

THE ROLE OF NGOs IN THE ASYLUM SYSTEM IN TURKEY:  
BEYOND INTERMEDIATION

by  
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Submitted to the Graduate School of Arts and Social Sciences  
in partial fulfillment of  
the requirements for the degree of  
Master's of Arts

Sabancı University  
Spring 2010

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BEYOND INTERMEDIATION

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Cultural Studies MA Thesis, 2010

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Keywords: NGO, refugee, Turkey, intermediation, right

The basic objective of this thesis is to explore the role of NGOs in the asylum system in Turkey, and to map the asylum field in terms of NGOs. First I examine the problems in the legal framework concerning asylum as well as the ways in which the implementation of the law diverges from the written texts. Based on twelve semi-structured interviews with UNHCR and eight NGOs, I then focus on power and capacity of NGOs to bring solutions to the problems in both legislation and implementation. NGOs have limited opportunities because of the shortage of material resources, ignorance of the government officers, unclarity of the legislation and arbitrary implementation. Nonetheless, I argue that they have a significant role in the system, one which is not a simple intermediation between refugees and authorities. Rather NGOs are actors intervening in the system in accordance with their own values and priorities which may be affected by such diverse principles as human rights, equality or religious references. I conclude that although the NGOs conduct valuable work to improve the current condition of the refugees such as giving them psycho-social and legal support, they are constrained when it comes to enacting more comprehensive and systemic changes. I believe that their roles as political actors and critics of the government are as important as their other missions, and agree with the need for a “reconsideration of political struggle” by the NGOs.

TÜRKİYE’DEKİ İLTİCA SİSTEMİNDE STK’LARIN ROLÜ:  
ARACILIĞIN ÖTESİ

Ayşegül Balta

Kültürel Çalışmalar Yüksek Lisans Tezi, 2010

Tez Danışmanı: Yard. Doç. Dr. Ayşe Parla

Anahtar Kelimeler: STK, mülteci, Türkiye, aracılık, hak

Bu tezin temel amacı Türkiye’deki iltica sisteminde STK’ların rolünü araştırmak ve bu alanın STK’lar açısından haritasını çıkarmaktır. Bunun için ilk olarak hem ilticaya dair hukuki çerçevedeki, hem de yazılı metinlerden farklılık gösteren uygulamadaki sorunlar incelenmektedir. BMMYK ve sekiz STK ile yapılan yarı yapılandırılmış 12 görüşmeye dayanarak, STK’ların mevzuattaki ve uygulamadaki sorunların çözümüne dair ne kadar güç ve kapasiteye sahip olduklarına odaklandım. Maddi kaynak yetersizliği, devlet görevlilerince ciddiye alınmama, mevzuatın belirsizliği ve keyfi uygulamalar gibi nedenlerden dolayı STK’lar kısıtlı imkânlarla sahip olsalar da sistemde yine de bir rolleri var. Bu rolün mülteciler ve otoriteler arasında basit bir aracılık olmadığını, aksine STK’ların insan hakları, eşitlik veya dini referanslar gibi değer ve ilkeleri doğrultusunda sisteme müdahale eden aktörler olduğunu iddia ediyorum. Sonuç olarak, psiko-sosyal ve hukuki destek vererek mültecilerin mevcut durumunu iyileştirmek anlamında çok değerli bir işlev üstlendikleri de, STK’ların sisteme dair daha kapsamlı değişimleri hayal etme ve gerçekleştirme noktasında tıkanıklarını savunuyorum. STK’ların diğer rollerinin yanı sıra politik olabilmeleri ve devleti eleştirmelerini önemli buluyor ve “politik mücadeleyi yeniden düşünme” ihtiyacına katılıyorum.

## Acknowledgements

I owe special gratitude to many people who accompanied me during the way towards this thesis. First of all, I would like to thank all my interviewees for sharing their very precious time and knowledge with me. My special thanks go to my colleagues at Helsinki Citizens' Assembly. Without the experience there I could not imagine this study. I owe very much to my thesis advisor Ayşe Parla, for her invaluable and continuous support at each step through this long year. She was as excited as I am for this study, and she has inspired me both as a person and an advisor. I could not have finalized this thesis without her guidance. I owe special thanks to Didem Daniş for giving me the idea to study this particular subject. I am grateful to her and Lami Bertan Tokuzlu for their presence in my jury and encouraging comments. Nancy Öztürk edited this thesis; I would like to thank her for her precise and timely work. I would like to thank to my dear friends and "sps council" members Yeliz, Feyzullah, Enes, Ezgi, Övünç and Kürşat for rendering the life at the campus endurable. I am indebted to Havva and Çınar for their presence when I was lost in writing. In the most difficult times they were with me. My greatest gratitude of all goes to my beloved one Aykun. Without him and his unique encouragements I could finalize neither the graduate study nor this thesis. Finally, I want to name Dicle Koğacıoğlu. I never forgot her and she was always with me during writing.

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## ABBREVIATIONS

AI	Amnesty International
ASAM	Association for Solidarity with Asylum-Seekers and Migrants
EU	European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
HCA-RASP	Helsinki Citizens Assembly - Turkey Refugee Advocacy and Support Program
HRDF	Human Resource Development Foundation
ICMC	International Catholic Migration Commission
IHAD	Human Rights Research Association
IHH	Foundation for Human Rights and Freedoms and Humanitarian Relief
IHOP	Human Rights Joint Platform
IIMP	Istanbul Interparish Migrant Program
LGBT	Lesbian, Gay, Bisexual and Transvestite/Transsexual
Mazlum-Der	Association of Human Rights and Solidarity for Oppressed People
MOI	Ministry of Interior
MSN	Migrant Solidarity Network
Mülteci-Der	Association for Solidarity with Refugees
NAP	National Action Plan
NGO	Non-Governmental Organization
OPE	Overseas Processing Entity
RSD	Refugee Status Determination
SHÇEK	Social Services and Child Protection Agency
TGNA	Turkish Grand National Assembly
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## CHAPTER 1

### INTRODUCTION

The basic objective of this thesis is to explore the role of non-governmental organizations (NGOs) in the asylum system in Turkey. The last 30 years have seen a dramatic increase in the numbers of refugees in Turkey (Kirişçi, 2001; Biehl, 2009) and a now-pressing issue concerns the legal status of non-European refugees. It is within this context that this thesis focuses on NGOs that provide legal support to refugees.<sup>1</sup> My interest in carrying out such a study has several sources. Firstly, studies in the literature on refugees to Turkey are very limited, and none of them examine the role of NGOs in detail. Theoretically, the importance of studying refugees is rooted for me in the exclusion of non-citizens from certain rights provided by a nation state. I find it important to underline the tension between the notion of universal human rights and the priority of nation-states in enforcing them; as a consequence refugees become important as representative cases. The differences between citizens and refugees in terms of human rights and its implications on state policies and NGO actions will be examined in the course of this thesis.

In the examination of the role of NGOs I primarily concentrate on the legal dimensions of the issue. I do that because being a refugee has strong legal implications; that is, it is impossible to deal with this issue without considering the legal aspects. “Refugee” status, as well as “asylum seeker” status, are actually legal categories granted by the state. The NGOs enter into the picture as soon as the state makes a negative status decision. In these cases the NGOs may immediately appeal to the judicial system. Besides, whether the NGOs define themselves as “social-support-based” or “rights-advocacy-based,” ultimately their role is to assist refugees in gaining certain rights, rights that are central to the legal order.

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<sup>1</sup> The special usage of the term “refugee” will be explained in the terminology discussion in following pages.

The second factor leading my curiosity in examining the role of NGOs is the nature of the existing studies on international migrants and refugees in Turkey. On the one side are studies written from a macro perspective with an eye to mapping the field and categorizing the international and especially irregular migration, as well as refugee, flows. These demographic, legal, and political science studies describe and document these movements broadly in terms of pattern over time, origins of flows, places of destination, and characteristics of migrants. As an inevitable part of their discussion they review the measures taken by Turkey and the impact of relations with the EU, while, in the background, they search for solutions to manage migration (Erder, 2000; İçduygu, 2000, 2004; İçduygu and Yüksek, 2008; Kaya, 2008; Kirişçi, 1996, 2001, 2008; Tokuzlu, 2010). On the other side are studies written from a micro perspective. These studies primarily consider the production of knowledge about the everyday experience of migrants and refugees. These studies have an anthropological and sociological focus and concentrate on integration models, patterns of networking, and the struggle for economic and social inclusion of different migrant groups in different cities, the experiences of primarily female irregular labor migrants, the impact of security discourses, and the resulting policies on the everyday lives of refugees (Akalin, 2007; Biehl, 2008; Brewer and Yüksek, 2009; Danış, 2007; Danış, Pérouse and Taraghi, 2009; Keough, 2006; Özdil, 2006; Parla, 2007; Yüksek, 2004).

Intermediary institutions such as NGOs carry out their activities in areas that span the macro patterns and micro daily experiences. There are different kinds of NGOs active in this sphere and these organizations have different kinds of relations, both with each other and with other public or private organizations such as the UNHCR, the European Court of Human Rights, the Ministry of Interior, refugees and society in general. These non-governmental organizations concern themselves with different contradicting discourses like escape, survival, suffering, uncertainty and hope on the one side and security, burden and legality/illegality on the other and on top of that they construct their own meta-narrative. This thesis explores the function of NGOs in the midst of all these relations and attempts to indicate their locations in the above-mentioned macro and micro-scaled studies.

The third factor leading my curiosity in examining the role of NGOs includes those certain characteristics attributed to civil society. It is generally assumed in Turkish intellectual circles that the civil society constitutes an opportunity for democracy and for a progressive solution against the strong nation-state tradition, and replaces the state as a significant service

provider. However, in this thesis I will question whether it is correct to lay such great expectations on civil society.

### Terminology Discussion

The two prominent categories in the international migration to Turkey literature are “regular” and “irregular” migration. Although the issue of “having necessary permissions” is questionable; according to the literature, whereas regular migration includes those individuals who have the necessary residence and work permissions such as permanent settlers, temporary contract workers or temporary professional employees, irregular migration is more complex. Although different authors may come up with different names for these classifications (İçduygu, 2002; İçduygu & Yüksek, 2008; Kaya, 2008; Kirişçi, 2008), irregular migration is usually further discussed under these categories: (1) irregular transit migrants mostly from Middle Eastern, Asian and African countries, (2) irregular labor migrants mostly from Eastern European and former Soviet Union countries, (3) victims of human trafficking, and (4) rejected asylum seekers who have become “illegal” for a variety of reasons.

Irregular transit migrants usually enter Turkey with the help of human smugglers in an attempt to reach European countries. They typically use the Aegean Sea route to go to Greece. It is not very possible to obtain accurate data on the numbers and nationalities of these people because of the irregular nature of this type of movement, for we know only those who are apprehended by police. From 1996 to 2006 nearly 620,000 migrants have been apprehended. Of this group, most were from Iraq, Pakistan, Afghanistan, Iran and Bangladesh (İçduygu & Yüksek, 2008, p. 4).

Studies written from a more micro perspective tend to consider the everyday experience of these transit migrants and focus more on their patterns of networking and social and economic inclusion. Daniş, Pérouse and Taraghi (2009) analyze how Iraqi, Afghan, Iranian and Maghrebi migrants in Istanbul survive and how they are incorporated into employment and housing markets. Brewer and Yüksek (2009) conducted a very similar study describing the demographic characteristics of African transit migrants, their reasons for-

- and patterns of-migration, as well as their living conditions and problems in Istanbul. Özdil (2006), who focuses on undocumented and irregular Nigerian migrants in Tarlabaşı, is learning their strategies of living, such as the creation of social spaces, forging community associations, claiming rights, and involvement in transnational trade networks.

The second group of irregular migrants is made up of irregular labor migrants. These migrants come with visas but then overstay their visas and work without permits in Turkey. Usually, they pay fines and return to their countries and return after a certain period. They do not try to travel further on into Europe. This kind of migration is also referred to as “shuttle” or “circular” migration since these people make multiple trips to Turkey in search of economic opportunities; it is characterized by the prevalence of women from Romania, Bulgaria, Gagauzia, Moldova, Ukraine, Azerbaijan, Armenia, Georgia and Turkmenistan who work informally in domestic services or in the entertainment sector. The estimated annual number of such migrants was 35,000-43,000 in the early 2000s, but now it has decreased to an annual level of 24,000-33,000 (İçduygu & Yüksek, 2008, p. 6).

Anthropological and sociological studies conducted on irregular labor migrants primarily investigate the experiences of migrant women working in the domestic work sector (Akalin, 2007; Keough, 2006; Daniş, 2007; Parla, 2007). Whereas Akalin (2007) focuses more on the personality of migrant women from post-socialist countries and the roles they play in the employing family, Keough (2006) turns her perspective onto Gagauz Moldovan women and argues that “migrant women and their communities understand transnational migration in Moldova in moral terms that are highly gendered” (p. 436). Daniş (2007) presents the case of Iraqi Christians in Istanbul and “the emergence of a specific occupational niche within the domestic service sector” (p. 601) and contributes to the literature by exploring “the role of religion in migrants’ participation in domestic labor.” Parla (2007) addresses the post-1990s irregular migration flows from Bulgaria to Turkey, demonstrating that their ethnic affiliation “counterpoises their social marginalization as ‘Bulgarian’ domestics, heightens the paradoxes of belonging, and affects migration strategies” (p. 157). In addition to studies on migrant domestic workers, the transnational shuttle trade network of women from Russia, Ukraine and Belarus is also investigated by Yüksek (2004). What is irregular about this group is the informal and unregistered nature of their trade, an activity to which the state of Turkey turns a blind eye, because it is seen as a source of foreign currency.

The third category of irregular migrants is made up of victims of human trafficking, who are often women who are being forced into prostitution. The government has kept records of trafficking since 2004. Accordingly, there have been close to 900 victims from the Balkans, Caucuses, Central Asia and former Soviet Union countries recorded by the police since 2004 (Kirişçi 2008b, p. 7). The literature does not include many studies on this type of irregular migration. İçduygu and Toktaş (2002) question how smuggling and trafficking operate via irregular border crossings in the Middle East. The authors state that the case for Turkey is rather consistent with the characteristics of smuggling, and they find no “involvement of large mafia-style criminal organizations; but rather a number of smaller, flexible groups seem to be active in this business on an opportunistic basis.” They also touch upon the human rights violations by traffickers and smugglers such as rape, physical and mental abuse, food deprivation, abandonment and death.

Refugees whose official statuses have been rejected make up the fourth category of irregular migrants in the literature. Even though they are ordered to leave Turkey within a certain timeframe, they often do not do so, preferring to live illegally in Turkey until they are caught. Sometimes refugees do not wait for the result of their application. If the pending decision seems to be taking a long time to be finalized, these refugees may simply disappear. It then becomes very difficult to understand whether they are still in Turkey, have returned to their home countries, or have left illegally for Europe or another destination. Although she does not focus her work on rejected refugees, Biehl (2008) has explored the impact of the security discourses and resulting policies on the everyday lives of refugees. She argues that uncertainty is a constitutive element of “refugeeness” and that refugees who fear rejection, or are exhausted because of this uncertain waiting period, may turn to irregularity.

How are refugees categorized in this literature? According to Kaya (2008), refugees are seen as irregular migrants because “in the Turkish legal context, an ‘illegal migrant’ is anyone who enters or leaves Turkey or is present in Turkey while breaching migration law (passport, visa, residence and work-permit legislation)” (p. 1). İçduygu and Yüksek (2008) also categorize refugees within the group of irregular migrants and group them along with transit and circular migrants. However Kirişçi (2008b), pointing to the difficulty in differentiating Asian and African refugees from “illegal transit migrants,” states that those people “who are a priori selected as being “illegal transit migrants” may be considered to be “asylum seekers.” (p. 3) In other words, even though refugees are discussed under the title of

irregular transit migrants in the literature, in fact this should not be the case. Moreover, according to the Article 31 of the 1951 Convention, states shall not impose penalties on account of the illegal entry or presence of refugees; therefore it is not legitimate to assume that refugees are irregular migrants.

If my aim is to focus on refugees, why then do I review the literature of irregular international migration? I do this because, without first gaining an understanding of irregular migration types, it becomes very difficult both to fit refugees, who are the primary subject matter of this thesis, into one of the regular-irregular categories and then comment on them. It is almost impossible to focus only on asylum without reviewing irregular migration literature, because especially as the duration of their stay is prolonged “the distinctions between transit migration, irregular labor migration and asylum seeking become blurred.” (İçduygu & Yüksek, 2008, p. 10)

Although the distinctions between the categories are blurred, there is a categorical difference between “irregular migrant” and “refugee” as such. Denominations like “transit migration,” “circular migration,” or “labor migration” are research-categories created by social scientists, however categories of “refugee” and “asylum seeker” are legal statuses given by official bodies. Of course migration can also be regulated legally, regulations to fight “illegal” migration are proofs of that; nevertheless, what I try to express here is that being a refugee is a legal status that the individual is granted.

