

# Turkey as a Safe Third Country?

Orçun Ulusoy

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Guest post by [Orçun Ulusoy](#), Lecturer/Researcher, Faculty of Law, Vrije Universiteit Amsterdam.

[Orçun Ulusoy](#) is a human rights lawyer from Turkey and a founding member of [Multeci-Der](#). He currently works as a researcher with VU Amsterdam as part of the [Human Costs of Border Control project](#).

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*The EU-Turkey Joint Action Plan has caused a heated debate on the humanitarian crisis that is currently taking place at the borders of EU. The Plan includes the readmission of irregular migrants to Turkey. The EU Asylum Procedures Directive requires that a person can only be readmitted to a 'safe third country' which can guarantee effective access to protection. According to the Plan, Turkey can be regarded as a safe third country. This may not be the case.*

Recent events in Askale—a small remote town in the east of Turkey, which also hosts a deportation centre for irregular migrants—illustrate why regarding Turkey as a safe third country is, to say the least, questionable. Here, local lawyers have started to report unlawful practices of the staff working in the centre, such as access to clients being arbitrarily blocked, clients' asylum applications being denied without proper examination, minors being kept in isolated cells without access to family members, and possible cases of ill treatment and torture.

Lawyers from the west of Turkey and NGO representatives confirmed that they've received similar complaints from their clients. On 28 December 2015, the migrants in Askale Removal Centre started to protest the conditions of the centre and illegal deportations. The roads to the centre were blocked by the police, members of the media and lawyers were forced to leave the area, and the riot police entered the removal centre. Many migrants were reportedly severely beaten during the police intervention and were taken to the hospital. On the first day of 2016, 11 national NGOs, including Amnesty International, Multeci-Der, and the Turkish Human Rights Association released a [public statement](#) summarising the above mentioned accusations and protesting the unlawful treatment of migrants in Askale.

The [Law on Foreigners and International Protection \(LFIP\)](#) was adopted in 2013 by the Turkish Parliament and came into power in April 2014. It grants all basic human rights to migrants, asylum

seekers, and refugees in line with EU legislation: access to legal counselling and a lawyer, prohibition of torture and ill treatment, extended protection, rights for minors, and so on. The LFIP was drafted by governmental officials in close cooperation and collaboration with NGOs, academics, and related experts in the field. This was already an unconventional practice within Turkish legislative history. The drafting committee of the LFIP extensively studied contemporary examples of the EU and took European Court of Human Rights decisions into consideration during its drafting. International organisations such as the UNHCR and IOM provided expertise and support during this period. When the LFIP was approved by the Turkish Parliament, it received the support of all political parties represented.

Yet, the administration of the Askale Removal Centre appears not to be obeying the rules of the LFIP. The lawyers and NGOs lodged four different official complaints about the practices of the executives of the centre as well as requested official investigations from the governmental Turkish Human Rights Institution and Human Rights Commission of the Turkish Parliament. Unfortunately a well drafted law hasn't provided nor [guaranteed basic rights](#) for migrants, asylum seekers, and refugees in Turkey.

The [EU-Turkey Joint Action Plan](#) assumes that since there is a law to guarantee the rights of migrants, asylum seekers, and refugees, Turkey should be regarded as a [safe third country](#) and asks Turkey to ensure access to [effective asylum procedures](#) for all persons in need of international protection. However, migrants in Askale Removal Centre have a very different idea and experience of this 'safe country' and its 'effective asylum procedures.'

There are several reasons for this failure and a closer look into these reasons may show why Turkey is not a safe country for migrants, asylum seekers, and refugees and will not, at least in the near future, provide sustainable and durable shelter for the people fleeing from their countries to save their lives.

First, the newly established **Directorate General of Migration Management (DGMM)** lacks **capacity and experience**. The Law on Foreigners and International Protection foresaw the establishment of a new civil body to replace the foreigners' police department which was responsible for all migration and asylum related issues. The DGMM was established right after the approval of the LFIP in 2013. Only two years after the establishment, the DGMM opened local offices in more than 100 cities or towns and hired 3,000 personnel. Almost all of the new personnel have no prior experience or related background in migration and asylum and lack capacity to fully implement the [new status determination procedure](#) provided by the LFIP. The only experienced staff were former police officers who were transferred from the foreigners' police departments.

Second, **the Syrian Refugee influx** created pressure on the newly established system. During the drafting period of the LFIP, there was no indication of a refugee influx to Turkey. Until the first half of the 2013, the total number of the Syrian refugees in Turkey was less than 150,000. However, the unprecedented rise of violence in the Syrian civil war forced millions to leave their homes and, as of March 2016, more than two and a half million Syrian refugees were living Turkey according to the [UNHCR database](#). While the Prime Ministry's Disaster and Emergency Management Authority (AFAD) is the responsible coordinating body for humanitarian needs of Syrians in Turkey since the onset of the crisis, the DGMM plays a vital role for policy and strategy development and

implementation. For a newly established and inexperienced system, these unexpected numbers are paralyzing.

Third, there is not enough **juridical capacity**. The LFIP is the first ever law on asylum and international protection since the establishment of the Turkish Republic. Prior to its enactment, the field was regulated by directives and decrees. Asylum applications as well as related procedural operations were carried out by the foreigners' department of the national police together with the UNHCR (in the so-called 'parallel procedure'). Juridical reviews of these cases were done by the administrative courts only to test the compliance of the proceedings according to the administrative rules. The substances or arguments of these cases and procedures were rarely questioned which limited the case law on migration and asylum in Turkey. Furthermore, migration and asylum law was never taught in Turkish law faculties and the field has limited academic expertise. Since the law was approved by the Turkish Parliament, judges, lawyers, and other legal professionals are receiving training. However, knowledge and experience are still partial and support services such as translation are inadequate, if not absent at all.

Fourth, a **retroactive migration management tradition and security based approach** to migration in Turkey is still dominant. As mentioned above, the first law on asylum was adopted only in 2013. The field was left to administrative bodies and national police until then. These bodies, focusing on the national security policies, regulated the asylum and migration issues according to the present needs. [Long term strategic planning](#) was absent until the establishment of the DGMM. Since the start of the Syrian refugee influx to Turkey, basic rights to Syrian refugees were granted after long hesitation periods. The Temporary Protection Regime was declared only in 2014 after previously naming the Syrian refugees as 'guests'—a term which has no legal definition or meaning in international asylum law—for more than two years. Non-Syrian refugees in Turkey such as Afghans, Iraqis, and Iranians still experience difficulties in accessing basic healthcare, education, and employment. While the new law grants these rights, contradicting regulations and a lack of information and willingness limits these groups' access to their rights. As seen in the Askale Removal Centre case (the centre is under the supervision of the DGMM), local officers may act against the clear rules of the law.

It's true that Turkey has a new asylum law but the Turkish asylum and migration system is still in its infancy. Inexperienced, under-equipped, under-trained, and under the wrong influences, this system is far away from providing a safe haven for migrants and refugees. Today, it's only creating a legal limbo where migrants and asylum seekers are waiting without seeing their futures.