[408] For detailed information about SPOD, see, «Hakkımızda», [consulted on: 16.01.2020], http://www.spod.org.tr/TR/sayfalar/1/hakkimizda

belief, language, ethnicity, age, gender, sexual orientation, gender identity, physical characteristics, lifestyle or any social status-based discrimination and social exclusion, poverty and labor exploitation. SPOD also emphasizes that its work is based on international human rights texts and evaluates these texts with new categories of rights and current interpretations and prioritizes transgender, intersex, disabled, prisoners and refugees in all their work, internal functioning and management. [409] The association has many important publications on LGBTI rights on various issues. [410] SPOD has conducted several studies for Syrian LGBTI refugees in Istanbul and LGBTI has gained significant experience in terms of needs and problems of LGBTI refugees in Turkey. Also, it has been carrying out "Supporting Key Refugees Project" with 4 other NGOs since January 2018. Within the scope of this project, service units, field work and refugee support line have been established.[411]

450. **Red Umbrella Sexual Health and Human Rights Association** was established advocacy work on bringing the problems of sex workers to the agenda of sexual health and human rights, developing solutions to these problems and developing gender equality, access to justice, developing social policies, public health, discrimination and hate crimes before the authorities and on other related issues. [412] The Association, whose starting point is to deal with problems such as rights violations experienced by sex workers, exclusion, violence, stigmatization, and ignoring, as well as works such as condom distribution for LGBTI+, brothel workers, trans sex workers, legal support for sex workers, besides, since 2017, it has been providing psychosocial support for LGBTI+ refugees and sex worker refugees living with HIV + within the refugee help center. [413] As the association carries out various activities such as conferences, conversations about raising awareness of sex workers from different sexual orientation and gender identities, and seeing sex work as a field of labor, creating a social awareness, and methods of

[409]For detailed information about the principles of SPOD, see, «İlkelerimiz», [consulted on: 16.01.2020], http://www.spod.org.tr/TR/sayfalar/1/ilkelerimiz
[410] For detailed information about SPOD Publications, see, «Yayınlar», [consulted on: 16.01.2020], http://www.spod.org.tr/TR/sayfa/3/yayinlar
[411]For more information about the Project see, «Supporting Key Refugees Project», [consulted on: 16.01.2020], http://spod.org.tr/multecidestekdetay/1
[412] For detailed information about the Red Umbrella Sexual Health and Human Rights Association, see, «Tüzük», [consulted on: 17.01.2020], http://www.kirmizisemsiye.org/TR/sayfalar/tuzuk
[413] For detailed information about the activities of the Red Umbrella Association, see, «Faaliyetlerimiz», [consulted on: 17.01.2020], http://www.kirmizisemsiye.org/

protection from diseases such as HIV, it also publishes publications such as brochures, booklets and reports. Red Umbrella is also one of the NGOs involved in the "Supporting Key Refugees Project".

451. Founded in 1988 by academics and businessmen consisting of 13 founding members, the **Human Resource Development Foundation (HRDF)** is one of the leading civil society organizations in Turkey. The Foundation explains its establishment purpose as contributing to the solution of health, education and employment related problems that negatively affect economic, social and cultural development related to human resources. [414] HRDF carries out various studies under many different topics such as reproductive health and rights promotion program, social development and women's empowerment program, irregular migration program, anti-trafficking program, and civil society development program. In terms of our topic, HRDF is the first non-governmental organization to start providing legal counseling to asylum seekers and refugees since 2001 and psychological counseling since 2002. Following these pilot studies, psychological support services were expanded and generalized in Istanbul and Ankara, in cooperation with the United Nations High Commissioner for Refugees (UNHCR) and HRDF. Since 2007, social counseling services have been included in the current program and started to be carried out by social workers, psychologists and translators working in Istanbul and Ankara refugee offices. With irregular migration program, studies as supporting the needs of refugees in satellite cities, ensuring the access of this target group to education, health and other services across the country, carrying out studies to increase the capacity of human rights and advocacy of NGOs, ensuring that the needs of refugees and asylum seekers are met with the regular contacts established among local authorities and NGOs in 7 provinces, and provide refugees to access accurate, realistic and responsible information about the asylum process in Turkey, are carried out. [415] HRDF has a large number of publications related to its fields of work, which will inform both target groups and NGO employees and volunteers.[416]

---

[414] For more information about İKGV, see, «Amaç», [consulted on: 17.01.2020], http://www.ikgv.org/hakkimizda.html

[415] For detailed information about IKGV studies, see, «Düzensiz Göç Programı», [consulted on: 17.01.2020], http://www.ikgv.org/duzensiz_goc.html

[416] For more information about İKGV publications, see, « Yayınlarımız», [consulted on: 17.01.2020], http://www.ikgv.org/yayinlarimiz.html

452. **Women's Solidarity Foundation (KADAV)** is based on the initiatives of a group of women who showed solidarity with women in the region, after the earthquake in Marmara, 1999. Later, KADAV, which was officially established in Istanbul, 2001, carried out information center services, combating male violence, psycho-social support, production workshops and similar works until 2010. Since 2010, it has been working on violence against women, combating domestic violence and counseling support, gender-based violence and discrimination against migrant women, solidarity studies with women and LGBTI prisoners, women's labor and employment. [417] KADAV is also a component of the Women's Shelters and Counseling and Solidarity Centers Congress, which has been gathering since 1998. The Congress aims to develop common policies to strengthen the fight against violence against women at home and in close relationships, to provide shelter and counseling / solidarity centers with a function that will enable women and children to move away from violence, to develop feminist methods for them, to develop solidarity and sharing among women's organizations and to combat violence against women. KADAV states that these groups act with an approach to establish their organization by developing solidarity among themselves, and also organize thematic groups and organize empowerment activities together, in the studies with Syrian women and LGBTI+ refugees.[418]

453. **The Women's Solidarity Foundation** expresses itself as a feminist non-governmental organization that fights violence against women and provides free advice to women who are exposed to violence. The foundation was established in Ankara, 1993. Founded to establish women's solidarity against male violence, the Foundation provides free social support, legal and psychological counseling to more than 350 women every year at its Women's Consultancy Center. [419] In addition to its efforts to combat violence against women, the Foundation also conducts projects and studies for women refugees. Last year, the Foundation, as being the executive of the "Promotion of Gender-Based

[417] For more information about KADAV, see, « Kadınlarla Dayanışma Vakfı (KADAV)», [consulted on: 17.01.2020], siginaksizbirdunya.org/tr/biz-kimiz/kurultay-bilesenleri/37-kadinlarla-dayanisma-vakfi-kadav

[418]For detailed information, see, «KADAV ile destekleyeceğimiz araştırma projelerini konuştuk», [consulted on: 17.01.2020], http://siviltoplumdestek.org/toplumsal-cinsiyet-esitligi-fonu/kadav-ile-destekleyecegimiz-arastirma-projelerini-konustuk/

[419] For more information about Women's Solidarity Foundation, see, « Kadın Dayanışma Vakfı», [consulted on: 17.01.2020], https://acikacik.org/sivil-toplum-kurulusu/kadin-dayanisma-vakfi

Discrimination and Violence Against Refugee Women and Local Organizations Dialogue Project", published a "Gender-Based Discrimination and Violence Against Violence" manual in this context. The booklet contains the legal framework on the issue, mechanisms to combat violence against refugee women and studies for Syrian refugee women in women's counseling centers.[420]

454. **Young Lesbian Gay Bisexual Trans Intersex Youth Studies and Solidarity Association (Young LGBTI Izmir Association)** was established in Izmir to investigate the problems of LGBTI + young people, to raise these issues, to offer solutions and to open spaces where LGBTI + young people can express themselves. Stating that it is not involved in any political thought, party or group, the Association, its members, volunteers, and participants of the activities, aim not to discriminate on the race, gender, sexual orientation, gender identity, religious belief, philosophical view, health status, age or status of the people who will contact the association and to take an egalitarian approach to everyone. Young LGBTI Izmir Association states that it is against many other types of discrimination such as homophobia, biphobia, transphobia, xenophobia, heterosexism, sexism, racism and aims to combat all forms of discrimination. The association is also against militarism, patriarchal order, all means of oppression and domination. [421] The association provides consultancy services on various subjects such as legal, academic, expert opinion, as well as other support services such as access to condom, LGBTI + library, opening chats. The Association has activities such as the Activism School Program, creating and running an internet campaign for LGBTI +s, LGBTI+ Friendly Municipalization Protocol. The association also conducts special studies for LGBTI refugees in Turkey. The association made several attempts against such problems as slowdown of the time to look at the files of pending LGBTI refugees in Turkey to be placed on countries such as the United States and Canada and U.S. practice known as "travel ban".[422]

---

[420] For more information, see, «Kadın Dayanışma Vakfı Mülteci Kadınlara Yönelik Toplumsal Cinsiyet Temelli Ayrımcılık ve Şiddetle Mücadele Kitapçığı Yayımladı», [consulted on: 17.01.2020], https://www.hyd.org.tr/tr/haberler/540-kadin-dayanisma-vakfi-multeci-kadinlara-yonelik-toplumsal-cinsiyet-temelli-ayrimcilik-ve-siddetle-mucadele-kitapc,igi-yayimladi

[421] For more information about Young İzmir Association, see, «Manifesto», [consulted on: 20.01.2020], https://genclgbti.org/hakkimizda/manifesto/

[422] For detailed information, see, «Uluslararası Koruma Altındaki Mültecilere Yönelik «Yerleştirilmeye İstekli Değil» Uygulaması Hakkında Çağrı», 19.05.2019, Genç LGBTİ+ Association,

455. “Lesbian Gay, Bisexual, Transsexual, Intersexual Association for Right, Equality, Existence”, in short name, **Hevi LGBTI Association**, works to create data on sexual orientation and gender identity-based violence, oppression, social exclusion and discrimination in all areas of society and to eliminate all forms of discrimination. At the same time, LGBTI policy in general, in particular; carries out studies in the fields such as, Kurdish LGBTIs migrating from geographical regions where Kurds are dense, war victim refugee LGBTIs, LGBTIs exposed to rights violations in prisons, LGBTI individuals who fall into the disadvantaged group, defined as mentally and physically handicapped, exposed to discrimination from sexual orientation and identity in the society, LGBTI individuals who are exposed to discrimination due to their sexual identity and sexual orientation in the military and who are humiliated in the process of obtaining a report that shows ineligibility for military service.[423] As stated in its charter, the association also carries out studies for refugee LGBTIs. The Association has working commissions such as Refugee and immigrant commission, Diaspora, Kurdish and Kurdish LGBTI commission, prisoner-prison LGBTI commission, Health commission, University commission. The association has brought up issues such as discrimination, sexism, racism and xenophobia that refugee LGBTI + and immigrant LGBTI + are exposed to, through the activities it carried out in 2018-2019 within the context of the refugee and immigrant commission. As a result of the LGBTI + Fight Against Racism Training Program in 2019, the report, "Turkey's Trial with LGBTI+ Refugees’: Racism", has been published.[424] The report on discrimination and oppression that LGBTI refugees experience both in Turkey and in their countries, offers important data about the reality of LGBTI refugees in Turkey.

456. **Citizenship Association**, formerly **Helsinki Citizens Assembly**, was established in 1993 as an international official organization in Istanbul. The Association, which decided to change its name as Citizenship Association in 2016, carries out studies on fundamental rights and freedoms, peace, pluralism, citizenship and democratization. The Association

---

[consulted on: 20.01.2020], https://genclgbti.org/2019/05/29/uluslararasi-koruma-altindaki-multecilere-yonelik-yerlestirilmeye-istekli-degil-uygulamasi-hakkinda-cagri/

[423] For more information about Hevi LGBTİ Assosation, see, «Dernek Tüzüğü», [consulted on: 20.01.2020], http://hevilgbti.org/dernek-tuzugu/

[424] For the full text of the report, see, «Türkiye’nin Mülteci LGBTİ+ ’lar ile İmtihanı: Irkçılık», Hevi LGBTİ Association, LGBTİ+ Alanında Irkçılıkla Mücadele Eğitim Programı Raporu, 2019, [consulted on: 20.01.2020], http://hevilgbti.org/wp-content/uploads/2019/08/HeviRaporu-1.pdf

organizes studies, symposiums, seminars, workshops, panels, meetings both at the country level and at regional scales (Balkans, Caucasus, Mediterranean, European Union); publishes; cooperates with NGOs operating in similar fields, initiatives, think tanks and the academic environment, develops contacts with different levels of public institutions to realize these objectives.[425] The work titles of the association are democratization and freedoms, methods and tactics in advocacy studies, civilian approaches in social conflicts, religion, state and citizenship, refugee and citizenship. The Citizenship Association has many studies both on the needs and problems of refugees in general and on the problems faced by LGBTI refugees. Through the agency of "Breath; Through the Rehabilitation Center for Migrants Surviving From Abuse " opened in Turkey, it provides psychological and social support and medical case management services to migrants and refugees who have been subjected to ill-treatment in their own country or on the migration route, regardless of their legal status.[426] As a result of research carried out in four different cities, the report study titled as "Civil Society and Syrian Refugees in Turkey", published by the Association, offers important data about civil society's reactions towards Syrian refugees in Turkey and on how to understand the interactions.[427] "Unsafe Shelter" report published in 2009 with the Organization for Refugee, Asylum & Migration (ORAM) as part of the Helsinki Citizens Assembly Refugee Support Program, reveals Lesbian, Gay, Bisexual and Transgender (LGBT) refugees' who escaped from persecution in their own countries and have security issues in Turkey and discriminatory approaches they encounter on exercise of rights such as housing, employment, social services and education. The report, which was updated and re-published in 2011, shows that violations and discrimination against LGBTI asylum seekers are still intense.[428] The report, in addition to revealing the problems experienced

[425] For detailed information about Citizenship Association, see, «Yurttaşlık Derneği Kuruluş Amaçları ve Kısa Tarihçe», [consulted on: 21.01.2020], https://www.hyd.org.tr/tr/hyd-nin-hikayesi/amaclar

[426] For more information about Breath project, see, «NEFES: Kötü Muameleden Hayatta Kalan Göçmenlere Yönelik Rehabilitasyon Merkezi », Citizens Assembly, [consulted on: 20.01.2020], https://www.hyd.org.tr/tr/multecilik-ve-yurttaslik/251-nefes-kotu-muameleden-hayatta-kalan-gocmenlere-yonelik-rehabilitasyon-merkezi

[427] For the full text of the report, see, «Türkiye'de Sivil Toplum ve Suriyeli Mülteciler», Citizens Assembly, [consulted on: 21.01.2020], https://www.hyd.org.tr/tr/multecilik-ve-yurttaslik/217-turkiye-de-sivil-toplum-ve-suriyeli-multeciler

[428] For the full text of report, see, «Unsafe Shelter, The Security Challenges Facing LGBT Asylum Seekers&Refugees in Turkey», Helsinki Citizens Assembly, Organization for Refugee, Asylum, Migration, June, 2009, [consulted on: 21.01.2020], https://www.hyd.org.tr/tr/multecilik-ve-yurttaslik/89-lgbtt-multecilerin-karsilastiklari-guvenlik-sorunlari

by LGBTI refugees in Turkey to the public eye as well; also makes constructive suggestions to government agencies, UNHCR and other relevant institutions, to address gaps in protection provided to LGBTI refugees. In this respect, the activities of the Association provide important data in terms of both law and practice. In addition to its institutional work, the Citizenship Association is also a member of the Refugee Rights Coordination (MHK) established by seven human rights organizations on March 15, 2010. In addition to the work carried out by these organizations within their bodies, MHK is a result of aims as raising awareness among the public and decision makers, to intervene in policy making processes in the field of migration and asylum with a human rights perspective.[429]

457. **International Migrant Women Solidarity Association (UGKDD)** was founded in 2018 for immigrant, women refugees and asylum seekers came to Turkey for various reasons and living in Turkey, to make all kinds of violence and discrimination they experience visible, especially violence against women, and to produce policies in favor of women with women. The Association states its aims and objections as follows: to ensure that women, children and LGBTI individual immigrants who have come to Turkey, refugees, asylum seekers, displaced people, stateless persons, undocumented, disabled people who are under "foreign and international protection" and "temporary protection" lead equal lives, without any discrimination regarding language, religion, sect, race, color, nation, class, status, political thought, age, gender, sexual orientation; carrying out supportive activities in areas such as violence against women as particular and then shelter, health, education, employment, personal care, sexual, legal, cultural and social rights with a rights-based approach; to create all kinds of protection mechanisms.[430] The field studies that UGKDD has done in this direction is noteworthy that the results of gender-based conservation efforts in Turkey is rather inadequate. Association officials also said that there are significant shortcomings in practice of Turkey's Istanbul

[429]For more information, see, « Hakkımızda», Mülteci Hakları Koordinasyonu, 22 August 2019, [consulted on: 21.01.2020], https://multecihaklari.org/?p=232

[430]For more information about Association, see, « Uluslararası Göçmen Kadınlarla Dayanışma Derneği (UGKDD) », [consulted on: 21.01.2020], http://siginaksizbirdunya.org/tr/biz-kimiz/kurultay-bilesenleri/110-uluslararasi-gocmen-kadinlar-dayanisma-dernegi-ugkdd

Convention and states that many of the migrant, refugee and asylum-seeking women are not able to reach protection mechanisms or complain about fear of being sent back.

458. **Organization for Refugee, Asylum & Migration (ORAM)** is an international organization that works to protect and strengthen LGBTI asylum seekers and refugees. It cooperates with governments, international and local organizations, respected academic institutions and communities to encourage change across the system to refugees and asylum seekers with different sexual orientation and gender identities, through sharing information globally, building capacity and creating sustainable futures.[431]

459. ORAM expresses itself and its field of work as advocating for the security and well-being of highly vulnerable refugees and asylum seekers, providing innovative tools and training programs for these groups. ORAM states that it conducts original studies for sexual and gender minority refugees in line with the practice and experience of the institution. The dictionary "Orientation, Sexual Identity and Discourse / Form of Expression: Basic Terminology within the Scope of Human Rights" has been published by ORAM to assist experts in the correct use of terms related to different sexual orientations and gender identities. This guide, which is published in five different languages, includes English, French, Turkish, Persian and Arabic definitions of terms, different spelling and pronunciation forms, and information to be considered in their use. Besides, "Unsafe Haven: Turkey Lesbian, Gay, Bisexual, Transvestite and Safety Issues Faced by Transgender Asylum Seekers and Refugees" report, that ORAM published together with the Helsinki Citizens Association in 2009, is a very important resource explaining the problems faced by LGBTI refugees in Turkey through interviews.

460. **International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)**, as a global federation of LGBTI organizations, continues its activities in many continents such as Asia, Europe, Africa, Oceania, North America and Central America. ILGA aims to provide visibility and support to LGBTI issues globally by conducting advocacy and social assistance at the United Nations Human Rights Council and organizing panels on a variety of issues led by the member organizations' priorities. For this purpose, there are many different programs such as, the gender identity and gender expression program of

[431] For more information about ORAM, see, « Hakkımızda », ORAM, [consulted on: 21.01.2020], https://oramrefugee.org/who-we-are/about-us/

the campaigning organization, European Union supporter's protection mechanism, ILGA world premiere, ILGA world conference. ILGA World Conference is the organization where the life of the organization is shaped and LGBTI activists from all over the world can come together and discuss about the future of the movement. Within the scope of the "European Union Defenders Protection" mechanism, efforts are made to support those who strive for the promotion and defense of human rights worldwide. Besides, ILGA strives to develop the rights of transgender people at the global and regional level with the "Gender identity and gender expression program" it has been carrying out since 2015. ILGA runs this program with its member organizations, partnerships, corporate networks in the UN, New York, Geneva and international organizations.[432] ILGA, which plays an important role both in the literature and in informing the public with its reports and similar studies on issues such as different gender identity and discrimination against sexual orientation, homophobia; has studies and publications on the violations of the rights that LGBTI's and LGBTI refugees experienced in Turkey.[433]

461. **UNHCR Turkey,** carries out studies for many years for refugees in Turkey. However, these studies were formalized with the signing of the Host Country Agreement between Turkey and the UNHCR on September 1, 2016. In addition to its headquarters in UNHCR Ankara; studies in Turkey's different regions as Istanbul, Izmir, Gaziantep, Hatay, Sanliurfa, Van describes the area as one of the largest operations in the world with these presences of fields. UNHCR states its main fields of activity in Turkey as follows; to lead the work carried out to support Turkey's intervention in the Syrian refugee crisis and to ensure coordination of United Nations agencies; protection of environment existing in Turkey for persons in need of international protection and access to social support mechanisms to be strengthened; by operating in close cooperation with the authorities in camps in Turkey and the provision of humanitarian assistance to refugees living in urban areas; supporting and contributing to institutional and legal capacity

[432] For more information, see, «Board», ILGA, [consulted on: 21.01.2020], https://ilga.org/about-us/board

[433] For more information, see, «ILGA Europe», Twitter, [consulted on: 23.01.2020], https://twitter.com/ilgaeurope/status/1003584668183285760; «Türkiye: 19 LGBTİ + hak savunucusu aleyhindeki suçlamalar düşürülmeli», ILGA Europe, 7 November, 2019, [consulted on: 21.01.2020], https://www.ilga-europe.org/resources/news/latest-news/turkey-charges-against-19-lgbti-rights-defenders-must-be-dropped; «Resources», ilga world, [consulted on: 21.01.2020], https://ilga.org/resources

building activities to strengthen the national asylum system. UNHCR studies have a wide range from basic needs to camp support, support of the right to education to placement in the third country. UNHCR assisted groups are generally refugees, those who return to their countries, stateless persons, internally displaced people and asylum seekers. However, UNHCR also advocates specifically the rights of minorities, women, children, men, LGBTIs, people with disabilities, and the elderly, who individually accept that everyone deserves a life free from persecution and discrimination. In this regard, UNHCR, which advocates that nobody should be discriminated against due to sexual orientation or gender identity, carries out various support, studies and campaigns to prevent discrimination against these people. UNHCR, which provides safe shelters, construction or maintenance support, fair food distribution systems and separate hygiene facilities for women and girls refugees, also provides programs that help women develop leadership skills, overcome barriers to education and gain access to opportunities.[434]

§ 3) What do NGOs say? Analysis of Interviews

462. Only the examination of legal regulations and theoretical studies may not always reflect reality. To evaluate the adequacy of legal regulations, it is also necessary to have information about how the implementation is. NGOs have a significant knowledge of implementation through hundreds and even thousands of women and LGBTI refugees applying to them. Thus, in this title, interviews were made with some NGOs competent in terms of study. In this way, it is aimed to further enrich the evaluations made in the first section.

463. The interviews were conducted with 7 identified and positive respondents as a result of benefiting from various studies of NGOs who work in the field of gender and refugees in Turkey, such as research, interview, report, article within the scope of thesis study. The interviews were made in Ankara, Izmir and Istanbul provinces where the center offices of the institutions are located in February 2020. According to the preferences of the institutions and the conditions of being able to meet, 6 of them were made in the form of a one-to-one or group meeting and one of them via Skype. Open-ended questions were asked to the interviewers, and additional questions related to the questions were asked

[434] For more information, see, «Türkiye'de UNHCR», UNHCR Turkey, [consulted on: 26.01.2020], https://www.unhcr.org/tr/turkiyede-unhcr

according to the different experiences and experience transfers of the institutions. It was aimed to allow the people interviewed with this method to reveal the opinions they believed and experienced in related issues. Thus, a richer result was achieved in contrast to the strict interview method. The interview questions and the answers given by the interviewees are as follows:

A- Research method

464. In this study, the interview method, which is widely used in social sciences as a qualitative research method, was used. Interviews were conducted according to the standardized open-ended interview method. The open-ended interview consists of a series of questions that are carefully written and put in a particular order, and these questions are asked to each interviewed individual in the same manner and order. In this way, while the subjectivity and bias of the interviewer is limited, the differences of the interviewers due to their subjectivity are also reduced. This facilitates the comparison and analysis of the data obtained. [435] To ensure that the subject of the research does not dissipate and the same type of data can be accessed, the pre-prepared information and questions were asked to the interviewers. Thus, systematic and comparable information was requested from different institutions. While preparing the questions, attention was paid to the contribution to the research problem, to be clear and understandable, to encourage the interviewer to give detailed information about the subject with open-ended statements. Beginning with questions that institutions can answer more easily about their work and experience, sensitive issues and general evaluations are left to the end by going from private to general. However, the interviews were not limited to these questions. For the the study, important issues were explained to the interviewees and the interviewees were asked to reflect their experiences and assessments on these topics. Different additional questions were asked to the interviewees in the natural flow of speech and interaction. Also, according to the course of the interview, some changes have been made to the questions that do not change the purpose. For example, the questions that continue to be asked to the interviewer, who says that he/she is working only for women refugees, were directed

[435] For detailed information about standardized open-ended interview see, YILDIRIM, Ali and ŞİMŞEK, Hasan, *Sosyal Bilimlerde Nitel Araştırma Yöntemleri*, 6th Edition, Ankara Seçkin Publications, 2008, p.132- 136

not in the form of women and LGBTI refugees, but about women refugees. While trying to explain the incomprehensible issues about the questions, care was taken to avoid directing the interviewers. All the interviews were recorded with a voice recorder, and notes were also taken on the computer. Later, the recordings were analyzed and the responses of the interviewees were adhered to. According to the preferences of the institutions, interviews were made with individuals or groups of two or three people. In individual interviews, the interviewees were asked to answer the questions in line with the experiences of the institutions they worked with rather than their personal experience and opinions. Group interviews took place in the form of focus group interviews, in which the interviewers interacted with each other's responses. In the interviews made in this way, it was observed that the interviewees made additions to each other's responses, sometimes similar and sometimes different opinions. However, it was noted that the interviewers working in the same institution mostly had similar opinions.

B- Analysis of data

465. The issue on how to analyze qualitative data have been tried to be explained with different processes and methods by many thinkers such as Anselm Strauss and Juliet Corbin; Wolcott Harry, Amanda Coffey and Paul Atkinson; Miles, Huberman and Saldana. [436] However, it can be seen that the different methods followed in all these studies have common aspects and an inductive analysis method in general. In the analysis of the data obtained in this study, content analysis method, one of the data analysis processes developed by Strauss and Corbin, was used. Strauss and Corbin explained the process of data analysis in two different groups as descriptive analysis and content

[436]For more information about data analysis methods, see, STRAUSS, Anselm and CORBIN, Juliet, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*, 4th edition, Sage Publications, 2015, [consulted on: 21.03.2020], https://books.google.fr/books?hl=tr&lr=&id=hZ6kBQAAQBAJ&oi=fnd&pg=PP1&dq=strauss+et+corbin+basics+of+qualitative+research&ots=6iS8QzhCV0&sig=kwRt52sfwukR9NIYhiGv0bqcSlU#v=onepage&q=strauss%20et%20corbin%20basics%20of%20qualitative%20research&f=false; WOLCOTT, Harry, F., *Transforming Qualitative Data, Description, Analysis and Interpretation*, 3th edition, Sage Publications, 1994, [consulted on: 21.02.2020], https://books.google.fr/books?hl=tr&lr=&id=BMqxX_TaWNEC&oi=fnd&pg=PA1&dq=wolcott+h+f+analysis+article&ots=1CvXkPKKtA&sig=NChAPZuQYZ2Fg7srGwDxTRxgI_M#v=onepage&q&f=false; MILES, Matthew and HUBERMAN, A. Michael and SALDANA, Johnny, *Qualitative Data Analysis A Methods Sourcebook*, 3th edition, Sage Publications, 2014, [consulted on: 21.03.2020], https://books.google.fr/books?id=3CNrUbTu6CsC&printsec=frontcover&hl=tr&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

analysis. The data obtained in the descriptive analysis are summarized and interpreted according to the themes previously determined. The aim is to present the obtained data to the reader in an organized and interpreted way. In content analysis, the main purpose is to reach the concepts and relationships that can explain the obtained data. For this, the data related to the research problem are first coded and **classified** according to these codes. Then, through common data between these codes, **themes** that can explain this data are determined. The data obtained are organized according to these codes and themes and the **findings** are identified. Finally, the findings are **interpreted**.[437] From the interviews with NGOs, the analysis of the data obtained within the scope of the study was carried out in the same order as Strauss and Corbil explained. First of all, the answers are read several times in sequence and common codes are determined. Later, in line with these codes, common themes were created. The findings obtained are classified under the topics determined without adding comment. Finally, these findings were evaluated. The themes and evaluations obtained in this way. These data are collected under two headings in accordance with the study's main problem:

1- Problems arising from Turkish legislation's violation of international law

2- Problems arising from the improper/arbitrary implementation or non-implementation of legal legislation

1) Problems arising from Turkish legislation's violation of international law

466. The FIPL was enacted for the purpose of implementing a systematic regulation on foreigner's law and the asylum system. When the law goes into effect, one of the key claims is that civilianization of asylum system will be accomplished. All of the interviewees' organizations stated that the existence of a law in this field is a positive thing. Indeed, after the law's adoption, a systematic law was created in place of the regulations that were partially included in sources such as various laws, regulations and instructions previously. Except for the Life Support Association, all interviewees pointed out that the law is very unsatisfactory in terms of civilianization claims. Prior to this law,

[437] For more information about the analysis theory of Strauss and Corbin, see, CORBIN, Juliet and STRAUSS, Anselm, «Grounded Theory Research: Procedures, Canons, and Evaluative Criteria», *Qualitative Sociology*, [online], 1990, Volume 13, No. 1, pages 237-252, [consulted on: 21.03.2020], https://med-fom-familymed-research.sites.olt.ubc.ca/files/2012/03/W10-Corbin-and-Strauss-grounded-theory.pdf

applications for protection were made by law enforcement officers at the asylum offices in the Security General Directorate. All NGOs stated that a completely security-based approach prevailed during this period. Along with the EU harmonization process, it has been promised that an administrative and civil formation will be established in the migration management structure and human rights-based approach will be taken into consideration. Changes within this scope such as the establishment of the GİGM, the first institution addressed in international protection applications is not security directorate, the presence of a civil registration desk and social service expert were given the thumbs up. Nonetheless, interviewees such as KAOS-Gl, KADAV, Att. Eda Bekçi, SPOD stated that the reasons such as GİGM being surrounded by police barriers, the approach of the officials working in GİGM to refugees being no different than law enforcement, and the fact that GİGM works in collaboration with institutions such as Police and MIT and acts with security center prevent civilianization. Moreover, the fact that the migration management structure has a very rigid bureaucracy and is inaccessible has been expressed as another subject of criticism. For example, the representative of the Immigrant Solidarity Association stated that they had difficulty entering migration management institutions and repatriation centers even with their lawyer identities and that they were prevented from meeting with their clients. Att. Eda Bekçi pointed out that the GIGM's work in Ankara makes it difficult to solve problems in other provinces.

467. According to the FIPL Law, Article 3 regarding the definitions, the concept of "person with special needs" is defined. It is seen that it is stated the applicant and persons who have international protection status within the scope of regulation includes as "unaccompanied minors, handicapped person, elderly, pregnant women, single parents with minor children or victims of torture, rape and other forms of psychological, physical or sexual violence". Generally speaking, it is a positive development to identify of people with special needs and to provide some assistance services, rights and procedural conveniences for these people. As a matter of fact, the interviewees' organizations have also positively evaluated the inclusion of this group separately. However, it has been observed that the criteria used to determine the scope of those with special needs were unsatisfactory. For instance, it is noted that female or LGBTI identity is not included within specified groups in itself while unaccompanied minors are specified as a group. In the definition, it is seen that the woman is dealt with mostly either through health-based conditions such as old age, pregnancy, disability, or through victimization such as single

mother with children, torture, sexual assault or other serious psychological, physical or sexual violence. Thus, a mechanism for assisting women in a variety of difficult situations has been identified. But, different concepts of sexual orientation and gender identity have never been included. Limiting the scope of those people with special needs in this way is a critical issue that all interviewees' organizations emphasize. In particular, representatives of Kaos-Gl and the Life Support Association pointed out that this situation causes LGBTI refugees to be excluded from the scope of these special regulations unless they are combined for other reasons such as being unaccompanied minority, victimization and health problems. Similarly, it has been criticized that women are not included solely because of their female identity, but also that they are expressed through different identities such as mother, victim, patient, elderly. It was also stated that the expression of belonging to a particular social group is used in many countries, especially in Europe, in favor of LGBTI applicants, but public officials in Turkey do not tend to interpret the regulation in this way. Doubtless, the primary solution is to identify and accept applications peremptorily as a justifiable cause of persecution due to different sexual orientation and gender identity. However, interpreting the application of LGBTI people to a certain social group within the existing regulations can also be a temporary solution. But it is clear from the statements of some organizations that the expression of belonging to a particular social group in practice in Turkey is not interpreted for LGBTI refugees.

468. Today, it is widely accepted that protection claims based on differing sexual orientations and gender identities should be included within the scope of the expression of belonging to a certain social group in the 1951 Geneva Convention. UNHCR, in particular, has addressed this issue in many recommendations[438]. UNHCR defines a particular social group as a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived by society as a group by society. The characteristic referred here is frequently described as innate, irrevocable or fundamental to a person's identity, conscience or exercise of human rights.[439] However,

[438] For examples of the decisions see, "Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", UNHCR, HCR/GIP/02/02, 7 May 2002, , [consulted on 29.03.2021], https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html

[439]For detailed information on UNHCR's approach see, "UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity", 23 October 2012,

neither the FIPL nor the regulation on its implementation provided an explanation as to whether the applications of LGBTI people should be evaluated within the scope of the expression "belonging to a particular social group". As a consequence, this assessment is dependent on the officials 'comments. The representative of the Immigrant Solidarity Association remarked that in the examples and transfers they encountered, they found that the applications of LGBTI people were not addressed within the scope of belonging to a particular social group.

469. Many interviewers including Immigrant Solidarity Association, Att. Eda Bekçi and Kaos-GL, remarked that the changes brought about by the decree-laws after July 15[440] further harmed the FIPL. It was noted in these assessments that; as a result of these changes, procedures for foreigners were carried out from an even more security point of view. It was regulated with the Decree No. 676 of 29 October 2016. With the articles 35, 36 and 37 of the Decree, the scope of deportation decision have expanded for persons applying for international protection or having international protection status, and it has been regulated that applying for a judicial action against deportation decisions taken for these reasons will not stop the deportation process. Accordingly, it is regulated that deportation decisions can be made any stage of international protection proceedings for "those who are the director, member or supporters of a criminal organization for the purpose of generating money" and "Those who pose a threat to public order or public safety or public health", and "those deemed to be associated with terrorist organizations defined by international institutions and organizations". This provision introduced by the Decree Law is in clearly violation of both the Constitution and the provisions of the 1951 Geneva Convention.[441] In particular, the statement that the judicial process against deportation procedure will not stop the execution has led to threats that are a violation of the right to life for many refugees. It is also unclear how to determine whether he/she is

---

[consulted on 09.03.2021], https://www.unhcr.org/publications/legal/509136ca9/unhcr-guidelines-international-protection-9-claims-refugee-status-based.html

[440] It is the alleged coup attempt of a group of soldiers from the Turkish Armed Forces, which is the supporters of the Islamic Organization called Fethullah Gülen, on 15-16 July 2016, alleging to overthrow the government. After this attempt a state of emergency has been declared in Turkey. For more information see, [consulted on 29.03.2021], https://tr.wikipedia.org/wiki/15_Temmuz_Darbe_Girişimi

[441] For the full text of the Decree No. 676, see, [consulted on 19.03.2019], http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm

a member or supporter of a terrorist organization or a criminal organization for profit. As a matter of fact, Turkey's legal legislation such as the Penal Code, the Anti-Terrorism Law, membership in a terrorist organization, support, and the widening of the scope in the regulations related to crimes such as support and leaving the definitions open for interpretation are already criticized. Similarly, expressions such as "public order", "public safety", "public health" are very ambiguous and open to interpretation. Many injunctions have been filed with the Constitutional Court about the deportation measures carried out due to this regulation. The Court then issued a pilot decision on the matter after the applications were too high. And after the pilot decision, the law was changed again to prevent this unlawful practice.[442]

A- Relations with Public Institutions

470. In parallel with the applications made to them, most of the interviewees' organizations stated that they are mostly object of GIGM, Provincial Directorates, UNHCR, Şönim, Directorate of National Education, social service centers, public education centers, municipalities, police stations, etc. Except for the Life Support Association, all institutions have remarked their relations/interaction with public institutions as problematic. Even though this most common reason for this is the public's negative attitude towards opposition institutions, LGBTI organizations such as SPOD and Kaos-GL have stated that they showed a more discriminatory and exclusionary attitude towards them solely because of their gender identity. This divisive approach sometimes manifest itself in the way of LGBTI people being ignored in laws and policies, and sometimes it can take place of politicians specifically targeting these groups. Indeed, it is seen that LGTBI identities are not explicitly stated in any Turkish legal legislation, and hostile toward different sexual orientations and gender identities is not clearly defined in hate crimes. According to the interview data, public institutions do not regard NGOs as a significant interlocutor and even develop policies to restrict and control their powers and activities. For instance, in the interview with the Women's Solidarity Foundation, NGOs are asked to report their projects and works to GİGM in full detail putting them into

[442] For the full text of the relevant decision of the Constitutional Court, see. Application No: 2016/22418, Decision Date: 30.05.2019, RG. 09.07.2019, Sa. 30826, [consulted on 22.03.2021], https://www.resmigazete.gov.tr/eskiler/2019/07/20190709-7.pdf

action. In a recent amendment, this authority was transferred to the Ministry of Labor, Social Services and Family. Although there is no such regulation in the legal legislation, it has been said that this practice was brought by a secret decision of the Ministry of Internal Affairs. Thus, the work of non-governmental organizations whose main characteristic is independence has been subjected to permission. This undermines the principle of NGOs 'independence and the rule of law principle is also harmed when a hidden decision takes precedence over the law. NGOs have also stated that if their projects are rejected, they would have trouble finding funding, making it impossible for them to continue to survive. As is well known, one of the most important sources of income of NGOs is the financial support they provide through their projects and campaigns. This indirectly means the NGOs 'operations will come to an end as institutions that receive negative responses to such works, will find hard to get support for their next projects.

471. The EU's projects and works to improve NGO's and public institutions 'cooperation and relationships were mentioned. However, it is understood that the general approach of public institutions in such works is not to recognize and address the expertise and experience of civil society, but rather to train and strengthen them. The Support to Life Association stated that they do not have any problems with public institutions as long as they obey the laws/rules. This institution has also engaged in joint works such as conferences with institutions such as UNHCR and DGMM.

472. It is understood that women and LGBTI refugees have a much more discriminatory and problematic relationship with civil servants than they do with institutions. Although it was stated that some officials have a willingness to help solve issues, it was noted that most public officers mostly lacked gender awareness and sensitivity. The majority of the institutions have pointed out that due to these attitudes and behaviors, applicants have found it difficult to articulate themselves easily and why they request protection, which causes their processes to be prolonged and their psychology negatively impacted. For example, in the interview with SPOD, it was claimed that public officials were asked confidential questions such as "How long have you been like this?", "When did you decide to become a woman?"

473. When the answers to questions about relations with public institutions are evaluated together, it is clear that their relations with both refugee groups and NGOs are generally problematic. The most important reasons for this were the implementation of practices

such as directives and circulars against refugees in a way that modified the regulations in the law, the lack of integrity between the practices of institutions and civil servants, and the derogatory attitudes and behaviors of public officers such as discriminatory and exclusionary. Such practices are contrary to fundamental legal principles such as legal security, uniqueness in practice and integrity in public administration, which are also guaranteed by the constitution.

B- Problems encountered and rights violations

474. All organizations remarked that women and LGBTI refugees face discrimination based on their gender and identity in every area where they have access to rights and services. This gender-based discrimination is explicitly in violation of to the basic conventions in international law such as UDHR, ECHR, 1951 Geneva Convention, CEDAW Istanbul Convention and standards set by international institutions and courts and principles such as UNHCR recommendations, ECtHR judges, CJEU judges, Yogyagarta principles. Refugees are all discriminated against in terms of access to many basic rights as all the interviewers pointed out. However, the way women and LGBTI people, sex workers, HIV-positive individuals are subjected to this discrimination is much more severe. For example, in the interview with SPOD, an example was reported about an HIV-positive applicant as threatening public health and that person wanted to be deported.

475. When the examples given through the applications made to the institutions and the answers to the relevant questions are evaluated together, it is understood that women and LGBTI refugees are subjected to discrimination both in their homes and in every field, they encounter from the moment they go to the public sphere. Accordingly, these discrimination and violations are most frequently experienced in terms of the housing right, the right to work, the right to travel, the right to petition and to a fair trial, the right to healthcare, the right to access social assistance and services, the right to benefit from an interpreter, the personal immunity, the right to protection of physical and mental integrity, the right to education and the right to settle in the violence prevention and monitoring center (VPMC)

476. Children are one of the victims of discrimination and violence. This type of violence was stated in the interview with KADAV. According to the KADAV, children are

exposed to everyday peer violence in the environment/community and school where they live, and sometimes they are also similarly subjected to discrimination and violence by their teachers. For example, in some schools in Istanbul, they stated that children were segregated and placed in the school's basemen or they stated that there are discriminations with negative statements such as "don't bring" to the families of refugee children at events such as kermis. Discrimination against children is sometimes carried out by the neighbors in the surrounding area. Accordingly, some Turkish families warn their children not to play with refugee children, resulting in negative consequences such as child isolation and mockery of them. As a result of such discrimination children are forced to change schools or drop out of school, preventing their right to education. Furthermore, children's isolation has a negative effect on their physical and mental/psychological development.

C- Access to the Right to Housing

477. According to Article 71 of the FIPL, it is regulated that the applicant of international protection may be imposed with administrative obligations such as the obligation to reside in a specific place or province in the reception or refuge center designated to him/her and to give notifications in the ways and periods specified. Despite the fact that the article argues that applicants can be accommodated in the reception or housing center, the number and capacity of these centers is inadequate to satisfy the demand. According to the data released by GİGM as of September 16, 2020, there are 59,877 Syrian people under temporary protection in 7 temporary shelter centers across 5 provinces in Turkey. However, there are 3,559,041 Syrians who are temporarily protected as well as approximately 330,000 refugees and asylum seekers from other nationalities residing outside these centers. The number of people staying in GİGM-affiliated centers is less than 1% of the current figure. Hence, it is understood that applying for international protection does not bring along with it the right and facilities of housing, and that this responsibility is left to the applicants.

478. For this reason, refugees attempt to find their own homes and cover their expenses with their own funds. All institutions have stated that refugees were abused and faced problems in various ways when renting a house. Some landlords are unwilling to rent their property to foreigners. Some of them agree to rent their houses but charge exorbitant rental fees. A similar issue arises in that one year's rent is demanded in advance. In

situations like this, it is understood that finding a house and meeting the expenses of the house found becomes more difficult. Thousands of refugees are known to have to rent houses in basements, houses much smaller than their needs, and sometimes in partnership with other families. Refugees who spend a large portion or all of the money they bring with them for rent have difficulty in meeting their minimum expenses. Furthermore, it is understood that refugees who left their homes and/or were evicted after paying a year's rent in advance are not reimbursed for the months they did not stay, and they are intimidated by the threat.[443] Moreover, an example provided by the SPOD representative showed that even after leaving the rented house, the applicant continued to pay rent because he/she afraid of the landlord's threats. The majority of interviewees stated that significant numbers of women and LGBTI refugees also experienced various problems, such as sexual harassment, being exposed to abuse, compulsion, violence or threats, offering or forcing sexual intercourse. Accordingly, in the face of such problems, even including rape, refugees have stated that they do not go to the police station because they are afraid to complain.