Then who is a refugee or asylum seeker according to legal definitions? As we answer this question we have to also consider the differences in national and international definitions of the terms. In the first article of 1951 Convention Relating to the Status of Refugees, the term “refugee” shall apply to any person who

“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 of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Although this definition is used by UNHCR in the refugee status determination practice, the rest of the Convention is not clear-cut or problem-free. As Goodwin-Gil and McAdam (2007) state, “no treaty is self-applying and the meaning of words, such as ‘well-founded’, ‘persecution’, ‘expel’, ‘return’ or ‘refouler’, is by no means self evident.” (p. 7) Other than being vague and open to interpretation, there are still serious questions as to who should be included into the definition. This amounts to asking, “Why should the victim or person at risk of persecution be protected through the grant of asylum (if that is the case), but not those who face other violations of human rights?” (Goodwin-Gil & McAdam, 2007, p. 12)

Since the scope of the definition of the 1951 Convention is inadequate, it has been complemented by other regional treaties. For example, in the 1969 Convention on the Specific Aspects of Refugee Problems in Africa, people who had to leave their place of residence “owing to external aggression, occupation, foreign domination, or events seriously disturbing public order” are included into the definition. The 1984 Cartagena Declaration on Refugees also includes: “Among refugees are such persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”

In Turkish regulations the content of the definition of refugee of the 1951 Convention is fully adopted under the term “asylum seeker.” The only difference in the definition of “refugee” is the phrase “as a result of events taking place in Europe”:

“The word “refugee” is an alien who is outside and cannot or is reluctant to enjoy the protection provided by his/her country of origin due to a well-founded fear of prosecution based on his/her race, religion, nationality, membership to a particular group or political opinion as a result of events taking place in Europe; or a stateless person who is outside and cannot or is reluctant to go back to the country he/she previously resided due to a well-founded fear.” (Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration, 2005)

The reason for this difference is that even though Turkey is a signatory to the 1951 Geneva Convention, it did so by choosing the geographical limitation which existed as an option in the Convention: Turkey recognizes only those from Europe as “refugees” and

specifies that non-Europeans can only be considered as “asylum seekers.” Moreover, there is yet another term defined in Turkey’s 2006 Implementation Directive: “Applicant” or “The person who applied for refuge/asylum” is an “individual who has applied to the Ministry of Interior for refuge/ asylum, but for whom no final decision has yet been made.” While this category may seem redundant; its relevance will be clearer in following chapters as we discuss the problems inherent in its implementations.

Many people have discussed the confusion that arises from the use of these terms. At a conference organized by the Istanbul Governorate, Tevfik Odman, a professor of law who played a role in the writing of the Regulation of 1994, expressed the need to clarify this confusion<sup>2</sup>. The differences between the Turkish and international definitions of the terms need to be eliminated. The purpose of defining a term is not simply an effort to understand a particular concept; it is done to clearly delineate individual rights and responsibilities. It is evident that the geographical limitation is the main culprit for the incoherence in the terminology. Even if the geographical limitation is not lifted, if people are to benefit from international protection and rights as they should, the definitions and scopes of the Turkish law have to be made compatible with international standards.

In this thesis I ignore the geographical limitation and adopt the interpretation put forth by Ezgi<sup>3</sup>, one of my interviewees. Accordingly, “An individual is already a refugee when she arrives, even though it is the UNHCR that later officially declares her to be a refugee”:

“It depends on your perspective. Anyway, Turkey does not grant refugee status. All these people are applying for temporary asylum; they are not even asylum seekers. But UNHCR examines their cases in detail in accordance with the 1951 Convention and makes certain decisions. This decision means recognition of the particular person as a refugee by the UNHCR in the international arena and her declaration as a refugee. She was actually a refugee the moment of arrival, even before being declared as such, but in Turkey this declaration is made by the UNHCR.” (Ezgi)

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<sup>2</sup> Conference on Recent Developments on Refugees and Asylum-Seekers, held by the Governorship of Istanbul, Commission of Human Smuggling, Refugees and Illegal Migrants on May 8, 2010

<sup>3</sup> Instead of the real names of my interviewees I use pseudonyms in order to maintain their anonymity.

While it needs to be stated that the final declaration of refugee status is actually spelled out by the MOI and not the UNHCR, my deployment of the term in the thesis “refugee” will follow Ezgi’s perspective and will also cover non-Europeans as well as those who have applied for refugee status, but have not yet been recognized.

### Notes on Methodology

For this thesis I have determined that the qualitative method best accords with the task at hand. Any quantitative research method, like a survey, would not allow me to make a proper analysis of social construction of reality and sense making. O’Reilly (2005) argues that, “Topics which involve examining processes of change, examining negotiated lived experiences” are suited to ethnography (p. 29). This supports my choice of method since my study covers the role of NGOs both in the negotiation on establishment of legal framework and in the process of change of refugee experiences. Although I must admit that my study lacks ethnographic depth due to the lack of lengthy participant observation, it does indeed have an ethnographic aspect. Ethnography is describing a culture which can be defined as “the acquired knowledge that people use to interpret experience and generate social behavior.” (Spradley, 1979, p. 5) In this thesis, I functioned as an ethnographer as I aimed to “describe and explain the regularities and variations in social behavior” (Spradley, 1979, p. 10) of NGO staff. Instead of collecting “data,” I my aim was to be taught by my interviewees.

To collect information for the thesis, I conducted semi-structured interviews in which I used a previously prepared written list of questions and topics that needed to be covered in a particular order. Bernard (1995) states that this kind of approach works well with “people who are accustomed to efficient use of their time,” because “it shows that you are prepared and competent but that you are not trying to exercise excessive control over the informant” (p. 210). Indeed, all my interviewees had very limited time and some were very interested in my questions list. My questions were mostly open-ended and enabled me “to get people to open up and let them express themselves in their own terms and at their own pace” (Bernard, 1995, p. 209). I do not see my interviewees as respondents or subjects who just answer survey questions; rather, they defined what was important for me to discover and my questions arose out of their culture. Additionally, I combined interviews with collection of other forms of data such as publications of my interviewees themselves, texts of legislation, maps and statistics.

With the aim of learning the legal framework of the Turkish asylum system and establishing a network in order to access the field of refugees I worked as a volunteer intern in Helsinki Citizens Assembly – Refugee Advocacy and Support Program (HCA-RASP) for 3.5 months from September 2009 until January 2010. Although my aim at the beginning was not to conduct participant observation there, later when my subject evolved into the role of NGOs in the Turkish asylum system, HCA-RASP became part of my field. Since I did not officially ask for permission to do participant observation, what I did there cannot be called as such; nevertheless, I must admit that the internship gained me access into the field and accumulation of very valuable initial information about the asylum system. In the office I had the opportunity to observe how the staff behaves towards refugees, what they find important, what makes them happy or angry, what kind of a language they use with whom, or where they draw their lines.

At the time of my internship nine legal advisors, eight interns and five interpreters were working in the office. There were three units called refugee status determination (RSD), protection and advocacy and training. All interns went through training where they were taught basic concepts on refugees and international protection, the context of asylum in Turkey and HCA-RASP services in the RSD or protection context. What is done in the office is basically counseling and interview preparation, preparing legal submissions, representing refugees during UNHCR interviews and corresponding with UNHCR and other agencies on behalf of clients. In cases of detention or deportation, the legal advisors get in touch with police, the Ministry of Interior, local UNHCR officers and if very necessary also with the ECtHR as an interim measure to stop an urgent deportation. My duties as an intern ranged from answering phone calls, doing new intakes, translating, faxing and photocopying documents, accompanying refugees to hospital or the Foreigners Department of the Police, to washing the dishes.

During this internship I found that remaining unobtrusive with the purpose of participant observation was impossible. The HCA is not a very permissible place and entry is limited. They are very sensitive about confidentiality. In relation to confidentiality, one of the meaningful details has been that when other interns learned about the subject of my thesis, they started to joke around with me, calling me “spy.” Moreover, I promised the supervisors that I would not conduct any interviews for my thesis as long as I worked in HCA-RASP, because I was representing HCA and interviewees could misunderstand me and think that I

was talking to them in the name of HCA. Nevertheless, after I had completed the internship and started doing interviews with other NGOs, my interviewees questioned me as to how well I knew the field and when I informed them that I had worked for HCA-RASP they situated me in their minds accordingly. So, I bore the label of HCA, even if I did not wish to. But also I have to admit that when I started with the interviews I could not stand equidistant to different realities of different NGOs, maybe because I felt politically engaged with the perspective of HCA. This situation changed later when I began to encounter different opinions in the interviews. Whereas at the beginning I sided more with the “rights-advocacy-based” NGOs such as HCA, in the course of the study the importance of “social-support-based” NGOs became clearer to me. Now at the end of the study I see that both kinds of NGOs are indispensable and complementary to each other.

I conducted twelve interviews in total with eight NGOs and the UNHCR. In Istanbul I talked with the Helsinki Citizens Assembly Refugee Advocacy and Support Program (HCA-RASP), the Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der), the Human Resource Development Foundation (HRDF), the International Catholic Migration Commission (ICMC), Caritas, and the UNHCR Istanbul Field Unit. In Ankara I interviewed the Association for Solidarity with Asylum-Seekers and Migrants (ASAM) and Amnesty International Turkey Branch. Lastly in Izmir I visited the Association of Solidarity with Refugees (Mülteci-Der). The reason I conducted the interviews in these cities is not a theoretical choice of multi-sitedness, but rather the most prominent NGOs in this field are located in these cities. Nonetheless, visiting NGOs outside of Istanbul proved to be very fruitful since I had the opportunity to observe different environments in different cities. For instance, I participated in the Cappadocia trip for refugee women organized by ASAM on the occasion of International Women’s Day where I had the opportunity both to observe the activity of ASAM and to interact with refugees.<sup>4</sup>

I revisited three NGOs in Istanbul, carrying out second interviews with HCA-RASP, Mazlum-Der and HRDF; the others I could interview only once due to time constraints. After the first five interviews, new questions as well as new developments, such as sharing of drafts of new laws and publication of new circulars led me to prepare a second list of questions. For Mülteci-Der, ICMC, Caritas and UNHCR a second interview proved to be unnecessary

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<sup>4</sup> This trip took place on 6/03/2010 and around 500 refugee women and children from Niğde, Nevşehir, Kayseri and Kırşehir participated.

because I had asked them everything in my first and second list of questions at once. Although at the beginning I had planned to revisit all of my interviewees at least once, I was unable to do that. Revisiting at least some of them, if not all, was also very important, because as part of the method it was also necessary not to leave the interviewees after using them as sources of information, but to establish more sincere humanistic relations and pay a second visit. How well a single person can represent an organization and the necessity of talking to other people from the organization for a better representation are problems to be discussed. In the organizations with which I had no such sincere relations, because I could not say “I want to test what you told me with another person,” I took the risk of the problem of representation and I preferred to conduct a second interview with the same person. For example, in Mazlum-Der fortunately my interviewee invited another lawyer from the organization to our second appointment, so we had an interview of three. In UNHCR I talked with both Pelin and Alp at the same time and also in Mülteci-Der Betül, İpek, Gaye and Ebru were present in the interview. And in HCA-RASP, since I had established good enough relationships with them, making a second interview with someone else would not cause mistrust.

One of the difficulties I faced during the interviews regarded “positionality.” Contrary to the classical anthropologists who study “down” the “natives,” I found myself studying “up.” In most interview situations I was the one who lacked information and my interviewees assumed the roles of “teachers.” Knowing that their narratives may change depending on the listener, leaves me with no other alternative than admitting that my position influences their construction of reality. Here the importance of participant observation comes into view, namely observing the same person as she interacts with others and engages in different situations. In various occasions such as in the Academic Network Seminar of UNHCR, in the meeting of Euro-Mediterranean Human Rights Network, in the conference on recent developments on refugees organized by the Istanbul governorate and in the international Istanbul meeting of Migreurop, where the representatives of almost all NGOs meet, I had the opportunity to observe my interviewees interacting with each other, as well as others. In all of these conferences and meetings my interviewees told the audience more or less the same things they told me in the interviews, in this sense I think that their reliability is proven.

## Chapter Summaries

In the following chapter I present the background of the Turkish asylum legislation and I discuss the impact of the EU on this legal framework. Then I narrate various thoughts of NGO representatives on this legal framework. I discuss the emergence of the concept of “migration management,” which includes the discourses of securitization and economization of migration. Then I introduce a brief history of the Turkish asylum system, its rules and procedures. I explain the origins, content and problematic consequences of the 1994 Regulation. In the second part titled, “The Impact of the EU,” I discuss the “National Action Plan for Asylum and Migration,” and demands of EU such as the lifting of geographical limitation or signing of Community readmission treaties. Then I mention the decisions of the European Court of Human Rights and Turkey’s efforts to harmonize its legislation with the EU. In the third part I convey various thoughts of NGO representatives first on the existence and sharing of the new unit called “The Bureau of Enhancing the Capacity and Implementation of the Asylum and Migration Legislation” under MOI and then on the possible developments in the future. In this context I will question whether 2010 is really “the year of legal reforms” as suggested.

Chapter 3 deals with problems in the implementation of the asylum legislation. Since my observations through actual experience of the problems are limited, I use reports of NGOs, a report of the Human Rights Inquiry Committee of the Turkish Grand National Assembly and of the Council of Europe Commissioner for Human Rights as well as my interviews as sources of information. In different parts entitled, Reception and Living Conditions of Refugees, Residence Fees, Administrative Custody and Conditions at “Guesthouses,” Access to the Asylum Procedure, The Violations in the Procedure and Accelerated Procedure, Right of Access to Legal Support and Reclaim, Deportation, and Groups in Need for Special Protection, I demonstrate that, contrary to what is stipulated in the legislation, the rights of the refugees are violated in many cases. I also argue that the public perception of the foreigners coming to our country is unfortunately based on notions of security and economy, rather than on human rights and that this is a situation that needs to be changed.

In the next chapters I look into the roles of the NGOs in the asylum system, and try to determine their power and capacity to bring solutions to the problems in both legislation and implementation that were summarized in previous chapters. In Chapter 4, I first introduce the NGOs I interviewed, depicting their tasks as they state them. I then discuss how they construct their own meta-narratives between refugees and authorities, in the sense that what information they hear from refugees and how they convey it to authorities. I show how the emphasis on rights, which is the most outstanding element in their discourse, leads to both cooperation and tension among the NGOs. I argue that NGOs are intervening in the system and helping refugees in line with their principles and priorities, rather than trying to draw portraits of victims as favored by RSD examiners. In general my aim in this chapter is to present what the NGOs are capable of doing in the asylum system in Turkey, while the subsequent chapter will focus more on the limits inherent in NGO efforts.

In Chapter 5, I respectively discuss the limits, as well as the ideas of the NGOs of their roles in the asylum system and point out their interactions with the state and the UNHCR. Finally I look into their approaches to the distinction between refugees and migrants, and the dreams of NGOs for another world. I think that although the NGOs carry out valuable efforts aimed at improving the current conditions of the refugees, they are also constrained in these efforts. I argue that their roles as political actors and critics of the government are as important as their missions to contribute to establishing the relevant legislation, generating information, resorting to judicial review, following up on the violations of rights, monitoring the government and raising public awareness on the issues. In this regard, I believe in the need for a “reconsideration of political struggle” (İpek Can, 2007) by the NGOs.

CHAPTER 2  
LEGAL FRAMEWORK OF THE TURKISH ASYLUM  
SYSTEM AND THE IMPACT OF THE EU

This chapter presents the background of the Turkish asylum legislation and discusses the impact of the EU on this legal framework with various thoughts of NGO representatives on the subject. When examining the role of NGOs, a discussion of the legal dimension is inevitable, because refugee status is, intrinsically, a legal category, meaning that one cannot discuss the issue without discussing its legal aspects. Scholars studying international irregular migration to Turkey usually start by defining the migrant categories and the applicable legal framework (İçduygu, 2002; İçduygu & Yüksek, 2008; Kaya, 2008; Kirişçi, 2008). They document the migration experience of Turkey and relate it to the wider context of the international migratory regimes around Europe. Another method is to start with the legal framework and compare the legislation with actual practice, since the implications are widely considered to be unlawful.

The concept of “migration management” has emerged from the considerable increase in the volume of legislation to regulate and restrict irregular migration, especially as seen in Europe. Since irregular migration is perceived as both a threat to security and an economic burden, both in the international arena and in Turkey, this concept includes both discourses of securitization and economization of migration. In the sense of securitization, because it has an irregular, uncertain and insecure nature, irregular migration “is perceived as posing serious challenge to the long-standing paradigms of certainty and order in migrant receiving countries,” hence a discourse of fear is produced (İçduygu & Yüksek, 2008, p. 15). In fact, Europe perceives itself vulnerable “to uncontrolled population movements” and sees this as an “example of the erosion of state sovereignty” (Collinson, 1996, p. 77). As Biehl (2009) states, “This growing fear of non-Western migration has led most Northern countries to resort

to fortified border policing measures and restrictive legislation, practically blocking all means of legal entry” (p. 1). According to Collinson (1996), Europe wants to prevent the arrival of more refugees with the help of three principal measures, namely visa requirements combined with carrier sanctions, the ‘safe third country’ policy and readmission arrangements.

One of the best examples of this securitization discourse is the Dublin II system and the EURODAC practice in Europe. According to the Dublin II Convention, someone who wants to seek asylum in Europe has to apply for it in the European country of initial entry into the EU. “Against forgeries, the fingerprints of asylum applicants are saved in a global database called EURODAC. In this way, when someone applies for asylum in one of the Schengen countries, firstly her fingerprints are examined and then checked to ascertain whether she applied for asylum in another country before and whether she has the intention to abuse the system” (Göçmen Dayanışma Ağı, 2010). The Dublin system is criticized for having unfavorable effects on asylum seekers. Contrary to its aim of preventing ‘refugee in orbit,’ it is the case that for many refugees Dublin transfers guarantee their applications will not be examined. Another criticism concerning the securitization discourse of the Dublin system is the shifting of “responsibility for refugee protection toward the newer Member States in Europe’s southern and eastern regions” rather than from promoting inter-state solidarity (ECRE, 2008, p. 4). Thus, the western European states push the states of Central- and Eastern Europe into the role of “asylum buffer states protecting Western Europe, as opposed to acting as equal partners.” (Collinson, 1996, p. 79)

In the sense of economization, there is a “restrictionist rhetoric of fewer benefits but more costs of immigration” which encourages “continuous and strong intervention to restrict and regulate migration flows” (İçduygu & Yüksek, 2008, p. 14). Nevertheless, as İçduygu and Yüksek (2008) state very well, “When national economies in Europe need labour, it seems that it often becomes irrelevant to think of the status of labour in these economies as being regular or irregular” (p. 14). One of my interviewees, Bilge, stated his opinions regarding the use of irregular migrant labor by both Turkey and European countries:

“In Turkey there are always 700,000-800,000 people who reside and work in the country irregularly. No European country supports such a huge population of informal workers. It is always mentioned that increasing the opportunities of legal migration and legal residence would result in prevention of illegal migration and human trafficking, but Europe never accepts this and tries,

rather, to make irregular migrants work there informally. And then it asks Turkey why it is not doing its best” (Bilge)

These processes are not only limited with Europe; the same discourses also develop in Turkey which, with the effect of globalization, has become a transit route and a target of an economically motivated irregular migration. Additionally, because of Turkey’s EU candidature to EU membership, the subject on the agenda in Europe also becomes an issue of discussion at home. Accordingly, in order to prevent migrants from reaching Europe by travelling through Turkey, EU demands that Turkey, “both securitize migration within its borders and conform fully to the norms of the international refugee regime” (İçduygu & Yüksek, 2008, p. 16). Turkey, in its intentions to Europeanize, has embraced the notion of migration management, which is defined by Bulmer and Radaelli as “processes of construction, diffusion, and institutionalization of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms to European model of governance, caused by forms of cooperation and integration in Europe” (as cited in İçduygu & Yüksek, 2008, p. 18).

However, as the MOI deputy secretary Hasan Canpolat expressed in the Academic Network Seminar of UNHCR in December 2009, while trying to manage migration, Turkey fell short of balancing the policies of protecting refugees and inhibiting “illegal” migration. Hence, unfortunately, refugees in severe need of protection cannot be differentiated from other irregular migrants. Here, I do not support the contrast in the official discourse of “good refugee vs. bad illegal migrant” which legitimizes the ‘bad’ treatment of migrants; nevertheless definitions should be clarified so that refugees obtain their internationally safeguarded rights. For this it is necessary to resolve the confusion of concepts and definitions in a reformist way.

As Chapter One indicates, definitions and understandings of terminology differ within individual countries and in international arenas. Among my interviewees were those who argued that it has been 60 years since 1951; the context of the world has changed to the degree that those definitions in the 1951 Convention no longer accord with needs and they have to be changed. Moreover, definitions in Turkish legislation differ from the standard because of the clause relative to geographical limitations. The definitions that were first introduced with the 1994 Regulation with the aim of managing migration are inadequate for the protection of refugees and therefore new solutions are needed.

At this point I want to inject a brief history of the Turkish asylum system, its rules, and procedures. Turkey was among the first signatories of the 1951 Geneva Convention relating to the Status of Refugees; however the Convention was signed with both geographical and time limitations. In 1967 Turkey agreed to eliminate the time limitation, but the geographical limitation was left intact. Thus, Turkey applies the 1951 Convention only to those people who seek asylum as a result of ‘events occurring in Europe,’ whereby “Europe” is meant to cover the countries member to the European Council (AI, 2009; HCA, 2007). Currently Turkey and Monaco are the only countries maintaining this limitation in Europe (Kirişçi, 2001).

Kirişçi (1996) states that during the Cold War asylum was granted only to those who were fleeing communist persecution in Eastern Europe and Soviet Union. The reasons of this treatment were Turkey’s anti-communist foreign policy and the small number of such refugees. Thus, only 13,552 refugees benefited from protection between 1970-1996. (p. 296)

Azerbaijanis, Chechens and Uzbeks were not granted refugee status, even though these countries are considered to be part of Europe. Kirişçi (1996) argues that these people “have been allowed to stay in Turkey on an unofficial basis or have been allowed to benefit from the laws that allow people of Turkish descent to settle, work and eventually obtain Turkish citizenship” (p. 296). Also, around 20,000 Bosnian Muslims, 8,700 Albanians and 18,000 Kosovars escaping conflicts in former Yugoslavia in 1990s sought asylum in Turkey. In their cases too, Turkey did not apply the provisions of the 1951 Convention and granted these people only temporary protection. Later, almost all of these groups returned to their countries of origin (Kirişçi, 2001: 76). Currently only 43 Convention refugees remain in Turkey<sup>5</sup>.

Non-European refugees for which Turkey did not accept responsibility under the 1951 Convention can be referred to as “non-Convention refugees.” Until the introduction of the 1994 Regulation<sup>6</sup>, Turkish national law had no provisions regarding the status of non-European refugees except the old Settlement Law. At the time of writing of this thesis, an Asylum Law has not yet been drafted, but such a law is in a process of preparation. Currently, Turkish refugee policy includes general provisions of the Passport Law (No. 5682) and the

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<sup>5</sup> According to the TGNA report (2010), these 43 European refugees consist of 27 Greeks, 6 Bulgarians, 6 Serbians, 3 Azerbaijanis and 1 Albanian citizen.

<sup>6</sup> The full name is “Regulation on Procedures and Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country” with decision number 94/6169.

Law on Residence and Travel of Aliens (No. 5683). Without going into much detail, I can argue that none of these laws are adequate to dealing with the issue of asylum. The fact that in the new Law on Settlement the reference to the concept of refugee has been dropped and only those of Turkish descent or culture are acknowledged as migrants, exemplifies this argument.

Until the 1980s, the flow of Convention refugees was a manageable size, but this situation started to change with Iranian refugees. During the 1980s, when a large number of Iranian opponents escaped Khomeini's regime and arrived in Turkey, the task of refugee status determination (RSD) was left to the UNHCR. However, these refugees' illegal entry to Turkey or failure to register with the police, that is, the uncontrolled movement of refugees, frequently led to disputes between Turkish officials and the UNHCR. These disputes over who is an asylum seeker and who is not intensified with the refugees of the Gulf Crisis in 1990-91 and led to fragile relations with UNHCR. Additionally, the inability to control the eastern borders of the country created sensitivity. As a result, the 1994 Regulation was introduced by the MOI. Because only the Foreign Ministry was consulted in the preparation of the regulation and there was no such consultation with UNHCR, NGOs or legal experts, the 1994 regulation has been criticized bitterly (Kirişçi, 1996, p. 299-301).

As stated in the terminology discussion of the first chapter, for the first time with the 1994 Regulation, the full content of the definition of refugee of the 1951 Convention was adopted under the term "asylum seeker." However, in the definition of "refugee" there remains the additional reference to "result of events taking place in Europe." Other than the definitions, the regulation includes procedures and principles to be pursued in individual asylum applications and precautions to be taken in case of mass influx. Kirişçi (1996), who examined the regulation article-by-article in a very substantial way, argues that, "The Regulation can be considered as a major step forward in respect to regularizing the status of asylum seekers and refugees, particularly those from outside Europe" (p. 303).

Although the acceptance of the non-refoulement principle and an assumed transparency and predictability due to the clearer set of procedures in the 1994 Regulation are positive developments, the Regulation also poses several practical problems. Firstly, the Turkish authorities were unprepared to implement the RSD. They lacked experience and knowledge and also did not have translation facilities. Apparently, these problems still continue to some extent in 2010. The most frequently pronounced problem was the five-day

deadline for submitting asylum application to Turkish authorities. If a refugee missed this deadline, his or her case was automatically rejected and the refugee would be deported. Despite the fact that in some cases the administrative courts rule that this time limit was invalid, the rigid application of this time limit led to people becoming “illegal immigrants.” When it was argued that these deportations were violations of the non-refoulement principle, the Turkish authorities responded with complaints about interference with their sovereign rights. Nevertheless, the government revised the Regulation in 1999 to deal with the complaints. The five-day limitation was changed to ten-days and appeal against negative decisions in the administrative courts was emphasized. Later in 2006, this 10-day time limitation was also lifted and replaced with a statement that those who want to seek asylum should apply within a “reasonable time” (Ekşi, 2006, p. 61).

Another problem was caused by the lack of a clearly defined role for the UNHCR. According to Kirişçi (1996), whereas until 1994 the UNHCR was recognized as the body responsible for receiving applications and determining status, with the new law its function was reduced to resettlement (p. 305). Since the Regulation does not allow the integration of the refugees, and they cannot go back to their countries due to the risk of persecution, the permanent solution would be to resettle the refugees in a third country such as the USA, Canada, Australia or some Scandinavian countries.

Nevertheless, from 1997 onwards, much closer cooperation developed between the UNHCR and the government. Kirişçi (2001) states that the UNHCR was permitted to open offices in some border towns such as Ağrı and Van. In 1998 UNHCR organized a series of seminars for Turkish officials in cooperation with the MOI. Moreover, together they started a publicity campaign to inform refugees about the Regulation (p. 83-84). In this way, UNHCR started again to make RSD decisions and the MOI followed suit.

Coming to the procedure, according to the 1994 Regulation, we see that there is a dual procedure, that is, a refugee must apply both to the police and the UNHCR. Both authorities examine the case according to the criteria of the 1951 Convention; however, Turkish authorities grant non-European applicants “the status of ‘asylum seeker’ (hence the right to temporarily reside in Turkey), whereas the UNHCR application grants the status of ‘refugee’ (hence the right to seek third country resettlement)” (Biehl, 2009: 4). Refugees may wait two

years on an average for the result of their application and finalization of their resettlement. During this long and uncertain waiting period they are assigned to live in one of the thirty ‘satellite cities’<sup>7</sup> designated by the MOI and located primarily in the country’s interior. Police permission is required to leave one’s satellite city for any reason.

At this point I want to convey some statistics regarding the numbers of people within the scope of the 1994 Regulation. According to the report of the Human Rights Inquiry Committee of the Turkish Grand National Assembly, since the 1994 Regulation entered into force, 58,804 foreigners from 53 different countries applied for asylum in Turkey. 30,627 of the asylum seekers were from Iran, 21,781 from Iraq, 2,746 from Afghanistan, 1,835 from Somalia and the remaining 1,815 people were from the other countries. According to the report, to date, 11,936 refugees have been resettled in the USA, 5,628 in Canada, 3,959 in Australia and 5,280 in Scandinavian countries such as Finland, Sweden, Norway and Denmark, while the remaining 1,012 refugees were resettled in 24 various other countries.

The TGNA Report states that as of May 2010 there are still 20,668 foreigners in the status of “applicant of asylum” residing in Turkey. Of these 8,027 are Iraqis, 5,941 Iranians, 3,755 Afghans, 1,490 Somalians, and the remaining 1,455 are from 55 different countries. However, in the interview I conducted with the UNHCR on May, 10, 2010, there were 15,497 registered people in total, of whom 9,353 are refugees and 6,144 asylum seekers.

According to the TGNA Report, since 1998, 9,327 human smugglers and, in 2009, 64,290 “illegal migrants” have been apprehended. Although these numbers can be considered near to reality, it is possible that they are in fact much higher. This is due to the fact that a common system of registration and monitoring of migrants apprehended at border crossings is not in place and the numbers announced by different authorities differ greatly from each other. Besides, public authorities do not share regular information regarding the real numbers of deported refugees and migrants. Therefore it is estimated that many more deportations are executed than are reflected in the media. According to the argument in İHAD’s 2009 Survey Report on Asylum in Turkey, 43 foreigners died during “illegal” border crossings and in

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<sup>7</sup> These cities are Adana, Afyon, Ağrı, Aksaray, Amasya, Bilecik, Burdur, Çankırı, Çorum, Eskişehir, Gaziantep, Hakkari, Hatay, Isparta, Maraş, Karaman, Kastamonu, Kayseri, Kırıkkale, Kırşehir, Konya, Kütahya, Mersin, Nevşehir, Niğde, Sivas, Şırnak, Tokat, Van and Yozgat. (Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2010)

incidents in detention centers in 2009. However, considering the refugees and migrants who are lost in accidents on sea, it is estimated that the real number of deaths is higher.

### The Impact of the EU

After the 1994 Regulation, the next document belonging to the legal framework is the National Action Plan for Asylum and Migration (NAP) adopted by the Turkish government in 2005. As Turkey began to exert more efforts for EU membership, the EU agenda started to play an influential role in shaping Turkey's asylum and migration policies. In response to the Accession Partnership document of 19 March 2001, Turkey agreed to take several measures regarding border control, visa regulations, and asylum system (Biehl, 2009, p. 5). These measures, such as development of administrative and technical capacity, training of specialized staff and changes in legislation are confirmed in NAP. However, Tokuzlu (2010) argues that, "The impact of the EU accession process on Turkish asylum law has been insignificant compared to other fields of law" and introducing "extensive legal reforms that go beyond political programs" has not been possible (p. 2). In a similar vein, I am also suspicious whether 2010 is the year of introduction of extensive legal reforms as argued by both government and NGO representatives.

After the NAP and also because of the convictions by the European Court of Human Rights against Turkey concerning deportation cases, the MOI adopted an internal asylum directive in 2006 that introduced certain mechanisms of the EU asylum acquis. Although the directive includes accelerated procedures, subsidiary protection status and some humanitarian grounds, it is narrower and more restrictive compared to the relevant EU acquis (Tokuzlu, 2010, p. 12).

In fact, what the EU demands from Turkey among other conditions are mainly that the geographical limitation applied to the 1951 Convention be lifted and the Community readmission treaties signed. These demands are in line with EU's two clear approaches in respect to asylum: The first is "to limit asylum seekers' access to asylum procedures within Member States" and the second is "to share the burden of those asylum seekers who have managed to gain access to the asylum procedures, in an equal fashion, among Member States"

(Tokuzlu, 2010, p. 2). However, none of the action plans or directives adopted in Turkey reference the lifting of the geographical limitation or the signing of Community readmission treaties.

Compliance with these two requirements would bring Turkey within the domain of a safe third country and enable EU to shift the burden of refugees who transited through Turkey back to Turkey. Since Turkey does not comply, the EU cannot effectively implement the burden-shifting tools (Tokuzlu, 2010). On the hand, from the Turkish perspective, the removal of the geographical limitation is “an issue which should be overcome without damaging the economic, social and cultural fabric of Turkey” (Hammarberg, 2009, p. 32); therefore, it depends on “burden-sharing” and the success of the EU Accession negotiations.

Because these negotiations were continuing, Turkey postponed its promises in the National Action Plan of 2005 and began to retreat in the implementation of reforms. As a solution to this tension between Turkey and EU, Kirişçi (2008b) recommends close cooperation instead of resorting to self-help and creating a climate of win-lose (p. 22). In a similar vein, Tokuzlu (2010) argues for a closer burden-sharing relationship, instead of the burden-shifting mentality of the EU. Nevertheless, as a result of pressures coming from the EU, especially those imparted through the decisions of the European Court of Human Rights, Turkey started to take steps to prepare new legislation. Article 3 of the European Convention on Human Rights prohibits torture, inhumane or degrading treatment, or punishment. Accordingly, a state cannot deport a person who faces a real risk of violation of the right in Article 3. Article 5 underlines the procedural guarantees while limiting the right to liberty and security of a person. Article 13 also proved to be useful for refugees who could not have an effective remedy before a national authority against an order for deportation (Tokuzlu, 2007). The ECtHR decided that holding applicants in detention without legal foundation and in unfavorable conditions is contrary to these articles and it is thus that Turkey has been convicted by the European Court of Human Rights because of human rights violations related to refugees.<sup>8</sup>

Here, it is important to differentiate between EU and ECtHR as two different institutions and in terms of their impact on Turkish asylum law. From the discussions on

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<sup>8</sup> Abdolkhani and Karimnia v. Turkey (no. 30471/08), Jabari v. Turkey (no. 40035/98), Tehrani and others v. Turkey (no. 32940/08, 41626/08 and 43616/08), Ranjbar v. Turkey (no. 37040/07), Keshmiri v. Turkey (no. 36370/08), Charahili v. Turkey (no. 46605/07)

burden-sharing and the EU Accession negotiations it can be inferred that the impact of the EU is rather negative. However, the impact of the ECtHR can be interpreted as positive since the decisions of the ECtHR forces reformist measures.

Regarding the process of taking steps to regulate the asylum system I mentioned above, it is said that 2010 is the “year of reforms.” Two Twinning Projects are currently underway as part of Turkey’s efforts to accord its legislation with the EU: One is the “Country of Origin and Asylum Information System,” which is seen as an essential component of a full-fledged RSD procedure. The other project is the “Establishing Reception and Accommodation Centers for the Asylum Seekers and Refugee Guest Houses.” According to the government, asylum seeker reception and accommodation centers at a capacity of 750 persons each will be established in the provinces of Istanbul, Izmir, Ankara, Gaziantep, Van, and Erzurum. Their construction is scheduled to begin in 2010 (Hammarberg, 2009, p. 30-31). It is argued that these centers will relieve part of the problem of shelter, but will not bring a solution. It is also uncertain yet whether service provider NGOs will be able to enter these centers, whether legal support will be provided, or whether entry and exit will be freely allowed.

In addition to the coordination of these projects to harmonize the legislation with the EU, the authorization to regulate the field of asylum now belongs to a new unit under MOI, which is called “The Bureau of Enhancing the Capacity and Implementation of the Asylum and Migration Legislation.” In March 2010 this bureau both issued two circulars: “Fighting against Illegal Migration” and “Refugees and Asylum Seekers,” and shared the headings of articles of the draft of new Asylum Law and Aliens Law with NGOs and academicians working in this field.

Can the existence and sharings of this new unit be interpreted as signals of reform? If we remember the problems mentioned in this chapter, it is seen that indeed reformatory solutions are needed. Will this new unit under MOI be able to resolve the confusion of concepts and definitions in the legislation? Are they prepared to implement the RSD? Do they have enough experience and knowledge? In the next section, different opinions of NGO representatives on this issue will help to clarify these questions.