479. Whereas, as set forth in Article 11 of the ICESCR[444] (International Covenant on Economic, Social and Cultural Right), the right to have appropriate housing and appropriate standard of living is part of everyone's rights. According the relevant article, it is regulated that the States Parties to the Convention shall accept that everyone has the right to an adequate level of living for himself and his family, including adequate food, clothing and housing, and to continuously improve living conditions. In Article 17 of the EU Directive of The Reception of Applicants, it is stated that the member countries shall ensure that material reception conditions provide an adequate standard of living for applicants for international protection, which guarantees their subsistence and protects

[443] For detailed information on the problems faced by refugees regarding the right to housing, see., «Türkiye'nin LGBTİ Mültecilerle İmtihanı», Kaos-GL, Ankara, [consulted on 22.03.2021], https://kaosgldernegi.org/images/library/2019lgbti-multeciler-ile-imtihani-web.pdf; « Kaos-Gl, Sığınmacı ve Mülteci LGBT Bireyler», [consulted on 22.02.2021], http://madde14.org/index.php?title=Kaos_GL_-_Sığınmacı_ve_Mülteci_LGBT_Bireyler

[444] For the full text of the Convention see, «International Covenant on Economic, Social and Cultural Rights», General Assembly resolution, Decision No: 2200A (XXI), Accepting Date: 16 December 1966, effective date:3 January 1976, [consulted on 25.03.2021], https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

their physical and mental health[445]. Article 18 of the directive imposes the responsibility on the states to take appropriate measures to prevent assault and gender-based violence within the houses they provide. Hence, according to EU Directive of the Reception of Applicants for International Protection, member states should both adequate standard of living and take the necessary measures to prevent gender-based violence for refugees. In addition to this, in its judge on the case of Belgium and Greece, the ECtHR judged that the failure to provide asylum seekers with the appropriate conditions stipulated in EU law would cause the applicant to become impoverished was a violation of Article 3.[446] Moreover, the ECHR's judge on Defense for Children International (DCI)/Netherlands case includes important assessments of children's housing rights.[447] ECSR, in its judge on the complaint against the Netherlands, argued that ESC should be interpreted, not alone, but in accordance with all other international law rules which it is part of, including rules stipulating the provision of appropriate housing to all those in need, regardless of whether they are duly or not in the territory of the member state at the most advanced level as possible. According to Article 31(2) member states of ESC should take measures to prevent homelessness. This requires the member state to provide housing for children as long as they are under their jurisdiction, regardless of their residency status. The evacuation of persons who are on the territory of the country as irregular migrants should be prohibited from the housing; because this will put the persons concerned, especially children, in a vulnerable situation that is contrary to human dignity. ESCR has also judged on Article 17(1) of the Charter, which protects children has been violated.[448]

480. Att. Eda Bekçi, one of the interviewers, stated that the reception and housing centers play an important role particularly for single (or with children) women, but the reception

[445] For the full text of the Directive see, « Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)», [consulted on 25.03.2021], https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013L0033

[446] ECHR, « M.S.S. V. Belgium and Greece decision», Application no. 30696/09, Decision Date: 21 January 2011, [consulted on 25.03.2021], https://hudoc.echr.coe.int/fre#{"itemid":["002-628"]}

[447] ECHR « International Children's Movement (DCI) / Netherlands Case Decision » Complaint no: 47/2008, Decision Date: 23 September 2008, [consulted on 25.03.2021], https://hudoc.esc.coe.int/eng/#{"sort":["ESCPublicationDate%20Descending"],"ESCDcIdentifier":["cc-47-2008-dadmiss-en"]}

[448] For more information about evaluations, see, « Sığınma, sınırlar ve göç ile ilgili Avrupa hukuku el kitabı», p. 197-198, [consulted on 25.03.2021], https://fra.europa.eu/sites/default/files/fra_uploads/handbook-law-asylum-migration-borders-1_tr.pdf

and housing centers for 750 people in Izmir, Aydin and Erzurum were turned into a repatriation center with a protocol with the EU.[449] In this case, it is understood that the public alternative, where only people and other needy people can stay, is almost non-existent. According to official data, there is a reception and housing center affiliated to GIGM in Yozgat. This center has a capacity of 100 people.[450] Moreover, Yozgat is a small city located in Central Anatolia[451]. It is very difficult for refugees to live safely here because the majority of the population has a nationalist, Islamist conservative identity. It is obvious that single women and LGBTI people will be under serious threat in such a city. Furthermore, while the opportunities for housing and jobs in the city are very limited even for the inhabitants, it does not seem possible for refugees to benefit from these rights. As can be clearly seen from both the legislative regulations and the existing capacity of reception and accommodation centers, there is no housing alternative for refugees supported by the state, even in cases of need and emergency. VPMCs also serve only victims of violence, besides there are various problems such as not or late registration in these centers and to make difficulties during the procedures.

481. Although there are positive examples in the environment such as vulnerable, solidarity landlords and neighbors, it has been evaluated that they remained on an individual basis and often the public's attitude toward foreigners is frequently exclusionary and discriminatory. When the examples described by the interviewing institutions through the applicants are evaluated, it is clear that most refugees do not have fair and equal access to the right to shelter, they are abused solely because of their foreign identity, but these issues are much more severe for women and LGBTI people. In order to prevent these violations and to ensure refugees 'right to humanitarian housing, necessary steps should be taken, especially to increase the number and capacity of reception and housing centers. In terms of placements, vulnerable groups and those with special needs should be prioritized and protected by the state. Necessary assurances

[449] For the full text of the Convention, see, «Consideration of reports submitted by States parties under article 73 of the Convention pursuant to the simplified reporting procedure Initial reports of States parties due in 2006 Turkey», [consulted on 22.02.2021], https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/TUR/CMW_C_TUR_1_6922_E.pdf

[450]For detailed information, see, «Merkezler», GİGM, [consulted on 08.03.2021], https://www.goc.gov.tr/geri-gonderme-merkezleri33

[451] For more information about Yozgat Province, see, «Orta Anadolu Kalkınma Ajansı Yozgat Sosyal Durum Analizi», [consulted on 22.03.2021], https://www.oran.org.tr/images/dosyalar/20190918155744_2.pdf

should also be provided to prevent unlawful practices and abuses suffered by the hosts of refugees outside these centers. In the relevant laws, practices such as asking for excess rent or annual rent due to foreign identity and/or sexual orientation and gender identity, and unfairly evicting them for an unlawful reason should be clearly considered a crime and subject to deterrent sanctions. It is possible to develop alternatives that will allow refugees to rent homes in humanitarian conditions through public institutions and municipalities. It is also possible to develop alternatives such as allocation of a certain number of capacities to refugees in the regulations governing of the guesthouses and housing of public institutions, an arrangement that municipalities will make through housing or voluntary landlords, and the ability of the needy to housing or rent a house in reasonable and safe conditions.

D- Rights violations caused by the obligation to reside in the registered province

481. In order to have access to many fundamental rights such as healthcare, education and work, refugees are required to register and reside in the province where they are registered. Accordingly, the applicant must leave within 15 days at the latest with the one determined by the GIGM for residence and register with the IGİM in this province. It is forbidden to leave the city without written permission from IGİM after being registered in this province. It has been regulated that the applicant who leaves the province of residence without permission will be deemed to have withdrawn his application for international protection and can be deported. In the regulation of FIPL 91/4, it is ruled that the applicants who are seen not to have returned to the province of residence or left the province of residence without permission at the end of the permit date are entered into the corporate software system and the necessary procedures are initiated in order to be found throughout the country and the procedures for deemed withdrawn of the application is established. In the 6th paragraph of the same article, it is ruled that restrictions can be imposed on those who do not go to the province where they are supposed to reside or who leave these provinces in violation of the rules determined by the governorships after leaving can be restricted in terms of benefiting from education, basic health and other rights except their rights. The applicants' provincial preferences or the provinces where their relatives are located are not guaranteed to be placed there, as they indicate to the IGIM authorities at the time of application.

482. According to data obtained from the interviews demonstrated that this regulation caused problems for refugees to access many fundamental rights and freedoms. Most of the NGOs interviewed remarked that public institutions strictly enforce this rule without any exceptions such as emergency, security, or extraordinary situation[452]. It was also noted that until 2014, only fines were issued in such cases but this was changed in 2014. Being aware of changes that make such a significant difference in practice as well as comprehending their content is also a difficult/complex process for applicants. According data from the interviews, while information is shared within the refugee commune and NGOs work to achieve this, it takes time for legal changes to be fully understood and new information to be disseminated. Thousands of refugees are unable to meet their obligations and face sanctions simply because they are unaware of legal changes and regulations.

483. The change of the province of residence can only occur in exceptional circumstances and as a result of the assessment of GIGM. These exceptional circumstances are specified as kinship, health and other reasons in Article 110 of the FIPL Regulation. Hence, if there are close family members such as parents, brothers, spouses, children, grandparents who are legally residing in another province, they may be requested to be transferred to the province where they are located. Or, it is stated that in the case a serious health problem, the applicants who could not be treated in the public hospitals in the province where they are located, could be requested to be transferred to another province where they could be treated. However, in both cases or for any other special reason, an application will be made by a petition to IGİM in the province of residence and the decision will be made by İGİM or if authorized, the provincial directorate. As can be seen, the change of residence province in the legal regulation was determined on very limited grounds and subject to the GIGM approval. Furthermore, the regulation does not include criteria such as sexual orientation, gender identity, violence, oppression and discrimination. Interviewees' institutions stated that the exceptional reasons for changing residence province had no

[452] For the regulations regarding the obligation to notify the change of address, see, «Adres Kayıt Sistemi Yönetmeliği» (a. 11), [consulted on 22.03.2021], https://www.mevzuat.gov.tr/MevzuatMetin/3.5.200611320.pdf, ; «Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanun» (a.14), [consulted on 22.03.2021], https://www.mevzuat.gov.tr/MevzuatMetin/1.3.5683.pdf

broader meaning, gender identity was not considered as a criterion and applications were frequently rejected.

484. Women's Solidarity Foundation's statement about a pregnant woman's inability to receive basic healthcare services is a significant example of this issue. Accordingly, applicant's pregnancy checks were not carried out in the state hospital, as a justification it was stated that he/she did not live in the province where he/she is registered and that had to go that province in order to benefit from the healthcare services. Another female applicant who came to the same institution also stated that she had to leave the province where she was registered due to violence from her husband, however, although despite explaining this to the officials, the residence change and the enrollment of her children were not made. Moreover, when the applicant explained having a security problem, she was ridiculed by the officials by being told that she should apply to the directorate of migration management of the province where she was registered and that her husband would not wait for her there. Another important example concerns the Iranian female applicant. This woman stated that her husband, who was a revolutionary guard in Iran, had abused both herself and his 1.5-year-old daughter, so he came to Turkey and requested international protection. The authorities replied to the woman who she asked to go to a third country, that the custody of the child was also held by her father and that she had to petition her father's permission. Representatives of the foundation stated that although there is a special situation such as violence, this applicant is not being provided convenience and is kept in Turkey. LGBTI refugees, on the other hand, are mostly sent to small and conservative provinces such as Isparta, Konya, Yalova and Kayseri. In particular, interviewees such as Kaos-GL and SPOD and Eda Bekçi gave important information about the dangers these satellite cities pose for LGBTI refugees. Accordingly, many LGBTI refugees who are not offered any other alternative despite facing serious security problems in the province they are registered in, have to leave there due to inhabitants' homo-phobic, fundamentalist and reactionist characteristics.

485. As can be seen from the examples quoted from the interview records, exercise of fundamental rights and freedoms subjected to province of registration is problematic in many respects. Applicants for international protection are generally not provided housing opportunity. Hence, the applicants have to find a house within the provincial boundaries determined for them by GIGM with their own means and cover their own housing

expenses. In order to continue their lives, they need to live in provinces where social and economic conditions that allow them to find work. Other factors such as safe housing, access to work rights and being away from threats such as oppression and violence are becoming increasingly important in determining the environment in which women, particularly single women, live. LGBTI people are in a similar situation too. These groups should also have to choose places where they will not be subjected to negative treatment such as oppression, threats, violence, discrimination, exclusion and where they can access relatively safer housing and the right to work. But it is understood that GİGM and the Provincial Directorates officials did not exercise the necessary care and precision in determining the applicants' province of residence or living in another province. So much so that, it is understood that this rule is not stretched even in the face of a phenomenon that threatens the right to life, such as violence, a vital process such as pregnancy, or any specific cause such as social pressure, threats, exclusion, and harassment. Furthermore, the relevant law article mentioned above, rules that applicants 'rights, other than the right to education and basic healthcare, will be limited outside of their province of residence. It is a serious infringement of rights to interpret not being in the province where it is registered in a way that prevents a pregnant woman from giving birth under safe conditions. Moreover, the interviewing institution that provided this example stated that despite numerous attempts to solve this problem, they received no positive response. NGOs working with LGBTI refugees drew attention to the fact that LGBTIs sent to small, conservative provinces are under serious danger in these regions. LGBTIs, who had to hide their gender identity and sexual orientation due to the negative behaviors and attitudes of the people of the region, stated that they were dismissed from their home or work when their identity was understood, they could not get their wages, deposits, rent in advance, and were subjected to violence or abuse. Accordingly, many LGBTI refugees have to leave their registered provinces and settle in big cities such as Istanbul, Izmir and Ankara just to earn their living. An indirect result of this regulation is the inability of women and LGBTIs to apply for complaints and litigation against the negativities they face. Because when they apply to these authorities, it will be understood that he does not live in the province where he is registered, his application will be deemed withdrawn and he may be deported.

486. The criterion for exercising fundamental rights should not be legal registration in a country or residing in the province where it is registered. Restricting the exercise of rights

in this way is against its essence and purpose. Fundamental rights and freedoms were introduced to protect individuals against the state and to limit states. Constitution of the Republic of Turkey regulated the restriction of the fundamental rights and freedoms under Article 13. According to this article, "*fundamental rights and freedoms might be limited only by law, depending on the reasons specified in the relevant articles of the Constitution without infringing upon their essence. These limitations cannot be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of society and the secular Republic, and the principle of proportionality*". Hence, limiting the rights of refugees in this way is problematic both for the health, safety and protection of public health and safety of the refugees that the state is obliged to protect. As a matter of fact, a refugee who does not benefit from health care poses a threat to public health as well as the victimization he is subjected to on an individual level. Or, similarly, a refugee who is barred from working poses a threat to public safety by being dragged out illegally to make a minimum living. As a result, when evaluating international protection applications, all criteria such as ethnic, religious, sexual orientation, gender identity, social, cultural characteristics of the applicant as well as the provinces where their relatives live and whether they want to be with them should be taken into consideration. Besides, applicants should not be subjected to harsh penalties simply because they do not live in the province where they are registered, taking into account that reasons that are not present or unforeseen during the application may arise later. In order to ensure that applicants have access to inherent rights such as education, healthcare, work and housing, the requirement to reside in the registered province must be completely changed.

E- Violence and VPMC

487. NGOs such as the Women's Solidarity Foundation and the Solidarity with Women Foundation talked about that in their efforts to prevent violence against women, most of the refugee women experienced violence but did not prefer to say this. In its interviews with women, the Women's Solidarity Foundation considered one of the most important reasons for not expressing violence as the lack of awareness of what violence is. In addition, anxiety due to being in a foreign country, insecurity, not knowing the application mechanisms, not speaking language enough, inadequate interpreter service, threats and persuasion methods to discourage law enforcement have also come to the fore as other reasons.

488. It is also noted that female refugees are often subjected to violence by their spouses, but sometimes the perpetrator of the violence is relatives, neighbors, landlords, employers, police and other public officials. Some female refugees who tried to flee Syria were also found to have unwittingly contacted gangs during this time and were later subjected to repression, threats and violence by them. Similarly, some refugees have stated that they have been subjected to violence by marriage networks in Turkey. Examples of who the violence came from show that the perpetrators were both other refugees and Turkish people. However, for women, the obvious result of the data is that violence is mostly practiced by spouses.

489. Kaos-GL, SPOD, Support to Life Association, Att. Eda Bekçi stated that all LGBTI refugees were subjected to one or more types of violence such as mockery, humiliation, discrimination, harassment, sexual, economic, psychological, emotional or physical violence, rape, threats both during the application process and in living spaces such as home and workplace. Although violence is sometimes perpetrated by refugee groups and Turkish citizens, in some cases it is understood that it is perpetrated by public officials. The fact that oppression, discrimination and violence are so widespread and systematic demonstrates how unsecured LGBTI people are as well as how worrying inadequate the protection provided to these groups in Turkey. The negative behaviors of officials working in public institutions and the effects and consequences of the violence they perpetrate, can result in serious victimization. When the examples in the interview data are evaluated, it is clear that women and LGBTI refugees are unable to express themselves clearly and accurately due to the discriminatory and negative attitudes of the officials and thus the application processes are negatively affected.

490. An important aspect of violence is the problems faced with victim's the legal status in applications made against violence. KADAV and the Women's Solidarity Foundation stated that they encountered difficulties when the applicant did not have legal status or did not reside in the province where he/she was registered. Accordingly, it is understood that some officials accept applications with the understanding that the victim leaves the registered province for this reason, but frequently viewed as an impediment to the application. However, it is stated in paragraph 3 of Article 4 of the Istanbul Convention, which regulates "fundamental rights, equality and non-discrimination", it is stated that the Parties shall ensure that the Convention is implemented without discrimination on any

basis, including migrant or refugee status or any other status. As a result, it is incorrect for officials to apply for the applicants' legal status or to live in the registered province as an application requirement. Those who are already victims of violence such an application makes those who are rendered even more helpless by such an application.

F- Problems Based on Limiting the Powers of the UNHCR

491. Since September 10, 2018, the UNHCR has been ceased to obtain the records of foreigners who wish to apply for international protection in Turkey and to carry out their referring process. As of this date, procedures for determining refugee can only be made to the Directorate General of Migration Management in the province where they are located. Furthermore, the UNHCR continues to assist refugees in Turkey through some consultancy services and project support, but this assistance is very limited and insufficient.

492. Several interviewee instutions including Kaos-Gl, KADAV, Att. Eda Bekçi and SPOD remarked that the termination of the UNHCR's registration authority severely limits its activities and effectiveness, negatively affecting refugee application processes. These institutions have stated that during the UNHCR period, procedures such as applications, interviews and evaluations were conducted much more attentively and in accordance with the law. On the other hand, it is a significant issue that many institutions draw attention to the fact that the language and style used against refugees are questionable in the procedures carried out in GİGM and its provincial directorates, particularly during interviews. Furthermore, it is stated that the criterion of special needs is not properly evaluated with only a statement is placed on the information in the relevant system indicating whether the applicants are in this group, but the necessary care and sensitivity is not shown in the recognition of rights and communication with these people.

493. It is understood that gender-based groups such as single women and LGBTI people prefer to apply through this channel, and that their applications are handled appropriately

when they state that they belong to a vulnerable group. Although some NGO reports[453] indicate that gender groups sometimes face negative attitudes in applications during the UNHCR period, it is understood that this is much less than in public institutions.

494. In addition to its general experience with refugees, the UNHCR also has an strong background in issues such as how to approach to vulnerable groups and the evaluation of their applications. In a country like Turkey, where gender inequality, homophobic and transphobic attitudes and gender-based violence prevail, it is a problem in itself that only public institutions have a monopoly on the work and transactions related to refugees. This reality also forms the basis for all kinds of discriminatory, sexist behavior and practices against refugees. For all these reasons, the UNHCR should be reauthorized in order to evaluate international protection applications in Turkey. Thus, applicants will be offered a more adequate and equipped alternative and will be a criterion that can compare Turkey's practices.

G- Application to Domestic Remedies

495. It is seen that interviewees have been made applications for the international protection, the objections to the deportation decisions, the debarment and protection measures in case of violence, the divorce, custody request, the transgender, gender reassignment cases, the cases of violation of the right to life of the people who lost their families, relatives, the injured due to boating accidents, the cases related to administrative detention, lawsuits regarding allegations of harassment, rape or ill-treatment, torture, ill-treatment, violation of the right to life in dispatch centers or during arrest, cases related to the violation of the right to life, the failure of the state to fulfill the duty of care and safety in boating accidents, the failure to intervene early in accidents or to take adequate security measures.

496. Several institutions have stated that protection measure decisions regarding the problem of violence against women have been made quickly, but the main issue in these cases is the actual removal/suspension of the violent man. Particularly, interviewees such

[453] For more information, see, «Türkiye'nin LGBTİ Mültecilerle İmtihanı», Kaos-GL, Ankara, p.59,60 [consulted on 15.03.2021], https://kaosgldernegi.org/images/library/2019lgbti-multeciler-ile-imtihani-web.pdf,

as the Women's Solidarity Foundation and KADAV, who made frequent applications regarding this issue, stated that the protection measures decisions were made immediately, but the actual suspension is more problematic. Furthermore, it was noted that the state's inability to prevent violence against gender groups who are citizens of Turkey exacerbates the situation for refugees. The president, government officials and bureaucrats make derogatory, exclusionary statements about LGBTI people and make statements that exacerbate gender inequality. Such statements incite violence against women and LGBTI people. Representatives of the Women's Solidarity Foundation emphasized the importance of the state taking a firm stance against violence in order to prevent violence against Turkish women and LGBTI people and refugee gender groups.

497. Indeed, the changes such as increasing protective and preventive measures in the relevant laws to prevent gender-based violence, exacerbating penal sanctions against crimes such as violence, marrying women at plural and/or earlier ages, and ensuring that they are actually implemented have been seen to be vital. However, many national and international reports state that Turkey remains incapable of taking these measures. Up-to-date and detailed data on this subject can be found in reports such as Grevio Turkey evaluation report,[454] shadow report of NGOs on the Monitoring of the Istanbul Convention, We Will End Femicides Platform 2020 Report, which is discussed in detail in the first part of the thesis. Furthermore, it was stated at interview with the Association for Solidarity with Migrants that some judicial authorities were looking into Syrian law in disputes involving Syrian citizens. Syrian citizens, on the other hand, are subject to Turkish law in ongoing legal disputes in Turkey. Women are made even more vulnerable as a result of this practice. In addition, the situation of refugees includes various peculiarities. In their examples, representatives of the Women's Solidarity Foundation pointed out that it is impossible to truly remove the man because refugees live together in certain neighborhoods. In some cases, it is seen that the man moves away because he is afraid of being subjected to sanctions, but continues the pressure and threat through others or through means such as telephones. Or on the contrary, the man has already abandoned the family and cannot be reached. If the male is removed, a variety of issues

[454] For the full text of the report, see, « Grevio Baseline Evaluation Report Turkey» (Grevio, Türkiye Temel Değerlendirme Raporu), [consulted on 22.11.2020], https://rm.coe.int/eng-grevio-report-turquie/16808e5283

may arise. For example, women mentioned problems such being unable to benefit from food aid provide by district governorships, and not being able to enroll their children because of the fact that registration such as house rent and bills are mostly in the names of men. Therefore, apart from the traditional suspension measures, it is necessary to develop measures in accordance with the specific conditions of the refugees.

498. Another factor that hampered the applications was the refugee's lack of official status. According to the interview with KADAV and Support to Life Association, it is difficult to get results from applications if the victim does not have a status such as residence permit, work permit, international protection status. However, according to Articles 59-61 of the Istanbul Convention, to which Turkey is a party, states must protect asylum seekers and migrant women who are victims of violence, regardless of their legal status. But institutions have explained that this practice has not been implemented and that they have experienced cases where mechanisms against violence are not used when there is a legal status issue. The representative of the Life Support Association stated that it is more difficult to get results when there are other factors along with violence. For example, when there was an unintended pregnancy and abortion request, there were incidents where the relevant authorities made applications difficult when the legal abortion period elapsed and the requests were not fulfilled. It is extremely wrong to disregard the reality of situations such as violence, rape and unwanted pregnancy. Such strict practices will lead to other aggrievement and can make the already traumatic process for victims even more unbearable.

499. The majority of the interviewing institutions stated that they had received positive outcomes from cases involving administrative procedures. The most common reason for this is that the administration has taken too many incorrect actions and not adequately assessed the actual situation. For example, Att. Eda Bekçi explained that they reached a favorable decision in a case against the unjust deportation decisions.[455] The court ruled in the revocation case involving the rejection process that person was an irreparable person

[455] For detailed information about the decisions see, İzmir 1st Administrative Tribunal, Merits No: 2020/330, Decision No: 2020/1396, Decision Date: 12.11.2020; İzmir 1st Administrative Tribunal, Merits No: 2020/929, Decision No: 2020/1634, Decision Date: 10.12.2020

and that what would happen to him in his country of origin if he was sent back to his country of origin was not well evaluated by the administration. Another encouraging decision is the administrative court's decision regarding the request for a transexion process. In this case, it is based on the university's determination that the person is physically and spiritually compatible with the process of gender reassignment. Furthermore, it has been reported that decisions on issues such as the cancellation of unfair administrative detention decisions and the cancellation of deportation proceedings are frequently made in favor of applicants.

500. In the interview with the Association for Solidarity with Immigrants, it was mentioned that one of the legal applications concerning gender reassignment regulated in Article 40 of the TMK. According to the relevant article, a person who wishes to undergo gender reassignment can apply to the court in person and may be given permission. However, the interviewer stated that the courts in some provinces have denied these requests, arguing that this rule is a privilege given only to Turkish citizens and that foreigners are not permitted to use it. In this way, it is understood that gender reassignment processes are prevented. Under these circumstances, most refugees are attempting to continue the process by requesting to other provinces 'courts. As with many issues, the lack of integrity in practice in terms of this problem is the most significant factor driving refugees to apply to other courts. The representative of the Migrant Solidarity Association claimed that although domestic remedies was also applied against this decision of the courts, no data about the result could be obtained because the applicant was cut off from the process. According to Att. Eda Bekçi, a recent litigation resulted in a favorable verdict; the university evaluation report which indicated the person's physical and mental suitability for the process of gender reassignment was influenced in favorable decision in this case.[456]

501. It is understood that both positive and negative results were obtained in the cases pursued by the lawsuit. The representative of the Kaos-Gl remarked that positive judgements on this matter are often taken by the high courts, and that there was no unity in the decisions of the local courts. Deportation decisions are one of the most frequently

[456]For more information about the case, see, İzmir 10th Civil Court of first Instance, Merits No: 2019/186, Decision No: 2020/38, Decision Date: 04.02.2020

cited examples in discussions on this subject. The administrative courts' rulings on deportation proceedings are final. In other words, these rulings cannot be appealed to a higher court. However, it has been criticized that the stare decisis is not established because of administrative courts gave different decisions in similar cases.

502. It is seen that many institutions make mostly individual applications to the Constitutional Court.[457] It has been explained that the court has made decisions, particularly regarding the measure, and these decisions are generally quick and favorable. Despite the fact that lawsuit was filed due to the decree issued in 2016, it was seen that there were so many appeals to the Constitutional Court about the ongoing deportations procedures, and then the Court take a pilot decision on this matter. Following this pilot decision, it is also a good development that the FIPL has been amended and the stopping execution effect in deportation decisions has been reinstated.

503. It is difficult for refuges to understand many factors in a foreign legal system such as the requirements as to form, terms, determination of officials and authorities. Since most of these conditions are determined as derogatory, they can lead to unrecoverable results. Therefore, it is important to establish a separate specialty court that will facilitate the applications of refugees and where they are informed by the specific methods in case of changes. Such an alternative would at least reduce problems such as being unfamiliar with the legal system and lack of unity in judicial decisions.

504. All the interviewees stated that international institutions and courts such as the UNHCR, the Council of Europe, the European Parliament, ECtHR are important for the protection and development of the rights and freedoms of refugees. However, it is also a general criticism that public officials do not take into account international standards and do not have adequate training and equipment. Av. Eda Bekçi remarked that international norms are not widely used for administrative procedures but they are taken into account by administrative courts. The representative of the Immigrant Solidarity Association believes that ECtHR decisions are very successful in terms of both legal changes and practical problems. The representative of the Life Support Association stated that these standards are effective. This institution stated that especially in protection

[457] For an example application, see: Application no: 2021/ 5388, Att. Eda Bekçi

decisions, they are often able to make decisions and put them into execution without looking for evidence, and that LGBTI refugees have been directed faster in the process of resettlement in third countries since 2014.

505. Two of the interviewers, KADAV and Av. Eda Bekçi, claimed in their applications to the administrative courts that their involvement in such international decisions and recommendations strengthened their petitions, making it easier for them to make favorable decisions. However, it should be noted that these decisions are mostly general decisions regarding refugees, such as repatriation and deportation decisions, AYM (CC) measures, and it has been stated that there is no specific impact on gender groups. Moreover, some institutions have claimed that the EU does not approach its relations with Turkey on the basis of protecting the rights and freedoms of refugees, and that they do not find the EU's position on this issue sincere. Citing the readmission agreement between Turkey and the EU, the interviewers pointed out that the approach of both sides is economic and political, and that the inability of refugees sent to Turkey to access the rights is not taken into account.

506. Many interviewee organizations have emphasized the importance of the Istanbul Convention in terms of imposing obligations on states to accept and return gender-based asylum applications of women and LGBTI refugees. Indeed, the guarantees introduced by the Istanbul Convention are capable of providing a significant enhance gender groups in practice. However, it is a problem expressed jointly in the interview data that Turkey has taken almost no measures to ensure both in terms of ensuring the compliance of its legislative regulations with the Convention as well as fulfilling its requirements in practice. Turkey was one of the first states to sign the Convention, but is reluctant to implement it. In fact, in late 2020, it was seen that the ruling party officials and President Erdogan were discussing Turkey's withdrawal from the Convention. This is justified by the fact that Convention uses terms like “gender”, and “sexual orientation” to refer to LGBTI activities. Underneath the government's stance lies the argument that LGBTI hostility and homosexual orientations are incompatible with to Turkish family structure and culture.

507. From the answers of most interviewees to the relevant questions, it has been seen that applying to international legal remedies is not a frequently used mechanism. Representatives of KADAV and the Women's Solidarity Foundation stated that they are

among the active women's groups to prepare shadow reports on international conventions such as CEDAW and Istanbul Convention. In the meeting with the Women's Solidarity Foundation, it was noted that Grevio began to include NGOs in the preparation of the reports. There are significant differences between the reports submitted by Turkey and the shadow reports of NGOs. These differences were also noted in the section where the reports were evaluated in detail. Accordingly, the inclusion of NGOs in the process is important in terms of confirming their seriousness and importance and strengthening their assessments. Av. Eda Bekçi said that he has files that he has applied to the ECtHR. It has been observed that one of the most decisive reasons for not taking the international legal remedies is that most NGOs do not pursue lawsuits with a power of attorney. Accordingly, the institutions mostly provide legal consultancy and directly support the applications to be made with the petition. All interviewees' organizations said that the applicants were directed to the legal aid centers of the bar associations in the works followed by lawsuit. However, it has been observed that a small number of applications are directed towards the ECtHR. ECtHR decisions are known to play an important role both in making and changing laws and in subsequent decisions of local courts.

2) Problems arising from improper/arbitrary application or non-implementation of legal legislation

A- Problems faced during the implementation of the FIPL

508. We mentioned the weaknesses in FIPL in the above title. In the interviews with institutions, it was understood that there were other issues arising from the implementation beside these deficiencies. Most of the interviewee organizations such as Women's Solidarity Foundation, Av. Eda Bekçi, Immigrant Solidarity Association, Kaos-GL stated that although there is no legislative regulation, the public officials carried out illegal practices on the grounds that "*we received instructions from the relevant ministry, a phone call from the relevant ministry*". Such a practice is incompatible with the principle of the rule of law. Furthermore, the changing of the application from province to province or even from person to person was seen as another important problem. Of course, the difference of the personal situations, needs and problems of refugees should be observed and treated according to these differences. However, the problem mentioned here is that when the same person applies to different officials, they get different results or people in similar situations are treated differently. As a matter of fact, it has been seen

in the interview data that almost all organizations consider the lack of integrity in practice as a common problem. One of the most common examples in this regard is the request for power of attorney from lawyers. In legislative regulations such as the Attorneyship Law and CMK, it is clearly stated that individuals can benefit from the support of the lawyer without seeking power of attorney. However, representatives of Kaos-Gl and the Immigrant Solidarity Association stated that when they wanted to meet with their clients, they were asked to present a power of attorney, and if they did not, they were prevented from meeting. There have been examples where lawyers who have a certificate of being appointed from the bar are not allowed to meet in a similar way. A striking example was the implementation of the injunction on the suspension of the deportation decision taken by the Constitutional Court. A lawyer who took the injunction from the Constituional Court while his client was still at the airport was told that the original decision was not with you and his client was deported. In terms of any of the examples we have included in the interviews, there is no legislative regulation that will prevent the representation of the lawyer. On the contrary, there are provisions regulating the right of the lawyer to be represented without seeking power of attorney.[458]

509. In Article 3 of the Law, we mentioned that the concept of the person with special needs is kept narrow by not expressing different sexual orientation and gender identities. In this respect, an important problem arises in the assessment of who has special needs. Some interviewees stated that DGMM does not make this assessment professionally and does not have a holistic approach to this. There is no clear regulation in the law regarding how this determination should be made. It is not known exactly how it is applied in GİGM. Because NGOs stated that they are not allowed to apply with the interviewees even if they have a power of attorney. For example, the representative of the Immigrant Solidarity Association stated that they were accepted at the place where the administrative work was done, but they could not accompany the applications. However, he explained that from the transmissions of the refugees who applied to them, they learned that the DGMM has a system such as migration net, which is only accessible by its officials, and that a tick was thrown into the field regarding whether there was a special need during

[458]For related regulations, see, CMK a. 147, 149, 153, 154, 234, 239, https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf, above; Avukatlık Kanunu a.2, https://www.mevzuat.gov.tr/MevzuatMetin/1.5.1136.pdf, above

registration and what this situation was noted. In this way, a determination is far from a professional approach and can vary from person to person. Since there are no specific procedures and criteria, it has been stated that the evaluations also differ from province to province and from civil servant to civil servant. In addition, the same interviewer stated that they made an application about people who had special needs or who had this situation later, but did not know how effective this was. He stated that they are usually told that the application will be evaluated, but they do not know if such an evaluation has actually been made. In the interviews with Kaos-Gl, SPOD, Att.Eda Bekçi, another important problem encountered in the GİGM and its provincial directorates was seen as the negative attitudes and behaviors of the officials towards LGBTI refugees. According to the data, LGBTIs reported that they exhibited themselves exclusionary, derogatory or sometimes even abusive negative behaviors such as “why are you like this”, “how long have you been like this”, “how do you have emotional and sexual relationships”, excluding, humiliating and sometimes harassing. Another unlawful practice concerns the separation of LGBTI people. Although it is clearly stated in international standards that these individuals should not be isolated, the applicants have stated that there are such practices sometimes take place in the centers affiliated to GİGM.

510. Almost every interviewee claimed that officials in different provinces and different institutions had different attitudes of the regarding similar applications and transactions. The most significant consequence is a lack of integrity in practice. As a result, it was quite common the cases that while the one of the refugees in the same situation had their application approved and that the other had rejected, or that one of the officials working at the same institution accepted another rejected. Furthermore, some NGOs such as The Women's Solidarity Foundation and Kaos-Gl have stated that it is easier to deal with refugees if they (refugees or themselves) have personal contacts in public institutions. In this way, different practices make the process more uncertain for refugees and make them feel insecure. Therefore, in order to ensure integrity in practice, gaps in laws and regulations should be eliminated and the officers should be monitored to prevent them from acting on their own initiative.

511. Another point that stands out in the interview data is that when refugees go to a public institution alone, they are treated differently that when they are accompanied by a lawyer or a representative of the institution. For example, The Women's Solidarity

Foundation has claimed that applicants who go alone are treated more negatively. NGOs have also stated that it was always difficult for them to assist the applicants in the institutions to which they went. Furthermore, some institutions such as Kaos-GL and the Migrant Solidarity Association have claimed that lawyers are asked for power of attorney despite being explicitly stated in the attorney ship law and other relevant legislative regulations, and in the absence of power of attorney, they are prevented from assisting the applicants. However, it is clearly stated in the relevant laws, especially Attorney ship Law, in which lawyers can offer many legal supports without power of attorney. Such unlawful practices cause the victimization of refugees and can lead to irreparable consequences, especially in urgent and important situations such as deportation.

512. In the interview with Kaos-GL, projects and studies aimed at improving cooperation and relationship between NGOs and public institutions were discussed. However, it is understood that the general approach of public institutions in such studies is not to recognize and address the expertise and experience of civil society, but rather towards civil society in the form of training and reinforcing them. The representative of the Life Support Association stated that they do not have a problem with public institutions as long as they act in accordance with the procedure. This organizations also stated that it collaborates on projects with organizations such as UNHCR and GIGM, such as conferences.

513. The Violence Prevention and Monitoring Center, which operates under the Ministry of Family, Labor and Social Services, was established within the scope of law no. 6284. The purpose of these centers is to provide 24/7 uninterrupted service to women who are exposed to violence or are in danger of being subjected to violence and their children if any. Although there are no limitations or distinctions between citizens or foreigners in the regulation regarding the functioning of VPMCs, it was stated that there were problems in the placement of women and LGBTI refugees who were victims of violence in these organizations. The Immigrant Solidarity Association said that a trend has been developed to prevent foreign and transgender women from being admitted to VPMCs. This poses a serious danger to refugees who are victims of violence.

514. Another issue stated by KADAV and the Women's Solidarity Foundation about VPMC is that while they should normally be served 24/7, specialists and officials cannot be reached after working hours. It has been observed in such cases that applicants are

advised to return the following day during working hours or that it is preferable to conduct the proceedings in the presence of a law enforcement officer. The violence lines created within this scope are also answered by the police after working hours. The inability to reach experts in the request for urgent need against violence as well as the failure to register the victims immediately are incompatible with the purpose of existence of VPMC. Another significant issue experienced in women's shelters is the discrimination faced by officials or other women who are there. Some women and LGBTI refugees have said that the attitude of officials and women living in shelters to them is in negative ways, such as insulting and exclusionary. The absence of activities such as training, workshops and activities to facilitate cohabitation and strengthen solidarity in shelters was also seen as an important reason for this discrimination.

515. A similar issue was uttered in the interview with KADAV about domestic violence offices. Thereafter, domestic violence offices for investigation and prosecution have recently opened. When the victim of violence goes to any police station to file a complaint, he/she is told that his/her application was not received and that he/she should go to the relevant police station. However, it was noted that the officers at the applied police station were supposed to transport the victim to the appropriate unit, but in practice, only general directions were given. In terms of the prosecution process, it was stated that domestic violence prosecutors and commissioned courts were determined in the courthouse and that the trials were made through these authorities. This application is positive in terms of its expertise and ease of application if it is carried out by adequately equipped officials and in accordance with its purpose.

B- Problems encountered in accessing legal mechanism

516. Mechanisms such as complaints and litigation are complex ways of applying, depending on the duration and formal conditions. Most of the time, this is a period of prescription. In other words, applications that are not submitted on time cannot be resubmitted again once they have expired. This situation is undoubtedly much more complicated for refugees. Kaos-Gl representative mentioned that in order to address this issue holistically, some organizations discussed the establishment of a separate judicial system for refugees and the recommendation of the specialized court. Furthermore, it has been stated by many organizations that support services should be improved to facilitate access to existing mechanisms.

517. The most important of these is the inability of refugees to access the service of lawyers and interpreters. All NGOs stated that these services were inadequate and they had negative consequences. Att. Eda Bekçi, who is also involved in the trainings of lawyers, pointed out that there is no integrity in the attitudes of the bar associations towards refugees. While some bar associations such as Istanbul, Izmir, Ankara, Antalya, Van Bar Association, provide special trainings and seminars for lawyers working with refugees, some bar associations of Mardin stated that they do not want to follow the cases of refugees. Furthermore, there may not be integrity between the legal aid commissions of the bar associations. For example, in the meeting with the Women's Solidarity Foundation, it was stated that some lawyers working in the Legal Aid Commission of the Ankara Bar Association did not understand their language; they don't want to accept the lawsuits on the grounds that giving up situations are frequent, and the attorney is unfairly held responsible.

518. Another significant factor that makes it difficult to apply and follow legal mechanisms is an inadequacy of interpreter services. This issue can manifest itself in a variety of ways at every stage of the application process, such as either not being able to reach the interpreter at all or not being able to get services from an interpreter with adequate equipment. All of the interviewees gave various examples of how to overcome this deficiency. It is understood that the translation services are tried to be provided by means of the joint project of the UNHCR and TBB, the work of the bar associations and the NGOs own, interpreters or volunteers, but such solutions are periodic/seasonally and inadequate. Furthermore, Att. Eda Bekçi pointed out that the interpreters reached by NGOs through their own networks of volunteers or staff were not accepted in the absence of a sworn translator certificate. The Women's Solidarity Foundation has reported that interpreters sometimes engage in negative behavior towards refugees based on some cases they encounter. They exemplified that a female refugee was reprimanded by an interpreter in Çubuk District of Ankara province, and that there was a misunderstanding because the name of the woman's husband and brother was the same, but the interpreter could not understand it. When they asked law enforcement officials who the interpreter was, they said they received a response from someone we found from around. The representative of the Migrant Solidarity Association stated that the lawyers were supported by phone for interpreting in the project jointly carried out by BMMYK and TBB. However, this interviewer pointed out that they could not take advantage of this

service because they couldn’t call the repatriation centers by phone. Another issue raised in the interview with KADAV was the inability of women to explain their complaints due to the lack of regular interpreters in the police and prosecutor's offices. It has been observed that some organizations such as Women's Solidarity Foundation, KADAV, Immigrant Solidarity Association have their own translator employees and try to address this deficiency with their own means. It is possible to say that these problems encountered in terms of interpreters make the already complex and difficult-to-access legal system even more inaccessible when the examples are evaluated together.

519. Almost all of the interviewing organizations have stated that complaint applications regarding the judicial situations such as violations of rights suffered by refugees, harassment, violence and theft are often not taken into consideration. Kaos-Gl representative pointed out that complaints are followed up mostly when there are severe physical assaults or attacks on the right to life. Another significant issue with complaint applications is the attempts of law enforcement not to receive the applications. Accordingly, the applicants stated that when they went to law enforcement to complain about any issue, they were cautioned that their protection applications would be extended and/or rejected deported, they would get in trouble. Or it was stated that the applications were not processed on the grounds that he did not have the right to apply, that no result would come out even if he applied, and that the criminal could not be found. Considering that all organizations emphasize the same problem, it is understood that the attitudes of law enforcement based on threats and deterrence in this way are not individual. In some cases, it was observed that law enforcement officials did not take the necessary care even in cases such as severe sexual violence and rape. For example, when an Iranian transgender woman was in Yalova for registration, she was part of a telegram group set up among Iranians. She was later subjected to sexual violence by a person he contacted through this group in order to find a home. The interviewer said that when the woman applied to her to complain, she directed to the Forensic Medicine, but the police did not take the request into consideration. She also said that she had to tell the story several times for reporting, so she was traumatized and that as a result, the police officers made no effort to find the suspect, and that this was how it dragged on. However, women's organizations have stated that applications are examined more carefully, mostly in cases of severe violence against women. It is only the subjects who are subjected to violence

that change in terms of both situations. This differences in the data shows us that law enforcement officials are discriminatory towards LGBTI victims and do not act with care.

520. In the interviews, it was stated that applications were frequently made within the scope of the Law no. 6284 on the Protection of the Family and the Prevention of Violence against Women. These applications are mostly stated as applications for suspension and protection measures for refugee women who have been exposed to violence. Representatives of the Women's Solidarity Foundation pointed out that most refugee women submit to violence unless it is too severe and systematic, and even though many women say they are unaware of what is violence and are not subjected to violence, other data indicate that they are actually exposed to violence. Moreover, LGBTI refugees have been found to have expressed that they do not apply for violence unless they are subjected to very severe violence due to their incriminating attitudes such as “Why are you like this”, “What were you doing there”, “Why were you there at that time”. From the reports of the representatives of the Women's Solidarity Foundation and KADAV, it was understood that the violence sometimes committed by employers, neighbors, landlords, relatives, but mostly from spouses. Most organizations have stated that the suspension decisions were taken quickly and evaluated this positively. However, KADAV representatives said that some law enforcement officials did not receive applications, saying that law no. 6284 was not intended for refugees.

521. According to Av. Eda Bekçi, GIGM has a victim assistance program for women who have been caught in police operations such as sex worker, victims of violence, victims of rape or victims of human trafficking. Within the scope of this program, women who are victims of the aforementioned causes are given special rights such as improving before deportation proceedings arising from both FIPL and international conventions, hosting turkey in various ways or placing them in VPMC. This İzmir-based Interviewer stated that they were able to get favorable outcomes from their applications and that they had applicants who were placed or treated in VPMC. However, it is understood that other interviewers have not given similar details about this practice and have even indicated that they have problems resettling refugees in VPMC. Therefore, it is possible to say that the victim assistance program can be implemented locally in Izmir and perhaps in other provinces. Granting privileges to women, who are victims, even though they are regional

victims, is a positive and exemplary practice. It will achieve its goal both in a way that covers other gender groups and with its implementation throughout the country.

522. One of the major problems experienced in applications for domestic legal remedies in the evaluations related to rights violations and legal applications was considered as problems experienced due to the discriminatory, exclusionary, mocker, threatening, etc. negative attitudes of law enforcement officers, prosecutors, judges, interpreters, attorneys, etc. These discriminatory attitudes may be directed at foreign identity or/or may be due to sexual orientation and gender identity. Indeed, it has often been claimed that the violence of discrimination and negative attitudes increases even more when the identity of foreigners is combined with the gender identity. It is essential that refugees can express themselves comfortably and make full use of the support of interpreters and lawyers without discrimination in order to have access to these application mechanisms. In this regard, negative attitudes of some bar associations regarding the use of legal aid services by refugees, the fact that unwillingness of some lawyers to carry out the cases of refugees, the lack of interpreters or the inadequate quantity and quality of the existing interpreters, and the negative behaviors of public officials working in the courthouse towards refugees are serious obstacles to refugees accessing legal mechanisms. Furthermore, the attitudes and behaviors of law enforcement to avoid receiving applications during the complaint process are an impediment. During the trial process, it was reported that the refugees were subjected to mocking, humiliating and discriminatory words and behaviors by some prosecutors and judges, though this was not continuous or systematic. In terms of the source of all these problems, the common reason that emerged commonly in the interview notes was the inadequacy of the laws aimed at preventing discrimination, as well as the lack of necessary training and equipment of public officials. Therefore, public officials involved in the investigation and prosecution process should be trained to ensure that refugees have equal access to rights and freedoms, and the prohibition against discrimination should be expanded to explicitly express different sexual orientations and gender identities as well as foreign and international protection applicants.

Conclusion of Chapter 2

523. To make gender assessment of Turkey's refugee laws in terms of gender, it is necessary to explain how are the practices of these regulations. Because law is an integral order of law and practice. For this purpose, for various reasons we have explained above, the method is referred to as the road meeting with NGOs which work for women and LGBTI refugees in Turkey. Most of the NGOs that could be interviewed have been institutions carrying out critical studies in this field. This study subject is also a critical area being a result of such reasons as many institutions demonstrating a rejectionist, discriminatory approach to LGBTI refugees in Turkey, lack of public relations in the bureaucracy to reach other NGOs. The interview questions were kept quite extensive, from the institutions' work and experience, to the problems they faced, from communication and relationship with public institutions, to applications made to the internal and external legal mechanisms. Thus, all human rights violations and discriminations faced by women and LGBTI refugees during the protection process were tried to be revealed. Besides, considering the experience and expertise of these institutions, they were also asked to present their concrete proposals for a more equitable and gender-sensitive legal system.

524. As can be understood from the evaluations in the second part, quite rich data can be obtained from the interviews. Accordingly, it was observed that the asylum system in Turkey is not egalitarian and sensitive both in terms of the legal protection of women and LGBTI refugee groups and the rights granted to them, and in terms of sensitivity in practice. It is seen that these groups are exposed to problems such as discrimination, humiliation, ridicule, violence, harassment and threat in all areas of life. It is understood that women's sensitivities are mostly observed when women are victims of violence, but women who are alone or alone and with children are not shown the same sensitivity. LGBTI groups, on the other hand, are discriminated against by a large number of practitioners, as they are ignored by law. It is seen that these problems are similarly followed in judicial and administrative remedies. In addition to discriminatory, homophobic and transphobic approaches among public officials, law enforcement officers, judges, prosecutors and lawyers, other factors such as lack of legal system, lack of access to lawyers, and language barriers further deepen these problems. NGOs, who approach critically on this issue, say that they face serious problems in their relations with

public institutions as well. This situation also shows the state's closedness in terms of gender-based attitude towards refugee groups. In addition to this, the fact that Turkey is not able to fulfill the necessities as being a party in the Istanbul Convention has been identified as one of the most important legal problems in this area. Another international legal mechanism to remedy outside the ECHR is not seen as a common option in Turkey.

General Conclusion Part 2.

525. It is understood in the detailed assessment of the basic laws and regulations concerning refugees that some rights in terms of gender are limited based on the criteria of women or child refugees, whereas LGBTI refugees are ignored. Neither the law nor the regulations have ever mentioned the criterion of gender identity and sexual orientation, women are identified and protected by identity and situations such as mothers, spouses, pregnant, married, victims of sexual abuse or violence. However, in Article 60 of the Istanbul Convention which Turkey is a party, too, is organized for asylum based on gender. In the “Asylum and Migration” section of the Convention, it is stated that States parties will do what is necessary for gender-sensitive asylum procedures. However, there is a violation of the obligations arising from the contract without observing the relevant legislation in this respect Turkey.

662. Another important deficiency regarding the law is not to identified LGBTIs in vulnerable groups. It also leads to the exclusion of these groups in terms of many rights and freedoms. It is seen that the necessary arrangements and guarantees are not provided to ensure that LGBTI refugees have equal access without discrimination to many basic rights such as housing, working, education, social assistance, health care. Gender-based deficiencies make women, children and LGBTI refugees vulnerable to discrimination, as well as being vulnerable and unprotected against oppression, violence, abuse, harassment, rape and murder. In addition, the fact that the public officials' discriminatory, derisive and humiliating negative attitudes towards women and LGBTI refugees are also common, was identified as another important problem.

526.Then, it is included the evaluations of the interviews were conducted with seven NGOs carrying out studies in this area to detect the asylum law provisions in practice on gender equality in Turkey. These interviews made within center in three big cities of Turkey; Istanbul, Ankara and Izmir in February 2020. From the evaluation of the interviews, it has been understood that women and LGBTI refugees are exposed to

discrimination in all areas of life and LGBTIs are heavily affected by this situation. One of the most important legal causes of this discrimination was evaluated as the identification of the group with special needs for health-based reasons such as the patient, the elderly, the disabled, and the pregnant rather than being based on gender identity and sexual orientation. This scope excludes women and LGBTI refugees who are alone. The fact that the staff working in public institutions are uneducated, sometimes even homophobic, transphobic, sexist about gender equality and gender sensitivity causes these groups to face serious problems in the asylum process. For these reasons, women and LGBTI refugees have problems in accessing many basic rights such as education, health, work, housing, social assistance. Moreover, they refrain from resorting to judicial and administrative authorities in the face of such violations of rights or problems arising from everyday life. The underlying various reasons of not being able to resort to legal remedies are as threats, harassment, intimidation, deterrence-based approaches of the police or administrative personnel, fear of losing their status due to not living in the province where they are registered, fear of being sent back because of uninsured employment, not knowing their rights and ways of application sufficiently, not knowing the language enough, not being able to access the lawyer. On the face of these problems described in detail in the second part, it is seen that first of all, Turkey should go to changes that recognize and protect sexual orientation and gender identities in the relevant legal regulations. To ensure equality in the real sense, long-term steps have to be taken for the whole implementation. In our opinion, these will find a response only if these changes regarding the accessibility of the application are considered as a multi-dimensional process that covers what the practitioners need to receive the necessary training and equipment.

CONCLUSION

527. The problem of the study is determined as the evaluation of Turkey's basic regulations relating refugees in terms of gender criteria and their compliance with international law. Studies on gender in the field of asylum law have become more prevalent since the 1980s, particularly following feminist critical studies directed at international law. In this study, the asylum process in Turkey is evaluated as both examining of the laws and analyzing of data obtained from interviews with NGOs working in this field, so theory and practice are considered as a whole. Through these evaluations, alternative suggestions were presented to identify the weaknesses and inadequate aspects of the system and to solve the problems. In this respect, the study is differing from other studies in the field and offers its own unique contribution to the literature.

528. In the first of chapter of the study, the issue of gender equality and the feminist perspectives to international law are touched upon. Indeed, the distinction created between sex and gender provides a foundation for discrimination based on sexual orientation or gender identity, which still prevalent throughout the world today. Afterwards, gender equality and the outlook of different sexual orientations and gender identities are discussed in the context of Turkish Law. To assess the discrimination experienced by the women and LGBTI refugee groups, it is necessary to understand the current legal status and actual state of Turkish citizens. The evaluation of this chapter reveals that there are no regulations including explicitly discriminatory language against LGBTI people except for Turkish Armed Forces Legislation and Law on Criminal Execution. On the other hand, discriminatory practices against different sexual orientations and gender identities are made with ambiguous and open-ended expressions such as "public morality", "consonance to Turkish family structure", "obscenity" and these people are prevented from using their rights and freedoms equally. In the examination of equality and prohibition of discrimination in Turkish law, it is understood that LGBTI people are ignored by not including different expressions of sexual orientation and gender identity in any regulations such as constitution, civil law, healthcare, social security, social service, criminal and execution law. In this chapter, the feminization of migration and the increased visibility of gender identities in the migration process are discussed. Hence, the phenomenon of the feminization of migration is

clarified by Castles and Miller as the women's independent migration from their family and getting the status of person who provides the care of the family. Today, women also travel abroad for various reasons such as work, education and internships and account for about half of the all-international migrants. Although over time, the reasons for migration of women, the problems they encounter in the migration process, the sectors in which they work and adaptation problems differ, they have common needs and problems on the basis of gender identity. In parallel with this increased visibility, the studies to treat women as subjects in migration process have also started to increase. In addition, through the report and academic studies examined, it is understood that LGBTI refugees are subjected to many problems such as discrimination, oppression, harassment and abuse throughout the entire migration process much more seriously. Many LGBTI refugees are often forced to seek refuge in other countries due to their inability to express their gender identity clearly, inability to work and being oppressed and threatened in their country, but these issues persist in the migration process and in the country arrived. These problems that these groups encountered are also an important issue on the agenda of both international law and civil society. In the second part of first chapter, the sources of international law seeking to achieve gender equality, which are seen as an important criterion for the considerations, are examined. In addition to the international conventions to which Turkey is a signatory party such as the CEDAW and the Istanbul Convention, the international standards such as Yogyakarta Principles, UNCHR, Council of Europe, European Parliament, ECHR, CJEU resolutions are discussed in detail. While the importance and contributions of these sources were included, attention has also been drawn upon their weaknesses. The inclusion of these regulations is important both in terms of its contributions to international law and in terms of establishing a basis for the examination of Turkey's regulations in the second part of the study.

529. The first part of the second chapter of the study evaluated Turkey's basic refugee law regulations in terms of gender criteria. In fact, all of the country's laws in force also affect refugees. But it is hardly possible to examine all the laws in force; it has been preferred here to examine the basic regulations issued directly concerning the rights and freedoms of refugees and their practices. In this context, notably FIPL, the implementing regulation of the law, "The Temporary Protection Directive as the most important regulations in Turkey were examined clause by clause. Furthermore, relevant articles that are significant in terms of gender groups have been evaluated on other regulations such

as Regulation on Units Responsible for Executing the Affairs of Refugee Guesthouses and their Duties, the Regulations on the Establishment, Management, Operation, having Operated and Audit of Reception and Accommodations Centers and Removal Centers". After the general consideration of the regulations, the problems encountered in the application are given under a separate title. In this part, after the general evaluation of the legal regulations, the problems encountered in the practice are given under a separate title. In this part, the problems experienced by women and LGBTI refugees in daily life and public institutions, especially the problems encountered in GIGM and its related public institutions, are examined. In this title, the method is mostly based on the studies and reports of international and national non-governmental organizations and other sources of research and examination. In this examination, it was found that single women and LGBTI refugees were subjected to discrimination and oppression in all aspects of life, both in their homes and from the moment they went out in public sphere. In addition, it is seen that this discrimination is systematic and continuous manner in all public institutions such as police stations, migration management institutions, courthouses, population directorates, national education directorates and hospitals.

530. The second part of this chapter includes interviews with 7 NON-Governmental Organizations that works for the women and/or LGBTI refugees. In order to make the evaluation of the laws on an accurate basis, it is necessary to be able to evaluate how the implementation of laws is done. The most important reason why NGOs are preferred to obtain data about the implementation is that these organizations have a direct connection with a wide range group of refugees thanks to their expert qualifications as well as the thousands of applicants that they accepted. Indeed, the 7 NGOs interviewed for this study are specialist organizations with various campaigns, projects, support, interviews, reporting, etc. on the problems faced by women and LGBTI refugees in Turkey. Through their applicants, they are also capable of making an assessment of the problems they encounter in all areas of life. The interviews were conducted face to face in The Turkish provinces of Ankara, Istanbul and Izmir in February 2020. Only one-to-one interviews with an organization within this date range could not be made, so it was interviewed via the Skype program in March 2020. The interviews were conducted according to the standardized open-ended interview method. By doing so, while the subjectivity and bias of the interviewer are limited, the differences arising from the subjectivity of the interviewers are reduced. Thus, it is easier to compare and analyze the data obtained. In

order not to digress from the research subject and to access the same type of data, the interviewers were asked a previously prepared memo and 15 questions. However, additional questions related to the subject were also asked according to the answers of the institutions. Thus, systematic and comparable information was obtained from different institutions. While preparing the questions, attention was paid to the contribution to the research problem, to be clear and understandable, and to encourage the interviewer to provide detailed information about the subject with open-ended expressions. Indeed, when the data obtained from the interviews were examined, it was seen that both the organization were selected correctly and the rich data were obtained in terms of the problem of the study were through questions that were suitable for the purpose.

531. In the last part of this chapter, the data were analyzed. Content analysis method, which is one of the data analysis processes developed by Strauss and Corbin, was used in the analysis of the data obtained from the interviews. The primary goal of content analysis is to elicit the concepts and relationships that can explain the obtained data. For this purpose, first of all, data related to the research problem is **encoded** and classified according to these codes. Then, the **themes** that can explain this data are determined through the common data between these codes. **Findings** are defined by organizing the obtained data according to these codes and themes. Finally, the findings obtained are **interpreted**[459]. In the analysis of the data obtained from the interviews with NGOs within the scope of the purpose of the study, it was acted in the same order as Strauss and Corbil explained. First of all, common codes were determined by reading all of the answers in turn several times. Then, common themes were created in line with these codes. The findings obtained are classified under the determined subject headings without any comments. Finally, these findings were evaluated. Accordingly, the heading obtained were grouped under two main title in line with the main problem of the study:

1- Problems arising from Turkish legislation's violation of international law

[459]For detailed information about Strauss and Corbin's analysis theory, see, CORBIN, Juliet, and STRAUSS, Anselm, «Grounded Theory Research: Procedures, Canons, and Evaluative Criteria», Qualitative Sociology, Volume 13, No: 1, 1990, pages 237-252, [consulted on 21.03.2020], https://med-fom-familymed-research.sites.olt.ubc.ca/files/2012/03/W10-Corbin-and-Strauss-grounded-theory.pdf

2- Problems arising from the improper/arbitrary implementation or non-implementation of legal legislation

532. According to the findings of both in the theoretical examination of Turkey's regulations concerning refugees and the findings of the interview data with the organizations, it is seen that these groups, which have different sexual orientations and gender identities, are ignored and not mentioned in any regulation in the Turkish asylum law system, as well as in the definition of rights related to women, the woman is considered not as an individual but with children, patient, elderly and victims of violence. One of the most important consequences of this is that women and LGBTI people are only included in the special needs group in cases such as disability, elderliness, serious disease or single with children, pregnancy and being a victim of violence. Whereas, equality and positive obligations for sensitive groups will not only be recognized in the law, additional measures, mechanisms and policies will need to be determined to implement it. Therefore, the lack of real equality and sensitivity even in legal regulations fueled the difficulties and rights violations that these groups will encounter. The changes that need to be made in Turkey's legal regulations concerning both general and refugees that will ensure the equality of all gender identities and sexual orientations and guarantee their rights and freedoms. In this regard, According to the 59th article of the Istanbul Convention, of which Turkey is a signatory, regardless of the duration of the relationship with the spouse or partner who is the victim of violence, the obligation to provide independent residence permits, the necessary legislative or other measures should be taken to ensure the suspension of the deportation proceedings initiated against the victims in this situation, the victims of forced marriage should be granted renewable residence permits, and the victims of forced marriage must fulfill their obligations to obtain the necessary legal and other measures in order to obtain the residence permit of the country in which they live. Similarly, it is obliged to take necessary legal or other measures to ensure that gender-based violence against women as specified in Article 60, can be recognized as persecution within the meaning of Article 1A(2) of the 1951 Convention on the Status of Refugees and as a form of serious harm requiring complementary/secondary protection; ensuring that all grounds defined in the Convention are interpreted in a gender-sensitive manner and that applicants are granted refugee status according to applicable legal means if there is a danger of persecution for any or more of these reasons; In addition to gender-sensitive admission procedures and support services

for asylum applicants, there is an obligation to take legal or other measures to establish gender-sensitive asylum procedures, including gender directives and refugee status determination and application for international protection. However, it is understood that the protection introduced with FIPL is not in accordance with these obligations both in terms of its scope and its procedure and functioning. In this context, Turkey must fulfill its responsibilities arising from international law and harmonize its legal regulations and practices with the standards specified in the Istanbul Convention.

533. Furthermore, it has been observed that the regulations concerning the equal and fair execution of their duties and obligations of the officials involved in the asylum process and their training and supervision are quite inadequate. In order to prevent discrimination and rights violations encounter by refugees, the laws and regulations regarding law enforcement officers, personnel, attorneys, judges, prosecutors, medical doctors, nurses, teachers and directors/principals who are responsible for conducting the work and procedures related to them, homo-phobic, trans-phobic, anti-foreigner sentiment should be explicitly prohibited and disciplined in the laws and regulations. In addition, regular seminars and trainings under topics such as communication with sensitive groups, trauma education, approach to foreigners, gender education should also be included in the laws. Naturally, it is not possible to eliminate discrimination in real terms without creating an egalitarian social consciousness in general. However, at least in terms of public officials, defining all forms of discrimination as crimes will significantly reduce the negative attitudes and behaviors encountered in the asylum applicant process.

In addition to the weaknesses and inadequacy of the regulations, the lack of generality and integrity in the practices concerning women and LGBTI refugees is another significant deficiency identified. Regulations such as directives and circulars that take precedence over the laws, and the changes in decisions from province to province or from official to officer in practice on the same subject are important problems that undermine legal security. One of the most important consequences of the norm's hierarchy principle is that the regulation at the bottom hierarchically conforms to those at the top. Therefore, unlawful practices cannot be imposed with regulations such as circulars and directives at the bottom of the hierarchy of norms. Moreover, the principle that the administration, which is one of the most fundamental principles of administrative law, is a whole with its establishment and duties, is also guaranteed by Article 123 of the Constitution. However,

it is clearly contradicting the Constitution to use different practices in the same situations in public institutions.

534. Both the examination of regulations and in the analysis of interviews with NGOs revealed that the regulations and support mechanisms to ensure equal and safe access to the rights of refugees were inadequate. One of the most important of these rights is the guarantee of the right to housing. The expectation that the state will be able to provide housing for millions of refugees is unrealistic. However, at least necessary regulations should be enacted to ensure appropriate housing opportunities for those with special needs such as refugees, single women, women with children, lonely children and LGBTI people who face serious security threats and are unable to provide housing conditions by their own means. The European Union standards, ECHR decisions and UNHCRS recommendations that we have exemplized above also require this.

535. One of the important rights violations encountered by refugees stems from the lack of a systematic translation service in the execution of administrative and judicial procedures. Data obtained from interviews with NGOs showed that this problem caused much more serious consequences for women and LGBTI refugees in various ways, such as not being able to complain about violence due to gender discrimination, not being able to disclose the request for protection, bowing to threats, and not being able to get custody of their children. Whereas, Article 12 of the Asylum Procedure Regulation states that applicants should be informed about the procedure to be followed in a language that they will understand or are expected to understand to a reasonable extent, and how long it will take; providing interpreter services where necessary; allowing them to contact the UNHCR or organizations providing legal assistance; ensuring that they have access to the evidence used in the decision about their applications; they should be informed of the decision within a reasonable period of time and the decision should be notified in a language that they are expected to understand or reasonably understand. [460] In its judgement in the Case of M.S.S.S Belgium and Greece, the ECHR also considered factors such as the availability of interpreters, access to legal assistance and a reliable

[460] For the full text of article see, «Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) », [consulted on 25.03.2021], https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013L0033

communication system between the authorities and asylum seekers in its assessment of whether the review of first-degree asylum decisions was effective.[461] This assessment of the ECHR shows us the importance of having an interpreter so that reliable communication with the authorities can be established and asylum applications can be evaluated effectively. Therefore, necessary legal arrangements should be made to provide a continuous and systematic interpreter service in all public institutions, especially public institutions that accept international protection applications, police stations, gendarmerie centers, prosecutors, bar associations and courthouses where case follow-ups are made. In order for everyone to benefit equally from the interpreting service to be provided in this way, it is necessary to make it clear that no discrimination can be made on any basis such as ethnic, religious, sexual orientation and gender identity in the legal regulations related to the work of interpreters and subject them to sanction. It is also understood that refugees have serious difficulties in fulfilling their legal obligations regarding their access to legal mechanisms. For example, the conditions such as writing a petition the authority and the official to the court in its time, preparing other necessary documents are really complicated for foreigners. Therefore, refugees should be granted privileges in terms of the procedural requirements related to applications to the judicial remedy. Moreover, the cases of refugees can also be looked at in a specialized court, among the important proposals raised in discussions with NGOs. But of course, this can provide a solution if it is to be created with an approach based on the protection of their rights and freedoms. Otherwise, it will turn to a tool that can further trigger discrimination against them, so it is important that the relevant regulations are addressed in an egalitarian and positively discriminatory approach.

536. In both the evaluation of reports and studies related to the implementation and in interviews with NGOs, we mentioned that women and LGBTI refugees could not complain for various reasons in the face of gender-based discrimination, harassment, abuse, etc., or that these requests were not followed up with due care. In order to prevent these crimes, different criteria of sexual orientation and gender identity must be clearly stated in regulations such as the right to equality, hate crimes and prohibitions of discrimination, and the rights of LGBTI people must also be guaranteed. Furthermore,

[461] For the full text of the Case of Norris v. Irish Decision, see, «Case of M.S.S. V. Belgium and Greece», Application No. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2021, [consulted on 25.03.2021], https://hudoc.echr.coe.int/fre#{"itemid":["002-628"]}

crimes committed for gender-based reasons such as homo-phobic and trans-phobic should be subject to deterrent sanctions. The approach of personnel such as in law enforcement, prosecutors, judges and court personnel charged with pursuing these crimes is very important in terms of truly corresponding to the law. Therefore, in the regulations related to the work of the officials involved in this process, the issue of having the necessary training and qualities on gender equality should also be included.

537. Furthermore, we mentioned that women and LGBTI refugees in particular are subjected to discrimination in access to many fundamental rights and freedoms such as working life, access to healthcare rights, benefits from social assistance and services, and freedom of travel. These problems arising from both due to weaknesses in legal regulations and implementation are also violate the requirements of international law and standards. In the first chapter of the study on this subject, especially the Geneva Convention of 1951, which is examined in detail (these rights are included in various articles). For example, see Art. 21 right to obtain housing, Art. 22: education, Art. 23: social assistance, Art. 24: right to work and social security, etc.), EU Temporary Protection Directive, ECHR and ECtHR resolutions, UNHCR directives, EU Reception Conditions Regulation, Asylum Procedure Regulation, International Convention on Economic, Social and Cultural Rights can be cited as examples.

538. One of the prominent issues for LGBTI refugees is that the application process and the expected time for settlement in the safe country are long. Hence, the application process and resettlement procedures need to be accelerated. On this issue, Turkey should be made changes that will provide the necessary conveniences and privileges, as well as the settlement countries should also make the relevant arrangements. It is also one of the recommendations presented in the interview data that countries considered safe countries should increase the number of refugees they accept. In addition, it is understood from the considerations made that no rights are granted to LGBTI partners in the relevant legal regulations in Turkey. They have serious problems both in bringing their partners from their country of origin to Turkey and going to their destination with their partners. In order to solve these problems, changes need to be made in the regulations for family reunification that cause LGBTI people to be separated from their partners.

539. Both the theoretical part of the study on the evaluation of Turkey's basic regulations regarding refugees and the analysis of interviews with NGOs concluded that Turkish

refugee law is far from equally protecting all sexual orientation and gender identities, and that Turkey does not take into account the legal regulations and standards in international law, especially the Istanbul Convention, of which it is a signatory in its municipal law. It has been observed that the most commonly used international law mechanism for rights violations against women and LGBTI refugees by Turkey is the ECtHR application. Indeed, ECHR resolutions are known to play an important role both in the making and changing of laws and in subsequent decisions of local courts. In line with the weaknesses and problems in legal regulations, it is seen that there are important problems such as discrimination and rights violations are widespread and systematic in administrative and legal practices, violations of principles such as openness, certainty and integrity in practice, taking a sexist, discriminatory, homophobic, transphobic approach by officers, inability to access interpreters, lawyers, strict and bureaucratic legal system, and the interruption of using rights such as applications, objections, complaints, lawsuits. In order to prevent all these rights violations, it is an urgent need to make necessary legals changes stated in the parts of the evaluation of the laws, the analysis of the negotiations and in the conclusion. Thus, it is possible to achieve a more egalitarian and gender-sensitive asylum system so women and LGBTI refugees in Turkey, can live with other individuals in free and equal manner possible to ensure their safety life.

APPENDICES

1-Information Note and Interviews Questions

This interview is being done for the doctoral student of François Rabelais (Tours) University Department of Public Law, Hümeyra Yılmaz's thesis named “Gender Criticism of Turkey’s basic Refugee Regulations and Their Compliance with International Law”

Millions of people who migrate because of various reasons like geographical, social, political, economic, sexual identities and orientation, cultural and religious ones see Turkey as their destination or as a transit point. This dissertation has assessed the basic legal regulations and the practice in Turkey by the perspective of gender and analyzed their convenience with principles and entailments of international law for gender mainstreaming.

In this study the approach which see the people who leaves their countries and request for asylum may have reasons like sexual orientation and sexual identy differences as well as particular reasons like social, political, religious or ethnical ones is based on. Therefore, the deficiencies and inadequacies of legal regulations which induce immigrants' abuses of right are determined and opinions and suggestions are offered for improvement. The dissertation aims to contribute both the immigrants who migrate because of their sexual orientations and sexual identities to benefit from international protection and also all of the immigrants to go through the process without discrimination and to keep living equally and free after having their protection.

It is assumed that contributions of the dynamics of a society are very important and valuable for improving that country's legal regulation and practice. Especially democratically and non-governmental organizations' experiences, opinions and suggestions on this field have to be accepted as important references for feeding academical works and alternating advice.

Because of this reason, (within the content of the dissertation) your organization's opinion is being asked with the questions below.

Thanks, in advance for your valuable contribution.

Note: In the questions the concept of "immigrant" is used for all of the people who migrate to Turkey independently of their legal status (temporary protection, refugee, subsidiary protection). Although these statuses are defined by different rights and freedom legally, immigrant status is occurred in particular conditions separately from states' definitions. So, the concept of "immigrant" is preferred deliberatively.

Questions:

1) How long have you been working on immigrants?
2) On which themes about immigrants are you working mostly?
3) Are you in connection with UNHCR or Directorate General of Migration Management (DGMM/GIGM) or any other governmental organizations?
4) Do you have any work completed or continuing especially on woman and/or LGBTI immigrants?
5) During these works, what kind of discriminations or abuses of right caused by gender or being LGBTI have you noticed?
6) After FIPL became svalid in 2014, have you observed any difference about the woman and LGBTI immigrants' problems?
7) In basic regulations like FIPL, FIPL's Governing Regulations and Temporary Protection Regulation, there are some groups defined with "special needs" and their rights. Do you have experiences/clients' demands and complaints which examines the inclusiveness of this definition about gender?
8) Have you resorted domestic remedies against the problems of woman and LGBTI immigrants' problems?
9) Are the legal applications against the abuses of rights efficent about solving the problems?
10) Have you ever used the mechanisms like individual application, investigation procedure**,** preparing shadow report as per CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), İstanbul Convenience (Convention on preventing and combating violence against women and domestic violence) or HUDOC? What kind of results have you reached?
11) What are your experiences and observations about whether international convenions or court results change the practice for the gender problems of woman and LGBTI immigrants or not?
12) Within your works on immigrants and your experiences about the migration process in Turkey, what are your observations about the impact of advisory jurisdiction of UNHCR and Council of the EU?
13) Do you have woman or LGBTI immigrant clients who have been sexually abused, harrased, raped or victimized by gender-based violence? Did you resort to legal means? Which result(s) did you reach?
14) What are your requests and suggestion for a gender responsive, more egalitarian and equitable refugee law according to your experiences?

15) Is there anything you would like to tell additionally?

Thank you

Hümeyra Yılmaz

PhD Student at François Rabelais (Tours)

University Department of Public Law

2- The Answers of Institutions

A- Kaos-GL

On behalf of the Association, the interview was provided by the Association Lawyer and Refugee Rights Program Coordinator Hayriye Kara, in Ankara. The answers given by the interviewer to the questions are as follows;

1- Kaos-GL has been working with LGBTI + refugees since 2007. It is also the first LGBTI organization working in this field. I have been working professionally at Kaos GL since 2010. I received necessary reading, seminar and orientation training on refugee studies and the legal affairs of the association.

2- Our works are firstly in the form of counseling activities in terms of psycho-social support and legal support. In terms of psycho-social counseling, we have two social service specialists within our program. Counseling is provided by them. I provide professional legal advice. When we go to the provinces where LGBTI + refugees are generally located, we can provide these counseling during one-to-one meetings. Afterwards, we provide consultancy via e-mail, interpreter and by telephone regularly. This is one line of our work for refugees. We are also the implementation partner of UNHCR since 2017. In this context, if it is an issue that is not our direct field, we also make referrals. If a legal process needs to be followed, we direct it to the bar associations to benefit from legal aid. During that process, I try to act with the lawyer appointed from legal aid. We try to provide all kinds of support from petition sharing, report sharing and decision translation. As Kaos-GL, we act with the perspective of acting together with the subject, not only in the field of refugee rights, but in the work, we do in general. For this reason, we gather together with refugees while determining our policies in the field of refugee rights. We come together with refugees in different cities and discuss various issues. We have discussions about what their solution suggestions are, or how we can support the process of existence in current places, socialization or survival of them, and how we can fight together. This determines our policy on refugee rights. Kaos-GL is a non-governmental organization in Ankara locality. To touch the present day of its mass, it alone is not enough. Therefore, being locally organized is needed. Peer counseling is one of the biggest tools for survival. So, when we gather locally, we also consider what we can do to strengthen the refugee committee there. We do social activities and organizations. We organize events according to requests from the refugee committee.

Anywhere in Turkey, we can receive counseling by phone and email. But mostly we are in three cities; Denizli, Eskisehir and Yalova. In the past years, we had fields in Istanbul, Adana and Mersin. But we have been working in these three cities without interruption for 4 years.

3- This is not just a special case for Kaos-GL in Turkey; in general, the relationship established by civil society organizations with the public is problematic. The public does not have a uniform policy on cooperation and communication with civil society. It also has no policy to develop this relationship. Some projects are being done, there are times when we are invited to the consultation meetings. But this is mostly in the form of communication with the public, strengthening the capacity of civil society organizations to improve cooperation. In other words, these studies are for non-governmental organizations. At the same time, public capacity needs to be improved. Looking at the practice in Turkey, we see that communication between public and cooperation between civil society is carried out through the personal connections of people in NGOs with those in public institutions. The problem stems from this. There should be a uniform policy, a social policy, an ongoing process, but this does not exist. Unfortunately, this is also reflected in us. Another problem is that we face problems such as refraining and difficulty in communication due to being an LGBTI association, and this problem happens officially. When we look at the policies of the current government, there is an ignore of LGBTI+s. We see that there is no statement about discrimination based on sexual orientation and gender identity in any law, that no social policy is included in this, which is, a neglection. From time to time, this happens in the form of targeting. We also encounter targeting from the language of political figures. Even though they are ignoring it visually, this existence continues in practice. I think this entity itself is a resistance. Top policy can be ignored, but practically not. In this case, we can cooperate with public personnel who have to solve the practical problem. Of course, we also encounter public who reflect their personal prejudices, personal approaches such as homophobia, transphobia and xenophobia to their work in public institutions. On the other hand, we try to communicate with the public as, "There is a problem like this, how can we solve this problem together". For this reason, we can communicate with public personnel who want to solve the problem and want to reach a result.

Question: You mentioned that there are positive or negative practices that you encounter. If it is possible to make a generalization based on your practical experiences, how do you evaluate the attitudes of public institutions towards NGOs?

Kaos-GL: The attitude in public institutions is about saving the day rather than a long-term and planned process. Our collaborations are also about saving the day. But this is not only in terms of gender discrimination or sexual orientation and discrimination against gender identity. Turkey's current immigration policy seems to be based on saving the day.

4- We already work specifically with LGBTI + refugees. Kaos-GL works in the field of discrimination and hatred for sexual orientation, gender identity, gender characteristics. The Refugee Rights Program was under the human rights program until 2017. Now it continues as a separate program. We are trying to raise the refugee rights not only in the refugee rights program, but also in other programs and study fields of Kaos-GL, where LGBTI rights are problematized.

Question: Can you exemplify these studies?

Kaos-GL: For example, Kaos-GL Magazine has been published since 1994. We prepared a special issue with the refugees, just published now. LGBTI + refugees prepared articles and interviews for this issue. They wrote about the topics they wanted. For example, some wrote about the difficulties they had regarding the right to education here, how they got stronger with the organization here, or what they wanted to do. This issue was prepared in English pdf and was also published in Arabic and Persian languages. In other words, this magazine was prepared in four languages, Turkish, English, Arabic and Persian. Kaos-GL also issues the problems of LGBTI + refugees in their work with the bar associations within the scope of law studies.

5- When it comes to combating gender-based discrimination, generally there is a perception that considers this as a separate topic. This anti-discrimination policy has to spread everywhere. This is not credible both institutions, within NGOs, and within democratic mass organizations. This is not a problem that a separate department, a separate department or separate people organized for it will discuss among themselves. When we look at the gender-based problems that refugees experience, we can say that they face discrimination based on gender and their identities in every field they access rights and services. On the other hand, they face psychological violence, harassment,

assault on bodily integrity and assaults on the right to life. For example, when they go to the hospital, they encounter a language barrier problem. All refugees have this problem. We talk about specific problems that LGBTI + refugees experience. However, the severity of the treatment of trans women, HIV positive, sex worker refugees, and barriers to access to the right to health is not the same with the treatment or discrimination of heterosexual refugees, male refugees when not being able to access their rights to health because of the language barrier in the hospital. Therefore, when every refugee is said to be experiencing this problem, the problems faced by all refugees are multiplied as these discrimination grounds are intertwined. In other words, when it comes to discrimination faced by all refugees as well as specific problems in all areas, LGBTI refugees seem to experience this much more severely.

6- When the law had already come into force, there was a disregard. Different sexual orientation and gender identity holders were not identified among those with special needs. The draft on the prohibition of discrimination was removed from the law. There is no article in the law on protection based on sexual orientation and gender identity, or there is no article that prohibits discrimination in this way. With the law, the area was civilianized and came out from the safety area. But while communicating with staff at DGMM or provincial directorates, we observe that the perception of security continues. The officers there must do their job. With the law, the most important change for refugees was the payment of SSI premiums. Now this right is being taken back from those under international protection and there will be serious problems again. Before the law, I remember examples where we found weekly medicines, UNHCR wrote letters to hospitals, and refugees died outside hospital doors. Apart from that, if sexual orientation and gender identity are taken aside, there is not even legislation that protects gender equality. The practices do not have a policy for this either. Putting the LGBTIs aside, I haven’t even observed a change on equality between women and men, because the public is not problematizing it right now. To access rights, subjects must also be made conscious. We also do not encounter any serious studies towards this, which take care of gender equality. Just having this in the law doesn't change anything. To establish a mechanism, it is necessary to ensure that this mechanism operates by considering gender equality and disadvantaged groups, and at the same time to ensure that this mechanism is accessible. Has anything changed with the law? Now there is a law article that we can show as a basis. However, everything works again with instructions. These are the instructions that

we do not see what it is, we do not know whether they are reported in writing or by phone. In practices in Turkey, the instructions can prevent the law.

Question: Is it possible to give an example that you have encountered regarding instruction practices?

Kaos-GL: For example, one of the problems that lawyer friends frequently encounter is experiencing client interviews. Let me convey an example of where we live. There is a deportation incident. The client was kept at the police station. The lawyer went to the police station to meet. After showing his document that he was appointed from the bar, he encountered the same thing. They had said that he doesn't have the power of attorney and did not let him meet with the client at the police station. It is said to us as, the attorney who does not have a proxy will not meet his client. The lawyer was not allowed to meet. Lawyer Law, FIPL includes the right of the lawyer to defend his client without seeking power of attorney. Another problem resulted from the regulation introduced by the Delegated Legislation issued in 2016. According to Article 54 "b. d, k" clauses[462], if the deportation order was issued, the appeal to the administrative court could not stop the process. Therefore, there have been numerous applications for measures to the Constitutional Court. The Constitutional Court, after making the pilot decision on this issue, with the changes made, removed this application. At that time, a lawyer friend who applied to The Constitutional Court and took precaution had informed me about the situation. That lawyer friend of mine had caught up on the client while the client was at the airport yet, however, they've sent the client claiming that it was not the original decision. There may be several examples such as this one. But there is an area that can do this. And after that there is a culture of impunity. Failure to obtain an investigation permit when complaining, on the other hand, the failure of any disciplinary investigation, an administrative process, feeds each other. These are the cases that we, as lawyers, witness and intervene. Aside from the functioning of mechanisms, access to these mechanisms is already impossible when we think about refugees, especially when we consider women and LGBTI refugees who are disadvantaged by social prejudices and social codes. The

[462] The 54th article mentioned here is the regulation of FIPL, see, «They will be taken to expel», Turkey, FIPL, the Grand National Assembly of Turkey, Ankara, No. 6458, Official Newspaper, 11.04.2013, N. 28615, p. 12034, [consulted on: 19.03.2020], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf

simplest is that they need to speak Turkish even to complain to "Cimer"[463] (Presidential Communication Center). Before this, it was a similar problem for non-Turkish speakers. Same thing goes for refugees. Other than that, if they have been subjected to ill-treatment, if they have had a problem, there is a fear that when they complain about an officer, worse things can happen to them, they may have more trouble. Even if it doesn't happen to one of the refugees, there are supporting examples of that happening to their friends. When such a problem occurs, the complaint is made according to general procedures. There is no grievance mechanism for refugees, no special system. They can only get support for helplines or translation. Keeping track of this becomes a business on its own. Not only that, these mechanisms are inaccessible.

7- LGBTI+s are not in special needs groups. In the legislation, supportive services, procedural facilities or supporting mechanisms for special needs are also envisaged and regulated. For LGBTI + s, additionally, there should be inclusive mechanisms for their disadvantages. But in our experience, it does not cover all LGBTI+s. For LGBTI refugees to benefit from special protection, they must must not have situations such as unaccompanied minority under the age of 18, being disabled, trans, or being a victim of serious physical, psychological and sexual violence. In addition to being LGBTI, there must be an additional reason. So, this arrangement is not inclusive for LGBTI + refugees. Let's say that within the definition of special needs, the service mechanisms, supports, and procedural facilities provided are not inclusive of LGBTI + s. On the other side, there is such a problem.

8- Yes, it happened.

Question: What kind of applications have you made?

Kaos- GL: We have had to apply for the violence they were exposed to in Turkey. When the subject is LGBTI+ refugees, these conditions appear to be folding of the problems that Turkish LGBTI+s' encounter. We have filed an appeal against the rejection of the international protection application and its deportation decisions. The applications I followed were those made before the UNHCR registration process was stopped. From

[463] Cimer: whose long spelling is the Presidential Communication Center, started its operations with the Official Gazette published on 20 November 2006. It was established to direct requests, notices and complaints directly to the presidency. For detailed information, see, «CIMER», [consulted on: 06.03.2020], https://www.cimer.gov.tr/

now on, it may be different. UNHCR has stopped registrations of international protection applications since September 2018. Previously, as well as DGMM (Directorate General of Migration Management), the UNHCR Office in Turkey was also taking applications and making its refugee status assessment interviews. That process is currently absent. Now, only DGMM makes this assessment.

Question: Were there any contradictions between UNHCR and DGMM's decisions in the process of applications being bilateral?

Kaos-GL: During the periods when the two carried out together, the decisions were generally compatible but contradictory decisions were also made. In this process, the residence time of a client in Turkey was extended two and a half years. Because it was accepted by UNHCR. But here, his application was rejected. He also won the case. But his file was kept in the State Council for a long time. DGMM had not waived the appeal. He appealed to the request to stop the execution. However, the third country had accepted it and it was going to come out. However, although the Council of State refused to stop the Execution, it did not take action there. We have encountered such examples several times. But in general, there was not much conflict between the two institutions in those processes. Now DGMM started to conduct interviews. We will see how decisions are made, how interviews are made, in the upcoming processes. Apart from that, due to reasons such as conservatism, pressure, not being able to find a job in the province where there is a lot of registration, LGBTI refugees' applications are deemed to have been withdrawn due to reasons such as leaving the province where they are registered without permission, not fulfilling their signature obligation, and being caught outside the province where they are registered and it happens a lot. But we encounter a problem like this. In case of change of address in the city where the person is registered, he / she needs to update this change. By simply putting it on the website, it does not become accessible. However, this is a very new application. Previously, when the refugees were out of the province where they were registered, they paid fines and then continued their lives. Then in 2014, the implementation changed with the law. But knowing their rights and obligations has also become a problem. The provisions of the notification law are being applied. However, they do not know about the notification. For this reason, they can miss their application deadlines. Events like this are happening too much. We try to provide important information on such issues, both in our publications and when we come

together with refugees. For example, when you are asked to sign a document, it should be described in the language you will understand. If this is not done, you can abstain from signing. Or you can annotate in your language. Information is spreading very fast within their networks. But it is not possible to reach everyone. The government is the one who needs to do these in cooperation with NGOs.