Thoughts of NGO Representatives on the New Bureau in MOI and  
on the New Law and Their Anticipations about Future

“We spun a cocoon like a silkworm; we want to pass on a beautiful silk.” (Alp)

This section narrates various thoughts of NGO representatives first on the existence and sharing of the new unit under MOI and then on the possible developments in the future. Many interviewees from the UNHCR and NGOs said that the state realized the seriousness of this issue as a result of EU pressure and appointed serious staff trying to better comprehend the problem. Indeed, the employees in this new bureau under MOI are thought to be more knowledgeable, having a strong background and better awareness of European standards. The AI and HCA especially reported that they met with the representatives of this bureau on various occasions. In the meetings the NGOs located the problems and gave their suggestions. They believe that as NGOs they have to continue such meetings because this dialogue is very important. Kaya from AI emphasizes that he sees this dialogue as revolutionary since in the past there was no communication between the general directorate of security and civil society at all and there was even tension amounting to hostility. They do not know how influential this new dialogue will be on the new laws, but remain hopeful. According to Ezgi from HCA, stricter regulations of the field would cause closure of areas they can currently infiltrate and would complicate their work, but on the other hand they are hopeful because they will face people who are more open to dialogue and who will react in a more predictable fashion. Also Alp from UNHCR finds this bureau positive and says that it represents the start of a process and from now on there will be no turning back, even if this bureau changes. But, those interviewed also stress that the police and gendarmerie have to be trained if positive results are to be obtained and the professional staff should not be changed frequently.

On the other hand, Bilge from HRDF said while many of the staff of governmental agencies are democratic, knowledgeable, and respect human rights, when they try to act, they are hindered by the traditional state mechanism. He maintains that it is not reasonable to evaluate the bureau positively just because its employees are talented. He says only time will tell how great an effect these people will have on the real world of refugee problems and how much benefit they will provide. He emphasized that work should not depend on the goodwill

of individuals and that everybody should carry out their work in accordance with certain principles. According to Bilge, NGOs identify institutions with the employees working there, that is, when they see people with goodwill in an area that has to be transformed institutionally, they might refrain from criticizing and this is not correct.

Several different opinions have been expressed on the headings of articles of the draft of the new Asylum Law and Aliens Law, which the new bureau shared with NGOs and academicians. Kaya from AI said that Turkey lacks a tradition of sharing and asking for feedback. He says it is amazing when this has been done with the titles of the draft law and he finds this to be a positive development. AI also holds that refusing to discuss issues constitutes a problem and they believe that better results will be achieved if the number of actors is increased. Kaya says that the sharing of the headings of the draft law reflects signs of a new discussion with more actors involved. Kaya thinks that the entrance of a highly professional civil society into this field in the last 4-5 years and the collaborative and long struggles waged by many NGOs to obtain legal backing for refugee implementations that accord with international conventions have also influenced this willingness to share. While Dicle from HCA appreciates the efforts to harmonize the new law with EU standards, she also is disappointed that the most fundamental problems of its content, the geographical limitation, have not touched. She said unless this problem is solved, the deportations of refugees, their employment in informal hiring situations for very little money, as well as their problems in going to hospitals and schools will continue.

As they have expressed in their evaluation of the headings of draft law provided them by the Turkey Coordination for Refugee Rights<sup>9</sup>, Hasan from Mazlum-Der argued that speaking on the basis of titles alone is very hypothetical; they are not able understand from the titles what the exact rights of refugees will be, rather they only learn which topics will be covered. Since this is the case, they have to base their evaluations on an argument in favor of fundamental international norms. This group holds that they have to know whether the final concrete text will be shaped in accordance with the interpretations and requests they have brought forward; otherwise, it is not very possible for them to comment correctly on the headings only. Speaking on this same topic, Bilge from HRDF said that this sharing of titles is

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<sup>9</sup> Turkey Coordination for Refugee Rights issued an evaluation report of the headings of draft law on 15/03/2010 where they point to international norms of asylum law. A similar report was written by the Ankara University Center for Human Rights.

essentially meaningless and his group did not respond because they were not able to read the entire draft. As far as his group is concerned, responding would mean that they had approved of this partial sharing of information, so they decided that silence on their part would be preferable.

In like fashion, Melisa from Caritas also believes that the sharing process constitutes window-dressing and was only done for show. Bilge holds that while this is presented as an indication of goodwill and the most democratic action possible by group of people subjected to super-structural pressure, it is actually a political maneuver carried out to appear to be democratic in nature. He suggested that its importance not be exaggerated. Contrary to Kaya's qualification of "revolutionary," Bilge added that such sharing is not new and such sharing was carried out, for example in the health sector, 10-15 years ago. He said that the former legislative texts are based on restricting or inhibiting people or institutions, whereas the law should be drafted in a manner based on principles such as providing refugees their rights or acceptance of asylum as a right. He expressed his hopelessness concerning the rights of refugees in a new law of this sort:

"When formulating a law, the latest strategy is to emphasize the popular human rights discourse in the introductory section of the draft; that is, to make a statement that asylum is a right, refugees should be provided services, and so forth. The law then goes on to establish institutions, advisory boards, new units in general directorate of security, and so on. All these are exaggerated, but then when we get to the real "meat" of the law, the rights, we see that there is retreat and steps are taken backward. This same situation is happening all over the world." (Bilge)

As an addition to his evaluations of the new law, Hasan from Mazlum-Der claims that it is absolutely necessary that the processes should be implemented by a civilian unit, rather than by the police, unless the refugee has committed a crime. He explained that police generally approach the refugees as if they were all criminals:

"Honestly speaking, people who wear uniforms and hang guns on their belts move about with the idea of establishing a secure area. Go anywhere in the world and you will see that the approach of an employee wearing civilian clothes is very different from the approach of a policeman in a uniform. More

precisely, it is easier to argue with a civilian, because such people do not give you the impression that you are facing the power of the state” (Hasan).

He said that violations of rights will continue if the new law stipulates that operations will be performed by the police.

*Should the field be regulated or remain flexible?*

While we were talking about the need of a new law in our interview, Bilge from HRDF argued that loopholes are intentionally left in the legislation to force provinces to work with their own initiatives and that these loopholes are not very harmful in the sense that they give the system a little flexibility. Based on this argument in all next interviews, I asked the NGO representatives what they think on the absence of clear law and whether they prefer the field to be regulated or remain flexible.

Bilge said that it is highly possible that in a system with determined rules like western countries, refugees not fitting into certain criteria are sent back to their countries of origin and are treated unjustly. But in Turkey since this field is not well regulated, refugees who are not recognized may work and live here for years and even call other people from their countries and take care of them. He thinks that a social field produces alternatives in itself when not regulated legally; therefore it is not easy to insist that it should be regulated. Hence, while not supporting a strict regulation, in fact he includes undocumented migrants into the picture who do not fit with the five criteria of religion, race, nationality, political opinion and belonging to a social group. He hopes that loopholes remain in the legislation so that these people can better shelter in Turkey.

When I asked the same question to the Mazlum-Der representative, his first reaction was, “If the way a law is worded will lead to more freedom, of course it should be flexible!” Hasan thinks that if a state or society is based on advanced concepts of human rights, a law can be flexible and open to interpretation; however Turkey as yet does not enjoy a strong foundation of human rights.

“Unfortunately, we do not have such an approach; if there is a loophole in a law, the implementers do not know how to interpret it in favor of people. In contrast, when left up to the individual official to decide, most interpretations tend toward limiting freedom. When you don’t specify the rights in written form and place them in front of people, implementers tend not to respect a right; rather they tend to limit it. Therefore, at least at this point in time, Turkey has to define rights in a very clear and definite way in the legislation in Turkey” (Hasan).

Perhaps to complement Hasan’s words, it could be said that Article 65 of the Constitution gives to the government a kind of flexibility and does not impose any obligation in terms of provision of social and economic rights. Hence, it can be argued that these should not remain as programmatic rights for the law-makers; instead they should be regulated with certain laws.

Dicle mentioned that, because their ultimate aim is to achieve something legal, the HCA prefers regulations of the field, even if they do sometimes benefit from legal loopholes in daily life. It is for this reason that they desire implementation of rules of the highest standards. She added that of course it is also necessary that they have a say in the setting up of rules. Havva from Mazlum-Der said nothing is clearly written in the existing regulations, and expressions on education, health or accommodation are skimmed over with vague words. According to her, when you look at international conventions, not only refugees, but all individuals, have many rights. If reality matched the conventions, there would be no problems at all; however if they are not specified in detail, then problems tend to occur in practice.

Most of the interviewees emphasized there are problems across the board in Turkey’s legal framework, starting from concepts and definitions to regulating the legislation and specifying the responsibilities of institutions. They said that in the absence of a law, regulations and circulars are not adequate to providing solutions to problems. On the one hand, they said that in no other country in the world can one find laws with so many vague points. They insist that Turkey needs laws that are clearly formulated and not open to interpretation. A single law is needed that cannot be interpreted in different ways and whose practice cannot vary from city to city due to its loopholes. Today in one city an individual with goodwill can facilitate tasks, while in other cities this may not be the case; therefore, the people of the country cannot obtain exact information. Take the medical system in Turkey:

Besides the variations from city to city, even practices within a city arbitrarily vary from hospital to hospital and clinic to clinic. While similar problems are also true for Turkish citizens, refugees face even more difficulties. But, on the other hand, the interviewees also expressed that it is necessary to be realistic and not to expect that a law can completely solve all problems. They argued that most probably no one group will like the new law and this law too will be amended many times until certain things are solved. They say that it is impossible to frame a law that pleases everyone.

Dicle also indicated that implementing the new law will be very difficult because there is a huge difference in knowledge and mentality between superiors and inferiors, between undersecretaries and implementers in the state. She argued that those who will be implementing the law also grew up within the general consciousness level of Turkish society and xenophobic discourse, they have their own references, and these references are also reflected in day-to-day practices.

### *Anticipations Regarding Future*

I asked all the interviewees what they anticipate regarding the future within the legal framework and not surprisingly, one of the first topics to be touched on was whether Turkey would be able in the future to lift the geographical limitation under 1951 Convention. An often misunderstood element concerning the lifting of the geographical limitation is that when framing the National Action Plan of 2005, the government did not promise to lift the limitation in 2012. It only stated that the issue will be brought to the parliament at that time; hence the proposal may possibly be rejected at that time as well. Almost all of the interviewees believe that the lifting of this limitation actually depends on the tone of the EU at that time, but that sooner or later the restriction will probably be lifted. For example, ASAM believes that this is one of the issues that will come to the board only when Turkey achieves the final stages in the EU accession process.

On the other hand, Kaya from AI evaluates the use of the lifting of the geographical limitation as a card on the negotiation table with EU and a way to violate the right of asylum. He believes that the approach of states should be more humane and more within the

framework of law and international responsibility. He also argued that it is a shame that Turkey does not recognize the right of asylum of non-Europeans, while it boasts of being the world's 17<sup>th</sup> largest economy. He says no other country in the world continues to cling to the mentality of 1951.

The geographical limitation functions in Turkey as a safety valve to manage the flow of refugees. As most of my interviewees agree, Turkey, in point of fact, does not have the capacity to manage the number of refugees who flow through the country. For example, Bilge said that the limitation should be lifted only by providing the necessary infrastructure for it. While this is done, the burden on the state also has to be shared, because there is no social mechanism in place with which to face such an extraordinary situation.

There are two points of view regarding the lifting of the limitation in Turkey: one contends that more refugees would arrive if the limitation is lifted; while the other believes that nothing would change. All the NGOs I interviewed favor the lifting of the limitation, but their opinions regarding the aftermath of lifting may vary. For example, although Havva from Mazlum-Der emphasizes that the geographical limitation should be lifted because the origin of people being persecuted is not important, she also argues that the RSD examination should be done very carefully; otherwise the migrants who do not have the requisite refugee qualifications will use Turkey as a transit point and cause the violation of rights of citizens. Indeed, the opinion is frequently expressed that even if Turkey lifts the limitation, obtaining the legal status of refugee would become more difficult. According to ASAM and HRDF, at the moment the refugees who come to Turkey do not intend to stay, but rather come with the hope of resettling in another country. That is, if they knew they would be accepted here permanently, they would not come, for their actual aim is to migrate to western and northern European countries.

Representatives of ICMC and Caritas believe that, despite what some people may say, lifting the limitation would not make a big difference and would not create a big flow of refugees. Dicle from HCA maintains that the limitation must absolutely be lifted. She holds that the state can close its eyes to the existing situation only for some time and since Turkey cannot build walls along all the eastern borders with Syria, Iran, and Iraq, people will continue to come:

“No matter how much they strive, can Europe succeed in closing its borders? They keep trying, but there is nothing that they can actually do to stem the flow of migration. When you look at the figures you will see that only 0.3% of the world’s entire population is made up of migrants and only a very small portion of that number is trying to go to Europe. That is to say, this situation is not something to make so much noise about, but they still do. Despite so much noise and precautions, the Europeans cannot hinder it, so we should accept the fact that we in Turkey cannot hinder it either.” (Dicle)

She continued on saying that she does not understand why people fear the arrival of non-Europeans, it is not possible that many more people will come and even if they did, their arrival should not be seen as a problem. She says that the argument that migrants cause unemployment of citizens is simply false and, on the contrary, the impact of migrant labor on unemployment is almost zero, and migration and asylum do not have the power to turn the world order upside down. Thus, she challenges the discourse of fear.

Among opinions expressed about the future, besides the geographical limitation, was what would happen if UNHCR transferred the RSD process to the MOI. On this matter, various NGO representatives suggest that the RSD should be conducted by a civilian unit instead of the police. Melisa from Caritas emphasized that the RSD must absolutely be conducted independently of political conjuncture. Bilge from HRDF thinks that it would not be unfavorable for UNHCR to hand over the RSD to MOI and for the state to undertake some portions of UNHCR’s tasks. Since problems about migration will not come to an easy end in Turkey, the UNHCR would find other priorities for itself. Bilge feels that the existing RSD criteria are too value-laden. According to these criteria, the risk of death is accepted as a real risk only if it has a political quality, whereas potential death from poverty is not considered to be important. Because of that, he said the RSD criteria need to be reviewed in the future. Ezgi from HCA did not forget to emphasize that UNHCR’s RSD experience, and the standards it utilizes for content evaluation, are very special. Nevertheless, she asserts that if RSD is done by the state and some funding is set aside for free legal support for refugees, for example in the bar association, then maybe many more refugees might be contacted and this would emerge as a more definite work area for lawyers.

Ezgi thinks that the new law will generate very serious changes in the future. For example, as HCA, their job will be more difficult, but this is fine, because she hopes there will

be clearer rules and decisions and the operations will be performed in a smarter way. She says that currently such major serious mistakes are committed that it is very easy to see them. In the new system they will have to be more sophisticated and able to obtain better information. Having certain standards to which they must conform would ease the process and any mistakes can be better addressed.

The interviewees feel that the number of people seeking asylum from Turkey will increase and that the country is not going to be able to turn a blind eye to the issue. They emphasize the importance of the economic policies of the state and the requirement to build a social state. But of, course, only time will show what will happen in the future.

## Chapter Conclusion

In this chapter, I presented the background of the Turkish asylum legislation and discussed the impact of the EU on this legal framework with various thoughts of NGO representatives on the subject. In the brief history of the asylum system in Turkey it is seen that Turkey has failed in balancing the policies of protecting refugees and preventing “illegal migration.” Despite the 1994 Regulation, 2005 NAP and several following directives, it is impossible to solve the problems with regulations and circulars in the absence of a single and comprehensive law, The reason is that, regulations and circulars are not sufficient for providing solutions and also a uniform practice of a uniform law is needed. Also most NGO representatives argue that their aim is that the rules and regulations be implemented at the highest possible of standards, even though they admit that they have benefited at times from certain loopholes in the law.

In the past five years “It has not been possible to introduce extensive legal reforms that go beyond political programs” (Tokuzlu, 2010, p. 2); however pressures coming from the EU, and especially the decisions of ECtHR, led in 2010 to a so called “year of legal reforms.” The existence of a new unit under the MOI called the “The Bureau of Enhancing the Capacity and Implementation of the Asylum and Migration Legislation” and its sharing of titles of the draft of the new Asylum Law and Aliens Law apparently rose the hopes of everybody working in this field, such as NGOs and academicians.

Nevertheless, NGOs are still suspicious regarding the “reforms.” First of all, they emphasize that work accomplished should not depend on the goodwill of individuals and it is necessary to build a method based on certain principles, such as protection of rights. NGOs argue that refugee implementations should be performed by a civilian unit, not the police, for otherwise violations of rights will continue. Finally, they all agree that the lifting of geographical limitation under the 1951 Convention depends on the EU, and that basic problems will not be solved until such time as the limitation is lifted. The concrete reforms, which are hoped to be seen in the new Asylum Law, were not introduced yet at the time when this thesis has been finalized; hence I think it is not correct to label 2010 as the “year of legal reforms” for the field of asylum.

Although a government representative, Berlan Pars Alan from the Turkish Ministry of Foreign Affairs<sup>10</sup>, stated that the new regulation will be based on provision of rights, he also announced that the fight against irregular migrants will be strengthened and that the current aim does not include a regularization in the status of refugees. This stance of the government inevitably raises doubts and leads me to agree with all the NGO arguments.

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<sup>10</sup> Berlan Pars Alan was one of the keynote speakers in the MiReKoc Migration Research Conference on June 4, 2010 in which I participated as a listener.

## CHAPTER 3

### PROBLEMS OF IMPLEMENTATION

Turkey is one of the signatories of the Geneva Convention of 1951, as well as the Universal Declaration of Human Rights, the European Convention on Human Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Covenant on Civil and Political Rights and the UN Convention on the Rights of the Child. Despite this, the incompatibility of Turkish legislation with those laws of generally-recognized international acceptance causes significant problems for those people in need of international protection, while arbitrary and unjust treatment also makes it difficult for refugees to access the rights granted them on international levels. Numerous NGOs that are critical of the issue claim that the refugees in Turkey are, in practice, deprived of their right of asylum, which is considered to be a fundamental human right as defined in the Article 14 of the Universal Declaration of Human Rights, which however is not binding.