9- From the legal point of view, only a conclusion can be reached when there is serious physical violence or attacks on the right to life. However, in cases such as threats, verbal abuse, simple injury, and property damage, not much result is taken from the applications. In the applications we receive, when they complain to the police individually, they are inculcated and persuaded that their files would be extended, that they would be in trouble. There are positive results and negative results. The positive results are generally seen in the decisions of the high courts. There is no uniformity in the decisions of the local courts. For example, the decisions of the administrative court regarding the border are final, do not go to the higher court. In this case, there is no stare decisis. There are positive decisions and negative decisions. This is the subject of the academy. But my friends who followed a lot of cases also suggested that there should be a court of expertise in this regard.

10- There was no file that we carried to the ECHR. The ECHR had very important decisions, especially regarding the expulsion, before the constitutional court received an individual application procedure. I have attorney friends who have taken very important decisions about Turkey during this period. We applied to the ECHR together with the Constitutional Court in only one deportation case. But then, we informed the ECHR that we had taken a measure decision from the Constitutional Court. For the same reason, we did not apply to the mechanisms regarding the CEDAW and the Istanbul Convention.

Question: How did your applications to the Constitutional Court end?

Kaos-GL: We got very fast results in individual applications to the Constitutional Court, especially in the applications for measures. The Constitutional Court has no decision about sexual and gender identity issues. Apart from cautionary decisions, I did not see an example where the Constitutional Court took initiative and made a positive decision. As for the measure, the decision was made within a few hours. It is now slowing down.

11- We do not see their reflection in practice. Sometimes we witness that they have been refused for talking about gender. For example, while the law numbered 6284 on preventing violence against women was enacted, our friends who participated in the discussions said that the word “gender” was extracted one by one from the law. Expressions such as "the end of this goes to homosexuals" were used. When we look at the asylum system right now, we see that it is refrained from using the concept as it is. Instead of saying LGBTI + s, we see that there are sayings such as “there are such refugees”. It does not end with saying that they do not exclude women or LGBTIs. A separate study needs to be done for these. When we look at the Istanbul Convention, we see that the government has positive obligations, but we do not see them fulfill.

12- There is no step taken directed for recommendations. When we look at the EU process, we see that it has lost its sincerity. Negotiations are made on human life. Something must be done about the practice of living together. It has become unmanageable anymore.

13- We encountered. These are also valid problems for Turks. When it comes to refugees, circumstances are more aggravated. The trial process itself is a violation of rights. When I apply as a lawyer, the first thing I do is to contact a psychologist or psychiatrist working in this field. I talk to them about what process I should follow and what I should do. This is the first process we follow. How to start the legal process? Do they want to complain? When is it necessary to start this process? Questions like these are not the issues I can talk about as a lawyer in the first place. Especially in applications that come to us about crimes against bodily integrity against sexual immunity it is said that the attitude of the police in general is bad, accusatory and that their discourse was as “You are refugees, what were you doing there already?”. More often, we are contacted in the situations when there is rape. But sexual assault crimes are not only rape, but we also encounter many internalized situations in the sexual assaults they are exposed to. Although they do not tell us what they are exposed to, we sometimes understand it in other conversations. There were high punishments in severe situations such as torture, closing the house for a few days, which resulted positively. But other than that, we also encountered files where the investigation was not taken seriously. For example, the perpetrator couldn’t be found.

Question: Who were these attacks usually carried out by?

Kaos-GL: It is very diverse. Often, we also came across attacks from citizens and a substantial non-LGBTI + refugee committee.

14- It is necessary to start with the first step: stop ignoring, accept. Gender-based violence, discrimination exist and that they have spread to all the institutions and structures in Turkey, systematic problem. Sexual assaults, physical assaults, assaults on the right to life are not isolated. First of all, it is necessary to accept that this problem exists. In Turkey some NGOs are experts in their fields, produce very good policies and work very well, there are also LGBTI organizations, and feminist organizations. Social policies need to be produced with them. Because different fields require different specialties. So, separate steps need to be taken for law, for access to rights and social services, for the prevention of domestic violence and to access mechanisms. First, it is necessary to stop refusing. This thing exists, systematic and perpetrators are doing this knowing that nothing will happen to them. So, it is necessary to overhaul the entire system and mechanisms. Changing law articles is the first step, an important step. Because it is also something that determines legitimacy, so the language of law is important. Both practical and long-term steps need to be taken and must be sustained.

15- Thank you, there is no other topic to address.

B- Women's solidarity foundation

Meetings on behalf of the Foundation were held with the Project Coordinator and the Board member of the Foundation, Esma Nur Kasram and Foundation Volunteer, Lawyer Günçe Çetin. The responses of the interviewees to the questions are as follows:

1- The foundation has been meeting refugee women for a long time. The Foundation ran a women's shelter for women victims of trafficking between 2005 and 2016. Then the shelter was closed due to the budget problem. Later, our communication with refugee women continued with the “Project to prevent gender-based discrimination against refugee women and to combat violence”. In the project, trainings were conducted more on developing NGOs' gender perspectives. In particular, NGOs working with refugee women were selected and it was aimed to strengthen the capacity of NGOs with workshops on such subjects by asking questions as follows: "What are the legal rights such as Istanbul Convention, CEDAW, Law No. 6284, refugee rights, violence?"

Currently, the “Empowerment of Syrian women” project we work with Günçe has been continuing for about 14 months. As part of this project, surveys were conducted on Syrian women living in Ankara. Focus group discussions and in-depth interviews were conducted with 50 women. There are 100,000 refugees in Ankara and at least half of them are women. 50 women are a small number, but with the method of in-depth interview, we were able to see the violence that women suffered in a better way. However, the rates that women state that they are subjected to violence are very low. In the survey results, we found that women do not prefer to say that they are experiencing violence. This might be because they live in a foreign country in Turkey, they do not know mechanisms and they do not know what the violence is. However, in depth interviews, with the questions we asked about their experiences from Syria to Turkey, we learned that they were subjected to all kinds of violence. Then, with 27 of the women we surveyed, we did a strengthening study for a day. We divided the group into two. While doing this, we considered the age hierarchy. We completed the day with questions and conversations measuring experiences and knowledge about violence and group merging. Apart from that, as the Foundation, we hold neighborhood meetings. We have been doing this work since 1993, as for Turkish women. We talk about topics like "What is gender? What are gender roles? What is violence?" and then we explain the mechanisms of violence and where they can apply. We organize neighborhood meetings for Syrian women similarly. Our women's counseling center has been providing social and legal support to Syrian women for 7 months. Günçe supports us as our lawyer in that project.

2- We provide advice and support to refugee women through violence they are exposed to. Our work is mostly in the form of support under the Law No. 6284. Our first criterion is that the woman has been subjected to violence. Because this is the main working area of the Foundation as well. Our last project is for Syrian women. But, women from other nationalities also applied. However, no applications were received from LGBTI + groups except women. Applications come mostly from women. We work with women over 18 years old. We support if there is an issue that is close to adulthood, such as early marriage, that we can support about 6284.

3- DGMM officially recognizes our institution. The EU is constantly carrying out projects to ensure cooperation between DGMM and NGOs. However, these projects do not result positively. If you have a witness in DGMM, things can go on. If there is no one you know, it is very difficult to get things done and get a positive answer. As with previous women's

refuge work, they present us with a lot of difficulties right now. Normally, they'd direct someone from the protection desks to us. It was that they would guide "women at risk" according to their classification to us, but there was no such guidance so far.

Question: Was this guidance an actual situation?

Women's Solidarity Foundation: They told us that they would make a guidance like this. They wanted them to guide us, instead of receiving an external application. However, in practice it does not happen that way. Because DGMM's workload is very high and the number of employees is not enough. Every NGO must report their work on refugees to DGMM. With the recent amendment, they gave the authority to the Ministry of Labor, Social Services and Family. Permission must be obtained from the Ministry for every work done on refugees. This creates a situation that makes NGOs' work increasingly difficult.

Question: Is this application exactly a permission or notification obligation?

Women's Solidarity Foundation: Actually, this situation is not clear. Normally, there is no regulation in the legislation for permission. However, the Ministry of Internal Affairs had a secret decision. With this decision, every NGO has become obliged to report its work.

Question: Did this practice lead to a consequence, such as blocking or stopping your project or work?

Women's Solidarity Foundation: So far, it has not caused a negative result. They send us an official letter, involving a statement as "yes you can". They want us to get permission for the activity in each project. We also hear examples where some projects are not allowed. NGOs can survive through projects. It says that if these fails, it can control you economically and politically; but economically it will make you "credibility deteriorated". If you want to control a power, first economic blows are hit. It is a parallel situation for NGOs.

4- We do not have studies for LGBTI refugees. As a foundation, we are a women's organization. This does not mean to exclude LGBTIs. For example, a lesbian, trans, bisexual woman can come to us when she is subjected to violence. But other than that, there is another strong civil society force for LGBTI people. As an example of our work

on women refugees, we can show the "refugee struggle against women trafficking" study between 2005-2016. This study was only for women victims of human trafficking. In 2010, awareness raising seminar was held on human trafficking. In 2012, in a study entitled "bespoke bride", study on information and experience sharing was carried out on human trafficking, trade in human beings, refugee, forced marriage. We took part in the project "Improving the Dialogue Between Civil Society Organizations and Local Institutions in the Fight Against Gender-Based Discrimination and Violence Against Refugee Women". There is still an ongoing project "To understand needs, strengthen solidarity: strengthen the capacity of the women's counseling center to support Syrian Women". The project aims to empower Syrian women. Women did not know about the Women's Solidarity Foundation. With this project, they have just learned about us. They established a trust relationship with us. The fact that we all are women and there are no male employees in the Foundation creates an environment where they can express themselves comfortably. We work with a feminist perspective. In other words, women's sensitivities, problems, demands, statements are important and valuable to us. We always consider this. This gives them confidence in us. Women shared what they had never shared before. They asked us for legal support. Women living in Örnek Mahallesi are now coming to Kızılay, to our Foundation. This project is carried out with women from various neighborhoods (Önder neighborhood, Yeşilöz District, Çaldıran District, Yenimahalle, Çubuk, Batıkent) that we can communicate in Ankara. Since we have been able to communicate directly with women for 7 months, we are currently meeting 17 women. Since being able to take care of women is one day a week, it was a sufficient number for us. These women include women who have problems such as incest, human trafficking, sexual assault, physical violence, psychological violence.

5- The fact that we were with them in the legal support processes strengthened them. Because they do not speak the language, although they know these mechanisms, they have difficulty in communicating. Since the translator is not always available, the mechanisms are very lacking.

Question: Do women who have experienced violence indicate who the violence against them came from?

Women's Solidarity Foundation: Trafficked people unwittingly contacted the gangs to flee Syria. All others are women who have been subjected to violence from their

husbands. Recently, a person applied because she saw threats and intimidation from her neighbor. Often, they see violence from their spouses. They are also exposed to violence from the police. For example, the police may not allow them to complain. For example, there are networks between Syria and Turkey working to organize a marriage between them. A woman who applied to us on a similar subject stated that when she applied to the police station in Nevşehir about a marriage network, she was said to be "we'll send you back" by the police. The threat of repatriation is a process that ties women in particular. Although they did not complain, they stated that they were subjected to harassment in the neighborhoods. They cannot go out very comfortably in the places they live. This harassment is made by both Syrian men and Turkish men. In our meeting with Syrian women, we see that most of them come with religious weddings as being the second or third wife. Women of all, without exception, say that they are discriminated against by people from Turkey. Therefore, they are also resistant to us.

6- Despite its many shortcomings and lateness, DGMM was still well established. More positive in practice. The first place to apply is no longer the police. There is a registration desk, social worker. I do not think that the sensitivities are being watched very much, but it is still a good development to start such an application and the social worker to meet with the refugees. However, there is a lot of concept confusion. After the Foreigners and International Protection Law, this concept confusion increased. Under which of the concepts such as asylum seeker, immigrant and temporary protected are refugees included? These are always mixed in the media. DGMM tries to keep all refugees under control. It is good that there are legal arrangements such as refugees' free access to rights on issues such as health and education. However, there are deficiencies and shortcomings in practice. A certain system has been created for crossing the border. They are registered for 6 months and then issued temporary protection IDs. This is an application for refugees from the war zone but may be more favorable to Turkey's security.

7- Specifying a concept such as special needs are good developments. There are many situations such as disabled, pregnant, sexually assaulted people. In this sense, it is a mechanism that women can apply when they are in a difficult situation. But to benefit from health, education or other basic needs, it must be registered. This must be flexible. For example, a woman can give birth in the city she is registered. This can have very difficult consequences for a pregnant woman. Or if she is not registered and does not have financial conditions, the woman cannot benefit from the right to health free of charge.

This is a terrible thing. Those with language may say I have money, but those who do not speak language face direct discrimination. The right to access health is very basic. Whether or not to enter the country or be registered legally should not be a criterion for this. This violates the very essence of the right. In terms of public health, we exclude the necessary situations, of course. However, ensuring the right to health is a duty of states. The government must provide this. For example, a woman, whom we did not know and could not prove and did not have to prove how she came, applied to us. This woman is a pregnant woman, from one of the disadvantaged groups. States should be more self-sacrificing and enabling against these groups. However, this is not the case in practice.

Question: How is the application in emergencies? Is the procedure implemented strictly?

Women's Solidarity Foundation: The rules are the same in emergencies. The fee is subtracted. In the past, there were also applications such as holding the baby. Now, that is not being done. However, very recently, benefiting from health services in international protection has been reduced to one year. Protection continues, but health protection is provided for one year. This is also dangerous for general public health. Lack of a group of people's rights to health poses a threat both to their health and to others. My right to live in a healthy environment is also taken away.

8- We made applications under the law numbered 6284. We made complaints to the prosecution. As a foundation, we are not able to get proxy directly. We accompanied them when they left. Or we directed them to the Bar Association, to the refugee center and enabled them to reach the lawyer. We were always with them in legal processes. Since we had an interpreter, we followed the processes exactly. We have applications such as divorce, custody cases, complaints from the prosecution, dismissal application arising from the law numbered 6284, and protective and preventive measures.

Since Syrian women generally do not have the financial conditions to request a lawyer, they ask for a lawyer from legal aid. However, if they go alone and they don't know the language, it's very difficult for them to act there on their own. Another reason is that when employees at the legal aid office go alone, they also encounter a negative attitude. The Poppy Center in the Ankara Bar Association was a subsidiary of the Legal Aid Center, which deals with women who have been subjected to violence. They also supported Syrian women for a while. However, they did not have translators, and some of the

lawyers in the center did not want to work with Syrians. Others did not want to do this work, as they did not know how to communicate since there were no interpreters. There is a very high demand for this center. "We have enough Turkish women" grounds, left to look after refugee women. Therefore, they changed the center there to the Refugee Rights Center. They direct Turkish women's applications to the Poppy Center and the refugee applications to the refugee rights center. This is everywhere, because they do not speak the language, it is difficult to exercise the right to education, health and law. We have an Arabic translator who works with us once a week. The Bar Association has an interpreting support line. However, it works with the appointment system.

9- For women who have been subjected to violence, we have issued removal orders, usually under Law No. 6284. This process is progressing rapidly. But spouses that do not comply with this decision are causing more trouble. Custody cases also often tend to give the child to the woman. Removal decision, getting a batter report makes it easier for refugee women to get economic assistance from the social assistance foundation and NGOs. Because, in such cases, they belong to the group with special needs. In this sense, Law No. 6284 facilitates their lives. Exposure to violence makes them a priority group in terms of national and international law. Suspension decisions are taken, but violence does not stop. It is also necessary to question whether the violent spouse has moved away. Refugees' housing conditions are even more troublesome. There are 4 neighborhoods where they are gathered and live together. How far can they be suspended? How much longer can they stay apart? They live in tiny places as multiple people. If they were able to complain about the state of violence, now I think the weight is the last point. Counseling for violence against classic women citizens and women refugees in Turkey can be very different. 6284 is a very dynamic law. Rather than deciding to take the law out of the classical forms and remove it from refugee women, it is necessary to be able to produce another word. Being able to move away physically is a very difficult situation for refugees. The individual who brings the money to the house is male, the lease contract and the bills are on the male. Therefore, not every district governor provides food aid. Some women cannot enroll their child in school. For such reasons, they have very different needs. It is necessary to think about it. When we compare with women who are Turkish and suffer violence, we can say that the situation is much worse. Sometimes the suspension order can stop the man. However, it is not realistic to make a suspension order for Syrians. He does not come, because he complies with the decision, does not come

anyway. Or, the woman fled from a different city. For example, the man is in Gaziantep and cannot technically leave that city. But he calls, sends news, makes somebody else call.

If the state gives a perception about this, it may decrease but there's also fueled violence in Turkey. There is no state standing by the women. The suspension order does not work alone. But if the state would come before a man or if there'd be a threat such as deportation, maybe it could be prevented. Violent men disrupt public order. They threaten public security. The state should be able to make us very clearly feel the idea that 'we are not a state that supports violence against women'. For example, in cases such as marriages with girls, violence against women, marriages with more than one woman, the state must stand against. Because international protection is not the protection of negative traditions and cultures. For example, sanctions can be imposed on men engaged in such behavior, such as being sent back. Even this threat will be a deterrent to them. What I generally observe concerning legal applications is that they have an approach as 'let them know that the state has their rights but they cannot use it'. Refugees have rights in the legislation, there are projects for them. Normally, an interpreter should be sent as soon as it appears to speak a foreign language. However, applying to the prosecutor's office is very difficult for refugee women. They are expected to write two petitions, photocopy of identity papers and similar documents. If the prosecutor thinks it is a crime, they call the interpreter and take the statement. The translator working with refugees should have the right sensitivity, be neutral, the body language should not be a trigger, and should perform translation without a gesture. For example, a female translator who came to a situation related to a woman refugee in Çubuk scolded the refugee. Since we do not have a good command of the language, we think the translator is doing his/her job. The woman's husband and her brother's name were the same, and the police called her brother. I am trying to explain this situation. The translator can't understand what I'm saying. I asked where they got this translator. They explained as someone we found around here.

10- We did not have the experience of applying to international law. But we are among the active women's groups to prepare shadow reports on international conventions such as CEDAW and the Istanbul Convention. We are on the non-governmental executive board to prepare the Cedaw shadow reports, we are members of the Istanbul contract monitoring platform. NGOs that prepared shadow reports were also included in the

preparation of Grevio reports. By taking into consideration the large differences between Turkey's report and the shadow reports of the NGOs, it will be understood that this is an important development. The seriousness of NGOs was understood.

11- We do not have direct international application experience like the ECHR. However, the decision of the Constitutional Court to stop execution may have influenced the decision of the administrative courts to send back on refugees. But this is more about the general refugee rights than a particular situation for women. Our institution has no direct experience.

12- I don't think it's a very structural change. We do not have a large number of files, but we encounter very specific applications. For example, we had a female refugee client fleeing violence, she wanted to take the residence of her child. DGMM insisted that the child's residence city appears elsewhere and that the woman should apply with the child from that city. Though, the woman had escaped from violence and came to Ankara. The response of the officer was, "I suppose that her husband is not expecting her in DGMM either." So, I don't think they act with international standards in mind. The officers act accordingly, just as they take the initiative. There was this Iranian woman. Her wife, who was the guardian of the revolution in Iran, was using violence against both her and the 1.5 years old child. The woman came to Turkey and applied for international protection. She wanted to take asylum and go to another country. Despite meeting with UNHCR many times, they asked for a petition from the woman that the child's father had permitted, since the child's custody also belonged to the father. That woman is still in Turkey and waiting to go for many years. In DGMM, the ongoing approach is if you have friends in the right places, your job will be carried out, which is the approach for refugees as well. We hear things about this. Some find an insider or agree with the translators working there. They do their job this way.

13- Any kind of violence against women is already our field of study. We resort to necessary legal remedies on this issue. We follow the legal processes with them. Our applications are directed to domestic legal mechanisms.

14- The masculine state system needs to change. In terms of women's rights, the state lags in refugee law. Women don't need the state to survive, but refugees do. Therefore, the state plays a very main role in refugee law. The more this gender defines itself over gender equality, the more equitable, fair, solution-oriented it will become. In Turkey, the word gender is excluded from the law. This also means that for refugees coming to such a

country, the bells of exposure to gender-based violence and repression are ringing. I think refugee is a concept that exists with the existence of the state. The actors and direct effect of this problem are the states themselves. Therefore, states need to set a stand and a side. It is necessary to not separate woman according to her characteristics such as refugee, trans, lesbian, married, single, widow, virgin, to approach her as a woman who is subjected to violence and mechanisms to prevent this need to be introduced. As a refugee, only extra care is required. But, applications in Turkey are vice versa. If it's easier for Turkish women to reach the police or judicial mechanism than refugees, it is problematic.

Waiting for the implementation of rights for refugee women is very hard in a country where full implementation of Turkish women's rights is not applied. Police officers' failure to fully know Law No. 6284 is also an important reason why refugee rights and women's rights are not enforced. Everyone working in the refugee field needs to be well informed. It is a dream for us that they'd all be gender sensitive. Even if they'd know the law at least and practice accordingly, if they'd remind the police and other officers that they have to act according to certain rights, even that would be a facilitating solution for us. The Istanbul Convention is a contract that can defend women's rights, even if it has deficiencies. But few know and apply. Another disadvantage of the refugee law is that the next day or 5 minutes of the refugee depends on a decision that the government can take at once. So, this is a field that should have a very specific perspective. Therefore, it is a field directly affected by all the decisions and statements made by the state. In a field where a refugee is so deprived of the right to self-determination, the state needs to be different. The state needs to realize this power and use it for the lives of people. As long as the states exist, refugees will also exist. Maybe these are the concepts that feed each other. Refugees are aware that the government is putting pressure on Europe by using them. We can't say that refugees in Turkey stay safe from danger. For women and children, we can't say that at all. These groups are very vulnerable to attack. The fact that the law is not enforced, supervised, enforceable or uncontrolled feed this.

15- Regardless of the nationality and the capacity of the women, the fact that women come in contact with each other and walk together strengthens me as well as strengthening the other side. It is very empowering for women to organize and fight together. This solidarity is a wonderful thing both for refugee women and a very nutritious, magnificent

source of inspiration and energy for us. Therefore, organizing, touching each other, solidarity is very important.

C- Migrant Solidarity Association

The meeting was held on behalf of the association with Legal Advisor Attorney Şahin Berber. Because of the negotiations for the making the one to one interview at the time I was able to been in Turkey the interview was made via Skype in March. The answers given by the interviewer to the questions are as follows;

1- Since 2016, the Migrant Solidarity Association has been working with migrants in general. We also have inclusiveness for foreigners who are here for economic reasons or as students. The Association's project for refugees is a project which began in October 2018, financed by EU funds of ECHO, carried out via WHH and came to us. The project is aimed at removing barriers to refugees' access to basic rights. A study to ensure access to justice, to remove barriers to access to health, education and other social and economic rights, as well as to provide psychological support and protection at these stages. We only provide consultancy with the legal support dimension. We do not enter legal proceedings. We guide how to handle legal applications. We accompany them in necessary cases. When there is a case, we direct to the legal aid office. We conduct the process in coordination with the lawyer appointed from the bureau. Istanbul Bar Association provides special training for lawyers who want to work with refugees in the Legal Aid Bureau and those who pass this training get to work with refugees. UNHCR and the Bar Association have a joint project. In certain provinces, bar associations run jointly with UNHCR and the cases against refugees are funded by UNHCR. In this way, they try to ensure that barriers to refugees' access to law are removed. UNHCR is no longer found in any activities outside of the placement and protection activities in third countries, in Turkey. It can’t receive international protection applications. Its activities remain in a very limited area. So, they brought such a project. At the very least, a funding activity for refugees to remove barriers to access to justice. It covers the fees such as attorney, counsel fee and travel expenses. Another joint project of UNHCR and TBB is providing telephone services to lawyers for interpreting. However, there is no such thing as sending an interpreter. When we go to the removal centers, we cannot take advantage of the phones because we leave them. Similarly, there is a study of refugees' access to health rights.

2- Our work is generally concentrated as legal counseling, legal support, health support, psycho-social support. We also have a doctor working in the association. He has no authority to examine, but after hearing the general complaint, he directs us to the hospitals we have contracted with. Within the scope of the project, we are currently trying to ensure that those who cannot access their right to health can access it. Those who already have an Istanbul identity can benefit from public hospitals in general. But we also support them when they need it. We offer support such as making an appointment for those who cannot make an appointment, accompanying the language barrier with an interpreter.

Question: Are there any interpreters working within the association? If so, in what language do they translate?

Migrant Solidarity Association: We have an Arabic translator who works with us full time.

3- In legal counseling, we generally do business with DGMM. Our work is concentrated with the Istanbul Migration Service, its representative here. We are in communication with UNHCR when necessary. We pass on some special, specific cases to them. They help in these matters, since they have protection activities and higher powers. We also discuss with the district national education directorate, the provincial directorate and other government agencies on necessary matters, depending on the case.

4- We had a project for women. As part of this project, efforts were made to empower migrant women last year. There were also studies on integration, along with Turkish women. With the "Women's Solidarity crosses borders" project, funded by GIZ, by defining pre-school children of refugees and Turkish women (partly their children too) as the target group; it was aimed to empower the beneficiaries in the context of gender equality through creative drama workshops, thematic and regular solidarity meetings. Furthermore, it was aimed for refugees and Turkish women that by discovering their commonalities, to inform them about women's health, rights to live in the city, access to the labor market, psycho-social support and language skills. The project, carried out between October 2018 and June 2019, has been completed. Apart from that, we also have special works for LGBTI immigrants. Until recently, we had LGBTI studies coordinator for this. That position is now emptied for other reasons. However, we have applicants who come for this subject. They get support from us. Joint activities were also held with

other institutions for LGBTI refugees. Also, our support for legal advice and access to healthcare continues. Since these people have special circumstances, we try to give them priority and support. Within the scope of the association's activities, there have also been studies for LGBTI refugees and they continue. We had activities to be with them and to solve problems together. We have close contact with LGBTI organizations. When there is a problem, they direct to us. We try to provide the necessary support. We also work on reaching LGBTI and female immigrants.

5- Just like women who want to get divorced from their spouse but cannot, there were also applications to our institution from women who want to get out of their family structure. Women who could not reach her child applied. Female immigrants mostly come to Turkey with their families. When they act independently from the family, they become powerless. The strong side can also have children. They face such obstacles to civil rights. LGBTI immigrants also face a lot of discrimination. For example, there are legal obstacles regarding the gender transition process. We try to provide legal support against these situations. However, unfortunately there are situations where we cannot communicate with these people and cannot reach them after providing support one day. Here we evaluate and advise on what we can do against discrimination. Especially, LGBTI refugees have problems with going to the police station. Even when they want to complain about a situation, we observe that they refrain from using these mechanisms. They do not want to go to the police station because their previous experience was facing reactions such as discrimination and humiliation when they went there. In such cases, we try to direct them to the prosecution application. We do not encounter such situations in the prosecution.

6- I was not very dominant in the area before 2014. With the enforcement of the Law on Foreigners and International Protection, scattered legislation was gathered under one law. Thus, it can be said that with UNHCR being more effective, there are relatively positive developments against women and LGBTIs under the name of special needs, in line with the decisions of the ECHR. Before the growth of the Syrian crisis, we have heard that there was positive progress in practice. But after the crisis, we get negative feedback about defining women with special needs, especially regarding the applications of women living alone. For LGBTI refugees from countries in the East, especially Iran, the government tends to accept more. But at the same time, the government is doing its best to end international protection. For example, they apply cases such as the withdrawal of the

application when they fail to fulfill their signature obligations three times, the cancellation of international protection from the violation of public order in a simplest case, on LGBTI refugees. Apart from that, LGBTI refugees are usually sent to conservative provinces such as Kayseri, Yalova and Denizli. We have seen cases of violence in these provinces. We have received applications for this. For this reason, they come to Istanbul. However, the request for city change is not accepted. When they are arrested, their application may be deemed to have been withdrawn because they have not fulfilled their signature obligation and they have problems at risk of being deported.

7- Turkey does not have such an expression of LGBTI in any law. The government does not want to use this statement. Regarding special needs, DGMM has a system like 'immigration net', which is a system that only its official can access. In this system, there is a field called 'is she/he in need of special needs' during registration. If there is any, a check mark is put and that special need is stated below. These recordings are not done professionally. There is also no good assessment of whether one has special needs or not. We also try to explain this if there is such a situation during registration or if it happened later. However, we do not know how well our petitions work in this regard. Usually, we receive responses as the application will be evaluated. For example, we have applications about women living alone. The husband returned to Syria or came here alone. When she first came, she registered in Gaziantep but most of her family was in Istanbul, so she came to Istanbul. The primary purpose of these women is to have identity. Because if they have identity, they can have other rights. For this, we offer reasons such as special needs, family reunification. In applications for this, there are people we can get IDs, but there are those who do not. At this stage, we do not know if DGMM has registered these people with special needs, and if so, how it has been implemented. There is no clarity in the law as to how the application regarding special needs will be. DGMM does not have a schedule for this. We cannot enter DGMM even if we have a proxy. There is another place where only administrative procedures take place, we can enter there, but we cannot enter where the applicants are taken. We cannot accompany the applicants. Applications can even vary from officer to officer. Another officer can do an operation that one officer does not do. Jobs do not go by law, but by circulars and instructions. For example, there was an application that we decided to stop the execution regarding the deportation decision. According to the decision, when we asked for the identity of the applicant, the response we had was “we want to see the final decision”. The person giving this answer

is mostly a security supervisor, not an official or lawyer in the institution. If the security chief deems it necessary, he delivers it to the agency. Even petitioning documents is a problem. Even when they go with us, sometimes they take them, sometimes they don't. When they go alone, most of the time there is no answer. Therefore, we think that they don't process the application.

8- We usually direct legal aid for the remedy. We are guiding legal aid to overcome the problems related to the civil law, which are related to women, mostly women who are victims of their gender roles. We support the operation of complaints mechanisms for LGBTI refugees. Besides, they face problems with article 40 of the Turkish Civil Code that regulates the gender transition. Courts in some provinces reject their demands, claiming that this is a right entitled to Turkish citizens and cannot be used by foreigners. For this reason, it seems that the gender transition processes of refugees are precluded. We had an applicant on this subject. After that, we were unable to contact her. In this case, the applicants try to apply in another province and continue the process. It is also a great problem that there is no case law. We have made a protection decision regarding women who have been subjected to violence. If the lawsuit has been filed, long-term follow-up is not required, if there are situations where decisions need to be made, we will be involved. When we have such applicants, we are helping to make a protection decision and place them in Şönim[464] (Violence Prevention and Monitoring Center). We have recently heard that there is a tendency towards unacceptance of foreign women in Violence Prevention and Monitoring Centers. Previously, they also accepted foreign or trans women, now there is a tendency not to accept. Apart from that, in cases such as divorce, we direct it to the office of judicial aid.

9- In our applications regarding violence against women, the decisions are generally positive. But we are having problems in terms of not being able to reach men and being notified. We hear that there is a tendency to not to accept foreign women who should be placed in Violence Prevention and Monitoring Centers. In courts of divorce, some courts are seeking to investigate Syrian domestic law. This is not a correct legal attitude. For

[464] Şiddet Önleme ve İzleme Merkezi (Şönim), Şiddetin önlenmesi ile koruyucu ve önleyici tedbirlerin etkin bir biçimde uygulanmasına yönelik güçlendirici ve destekleyici danışmanlık, rehberlik, yönlendirme ve izleme hizmetlerinin verildiği, yeterli ve gerekli personelin görev yaptığı ve tercihen kadın personelin istihdam edildiği, çalışmaların yedi gün yirmi dört saat esasına göre yürütüldüğü merkezler olarak tanımlanmıştır, [consulted on: 13.04.2020], https://www.resmigazete.gov.tr/eskiler/2016/03/20160317-8.htm

these people, under international protection, a judgment according to Turkey's domestic legal proceedings is required. However, since Syrian domestic law is not a law that protects women, resorting to this path leads to negative practices.

10- Institutionally, we did not apply to the ECtHR application or to other control mechanisms. We are mostly working on protection activities. I also operate in the refugee sub-working group of the Istanbul bar. We sent a report of the UN Human Rights Council, which had a section on refugees in UPR (Universal Periodic Review). Apart from that, the human rights report is published every year. This report also includes a section on refugee rights. In this section, we add data on the situation of women and LGBTI refugees. These also create some kind of shadow report. We also direct the applications of ECHR to legal aid.

11- ECHR judgments are very effective. It also played an important role in the preparation of the Law on Foreigners and International Protection. Problems at the point of cautionary decisions were tried to be solved with the ECHR. With the Decree Law published in 2016, foreigners could be deported even in the simplest cases due to violations of public order and terrorism. Deportation was applied even if the person filed a lawsuit. In these cases, a measure was filed with the Constitutional Court. The Constitutional Court was also making positive measures. When the applications to the Constitutional Court increased, it gave pilot judgments. Later, with the amendment made in the Law on Foreigners and International Protection, the stopping effect in terms of deportation decisions was restored. Of course, this will also have an impact on women and LGBTI refugees. There is a special part of the Istanbul Convention regarding gender-based applications. Regarding this, I have not seen an example in either legislation or practice. Grevio also has recommendations for working on this. Reflection of the Istanbul Convention in the Turkish domestic law was mostly through the law numbered 6284. However, there is no regulation in this law regarding trans women and LGBTI refugees.

12- UNHCR's principles and guidelines are advisory and are adhered to in terms of acceptance in practice. In these texts, recommendations that the approach towards refugees should be correct are highlighted. But I can say that DGMM officers are far from these approaches. We hear from the applicants that they have experienced harassment problems other than discourses and attitudes. For example, UNHCR has a recommendation to prevent isolation of trans refugees. Previously, there were negative practices such as isolation. However, it is not implemented this way now. Nevertheless,

we receive sensations that LGBTI refugees are kept separate and sent elsewhere. We hear that officers use phrases such as “these kinds of people” or refugees are sometimes subjected to ill-treatment.

13- Our institution did not receive applications in this direction.

14- Altogether, there should be a change in mentality. Since the approach to refugees is generally discriminatory and fueled negatively, if they have a special situation (such as being a woman, LGBTI member) besides being a refugee, there are even more negative approaches to people. A perception that has spread to everyone, from officers at the DGMM to the interviewers. As long as this perception exists, it is not possible to take a gender-based approach. I think we need a total change of perception. This change will also be reflected in people, laws, civil servants, and interviewers. Even the concepts of sexual orientation and gender identity not being in the law are an indication of this mentality. This is a political issue rather than a legal issue. A will that will change these perceptions must emerge and clash with this. When something changes in the law, that doesn't change. There are law enforcers. For example, in the interpretation of the definition of belonging to a particular social group, there are international studies that women should be included in it because of sexual orientation. This trend is not implemented in many countries while it is applied in Turkey. Even if there is a change in the law, we will not get a result unless the practitioners do this. I think that there should be a fundamental change in mentality beyond the change of law.

15- There is no other topic I would like to mention.

D- Women's Solidarity Foundation (KADAV)

The meeting was held with the association's Sefaköy office in Istanbul, with Sanem Öztürk, employee of training and workshops, associate lawyer, Fulya Dağlı and Clemens Dumas, report monitoring and evaluation officer. The answers given by the interviewers to the questions are as follows;

1- We started working on violence against women at the end of 2015. And as for working with refugees, we started our studies at the beginning of 2016. Since 2011, we have been working on immigrants. In the early days, our work was at a more political level. The legal framework on immigrants did not give us much space. But there was a lot to be done about immigrant women. As KADAV, we played a role in the establishment of the “women without borders” initiative. This work was essentially a political level work, but

we were also receiving applications. Support was also given to paperless women, especially women who did not know where to apply. This initiative continues to work. Until 2016, it was not possible to find funds for our projects. Because the gender side of migration was not visible. More vital needs were supported. Funding sources were very limited. At present, the interest of many more funding agencies for gender-based violence has increased. Of course, the effect of the pressure from below played an important role in this change.

2- As KADAV, we work directly with women and we also work with LGBTIs. We have a child safe area, but we do not specifically run a child study. Since our field of work is gender equality, our work is towards women and LGBTIs. Istanbul is where we come into direct contact with women. Violence is our primary concern. Our work is in the form of direct information about violence, raising awareness, disseminating information, training with women, organizing workshops, personal, individual counseling and acceptance of case applications. Both Turkish women and refugee women can make violence related applications. We also work on facilitating women's participation in employment. KADAV is also the secretary and founder of the "Women's Labor and Employment Initiative". In particular, our work on refugee women takes place intensely on facilitating women's labor force participation in employment. There are studies we have been carrying out with women and LGBTIs in prison. We are conducting studies and research on direct support, solidarity and participation in life and employment after prison. We constantly provide legal advice. In general, we take place in the work of women's organizations in Turkey and related platforms. Besides, KADAV is a part of the shelter congress. Shelters congress hold an interim and a general congress meeting each year for 22 years in Turkey. These congresses are held in a different city every year. It is discussed how to organize women's organizations with a common perspective on violence. Also, we are also working at the "woman is the home of women, solidarity platform" established in 2017. A platform consisting of 26 organizations, 10 of which are Syrian women's organizations, is a combination of Turkish and migrant women's organizations. In general terms, it is a platform of solidarity not only among Syrian but also migrant women's organizations and Turkish women's organizations. We held two extrovert workshops. Apart from that, we provided training to women organizations on CEDAW, the Istanbul Convention with the law numbered 6284. All of the organizations

are from different cities such as Mardin, Urfa, Adana, Mersin, Gaziantep, Hatay and Istanbul.

3- From time to time, we come together with DGMM, other state institutions, and municipal representatives at meetings where various organizations also participate. We have meetings with officials from various government agencies, such as police officers, officials of the ministry of education. The state institution that we have a direct relationship with is Şönim. We have a direct relationship with Istanbul Şönim, as we are constantly redirecting. UNHCR has been our project partner since 2016.

Question: What kind of activities are you carrying out within the scope of the Project partnership with UNHCR?

KADAV: UNHCR sometimes provides funding for our projects, and sometimes invites the association to trainings and meetings that it holds on various subjects. Currently we carry out the project "Community Based Protection in Ending GBV against refugees in Turkey-2020" project, which aims ending sexual and gender-based violence against refugees in Turkey via Community-Based Shelter- 2020. Every year, we prepare a new project. In our project with UNHCR, we have the goal of establishing a self-organized organization that is prominent, active and effective through women.

4- The full name of the project we are currently conducting for refugees is “Today’s protection in ending sexual and gender-based violence against refugees in Turkey”. Our project with UNHCR was a project for women and LGBTIs. We also carried out studies for women and LGBTI groups in the project on the participation of women and LGBTIs in prison, for employment after prisons. KADAV has its workshops. The real subject of these studies is refugee women. Currently, we only work with refugee women. Our target for this year is to carry out joint studies for both Turkish and immigrant women, thereby strengthening the relationship between women. We have an existing EU project for this.

5- Women and LGBTI refugees face discrimination in all areas of life. LGBTI refugees, because of homophobic and transphobic structure in Turkey, if they have clear identities, they face many discriminations both in business and social life. If a few of them have their environment and safe area, they also have a condition to stay. But the vast majority want to go to the third country. Women are exposed to many kinds of violence, especially sexual violence. This violent process continues in war, border crossing, camp and beyond.

The camps are now mostly closed, they generally live in houses. Violence is one of the main problems of women. At first, Syrian women thought that they were subjected to violence because they were foreigners. But now they know that Turkish women are also exposed to violence. Women can now distinguish between discrimination and gender-based violence. There are various problems that refugee women face in terms of operating legal mechanisms against violence. Previously, there was a distinction between being registered and being unregistered. Being unregistered means entering the country in illegitimate ways and not applying for any international protection status. Refugee women who were not registered could not apply to the police when they were subjected to violence. Because the decisions about sending them back to their countries and expelling them were implemented. This application is still being done. Since last summer, Syrians under temporary protection have begun to be sent back to the provinces where they are registered. In this process, people even have been deported. Many migrants, especially unregistered African immigrants in Turkey, were sent to return centers by making very intensive identity checks. Besides, women who do not live in the province they are registered in cannot also complain in their province. However, since most of these women escaped from the violence they experienced in the province where they were registered, their return there poses a serious threat to them. In Istanbul, we encountered many problems not to be registered except in exceptional cases. The extent to which these exceptional cases will be or not depends on the state's approach at that time. But this period is a little more flexible. For example, a single mother can be registered for reasons such as danger in the province to which she will be sent. But there is a constant change and uncertainty in practice. In such cases, the exercise of basic rights such as health and education are restricted.

The most they can do is to benefit from emergency health services. Due to the lack of regular interpreters in the police and prosecution offices, they are not able to voice their complaints properly. We advise refugee women who make requests for temporary protection, registration, residence permit, family residence, citizenship application. We also provide consultancy services in violence applications; If another legal action is required, we direct it to legal aid. During the implementation of 6284, there were examples that law enforcement officers said, "this law is not for refugees" and rejected it. Even now, there is a possibility of encountering such situations. However, refugees also know their rights relatively better.

Question: Who does the violence against refugee women in general?

KADAV: Some applicants were subjected to the harassment of the boss, the harassment of the host, the harassment or rape of the grocery owner. However, most of the applications we receive are cases of domestic violence or violence from one of the older men at home. Turkish men can be seen from the violence, but they can see it more tolerable. Women often initiate the grievance process when domestic violence becomes unbearable. Women living in large families have a higher risk of domestic violence. However, we see that women who come alone are also more open to violence from outside. Another discrimination experienced by refugee women takes place in shelters. They can be discriminated by both employees and other women. There are no activities and workshops in shelters, such as workshops to facilitate life together. Another problem is violence against foreign children. Children are also exposed to daily peer violence. In many meetings we have seen that this problem has been complained about. Therefore, sometimes they have to change school or they do not want to go to school. Some of them even said that teachers are being discriminatory. For example, at a school in Yeditepe, they separated Syrian children and put them in the basement. In another example, when there was a kermess among parents, the refugees have been told, " do not cook and bring things".

6- Previously, the initiative of safety from the outset was an approach that treated migration as a criminal situation. But in Turkey, ‘neither civil nor none’ distinction is a bit vague. The DGMM is not a police force, but it is surrounded by police barricades and wires. The behavior of the officers is like police. Of course, it is important that this is institutionalized and defined in the legislation. It's too late. Because, despite Turkey being a country area of immigration since the late 1980s, it lacked legal regulations. It was in the hands of the police. When there is legislation, there is a legal basis too. However, no law is perfect. This law is a regulation in need of improvement.

7- Laws are guided by state policies. Therefore, in the definition called special needs, homosexuality is not mentioned in writing. However, both women and LGBTI groups are counted as vulnerable groups, with UNHCR's decisions and impact on implementation. For this, there are various criteria such as being a lonely woman, old woman, unaccompanied child, HIV positive. If it would be written in the legislation, it would be easier to make claims. However, since the laws are enacted with ideological approaches,

they are not regulated in this way. There is a constant uncertainty and change in practice. In this respect, there is no legal security.

8- What we do mainly is counseling and guidance, but follow-up guidance. In emergencies, we intervene directly and make the applications together. In general, when the application is received, we make an appointment over the phone and direct it to Şönim. In cases where a lawyer appointment is required from legal aid, we make the application together and accompany it with a translator friend. We are also in contact with the lawyer. In cases such as divorce, we direct to legal aid. Şönims normally need to be working 7-24, but they work according to shifts and do not work after 5. The phone line is open, but the police answer. Currently, domestic violence offices have been opened for the investigation and prosecution stages. When they go to any police station, they do not receive the application and direct it to the police station concerned with the issue. While police officers normally have to take them there, they refer to it as "you only need to apply here." There are domestic violence prosecutors and competent courts in the courthouse, and they receive applications.

9- We receive positive results from applications against violence related to refugees with legal status. However, we have problems if they do not have legal status, are not under temporary protection, or are not located in the province where they are registered. If we can prove that they fled from violence and went to another city, we do not have much trouble in those situations.

10- We do not have individual applications to the ECHR and Cedaw. However, we take part in the shadow reports on both the Istanbul Convention and Cedaw together with other women's organizations. We take an active role especially in migration related parts. But we haven't had an individual application yet.

11- Rather, in petitions about deportation events, decisions can be made using such arrangements. The Istanbul Convention, which includes women and LGBTI + refugees, gives states both the obligation to accept the asylum request and the prohibition of repatriation. However, we cannot get results based on the Convention in this context. When we make a request based on the Istanbul Convention, we cannot get a response. Law No. 6284 was also enacted in this direction and the state generally wants to direct it to this law. We can apply based on 6284. Actual applicability of the Istanbul Convention does not exist for us. There is a general reluctance about the implementation of the Istanbul Convention. We frequently observe this in international meetings we attend

regarding the contract. Turkey is one of the first signatory countries, but even when the last steps are being taken, we are one of the countries who do nothing to enforce.

12- Our field observation is limited, but we have information about experience transfers and the sensations we receive. For a period, UNHCR received third country applications, but no longer. At that time, the decisions were more effective. However, we have no experience with the direct impact of UNHCR decisions.

13- As we mentioned earlier, we, as the institution, work in this field. We also get positive results from our applications. However, if the refugee does not have an official status here, it does not have a status such as residence permit, work permit, international protection, not just refugee status, we cannot operate these processes. In fact, according to the Istanbul Convention, even if it is anonymous, the person should be taken under state protection against violence. However, we cannot apply it.

14- The Istanbul Convention needs to be implemented. The Istanbul Convention provides an enormous space for us. A contract that can revolutionize women's lives when properly implemented. The current national and international conventions should be implemented properly and steps not taken should be taken. Rape crisis centers do not exist, Şönim does not work for 7-24 hours. More steps need to be taken towards implementation. Even if an egalitarian legal framework is drawn, you cannot apply that equality on the street if you use the definition of 'guest' for refugees. Now, 272 million of the world are international immigrants. People migrate for many reasons other than war, such as poverty, violence and political reasons. In such a world, expressions such as 'guests' maintain inequality in all dimensions. Unless you approach rights based, inequality will continue. It is necessary to accept the asylum as a human right and walk on this ground. It cannot be used as a political trump card. We have serious problems with applying it. The implementation needs to be more concrete, more specific. Mechanisms that will say 'I am implementing the Istanbul Convention' must be created.

15- It's a huge and massive migration, new for Turkey. Europe has experienced this before with different experiences. Although it is not acceptable to get used to adaptation problems, it is normal. However, while this had to be normalized, it was made difficult by the power. As long as state policy is in action, social cohesion becomes harder. Otherwise, people can adapt to the globalizing world.

E- Lawyer Eda Bekçi

Eda Bekçi is a Member of **Association for Solidarity with Refugees** and two terms, former president, founding member of "**Izmir Bar Association Immigration and Asylum Commission**" established in 2012, "Immigration and Asylum Awareness Course" trainer, which is compulsory for trainee lawyers in the Legal Aid Office. The meeting was held in Izmir. The answers were like that:

1- Since 2002, I have been working with refugees professionally and voluntarily.

2- It's mostly in the legal direction. Izmir, in illegal migration from Turkey to Europe by way of the Aegean Sea coast is in an important transition point. The most frequently encountered cases here are irregular transition, administrative surveillance, deportation events. After 2012, 90% of both my files and legal aid assignments are deportation and administrative surveillance cases. Also, there are different demands such as divorce, population, residence demands, gender change requests without getting married.

3- We have many close contacts with these institutions. Especially DGMM now, is the interlocutor institution for businesses and operations related to foreigners and to all foreigners who need/have international protection within the asylum system in Turkey. We do all the work and procedures, applications, interviews, with them administratively. An institution in which the baron is also organizationally connected. We try to cooperate and solve the problems we experience. In cases where we cannot resolve it, we go to complaints or public cases about public personnel. UNHCR had a much bigger role before the DGMM was established. It was receiving international protection applications with the Ministry of Internal Affairs. It was also conducting negotiations on refugee status determination. Currently, its role has been slightly reduced. It mainly plays a major role in placement in third countries. For this reason, we are discussing with UNHCR about our clients, whose files have been completed, about going abroad or sensitive files. Even the UNHCR's past status assessments, DGMM no longer takes into account. By law, our interlocutor is DGMM.

4- Under the sensitive group, predominantly lonely women, lonely women with children, unaccompanied children, LGBTIs, is a completely different subject of study. Unfortunately, other than LGBTIs are considered as sensitive groups by law. The work and transactions for these people should be prioritized and the necessary measures should be taken. GIGM is a little more sensitive about women who are victims of violence, but

they can be very insensitive about LGBTI refugees and unaccompanied minors. I took part in the training of colleagues in many bar associations in Turkey. Very rarely, the bar association shows sensitivity. Aside from vulnerable groups, many bar associations still have the option of not assigning refugees or restricted assignments to legal aid. In the provinces such as Ankara, Istanbul, Izmir, Antalya, Van, great care is taken, but in many provinces, for example, in Mardin, legal aid support is not provided.

5- I have been consulting the Kaos-GL Association in Ankara for many years. On this occasion, I had the opportunity to work with refugee LGBTI groups in Denizli, Kocaeli, Eskisehir and Yalova provinces. Prolonged stay in Turkey and waiting are two of the most disturbing situations. However, almost all of them complain about being subjected to discrimination, maltreatment, violence, harassment and unnecessary signature obligations and difficulties from time to time by DGMM personnel. Apart from that, many are exposed to physical violence directly on the street, in social life, unfortunately. In particular, some trans people are settled in the provincial provinces of Anatolia, where even Turkish trans people will have difficulty living. We have encountered cases such as beatings, violence, harassment, rape, and theft exposure of these people. These people were sent to safer provinces later. Unfortunately, sensitive groups are not prioritized in this regard. DGMM does not support women. Reception and accommodation centers are very important especially for alone women and women with children. 750 reception and accommodation centers in Izmir, Aydin and Erzurum have been turned into repatriation centers with a protocol made with the EU. There is no place for lonely people, those in need. There is a center for 100 people in Yozgat. If they are exposed to violence, we barely ensure that they are placed in Şömins. Unless there is violence, there is no shelter. A hotel can be provided for two days from UNHCR or ASAM.

6- While FIPL came into force, it entered with a great claim. Previously, the asylum system was made by the asylum office of the General Directorate of Security with a security-based perspective. The DGMM was created both within the framework of EU harmonization laws and with the claim that a civilization and administrative structuring would be achieved and thus a more human rights-based approach would be implemented. But unfortunately, it disappointed everyone. The administrative structure of the migration administration has been transformed into a strict bureaucracy and has become inaccessible. Such that, even with the identity of a lawyer, we started to have difficulties in entering the administrative buildings of the immigration administration, entering the

removal centers, and meeting with our clients. From an extreme security perspective, we know that they are working in connection with the police headquarters and the Undersecretariat of the national intelligence agency. Since Ankara is center-based, it has become more difficult to solve problems for locals. Especially after July 15, the Law on Foreigners and International Protection was further damaged by the regulations introduced with the Decree Laws. Although there were some changes afterwards, work and transactions for foreigners were made from a security-based perspective. In terms of vulnerable groups, we could not see any visible differences.

7- If one needs support from public authorities about gender-based discrimination, the state mechanism expects one to have a grievance. For example, the person must be exposed to violence, be encountered with a physical difficulty, or the lawyer must intervene. We do not witness that these groups show a careful attention or sensitivity arising from the law, ex-officio. For example, we see that children are still being held in the removal center, despite being under 16 years old.

8- We have filed for the rejection of international protection applications of LGBTI Iranian women clients. Apart from this, there are many cases of violation of right to life, and administrative detention and deportation cases on those who lost their families, relatives and injured due to boat accidents, being trans, having changed their genders, having had divorce cases, custody request cases. There are also cases followed by my colleagues in alleged harassment, rape or ill-treatment at the removal centers or while they were caught.

9- Yes.

Question: Could you exemplify?

Att. Eda Bekçi: For example, in the annulment case we filed for the rejection of the application for international protection, the court ruled that the person in question was one of the irrevocable persons, that the administration did not evaluate well what would happen to their country of origin if he/she would return to his/her country. And, it decided to cancel the process and evaluate the application for international protection. In the case we filed for the request for gender change during the trans transition period, a positive decision was recently taken. In the university evaluation report, this decision was made by stating that the person is physically and mentally fit for the gender change process. We made decisions regarding the termination of administrative detention and the cancellation

of deportation proceedings for women and children held under administrative supervision. The administration does a lot of wrong work and operations. We have a high rate of winning the lawsuits we have opened, but there is a lack of access to lawyers. The administration provides interpreting services for its staff and work. We do not prefer to use the lawyers of the administration. Therefore, as lawyers, we have to take our translators. The legal aid office does not have a budget for this. Recently ended, there was a project carried out by Turkey Bar Association with EU partners. This project included interpreting service. But now it's over. For this, we are trying to develop a solution like this in İzmir. NGOs in Izmir allocate their translators to the lawyers of Izmir bar associations. By making an appointment with them, we can benefit from a Persian, Arabic or English translator. Or our colleagues who speak Kurdish, English, Arabic and Persian can accompany us to meet with foreigners. We are trying to solve it this way. Another problem now is that GIGM only accepts translators with a sworn translator ID in their removal centers. In the past, we could take the person who speaks language as an interpreter and wish. However, the volunteers that we take with us as an option cannot enter the building.

10- Turkey is a party to the contracts of international, constitutional qualifications required in domestic law. We primarily train our colleagues in making their petitions in domestic law and using them in decisions, both in our applications and in vocational training. We see that such petitions yield much healthier results. Because the courts always consider more the evidenced and legally supported petitions. Besides, the country of origin information reports is very important to us. Being able to present these claims at the right time is also very important in terms of moving the file to the Constitutional Court or the ECHR. We have applications both to the administrative court, the Constitutional Court and the ECHR.

Question: On which subjects are your applications usually?

Att. Eda Bekçi: My files are usually about torture, ill-treatment and right to life. Regarding boat accidents, there are applications related to losses, especially due to the state's failure to comply with care and safety, early intervention to accidents or insufficient security measures. There are many applications for measures to be made to the Constitutional Court during the decree. However, after the Foreigners and

International Protection Law, I do not have a file that results in the Constitutional Court or ECHR.

11- When you explain this to the administration correctly, you can get a result. DGMM has a victim support program for women caught in police operations such as sex work, victims of violence, rape victims or women victims of human trafficking. In this context, these women have other rights arising from both the Foreigners and International Protection Law and international conventions, such as improving before deportation procedures, housing in different ways in Turkey and being placed in Şönims. In the applications we made on this subject, we received positive results, as were our applicants placed in Şönim, and some of them were treated.

12- Especially on temporary protection, UNHCR has a recommendation handbook and we benefit from it.

Question: Do you see the effect of this before the courts?

Att. Eda Bekçi: In general, we see that the more you strengthen legal petitions, the more effective results you get. Therefore, we use all the resources we have. However, there is a bureaucratic structure in DGMM, which runs with circulars and instructions. There are difficulties for lawyers to enter the institution and even to take action. Therefore, this is not possible in administrative procedures. We mostly use it in courts.

13- I have heard such events a lot. However, they are very hesitant to complain about the removal center. We cannot do much, especially with people in the removal center regarding allegations of harassment, rape, ill-treatment. But there were those with the marks of assault. There were cases when we complained to public or security personnel about them. There are many allegations such as harassment and forced sex especially for foreign women on issues such as threats, doing business and transactions, renting the house. But foreigners, especially ones with aggrieved status, are very timid about exercising their rights. Because when they encounter public power, they are disadvantaged. For example, an unregistered person is harassed at work. When she complains, this leads to her deportation. Unfortunately, she does not want to complain about this fear. This is also the case in work accidents, injuries, harassment, rape.

14- First of all, the law needs to be changed. LGBTI refugees also need to be included in vulnerable groups. This is, however, left to the discretion of the administration. There

needs to be training on issues such as “Who are the vulnerable groups of law enforcement? How should they be treated?”. They have very serious grievances suffered by public personnel. There is a need for lawyers to work with focus groups. Among our colleagues, there may be those who are biased towards vulnerable groups or who do not take due care. In general, it is necessary to raise the awareness of the society and to train lawyers and personnel working in this field. We do this from time to time in the Izmir Bar Association. We have trainings on vulnerable groups. We provide separate trainings on talks with trauma victims, LGBTI individuals, and victims of violence. We also get very positive results from this.

15- There are problems with vulnerable groups and LGBTIs stemming from the Law on Foreigners and International Protection and DGMM. I think that the necessary care and attention is not shown against these groups. We have a problem of discrimination in society in this field, from civil society to experts, and we need to solve this. After that, we can do what is necessary.

F- Social Policies, Gender Identity and Sexual Orientation Studies Association- SPOD:

The interview was held on behalf of in Istanbul with Tuğkan Gündoğdu, Treasurer of the Association. The answers given by the interviewer to the questions are as follows;

1- SPOD has been working on refugees since 2015. I have been actively working at SPOD since 2017. At that time, SPOD carried out a project focused on community empowerment with the American Consulate. With this project, "Tee and talk team" was created within SPOD. Various strengthening activities were held with a group of LGBTI + refugees, mainly gay Syrians. This kind of study was the first in Turkey. Later, as this group grew, they started to organize under ASAM, since the capacity of SPOD was not enough. Apart from that, SPOD took part in the “Key Refugee Groups Project” as an implementing partner for a while. This was a project where LGBTI + refugees living in Istanbul, provinces close to Istanbul and Eskişehir could receive counseling on access to law and justice, psycho-social support, and the fight against sexual violence. As we worked very closely with the UN, placements were directed to the second country. After taking part in this study for about 7 months, we left the project as SPOD. However, as long as there is no language barrier, we continue to advise. Apart from that, we make our guidance with the other partners.

2- Our target groups are all refugees who define themselves as LGBTI +. In this context, regardless of the status, we provide consultancy to everyone, with or without paper, with registered records or unregistered ones. As part of our projects, we were hiring a psychologist and a lawyer. We were providing psycho-social and legal support with them. Legally, there was no process of taking power of attorney but we were giving consultancy on urgent and essential matters such as writing petitions, reaching the removal centers and intervention at that moment. Besides, we had a hotline that operates in 7-24 and 5 languages (Persian, Kurdish, Arabic, English, Turkish). We were organizing social events such as movie nights, dance nights, iftar dinners in Ramadan.

3- We had relations with UNHCR but mostly on project managers and UN representatives. Since we were not recognized by DGMM or any government agency, that communication was never provided. It is not only an attitude towards LGBTI + s, but the state follows a closed wall policy against foreign or institutions here, who are generally opposed and criticize the migration policy. Therefore, it is not possible to access state institutions. During the period when we carried out the project, (2017-2018) UNHCR did not transfer its powers to DGMM. But in my experience in the 'doctors without borders' study, which I later took part in, we saw that after the handover to DGMM, more problems started to occur.

4- In the project that we carried out with the American consulate, works such as trainings, movie screenings, workshops and Turkish lessons were carried out for the target groups. However, they later banned it.

Question: Was NGOs banned from teaching Turkish?

SPOD: Authority of institutions to teach language lessons was prohibited. We can no longer teach Turkish. The "key refugee project" was financed by ECHO. SPOD, Red Umbrella and Positive Life Associations were also implementing partners. This was a project where consultancy service was provided and it was tried to provide access to the services. Most of the clients were male homosexuals. Women, trans people and intersex were not very visible in this project.

5- I do not establish a hierarchy between rights or discrimination. I can say that they are exposed in every area. At the very first, there is discrimination that starts on the migration path. Discrimination is made within the community they live in. In Turkey, they are

exposed to discrimination layer by layer. While they are exposed to racism because they are refugees, they are exposed to discrimination because of their sexual orientation and gender identity. Since the legal regulations in Turkey does not allow it, they cannot access their economic, social and cultural rights. To respond to immediate problems in Turkey, they created a non-existent concept in the world called secondary prevention. We see that this causes great problems in the long run. What we are experiencing is not a migration crisis, but a problem arising from the lack of a migration policy. Refugee crisis is another expression of discrimination. Being a refugee is a right and states must meet it. Turkey failed to meet this wave. People cannot access their health rights due to their language barrier and ethnicity. They are subjected to serious discrimination by healthcare professionals. There are also big problems about the right to education and working. Most of them, as being cheap labor, are employed as uninsured, in unsafe environments. LGBTI + refugees have survival sex in unsafe, unprotected environments. Some are exposed to violence from their customers. Finding a home is a big nuisance. Either they cannot find a house, or even if they find it, they have to pay twice, three times rent. There are all kinds of exploitation, violation of rights, discrimination. There has been an increasing social encounter recently. In Adana, İzmir, Hatay, and Istanbul, clashes now occur in groups. There is discrimination in all the encounters that they have from getting on the bus, to the way towards the school or the hospital, in short, it starts when they go out to public areas in the cities. Even if they do not leave the house, they are bullied by the landlord. For example, the former landlord of one of our clients continued to ask for rent by threatening the refugee lessee, despite the refugee having moved. My client had to give it.

6- I started working in 2017. The problems we face are huge. This shows that much has not changed. Our applications were mostly about shortening the retention time at the removal center and making it easier to send them back. Civilization is an important thing, but in practice we do not see its effect. The transfer of authority from UNHCR to DGMM in resettlement in the second country caused the discrimination experienced by LGBTI + refugees increase much more. Because the factors that facilitate these applications are generally as being HIV positive, being gay, being trans. But now, they cannot express them clearly. Because no experienced UNHCR representatives are working in this field for years now. There are vulgar staff working for two or three years. In such negotiations, we encounter problems where discrimination increases, people cannot open themselves, and therefore the process is prolonged. For example, we encountered an example where

an HIV positive person threatening public health was reported and was deported by the provincial immigration authority employee. There is nothing that goes well in practice. There is no vision based on rights, therefore discrimination and violations of rights have increased.

7- Its coverage is problematic. Because there is no right-based approach in the law, it cannot be inclusive because it marginalizes and dramatizes such sensitive and fragile groups. It also cannot meet the needs in the application.

Question: Can you open the question a little more? Like what?

SPOD: For example, your target group is LGBTI + refugees. Do your applicants encounter any problems in the application regarding recognition or special rights?

I also encountered good examples, but this was specifically about working people. There is also no sexual orientation and gender identity in article 10 on equality in the Constitution, and there is no declarative perspective in the regulation on the transition process. Therefore, it does not exist in the Law on Foreigners and International Protection. LGBTI + s does not appear in the Foreigners and International Protection Law, as everywhere. This also has a lot of problems in practice. For example, unregistered refugees cannot start the transition process. The registration process, on the other hand, is economically costly and takes at least two to three months. During this time, their urgent needs are not met.

8- In both projects, our lawyer did not take power of attorney. He did not take any action. Support was provided only for issues such as petition writing, guidance, communication with the bar.

Question: So, did you follow the legal process of the people you provided legal advice to? Do you have any information about the results obtained from the applications?

SPOD: For example, we had Iranian transgender clients. He made his first entry in Yalova and was waiting for the registration process. There is a telegram group that includes Iranians. Our client was exposed to sexual violence by someone he contacted to find a home. We directed our clients to Forensic Medicine. He wanted to complain. However, the police in Yalova were not interested, could not find the person and were

not interested. This process has been suspended for months. Our client was repeatedly traumatized while trying to report. We cooperated with other institutions on this issue, but it was not resolved. This process last hung like this.

9- What I observe is this; gender will set a precedent for LGBTI, and if there are positive examples, they prevent this. Rescuing someone without sending it back does not contribute to LGBTI + rights. But finding and judging Ahmet Yıldız's father would. (Note: Ahmet Yıldız was killed by his father in Turkey.) For the person to be safe, positive decisions are made other than a decision to send back. However, we observe that the decisions that will cause gains in the struggle for rights are not made.

10- We did not have an international application. We are only concerned with torture at the Istanbul Protocol, we worked together with the Human Rights Foundation of Turkey. In this study, I worked with doctors without borders. It was a Protocol documenting the experience of torture and enabling the process to be accelerated by being included in the second country placement process. It was a comprehensive torture document requiring expertise, including a psychologist, psychiatrist, social worker and other related doctors. In this regard, the Human Rights Foundation of Turkey is one of the leading institutions in Turkey. The report was written by doctors without borders and the Human Rights Foundation of Turkey. I also took part in this study in 2018-2019. We were writing our experiences and observations about the client with a psycho-social perspective. This is an important, effective report in the person's relocation process.

11- Government institutions do not comply with this. We know that there are positive samples in ECHR, but they are not implemented in Turkey.

12- Turkey is ignoring these resolutions. They’re at 'We don't have LGBTIs' level. There are such problems as EU-Turkey agreement, the aid to Turkey being transparent unrestrained there are problems such as lack. I do not find the decisions and recommendations sincere on this issue. With the transfer of authority and responsibility of UNHCR, refugees in Turkey were thoroughly left alone. In my opinion, international recommendations are zero in practice. Training of employees is very important. The language used by DGMM employees who hold the interviews is very important. We heard that they used phrases like: "How long have you been like this?", "When did you decide to be a woman?" This is the main indication that the recommendations are not being followed.

13- We did, of course. We were also having it in SPOD, also within doctors without borders. In the study of doctors without borders, we also had a great support team for LGBTI +s. Our Iranian transgender, whom I just mentioned, had an application for rape. Apart from that, harassment and gender-based abuse are very common. For example, there are harassment and abuse incidents that women experience in the textile workshop, and there is violence and abuse that LGBTI + people face in daily life or while doing survival sex. In both institutions, we were not receiving and directing legal applications. In the study of doctors without borders, we were referring to RRT (Refugee Rights Turkey). However, it is a process where it is not possible to reach justice, which is progressing very slowly. I did not see any examples that resulted in the time I worked.

14- At first, Turkey's refugee law is supposed to be an immigration policy with perspective. It needs to act as it should, not like the watchman of the EU. Because refunds are a violation of rights. Apart from that, I want to see a state that does not confront civil society but acts together. According to the fields, I think that specialized institutions should benefit from their knowledge and experience. Discrimination, the equality law should be revised, 'sexual orientation, gender identity and gender expressions' should be included. Article 40 needs to be changed and updated. There is a legal gap in terms of unregistered people being unable to receive any services regarding the gender adjustment process during the registration process. During this time, people who are in the process of adaptation or want to start it cannot do it. Even if he/she is not registered, the person should be able to start the adaptation process and the gender transition process.

15- There is nothing else I can add.

G- Support to Life Association

The meeting with the Law Sector Manager, Att. Mahmut Can İsal, on behalf of the was held in March via the Internet, Skype. The fact that the meeting was conducted via the internet was a situation that occurred due to the inability to establish a common time with the interviewer between the dates in Istanbul. The interviewer's answers to the questions are as follows;

1- Since 2012, we have been working on refugees. Our first work started at a community center in Hatay. Our headquarters is Istanbul.

Question: Currently, in which provinces do you have activities?

Support to Life Association: The Association has works in Istanbul, Mersin, Adana, Hatay, Şanlıurfa, Mardin, Batman and Diyarbakır.

2- Most of our clients are refugees under temporary protection. A few of our clients are under international protection. Although our activities vary with the province, they are generally in the form of basic protection activities, case management, legal counseling, psychological counseling. Apart from this, we also have activities such as psycho-social support activities, women, youth empowerment groups, psycho-social support activities for children, Turkish courses, vocational courses, livelihood projects. Currently, there is a refugee restaurant operating in Yeşilli district of Mardin, established with our support. It's a restaurant where refugees and Turkish women come together. Apart from that, we have other livelihood activities.

3- We are working on both capacity building and joint case management. We already have to get certain permissions when conducting the activities. We conducted a project to strengthen refugees with UNHCR. Our donors from two provinces are in UNHCR Istanbul and Hatay.

Question: What does it mean to have a donor?

Support to Life Association: It means the funding organization. Together with DGMM, we held a big conference in September. The conference, which was held in Ankara with the title "Encounter Share Be Inspired", was an international study with nearly 20 participants from seven continents. In this, we worked with DGMM as well. Apart from that, there are activities that we carry out jointly with social service centers, public education directorates.

Question: How is the communication and attitude of the officers towards you in your relations with the institutions?

Support to Life Association: As long as we approach duly, we don't have any difficulties.

4- We had a project that ended with the end of 2018 and was carried out with UNWOMEN. We are currently working towards mainstream gender-based violence, gender equality. Currently, our gender equality counselee works in our headquarters. We

get support from our counselee on these issues. Currently, our gender equality client works in our headquarters. We get support from him on these issues.

5- I can say that they face discrimination and violations of rights such as gender-based violence, difficulties in accessing livelihoods, difficulties in accessing basic rights.

Question: Is it possible to open this subject a little more?

Support to Life Association: Women experience difficulty in accessing health, especially when they are unidentified during pregnancy. While birth should be provided to them free of charge as an emergency health service, they face obstacles to this. LGBTI refugees are already a double sensitive group. Therefore, they are cited as key refugee groups in all studies. They face intense discrimination both within their committees and from outside. LGBTI child refugees often have to leave their families and fight alone. Domestic violence is a common situation for women. When we think that even a Turkish person is ignorant about accessing fundamental rights, the importance of information activities for refugees emerges from there. We also organize information sessions by visiting our neighborhoods through our access teams. We have volunteer teams and access officers in each province. We get feedback from these studies. We encounter women who are exposed to violence and who need support.

6- In our work, I have observed that women, especially in large provinces, who have certain problems, have access to relevant guidance before the Migration Management. But since the law does not contain any regulations regarding LGBTI refugees, I do not think there is a change in their problems.

7- I don't think this definition is gender-based inclusion. Rather, it has a health-related counterpart. Generally, people with disabilities, those with severe disease and those with chronic disease are included in this definition. At the end of December, a change was made in the Law on Foreigners and International Protection in terms of the access of persons under international protection to the right to health. Accordingly, those who have expired a year or more after application will be considered as general health insured. That is, they will have to pay fees to access healthcare. In this arrangement, they exempted those with special needs. From this application, we understand that special needs are handled on a health basis.

8- We make legal applications with each of our clients who apply to us. At least one of our lawyers works in each province. In complaints, we support the necessary applications for protection decisions, we establish legal aid links.

Question: Do you follow the cases personally?

Support to Life Association: We can only provide legal advice. Since we work for the institution, we are not able to have the power of attorney. In simple legal transactions, in cases that do not require follow-up, we write a petition and support it. However, if there is a litigation process, if a proxy is required, we will benefit from legal aid.

9- I cannot say that it cannot be changed but I can say that we can get results in approximately 8 out of 10 applications. For example, the application for a protection order, in which we could not get results in Istanbul, is almost nonexistent. But when things start to get complicated, for example, when things like abortion are involved, the processes are getting harder. The Constitutional Court is now a mandatory authority in domestic law. Positive measures were taken from the Constitutional Court, particularly regarding the deportation of refugees. Following the pilot decision of the Constitutional Court on the need to change the law, the deportation clause (b-d-k clauses) was amended in the law.

10- Since we did not follow-up directly, we did not apply. However, we provide training for bar associations based on provinces. In these training sessions, we frequently explain these mechanisms to lawyers. I hear that ECHR applications are frequently used by colleagues, especially in Istanbul. However, the method of application to the UN's control mechanisms in Turkey, not a very common method. In general, applying to the ECtHR is a more effective and widespread application. However, the method of application to the UN's supervision mechanism is not very common in Turkey. In general, applying to the ECHR is a more effective and widespread application.

11- I think they are effective. Especially in protection decisions, we can usually take decisions and enforce them without seeking evidence. The most important effect is seen in 6284's implementation of protection orders before the family courts. However, LGBTI refugees have been guided faster in their 3rd country placement process since 2014.

12- Temporary protection status is given to everyone. We don't have a lot of international protection applicants. In general, there are very variable applications. Applications vary

from expert to expert and from province to province. While some experts act by all standards, some approach their files with a narrower perspective. We know that DGMM is trying to make some positive changes. It is trying to increase its capacities. The officers are trying to evaluate them more duly, by reducing the number of interviews in a day and minimizing them. But applications for international protection, in particular, is not very easy in Turkey.

13- We did not have many LGBTI refugee applicants. For example, the prosecution of our last applicant, UNHCR acted very quickly, and in a short time the applicant was placed in the third country. Many female clients suffer gender-based violence. We usually make protection orders or take a criminal complaint. We usually get positive results. But if the issue goes beyond a simple conservation decision, problems arise. For example, when a woman conceived as a result of rape wants to have an abortion and if the legal abortion period has been exceeded, the courthouse gives us difficulties with this.

Question: Do your applications against violence give results?

Support to Life Association: It usually stops. As the violent party is also usually a refugee, when the police come to the door or take a paper from the courthouse, the refugee is anxious. He/she pulls himself back out of fear of deportation.

14- First, the definition of special needs are supposed to be expanded in the law. Definitions for key refugee groups need to be regulated. I think that any contact with refugees should receive relevant training to increase the awareness of all stakeholder employees (civil society, public institution, private sector) on gender. I think that the principles of Yogyakarta should be turned into a regulated legal norm. We see that this is not enough to remain in these principles or UNHCR's guidelines, to ensure gender equality.

LGBTI refugees are having problems with family reunion in Turkey and many parts of the world as well. An arrangement should be made regarding this issue. When LGBTI refugees leave their countries and go to another country, they cannot access the right to family reunification. Sometimes this may even cause these people to come back. I think that the norms related to this should be expanded and more refugee friendly norms should be made.

Bibliography

I. Books

1) Printed Books

-ADIGÜZEL, Yusuf, *Göç Sosyolojisi,* 2nd edition, Ankara, Nobel Publications, 2018, p.223

-AKYÜZ, Latife, Ethnicity, *Gender and the Border Economy : Living in Turkey-Georgia Borderlands,* 1st edition, London, Routledge Publications, February, 2017, p. 168

-ARBEL, Efrat and DAUVERGNE, Catherine and MILIBANK, Jenni, *Gender in Refugee Law from the Margins to the Centre*, 1st edition, Routledge Publications, February 29, 2016, p. 318

-AYBAY, Rona, *Yabancılar Hukuku*, Third Edition, İstanbul, Bilgi University Publications, November 2010

-BAKLACIOĞLU, ÖZGÜR, Nurcan, *Uluslararası Sınırların Gölgesinde Mülteci Kadınlar*, 1st edition, İstanbul, Der Publications, 2017

-BUTLER, Judith, *Cinsiyet Belası Feminizm ve Kimliğin Altüst Edilmesi*, ERTÜR, Başak (translator), 5th edition, İstanbul, Metis Publications, 2005, p. 246

-COLLINS, Alan, *Çağdaş Güvenlik Çalışmaları*, NASUH, Uslu (translator), 3rd edition, Library of International Relations, Röle Akademik Publishing, Istanbul, September, 2017, pages 510

- ÇELIKEL, Aysel and GELGEL, Günseli, Öztekin, *Yabancılar Hukuku*, Beta Publication, 23rd edition, March 2017

-EKŞI, Nuray, *Türkiye Avrupa Birliği Geri Kabul Anlaşması,* 1st edition, Istanbul, Beta Publications, March, 2016, p.183

-FINE, Cordelia, *Testosteron Rex Unmaking the Myths of Our Gendered Minds*, London, Icon Books, 2017, p. 256

-FIRESTONE, Shulamith, *Cinselliğin Diyalektiği,* SALMAN, Yurdanur, (translator), 2nd edition, İstanbul, Payel Publications, March 1993

-HARTMANN, Heidi, *Marksizm ve Feminizmin Mutsuz Evliliği*, İstanbul, Agora Library Publication, 2006, p. 80

- KIVILCIM, Zeynep and BAKLACIOĞLU, Nurcan Özgür, *Sürgünde Toplumsal Cinsiyet, İstanbul'da Suriyeli Kadın ve LGBTİ Mülteciler*, Istanbul, Derin publications, 2015, p. 182

-MARKS, ENGELS, LENIN, *Kadın ve Aile*, Eriş Publications, 3rd edition, Ankara, December, 2006

-MILLET, Kate, *Cinsel Politika*, SEÇKIN, Selvi (translator), 2nd edition, İstanbul, Payel Publishing, 1987

-NAIMAN, Joanne, *Two Different Theories of Marxism and Feminism*, ÖZKAL, Saadet (translator), 2nd edition, İstanbul, Amaç Publications, March 1988

-NEOCLEOUS, Mark, *Güvenlik, Şiddet ve Savaş,* ÇORBACIOĞLU, Gül and EMBEL, Ersin (translators), 1st edition, Ankara, Dipnot Publications, 2011, p. 316

-NEOCLEOUS, Mark, *Savaş Erki Polis Erki*, AYDAŞ, Beyza, Sumer (translator), Ankara, 1st edition, Nota Bene Publications, 2014, p. 336

-NOTZ, Gisela, *Feminism*, ÇETINKAYA, Sinem, Derya (translator), Ankara, 2nd edition, Phoneix Publishing, January, 2018, p. 120

-PAZARCI, Hüseyin, *Uluslararası Hukuk Dersleri*, 11th edition, Ankara, Turhan Publications, 2011

-SAFI, Sibel, *Mülteci Hukuku*, İstanbul, 1st edition, Legal Publications, 2017, p. 861

-SAYGILIGIL, Feryal, *Toplumsal Cinsiyet Tartışmaları*, 1st edition, Ankara, Dipnot Publications, 2016, p. 328

-SCHOCHET, Gordon, J., *Patriarchalism in political thought: the authoritarian family and political speculation and attitudes especially in seventeenth-century England*, Blackwell Publishers, 1st edition, New York, 1975, p. 291

-SJOBERG, Laura, *Gender, War and Conflict, Feminist theory of war*, 1st edition, AYDIN, Onur (translator) Altın Bilek Publications, 20 May 2015, p. 269

-WITTING, Monique, *Straight Düşünce*, DARICIOĞLU, Leman, Sevda and BÜYÜKTAŞ, Pınar (translators), İstanbul, Sel Publications, May, 2013, p. 122

-WOLLSTONECRAFT, Mary, *A Vindications of Women's Rights*, HAKYEMEZ, Deniz (translator), 2nd edition, İstanbul, Turkey Business Bank Cultural Publications, January, 2012, p. 291

-YILDIRIM, Ali and ŞİMŞEK, Hasan, *Sosyal Bilimlerde Nitel Araştırma Yöntemleri*, 6th Edition, Ankara Seçkin Publications, 2008, p. 366

-YÜCEL, YÖNLÜ, Kübra, *Batı Eksenli Dünya Düzeni ve Türkiye'ye Gelen Dış Göç Dinamiği Göç Sosyolojisi*, İstanbul, Doğu Publisher, June, 2018, p. 240

2) Books Online

-ACER, Yücel and KAYA, İbrahim, *Uluslararası Hukuk: Temel Ders Kitabı*, 3rd edition, Usak Publications, 2013, [consulted on 18.07.2020], https://books.google.fr/books?id=Dj37AgAAQBAJ&pg=PA194&lpg=PA194&dq=insan+haklar%C4%B1+s%C3%B6zle%C5%9Fmesi+s%C4%B1%C4%9F%C4%B1nma+hakk%C4%B1+akademik&source=bl&ots=2OTCG1FwyV&sig=ACfU3U3qy5Am_FmipCuoq_thr-nkxl5Kxw&hl=tr&sa=X&ved=2ahUKEwj684ijp4vhAhUO2eAKHWpRA6k4ChDoATACegQIBxAB#v=onepage&q=insan%20haklar%C4%B1%20s%C3%B6zle%C5%9Fmesi%20s%C4%B1%C4%9F%C4%B1nma%20hakk%C4%B1%20akademik&f=false

-ARNARDÓTTIR, Oddný Mjöll, *Equality and Non-Discrimination Under the European Convention on Human Rights*, New York, Martinus Nijhoff Publishers, 2003, [consulted

on 02.07.2020], p. 265, https://books.google.fr/books?id=0-7ijEFOS80C&pg=PA170&lpg=PA170&dq=.+Dudgeon+v.+United+Kingdom+case+is+very+important&source=bl&ots=8bLKUyBFTA&sig=ACfU3U2inth5tridnyX5PCepLr4MGGKAgA&hl=tr&sa=X&ved=2ahUKEwiw4oOnlq7qAhWP2hQKHQyMDpU4ChDoATABegQIChAB#v=onepage&q=.%20Dudgeon%20v.%20United%20Kingdom%20case%20is%20very%20important&f=false

-BARRETTE, Mitchell, *Women's Oppression Today,* New, York, Verso Publication, 5th Edition, p. 146, [consulted on 13.11.2018], https://genderstudiesgroupdu.files.wordpress.com/2014/07/womens-oppression-today-barrett.pdf

-BASTICK, Megan and GRIMM, Karin and KUNZ, Rahel, *Sexual Violence in Armed Conflict Global Overview and Implications for the Security Sector*, Genava, Geneva Centre for the Democratic Control of Armed Forces, 2007, p. 217, [consulted on 04.02.2019], https://www1.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full%5B1%5D.pdf

-BEAVUOIR de Simone, *Le deuxième sexe Les Faits et Les Mythes*, Paris, Gallimard Publications, 1949, [consulted on 17.07.2020], https://cdn.frenchpdf.com/wp/2019/01/07083802/Le-deuxieme-sexe-tome-1-Simone-de-Beauvoir-FRENCHPDF.COM_.pdf

-BENNETT, Judith, M, *History Matters: Patriarchy and the Challenge of Feminism*, Philadelphia, University of Pennsylvania Press, 2006, [consulted on 16.07.2020], https://books.google.fr/books?hl=tr&lr=&id=IqqbkBA_tQYC&oi=fnd&pg=PA1&dq=Bennett+J.M.+(2006)+History+Matters:+Patriarchy+and+the+Challenge+of+Feminism,+University+of+Pennsylvania+Press.&ots=iB1qnZtHBD&sig=HOk7qcdQ23qCfrAE8zRRHI0oES8#v=onepage&q=Bennett%20J.M.%20(2006)%20History%20Matters%3A%20Patriarchy%20and%20the%20Challenge%20of%20Feminism%2C%20University%20of%20Pennsylvania%20Press.&f=false

-CASTLES, Stephen and de HASS, Hein, MILLER, Mark, J., *The Age of Migration International Population Movements in the Modern World,* 5th edition, London, Palgrave Macmillan, 2014, [consulted on 18.07.2020], http://migrationmatters.me/wp-content/uploads/2016/11/AgeOfMigrationChapter1and.pdf

- *Combating Discrimination on Grounds of Sexual Orientation or Gender İdentity Council of Europe Standards*, Strasbourg, Council of Europe Publishing, June, 2011, p.112, [consulted on 29.11.2019], https://rm.coe.int/168047f2a6

- *Council Of Europe Gender Equality Strategy 2018-2023*, [online], published by Council of Europe, June, 2018, p.53, [consulted on 15.07.2020], https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1

-CRAWLEY, Heaven and LESTER, Trine, *Comparative Analysis of Gender-Related Persecution in National Asylum Legislation and Practice in Europe*, Geneva, EPAU, May 2004, p. 185, [consulted on 15.07.2020], https://www.unhcr.org/40c071354.pdf

-DAVIES, Margaret and MUNRO E., Vanessa, *The Ashgate Research Companion to Feminist Legal Theory*, London and New York, Routledge Publisher, 2013, [consulted

on 05.11.2019], https://books.google.fr/books?id=WOLeCwAAQBAJ&printsec=frontcover&hl=tr#v=onepage&q&f=false

-ECKERT, Penelope and MCCONNELLGİNET, Sally, *Language and Gender*, 2nd edition, Cambridge and New York, Cambridge University Press, [consulted on 16.07.2020], https://web.stanford.edu/~eckert/PDF/Chap1.pdf

-ENGELS, Frederik, *Ailenin, Özel Mülkiyetin ve Devletin Kökeni*, 8th edition, SOMER, Kenan (translator), Ankara, Sol Publications, October, 1986, [consulted on 22.10.2019], http://www.dogrudandemokrasi.co.uk/klasikler/Ailenin_Ozel_Mulkiyetin_ve_Devletin_Kokeni.pdf

-FANG, Ng, Su, *Literature and the Politics of Family in Seventeenth-Century England*, Cambridge University Press, February 5, 2007, p. 246, [consulted on 16.07.2020], https://books.google.fr/books?id=XtHEgx0odbEC&pg=PA77&lpg=PA77&dq=chapman+schochet+hobbes&source=bl&ots=_t00EAOzmf&sig=ACfU3U0EkWM_Wg2lEgUyFaJ5kUJv-JhBcg&hl=tr&sa=X&ved=2ahUKEwiTk7Sz99XpAhUtCWMBHZ6LD8EQ6AEwAXoECAgQAQ#v=onepage&q=chapman%20schochet%20hobbes&f=false

-FAULKNER, Neil, *A Marxist History of the World*: *from Neanderthals to Neoliberals*, 1st edition, London, Pluto Press, p. 301, [consulted on 16.07.2020], https://books.google.fr/books?id=j4x2DwAAQBAJ&pg=PA34&lpg=PA34&dq=s%C4%B1n%C4%B1flar+ortaya+%C3%A7%C4%B1k%C4%B1%C5%9F%C4%B1+neolitik+d%C3%B6nem&source=bl&ots=KWv5Qi9OHX&sig=ACfU3U2GClQ4V2XkorTIIg11V1Q_gulG9q&hl=tr&sa=X&ved=2ahUKEwj0jdr2isrgAhVtAGMBHXBiAJ0q6aewaxoecaqqaq#v=homepage&q=s%C4%B1n%C4%B1flar%20ortaya%20%C3%A7%C4%B1k%C4%B1%C5%9F%C4%B1%20neolitik%20d%C3%B6nem&f=false

-FILMER, Sir Robert, *Patriyarka: of the Naturel Power of Kings*, London, printed for CHİSWEL, Richard in St. *Paul's* Church, 1680, [consulted on 16.07.2020], https://oll.libertyfund.org/titles/filmer-patriarcha-or-the-natural-power-of-kings

- GUY, S. and GOODWIN-Gill, «The International Law of Refugee Protection», in *The Oxford Handbook of Refugee and Forced Migration Studies,* FİDDİAN-QASMİYEH, Elena and LOESCHER, Gil and LONG, Katy and SİGONA, Nando (editors), June, 2004, [consulted on 29.11.2018], p. 2, http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021?print=pdf

- *Guide on the case-law of the European Convention on Human Rights*, [online], published by Council of Europe/European Court of Human Rights, 30.04.2020, p. 39, [consulted on 15.07.2020], https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf

-*Handbook on Criteria and Procedures for Determining Refugee Status under 1951 Convention and 1967 Protocol relating to the Status of Refugees*, UNHCR, February 2013, [consulted on 09.28.2018], http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=55fa66404

-*Handbook on European non-discrimination law*, published by European Union Agency for Fundamental Rights and Council of Europe, February, 2018 edition, p. 300, [consulted on 15.07.2020], https://www.echr.coe.int/Documents/Handbook_non_discri_law_ENG.pdf

-*Handbook of European Law on asylum, borders, and migration*, Official Publications Office of the European Union, 2014, pages 43 – 48, [consulted on 19.07.2020], https://fra.europa.eu/en/publication/2014/handbook-european-law-relating-asylum-borders-and-immigration#:~:text=The%20Handbook%20on%20European%20law,and%20the%20Council%20of%20Europe