First of all, the right to seek asylum is violated through arbitrary detentions of these people, both at the border as they seek access to Turkey and during their stay. Those who do manage to enter and to file an application cannot be guaranteed a fair and satisfactory RSD procedure, and moreover they encounter significant problems in gaining access to the rights of healthcare, housing and work. Due to endless interview periods, which try the patience of the refugees, as well as the tremendous bureaucratic obstacles in accessing the right to asylum, these people struggle to survive in conditions of uncertainty as they try to be included in the asylum procedure. In addition to this, there may also be violations of the principle of non-refoulement of refugees, which may lead to the deportation of these people back to the countries where they have been subjected to persecution (HCA, 2007; AI, 2009).

In this chapter, which has been summarized above, I will scrutinize the actual implementations of the written documents in the legal framework and the problems

encountered in their implementation. As my observations of the actual experience of the problems in implementation are limited, this chapter will be based on the interviews I have conducted with the UNHCR and the representatives of other NGOs, as well as the reports of these NGOs.<sup>11</sup> Furthermore, since this thesis focuses particularly on the NGOs working in the field of asylum, I believe that one of the tasks of this work is to provide information generated by the NGOs. In addition, I have also used the “Report for reviewing the problems of the refugees, asylum seekers and illegal migrants in Turkey” issued by the Human Rights Inquiry Committee of the Turkish Grand National Assembly on 01.06.2010, and the "Report on the human rights of the refugees and asylum seekers in Turkey” issued by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, dated 01.10.2009.

As I mentioned in the previous chapter, the absence of a defined refugee law in Turkey and its temporary substitution by circular notes leads to various interpretations of the documents by the implementing agencies. In other words, the implementation may vary across different provinces. In their complaints about the lack of uniformity in implementation, the UNHCR representatives point out that the local authorities may abstain from implementing the instructions provided in the circulars and then end up consulting Ankara about what they should do, although the instructions in question are usually clear-cut. The representative said that the UNHCR often had to intervene in the procedure, although it is not necessary, and their intervention usually annoyed the authorities in Ankara. However, the provincial governments do not have an obligation to consult Ankara, as the content of the circulars are straight forward. The hesitancy on the part of local officials leads to delays in the procedure, as it may take as long as a month to receive a reply from Ankara. When I mentioned the cases where governorships do not take initiative and consult Ankara for every matter, Hasan from Mazlum-Der explained his striking observation on the approach of the government towards the issue of human rights:

“In Turkey, the government assumes a certain stance of wanting to impose its authority on you. You are fully aware that they are behaving thusly just to make you feel their power. They hint at the idea that you have to submit to

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<sup>11</sup> Mazlum-Der, 2008 Report for Review of the Human Rights in Turkey; Mazlum-Der, Survey Report on the Death Fast at Kırklareli Gaziosmanpaşa Refugee Housing and Acceptance Center; Mazlum-Der, Refugees Should Be Treated Humanely; AI International, Stranded: Refugees in Turkey Denied Protection; HCA, Unsafe Haven; HCA, Unwelcome Guests; İHAD, 2009 Survey Report on Asylum and Refuge in Turkey; Human Rights Watch, Stuck in a Revolving Door.

their authority, because you can be granted only as many rights as the government chooses to allow. Therefore, encountering such difficulties becomes the norm." (Hasan)

Havva inquired as to the extent to which we can benefit from our rights, even though they are clearly defined in the Constitution, and stressed that there are many fundamental rights that are not limited by law, but are violated by authorities. This violation occurs despite the fact that Article 13 of the Constitution clearly stipulates that fundamental rights can only be restricted by laws. In this regard, Havva stressed the importance of the role of the implementing agencies.

### Reception and Living Conditions of Refugees

According to Ezgi from HCA, while it is engaging in its EU accession process, Turkey adapts a discourse of economical burden and security threat when referring to the refugees. While it is doing so, Turkey finds itself committing the very human rights violations that Europe is striving to eliminate.

I would like to demonstrate how government officials, who play a significant role in the recognition or violation of rights, perceive the implementation of laws: According to Oğuzhan Ömer Demir, the Chief of the Illegal Migration Unit at the General Directorate of Security, who is mentioned in the report of the National Assembly (Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2010), it is the task of the UNHCR to ensure the subsistence and meet the needs of the refugees during their stay in Turkey; he believes, however, that the organization fails to fully achieve its liabilities (p.54). In another quote from the same report, Melih Ulueren, the Assistant General Manager of Embassy, Migration, Asylum and Visa at the Ministry of Foreign Affairs, asserts that the UNHCR demands that Turkey recognizes an exceeding number of refugees and that the organization may accept the applications of people who tend to abuse the system, without proper review (p.80). Ulueren says that his department is disinclined on the issue of resettlement of refugees in other countries via Turkey, since they do not want Turkey to become a center of attracting refugees (p.84).

As can be understood from the above statements, the government tends to transfer its liabilities to the UNHCR instead of assuming these as personal responsibilities. Indeed, according to the Implementation Directive of 2006, for instance, the refugees themselves bear the liability of meeting the costs of healthcare services. In those cases where the refugees cannot afford to pay the costs, the UNHCR is responsible for providing aid. The existing legislation does not stipulate an accountability for the government to offer healthcare service to the refugees; despite this, the Social Assistance and Solidarity Foundation does provide registered refugees with healthcare services.

The problems of the refugees concerning their living conditions in Turkey can be categorized under four main titles: healthcare, education, work and housing. All of my interviewees stated that their most significant problems in implementation were the healthcare facilities and residence fees. Although the new law is supposed to annul these fees, the refugees still cannot obtain a foreigner's identity number unless they go to their satellite city and get a residence permit by paying the residence fee. Without the identity number, they cannot have access to the hospitals since the automation system at these facilities is based on these identity numbers. Moreover, even if they get the number, sometimes they may be required to obtain additional documents from the Social Security Institution, which may not include their names in their lists.

Bilge from HRDF pointed out that the healthcare issue is becoming ever more problematic, and, despite promising developments such as the healthcare transformation program and social security reform, other issues are complicating the procedures for the disadvantaged groups. It was also stated that the amendments to Law 5510 on Social Insurance and General Healthcare Insurance that were passed in April 2008 fail to include the "applicants for asylum" among the beneficiaries of general healthcare insurance, thus becoming a failed opportunity to solve the problem. According to Kemal from ASAM, even if the refugees are recognized by the UNHCR, the government only grants them the status of "applicant for asylum" until they are resettled in a third country. Among the 18,000 people in Turkey, around 300 have the status of "asylum seeker" and 43 have the status of "refugee," whereas the remaining population, which amounts to approximately 17,000 people, is only recognized as "applicants for asylum." According to Kemal, the government waits to just several weeks before they are going to be resettled before they change their status to "asylum

seeker.” It is only at this point that they gain the right to benefit from general healthcare insurance, which is quite late.

Another problem with Law 5510 on social insurance is that the status of “refugee” is omitted, while those of “asylum seekers” and “stateless” are included:

“As they have not included refugees in the scope of the law, it becomes clear that the law-makers are not familiar with the implications of such terms as “applicant for asylum,” “asylum seeker,” “refugee,” and “stateless person.” They say that they used the term ‘asylum-seeker’ because they thought it was the Turkish term for the word *mülteci* (refugee)” (Kemal).

In other words, the granting of the right to healthcare service to the asylum seekers and stateless people in the social security law may not mean anything without proper implementation. UNHCR also asserts the same and underlines that they may run into walls in such cases and may be left desperate.

Education represents another problematic area. According to the reports of various NGOs, although the children of the refugees have access to education in practice, the use of this right depends on the registration of the family in a satellite city and granting of the required residence permits. In many cases, the children cannot submit the necessary documentation proving their level of education at their country of origin, and cannot be officially enrolled at a school after paying the residence fee. In such cases they can only attend classes as guest students and cannot be issued a diploma. It is stated that there only a very few students are able continue their education after elementary school.

Another problematic area for the living conditions of the refugees is employment. Although the refugees are theoretically granted the right to work, in practice only those foreigners working at leading companies, universities and sports facilities can obtain work permits, and the refugees are subject to the same procedure as other foreign workers in terms of the granting of a work permit (Göçmen Dayanışma Ağı, 2010). For instance, according to the representative of Mazlum-Der, the system has many dead-ends since the refugees can obtain the right to work only after getting a residence permit. The individual must first be recognized as an “asylum seeker” in order to obtain the necessary documents; however, as the conclusion of an application for asylum can take two years on an average, the subsistence of the refugees becomes another issue. According to Havva from Mazlum-Der and Dicle from

HCA, in these conditions of absence of the opportunity to work as a registered employee and without any government support, most of the refugees have to work in the undocumented job market with very low pay and prone to exploitation, which is tolerated unofficially by the authorities.

Although it is illegal, some refugees live and work in metropolises like Istanbul, since the metropolises offer better chances of finding undocumented jobs. These refugees only go to their satellite cities when they are required to visit the police department. Therefore, the NGOs suggest that the right to work should not be bound by the residence permit. It is not enough to suggest that they have the right to work; the regulations regarding their employment should be expressly detailed by law. Although the amendments in the Directive on Implementation of the Law on the Work Permit of Foreigners in January 2010 were supposed to annul the refugees' work permit requirement of six months prior residence, work permits can only be granted to those who have been granted "asylum seeker" or "refugee" status by the MOI. In other words, it is still not clear whether the changes are being applied for "asylum applicants."

Another problematic issue is housing. According to the AI report, in the current conditions, the government does not offer housing or any other accommodation during the asylum application process. Since the government does not assist the refugees in finding private housing and does not offer any public accommodation facility, these people often have to live in overpopulated and under-heated homes, and are forced to pay excessive rents to the landlords (AI, 2009, p. 22).

According to the representatives of several NGOs, besides these issues, the shortcomings in the abovementioned problems force the refugees into crime or even to become the victims of human trafficking. Caritas described some other problems, such as the obscurity of the status of the children of refugees who are born in Turkey, the traumatic effects of the education in a different language for the children, as well its economical burden for the refugees, the difficulties in the divorce procedures for the refugees, and disputes with landlords.

Deniz from ICMC pointed out that Turkish legislation does not allow the integration of the refugees, and since they cannot go back to their countries due to domestic conditions,

the permanent solution consists of trying to resettle the refugee in a third country Deniz said that their organization plays an intermediary, rather than a decision-making, role in the process. For refugees in situations of particular vulnerability, resettlement to the US and other countries remains an important means of achieving protection, allowing some of the most vulnerable to rebuild their lives, and regain a sense of hope for the future.

The opportunity for resettlement in a third country constitutes a hope for the refugees; however, in fact, the mental state of a refugee in Turkey can be best defined by the term “ambiguity.” The statement issued by the Migrant Solidarity Network on June 20, the International Refugee Day, clearly describes the situation:

“The application for refugee status determination entails a complicated process that involves registration, profound interviews, applications to the third country for resettlement in case of approval, and appeals in case of rejection. If the refugee status is approved, what will be offered to them as a 'permanent solution' is often based on international diplomatic talks. For instance, until the year 2006, all procedures for resettlement of the Iraqi refugees in Turkey were suspended. Therefore, the 'transitory' period for the refugees applying for asylum may vary from two to ten years. For the refugees, this period of time means continual desperation as they await the final decision” (Göçmen Dayanışma Ağı, 2010).

Furthermore, the refugees may also encounter xenophobic and nationalist attacks from local residents in the satellite cities, such as being exposed to treatment as if they were drug sellers or infected with AIDS. According to Recep Korkut from ASAM, “For the Somalians, who were the first ‘black people’ in Konya and Niğde, where they were settled for better control, the life in these cities is like living in a house of glass” (Korkut, 2010). Due to the obscurities in the asylum application process in Turkey, the waiting period and the difficult living conditions, many refugees prefer to live an “illicit” life in Istanbul or try to go to European countries via “illegal” routes. If these refugees are seized, “they are treated as potential criminals and are held under custody at the 'guesthouses' for an undefined time period or even deported to the country where they had supposedly suffered from persecution” (Göçmen Dayanışma Ağı, 2010)

## Residence Fee

As mentioned above, the refugees can only benefit from services in their satellite cities of residence and with a valid residence permit. The refugees seeking asylum in Turkey are required to pay a residence fee of 310 TL according to the Act of Fees<sup>12</sup>. Together with the book fee of 138 TL, the total fees that a refugee family with two children has to pay amounts to 3,000 TL. This is an amount that the refugees, who are already unable to meet their most fundamental human needs and are not allowed to work, cannot afford (İHAD, 2010). As they cannot afford the cost of residence documents, they cannot benefit from resident services, a situation that further complicates their lives. They then encounter further obstacles such as the inability to obtain the permit to travel to the third country where they have been resettled by the UNHCR.

The UNHCR representative stated that although Article 88/d of the Act of Fees No. 492 stipulates, “The poor, whose financial incapability is substantiated by the authorities that issue residence permits, shall not be required to pay any fees for the permit,” in practice, this annulment of fees is both rare and arbitrary. Furthermore, the circular note of March 2010 instructed the authorities to implement the abovementioned article, stating that the refugees should apply for exemption from residence fee, which will be evaluated by the general directorates of security. However, in practice, the initiative is again left to the provinces. Yet, the NGOs I have interviewed, as well as the UNHCR, emphasize that the residence fee should be completely annulled. Taner Kılıç from Mülteci-Der responds to the question as follows: “In fact I find it a 'shame' to know that these people, who seek asylum in our country in tremendous deprivation, after escaping from threats to their life and dramatic traumas have paid for our treasury, our highways and bridges” (Kılıç, 2010).

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<sup>12</sup> <http://www.egm.gov.tr/hizmet.yabancilar.harc.asp> (Retrieved August, 20, 2010.)

## Administrative Custody and Conditions at “Guesthouses”

The previous paragraphs described the problems faced by refugees who apply to the UNHCR and register at the police department. They ask to be included in the asylum system and are then sent to a satellite city. However, there are also refugees who are taken into custody by the police before they can even access the refugee system and are then locked up at the detention centers, which are referred to as “guesthouses.” Government authorities contend that this practice is more humane than those implemented by many European countries. Supposedly, these countries put the new refugees directly into detention centers and do not release them for free residence without scanning their information. Turkish officials argue, however, that in Turkey, the people who describe themselves as “refugees” are immediately allowed to obtain free residence (Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2010, p. 45). Nevertheless, NGO reports demonstrate that these contentions do not reflect actual practice.

According to the Convention on Refugees, these people, if coming from a country where their lives and freedoms are under threat, cannot be punished for illicit travel to another country. Besides, the principles of law stipulate that, as it is a fundamental human right, individual freedom cannot be regulated by administrative decisions, circulars and directives. However, since Turkey considers the entrance and exit to its territory without passport and visa as violations of the Passport Law, the refugees are obliged to reside at a place that is prescribed by the administration until the necessary investigation process is concluded. In practice, this place is usually the “guesthouse.” This practice can be summarized as unlawful punishment and violation of individual freedoms of the refugees who have not yet applied for asylum. Despite this, the government continues to assert that the “guesthouses” are not detention centers, the refugees are not under arrest, and the people kept there are illegal migrants, not refugees. However, during the most of their time under custody, the refugees are usually held for administrative purposes, such as the review of their applications for asylum and the deportation process.

According to the AI and HCA reports, refugees being kept in detention are not informed about the reasons of their custody, their alleged crimes, and/or their rights during their time under custody. The people who may require international protection are deprived of

the information on the procedure of application for asylum, and moreover, they are not provided with the interpreters who are required for their communication with the security officers. The reports indicate that when they request any information, they are either ignored or exposed to the aggressive behavior of the officials.

According to international standards, the refugees in custody have the right to contact a lawyer. When they are tried for violation of the Passport Law, which is a part of the Criminal Code, they technically have the right to demand a lawyer, but the ones who need international protection cannot benefit from this right. The refugees in custody can rarely contact a lawyer, and they are not allowed visits by the legal consultants working at the NGOs.

The reports of the NGOs state that the refugees are often kept in custody for long periods without being informed of a clear and lawful reason for their detention, and that there is no limit for this custody period. Since they do not know how long they will be locked up, they are prone to depression. The legal rights of people who are arrested under regular conditions are not implemented for the refugees. Those who apply to be granted the status of a refugee during their time in custody do not have the same rights as those who are not under custody. According to a report issued by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights (2009), the UNHCR, which does not have any mechanism to ensure its intervention in the refugee procedure from its beginning, often has to apply for a permission to the Ministry of Foreign Affairs and the Ministry of Interior in order to be able to visit those who want to apply for asylum and conduct their RSD interviews. In many cases, their requests are rejected. The UNHCR representatives I interviewed pointed out that there are even certain detention centers to which they have never managed access. According to Hammarberg, in 2008, the UNHCR intervened in 393 cases concerning 3,351 undocumented foreigners, most of whom sought asylum. The organization was allowed to interview only 72 people, and the access was denied for the others. UNHCR assumes that the majority of these refugees were deported without proper review of their need for international protection (Hammarberg, 2009, p. 11).

Concerning these practices, Kaya from AI spoke of their repeated notices of the unacceptability of the conduct of these works based on a directive. He particularly stressed

that, although the refugees have been detained at “guesthouses” for years, no legal article regulates the issue. In other words, there is no legal backing for the detention of refugees at “guesthouses,” the length of the time of detention, or the conditions of the detention. Perhaps the most important aspect in what Kaya described was that it is legally impossible to include the act of detention and depriving people of their freedom in a circular or a directive, since individual freedom is a fundamental right and there cannot be such a thing as "administrative custody." Kaya said that Turkey had been sentenced to pay compensations by the ECtHR, as well as many other cases pending at the court, and the government plans to preclude these sentences with the new legal infrastructure.

Moreover, the reports of the NGOs claim that the refugees are kept under unfavorable conditions and are exposed to ill-treatment. The detention centers are overpopulated and some of the refugees even have to sleep on the floor as there are not enough beds. The children and the adults, the convicted and the detained are all kept in the same areas. The distinction is only between the men and the women. Furthermore, there are problems of ventilation and heating, dirty bathrooms, pest infestations in the wards, and interruption of hot water in showers. The refugees have to buy cleaning materials themselves. The nutritional value of their food is quite low, and the drinking water is charged for. Some of the facilities do not serve meals over the weekends, and the refugees who can afford it are forced to buy their own meals at excessive prices from the restaurants in the surrounding area. In general the detainees are not provided with opportunities to exercise or rest, and the healthcare services at “guesthouses” are usually inadequate. These healthcare services are limited due to the impeding of services by the police, high charges for treatment and medicine, and the lack of interpreters. Their communication with the outside is also limited due to the excessive price of phone calls, prevention of incoming calls, lack of privacy and restrictions on visitors.

In their report titled “Unwelcome Guests”, the HCA (2007) points out that the people kept at foreigner “guesthouses” are subject to torture and ill-treatment. Human Rights Watch was also informed during direct interviews at the “guesthouses” in Edirne-Tunca and Kırklareli that the people are kept in inhumane and degrading conditions, with people exposed to, or forced to witness, verbal and physical ill-treatment by the police officers. The refugees repeatedly report that the police are indifferent to them, and sometimes resort to arbitrary physical violence including beating and slapping. The most aggravated charges against the

police include beating with batons and forcing them to stand naked in front of the other detainees and the police officers.

Despite all these claims in the reports, Kemal from ASAM asserted that, even though the detention conditions have improved, following their release the refugees may tend to focus on unfavorable descriptions of the conditions. In cases where they are being fed meals, for instance, if they were denied extra servings, they may later describe this as “not being fed in the guest house.” Kemal warns that all criticism should not be generalized. He said that just as there are police officers who insult and degrade the refugees, there are also cases of police officers who, for instance, bring an ill refugee woman to a hospital, take on the responsibility of the education of another child even though they cannot spare time for their own children, register refugees to soup kitchens, and ask that their neighbors host refugees and find work for them. Kemal claims that NGOs who fail to see both sides may be criticizing the conditions based on rumors alone, while ASAM only speaks on what they observe without taking sides. Similarly, HRDF pointed out that these facilities are not well-organized or supported and are left to the responsibility of the General Directorate of Security, while these centers should be administered by the Social Services and Child Protection Agency and the Social Solidarity Fund. HRDF also underlined that the police officers assigned to those places are not well-trained in psychology, and it is difficult to manage people in a closed environment, and thus anyone would suffer from traumatic cases in the “guesthouses.” HRDF claims that the civil society has a one-sided perspective on the issue and only identifies problems instead of supporting the solutions.

In the past years, some refugees have organized hunger strikes and death fasts to protest the conditions and treatments reported for the “guesthouses.” On August 27, 2008, five refugees at the Kırklareli Gaziosmanpaşa Foreigner Acceptance and Housing Center declared a death fast. Three of them were kept in detention, even though they had been recognized as refugees by the UNHCR. They stated that their death fast was to protest their detention in adverse conditions without any criminal charges being pressed and due to the failure of the MOI General Directorate of Security to respond and take action, despite countless petitions on their conditions written by the UNHCR and their lawyers and the delay of their release. After this action, Mazlum-Der visited the Kırklareli detention center to examine the conditions and reported that the government was obliged to implement the

articles specified in Turkish and international law on refugees, otherwise the actions of the refugees would continue. The group also underlined that it is a humanitarian responsibility and a requirement of a state of law to provide the refugees with humane living conditions.

On September 18, 2009, after a fire broke out at the Kırklareli Gaziosmanpaşa Foreigner Acceptance and Housing Center, some of the refugees claimed that they were exposed to violence and ill-treatment of the police officers, that the security officers applied disproportionate force, injuring the refugees and causing one woman to miscarry. Although Zafer Üskül, the Chairman of the Human Rights Inquiry Committee at the Turkish Grand National Assembly, paid an unexpected visit to the Istanbul Kumkapı “Guesthouse” on June 6, 2008, and found the institution to be compliant in terms of human rights (Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2008), the refugees who are forcibly kept at the facility do not agree with him. In 2009, hundreds of refugees detained at the Istanbul Kumkapı “Guesthouse” protested the authorities for the arbitrary behavior and bureaucracy in their procedures, inadequacy of food and accommodation, and the imposition of inhumane conditions.

In their reports the NGOs list some suggestions to improve the abovementioned practices. Their leading suggestions are as follows: First of all, all detention decisions and the security of the methods to oppose these decisions should be regulated by law in compliance with the national constitution and international criteria. The physical conditions and management of foreigner “guesthouses” should comply with the existing relevant international standards. Detention of refugees for purposes of residence control should be the final alternative, and the implementation of free residence should be preferred. The UNHCR should be allowed to make informed or spot checking at the Foreigners Department and “guesthouses” of the General Directorate of Security, and the authorities should not be allowed to impede such visits. The interviews of UNHCR for reception of asylum applications and RSD should not be subject to permission, and the necessary physical conditions for interviewing refugees at the “guesthouses” should be provided. Human rights advocates are not allowed to audit some of the “guesthouses” despite their requests, and thus the violations cannot be identified. All “guesthouses” should be opened for monitoring by the NGOs. The access of the NGOs, academicians and particularly the lawyers to the foreigner “guesthouses” should not be subject to the permission of the MOI and the initiative of the police officers in charge, and these centers should be made more accessible. After a law

workshop they held in January 2010, AI and the Human Rights Center of Ankara University's Faculty of Political Science submitted their suggestions for improvement of the "guesthouses" to the Ministry of Justice, Ministry of Interior, Union of Bars of Turkey, European Union General Secretariat and other relevant agencies.

Furthermore, the Human Rights Inquiry Committee of the TGNA supported the suggestions of the NGOs in its report (Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2010), which claims that the majority of the people detained as illegal migrants at the foreigner "guesthouses" are charged with violation of the Passport Law, which should technically be considered as an offense rather than a crime. Nevertheless, these people have to wait at the "guesthouses" without knowing the judicial procedure they will encounter, the length of time for which they will be detained and their rights and liabilities (p. 256). The legal regulations should clearly indicate the maximum period for which these people can be kept at detention centers. A regulating judicial text should be prepared to define the internal management, norms to be applied, behavioral rules and the minimum standards to be implemented. Registries and statistical data should be collected from all detention centers in a standard form and published periodically (p. 304).

#### Access to the Asylum Procedure

As the NGOs highlight, the cornerstone of the international protection provided for the refugees is the principle of "non-refoulement" which restricts the deportation of people to a country where they will suffer from tremendous human right violations for any reason. This principle also includes the principle of "non-rejection at the frontier" (AI, 2009, p. 11). In other words, the governments are liable to permit the entrance of the people who might need international protection, in order to determine through a fair asylum procedure whether they will suffer from significant human rights violations in the country to which they will be deported. The right to leave a country as well as the right to seek asylum in another country are fundamental rights defined in the Universal Declaration of Human Rights of 1948. According to the report titled, "Stranded: Refugees in Turkey Denied Protection" issued by AI (2009), although the Turkish legislation on asylum in principle guarantees the right to have access to asylum procedure, in practice there are tremendous obstacles to this. The right of the

refugees to have access to the asylum procedure is routinely violated by their rejection at land frontiers or airports or after their detention for illegal entrance to Turkey (AI, 2009, p. 11). The legal regulations include only the liabilities of the government to the refugees that are applied after they pass the frontier and during their time in the Turkish territory; however, it does not specify any liability concerning their acceptance at the frontiers in compliance with the international standards. Access to the asylum procedure is also restricted by the police officers who refuse to accept the application for asylum. The Turkish authorities consider the applications for asylum by people who are arrested during illegal entrance to, or exit from, Turkey to be ill-disposed. Oğuzhan Ömer Demir, the Chief of the Illegal Migration Unit of the General Directorate of Security, confirms the restrictions on access to the asylum procedure:

“Do we behave unwillingly toward these people? Do we tend to ignore them? Do we tend to behave as though we are overlooking them? Of course these are out of question in the legal framework. However, is it true in practice? It is difficult for me to say 'Yes, it is' about that" ((Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2010, p. 52).

According to Betül from Mülteci-Der, in general, to date the general practice has been to reject the applications of those who were arrested for illegal migration and did not apply for asylum. Sometimes the police accepted the applications and processed them, and in other times they accepted them but did not process them, or rejected them. In such cases, Mülteci-Der writes support letters and sends them to all the relevant agencies such as the local Foreigners Department, the Directorate of Security, the Human Rights Committee, the Provincial Human Rights Committee, the local Directorate of Security, to the Directorate of Healthcare in cases of health problems, to the Provincial and General Directorates of Social Services and Child Protection Agency if there are unaccompanied children, and to the UNHCR. They usually do not obtain a written or verbal reply to their letters; however, the practice indicates that sometimes they work. Nevertheless, these letters may not help, and the procedure for their deportation may be launched despite the requests and the support letters.

The refugees detained at “guesthouses” report such difficulties as the rejection of their asylum applications by the police. According to the NGO reports, the asylum applications of

the refugees who are kept in transit regions are being totally hampered. The detainees' failure to access the asylum procedure leads to their unlawful deportation. The refugees detained at the transit areas at the Turkish airports are not allowed to contact a lawyer, the UNHCR, or any other institution or advocate. Oktay from HCA reports that those refugees whose request of access to the asylum procedure is denied will find themselves locked up awaiting deportation following a brief criminal procedure charging them with illegal entry or attempted exit: They are not being given an opportunity to argue their claims and demanding such can lead them to persecution (ECRE, 2009, p. 3).

Havva from Mazlum-Der gave an example of the rejection of the asylum applications of the detainees at the "guesthouses" by the police. She once visited three people who were detained at a "guesthouse." They did not know what to do and she helped them prepare their applications. Havva herself handed the petitions to the police for the fear that they may not be accepted:

"I submitted the petitions and asked for a signature indicating that the submission had been made. They asked 'We have taken it, why do you need the signature?' I told them 'Yes, you did take it. You did your job. It was the right thing to do, but why can't you stand up for the right thing that you did?' This is same as being asked to put your name down and abstaining from it. If you believe that you did the right thing, you should not be afraid to affix your signature. I told them, 'If you believe that you did the right thing, this can be used as an evidence in your favor in the future, indicating that you accepted the petition, as it was your duty, and the signature indicates that you accepted it.' We have to directly confront this behavior. Sometimes, actually often, the officers are ignorant of the legislation, and they think they have the power to do anything." (Havva)

The Human Rights Inquiry Committee at the Turkish Grand National Assembly (2010) also confirms the restraints on the access of refugees to the asylum procedure: "It would be excessively optimistic to suggest that there are no problems with access to asylum procedure in our country or that the security officers sufficiently assist and inform the asylum seekers and process their applications" (p. 201). All NGO representatives, as well as the UNHCR representatives, that I interviewed hope that this implementation will change after

the inclusion of the statement, “If they request to apply for asylum, their applications should be accepted” in the circular issued in March 2010. However, they also stress that only time will show whether this will be implemented in actual fact.

### Violations in the Procedure and Accelerated Procedure

According to the NGOs, one of the procedural violations concerns that of RSD interviews. Article 30 of the 1994 Regulation defines the assignment of the staff who will conduct the RSD interviews. This article stipulates that the police officers shall be assigned for this task temporarily and in addition to their other tasks. Even though the police officers are required to conduct RSD interviews in civilian dress, the independent objectivity of the interviewers and the decision-making mechanisms that are affiliated to the security unit remain doubtful. Both the NGOs and the UNHCR representatives claim that the value of the training programs is undermined as the police officers are assigned to this task temporarily and later the task is transferred to another officer. In practice, the attitudes of the officers conducting the RSD interviews vary greatly across provinces. The interviews are not private, and sometimes multiple interviews can be conducted in the same room. In addition to this, the authorities do not enlist the assistance of any interpreters in conveying the claims of all applicants. According to Havva from Mazlum-Der, the refugees are forced to sign documents in Turkish even though they do not understand them, and later these documents can be used against them. The NGO representatives I have interviewed stress that the RSD should be handled by civilian officials instead of police officers. Furthermore, a former employee of the UNHCR suggests that the RSD should be conducted by the NGOs for increased efficiency, and that the NGOs should be involved in the decision-making mechanism instead of only criticizing the process.

It is argued that another procedural violation is related to resettlement. In a significant number of cases, the resettlement of the refugees is hampered or delayed since the Turkish authorities refrain from issuing an exit permit for those refugees who have been accepted by a third country. The refusal to issue an exit permit may be based on several reasons, such as the irregularity of status due to failure to register or obtain a residence permit, rejection of the asylum application by the Turkish authorities despite being accepted by the UNHCR, or

disapproval of permit by the authorities who fail to provide necessary feedback (AI, 2009, p. 29).

According to the legislation governing asylum, people who enter the country by illegal means and are arrested while trying to leave the country through similar means or stay in the territory of the country without any status are taken into custody and subjected to an accelerated asylum procedure of five days. However, it is asserted that, in practice, this means punishment of the refugees who enter or stay in the territory of the country by illegal means, which is a violation of the Geneva Convention (AI, 2009, p. 25). In the accelerated procedure, the procedural rights of the people are very limited as compared to the standard procedure. First of all, the refugees in this procedure are kept under arrest. The accelerated procedure has to be completed in five days. In this procedure, the requirement of legal representation is out of the question, and the appeal application should be done in two days. Therefore, the NGOs are concerned that the implementation of accelerated procedures in RSD may invalidate certain fundamental human rights, such as the right to asylum and that of non-refoulement.

#### Right of Access to Legal Support and Reclaim

NGOs, claiming that the refugees should be provided during every step of the asylum procedure with the right to have legal assistance and be informed that such a right exists for them, are concerned that the Turkish legislation on asylum offers a lower level of legal assistance than the required level. Legal support is not available during the first application phase, and administrative reclaims can only be submitted by lawyers. However, no legal assistance is provided by the government. In the reports, the NGOs claim that the refugees do not have the right to contact a lawyer, since they are not considered under official custody. They claim that the detainees are not being charged with a criminal action and are only being held under administrative custody.

For instance, Havva from Mazlum-Der once requested to review the file of a refugee who was being held in detention, but her request was rejected and she was asked to submit a letter framed by an attorney. To issue this document the lawyer had to bring a notary and a sworn translator, which is very difficult. Nevertheless, Havva insisted that she had the right to see the refugee, as the law grants this authority to the lawyers, and that she would obtain a letter from an attorney if necessary. She told the authorities, “You know why I am doing this.

I come from Mazlum-Der, and do this as a volunteer; that is, I am not paid to do this. We are working for the benefit of these people and in fact we do not have to be here. I mean, if you do this, I would not be obliged to submit a petition here." It was only then that the police officer allowed her to look into the file. As can be seen here again, the access of NGO activists as well as the lawyers, who have the authority to talk to the refugees and review files, to the "guesthouses" and the right of the refugees to access to legal assistance can be arbitrarily limited by the authorities.

Even if the refugee manages to gain access to legal assistance, she may still not be given the right to challenge administrative decisions in national courts. According to AI, there are no procedures to review the necessity for detention of refugees in "guesthouses." Detainees are not provided with written information about the reason of their detention and so they have nothing concrete on which to challenge the reasons of their detention. According to HCA (2007), the refugees do not have any mechanisms to apply to judicial review of the legality of their custody, the time period for which they are kept in custody and other issues concerning the custody process (p. 2).

Furthermore, the basis for rejection of the claims of the refugees by national bodies is not still clear as the refugees are not provided with a justified decision upon rejection of their applications for asylum. Occasionally, "threat against national security" may be indicated as the reason of forcible refoulement; however, the arbitrariness of these decisions is clear. NGOs argue that the rejections are not submitted in writing and there are no opportunities for challenging the decision. According to Oktay from HCA, in the rare case where a refugee applies to a domestic court to challenge her deportation, the courts fail to provide a proper remedy. There is a very good chance they will be sent back to war or persecution. In this context, the ECtHR is currently the only effective remedy available to NGOs to halt illegal deportations of individuals who express fear of persecution (ECRE, 2009).

## Deportation

Berlan Pars Alan from Turkish Ministry of Foreign Affairs was one of the keynote speakers at the MiReKoc Migration Research Conference held on June 4, 2010. Although he

termed the irregular migrants as “our settled immigrants” pointing at Turkey’s tolerance policy, I was stupefied when he said, “Our hope is that they just disappear by themselves!” I immediately considered that of course they would not disappear by themselves, so what does happen to them? The answer comes from Oğuzhan Ömer Demir, the Chief of the Illegal Migration Unit at the General Directorate of Security: “As I mentioned, we managed to deport all of the 127,000 Iraqis because we have a vast border which is quite permeable. The crossing is easy, even if you catch them in Edirne, if you want...” (Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu, 2010, p. 53). Halit Turgut Yıldız, Chief Assistant of the Foreigners Department at the General Directorate of Security, also supports deportations with state sovereignty: “Furthermore, the deportation decisions are also related to the right of sovereignty of the state, as stipulated by Law 5683 on Residence and Travel of Foreigners in Turkey as well as by Law 3201 on Security Organization. When a state believes that its right of sovereignty is violated, it may deport a person" (p. 43).