-JASTRAM, Kate and ACHIRON, Marilyn, «Mültecilerin Korunması Uluslararası Mülteci Hukuku Rehberi», Parlamenterler İçin El Kitabı, [online], No. 2, 2001, [consulted on 04.06.2018], http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=55fa659a4

-KELLY, Kristin, Anne, *Domestic Violence and the Politics of Privacy*, New York, Cornell University Press, 2003, p. 209, [consulted on 16.07.2020], https://books.google.fr/books?id=h7aSQ-kJ2swC&pg=PA25&lpg=PA25&dq=patriarchy+in+locke&source=bl&ots=vVr8QvcHfR&sig=ACfU3U2MiywJDVJsfe1bKhd80LGAsZ6NAQ&hl=tr&sa=X&ved=2ahUKEwjQpNL0gNvpAhWiDmMBHfVqClsQ6AEwCHoECAkQAQ#v=onepage&q=patriarchy%20in%20locke&f=false

-LOCKE, John, *Yönetim Üzerine İkinci İnceleme, Sivil yönetimin gerçek kökeni, boyutu ve amacı üzerine bir deneme*, BAKIRCI, Fahri (translator), 2nd edition, Ankara, Ebabil Publication, May, 2012, [consulted on 22.10.2019], p. 161, https://docplayer.biz.tr/93230338-Yonetim-uzerine-ikinci-inceleme-sivil-yonetimin-gercek-kokeni-boyutu-ve-amaci-uzerine-bir-deneme-john-locke-ceviri-fahri-bakirci.html

-JOHNSON, BAGBY, Laurie M., *Thomas Hobbes Turning Point for Honor,* Lanham, Lowman&Littlefield Publishers, 2009, pages 122-123, [consulted on 16.07.2020], https://books.google.fr/books?id=5jRHPMouOroC&pg=PA122&lpg=PA122&dq=patriarchy+hobbes&source=bl&ots=neRFkHvF9y&sig=ACfU3U1jYLSU42KcUrXAb3e4tqTNCgxrjw&hl=tr&sa=X&ved=2ahUKEwjRndC5_MvpAhVWA2MBHeemCh4Q6AEwCHoECAkQAQ#v=onepage&q=patriarchy%20hobbes&f=false

-MACKREATH, Helen and SAĞNIÇ, Şevin Gülfer, *Türkiye'de Sivil Toplum ve Suriyeli Mülteciler*, 1st edition, Istanbul, Zer Publishing, March 2017, p. 84, [consulted on 27.01.2020], https://www.hyd.org.tr/attachments/article/216/turkiyede-sivil-toplum-ve-suriyeli-multeciler.pdf,

-MILES, Matthew and HUBERMAN, A. Michael and SALDANA, Johnny, *Qualitative Data Analysis A Methods Sourcebook*, 3th edition, Sage Publications, 2014, [consulted on 21.03.2020],https://books.google.fr/books?id=3CNrUbTu6CsC&printsec=frontcover&hl=tr&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

-MOLE, Nuala, *Asylum and European Convention on Human Rights,* Strasbourg, Council of Europe Publications, 2003, [consulted on 10.06.2020],

https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-09(2000).pdf

-*Mültecilerin Korunması Uluslararası Mülteci Hukuku Rehberi, Parlamenterler İçin El Kitabı*, UNHCR, Inter-Parliamentary Union, Year 2001, No. 2, p. 132, [consulted on 31.10.2018], [http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=55fa659a4

-NATHWANI, Nishin *Protecting Persons with Diverse Sexual Orientations and Gender Identities*, [online], United Nations High Commissioner for Refugees, Geneva, December, 2015, [consulted on 15.07.2020], https://www.refworld.org/docid/566140454.html

-ÖZCAN, Mehmet, *Avrupa Birliği sığınma hukuku: Ortak bir sığınma hukukunun ortaya çıkışı* Ankara, International Strategic Research Institution Publications, 2005, p.248, [consulted on 04.06.2018], https://books.google.fr/books?id=0k6bYEyQ6XYC&pg=PA28lpg=PA28&dq=yasa+d%C4%B1%C5%9F%C4%B1+g%C3%B6%C3%A7+yollar%C4%B1nda+ka%C3%A7+m%C3%Besteci+%C3%B6ld%C3%BC&source=bl&ots=CFVOSX25g_&sig=jlVkFTfeYS_8m22gfpvfRW76S_0&hl=tr&sa=X&ved=2ahUKEwiRhJai1qPeAhUHDMAKHRcVDvkq6aewb3oecaeqaq#v=homepage&q=yasa%20d%C4%B1%C5%9F%C4%B1%20g%C3%B6%C3%A7%20yollar%C4%B1nda%20ka%C3%A7%20m%C3%Besteci%20%C3%B6ld%C3%BC&f=false

-ROUSSEAU, Jean, Jacques, *Emile ya da Eğitim Üzerine*, AVUNÇ, Yaşar, (Translator), İstanbul, Turkey Is Bank Culture Publications, [consulted on 16.07.2020], https://www.pdfdrive1.com/emile-ya-da-eğitim-Üzerine-jean-jacques-rousseau-e117512088.html

-SALAH, Abir Ben and GLEIZES, Fang and HANCIOĞLU, Furkan and KHOIE, Ali and LOHMAN, Leila and SOLOMON, Rachel and THIRY, Alexis, *Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector*, ORAM, 2016, the Turkish text pages 50-73, [consulted on 11.06.2019], https://oramrefugee.org/wp-content/uploads/2016/04/Glossary-PDF.pdf

- SALİH, Şahin, *İç İşleri Bakanlığı için LGBTİ Hakları El Kitabı,* KÖYLÜ, Murat (editor), 2th edition, Ankara, Kaos GL, 2017, p.67, [consulted on 06.06.2019], http://www.kaosgldernegi.org/resim/yayin/dl/icisleri_bakanligi_lgbt_haklari_el_kitabi.pdf

-SLOMP, Gabriella, *Thomas Hobbes*, New York, Routledge Press, August 2008, p. 568, [consulted on 22.10.2019], https://books.google.fr/books?id=-AkkDwAAQBAJ&pg=PT278&lpg=PT278&dq=traditional+classic+modern+theory+patriarchy&source=bl&ots=jYT42HE7-6&sig=ACfU3U2wId9ZGJZlB_X47f0Cvoz5Al-JAg&hl=tr&sa=X&ved=2ahUKEwj9sM7VrtjpAhVL8OAKHTxlCF0Q6AEwEnoECAcQAQ#v=onepage&q=traditional%20classic%20modern%20theory%20patriarchy&f=false

-STRAUSS, Anselm and CORBIN, Juliet, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*, 4th edition, Sage Publications, 2015, [consulted on 21.03.2020], https://books.google.fr/books?hl=tr&lr=&id=hZ6kBQAAQBAJ&oi=fnd&pg=PP1&dq=

strauss+et+corbin+basics+of+qualitative+research&ots=6iS8QzhCV0&sig=kwRt52sfwukR9NIYhiGv0bqcSlU#v=onepage&q=strauss%20et%20corbin%20basics%20of%20qualitative%20research&f=false

- *UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation*, UNHCR Women's Commission for Refugee Women and Children, New York, May 2002, p.108, [consulted on 15.07.2020], https://www.refworld.org/pdfid/48aa83220.pdf

-*UNHCR's Commitment to Gender Equality from Women and Development to An Age, Gender and Diversity Approach*, UNHCR, [consulted on 15.07.2020], https://www.unhcr.org/56b478939.pdf

-ÜNER, Sarp, *Toplumsal Cinsiyet Eşitliği*, Ankara, Directorate-General for the Status of Women of the Turkish Prime Ministry, October, 2008, [consulted on 06.02.2019], http://www.ilkadim.bel.tr/yerel - equal/9.pdf

-WARD, Lee, *John Locke and Modern Life*, Cambridge, Cambridge University Press, 23 August, 2010, [consulted on 21.02.2020], https://books.google.fr/books?id=NeyjcXB9dl8C&pg=PA171&lpg=PA171&dq=patriarchy+in+locke&source=bl&ots=KRJ8JQmmXl&sig=ACfU3U2RaKYBCNQNejtOhwFOVgH1e_0nOg&hl=tr&sa=X&ved=2ahUKEwjQpNL0gNvpAhWiDmMBHfVqClsQ6AEwCXoECAgQAQ#v=onepage&q=patriarchy%20in%20locke&f=false

WOLCOTT, Harry, F., *Transforming Qualitative Data, Description, Analysis and Interpretation*, 3th edition, Sage Publications, 1994, [consulted on: 21.02.2020], https://books.google.fr/books?hl=tr&lr=&id=BMqxX_TaWNEC&oi=fnd&pg=PA1&dq=wolcott+h+f+analysis+article&ots=1CvXkPKKtA&sig=NChAPZuQYZ2Fg7srGwDxTRxgI_M#v=onepage&q&f=false

II. University Works

-BERKTAY, Fatmagül, *Kadınların İnsan Haklarının Gelişimi ve Türkiye,* Istanbul Bilgi University, [online], İstanbul, Civil Society and Democracy Conference Papers, 2004, No 7, p. 3, [consulted on 17.07.2020], https://stk.bilgi.edu.tr/media/uploads/2015/02/01/berktay_std_7.pdf

-ERDOGAN, Deniz, *Toplumsal Cinsiyet ve İktidar, Hacettepe University, Institute of Social Sciences, Department of Sociology*, the lesson of introduction to women and gender, Postgraduate Homework, [consulted on 16.07.2020], https://www.academia.edu/5800814/Toplumsal_Cinsiyet_ve_İktidar

-FREY, Regina, «Paradox of Gender Budgeting», *The First International Conference on Gender Responsive Budgeting and Social Justice*, Berlin, Vilnius, 2008, [consulted on 18.06.2020], http://www.esf-gleichstellung.de/fileadmin/data/Downloads/Materialsammlung/Paradoxes_of_Gender_Budgeting.pdf

-KARAOSMANOGLU, Abdülhalim, *Bir Uluslararası İlişkiler Teorisi Olarak Feminizm*, Master's Thesis, Ankara University Institute of Social Sciences, Department of Women's Studies, Ankara, 2016, [consulted on 16.07.2020], http://hdl.handle.net/20.500.12575/33716

-KAYA, A., *AB'nin Entegre Sınır Yönetimi Kurumu Frontex'in Rolü ve Türkiye'nin Uyum Süreci*, Master Thesis, Beykent Üniversitesi, İstanbul,2005

-KEYMAN, *Fuat, Avrupa'da ve Türkiye'de Sivil Toplum*, Istanbul Bilgi University Civil Society Organizations Education and Research Unit, KARAMANİ, Arzu (editor), Civil Society and Democracy Conference Articles No. 3, 2004 [consulted on 07.01.2020], http://scholar.google.fr/scholar_url?url=http://www.academia.edu/download/32605890/avrupadaveturkiyedesiviltoplum.doc&hl=tr&sa=X&scisig=AAGBfm13WQYSLiICYRTJkprx2MAaokBKUA&nossl=1&oi=scholarr

-MOJAB, Shahzrad and GORMAN, Rachel, *The Struggle Over Lifelong Learning: A Marxist-Feminist Analysis*, Kansas State University, Manhattan, Adult Education Research Conference, Kansas State University Libraries New Prairie Press, 2001, p. 5, [consulted on 16.07.2020], https://newprairiepress.org/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2325&context=aerc

-ÖZKAZANÇ, Alev, *Bilim ve Toplumsal Cinsiyet,* in 2nd Women's Medicine and Women's Health Congress, Science And Health Policies Without Women, 20-23 May, 1st Edition, Ankara, pages 16-30, Ankara University Faculty Of Political Science, Turkish Medical Association, [consulted on 17.07.2020], https://d1wqtxts1xzle7.cloudfront.net/40078533/2._Kadin_Hekimler_Kadin_sagligi_Kongre_Kitabi_Mayis_2011.pdf?1447708036=&response-content-disposition=inline%3B+filename%3DABD_Feminist_Saglik_Merkezlerinin_Tibbil.pdf&Expires=1595060402&Signature=glL3cPk90xxOpUqqLChK5rfw8xjEJuETPL2gca8NHnbMFGZm1XUgv5YvGk9RSB5YBAFndVngLS6KmiiJo3WkCBbOG68qugF2y6nbsvGe05VmYPkGQt2AZKB4jVcB1~Q~RD59AxKrJAmf2116z-sietIHyBjkPp~U4aqumLUYA~X0JW0AoAO-bjTG4ONS9r031P0f3NSswkvxam8lzIDINTHw0QVc5q7v7FynePBYeqcPC9dpyAGceJSLOptG9zOSYRPFykq0bI6ZI~iXbMVDALp1B0nIvgrK2SNKQgfmK-M6U5qQHc-35J85OhT0~QJ3tI5edXFN8nmccIlMvVJNRg__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA#page=17

-SCHOPP-SCHILLING, Hanna Beate, «The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation», [online], *International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference,* Budapest, Hungary, 22-23 October 2004, [consulted on 18.06.2020], https://www.legislationline.org/download/id/2887/file/Role%20of%20CEDAW%20in%20Promoting%20Pol%20Reprs%20of%20Women%20-%20IDEA.pdf

-ŞANLI, Yeliz, *Küreselleşme Sürecinde İnsan Hakları: Sığınma Hakkı*, Master Thesis, Ankara University Graduate School of Social Sciences, Department of Public Law, Ankara, 2004, [consulted on 18.07.2020], https://dspace.ankara.edu.tr/xmlui/bitstream/handle/20.500.12575/27632/586.pdf?sequence=1

-TANERI, Gökhan, *Mülteci Hukuku,* p.165, [consulted on 17.04.2019], https://books.google.fr/books?id=aVx_DwAAQBAJ&pg=PA165&dq=%C4%B0%C5%9Fkence+ve+Di%C4%9Fer+Zalimane,+Gayri+%C4%B0nsani+veya+K%C3%BC%C3%A7%C3%BClt%C3%BCc%C3%BC+Muamele+veya+Cezaya+Kar%C5%9F%C4%B1+S%C3%B6zle%C5%9Fme&hl=tr&sa=X&ved=0ahUKEwj23qPP0NbhAhVMrxoKH

c-IDr4Q6AEIMjAC#v=onepage&q=%C4%B0%C5%9Fkence%20ve%20Di%C4%9Fer%20Zalimane%2C%20Gayri%20%C4%B0nsani%20veya%20K%C3%BC%C3%A7%C3%BClt%C3%BCc%C3%BC%20Muamele%20veya%20Cezaya%20Kar%C5%9F%C4%B1%20S%C3%B6zle%C5%9Fme&f=false

-TICKNER, J. A., *Gender in International Relations Feminist Perspectives on Achieving Global Security*, New York, Columbia University Press, 1992, [consulted on 15.10.2019], https://books.google.fr/books?hl=tr&lr=&id=8LtKx_vm6IUC&oi=fnd&pg=PP9&dq=ann+tickner+security&ots=THaocv_Bqe&sig=JrjNgZOqOr60YdQCl-6Hd7_rLlo#v=onepage&q=ann%20tickner%20security&f=false

III. Articles

Articles in Book

-ACKERLY, B.A., «Feminist Theory: Liberal», in SMELSER, N. J. and BALTES P. B. (Ed.), *International Encyclopedia of the Social & Behavioral Sciences*, Oxford, Pergamon Press, November, 2001, [consulted on 16.07.2020], https://www.sciencedirect.com/topics/computer-science/liberal-feminist

-ADAK, Sevgi, «Siyaset ve Toplumsal Cinsiyet», in *Toplumsal Cinsiyet Tartışmaları,* SAYGILIGİL, Feryal (Ed.), Dipnot Publications, Ankara, 2016, pages 17-32

- *Avrupa Ayrımcılık Yasağı Hukuku El Kitabı*, European Union Agency for Fundamental Rights, 2010, p. 164, [consulted on 03.07.2020], https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_TR.pdf

-BAYRAKLI, Enes and KESKIN, Kazım, «Avrupa'nın Mülteci Krizi», *Journal of Academic inquiries*, [online], Year: 2017, Volume: 12, No.: 2, pages 115-136, [consulted on 10/19/2018], http://dergipark.gov.tr/download/article-file/355347

-BINGÖL, Oktay, «Yeni Güvenlik Yaklaşımları ve 21. Yüzyıl Güvenlik Sorunları», in *Uluslararası Güvenlik Yeni Politikalar, Stratejiler ve Yaklaşımlar*, 1st edition, ÇOMAK, Hasret and SANCAKTAR, Caner and DEMIR, Sertif, Beta Publications, February 2016, pages 17-45

-BOZOK, Mehmet, «Toplumsal Cinsiyet ve Aile», in *Aileyi Anlamak, Disiplinler Arası Yaklaşım,* OKTİK, Nurgün and ÜNAL, REŞİTOĞLU, Halime (Editors.), Ankara, Nobel Publication, 2018, pasges 101-114

-CIVELEK, Yaprak, «Feminizm ve Güvenlik», in *Uluslararası Güvenlik, Yeni Politikalar, Stratejiler ve Yaklaşımlar*, ÇOMAK, Hasret; SANCAKTAR, Caner; DEMIR, Sertif (editors), İstanbul, Beta Publications, January 2016, pages 65-81

-ÇIRAKOĞLU, Okan, Cem and ALTINEL, BAYSAL, Gözde, «Türkiye'de Nefes Almak (mı?): Mülteci ve Sığınmacı LGBTİ Bireyler», in ONUR, Aras (editor), *Direnç, onur ve dahası: Disiplinler arası bakışla LGBTİ*, 1st edition, FİSA Publications, 2019, Chapter 8, pages 149-166, [consulted on 02.10.2019], https://www.researchgate.net/publication/327263415_Turkiye'de_Nefes_Almak_mi_Multeci_ve_Siginmaci_LGBTI_Bireyler

-FREEDMAN, Jane, «A Gendered Approach to Refugee and Asylum Studies», in *Gendering the International Asylum and Refugee Debate,* London, Palgrave Macmillan Publications, 2015, pages 1-20

- GUY, S. and GOODWIN-Gill, «Nonrefoulement and the New Asylum Seekers» in Refuge from Inhumanity? War Refugees and International Humanitarian Law, Leiden, Brill, 2014, p. 433-459, [consulted on 19.12.2018] https://www.researchgate.net/publication/297558394_Non-refoulement_temporary_refuge_and_the_'new'_asylum_seekers

-GUY, S. and GOODWIN-Gill, «The International Law of Refugee Protection», in *The Oxford Handbook of Refugee and Forced Migration Studies,* [online], FIDDIAN-QASMIYEH, Elena and LOESCHER, Gil and LONG, Katy and SİGONA, Nando (editors), June, 2004, [consulted on 29.11.2018], pages 1-14, http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021?print=pdf

-HUGHES, Sarah, Shaver and HUGHES, Brady, «Women in Ancient Civilizations, in Women's History in Global Perspective», in BONNIE G. Smith (editor), *Women's History*, Second Volume, Chicago, University of Illinois Press, 2004, [consulted on 16.07.2020], https://books.google.fr/books?id=maEPASodz7AC&pg=PA12&lpg=PA12&dq=neolithic+age+patriarchy&source=bl&ots=1rkCezwJt2&sig=ACfU3U2XQvLfnHO8NXE2amjyCfeUG6PUqw&hl=tr&sa=X&ved=2ahUKEwiQ5_v6wdjpAhUOA2MBHZlsDlM4ChDoATAAegQIBRAB#v=onepage&q=neolithic%20age%20patriarchy&f=false

-İLKKARACAN, Pınar and ILKKARACAN, Ipek, in «1990'lar Türkiye'sinde Kadın ve Göç», in *Bilanço 98: 75 Yılda Köylerden Şehirlere*, Istanbul, History Foundation Publications, 1998, pages 305-322, [consulted on 04.02.2019], http://kadinininsanhaklari.org/wp-content/uploads/2018/06/kadin_goc.pdf

-ÖZKÜRALPLI, Ilkay, «Queer Teori», in *Toplumsal Cinsiyet Tartışmaları,* pages 213-231, 1st edition, Ankara, Dipnot Publications, 2016

-PATEMAN, Carola, «Genesis, Fathers and the Political Liberty of Sons», in EVANS, Mary (Editor) *Feminism: Feminism and the Enlightenment*, London, Routledge Press, 2001, pages 118-154, [consulted on 16.07.2020], https://books.google.fr/books?id=rLs1RhPHIk0C&pg=PA126&lpg=PA126&dq=filmer+patriarchy&source=bl&ots=JyCWjvFrg6&sig=ACfU3U2_9CwfZCwX9i0sIBB7W-vNB5y60Q&hl=tr&sa=X&ved=2ahUKEwiS6OT4_t_pAhUQEBQKHfk2DBE4ChDoATACegQIBxAB#v=onepage&q=filmer%20patriarchy&f=false

-RUBIN, Gayle, «The Traffic in Women: Notes on the "Political Economi" of Sex», in REITER, Rayna, R. (editor) *Toward an Anthropology of Women*, London, Montly Review Press, 1975, pages 157-210, [consulted on 31.10.2019], https://philpapers.org/archive/RUBTTI.pdf

-SAM, David, L., «Acculturation of Immigrant Children Island Women», in BERRY, John, W., and SAM, David, L., (editors), *Acculturation Psychology*, Cambridge University Press, 2006, pages 403-418

-SANDIKLI, Atilla and EMEKLIER, Bilgehan, «Güvenlik Yaklaşımlarında Değişim ve Dönüşüm», in *Teoriler Işığında Güvenlik, Savaş, Barış ve Çatışma Çözümleri,* 1st edition, SANDIKLI, Atilla (editor), İstanbul, *Bilgesam Publications*, 2012, pages 3-71

-SAYGILIGIL, Feryal, «Giriş» in *Toplumsal Cinsiyet Tartışmaları*, 1st edition, Ankara, Dipnot Publications, 2016

-URAL, Sami Sezai and SHILIBEKOVA, Aigerim, «Uluslararası Güvenlik ve Yönetişim», in, *Uluslararası Güvenlik, Yeni Politikalar, Stratejiler ve Yaklaşımlar*, Editors: ÇOMAK, Hasret and SANCAKTAR, Caner and DEMIR, Sertif (Editors.), İstanbul, Beta Publications, 2016, pages 3-17

-WIESTAD, Else, « Empowerment Inside Patriarchy Rousseau and the Masculine Construction of Femininity», in LANGE, Lynda (Ed.), *Feminist Interpretations of Jean-Jacques Rousseau,* Pennsylvania, Pennsylvania State University Press, November 2002, pages 170-180, [consulted on 16.07.2020], https://books.google.fr/books?id=HhrtX_bPJygC&pg=PA169&lpg=PA169&dq=Rousseau+patriarchy&source=bl&ots=mPAl6G75Ol&sig=ACfU3U2LB3FdDH0587XdjovhTY0GUp2_rA&hl=tr&sa=X&ved=2ahUKEwi5n9SFxN3pAhUd6OAKHfzZAd4Q6AEwAnoECAgQAQ#v=onepage&q=Rousseau%20patriarchy&f=false

2) Articles online

-AĞIR, Bülent, Sarper, «Güvenlik Kavramını Yeniden Düşünmek: Küreselleşme, Kimlik ve Değişen Güvenlik Anlayışı», *Security Strategies,* [online], Year 11, No. 22, pages 97-131, [consulted on 16.01.2019], https://www.academia.edu/33022110/G%C3%BCvenlik_Kavram%C4%B1n%C4%B1_Yeniden_D%C3%BC%C5%9F%C3%BCnmek_K%C3%BCreselle%C5%9Fme_Kimlik_ve_De%C4%9Fi%C5%9Fen_G%C3%BCvenlik_Anlay%C4%B1%C5%9F%C4%B1_Rethinking_Security_Concept_Globalization_Identity_and_Changing_Security_Conception,

-AKAR, Fatma, M., «Butler'in Kadın, Cinsiyet, Toplumsal Cinsiyet, Performatif Kavramları ve Feminizme Eleştirisi», *KAOS-GL Magazine*, [online], No. 144, pages 53-56, [consulted on 17.07.2020], http://www.kaosgldergi.com/dosyasayfa.php?id=2905

-AKMAN, Adem and KILINÇ, Ismail, «AB'de Entegre Sınır Yönetiminin Gelişimi ve AB Sürecinde Türkiye'nin Entegre Sınır Yönetimine Geçiş Çalışmaları», *Journal of Turkish Administration*, [online], June 2010, No.: 467, pages 9-29, [consulted on 23.10.2018], http://www.tid.gov.tr/Makaleler/467ademakman.pdf

-ARIKAN, Gülay, «Ataerkillik Kavramı İle İlgili Sosyolojik Tartışmalar», *Hacettepe University Faculty of Letters Journal*, [online], 1997, Volume 14, No. 1-2, pages 1-24, [consulted on 20.02.2019], http://kaynakca.hacettepe.edu.tr/eser/164653/ataerkillik-kavramiyla-ilgili-sosyolojik-tartismalar

-ARSLAN, Gülay, «Birleşmiş Milletler Kadınlara Karşı Her Türlü Ayrımcılığın Ortadan Kaldırılmasına Dair Sözleşme (Öngörülen Haklar ve Öngörülen Usüller) » [online], *Journal of Istanbul University Law Faculty*, Year: 2004, Volume, LXII, No. 1-2, , pages 3-43, [consulted on 27.02.2019], https://dergipark.org.tr/tr/download/article-file/95911

-AYBAY, Rona, «Avrupa İnsan Hakları Sözleşmesi Konusunda Bazı Gözlemler ve 14. Protokol», *TBB Dergisi*, [online], Year 2010, No. 88, [consulted on 17.04.2019], http://tbbdergisi.barobirlik.org.tr/m2010-88-597

-AYTAÇ, Bilgin, Gizem, «Feminist Yaklaşım Çerçevesinde İnsan Güvenliği: Sivil Toplum Gözüyle Irak Örneği», *Marmara University Journal of Women and Gender Studies*, [online], Year 2018, Volume 2-1, pages 9-23, [consulted on 06.02.2019], https://dergipark.org.tr/tr/download/article-file/482771

-BAKAN, Zerrin, Ayşe, « Soğuk Savaş Sonrasında Yeni Güvenlik Teorileri ve Türkiye'nin Güvenlik Algılamaları», *Magazine of 21st Century*, [online], October, November, December 2007, pages 35-50, [consulted on 12.11.2018], http://www.21yuzyildergisi.com/assets/uploads/files/61.pdf

-BAKIM, Sevi, «Avrupa İnsan Hakları Mahkemesi (AİHM) Kararları Çerçevesinde Cinsiyet Ayrımcılığı », Marmara University Faculty of Law Legal Studies Journal, [online], Year 2016, Volume 22 , No. 3, pages 3191 – 3218, [consulted on 02.07.2020], https://dergipark.org.tr/en/download/article-file/373743

- BAKIRCI, Kadriye, «İstanbul Sözleşmesi », *Ankara Bar Association Journal*, Year: 2015, No. 4, pages 133-204, [consulted on 24.04.2019], https://dergipark.org.tr/download/article-file/398473

-BATIR, Kerem, «Avrupa Birliği'nin Geri Kabul Anlaşmaları: Türkiye ile AB Arasında İmzalanan Geri Kabul Anlaşması Çerçevesinde Hukuki Bir Değerlendirme», *Journal of Administrative Sciences,* [online], 2017, Volume: 15, Number 30, pages 585-604, [consulted on 24.10. 2018], http://ybd.dergi.comu.edu.tr/dosyalar/Ybd/avrupa-birligi-nin-geri-kabul-anlasmalari-turkiye-ile-ab-arasinda-imzalanan.pdf

-BAYLIS, John, «Uluslararası İlişkilerde Güvenlik Kavramı», *Uluslararası İlişkiler*, [online], Summer 2008, Volume 5, No. 18, pages 69-85, [consulted on 11.08.2018], http://www.uidergisi.com.tr/wp-content/uploads/2011/06/UIde-Guvenlik-Kavrami.pdf

- BAYRAKTAR, Tuğba, «İstanbul Sözleşmesi ve 2017 Türkiye Gölge Raporuna İlişkin Bir Değerlendirme», *Journal of Selcuk University Law Faculty*, [online], 2018, Volume 26, No. 3, pages 87-111, [consulted on 03.05.2019], https://dergipark.org.tr/tr/download/article-file/610429

-BAYSAL, Başar and LÜLECI, Çağla, «Kopenhag Okulu ve Güvenlikleştirme Teorisi», *Journal of Security Strategies*, Year 11, No. 22, pages 61-96, [consulted on 11.08.2018], http://dergipark.gov.tr/download/article-file/84601

-BEDDOES, Kacey and BORREGO, Maura, «Feminist Theory in Three Engineering Education Journals: 1995–2008», *Journal of Engineering Education*, [online], April, 2011, Volume 100, No. 2, pages 281–303, [consulted on 30.10.2019], https://onlinelibrary.wiley.com/doi/abs/10.1002/j.2168-9830.2011.tb00014.x?casa_token=p5Q5mSHAqBYAAAAA:VwGc_AvPoUCNdXVM0Z1pGMBuAQZULjph7__NcKKFDmrgd3fIjvNvj5IaarLr7rFpe6TWx26XJYUoFT4

- BENNOUNE, Karima, «Do We Need New International Law To Protect Women In Armed Conflıct? », [online], *Case Western Reserve Journal of International Law*, 2006-2007, Volume 38, No. 2, [consulted on 05.11.2019], https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1338&context=jil

-BESSON, Samantha, «Gender Discrimination under EU and ECHR Law: Never Shall the Twain Meet?», *Human Rights Law Review,* [online], 2008, Volume 8, No. 4, pages 647–682*,* [consulted on 04.07.2020], https://doi.org/10.1093/hrlr/ngn023

-BILGIN, A. Aslı, «GöçmenlereYönelik Deniz Operasyonlarında Frontex'in Müdahale Yetkisinin Uluslararası Hukuk Kapsamında Değerlendirilmesi», *Hacettepe University Journal of Law Faculty,* [online], Year 2017, No. 7(2), pages 55-82, [consulted on 22.10.2018], http://www.hukukdergi.hacettepe.edu.tr/dergi/C7S2makale3.pdf

-BODUR, Ün, Marella, « From guest editor», *Alternative Politica Feminist International Relations,* [online], October 2017, Volume 9, No. 3, [consulted on 20.11.2018], https://docs.google.com/document/d/1gs9susuycqwtf8dzxm2h8hxıjgecqev3olk254g_jpq/edit

-BORA, Aksu, «Toplumsal Cinsiyete Dayalı Ayrımcılık», *Istanbul Bilgi University Sociology and Education Studies Unit (Seçbir)*, [consulted on 07.06.2018], http://secbir.org/images/haber/2011/01/15-aksu-bora.pdf

-BÖRÜ, PARLAK, Şafak, «Kadının Korunmasına İlişkin Uluslararası Sözleşmeler ve Türkiye'nin Konumu», *Journal of TBB*, [online], Year 2017, Special No. pages 43-63, [consulted on 13.11.2019], http://tbbdergisi.barobirlik.org.tr/m2017-2017-1715

-BRAUCH, Hans, Günter, «Güvenliğin Yeniden Kavramsallaştırılması: Barış, Güvenlik, Kalkınma ve Çevre Kavramsal Dörtlüsü», *International Relations*, [online], Summer 2008, Volume 5, No. 18, pages 1- 47, [consulted on 20.11.2018], http://www.uidergisi.com.tr/wp-content/uploads/2011/06/Guvenligin-Yeniden-Kavramsallastirilmasi.pdf,

-BUTLER, Judith, «Toplumsal Cinsiyet Düzenlemeleri», *Feminism, Cogito Journal of Thought*, [online], 2nd Edition, Spring 2009, No. 58, March, 2013, pages 73-93, [consulted on 04.02.2019], https://issuu.com/buyukkutuphane/docs/cogito_dergisi_-_say__58_-_bahar_20

-CALLAMARD, Agnes, «Refugee Women: a Gendered and Political Analysis of the Refugee Experience», [online], in Daniele Joly (ed.), *Global Changes in Asylum Regimes*, London, Palgrave Macmillan Publications, 2002, pages 137-153, [consulted on 15.07.2020], https://link.springer.com/chapter/10.1057/9781403914149_8

-CANCA, Hakan, Selim, «Examination of the framework of international law for the Prevention of migrant smuggling at sea within the scope of human rights and responsibilities of aid and rescue at sea», *Journal of Human Sciences*, [online], Year 2014, Volume 11, No. 1, [consulted on 18.07.2020], https://www.j-humansciences.com/ojs/index.php/IJHS/No./view/30

-CANYAŞ, BAYATA, Aslı, «Yabancılar ve Uluslararası Koruma Kanunu Kapsamındaki Geri Gönderme Yasağının Uygulanma Koşullarının AİHM Kararları Çerçevesinde İrdelenmesi», *Hacettepe University Journal of Law Faculty,* [online], Year: 2015, Volume: 5, No. 1, pages 73–90, [consulted on 03/18/2019], http://www.hukukdergi.hacettepe.edu.tr/dergi/c5s1makale4.pdf

-CASTLES, Stephen, «Towards a Sociology of Forced Migration and Social Transformation», *Sociology Journal,* [online], Year: 2006, Sage Publications, Volume

37, No. 1, pages 13-34, [consulted on 07.06.2018], https://journals.sagepub.com/doi/abs/10.1177/0038038503037001384

- CASTLES, Stephan. and MILLER, Mark J., «The Famile Face of Migration», 1998, [online], Caritas Internationalis, [consulted on 06.10.2020], http://www.caritas.org/includes/pdf/backgroundmigration.pdf

-CESUR KILIÇASLAN, Seher and AKKUŞ, Pınar, «Türkiye'de Heteropatriarkal Sistem Baskısı Altında Lgbti'lerin Sosyal Hizmet İhtiyaçları», *Education, Science and Society Magazine,* [online], Fall 2016, Volume 14, Number 56, pages 28-54, , [consulted on 07.06.2019], http://egitimsen.org.tr/wp-content/uploads/2017/01/28-54_hakemli-makale.pdf

-CHAPMAN, Richard Allen, « Leviathan Writ Small: Thomas Hobbes on the Family», *The American Political Science Review*», [online], March 1975, Volume 69, No 1, pages 76-90, [consulted on 16.07.2020], https://www.cambridge.org/core/journals/american-political-science-review/article/leviathan-writ-small-thomas-hobbes-on-the-family/E41E6308C0A122BFDD8B4A9A472F6AA3

-CHARLESWORTH, Hilary and CHİNKİN, Christena and WRİGHT, Shelley «Feminist Approaches to International Law », *The American Journal of International Law,* [online], October 1991, Volume 85, No. 4, pages 613-645, [consulted on 16.07.2020], https://www.cambridge.org/core/journals/american-journal-of-international-law/article/feminist-approaches-to-international-law/912D0F3051C6356EAB44261B6D94B72D

-COCKBURN, Cynthia «The Continuum of Violence a Gender Perspective on War and Peace», [online] in GİLES, Wenona and HYNDMAN Jennifer (ed.), *Sites of Violence Gender and Conflict Zones*, Los Angeles, London: University of California Press, pages24-44, [consulted on 15.07.2020]

-CORBIN, Juliet and STRAUSS, Anselm, «Grounded Theory Research: Procedures, Canons, and Evaluative Criteria», *Qualitative Sociology*, [online], 1990, Volume 13, No. 1, pages 237-252, [consulted on: 21.03.2020], https://med-fom-familymed-research.sites.olt.ubc.ca/files/2012/03/W10-Corbin-and-Strauss-grounded-theory.pdf

-CRAWLEY, Heaven, «Women and refugee status: beyond the public/private dichotomy in UK asylum policy», [online], in INDRA, Doreen (ed.), *Engendering Forced Migration: Theory and Practice,* New York, Berghahn Books, 2008, p. 424, Chapter: 17, [consulted on 15.07.2020], https://www.berghahnbooks.com/title/IndraEngendering

-ÇELIK, Gizem, «Erkekler (de) ağlar!: Toplumsal Cinsiyet Rolleri bağlamında erkeklik inşası ve şiddet döngüsü», *Journal of Feminist Criticism*, [online], 27 December 2016, Volume 8, No. 2, pages 1-12, [consulted on 16.07.2020], https://cins.ankara.edu.tr/16_1.pdf

-DEĞIRMENCI, Olgun, «Mukayeseli Hukukta ve Türk Hukukunda İnsan Ticareti Suçu», *Journal of Turkey Bar Assosation*, [online], Year: 2006, No. 67, p. 59, [consulted on 03.07.2018], http://tbbdergisi.barobirlik.org.tr/m2006-67-272

-DEMIR, Ebru, «Foucault'da İktidar, Baskı Varsayımı ve Cinsellik», *Academia.edu*, [consulted on 04.03.2019],

https://www.academia.edu/12298164/Foucaultda_%C4%B0ktidar_Bask%C4%B1_Varsay%C4%B1m%C4%B1_ve_Cinsellik

-DIKICI, Erkan, «Feminizmin Üç Ana Akımı: Liberal, Marxist ve Radikal Feminizm Teorileri», [online], *The Journal of Academic Social Science Studies*, Spring 2016, Number: 43, pages 523-532, [consulted on 11.02.2019], http://www.jasstudies.com/DergiTamDetay.aspx?ID=3100

-EISENSTEIN, Zillah R., «Constructing a Theory of Capitalist Patriarchy and Socialist Feminism», [online], *Critical Sociology,* Volume: 25, No. 2-3, pages 196-217, [consulted on 16.07.2020], https://journals.sagepub.com/doi/10.1177/089692059902500209O1

-EISENSTEIN, Zillah R. «Developing a Theory of Capitalist Patriarchy and Socialist Feminism», *Insurgent Sociologist,* [online], July 1, 1977, Volume: 7, No. 3, pages 3-17, [consulted on 16.07.2020], https://journals.sagepub.com/doi/10.1177/089692057700700301

-ERCAN, Murat, «Mülteci Krizi Bağlamında Türkiye-AB İlişkileri ve Geri Kabul Anlaşması», *Regional Studies*, [online], Summer 2016, Volume 1, No. 1, pages 1-22, [consulted on 25.10.2018], http://kaynakca.hacettepe.edu.tr/eser/24906000/multeci-krizi-baglaminda-turkiye-ab-iliskileri-ve-geri-kabul-anlasmasi

-ERDOĞAN, Barış and KÖTEN, Esra, «Yeni Toplumsal Hareketlerin Sınıf Dinamiği: Türkiye LGBT Hareketi», *Marmara University Journal of Political Sciences,* [online], March 2014, Volume 2, No. 1, pages 93-113, [consulted on: 01.17.2019], http://dergipark.gov.tr/download/article-file/1167

- ERKİNER, Hakkı, Hakan, «Birleşmiş Milletler Uluslararası Adalet Divanı Kararlarının Birleşmiş Milletler Güvenlik Konseyi Aracılığıyla Uygulatılması », *MÜHF - HAD*, [online], Volume: 23, No. 2, p. 87- 101, [consulted on 18.07.2020], http://dergipark.gov.tr/download/article-file/456828

- ERTEN, Rifat, «Yabancılar ve Uluslararası Koruma Kanunu Hakkında Genel Bir Değerlendirme », *Gazi University Journal of Law Faculty,* [online], Year 2015, Volume XIX, No. 1, pages 3-52, [consulted on 03/18/2019], http://webftp.gazi.edu.tr/hukuk/dergi/19_1_1.pdf

-FILIPPEN, Chenoa, A., and PARRADO, Emilio, «A., Migration and Gender Among Mexican Women», *American Sociological Review*, [online], August, 2005, Volume 70, pages 606-632, [consulted on 30.01.2019], https://journals.sagepub.com/doi/10.1177/000312240507000404

-GÜNEŞ, Fatime, «Feminist Kuramda Ataerki Tartışmaları Üzerine Eleştirel Bir İnceleme», *Fırat University, Journal of Social Sciences,* [online], 2017, Volume 27, Number 2, pages 245-256, Elazığ, [consulted on 19.02.2019], http://dergipark.gov.tr/download/article-file/354463

-HALLIDAY, Fred, «Hidden from International Relations: Women and the International Arena», *Rethinking International Relations*, [online], 1994, pages 147-169, [consulted on 17.10.2019], https://link.springer.com/chapter/10.1007/978-1-349-23658-9_7

-HALLIDAY, Fred, «State and Society in International Relations: A Second Agenda», *Millennium*: *Journal of International Studies*, [online], [June 1, 1987, Volume 16, No 2, [consulted on 17.10.2019], https://journals.sagepub.com/doi/pdf/10.1177/03058298870160022701

-HURWITZ, Agnes, «The Collective Responsibility of States to Protect Refugees», *Oxford University Press*, [online], August, 2009, p.9, [consulted on 18, 07,2020], http://fdslive.oup.com/www.oup.com/academic/pdf/13/9780199278381_chapter1.pdf

-İNELİ, CİĞER, Meltem, «Uluslararası Hukuka Uygun Geçici Koruma Rejiminin Unsurları Üzerine», *The Journal of Migration Studies,* [online], Year: 2016, Volume: 2, No.3, pages 20-81, [consulted on 12/11/2018], http://www.gam.gov.tr/files/sayi3-3.pdfp

-KAHYA, Nizam, Özlem and SALLAN, Gül, Songül, «Türkiye'de Mültecilere Yönelik Yerleşim Politikaları ve Uydu Kentler Güvenlik Kıskacında Yaşamlar», *Süleyman Demirel University, Journal of Faculty of Economics and Administrative Sciences*, [online], Year 2017, Volume 22, Special Number on Migration, p. 1385- 1410, [consulted on 13.09.2019], https://www.researchgate.net/publication/322505224_TURKIYE'DE_MULTECILERE_YONELIK_YERLESIM_POLITIKALARI_VE_UYDU_KENTLER_GUVENLIK_KISKACINDA_YASAMLAR

-KALE, ÖZÇELIK, Fatmagül, «Kadınlara Karşı Her Biçimiyle Ayrımcılığın Ortadan Kaldırılması Sözleşmesi'nin Usule ve Esasa İlişkin Düzenlemeleri ve Türk Anayasa Hukuku'na Yansımaları», *Journal of the Court of Conflict*, Year 2016, No. 8, pages 317-340, [consulted on 21.05.2019], https://dergipark.org.tr/download/article-file/2712621

-KAPUR, Ratna, «Gender, Sovereignty and The Rise of a Sexual Security Regime in International Law and Postcolonial India», *Melbourne Journal of International Law*, [online], December, 2014, Volume 14, No 2, pages 1-29, [consulted on 05.05.2020], http://dspace.jgu.edu.in:8080/xmlui/bitstream/handle/10739/1117/GENDER%2c%20SOVEREIGNTY%20AND%20THE%20RISE%20OF%20A%20SEXUAL.pdf?sequence=1&isAllowed=y

-KAPUR, Ratna, «The Other Side of Globalization The Legal Regulation of Cross-Border Movements », *Canadian Woman Studies les Cahiers de la Femme*, [online], 2003, Volume 22, No 3-4, pages 6-11, [consulted on 05.05.2020], https://cws.journals.yorku.ca/index.php/cws/article/view/6408/5596

-KARTAL, Filiz, «Kadınların Yurttaşlığı ve Feminist Kuram», *Journal of Public Administration*, [online], September 2016, Volume 49, No. 3, pages 59-87, [consulted on 30.10.2019], https://www.researchgate.net/publication/309609743_Kadinlarin_Yurttasligi_ve_Feminist_Kuram_Women's_Citizenship_and_Feminist_Theory_in_Turkish

-KAYPAK, Şafak, «Göçün Kadınlaşması: Göç Olgusuna Toplumsal Cinsiyet Perspektifinden Bakmak», in *International Kaysem 11, 28-30 September 2017 Proceedings Book,* YATKIN, Ahmet (editor), Elazığ, Fırat University, pages 1596- 1614,