However, the principle of non-refoulement, which is a fundamental principle in law, restricts the refoulement of any person to any country where she may suffer from the threats of persecution or serious human rights violations. The NGOs are also concerned about the violation of this principle by forcible refoulement of refugees. According to a report by AI, there is often refoulement of registered refugees to the neighboring countries such as Iraq or Iran which have a land frontier with Turkey. There have also been refoulements of refugees on the Syrian land frontier, though fewer. Forcible refoulement may take place officially by handing over refugees to the authorities of another country passing through the official frontiers, or non-officially by forcing people out of the country through regions other than the official customs. This implementation has frequently led to violations of the right to life and protection from ill-treatment. According to Oktay from HCA, this is not simply a matter of border control officials not doing what they are supposed to do. On the contrary, this is a systematic policy instructed and endorsed by Turkey’s Ministry of Interior (ECRE, 2009, p. 4).

According to the report of Mazlum-Der, every month more than 3,000 refugees are arrested while entering the Turkish territory by illegal means, and most of them are deported without granting them the right to asylum. Yet another ill-treatment is deportation at the transit area of airports without providing the right to apply for asylum, as well as without allowing the refugees to seek a lawyer as their legal representatives. There are also refugees

who cannot be deported due to the absence of a readmission agreement between Turkey and their country of origin, or because of a lack of sufficient resources for their deportation. It is claimed that in many cases, refugees are kept in custody for months and then released on the condition that they leave the country within three months.

### Groups in Need for Special Protection

Unaccompanied children represent the group that is in greatest need for special protection in the asylum procedure. Although international laws stipulate that minors should only be detained as a last resort and for the shortest time possible, according to the HCA report (2007), the arrested unaccompanied minors are kept in the same “guesthouses” as the adults until their age is determined and they are sent to facilities for the minors. The age determination process does not take error margin or the psychological maturity of the applicant into account, and in cases of doubt of the age of minors, a favorable decision is almost never forthcoming. The refugee children in the company of their parents are held separately from their parent of the opposite gender (HCA, 2007, p. 3).

The minors who are not kept at “guesthouses” are under the responsibility of the Social Services and Child Protection Agency (SHÇEK). The NGOs underline that the agency can meet the housing needs of the refugees at only very limited levels, and the living and health conditions of these children rapidly deteriorate. Whereas until recently there had been no legislative regulations concerned with vulnerable groups, a SHÇEK circular issued in March 2010 regulates the procedures for refugee use of the facilities of the agency, social assistance to unaccompanied children and their parents, educational and healthcare support, and acceptance of the disabled and elderly refugees to nursing and rehabilitation centers.

Lesbian, gay, bisexual and transvestite/transsexual (LGBT) refugees encounter even more difficult conditions. HCA defines the conditions of the LGBT refugees in its report titled “Unsafe Haven.” This report is based on in-depth interviews with 46 LGBT asylum seekers and refugees living in Turkey, most of who are Iranian. LGBT asylum seekers and refugees in Turkey are particularly vulnerable. Their testimonials shed light on serious gaps in their protection. Most reported consistent, often violent harassment from xenophobic and homophobic local community members. They are similarly marginalized by other asylum seekers and refugees. They also described a lack of sufficient police protection in response to

their complaints of violence, including admonitions that they stay home or dress “like a man” to avoid being targeted. Others reported being evicted from their homes on the basis of their sexual orientation or gender identity. The few able to secure work described being violently forced off the job when their LGBT status was exposed. Yet others reported identity-based barriers accessing social services and education. It is therefore not surprising that LGBT asylum seekers and refugees in Turkey uniformly express deep feelings of isolation.

According to the HCA report (2009), significant steps need to be taken to ameliorate the difficult conditions of Turkey’s LGBT refugees. They argue that as a first step immediate measures are required to safeguard the physical security of LGBT refugees and to protect them from harassment. This requires intensive training of the local police, and may include assigning LGBT asylum seekers to live in less hostile locations. They should be re-assigned from locations where they cannot be effectively protected. Second, they demand that processing by UNHCR, the government of Turkey and resettlement counties must be accelerated to minimize LGBTs’ exposure to violence. These stakeholders should also ensure that appropriate interviewing techniques are utilized in the evaluation of LGBT-based claims. Finally, they underline the necessity of trainings at UNHCR, with the Turkish police, and among service providers in the health, public assistance and education sectors. It is necessary to train legal officers to pose the kinds of questions that elicit information about the identity of the refugee as an LGBT person, rather than regarding his or her sexual practices or history. Such training should extend to officers, intake workers, service providers and interpreters, increasing receptivity toward LGBT asylum seekers and refugees and creating environments where discrimination and intolerance are minimized (HCA, 2009, p. 1-2).

## Chapter Conclusion

In this chapter, based on the reports of the NGOs, I have attempted to demonstrate that the rights of the refugees are violated in many cases, contrary to what is stipulated in the legislation. NGOs are concerned that the refugees do not have access to a national procedure that will determine their status in a fair and satisfactory way that complies with international standards. The rights of the refugees for education, healthcare, work and residence are restricted. Furthermore, the refugees face the risk of being detained under severe conditions

that deprive them of the rights granted to people in detention. Many registered refugees, as well as people who were granted the status of refugee by the UNHCR, have been forcibly deported to the countries where they may suffer from aggravated human rights violations. The resettlement of the refugees who are recognized by the UNHCR is also being hampered by government authorities. Judicial control is quite limited against the broad discretionary power of the administration; however, in cases of deportation, for instance, the motion for stay of execution should be automatically issued.

Today, the public view on the foreigners coming to our country is unfortunately based on security and economy rather than on human rights. This point of view should be changed to focus on human rights. Every foreigner who seeks asylum in Turkey should not be considered as an illegal migrant. The news articles on refugees published in mainstream media stress the idea that the arrested refugees are criminals, thus consolidating the discourse of security threat and fear. For instance, the media reports the arrest of 475,793 migrants since the year 2002 with the title, “Illegal migrants match the population of 5 cities”<sup>13</sup>, exaggerating the situation and putting it in a fear engendering manner. They report with the title “Great war against illegal migrants”<sup>14</sup> and inform us that the arrested people have been taken to the Foreigners Department for deportation.<sup>15</sup> However, the media should be more sensitive on the issue of refugees and reflect the violations of rights in implementation instead of supporting the discourse of fear.

The NGOs identify and report all these violations of rights and jurists prepare their requests for changes in laws at workshops and submit them to the authorities. They express that they are trying to mobilize public awareness and political solidarity for refugees. However, can all these lead to the solution of the problems in the legal framework and in implementation? In the following chapters, I will try to look into the roles of the NGOs in the asylum system, and try to determine their power and capacity to bring solutions to the abovementioned problems.

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<sup>13</sup> <http://www.haberturk.com/yasam/haber/523562-5-ilin-nufusu-kadar-kacak-gocmen>

<sup>14</sup> <http://hurarsiv.hurriyet.com.tr/goster/ShowNew.aspx?id=14825716>

<sup>15</sup> <http://www.milliyet.com.tr/edirne-de-19-kacak-yakalandi/turkiye/sondakikaarsiv/15.07.2010/1202488/default.htm>

## CHAPTER 4

### ROLE OF NGOS PART I: WHAT ARE NGOs CAPABLE OF DOING?

In this chapter I will first introduce the NGOs I interviewed, depicting their tasks as they state them. I then discuss how they construct their own meta-narratives between refugees and authorities, in the sense of the information they hear from refugees and how they convey it to authorities. I will show how the emphasis on rights, which is the most outstanding element in their discourse, causes both cooperation and tension among the NGOs. In general my aim in this chapter is to present what the NGOs are capable of doing in the asylum system in Turkey, while the subsequent chapter will focus more on the limits of NGO work.

#### Brief Introduction of my Interviewees and NGOs

I conducted 12 interviews, interviewing 15 people in total, 9 of them were single person interviews, while 3 were group interviews. Most of the interviewees were well-experienced professionals with a comprehensive knowledge of the field, such as administrative coordinators, heads of department, refugee service coordinators, legal advisors, legal officers, supervisors and founding members. Only four of them were volunteers. All of them were university graduates with degrees in international relations, philosophy, sociology, social anthropology, human rights law, literature, law or medicine.

If we should start the brief picture of the NGOs with a chronological view, it is seen that the oldest one is ICMC, which is followed by Mazlum-Der and Caritas that operate since almost 20 years. Because of the lack of an NGO which engages only in the issues of migration and asylum, ASAM has been founded with the support of the UNHCR 15 years ago. Half of the NGOs I interviewed, that is HCA, HRDF, AI and Mülteci-Der started to

engage in the issue of asylum only within the last 8 years. That three of them, except HRDF, focus only on rights advocacy, gives us a clue about the emergence of the new shape of the field.

As also most NGO representatives acknowledge, the NGOs which had already been engaged in human rights for a long time have begun to show interest in refugees, because they started to see refugee rights as a part of human rights. Some NGO representatives particularly emphasized the relationship between the penetration of refugee rights into the agenda of the government and the civil society and the pressure applied by the EU authorities. Not only pressure of the EU authorities, but also financial support of them to several NGO projects is apparently effective in the rise of interest in the refugees among civil society. Here I will briefly introduce the NGOs in the order in which the interviews were held.

*Helsinki Citizens Assembly (HCA):* Helsinki Citizens Assembly is a human rights institution engaged in the advocacy of human rights. The activities of the HCA in other fields primarily involve reaching various actors in the field who hold different views and conducting projects that vary in their scope and time span. However, the Refugee Advocacy and Support Program is an ongoing project that has maintained its continuity since 2004. This particular project is directly involved in legal support and case follow-up. In addition, they conduct reporting activities that aim to point out the discrepancies in the field and propose suggestions for possible solutions. For example, in case they detect any persisting problems in any field, such as disparities concerning the conditions of the people under custody or unaccompanied minors or the determination of the refugee status by the UNHCR, they report and submit the case in a way that includes the different views of different actors. Furthermore, they engage in advocacy work conducted through attendance to various meetings and conferences and publishing reports.

*Human Resource Development Foundation (HRDF):* HRDF is a foundation that operates in reproductive health and prioritizes issues of population and development. Its first study on migration has involved providing access to reproductive healthcare and family planning services for people who have been displaced due to internal migration. The foundation, which conducts parallel activities on migration and reproductive health, also organized a program for approximately 9,000 refugees who migrated from Bulgaria in 1989. Later they provided assistance for hand surgery and plastic surgery to the victims of the war in Bosnia. In 2001, they held training exercises on reproductive health for the refugees in

Aksaray, Nevşehir and Van, with the support of the UNHCR. In 2002, they launched a program of legal and psychological support for the refugees in Istanbul, which was gradually transformed to social consultancy. They started opening branches in 2007, with their first offices opening in Istanbul and Ankara, and later in satellite cities like Bilecik, Kütahya and Eskişehir, and another one to be opened in Van. As HRDF is an implementing partner of UNHCR, these offices to a certain extent operate as the outposts of the UNHCR, and undertake tasks such as preregistration, arrangement of appointments, referral, accompaniment and interpretation, tasks that would otherwise be handled by UNHCR. The Istanbul branch of HRDF has a psychologist, who is available two days a week to offer psychological consultancy services. Should the case be referred to a psychiatrist, it is forwarded to the contracted psychiatrist of the UNHCR. They do not encounter any difficulties concerning refugees contacting the HRDF; furthermore, as they are often overburdened, they state that they would be paralyzed if more refugees applied.

*The Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der):* Mazlum-Der is a human rights organization which was founded 18 years ago and which today has 22 branches. Their fields of activity vary; for example, Mazlum-Der intervenes in cases of probation, arrest, torture or when fundamental human rights such as personal security, right of education and right to work are violated. However, the engagement of Mazlum-Der requires that one of the parties is the government and there must be the existence of mistreatment by public institutions to people. When an application is submitted, their general approach is to hear both parties; however, as can be supposed, government institutions are usually unwilling to communicate. In such cases, Mazlum-Der informs the highest available institution regarding the violating party. When the hierarchical superior receives the report, they force the violating party to act more carefully and more cautiously. Mazlum-Der sends some of the results obtained to the press. The organization participates in, or submits written applications to, boards such as human rights boards or patient rights boards to make them operate more efficiently, because it aims to create statistical data and to ensure the development of the consciousness on seeking rights, and it states that many positive outcomes have been achieved. Mazlum-Der has a high opinion of these boards as even the complaint of a single person makes a difference, such as ensuring better treatment to a patient by a doctor. Additionally, the institution issues annual human right reports and quarterly bulletins, as well as holding seminars, conferences and schools of human rights. It also collaborates with various NGOs when necessary.

Concerning refugees, Mazlum-Der intercedes when individual applications are submitted; however, it does not follow-up current files. The organization defines its role as an emergency response after an accident. Some of the activists have access to the “guesthouses” with their lawyer identity, and talk directly with the people under custody. When there are problems of physical conditions or mistreatment/torture against the refugees, they help to convey the issue to the authorized agencies. In fact, the most important task is the explanation of the legal status to the refugees, because most often than not the refugees do not have any idea of what will happen to them. Therefore, mere provision of information is helpful in enabling the refugees to see the future. As most of the refugees believe that negative court verdicts cannot be appealed, Mazlum-Der informs them about the available legal remedies, and prepares an exemplary petition document. If the refugee has the sufficient financial sources and has to file a case, Mazlum-Der refers the refugee to a lawyer.

*Amnesty International (AI):* The Turkey office of Amnesty International (AI) is a new branch, and has been working on refugees as a professional office for the past four years. Formerly, they only held meetings and organized demonstrations and press declarations for important events. AI has four basic areas of action: individual cases, campaigns, training and lobbying. Indeed, the primary mission of AI is to take urgent actions rather than continuous activity on individual cases; however, they have had too many individual cases to handle. In 2006 they opened a field office in Van, as it is both an entrance and an exit for the refugees and as the city has the highest population of refugees in Turkey. Their aim is to expand by collaborating with the other local NGOs, the bar and the municipality, which they achieved. They transferred their Van office to the Human Rights Foundation of Turkey and the Human Rights Association and they have now decided to work primarily on relevant legislation.

AI, within the framework of its campaign, holds events every year on June 20th, the World Refugee Day. In 2008 the organization had an outstanding campaign with a refugee rights truck that traveled across six cities. Last year AI held an international campaign to annul the residence fees, and this year it has a campaign on “guesthouses,” which are also known as detention centers.

To date, they have held training sessions for lawyers in many cities, such as Edirne, Van, Mersin, Muğla and İzmir, where they have the bars as partners. They occasionally attend these training sessions with the Helsinki Citizens Assembly, Mülteci-Der, United Nations and sometimes with the MOI, and every agency gives lectures from their own perspective. Some

of these training sessions present certificates to the completing participants. These training programs are crucial because the schools of law do not include courses on refugee law in their curriculum, despite the problems in accessing refugee procedures. Thanks to these training sessions the organization has contacts in almost all cities and districts in the coastal regions. They give lectures in at least four or five universities every year. The aim here is to draw attention to the presence of refugees and to highlight the differences between refugees and migrants in order to raise awareness. In addition, each year AI holds a workshop on an outstanding issue. They have had workshops in collaboration with the Human Rights Center of Ankara University Faculty of Political Science. For example, the subject of the workshop held in January 2010 was the “foreigners’ guesthouses.” The organization attaches great importance on these workshops as a means of contributing to building a human rights perspective in the ongoing efforts on the relevant legislation at MOI.

As they are convinced that there is a dearth of significant actors in the refugee area and that the prime ministers, the ministers of the interior, the national assembly and the political parties are ignorant of the issue, today they prefer to focus on lobbying activities. They point out that the creation of the Bureau of Enhancing the Capacity and Implementation of the Asylum and Migration Legislation to draft the new legislation under MOI, which was formerly assigned to the initiative of several people at the General Directorate of Security, has led to promising outcomes and thus they continue with their lobbying efforts.

*Association for Solidarity with Asylum-Seekers and Migrants (ASAM):* Founded with the support of UNHCR in 1995, ASAM is the first organization engaged in the area of asylum. As an implementation partner of UNHCR, ASAM uses a very populated team to provide social consultancy and support services to asylum-seekers and refugees. Some of the employees are people who formerly worked at UNHCR but were, for example, tired of hearing traumatic stories at RSD, or were uncomfortable with being far from the field and with the diplomatic stance of UNHCR. They try to solve the problems of refugees in the satellite cities by mobilizing the local administration, with the help of social service experts, sociologists, psychologists and interpreters. They state that the primary aim is to make the existing system more viable and efficient rather than suggesting a brand new system. They regard such social needs as education, health and accommodation, and legal needs as a whole, and therefore they both offer services and hold advocacy activities.

ASAM believes that public recognition of the issues is important to ensure a better working mechanism, and therefore collaborates with the press carefully and in a controlled way. So far, the organization has published more than 900 items in the press, as well as participating in two documentary films shot by TRT (Turkish Radio and Television). ASAM has also organized training sessions to raise public recognition of the refugees and to convey the public opinion on the refugees in a way that promotes an exchange of ideas and lessening of prejudices. The organization has produced publications in Persian and in Turkish written in partnership of citizens and refugees. The organization points out that the mere coexistence of the two populations in the same environment has paved the way for great changes.

ASAM now plans to conduct research activities, educational activities and events to raise awareness in the cities where new reception centers will be built. In addition, they have a project titled “Suspended Lives, Perceived Lives” which is a perception identification research involving 3,500 participants. The organization believes that if social prejudices and opposition can be foreseen, research-based advocacy activities and campaigns can be planned accordingly.