[consulted on 19.11.2019], https://www.academia.edu/36038980/G%C3%96%C3%87%C3%9CN_KADINLA%C5

%9EMASI_G%C3%96%C3%87_OLGUSUNA_TOPLUMSAL_C%C4%B0NS%C4%B0YET_PERSPEKT%C4%B0F%C4%B0NDEN_BAKMAK

-KAYPAK, Şafak and KAHRAMAN, Mehmet, «Türkiye'de Kadının İnsan Hakları ve Anayasal Yansıması», *Mustafa Kemal University Journal of Graduate School of Social Sciences,* [online], Year 2016, Volume 13, No. 33, pages 298-315, [consulted on 16.07.2020], https://dergipark.org.tr/tr/download/article-file/183441

-KILINÇ, Ayşegül, «Sınır Aşan Göçler: Mülteci Sorunu ve Göç Yönetimi», *Ombudsman Academic,* [online], Year 2018, No. 8, pages 75-102, [consulted on 19.10.2018], http://dergipark.gov.tr/ombudsmanakademik/No./38308/443450

-KIVILCIM, Zeynep, «Yabancılar ve Uluslararası Koruma Kanunu ile Geçici Koruma Yönetmeliği: Toplumsal Cinsiyet Perspektifiyle Bir Değerlendirme », *Ankara University SBF Magazine*, [online], 2016, Volume 71, No. 3, pages 919-940, [consulted on 15.07.2020], http://dergipark.gov.tr/download/article-file/220351

-KOÇAK, Seyda, «Queer Kuram», *Academia.edu,* [consulted on 17.07.2020], https://www.academia.edu/5808440/Queer_Kuram

-KOLASI, Klevis, « Eleştirel Teori ve Güvenlik: Kimin İçin Güvenlik*?*», *Ankara University, Faculty of Political Sciences, Library of International Relations*, 2014, pages 121-154, [consulted on 19.11.2018], https://www.academia.edu/9587264/Eleştirel_Teori_ve_Güvenlik_Kimin_için_Güvenlik

-KOYUNCU, Çiğdem, Aydın, «Kitap İncelemesi – Laura Sjoberg (derleyen), Cinsiyet ve Uluslararası Güvenlik- Feminist Bakış Açısı», *Journal of International Relations,* [online], Fall. 2011, Volume 8, No. 31, pages 119 – 124, [consulted on 16.11.2018], https://www.academia.edu/7158554/Kitap_%C4%B0ncelemesi_-_Laura_SJOBERG_Der._Cinsiyet_ve_Uluslararas%C4%B1_G%C3%BCvenlik_Feminist_Bak%C4%B1%C5%9F_A%C3%A7%C4%B1s%C4%B1

-KÖKÜSARI, İsmail, «Anayasa Mahkemesinin Bireysel Başvuru Kararlarının Anayasanın Genişlemesi ve Uluslararasılaşmasındaki Etkisi», *Constitutional Judgment Journal*, [online], Year 2016, No. 33, pages 303-318, [consulted on 03/20/2019], https://www.academia.edu/33294712/Anayasa_Mahkemesinin_Bireysel_Ba%C5%9Fvuru_Kararlar%C4%B1n%C4%B1n_Anayasan%C4%B1n_Geni%C5%9Flemesi_ve_Uluslararas%C4%B1la%C5%9Fmas%C4%B1ndaki_Etkisi

-KRİEGER, Nancy, «Genders, sexes, and health: what are the connections—and why does it matter? », *International Journal of Epidemiology,* [online], August 2003,Volume 32, No. 4, pages 652–657, [consulted on 16.07.2020], https://doi.org/10.1093/ije/dyg156

-LAVRYSEN, Laurens, «European Asylum Law and the ECHR: An Uneasy Coexistence», *Goettingen Journal of International Law*, [online], Year 2012, Volume 4, No. 1, p. 197-242, [consulted on 13.06.2020], https://biblio.ugent.be/publication/2099327/file/6770103

-LEE, Wendy, Lynne, «Socialist/Marxist Feminism», [online], *Oxford Bibliographies*, 15 January 2020, [consulted on 16.07.2020], https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0088.xml

-MIRKIN, Harris, «The Passive Female the Theory of Patriarchy», *American Studies*, [online], 1984, Volume 25, No. 2, pages 39-57, [consulted on 16.07.2020], https://journals.ku.edu/amsj/article/view/2566

- MOROĞLU, Nazan, «İstanbul Sözleşmesi », *Istanbul Bar Women's Rights Center,* [online], 8 March 2019, pages 7-10, [consulted on 14.11.2019], https://www.istanbulbarosu.org.tr/files/docs/khum/KH2019.pdf

-MOROĞLU, Nazan, «Uluslararası ve Ulusal Hukukta Kadının İnsan Hakları », *Yeditepe University Journal of Law Faculty,* Year 2018, Volume: 13, No.1, [consulted on 19/11/2019], https://nazanmoroglu.com/wp-content/uploads/2018/11/Uluslararas%C4%B1-ve-Ulusal-Hukukta..-Yeditepe-%C3%9C.-Hukuk-makale..20.2.2018-Beykent-%C3%9C..pdf

-NAVDAR, Hasret, «Feminizm ve Toplumsal Cinsiyet», *academia. edu*., [consulted on 05.05.2020], https://www.academia.edu/37673098/FEM%C4%B0N%C4%B0ZM_VE_TOPLUMSAL_C%C4%B0NS%C4%B0YET

-O'ROURKE, Catherine and SWAINE, Aisling, «Cedaw and The Security Council: Enhancing Women's Rights in Conflict», *International and Comparative Law Quarterly*, [online], January 2018, Volume 67, Number 1, p. 167-199, [consulted on 22.06.2020], https://www.cambridge.org/core/journals/international-and-comparative-law quarterly/article/cedaw-and-the-security-council-enhancing-womens-rights-in conflict/41BC82165E5E2FD6B79899E1BCCCAA0A/core-reader

- ÖZTÜRK, ÖVÜNÇ, Neva, «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», *Journal of Ankara University Faculty of Law*, [online], Year 2017, Volume: 66, No.1, p. 204, [consulted on 12/03/2018], http://dergiler.ankara.edu.tr/dergiler/38/2204/22871.pdf

-ÖZDEMIR, Özlem, «Değişen Uluslararası Güvenlik İnşasında Toplumsal Cinsiyet Meselesi» *Journal of Security Sciences*, [online], November, 2016, Volume 5, No 2, pages 33-59, [consulted on 04.02.2019], http://dergipark.gov.tr/download/article-file/264115

-ÖZGÜR, Ergün, « Genişleyen Avrupa Birliği'nin Göçmen İkilemi ve Yaşlanan İşgücü», July 2012, *Magazine of Marmara University,* [online], Volume10, pages 73-85, [consulted on 19.07.2020], http://dergipark.gov.tr/download/article-file/165712

-ÖZKAN, Işıl, « Avrupa İnsan Hakları Mahkemesi ve Avrupa Birliği Adalet Divanı Kararları Işığında Avrupa Birliği'nin Göç ve Sığınma Politikası», *Ankara Bar Association Journal,* [online], Year 2011, No. 69, pages 163-187, [consulted on 05.07.2020], http://www.ankarabarosu.org.tr/siteler/1944-2010/Dergiler/AnkaraBarosuDergisi/2011-1.pdf#page=165,

-ÖZKERIM, GÜNER, Neslihan, «Avrupa İnsan Hakları Mahkemesi'nin Mültecilerin Haklarının Korunmasındaki Rolü», *Journal of Migration Research,* [online], July-December 2016, Volume 2, No. 2, pages 212-241, [consulted on 13.05.2019], http://www.gam.gov.tr/files/neslihan-ozkerim.pdf

-ÖZTÜRK, ÖVÜNÇ, Neva, «Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme», *Journal of Ankara University Faculty of Law*, [online], Year:

2017, Volume: 66, No.1, pages: 201-2016, [consulted on 12/03/2018], http://dergiler.ankara.edu.tr/dergiler/38/2204/22871.pdf

-PATEMAN, Carola, « 'God Hath Ordained to Man a Helper': Hobbes, Patriarchy and Conjugal Right», *British Journal of Political Science,* [online], October 1989, Volume 19, No 4, pages 445-463, [consulted on 16.07.2020], https://www.cambridge.org/core/journals/british-journal-of-political-science/article/god-hath-ordained-to-man-a-helper-hobbes-patriarchy-and-conjugal-right/D46D95EB69CD2ED3731B974B185E4BC2

-PITTAWAY, Eileen and PITTAWAY Emma, «Refugee woman': a dangerous label: Opening a discussion on the role of identity and intersectional oppression in the failure of the international refugee protection regime for refugee women», *Australian Journal of Human Rights,* [online], June, 2004, No 20, [consulted on 15.07.2020], http://classic.austlii.edu.au/au/journals/AUJlHRights/2004/20.html

-RADAY, Frances, «Gender and democratic citizenship: the impact of CEDAW», *International Journal of the Constitution, [online], Volume 10, No. 2,* 30 March 2012, p*ages 512–530,* [consulted on 05.11.2019], https://academic.oup.com/icon/article/10/2/512/666068

-SALES, Rosemary and GREGORY, «Jeanne Refugee Women in London: The Experiences of Somali Women», *Refugee, Canada's Journal on Refugees,* [online], 1998, Volume 17, No 1, pages 16-20, [consulted on 15.07.2020], https://refuge.journals.yorku.ca/index.php/refuge/article/view/21956

-SANCAK, Kadir, « Güvenlik Kavramı Etrafındaki Tartışmalar ve Uluslararası Güvenliğin Dönüşümü», *Social Sciences Magazine*, [online], 2013, No.6, pages 123-134, pages 129-130; [consulted on 15.11.2018], http://www.ktu.edu.tr/dosyalar/sbedergisi_69519.pdf

-SEÇKİN, Mehmet, Beyhan, « Anayasa Mahkemesi'nin Bireysel Başvuru Kararları Işığında, Yaşam Hakkından Kaynaklanan Kamu Gücü İhlallerinin Değerlendirilmesi », *Journal of Ankara Bar Association*, [online], Year 2016, No. 2, pages 419-43, [consulted on 03/20/2019], http://dergipark.gov.tr/download/article-file/398529

-SEVEN, Huriye, «Avrupa İşkenceyi Önleme Sözleşmesi ve Uygulaması», [online], *Journal of Turkish Management,* [online], September 2005, No. 448, pages 101-129, [consulted on 18.07.2020], www.tid.gov.tr/Makaleler/H.Seven%20101-130.doc

-SEVER, Merin, «Queer Teori Ekseninde LGBTİ Hareketi ve Feminizm», *Journal of Birikim,* December 2014, No. 308, [consulted on 07.02.2019], https://www.birikimdergisi.com/dergiler/birikim/1/sayi-308-aralik-2014/2477/queer-teori-ekseninde-lgbti-hareketi-ve-feminizm/6599

-ŞAFAK, Gökçe Nur, «Feminizm Notları –I: Düşünsel Temeller ve Birinci Dalga», [online], *Ayarsız Magazine*, [online], 3 August 2016, [consulted on 05.05.2020], https://www.ayarsiz.net/feminizm-notlari-i-dusunsel-temeller-birinci-dalga/

-ŞAFAK, Gökçe Nur, «Feminizm Notları –II: Farklı Yollar, İkinci Dalga», [online], *Ayarsız Magazine*, 3 September 2016, [consulted on 05.05.2020], https://www.ayarsiz.net/feminizm-notlari-ii-farkli-yollar-ikinci-dalga/

-ŞAHINDE, Yavuz, «Ataerkil Egemen Erkeklik Değerlerinin Üretiminde Kadınların Rolü, Trabzon Örneği», *Fe Magazine,* [online], Year 2015, No. 1, pages 117-130, [consulted on 05.05.2020], http://cins.ankara.edu.tr/11_10.pdf

-ŞEKER, Betül Dilara and UÇAN, Gülten, «Göç Sürecinde Kadın», *CBU Journal of Social Sciences*, [online], March 2016, Volume 14, No. 1, pages 198-214, [consulted on 01.30.2019], https://www.researchgate.net/publication/301306537_GOC_SURECINDE_KADIN

-STRIK, Tineke, «The Global Approach to Migration and Mobility», *Groningen Journal of International Law*, [online], 2017, Volume 5, No. 2, p. 312, [consulted on 19.07.2020], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=31220848

-TAŞ, Gün, «Feminizm Üzerine Genel Bir Değerlendirme: Kavramsal Analizi, Tarihsel Süreçleri ve Dönüşümleri», *Journal of Academic Sensitivities,* 2016, Volume 3, No. 5, pages 163 - 176, [consulted on 27.02.2019], http://dergipark.gov.tr/download/article-file/269956

-TICKNER, J., A., «Feminist Responses to International Security Studies», *Peace Review*, [online], Mart, 2004, Volume 16, No. 1, pages 43-48, [consulted on 15.10.2019], https://www.tandfonline.com/doi/full/10.1080/10402650420002101 48?scroll=top&needAccess=true

-TICKNER, A., J., « Feminist Security Studies: Celebrating an Emerging Field», *Politics&Gender,* [online], December, 2011, Volume 7, No. 4, pages 576-581, [consulted on 15.10.2019], https://www.cambridge.org/core/journals/politics-and-gender/article/feminist-security-studies-celebrating-an-emerging-field/217878B4467BBAC0D64161CD88CD8A18,

-TICKNER, J. Ann, «What Is Your Research Program? Some Feminist Answers to International Relations Methodological Questions», *International Studies Quarterly*, [online], March, 2005, Volume 49, No. 1, pages 1-21, p. 6, [consulted on 01.16.2019], https://www.jstor.org/stable/pdf/3693622.pdf;

-TICKNER, J., Ann, «You Just Don't Understand: Troubled Engagements between Feminists and IR theorists», *International Studies Quarterly*, [online], 1997, Volume 41, No: 4, pages 625 - 626, [consulted on 01.15.2019], https://www.jstor.org/stable/2600855?seq=1#metadata_info_tab_contents,

-TOĞRAL, Koca, Burcu, «Biyopolitika, güvenlik ve Frontex'in Türkiye-Yunanistan Sınırındaki Rolü», *Journal of Migration*, [online], October 2014, Volume 1, No. 1, pages 57-76, p. 60, [consulted on 22.10.2018], https://www.academia.edu/8791488/Biyopolitika_g%C3%BCvenlik_ve_Frontexin_T%C3%BCrkiye-Yunanistan_s%C4%B1n%C4%B1r%C4%B1ndaki_rol%C3%BC

-TOKUZLU, Lami, Bertan, «Yabancılar ve Uluslararası Koruma Kanunu'nun Yasal Belirlilik İlkesi Konusunda Türk Uygulamasına Katkısı Üzerine Bir Değerlendirme », *Journal of Conflict Court,,* [online], Year 2016, No.7, p.1073, [consulted on 03/18/2019], http://dergipark.gov.tr/download/article-file/229932

-TÜR, Özlem and AYDIN KOYUNCU, Çiğdem, «Feminist International Relations Approach: Fundamentals, Development, Contribution and Problems», *International*

Relations, [online], Summer 2010, Volume 7, No. 26, pages 3-24, [consulted on 23.11.2018], https://dergipark.org.tr/en/download/article-file/540062

-UZUN, Elif, «Geri Göndermeme (Non-refoulment) İlkesinin Uluslararası Hukuktaki Konumu Üzerine Bir Değerlendirme», *International Journal of Law and Policy*, [online], 2012, Volume 8, No. 30, pages 25-58, [consulted on 31.03..2017], http://docplayer.biz.tr/1963253-geri-gondermeme-non-refoulment-ilkesinin-uluslararasi-hukuktaki-konumu-uzerine-bir-degerlendirme.html

-UZUN, Elif, «Uluslararası Hukuk Çerçevesinde BMMYK'nın Yapısı, Görevleri ve Uluslararası Mülteci Hukukunun Gelişimindeki Yeri», *Göç Araştırmaları Dergisi*, [online], July-December 2016, Volume 2, No. 2, p. 68, [consulted on 04.06.2018], http://www.gam.gov.tr/files/elif-uzun2.pdf

-YAMAN, Melda, «Ataerki: Bir Kavramın Yeniden İnşası Eski Ataerkiden Ataerkil Kapitalizme», *Journal of Education, Science, Society,* [online], 2012, No. 38, [consulted on 19.02.2019], https://www.academia.edu/37986264/Ataerki_Bir_Kavram%C4%B1n_Yeniden_%C4%B0n%C5%9Fas%C4%B1_Eski_Ataerki_den_Ataerkil_Kapitalizme

-YANIK, Lerna, K. « Liberalizm: Bir Yazın Değerlendirmesi», [online], *Journal of International Relations,* Volume 12, No. 46, pages 35-55, [consulted on 08.02.2019], http://www.uidergisi.com.tr/wp-content/uploads/2016/06/46-3.pdf

-YILMAZ, Demirhan ve ASLAN, Seyfettin, «Türkiye'nin Sınır Ötesi Göç Politikaları ve Yönetimi», *Birey ve Toplum Magazine*, [online], Spring 2015, Volume 5, Number 9, pages 23-62, [consulted on 06.06.2018], http://dergipark.gov.tr/download/article-file/307114

-YOUSAF, Farhan, Navid, «Forced Migration, Human Trafficking and Human Security », *Sage Journals,* [online], November 23, 2017, pages 209-225, [consulted on 04.07.2018], http://journals.sagepub.com/doi/pdf/10.1177/0011392117736309,

-WARD, Cynthia V., «The Radical Feminist Defense of Individualism», *89 Northwestern University Law Review*, [online], 1995, No:100, pages 870-899, [consulted on 29.10.2019], http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1102&context=facpubs

-WOLFERDS, Arnold, «National Security as an Ambiguous Symbol», *Political Science Quarterly,* December, 1952, Volume 67, No. 4 pages 481-502, [consulted on 15.10.2019],

https://www.jstor.org/stable/2145138?seq=1#metadata_info_tab_contents

-WOLFF, Kristina, «Liberal Feminism», [online], *The Blackwell Encyclopedia of Sociology,* February, 2007, [consulted on 16.07.2020], https://onlinelibrary.wiley.com/doi/epdf/10.1002/9781405165518.wbeosl040

IV. Court decisions

-«Case of Abdülaziz, Cabales and Balkandali v. United Kingdom Decision», Application No. 9214/80, 9473/81 and 9474/81, Council of Europe: European Comission of Human Rights, 12 May 1983, [consulted on 10.06.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-73505"]}

-«Case of Baczkowski and Others v. Poland », Application No. 1543/06 , Council of Europe: European Court of Human Rights, 10.05.2017, [consulted on 20.05.2019], https://hudoc.echr.coe.int/tur#{%22fulltext%22:[%22B%C4%85czkowski%20poland%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-80464%22]}

-«Case of Defrenne Sabena Belgium », Application No. 149/77, Council of Europe: European Court of Human Rights, 15 June 1978, [consulted on 03.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61975CJ0043&from=EN

- «Case of Dudgeon v. The United Kingdom », Application No. 7525/76 , Council of Europe: European Court of Human Rights, 24 February 1983, [consulted on 25.11.2019], https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61263%22]}

-«Case of EB v. France », Application No. 43546/02, Council of Europe: European Court of Human Rights, 22 January 2008, [consulted on 03.07.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-84571"]}

-« Case of Gabrielle Defrene v. Sabena Belgian », Application No. 149/77, ECJ, 15 June 1978, [consulted on 04.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?isOldUri=true&uri=CELEX:61977CJ0149

-«Case of A. Hikmatov v. Turkey », Application No: 2015/18582, Council of Europe: European Court of Human Rights, 24.09.2007, [consulted on 03.20.2019], http://www.constitutionalcourt.gov.tr/inlinepages/press/PressReleasesofJudgments/detail/72.html

-«Case of Hoechst v. Case», Case No:46/87, ECJ, 21 September 1989, [consulted on 04.07.2020], http://curia.europa.eu/juris/liste.jsf?num=46/87&language=en

-«Case of I. V. England» Application No. 25680/94, Council of Europe: European Court of Human Rights, 27 May 1997, [consulted on 03.07.2020], http://www.pfc.org.uk/caselaw/I.%20v.%20England.pdf

-«Case of Jabari V. Turkey », Application No. 40035/98, Council of Europe: European Court of Human Rights, 11.10.2020, [consulted on 25.11.2019], https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58900%22]}

- «Case of Karner V. Austria », Application No. 40016/98, Council of Europe: European Court of Human Rights, 24.10.2003 [consulted on 25.11.2019], https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61263%22]}

-«Case of Lisa Jacqueline Grant v South-West Trains Ltd. », C 249/96, ECJ, 17 February 1998, [consulted on 05.07.2020], http://curia.europa.eu/juris/liste.jsf?&num=C-249/96

-«Case of Maruco Germany», Case No. C 267/06, ECJ, 1 April 2008, [consulted on 03.07.2020], http://curia.europa.eu/juris/document/document.jsf;jsessionid=DE860C47F300FAAAA7A2EACE40E31385?text=&docid=70854&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7857885

-«Case of. Mengesha Kimfe Switzerland decision», Application No. 24404/05, Council of Europe: European Court of Human Rights, 29 Octobre 2010, [consulted on 10.06.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-100119"]}

-«Case of Modinos V. Cyprus», Application No.15070/89, Council of Europe: European Court of Human Rights, 22 April 1993, [consulted on 02.07.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-57834"]}

-«Case of M.S.S. vi. Belgium and Greece decision», Application No. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, [consulted on 10.06.2020], https://www.refworld.org/docid/4d39bc7f2.html

-«Case of Nada v. Switzerland decision», Application No. 10593/08, Council of Europe: European Court of Human Rights, 12 September 2012, [consulted on 10.06.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-113118"]}

-«Case of Niemitz v. Germany», Application No: 13710/88, Council of Europe: European Court of Human Rights, 16 December 1992, [consulted on 04.07.2020], https://hudoc.echr.coe.int/rus#{"itemid":["001-57887"]}

-«Case of Norris v. Ireland», Application No. 10581/83, Council of Europe: European Court of Human Rights, 26 October 1988, [consulted on 02.07.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-57547"]}

-«Case of OM v. Hungary », Application No. 9912/15, Council of Europe: European Court of Human Rights, 5 July 2016, [consulted on 02.07.2020], https://www.refworld.org/cases,ECHR,577b7dcf4.html

-«Case of P. and S. Cornwall County Council, England», C 13/94, ECJ, 30 April 1996, [consulted on 03.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0013&from=EN

-«Case of Römer Germany», Case No. C 147/08, ECJ, 10 May 2011, [consulted on 04.07.2020], http://curia.europa.eu/juris/liste.jsf?language=en&num=C-147/08

-«Case of Salgueıro Da Sılva Mouta V. Portugal », Application No.33290/96, Council of Europe: European Court of Human Rights, [consulted on 25.11.2019], https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58404%22]}

-«Case of Sejdic and Finci Bosnia and Herzegovina», Application No. 27996/06 and 34836/06, Council of Europe: European Court of Human Rights, 22 December 2009, [consulted on 03.07.2020], https://hudoc.echr.coe.int/fre?i=001-96491

-«Case of S.L. v. Austria », Application No. 45330/99, Council of Europe: European Court of Human Rights, 09.04.2003, [consulted on 03.07.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-60877"]}

-«Case of Sufi and Elmi United Kingdom decision», Application No. 8319/07 and 11449/07, Council of Europe: European Court of Human Rights, 28 November 2011, [consulted on 10.06.2020] https://hudoc.echr.coe.int/fre#{"itemid":["001-105434"]}

-«Case of Suso Musa v. Malta decision», Application No. 42337/12, Council of Europe: European Court of Human Rights, 9 December 2011, [consulted on 10.06.2020], https://hudoc.echr.coe.int/fre#{"itemid":["001-122893"]}

- «Case of Unal Tekeli Turkey », Application No: 29865/96, Council of Europe: European Court of Human Rights, 16 November 2004, [consulted on 03.07.2020], https://hudoc.echr.coe.int/eng#{"itemid":["001-67482"]}

-«Constitutional Court Decision», Application No. 2015/68, Decision No. 2017/166, 29.11.2017, [consulted on 10.10.2019], http://kararlaryeni.anayasa.gov.tr/Karar/Content/6e55c0b8-bb09-480f-9737-57c9b0199fa0?excludeGerekce=False&wordsOnly=False

-«Council Decision of 13 June 2002», European Union Council Decision, 2002/463/EC, [consulted on 20.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002D0463

-Council of State 10. Department, Application No. 2008/6039, Decision No. 2012/1678, [consulted on 04/24/2019], https://m.lexpera.com.tr/ictihat/danistay/e-2008-6039-k-2012-1678-t-20-4-2012

-«Council Directive 2001/55/EC», 20 July 2001, [consulted on 15.10.2019], https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF

-«Council Regulation (EC) », No 2725/2000, *Official Journal L 316 , 15/12/2000 P. 0001 – 0010,* [consulted on 10/19/2018], http://madde14.org/index.php?title=AT_Konsey_T%C3%BCz%C3%BC%C4%9F%C3%BC_EURODAC

-«Directive 2013/33/EU of the European Parliament and of the Council», 26.03.2013, [consulted on 19.07.2020], https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0033

-«M. A. Application Constitutional Court Interim Decision on the Measure», Turkey, Constitutional Court, Application No: 2016/220, Decision Date: 20.01.2016, [consulted on 03/20/2019], http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/dc1f5baf-97a1-4c82-b8f0-297176907fc2?wordsOnly=False

V. Resolutions, Recommendations

-«Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazırlanan İkinci ve Üçüncü Birleştirilmiş Periyodik Türkiye Raporu», Ankara, 6 September 1996, [consulted on 24.06.2020], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/ulke_raporlari/CEDAW%20Komitesi%27ne%20verilen%20TÜRKİYE%20RAPORU%202%20ve%203.%20dönem.pdf

-«Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazırlanan İkinci ve Üçüncü Birleştirilmiş Periyodik Türkiye Raporu», Ankara, 8 August 2003, [consulted on 24.06.2020],

https://humanrightscenter.bilgi.edu.tr/media/uploads/2015/08/03/CEDAW:C:TUR:4-5.pdf

- «Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazırlanan Altıncı Birleştirilmiş Periyodik Türkiye Raporu», Ankara, 24 November 2008, [consulted on 24.06.2020], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/ulke_raporlari/CEDAW%20Komitesi%27ne%20verilen%20TÜRKİYE%20RAPORU%206.%20dönem.pdf

- «Birleşmiş Milletler Cedaw Komitesine Sunulmak Üzere Hazırlanan Yedinci Periyodik Türkiye Raporu», Ankara, 2 December 2014, [consulted on 24.06.2020], https://humanrightscenter.bilgi.edu.tr/media/uploads/2015/08/03/CEDAW:C:TUR:7.pdf

-«Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted», 2004/83/EC of 29 April 2004, [consulted on 03.22.2019], https://eur-lex.europa.eu/lexuriserv/lexuriserv.do?uri=oj:l:2011:337:0009:0026:en:pdf

-«General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women», CEDAW, C/CG/32, 12 November 2014, [consulted on 25.06.2020], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/32&Lang=en

-«Grevio Baseline Evaluation Report Turkey», Grevio, Strasbourg, 15 October 2018, [consulted on 22.11.2019], https://rm.coe.int/eng-grevio-report-turquie/16808e5283

-«Presidency Conclusions European Council Meeting in Laeken 14 and 15 December 2001», European Council, pages 11-12, [consulted on 10/22/2018], https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/68827.pdf

- «Recommendation Discrimination Against Homosexuels», Parliamentary Assembly, REC 924, 1981 - 33rd Session - Second part, 01.10.1981, [consulted on 29.11.2019], https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=14958&lang=EN

- «Regulation (Ec) No 863/2007 of The European Parliament and of the Council», 11 July 2017, Official Journal of the European Union, L 199/30,

[consulted on 19.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007R0863

-«Report of CEDAW 38 (A/45/38),», New York, No. 38 (A/45/38), Ninth Session, 1990, [consulted on 24.06.2020], https://undocs.org/pdf?symbol=en/A/45/38

-«Report of CEDAW 38 (A/60/38)», New York, No. 38 (A/60/38), Thirty-second, Thirty-third Session, 2005, [consulted on 24.06.2020], https://undocs.org/pdf?symbol=en/A/60/38(SUPP)

-«Report of CEDAW/C/TUR/CO/6», New York, No. CEDAW/C/TUR/CO/6, Forty-sixth Session, 12-30 July 2010, [consulted on 24.06.2020], https://undocs.org/en/CEDAW/C/TUR/CO/6

- «Report of CEDAW/C/TUR/CO/7», New York, No. CEDAW/C/TUR/CO/7, 25 July 2016, [consulted on 24.06.2020], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/TUR/CO/7&Lang=En

-«Statute of the Office of the United Nations High Commissioner for Refugees», General Assembly Resolution 428 (V) O F 14 December 1950, [consulted 30.10.2018], https://www.unhcr.org/4d944e589.pdf

-«Tampere European Council 15 and 16 October 1999 - Presidency Conclusions», European Parliament, [consulted on 19.07.2020],

http://www.europarl.europa.eu/summits/tam_en.htm#c

-«Temporary Protection», European Commission, [consulted on 15.10.2019], https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/temporary-protection_en

-«Temporary protection if there is a mass influx of displaced people», Directive 2001/55/EC, [consulted on 05/04/2018], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0055

-«Temporary Protection Regulation», Council of Ministers, 13.10.2014, [consulted on 12.03.2018], https://www.resmigazete.gov.tr/eskiler/2014/10/20141022-15-1.pdf

- «Temporary Refugee», No. 12A (S/35/12/Add. 1), Executive Committee of the High Commissioner's Program, 16 October 1980, [consulted on 15.10.2019], https://www.unhcr.org/excom/exconc/3ae68c443b/temporary-refuge.html

-«Refugee Women and International Protection», UNHCR, No. 39, 18 October 1985, [consulted on 25.11.2019], https://www.unhcr.org/excom/exconc/3ae68c43a8/refugee-women-international-protection.html

VI. Conventions and Codes

-«Additional Optional Protocol to the Convention on Elimination of All Forms of Discrimination against Women», United Nations Human Rights Office of the High Commissioner, [consulted on 26.11.2019], https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx

-«Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation», Official Journal of the European Union, L 134/3, 07.05.2014, [consulted on 20.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0507%2801%29

-«Arab Convention on Regulating Status of Refugees in the Arab Countries», League of Arab States, 1994, [consulted on 03.22.2019], https://www.refworld.org/docid/4dd5123f2.html

-«Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection», No. 103 (LVI) - 2005, 7 October 2005, [consulted

on 03.22.2019], https://www.refworld.org/topic,50ffbce576f,50ffbce5772,43576e292,0,,exconc,.html

-«Constitution of Turkey», Law No. 2709, 18.10.1982, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 17863, 09.11.1982, [consulted on 03.10.2019], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf

-«Consultant Law», Law No. 2575, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 17580, 20.01.1982, pages 5437- 5456/3, [consulted on 03/29/2019], http://www.mevzuat.gov.tr/mevzuatmetin/1.5.2575.pdf

-«Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment», General Assembly Resolution 39/46, 10 December 1984, [consulted on 18.07.2020], https://www.ohchr.org/en/professionalinterest/pages/cat.aspx

-«Convention on the Elimination of All Forms of Discrimination against Women», UN Human Rights Office of the High Commissioner, New York, 18 December, 1979, [consulted on 24.04.2019], https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx

-«Convention on the Political Rights of Women», United Nations, Treaty Series, Volume 193, p. 135., [consulted on 17.07.2020], https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-1&chapter=16&lang=en

-«Council of Europe Convention on preventing and combating violence against women and domestic violence», 01.08.2014, No 210, [consulted on 16.07.2020], https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210

-«Declaration on Territorial Asylum», UN General Assembly, A/RES/2312(XXII), 14 December 1967, http://www.unicankara.org.tr/doc_pdf/metin_ant4.pdf

-«Discrimination on the basis of sexual orientation and gender identity», Resolution 1728, Parliamentary Assembly, 29 April 2010, [consulted on 29.11.2019], https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17853&lang=en

-«General Justification of the Law on Foreigners and International Protection», Turkey, Grand National Assembly of Turkey, Ankara, No. 310, [consulted on 03/18/2019], https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss310.pdf

-«Gülhane Military Medical Academy Law», Law No. 2955, Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 18226, 19.11.1983, [consulted on 10.10.2019], http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2955.pdf

-«Foreigners and International Protection Law », Law No. 6458, Turkey, Grand National Assembly of Turkey, Ankara, 04.04.2013, Official Newspaper No. 28615, 11.04.2013, [consulted on 11.06.2019], https://www.resmigazete.gov.tr/eskiler/2013/04/20130411-2.htm

-«Implementing The Schengen Agreement», Official Journal, 22.09.2000, L 239 , P. 0019 – 0062, [consulted on 19.07.2020],

http://www.madde14.org/index.php?title=Schengen_Y%C3%BCr%C3%BCtme_Anla%C5%9Fmas%C4%B1

-«International Covenant on Civil and Political Rights », General Assembly Resolution 2200 A (XXI), 16 December 1966, [consulted on 18.07.2020], https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

-«Labor Law», Law No.4857, 22.05.2003, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 25134, 10.06.2003, [consulted on 04.10.2019], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4857.pdf

-«Law on the Establishment and Procedures of the Constitutional Court», Law No. 6216, Turkey, Grand National Assembly of Turkey, Ankara, 22.04.1962, Official Newspaper No.11091, 25.04.1962, [consulted on 11.06.2019], https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc045/kanuntbmmc045/kanuntbmmc04500044.pdf

-« Law on the Protection of the Family and Prevention of Violence Against Women », Law No. 6284, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 28239, 20.03.2012, pages 11541- 11550, [consulted on 26.06.2020], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6284.pdf

-«Making Some Arrangements Under the Extraordinary Carpet Decision on the Provision of Law», Law No. 676, 03.10.2016, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 29872, 29 October 2016, [consulted on 03.10.2019], http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm

-«Ministry of Interior General Directorate of Security Application Instruction», Turkey, Ministry of Interior, Ankara, No. B.05.1.EGM.0.13.03.02/16147 71810–12/Gnl.D.6-6, 22 June 2006, [consulted on 03/22/2017], http://www.multeci.org.tr/wp-content/uploads/2016/12/57-Sayili-Genelge-2010-Degisikligi.pdf

-«Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto», No.046, Strasbourg, 16/09/1963, [consulted on 25.06.2019], https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046

- «Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms », No. 117, Strasburg, 22/11/1984, [consulted on 25.06.2019], https://humanrightscenter.bilgi.edu.tr/media/uploads/2016/08/26/AIHS_7.protokol.pdf

- «Schengen Agreement », Official Journal, L 239, 22/09/2000 P. 0019 - 0062 , 14 June 1985, [consulted on 19.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42000A0922%2802%29

-«The Law About Contracted Officers and Petty Officers will be Employed in Turkish Armed Forces», Law No. 4678, Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 24439, 21.06.2001, pages 7965- 7974-3, [consulted on 10.10.2019], http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4678.pdf

-«The UN Charter», San Francisco, 26 June 1945, [consulted on 16.04.2019], https://treaties.un.org/doc/publication/ctc/uncharter.pdf

-«Treaty on the European Union and The Functioning of the European Union», 1 January 1958, (consolidated version, 26.10.2012), C 326/47, *Official EN Journal of the European Union,* [consulted on 19.07.2020], https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:EN:PDF

-«Treaty on European Union and the Treaty on the Functioning of the European Union», *Official Journal C 326 , 26/10/2012 P. 0001 – 0390,* [consulted on 04.07.2020], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT

-«Turkish Armed Forces Health Talent Regulation », Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 29885, 11.11.2016, [consulted on 05.06.2019], http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20158136.pdf

-«Turkish Armed Forces Staff Law», Law No. 926, Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No. 12670, 10.08.1967, page 2352, [consulted on 10.10.2019],https://www.mevzuat.gov.tr/MevzuatMetin/1.5.926.pdf

-«Turkish Criminal Code », Law No. 5237, 26.09.2004, Turkey, Grand National Assembly of Turkey, Ankara, Official Newspaper No. 25611, 12.10.2004, [consulted on 03.10.2019], https://www.resmigazete.gov.tr/eskiler/2004/10/20041012.htm#1

V. Internet Resources

-«About Us», *OXFAM International,* [consulted on 20.07.2020], https://www.oxfam.org/en/about

-ACAR, Feride, «CEDAW ve İhtiyari Protokol», [consulted on 12.11.2019], https://www.turkhukuksitesi.com/showthread.php?t=2183

-«A Comprehensive Response to the Humanitarian Crisis in the former Yugoslavia», 24 July 1992, HCR/IMFY/1992/2, [consulted on 15.10.2019], https://www.refworld.org/docid/438ec8aa2.html

-«Asker adayları artık soyunmayacak», Sabah Newspaper, 13.11.2015, [consulted on 05.06.2019], https://www.sabah.com.tr/gundem/2015/11/13/asker-adaylari-artik-soyunmayacak

-«AB – Türkiye Geri Kabul Anlaşması: Göçmenlerin, Mültecilerin ve Sığınmacıların Hakları Güvende mi? », EMHRN, [consulted on 10.29.2019], http://www.euromedrights.org/eng/2013/06/20/an-eu-turkey-readmission-agreement-undermining-the-rights-of-migrants-refugees-and-asylum-seekers/

-«AB: Türkiye ile yapılan mülteci antlaşmasının ortaya çıkarttığı insan haklarının bedeli başka bir yerde tekrarlanamayacak kadar yüksek», *Amnesty International,* 14 February 2017, [consulted on 20.07.2020], https://www.amnesty.org.tr/icerik/ab-turkiye-ile-yapilan-multeci-anlasmasinin-ortaya-cikardigi-insan-haklarinin-bedeli-baska-bir-yerde-tekrarlanamayacak-kadar-yuksek

-«Asylum &The Rights of Refugees» *International Justice Resource Center*, Juliet 16, 2020, [consulted on 18.07.2020], https://ijrcenter.org/refugee-law/

-«Ataerkil Pazarlık», see, [consulted on 16.07.2020], https://feministsozluk.com/discussion/737/ataerkil-pazarlik, feminist dictionary

-AVCI, Onurkan, «Lambda İstanbul Kapatıldı», Birgün Newspaper, 30.05.2018, [consulted on 10.10.2019], https://www.birgun.net/haber/lambda-istanbul-kapatildi-40793

-«"Avrupa ve Türkiye'de Göç Ağı" AB Politikalarına Göre İltica Prosedürleri Bilgilendirme Seminer Kılavuzu », 2017, [consulted on 18.07.2020], http://migrationnetworkproject.eu/wp-content/uploads/2017/06/Minaret_Izmir_Training_Manual.pdf

- AYATA, Gökçiçek, «Feride Acar ile İstanbul Sözleşmesi ve Grevio Üzerine», Istanbul Bilgi University Human Rights Law Application and Research Center, 11 April 2016, [consulted on 30.06.2020], https://insanhaklarimerkezi.bilgi.edu.tr/tr/blog/feride-acar-ile-istanbul-sozlesmesi-ve-grevio-uzer/

-«Beijing Declaration and Platform for Action», Beijing, The Fourth World Conference on Women, 4-15 September 1995, [consulted on 13.11.2019], https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

-«Birleşmiş Milletler Mülteciler Yüksek Komiserliği Yürütme Komitesi», Madde 14, [consulted on 30.10.2018], http://madde14.org/index.php?title=Birleşmiş_Milletler_Mülteciler_Yüksek_Komiserliği_Yürütme_Komitesi

-«Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law», United Nations Human Rights Office of the High Commissioner, New York and Geneva, 2012, [consulted on 05.11.2019], https://www.ohchr.org/Documents/Publications/BornFreeAndEqual_Turkish.pdf

-«Biz Kimiz? », Sığınmacılar ve Göçmenlerle Dayanışma Derneği, [consulted on: 17.01.2020], https://sgdd.org.tr/who-we-are/

-«Board», ILGA, [consulted on: 21.01.2020], https://ilga.org/about-us/board

-BORA, Aksu, «Toplumsal Cinsiyete Dayalı Ayrımcılık: Çok Boyutlu Yaklaşımlar», *Istanbul Bilgi University Sociology And Education Studies Unit*, [consulted on 12.11.2019], https://cws.emu.edu.tr/tr/PublishingImages/sbsb-203-secmeli-ders/Toplumsal%20cinsiyet%20ve%20Hukuk_Aksu%20Bora.pdf

-«CEDAW 40 Years in: What Have We Learned and What has Improved», see, [online], *Heinrich Böll Stiftung,* 10 December 2019, [consulted on 18.06.2020], https://www.boell.de/en/2019/12/10/cedaw-40-years-what-have-we-learned-and-what-has-improved

-CELIK, Ilayda, «3. Kuşak Feminizm », *Minerva Magazine*, January, 2018, [consulted on 17.07.2020], https://minervadergi.wordpress.com/2018/01/20/ilayda-celik-yazdi-3-kusak-feminizm/

-«Charter of Solidarity Association with Refugees», [consulted on: 13.01.2020], http://www.multeci.org.tr/wp-content/uploads/2016/10/Tuzugumuz.pdf

-«CIMER», [consulted on: 06.03.2020], https://www.cimer.gov.tr/

-«Cinsiyet Eşitliği», [consulted on 19/11/2019], https://www.ilo.org/ankara/projects/gender-equality/lang--tr/index.htm

-«Committee on the Elimination of Discrimination Against Women», United Nations Human Rights, Office of the High Commissioner, [consulted on 18.06.2020], https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx

-Conclusions Adopted by The Executive Committee on the International Protection of Refugees 1975 – 2009 (Conclusion No. 1 – 109), Office of the United Nations High Commissioner for Refugees Division of International Protection Services, December, 2009, https://www.unhcr.org/en-my/578371524.pdf

-«Declaration on the Elimination of Violence Against Women », proclaimed by General Assembly Resolution 48/104, 20 December 1993, [consulted on 13.11.2019], https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx

-DAĞISTANLI, Sorel, «2019 Şiddet Raporu: Türkiye'de her üç dakikada bir kız çocuğu cinsel saldırıya uğruyor », *Tarafsız News Agency,* 28.08.2019, [consulted on 19.11.2019], https://www.tarafsizhaberajansi.com/2019/08/28/ozel-haber-2019-siddet-raporu-turkiyede-her-uc-dakikada-bir-kiz-cocugu-cinsel-saldiriya-ugruyor/

-«Dernek Tüzüğü», Hevi LGBTİ Association, [consulted on: 20.01.2020], http://hevilgbti.org/dernek-tuzugu/

-«Discrimination on grounds of sexual orientation and gender identity in Europe», 2nd edition, Strasbourg, Council of Europe Publishing, September, 2011, p. 5, [consulted on 13.05.2019], https://www.coe.int/t/commissioner/Source/LGBT/LGBTStudy2011_Turkish.pdf

-EDAL, «*Finland: Supreme Administrative Courts overturns rolling on asylum application on grounds of sexual orientation and gender identity*», [online], August 20, 2019, [consulted on 15.07.2020], https://www.asylumlawdatabase.eu/en/content/finland-supreme-administrative-court-overturns-ruling-asylum-application-grounds-sexual

-EDWARDS, Alice, «Age and Gender Dimensions in international refugee law», pages 46-80, [consulted on 06.05.2019], https://www.unhcr.org/419c74784.pdf

-ESEN, Yasemin, «Cinsiyet ve Toplumsal Cinsiyet, Kavramsal, Kuramsal Perspektifler», *Ankara University Open Course Materials*, [consulted on 16.07.2020], https://acikders.ankara.edu.tr/pluginfile.php/72069/mod_resource/content/0/TOPLUMSAL%20C%C4%B0NS%C4%B0YET-kavramsal%20ve%20kuramsal%20perspektif.pdf

-«European Integrated Border Management», European Commission, [consulted on 20.07.2020], https://ec.europa.eu/home-affairs/content/european-integrated-border-management_en

-EVIN, Mehveş, «Suriyelilerle evlilik ticarete dönüştü», Milliyet Newspaper, 27 January 2014, [consulted on 04.10.2019], http://www.milliyet.com.tr/yazarlar/mehves-evin/suriyelilerle-evlilik-ticarete-donustu-1828673

-«Femina», cevirsozluk.com, [consulted on 17.07.2020], https://turkce-latince.cevirsozluk.com/#la/tr/femina%0A

-«Feminist Perspectives on Sex and Gender», Stanford Encyclopedia of Philosophy, [online], 25 October 2017, [consulted on 17.06.2020], https://plato.stanford.edu/entries/feminism-gender/

-FINE, Cordelia and SOJO, Victor, «Women's value: beyond the business case for diversity and inclusion», The University of Melbourne, [consulted on 16.07.2020], https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30165-5/fulltext

-«FIPL», Turkey, the Grand National Assembly of Turkey, Ankara, No. 6458, Official Newspaper, No. 28615, 11.04.2013, pages 12019- 12064-1, [consulted on: 19.03.2020], https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf

-«Fire in Moria refugee camp on Lesbos island», 09.09.2020, [consulted on 06.10.2020], https://www.dw.com/tr/midilli-adasındaki-moria-sığınmacı-kampında-yangın/a-54861782

-FREEDMAN's articles, see, Cresppa, «Publications», [consulted on 15.07.2020], http://www.cresppa.cnrs.fr/gtm/equipe/les-membres-du-gtm/freedman-jane/?lang=fr

FREDMAN, Sandra and GOLDBLATT, Beth, «Gender Equality and Human Rights», 4 July 2015, UN Women, http://www.ungei.org/resources/files/goldblatt-fin.pdf, 04.11.2019

-«Gender, Gender Concepts and Definitions», see, [online], [consulted on 18.06.2020], http://www.ekvilib.org/wp-content/uploads/2017/06/01_Gender_Concepts.pdf

-«Gender», *World Health Organization*, [consulted on 16.07.2020], https://www.who.int/health-topics/gender

-«Gender Inequality Index », United Nations Human Development Program Development Reports, [consulted on 12.05.2019], http://hdr.undp.org/en/composite/GII

«-General Recommendations», CEDAW Committee, [consulted on 24.06.2020], https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx

-«Grevio Türkiye'ye İlişkin İlk Değerlendirme Raporunu Açıkladı», *İstanbul Bilgi University Human Rights Research and Application Center,* 15 Ekim 2018, [consulted on 22.11.2019, https://insanhaklarimerkezi.bilgi.edu.tr/tr/news/none-grevio_turkiye_raporunu_acikladi/

-«Guidelines on International Protection, No 9», UNHCR, HCR/GIP/12/09, 23 October 2012, [consulted on 25.11.2019], https://www.unhcr.org/509136ca9.pdf

-«Guidelines on Temporary Protection or Stay Arrangements», [online], UNHCR, [consulted on 12/17/2018], https://www.unhcr.org/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html

-«Guidelines on the Protection of Refugee Women», Office of the United Nations High Commissioner for Refugees, Geneva, July, 1991, [consulted on 25.11.2019], https://www.refworld.org/docid/3ae6b3310.html

-GÜL, Ezgi and ER, Tolga (translators), «Suriyeli LGBTİ Mülteciler: Türkiye'de Eşcinsel Olmak Hayatı Daha da Zor Hale Getiriyor», *Newspaper Karınca,* 14 July 2017, [consulted on 02.10.2019], http://gazetekarinca.com/2017/07/suriyeli-lgbti-multeciler-turkiyede-escinsel-olmak-hayati-daha-da-zor-hale-getiriyor/

-GÜNAYDIN, Enis, «CHP Raporu: 1 milyon Suriyeli kayıt dışı çalışıyor, 200 bini çocuk», euronews, 05.08.2019, [consulted on 02.10.2019], https://tr.euronews.com/2019/08/05/chp-raporu-1-milyon-suriyeli-kayit-disi-calisiyor-200-bini-cocuk

-GÜNER, Umut and KALKAN, Pelin and ÖZ, Yasemin and ÖZSOY, Elif , Ceylan and SÖYLE, Fırat, «Türkiye'de Cinsel Yönelim veya Cinsiyet Kimliği Temelinde Ayrımcılığın İzlenmesi Raporu 1 Ocak – 30 Haziran 2010», Istanbul Bilgi University Human Rights Law Research Center, Istanbul, February, 2011, p. 13, [consulted on 05.06.2019], https://webcache.googleusercontent.com/search?q=cache:wM2GuIzRTNQJ:https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/02/24/Cinsel_Yonelim_veya_Cinsiyet_Kimligi_Izleme_Raporu.doc+&cd=6&hl=tr&ct=clnk&gl=fr

-GÜNEŞ, Ahmet, «İlk eylemden bugüne LGBTİ hareketi», Platform 24, [consulted on 24.05.2019], http://platform24.org/objective/365/ilk-eylemden-bugune-lgbti-hareketi

-GÜRGEN, Murat, Ankara, Haber Turk, 06.02.2013, «'Sakıncalı' eşcinseller askere gitmeyecek", [consulted on 05.06.2019], https://www.haberturk.com/polemik/haber/817610-sakincali-escinseller-askere-gitmeyecek

-«Güvenli Olmayan Sığınak Türkiye'de Sığınmacılar ve Mülteciler Etkili Korumaya Erişemiyor», Amnesty International, Year 03.06.2016, No: EUR 44/3825/2016, [consulted on 03.18.2019], https://www.amnesty.org/en/documents/eur44/3825/2016/tr/

-«Hakkımızda», Mülteci Derneği, [consulted on: 13.01.2020], http://www.multeci.org.tr/hakkimizda/

-«Hakkımızda», Mülteci Hakları Koordinasyonu, 22 August 2019, [consulted on: 21.01.2020], https://multecihaklari.org/?p=232

-«Hakkımızda », Organization for Refugee, Asylum, Migration, (ORAM), [consulted on: 21.01.2020], https://oramrefugee.org/who-we-are/about-us/

-«Hakkımızda», Refugee Rights Center, [consulted on: 16.01.2020], https://www.mhd.org.tr/tr/hakkimizda

-« Hakkımızda», Refugee Rights Coordination, 22 August 2019, [consulted on: 21.01.2020], https://multecihaklari.org/?p=232

-«Herkes Özgür ve Eşit Doğar, Uluslararası İnsan Hakları Hukukunda Cinsel Yönelim ve Cinsiyet Kimliği», UN High Commissioner for Human Rights, 2013, [consulted on 25.07.2019],

https://www.ohchr.org/Documents/Publications/BornFreeAndEqual_Turkish.pdf

-«History and Theory of Feminism», *GWA net Central Asia,* [consulted on 17.07.2020], http://www.gender.cawater-info.net/knowledge_base/rubricator/feminism_e.htm

-«Human Rights and Gender Identity Report», Commissioner for Human Rights, CommDH/IssuePaper (2009)2, Strasbourg, 29 July 2009, [consulted on 16.05.2019], https://rm.coe.int/16806da753

-HUMAN Rights Watch, «*World Report 2020*», [online], New York, Seven Stories Press, 2019, p. 652, [consulted on 15.07.2020], https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf

-«2018 yılında Türkiye'de Gerçekleşen Homofobi ve Transfobi Temelli Nefret Suçları Raporu », Kaos-GL, April 2019, Ankara, [consulted on 19.11.2019], http://www.kaosgldernegi.org/resim/yayin/dl/nefret_suclari_raporu_2018_web.pdf

-«2001'den 2015'e AKP'nin LGBTİ Tarihi», BIA News Center, İstanbul, 26 September 2015, [consulted on 10.10.2019], https://m.bianet.org/biamag/lgbti/167837-2001-den-2015-e-akp-in-lgbti-tarihi

-«ILGA Europe», Twitter, [consulted on: 23.01.2020], https://twitter.com/ilgaeurope/status/1003584668183285760

-INCE, Feyzanur, «68 Kuşağı, İkinci Dalga Feminizm ve Cinsel Devrim Üzerine Mukayeseli Bir Değerlendirme», [online*], Association Of History, Economics And Politics Research*, 19 July 2018, [consulted on 17.07.2020], https://www.tesadernegi.org/68-kusagi-ikinci-dalga-feminizm-ve-cinsel-devrim-uzerine-mukayeseli-bir-degerlendirme.html

-«Inter-American Convention on the Prevention, Punishment and Elimination of Violence Against Women», Multilateral Treaties, [consulted on 13.11.2019], https://www.oas.org/juridico/english/treaties/a-61.html

-«Interim Measures», European Court of Human Rights, March 2020, [consulted on 13.06.2020], https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf

-«International Human Rights Law and Gender Equality and Non-Discrimination Legislation Requirements and Good Practices», ICJ Briefing paper, April 2014, [consulted on 04.11.2019],https://www.icj.org/wp-content/uploads/2014/05/GEL-BRIEFING-ELECwhole.pdf

-«Iranlı mülteci LGBTİ'ler: Ötekileştirilenlerin Ötekisi», *T 24,* 23 May 2017, [consulted on 26.11.2019], https://t24.com.tr/haber/iranli-multeci-lgbtiler-otekilestirilenlerin-otekisi,405409

-«İstanbul: Suriyeli eşcinsel mülteci 'başı kesilmiş halde bulundu'», BBC News, 4 August 2016, [consulted on 03.10.2019], https://www.bbc.com/turkce/haberler-turkiye-36972793

-«İşgücü İstatistikleri, Haziran 2019», Turkish Statistical Institute, No. 30686, 16 September 2019, [consulted on 04.10.2019], http://www.tuik.gov.tr/PreHaberBultenleri.do?id=30686

-«KADAV ile destekleyeceğimiz araştırma projelerini konuştuk», [consulted on: 17.01.2020], http://siviltoplumdestek.org/toplumsal-cinsiyet-esitligi-fonu/kadav-ile-destekleyecegimiz-arastirma-projelerini-konustuk/

-«Kadına Karşı Her Türlü Ayrımcılığın Ortadan Kaldırılması Sözleşmesi CEDAW», Kadının İnsan Hakları Yeni Çözümler Derneği, [consulted on 30.06.2020], https://www.kadinininsanhaklari.org/savunuculuk/uluslararasi-sozlesmeler-ve-mekanizmalar/cedaw/#:~:text=KADINA%20KARŞI%20HER%20TÜRLÜ%20AYRIMCILIĞIN%20ORTADAN%20KALDIRILMASI%20SÖZLEŞMESİ%20(CEDAW)&text=Kadın%20örgütlerinin%20CEDAW%20Komitesi%27ne,başlanan%20bir%20uygulama%20haline%20geldi

-«Kadınlara Karşı Ayrımcılığın Önlenmesi Komitesi Genel Tavsiye Kararları 1986-2013», [consulted on 07.11.2019], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/tavsiye_kararlari/CEDAW%20Komitesi%20Tavsiye%20Kararlar%C4%B1_(1-29).pdf

-«Kadın Cinayetlerini Durduracağız Platformu 2019 Raporu», The Platform of We Will Stop Women Murders, 05.07.2019, [consulted on 13.10.2020]

-«Kadın Dayanışma Vakfı», [consulted on: 17.01.2020], https://acikacik.org/sivil-toplum-kurulusu/kadin-dayanisma-vakfi

-«Kadın Dayanışma Vakfı Mülteci Kadınlara Yönelik Toplumsal Cinsiyet Temelli Ayrımcılık ve Şiddetle Mücadele Kitapçığı Yayımladı», [consulted on 17.01.2020], https://www.hyd.org.tr/tr/haberler/540-kadin-dayanisma-vakfi-multeci-kadinlara-yonelik-toplumsal-cinsiyet-temelli-ayrimcilik-ve-siddetle-mucadele-kitapcigi-yayimladi

-«Kadın Göçmen İşçilerle İlgili 26 Sayılı Genel Tavsiye», 5 December 2008, CEDAW/C/2009/WP.1/R, in *Kadınlara Karşı Ayrımcılığın Önlenmesi Komitesi Genel Tavsiye Kararları 1986-2013*, pages 66-72, [consulted on 20.07.2020], https://www.tbmm.gov.tr/komisyon/kefe/belge/uluslararasi_belgeler/ayrimcilik/CEDAW/tavsiye_kararlari/CEDAW%20Komitesi%20Tavsiye%20Kararlar%C4%B1_(1-29).pdf

-«Kadın Örgütlerinden Kadına Yönelik Şiddeti Önlemek İçin 50 Acil Önlem», [consulted on 19.11.2019], https://www.morcati.org.tr/attachments/article/449/golge-rapor-50-acil-onlem.pdf

-KARA, Hayriye and ÇALIK, Damla, «Tekin Olmayı" Beklerken: LGBT Mültecilerin Ara Durağı Türkiye», Kaos-GL, Temmuz, 2016, p. 64, [consulted on 03.10.2019], http://panel.stgm.org.tr/vera/app/var/files/t/e/tekin_olmayi_beklerken_lgbti_multecilerin_ara_duragi_turkiye.pdf

-KARA, Hayriye, «Türkiye'deki Sığınma Sistemi ve LGBTİ Mülteciler», Ayrıntı Journal, 11 August 2017, [consulted on 13.05.2019], http://ayrintidergi.com.tr/turkiyedeki-siginma-sistemi-lgbti-multeciler/

- KARAKAŞ, Burcu, «Eşcinsel Turistler İzmir'de gözaltına alındı, gerekçesiz sınır dışı edildi», *Journo,* 20 October 2017, [consulted on 26.11.2019], https://journo.com.tr/escinsel-turistler-sinir-disi-edildi

-KARAKAŞ, Burcu, «Türkiye'de İki Ayrı Hayat Yaşıyorlar», İstanbul, 18.12.2017, [consulted on 03.10.2019], https://www.dw.com/tr/t%C3%BCrkiyede-iki-ayr%C4%B1-hayat-ya%C5%9F%C4%B1yorlar/a-41837359

-Kurtuluşumuz İçin Bize Bir Yasa Gerek, Türkiye'de Toplumsal Cinsiyet, Cinsellik ve İnsan Hakları, Human Rights Watch Publishing, May 2008, New York, [consulted on 02.07.2020], https://books.google.fr/books?id=QJ4y_HoLkvUC&pg=PA95&lpg=PA95&dq=Dudgeon+v.+Birleşik+Krallık+davası+kararı+cinsiyet&source=bl&ots=TT5fh8VdjT&sig=ACfU3U317gPHisjCGy54S9UwT_nkbwdUww&hl=tr&sa=X&ved=2ahUKEwjGhu3sla7qAhXQDmMBHc0VCScQ6AEwAHoECAoQAQ#v=onepage&q=Dudgeon%20v.%20Birleşik%20Krallık%20davası%20kararı%20cinsiyet&f=false

-«Kuruluşundan Günümüze Anayasa Mahkemesi», Constitutional Court of Turkey, [consulted on 03/18/2019], https://www.anayasa.gov.tr/tr/mahkeme/tarihi/1/

-«LGBTİ + Mültecilerin, Mülteci Statüsüne Kabul Edilmesi», Support to Life Association, [consulted on 11.06.2019], https://www.hayatadestek.org/4670/

-LILIENKAMP, Marc and SALIBA, Susan «EU Readmission Agreements: Facilitating the return of irregular migrants», *European Parliament, Think Tank*, 14.04.2015, [consulted on: 20.07.2020], http://www.europarl.europa.eu/thinktank/en/document.html?reference=eprs_brı(2015)554212

-«Manifesto», Young İzmir Association, [consulted on: 20.01.2020], https://genclgbti.org/hakkimizda/manifesto/

MCCRUDDEN, Christopher and PRECHAL, Sacha, « The Concepts of Equality and Non-Discrimination in Europe: A practical approach», European Network of Legal Experts in the Field of Gender Equality, June 2, 2009, [consulted on 03.07.2020], http://webcache.googleusercontent.com/search?q=cache:6YzZ7I6lu1MJ:ec.europa.eu/social/BlobServlet%3FdocId%3D4553+&cd=1&hl=tr&ct=clnk&gl=fr&client=opera

-«Milyonlarca Çocuk Ülkelerinden Göç Ermek Zorunda Kalıyor», YILMAZ, Tuğçenur, *Anatolia Ajans*, Ankara, 30.09.2018, [consulted on 04.02.2019], https://www.aa.com.tr/tr/dunya/milyonlarca-cocuk-ulkelerinden-goc-etmek-zorunda-kaliyor/1268789

-MOROĞLU, Nazan, «Nazan Moroğlu GREVİO Raporunu Değerlendirdi», *SES, Equality, Justice, Women's Platform,* 30 October 2018, [consulted on 03.05.2019], http://esitlikadaletkadin.org/nazan-moroglu-grevio-raporunu-degerlendirdi/

-«Mukarenet», Dictionary of Turkish Language Society, [consulted on 28.11.2019], https://sozluk.gov.tr/

-«Mukarenet», Audio Dictionary [consulted on 05.06.2019], https://www.seslisozluk.net/mukarenet-nedir-ne-demek/

- «Mülteci Kadınların Durumuna İlişkin Bir Değerlendirme, Hem Mülteci Hem Kadın: Mülteci Kadınlar Ne Yaşıyor? Ne Yapmalı? », *Mülteci-Der.,* 09.03.2018, [consulted on 06.05.2019], http://www.multeci.org.tr/haberler/multeci-kadinlarin-durumuna-iliskin-bir-degerlendirmehem-multeci-hem-kadin-multeci-kadinlar-ne-yasiyor-ne-yapmali/

-«Mültecileri Korumak», UNHCR, Kıbrıs, [consulted on 17.04.2019], https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/05/UNHCR_Brochure_TR.pdf

-«Mültecilerin sınır dışı edilmelerini durdur», *Kaos-GL,* 21.04.2017, [consulted on 26.11.2019], https://www.kaosgl.org/haber/multecilerin-sinir-disi-edilmelerini-durdur

-«Mültecinin Hakları Nelerdir? », UNHCR, 19 February 2017, [consulted on 03/21/2019], https://www.unhcr.org/tr/11081-multecinin-haklari-nelerdir.html

-NAPIKOSKI, Linda, «Patriarchal Society According to Feminism, Feminist Theories of Patriarchy», [online], *ThoughtCo*., January 24, 2020, [consulted on 16.07.2020], https://www.thoughtco.com/patriarchal-society-feminism-definition-3528978

-«NEFES: Kötü Muameleden Hayatta Kalan Göçmenlere Yönelik Rehabilitasyon Merkezi », Citizens Assembly, [consulted on: 20.01.2020], https://www.hyd.org.tr/tr/multecilik-ve-yurttaslik/251-nefes-kotu-muameleden-hayatta-kalan-gocmenlere-yonelik-rehabilitasyon-merkezi

-NOBEL Women's Initiative's Assessment, «*Women Refugees at Risk in Europe*», [online], March, 2016, p. 20, [consulted on 15.07.2020], https://nobelwomensinitiative.org/wp-content/uploads/2016/03/Opening-Borders-Report_FINAL_WEB-1.pdf

-NURCAN, Alif, Sercen, «21. Yüzyılda Feminizm», *21st Century Studies*, April 5, 2014, [consulted on 17.07.2020], https://www.academia.edu/6663601/21._Y%C3%BCzy%C4%B1lda_Feminizm

-ÖNDÜL, Hüsnü, «Avrupa İnsan Hakları Sözleşmesi ve Eki Protokollerde Yer Alan Hak ve Özgürlükler», Ankara, *Human Rights Association*, 20, 04, 2011, [consulted on 17.04.2019], https://www.ihd.org.tr/avrupa-insan-haklari-sozlesmesi-ve-eki-protokollerde-yer-alan-haklar-ve-ozgurlukler/

-«Patriarchy», see, Cambridge Dictionary [online], [consulted on 16.07.2020], https://dictionary.cambridge.org/dictionary/english/patriarchy

-«Patrik», see, Vikipedi, [online], [consulted on 16.07.2020], https://tr.wikipedia.org/wiki/Patrik

-«'Pembe Tezkereye' Koğuş İşkencesi», Cumhuriyet Newspaper, 15 Nisan 2012, [consulted on 07.06.2019], http://www.cumhuriyet.com.tr/haber/diger/335136/_Pembe_tezkere_ye_kogus_iskencesi.html

-«Plucked from their roots», Unicef, [consulted on 04/02/2019], http://www.unicef.org.tr/files/bilgimerkezi/doc/Uprooted-ES-Turkish.pdf

-«Projeler», Sığınmacılar ve Göçmenlerle Dayanışma Derneği, [consulted on 17.01.2020], https://sgdd.org.tr/projeler/

-«Protection Against Violence and Discrimination Based on Sexual Orientation And Gender Identity», United Nations General Assembly, A/72/172, 19 July 2017, [consulted on 22.05.2019], http://www.kaosgldernegi.org/resim/yayin/dl/bm_lgbti_haklari_uzman_raporu.pdf

-«Publications of Solidarity Association with Refugees», [consulted on 13.01.2020], http://www.multeci.org.tr/yayinlar/

-«Raporlar», Kadının İnsan Hakları ve Yeni Çözümler Derneği, [consulted on 24.06.2020], https://www.kadinininsanhaklari.org/yayinlar/raporlar/

-RAU, Simon, «Türkiye: Sığınmacıların Eğitime Erişimleri Önündeki Engeller», [consulted on 28.11.2019], *Human Rights Watch,* 31 May 2017, https://www.hrw.org/tr/news/2017/05/31/304376

-«Refugees and Migrants arriving in Europe and at Europe's Borders January-December 2018», *UNHCR*, [consulted on 18.07.2020], https://www.unhcr.org/desperatejourneys/

-«Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace», Nairobi, 15-26 July 1985, [consulted on 13.11.2019], http://www.5wwc.org/downloads/Report_of_WCW-1985.pdf

-«Reservations to CEDAW», [consulted on 23.06.2020], https://www.un.org/womenwatch/daw/cedaw/reservations.htm

-«Resources», ilga world, [consulted on: 21.01.2020], https://ilga.org/resources

-«Returns from Greece to Turkey», *UNHCR*, 31 December 2019, [consulted on 20.07.2020], https://data2.unhcr.org/en/documents/details/73295

-«Sığınma», Courtalks Discours, Human Rights Education for Lawyers, Council of Europe, ECtHR, 2016, [consulted on 10.06.2020], p. 7, https://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_TUR.PDF

-«Sığınmacı ve Mülteci, Lezbiyen, Gey, Biseksüel, Trans Bireyler», *Kaos- GL*, 4 April 2012, [consulted on 14.06.2019], http://kaosgldernegi.org/haber.php?id=7476

-«Suriyeli kız kardeşler taciz yüzünden 100 iş değiştirdi», T 24, 6 August 2915, [consulted on 04.10.2019], https://t24.com.tr/haber/suriyeli-kiz-kardesler-taciz-yuzunden-100-is-degistirdi,305346

-«Suriyelilerle evlilik ticarete döküldü: 'Hemen bir kadın bulurum, birkaç ay evli kalabilirsin», Diken, 09.09.2014, [consulted on 04.10.2019], http://www.diken.com.tr/suriyelilerle-evlilik-ticarete-dokuldu-hemen-bir-kadin-bulabilirim-birkac-ay-evli-kalabilirsin/

-«Suriyeli trans kadın İstanbul'da öldürüldü», İleri News, 21.12.2016, [consulted on 03.10.2019], https://ilerihaber.org/icerik/suriyeli-trans-kadin-istanbulda-olduruldu-65099.html

-«Syrian Women Refugees Living Outside the Camp», Mazlum-Der. Women's Studies Group, May, 2014, [consulted on 30.06.2020], https://istanbul.mazlumder.org/tr/main/yayinlar/yurt-ici-raporlar/3/mazlumder-kamp-disinda-yasayan-suriyeli-kadin/1116

-ŞENKAYA, Dilara, «Türkiye'deki LGBTİ Mülteciler Anlattı», *BIA News Center,* 19 May 2017, [consulted on 28.11.2019], https://m.bianet.org/bianet/lgbti/186636-turkiye-deki-multeci-lgbti-ler-anlatti

-«ŞÖNIM», [consulted on: 13.04.2020], https://www.resmigazete.gov.tr/eskiler/2016/03/20160317-8.htm

-TAR, Yıldız, «'Askerliğe elverişli değildir' raporunu nasıl aldım? », Kaos-GL, [consulted on 07.06.2019],

https://kaosgl.org/sayfa.php?id=25399

-«The People On The War Report», International Committee of the Red Cross, Geneva, October, 1999, pages 8-9, [consulted on: 01/15/2019], https://www.icrc.org/en/doc/assets/files/other/icrc_002_0758.pdf

-«The Turkish National Action Plan for the Adoption of the EU Acquis Communautaire on Migration and Asylum», [consulted on 02/16/2018], http://www.goc.gov.tr/files/files/turkiye_ulusal_eylem_plani(3).pdf

-«The Turkish National Program for the Adoption of the Acquis Communautaire of the European Union», 2001, [consulted on 09/25/2018], https://www.ab.gov.tr/195.html

-«The Yogyakarta Principles», 2006, [consulted on 13.05.2019], http://yogyakartaprinciples.org/principles-en/official-versions-pdf/

-«The Yogyakarta Principles Plus 10», Geneva, 10 November, 2017, [consulted on 13.05.2019], http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

-«Turkish Armed Forces Health Talent Regulation », Turkey, the Grand National Assembly of Turkey, Ankara, Official Newspaper No.29885, 11.11.2016, pages 6599-6756-2, [consulted on 05.06.2019], http://www.mevzuat.gov.tr/MevzuatMetin/3.5.20158136.pdf

-«Türkiye'de Kadın », Ministry of Family, Labor and Social Services, June 2019, [consulted on 19/11/2019]

-«Türkiye'de Kadın Hakları Alanında Kaydedilen Gelişmeler», Ministry of Foreign Affairs, [consulted on 19/11/2019], http://www.mfa.gov.tr/turkiye_de-kadin-haklari-alaninda-kaydedilen-gelismeler.tr.mfa

-«Türkiye'de Mültecilerin Kabul Koşulları, Hak ve Hizmetlere Erişimleri, Uydu Kentler İzleme ve Raporlama Projesi Raporu», Mülteci-Der, İzmir, 2015, [consulted on 04.10.2019], http://www.multeci.org.tr/wp-content/uploads/2016/10/Turkiye-de-Multecilerin-Kabul-Kosullari-Hak-ve-Hizmetlere-Erisimleri-Uydu-Kentler-Izleme-ve-Raporla.pdf

-«Türkiye'de Toplumsal Cinsiyet ve Kadın Algısı Araştırması, 2019» , Kadir Has University, [online], İstanbul, Gender and Woman Studies Center, 2019, [consulted on 19/11/2019], https://www.khas.edu.tr/uploads/pdf-doc-vb/toplumsal-cinsiyet-ve-kadin-algisi-arastirmasi-2019-sonuclari-2.pdf

-«Türkiye'nin LGBTİ Mültecilerle İmtihanı», Kaos- GL, 12 April 2019, [consulted on 02.07.2020],

http://www.kaosgldernegi.org/yayindetay.php?id=271

-«Türkiye: 19 LGBTİ + hak savunucusu aleyhindeki suçlamalar düşürülmeli», ILGA Europe, 7 November, 2019, [consulted on: 21.01.2020], https://www.ilga-

europe.org/resources/news/latest-news/turkey-charges-against-19-lgbti-rights-defenders-must-be-dropped

-«Türkiye'de UNHCR», UNHCR Turkey, [consulted on: 26.01.2020], https://www.unhcr.org/tr/turkiyede-unhcr

-«UNHCR tarafından kayıt ve MSB», UNHCR, [consulted on 23.03.2020], https://help.unhcr.org/turkey/tr/information-for-non-syrians/registration-rsd-with-unhcr/

-«Queer», see, *Zargan Dictionary*, [consulted on 17.07.2020], http://www.zargan.com/tr/q/queer-ceviri-nedir

-«Security», see, *TDK Dictionary*, consulted on 18.07.2020], https://www.google.fr/search?q=s%C3%B6zl%C3%BCk&rlz=1C1GGRV_enFR751FR751&oq=s%C3%B6zl%C3%BCk&aqs=chrome..69i57j0l5.1009j0j8&sourceid=chrome&ie=UTF-8#dobs=g%C3%BCvenlik

-«Social Security», see, *TDK Dictionary,*[online], [consulted on 19.07.2020], https://www.google.com/search?q=S%C3%B6zl%C3%BCk#dobs=sosyal%20g%C3%BCvenlik

-«Sözlük», [online], Kaos GL, [consulted on 17.07.2020], http://www.kaosgldernegi.org/belge.php?id=sozluk

-«Tarihçe», Kaos- GL, [consulted on 10.01.2020], http://www.kaosgldernegi.org/belge.php?id=tarihce

-«Tekin Olmayı Beklerken: LGBTİ Mültecilerin Ara Durağı Türkiye», Kaos- GL, 29 August 2016, p. 54, [consulted on 13.01.2020], http://www.kaosgldernegi.org/yayindetay.php?id=154

-TSENG, Jennifer, «Sex, Gender, and Why the Differences Matters? », *AMA Journal of Ethics*, [online], July, 2008, [consulted on 16.07.2020], https://journalofethics.ama-assn.org/article/sex-gender-and-why-differences-matter/2008-07

-«Türkiye'de Sivil Toplum ve Suriyeli Mülteciler», Citizens Assembly, [consulted on: 21.01.2020], https://www.hyd.org.tr/tr/multecilik-ve-yurttaslik/217-turkiye-de-sivil-toplum-ve-suriyeli-multeciler

-«Türkiye'de UNHCR», UNHCR, [consulted on 05.06.2018], http://www.unhcr.org/tr/turkiyede-unhcr

-«Türkiye'nin LGBTİ Mültecilerle İmtihanı», Kaos- GL, 12 April 2019, p.78, [consulted on 13.01.2020], http://www.kaosgldernegi.org/yayindetay.php?id=271

-«Türkiye'nin Mülteci LGBTİ+ 'lar ile İmtihanı: Irkçılık», Hevi LGBTİ Association, LGBTİ+ Alanında Irkçılıkla Mücadele Eğitim Programı Raporu, 2019, [consulted on: 20.01.2020], http://hevilgbti.org/wp-content/uploads/2019/08/HeviRaporu-1.pdf

-« Uluslararası Göçmen Kadınlarla Dayanışma Derneği (UGKDD) », [consulted on: 21.01.2020], http://siginaksizbirdunya.org/tr/biz-kimiz/kurultay-bilesenleri/110-uluslararasi-gocmen-kadinlar-dayanisma-dernegi-ugkdd

-«Uluslararası Koruma Altındaki Mültecilere Yönelik «Yerleştirilmeye İstekli Değil» Uygulaması Hakkında Çağrı», 19.05.2019, Genç LGBTİ+ Association,

[consulted on: 20.01.2020], https://genclgbti.org/2019/05/29/uluslararasi-koruma-altindaki-multecilere-yonelik-yerlestirilmeye-istekli-degil-uygulamasi-hakkinda-cagri/

-«Uluslararası Mülteci Örgütü», Madde 14, [conducted on 17.04.2019], http://madde14.org/index.php?title=Uluslararas%C4%B1_M%C3%BClteci_%C3%96rg%C3%BCt%C3%BC

-ULUSOY, Orçun, «Geri Kabul Antlaşması, AB ve Türkiye», *Multeci.net*, 24 September 2013, [consulted on: 20.07.2020], https://multeci.net/2013/09/geri-kabul-anlamas-ab-ve-tuerkiye/

-«UNHCR Decisions», UNHCR, [consulted on 25.11.2019],

http://sorular.rightsagenda.org/Uploads/MULTECI%20MEV/BMMYK%20Y%C3%9CR%C3%9CTME%20KOM%C4%B0TES%C4%B0%20KARARLARI.pdf

-«UNHCR Global Appeal 2018-2019», UNHCR, [consulted on 17.04.2019], https://www.unhcr.org/publications/fundraising/5a0c05027/unhcr-global-appeal-2018-2019-full-report.html

-«Unsafe Shelter, The Security Challenges Facing LGBT Asylum Seekers&Refugees in Turkey», Helsinki Citizens Assembly, Organization for Refugee, Asylum, Migration, June, 2009, [consulted on: 21.01.2020], https://www.hyd.org.tr/tr/multecilik-ve-yurttaslik/89-lgbtt-multecilerin-karsilastiklari-guvenlik-sorunlari

-«3. Dalga ile Feminizm Tarihi», April 13, 2009, [consulted on 17.07.2020], https://kendineaitbiroda.wordpress.com/2009/04/13/3-dalga-ile-feminizm-tarihi/

-«Vulnerable and abandoned», *OXFAM*, [online], 9 January 2019, [consulted on 20.07.2020], https://www.oxfam.org/en/pressroom/pressreleases/2019-01-09/pregnant-women-children-and-survivors-torture-abandoned-greek

-«Women of the World, What is CEDAW? », *Australian Human Rights Commission*, [consulted on 22.06.2020], https://humanrights.gov.au/our-work/woman-world-what-cedaw

«Women Report of Syrians in Turkey in 2014», AFAD, 2014, [consulted on 30.06.2020], https://www.afad.gov.tr/kurumlar/afad.gov.tr/17934/xfiles/turkiye_deki-suriyeli-kadinlar_-2014_2_.pdf

-YARDIMCI, Sibel, «Ne O! Ne Bu! Ne Şu! Queer kuramı ve kimliksizleşme », *SKOP sanat tarihi eleştiri*, [online], 18.05.2012, [consulted on 17.07.2020], https://www.e-skop.com/skopbulten/ne-o-ne-bu-ne-su-queer-kurami-ve-kimliksizlesme/749

-YETKIN, Nesrin, «Eşcinseller Farklı mıdır?», *Minidev*, 15.06.2001, [consulted on 17.07.2020], http://www.minidev.com/cinsel/cinsel_editor37.asp

-«Yurttaşlık Derneği Kuruluş Amaçları ve Kısa Tarihçe», [consulted on 21.01.2020], https://www.hyd.org.tr/tr/hyd-nin-hikayesi/amaclar

TABLE OF CONTENTS

Acknowledgements iii
Résumé en Français iv
Summary in English v
Summary vi
Abbreviations vii

INTRODUCTION 1

Part 1: Basic Principles of Refugee Law and Gender Equality in International Law 10

Chapter 1: Basic Standards on International Protection and Feminization of Migration 10

Section 1: Principles of International Protection and Refugee Law 10
§ 1) International Protection 11
§ 2) International Resources of Refugee Law 13
A- 1951 Geneva Convention and 1967 Protocol 16
B- UN Declaration on territorial asylum dated 1967 19
C- European convention for the protection of human rights and fundamental freedoms and protocols 20
§ 3) Determination of Refugee Status 26
§ 4) Rights and freedoms of refugees 31
§ 5) Secondary protection - complementary protection (subsidiary protection) 34
A- Entry into country and non-refoulment principle 37
B- Temporary Protection 41
1) EU Temporary Protection Regime 44
2) Some of important UNHCR's decisions and guidelines on temporary protection 45
§ 6) A Short Reference to The Turkey Refugee Law 49
A- EU harmonization program and national action plans related to migration and asylum 49
B- LFIP and International Protection Forms 52

C- Temporary protection regulation 55
D- Compliance of temporary protection regime with international law .57
E- Constitutional court decisions.....59
F- Decisions of the council of state 64
Section 2: Securitization of Migration and Increasing Gender Visibility in the Migration Process.....67
§ 1) Migration control policies and human smuggling 67
§ 2) Securitization of migration, security concept, and definitions.....70
§ 3) EU Border Policies.....74
A- Commonization of EU asylum and border policies neighborhood policy.....77
B- Schengen area process.....77
C- European border security policy.....80
D- Eurodac regulation 81
E- Frontex agency.....82
F- Integrated border management 83
G- Readmission agreements and EU-Turkey readmission agreement....84
§ 4) Addressing security studies with a gender perspective.....92
A- Feminist approach to security and the emergence of feminist international relations.....96
B- Feminization of migration and/or gender identities becoming visible in the migration process 99
General Conclusion Chapter 1: 103

Chapter 2: Gender Equality in International Law Regulations 104
Section 1: International Conventions to Ensure Gender Equality.....105
§ 1) Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), additional optional protocol and the reports of the committee 106
A- Convention on Elimination of All Forms of Discrimination Against Women (CEDAW -1981).....107
B- Additional Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (22 December 2000) 120
C- CEDAW Committee General Recommendation No. 32.....123

D- CEDAW Committee's recommendations about Turkey 128
E- NGO’s shadow report on Turkey’s seventh periodic report 135
§ 2) The Council of Europe Convention on preventing and combating violence against women and domestic violence and GREVIO evaluation report Turkey-2018 142
A- The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) 143
B- GREVIO evaluation report Turkey-2018 151
Section 2: International Principles and Standards for Gender Equality 157
§ 1) The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (2006-2017) 158
A- Yogyakarta Principles 2006 158
B- Additional principles and state obligations on the application of international human rights law concerning sexual orientation, gender identity, gender expression, and sex characteristics to complement the Yogyakarta Principles (The Yogyakarta Principles Plus 10 – 2017) 163
§ 2) UNHCR's, ECHR’s and ECJ’s resolutions and case law on gender-related problems 167
A- UNHCR's gender-related resolutions and guidelines 167
B- Resolutions of the Council of European Union, the Committee of Ministers and the Parliamentary Assembly to Prevent Gender Discrimination 176
C- Decisions of the ECHR on gender-related problems 181
D- Decisions of the European Court of Justice (ECJ) on gender-related problems 189
Conclusion Chapter 2: 193
General Conclusion Part 1 193

Part 2: Gender based assessment of Turkey's refugee law and Experiences of Ngos in This Subject 196

Chapter 1: Assessment of Turkey's basic laws on refugees in terms of gender 197

§ 1) Gender equality and view of different sexual orientation and gender identities in Turkey law 198

§ 2) The Assessment of Law on Foreigners and International Protection (LFIP) with a gender perspective 208
§ 3) Assessment of the regulation relating to the implementation of the Law on Foreigners and International Protection (LFIP) with a gender perspective 219
§ 4) Assessment of the Temporary Protection Regulation with a gender perspective 230
§ 5) Assessment of the provisions of some other laws and regulations relating to refugees with a gender perspective 237
§ 6) General assessment in terms of implementation 243
Conclusion Chapter 1 248

Chapter 2: Role of NGOs in Migration and Gender Problem 250
§ 1) The reality of civil society in migration areas of Turkey 251
§ 2) NGOs operating in the fields of migration and gender in Turkey 252
§ 3) What do NGOs say? Analysis of Interviews 269
A- Research method 270
B- Analysis of data 271
1) Problems arising from Turkish legislation's violation of international law 272
A- Relations with Public Institutions 276
B- Problems encountered and rights violations 278
C- Access to the Right to Housing 279
D- Rights violations caused by the obligation to reside in the registered province 283
E- Violence and VPMC 287
F- Problems Based on Limiting the Powers of the UNHCR 289
G- Application to Domestic Remedies 290
2) Problems arising from improper/arbitrary application or non-implementation of legal legislation 296
A- Problems faced during the implementation of the FIPL 296
B- Problems encountered in accessing legal mechanism 300
Conclusion of Chapter 2 305
General Conclusion Part 2. 306

CONCLUSION 308

APPENDICES 318

1-Information Note and Interviews Questions 318

2- The Answers of Institutions 321

A- Kaos-GL 321

B- Women's solidarity foundation 330

C- Migrant Solidarity Association 340

D- Women's Solidarity Foundation (KADAV) 346

E- Lawyer Eda Bekçi 353

F- Social Policies, Gender Identity and Sexual Orientation Studies Association- SPOD: 358

G- Support to Life Association 363

Bibliography 368

Hümeyra YILMAZ

Évaluation des lois fondamentales sur les réfugiés en Turquie du point de vue du genre et de leur pertinence pour le droit international

Résumé

Les différences dans les caractéristiques physiques, sexuelles, d'âge, culturelles, ethniques, de couleur et religieuses des personnes ont entraîné la discrimination et l'exclusion. Cette discrimination se manifeste dans les politiques de l'État ainsi que dans tous les domaines de la vie quotidienne. La discrimination a été un domaine important des études universitaires avec ses différentes dimensions et types. Dans cette étude, la discrimination à laquelle sont confrontés les LGBTI qui sont exposés à la discrimination en raison de leur orientation sexuelle et de leur identité de genre différentes et les femmes encore opprimées en tant que second sexe pendant la procédure d'asile sont examinées.
Le phénomène de la migration est une réalité sociologique multidimensionnelle. On peut dire que le groupe le plus touché par les causes et les conséquences de la migration sont les groupes de genre tels que les femmes et les LGBTI. Les personnes LGBTI sont exposées aux abus et à la violence dans différentes aspects, tels que les violences sexuelles, physiques, psychologiques et économiques, tant aux frontières que dans les pays de transit ou de destination. La Turquie est l'un des pays où ces groupes sont sérieusement confrontés à de tels problèmes. Bien que la Turquie soit un pays où le nombre de réfugiés dépasse les cinq millions, les droits et libertés des réfugiés sont obérés par des motifs politiques. Les organisations internationales et l'UE l'ignorent afin d'accueillir davantage de réfugiés en Turquie.
Dans cette étude, les réglementations et pratiques juridiques de base relatives aux réfugiés en Turquie ont été évaluées en termes de critères de genre et leur compatibilité avec les principes et exigences du droit international a été examinée, grâce à une analyse du droit positif. La recherche a été enrichie par des entretiens avec 7 ONG qui travaillent pour les femmes et / ou les réfugiés LGBTI. La recherche entend ainsi évaluer non seulement la norme applicable, mais également les conditions de son application effective, au regard de la protection des droits humains des personnes LGBTI et des femmes réfugiées en Turquie.

Mots Clés : Migration, Réfugié, Asile, EDPI, Genre, Intersectionnalité

Résumé en anglais

Differences in people's physical, sexual, age, cultural, ethnic, color and religious characteristics brought about discrimination and exclusion. This discrimination manifests itself in state policies as well as in all areas of daily life. Discrimination has been an important field of academic studies with its different dimensions and types. In this study, the discrimination faced by LGBTIs who are exposed it due to different sexual orientation and gender identity and women still oppressed as a second sex during the asylum process are discussed.
The phenomenon of migration is a multidimensional sociological reality. It can be said that, the group most affected by both causes and consequences of migration are gender groups such as women and LGBTIs. LGBTI people are exposed to abuse and violence in different aspects such as sexual, physical, psychological and economic violence both at the borders and in transit or destination countries. Violations of rights and discrimination experienced by women and LGBTI refugees are seen in pretty much all aspects of the world. Turkey is one of the countries that these groups face such problems seriously. Turkey, despite being a country where the refugees with as high a figure of more than five million, the rights and freedoms of refugees are determined by political motives. The international organizations and the EU ignore it in order to accommodate more refugees in Turkey.
In this study, the basic legal regulations and practices relating to refugees in Turkey were assessed in terms of gender criteria and their compatibility with the principles and requirements of international law was examined through an analysis of positive law. The research was enriched by interviews with 7 NGOs working for women and/or LGBTI refugees. In this way the research intends to assess not only the applicable standard but also the conditions of its effective application with regard to the protection of the human rights of LGBTI people and refugee women in Turkey.

Key Words : Migration, Refugee, Asylum, FIPL, Gender, Intersectionality