*Association for Solidarity with Refugees (Mülteci-Der):* When Mülteci-Der was first founded in January, 2008, it had neither an office nor a professional employee. In September 2008, a part-time administrative coordinator was employed with the support of a fund organization. Currently they have a refugee rights training project for the NGOs and press members in Izmir with the support of the Finnish Embassy, which also includes activities to raise awareness of the issue. Furthermore, Mülteci-Der has a project titled Corporate Capacity Improvement and Access to Target Group, supported by the Dutch Embassy. The organization, based on the idea that fundamental needs should be deemed as rights, primarily aims to provide psycho-social and legal consultancy and support. It provides assistance in obtaining accommodation, food and clothing, helps with healthcare and educational services and refers individuals to other NGOs, public institutions or local authorities. In terms of legal support, they provide information on the relevant procedures in Turkey and try to intervene when problems arise. For example, when a refugee is denied by the UNHCR, Mülteci-Der refers her to the Helsinki Citizens Assembly. As they do not undertake follow-up of files themselves, they usually do not need to hear the whole life story of the individuals; they just briefly ask why they left their country and whether they are seeking asylum. While trying to raise awareness across every platform to which they have access, they are also engaged in

lobbying. Their activities aim to render existing legislations and implementations more humane and compliant with human rights and human right standards. The individual members of Mülteci-Der are members to the Kayiki movement established by the activists in Turkey and in Greece, although Mülteci-Der is not a member organization of the movement. Here they try to point out that the recent increase in the incidents of deaths in the Aegean Sea, Mediterranean and in other borders are the outcomes of the policies of the governments.

*The International Catholic Migration Commission (ICMC):* Based in Geneva, ICMC has had a regional office in Turkey since 1967. It also has offices in Lebanon, Pakistan, Yemen, Kuwait and UAE in the region. Its member Deniz says that ICMC is one of the first international organizations acknowledged by the MOI. According to Deniz ICMC formerly provided social services to refugees and training to the police officers in coordination with the MOI, but today it operates only as an Overseas Processing Entity (OPE). He says that the 8 OPEs operating around the world try to facilitate the process of resettling of recognized refugees in the US, and the US State Department contracts various NGOs for this task. The ICMC works in close collaboration with the UNHCR, which submits the files of the refugees to be resettled in the US to the ICMC; then the ICMC arranges interviews and processes the files. Finally, officers from the US Department of Homeland Security come to Istanbul periodically to make a final decision. Deniz especially stresses that ICMC is not involved in the decision-making process, but is a mere intermediary. ICMC also organizes cultural orientation classes for the refugees whose resettlement in the US is approved. In the classes of 15-20 people above the age of 14, refugees are informed about life in the US. Children at the age of 8-13 have orientation classes with children of their own age. There is also a day-care service for children at the ages of 0-7, while the adults are attending classes. These training sessions are held in Istanbul. The refugees are also required to go through medical check-up procedures here.

The US government accepts only a specified number of refugees for resettlement from every region, which amounts to about 5,000 to 7,000, but does not have a quota implementation concerning the country of origin of the refugees. ICMC is aware of the fact that people think the refugees resettled in the US are primarily Iraqis. Indeed, currently the number of the Iraqis is quite high. However, ICMC handles the problems of refugees of every country, in addition to Iraq. Deniz says that they process every file submitted, regardless of

the religion or background of the applicant, without any discrimination against any nationality.

*Caritas*: Caritas is a charity organization for vulnerable groups such as women, the disabled, refugees and the people in urgent state. The refugee unit was founded in 1991 upon a call from the Vatican. The organization helps the refugees in issues such as healthcare, consultancy, file processing, referring, interpreting and networking. Their activities for the refugees were launched with an aid campaign for the Iraqis, and they were one of the founding organizations of the IIMP. Until recently Caritas helped the Iraqis while the IIMP served the non-Iraqis; however, such sharing of tasks has been changed today. Although their activities are not exclusively aimed at Christian refugees, people of the Christian faith comprise the majority of the beneficiaries. Caritas does not work for the integration of the refugees in Turkey, but for their relief in the short-term. The Caritas representative states that they believe the organization should undertake rights advocacy tasks apart from relief programs.

#### The Discourse of NGOs Constructed between the Refugee and the Government/UNHCR: Beyond Intermediation

I first thought that in the Turkish refugee system NGOs have an intermediary role of NGOs between the refugees and the authorities. In fact, during my interviews I asked the NGOs about the stories they hear from the refugees, and their methods of processing this information and submitting it to the government or to UNHCR. Here I tried to understand the way that they constructed their own meta-narratives. When I went on to probe their priorities, principles and highlights, I saw that the NGOs do not simply have a role as an intermediary, but also they act in a way to intervene in the system in line with their own values. Here I will first convey their way of transmitting what they hear and then mention their opinions on their own discourse.

HCA is one of the NGOs that encounters the most detailed stories as it offers file processing and direct legal consultancy services. During an interview for RSD, a refugee explains the reasons for leaving her country and her fear of going back, and says “Here, I am

afraid to walk on the streets. And I am unemployed. I am going to starve," as the issue is an indispensable part of the case. Similarly, Mazlum-Der says that the refugees have a tendency to want to tell their whole life story, as they do not know what is important and useable and what is not, and they expect the lawyers to pick the highlights. Although there is a pressure of time and capabilities, they think HCA is rather lucky because they have a certain kind of flexibility in terms of working hours as they can stay late at the office or work at the weekends to listen to the refugees. Although they try to refrain from referring the refugees to any kind of action during the interviews, they try to focus on the highlights of the subject to achieve effective results.

Ezgi says she tends to compartmentalize certain issues in her mind and expects an explanation of the issue in that order, which is rarely the case:

"A person may lay importance on colors and try to tell the story by colors. You have to understand and interpret it that way, but when writing down a statement, we try to remain loyal to the way that it is put forward. Still, for instance, a person may spend a whole hour depicting a scene where she saw her mother leaving. Such a narrative can actually be included in the statement with only one sentence. This may be the most important thing for that person but that much detail may not be very important for determination of refugee status." (Ezgi)

As the decision-makers have a certain way of analysis and review, HCA has to explain the status in that way of understanding, in line with their categories and criteria, because a chronological narrative of events facilitates the work of the hearing decision-maker. Therefore, it is rather useful to understand this logic and what is expected, and try to narrate the story accordingly.

The volunteers of Mülteci-Der were concerned about not being able to understand everything that the refugees narrate. Their language capabilities were limited to such widely spoken languages as English and French, and they did not have interpreters for Arabic and Persian. They told me that when they convey the stories to the authorities, they apply some kind of a filter on the accounts of the refugees, which depends on the specificity of the case. For instance, during an asylum application to the UNHCR, they try to detail the stories as profoundly as possible to get help. Similarly, Mazlum-Der said that they submit everything

that the refugees tell the superiors and they do not apply any filters because they usually do not have the possibility to verify what has been told.

Anyway, as almost none of the NGOs, excluding HCA, is involved in RSD appeals, they do not require the lengthy stories of refugees. For example, when Mülteci-Der is informed that a refugee is about to be deported, they try to defend that person using rather legal expressions, and they apply with petitions. In such cases, they try to seize the main theme of the story and immediately start the procedure because they admit that the rest of the work is beyond their capability. ASAM, on the other hand, says that their tasks do not involve a detailed review of the reasons why the refugees leave their home countries, and therefore, for instance, in case of a traumatic story, they avoid making the refugee tell the story repeatedly in a way that revives that trauma.

The NGOs may submit petitions to some government agencies for various problems, even though they are not involved in the RSD appeal process. AI said that they try to convey the problems of the refugees to the authorities based on a perspective of human rights and revealed their ideas on their intermediary role as follows:

“As human beings, their mental state is the most important issue for us. It is also very crucial for us to hear their real complaints, which may ensure that we can help them. They express these complaints in their own language, and usually crying. Sometimes they have anxiety attacks during the interviews. However, we have to listen to them as professionals, although the term is not right as such, and we have to ensure certain outcomes. That is our task.” (Kaya)

Interestingly Kaya said that, due to gradual standardization of complaints, they often are already acknowledged of the problems, and there is less need for the refugees to provide detailed accounts, the only thing to do being the follow-up of practices which vary across provinces. Similarly the Caritas representative said that as the requests are standardized, their language is also standardized and that they try to avoid transforming the accounts into a legal language which she apparently thinks is cold, and to render petitions more humanly.

Despite all these, according to Bilge from HRDF, refugees may have demands that surpass the organization’s capabilities or try to get things done by shouting. Therefore, it is usually useful to have an NGO worker who can empathize with the refugee and make objective evaluations. Such people can achieve reconciliation when submitting problems to

the UNHCR. Furthermore, HRDF encounters many narratives that include poverty, violence, and much more that comes to mind. The filtering of what they hear depends on the requirements of the service. If a refugee has been exposed to violence and experiences a traumatic mental state, the HRDF takes actions based on the ways to support the refugee, finds alternative agencies for referral, or tries to handle the urgent health issues.

Some of the interviews discussed the issue of the reliability of the refugee accounts. According to the lawyer at Mazlum-Der, they sometimes sense that they are being lied to, because there are contradictions in the account, or the refugee behaves strangely, or they are irritated by the expressions of the refugee; despite these reservations, however, they try to help anyway in case of any possibility that the refugee will encounter persecution if sent back. ASAM also asserted that refugees tend to have a typical behavioral pattern due to their conditions or psychological state, and that they try to narrate adverse conditions, even though their actual conditions may not match their descriptions. ASAM said that they do not consider this lying as such, and they see it as a natural behavior. Their suggestion was to employ a psychologist at NGOs such as Mazlum-Der or HCA which accept personal applications.

Now I would like to mention the opinions of the NGOs on their own discourse. Most of the NGOs I interviewed underline that asylum and a humane life is a right and cannot be regarded as a favor or dependent on personal initiatives. For instance, Ezgi said that the employees of HCA may individually highlight various issues in their discourse but, as the Refugee Advocacy and Support Program, they primarily try to discuss issues within the framework of rights. In other words, their main principle is to prevent violation of existing rights rather than helping, collecting donations or offering privileges to people. The rights they stress include the right of asylum, rejection of deportation to a place where they will suffer from persecution, right to access healthcare, right to life in the country of asylum, right of freedom and the right to deny arbitrary detention. AI underlines that their foundation is based on the European Convention on Human Rights and the United Nations Universal Declaration of Human Rights, and that they always refer to such international documents and standards. On the other hand, Kaya says that the MOI, despite being bound by international conventions, has a right of sovereignty, and often uses such language. He states that there is a certain difference of discourse between the government and the organization; and the requests and suggestions of the organization in terms of the right to life, deportation and social needs are shaped by certain universal standards on human rights.

According to the statements of all of the NGOs I have interviewed, the officials at the corresponding government agencies do not have proper knowledge of refugee rights, and therefore, the NGOs usually have to explain these rights to the officials and that it is wrong to deny such rights. Mülteci-Der explains the issue as follows:

“When we wanted to open a stand, the corresponding party said ‘As you may also know, one might be skeptical or afraid when you talk about refugees. We do not support this... Usually that is the case when one says 'refugee,' I mean people do not know what it means or they defy us saying that they do not have to care about them. They think that the refugees consist of those who are guilty of some crimes and are trying to escape for this reason. This is one of our tasks: to try to explain what is the true meaning of the word, rather than correcting the existing view" (İpek).

During their fieldwork, most of the NGOs encounter the same question coming from both government officials and from the public: "Why do you try to help the foreigners when we have so many poor people we cannot take care of?" Deniz from ICMC has an apt answer to this:

“Why are you helping refugees? We cannot differentiate between people; these people are not here because they want to be here. I mean they come here because of fear of persecution in their country. And if they go back, they will get killed. So, they need some kind of protection and someone to assist them. Think, some day you may also become a refugee. You never know. It can happen for any number of reasons, a regime change or just because you happen to wear glasses” (Deniz).

ASAM thinks that this question should be answered by considering the international policies and placing the emphasis on the issue of inequality. For instance, Kemal stresses the effect of global policies that lead to asylum and migration movements, and says:

“This issue arises out of inequality. As millions of people around the world do not have the money to pay human smugglers, they cannot leave their countries. We take care of the people who have left their countries, but who are still suffering." (Kemal)

Kemal also points out that as a civil society they can only identify the problems but they cannot do anything beyond that in order to solve these problems. He states that they consider it very crucial to provide the people living here with the necessary services and conditions that ensure their rights.

One of the most interesting and outstanding discourse was the one of Mazlum-Der, which, unlike other NGOs, has religious references. The Mazlum-Der representative states that in principle they defend impartiality and handle the applications as claims, rather than absolute truth, and that their first task is to evaluate the applications in terms of legislation. The representative explains their primary criteria of evaluation as follows:

“Then we evaluate the case in terms of human rights violation, based on our own perception of human rights. For Mazlum-Der, this perception is primarily based on the Koran, the *sunna* of the Prophet as well as international agreements. Therefore, we filter applications through these criteria to conclude whether a violation of human rights is in question.” (Havva)

The representative later gave the example of sexual identity as a human right, which they hold to be an illness rather than a right. They also stated that they disapprove of the claims of violation of rights to sexual identity and the attempts to legitimize it across society.

In conclusion, although it seems that the NGOs have to interpret the accounts of the refugees in a way that UNHCR requires in the RSD process and use a standardized legal language, in fact they intervene in the asylum system in line with their varying values and principles. They translate the narrative of a refugee into legal language, whereby “although her voice was lost in translation, her position as a legal subject was constituted” (Giordano, 2008, p. 593). They don’t just translate, they provide “the possibility of becoming visible and recognizable as a subject” (Giordano, 2008, p. 592). Ticktin (2005) states that the RSD process “privileges forms of life or humanity not constituted as rights-bearing individuals, but as corporeal victims of sexual violence, innocent, non-agentive, and apolitical” (p. 367); nevertheless I argue that NGOs are helping refugees in line with their values, rather than trying to draw portraits of victims as favored by RSD examiners. These values may change from NGO to NGO; for example whereas HCA and AI prioritize universal standards on human rights, ASAM stresses global equality and Mazlum-Der builds its perception of human rights on religious references. As one of the interviewees said, the NGOs may render the wording of the accounts more aggressive and violent. According to Alp from UNHCR and Melisa from Caritas, the picture indeed does not consist of three layers, which may be listed

as refugees, NGOs and government/UNHCR; the relations are more complicated than they seem. The government may prefer to avoid direct contact with the NGOs and use UNHCR as an intermediary, or when the NGOs are ignored by the government they may use ECtHR and their contacts in European countries to press the government. All that indicates that NGOs have a greater role than as a mere intermediary.

### Cooperation and Tensions among the NGOs

“You know the saying: give man a fish, you feed him today; teach a man to fish, you feed him for the lifetime. We also have to give him fish, and allow him entry into the space where he can fish, as well as teaching him how to fish.” (Melisa)

During all of the interviews, I asked about the relationships between different NGOs, and the answer was invariably the same: there is close cooperation and networking among them. AI states that there is a natural division of labor among the NGOs, though not officially defined, because they all work with limited financial and human resources. The AI representative emphasizes that it would be absurd to have four NGOs do the same work when there are only 4-5 NGOs in the field. Similarly, Bilge from the HRDF says that there is a non-official network among the NGOs that has been developed in the minds of the employees. These NGOs are in constant communication with each other and refer the refugees to each other. UNHCR considers that it is efficient to have a network that communicates the news any incident in the field to all NGOs via e-mail.

Mülteci-Der underlines that their organization is the only one that is involved only with the refugees in Turkey, and that they have strong relations with the other NGOs, particularly with those based on rights advocacy, because their employees have great skills in handling individual affairs. According to them, since the refugees require more than legal support, Mülteci-Der can cooperate with the other NGOs that provide humanitarian aid, and they try to expand their network of relations for this purpose.

Mülteci-Der also stressed their effective cooperation with the HCA. For instance, when the MOI decides on the deportation of a refugee, Mülteci-Der immediately reports it to the HCA, where an application to the ECtHR is prepared. Within a few hours, the ECtHR

sends an urgent interim measure decision to stop the execution of the deportation, which is immediately submitted to the Ministry of Foreign Affairs. Then, Mülteci-Der calls the Foreigners Department in the relevant city and warns the officers about the motion for stay of execution and possible consequences of its violation.

Mazlum-Der says that they may gather with the other NGOs when a joint activity is concerned, such as demonstrations and press meetings, as well as sending each other the news on their organizations through a network of e-mail. For instance, the organization supported the demonstrations on the “guesthouses” held by DirenIstanbul, and they consider it very important for their supporters, for the supporters of the organizing NGO and for the applicants for asylum, because the achievement of an actual outcome requires the collaboration of organizations. Furthermore, they spread the news on such activities to raise awareness on the subject.

HCA states that they have established a strong dialogue, particularly with the NGOs in Istanbul, based on frequent meetings. These organizations in Istanbul gather at the HCA on a monthly basis to discuss the latest developments, latest information, new problems and new areas of activity of other NGOs. Havva from Mazlum-Der pointed out that she once attended a meeting of NGOs at the HCA, but since the meeting was held in English, which she was not told about in advance, and she was not proficient in that language, she was not content about the event. ICMC also says that in cases when they have to refer the refugees to other organizations, they contact the other NGOs, particularly the HRDF and the HCA, although they have not been able to attend the NGO meetings for a long time. Apart from the meetings at the HCA, UNHCR also organizes meetings for NGOs, where not only organizations that currently support the refugees but also those who intend to embark on this field are invited.

Despite the individual contacts among the employees of different NGOs, the e-mail network that has developed by itself and the traditional meetings at the HCA covering some of the NGOs in Istanbul, most of the interviewees generally deemed it necessary to establish an institutional network, that is, an organization like a federation or a council. In this regard, the UNHCR has suggested the establishment of a Refugee Council, a development of which ICMC and Mazlum-Der representatives have never heard.

HRDF states that the objective of the Refugee Council is to enable further cooperation among the NGOs, and it is still in the start-up phase; however, they do not have any further

information about the Council. AI points out that there is an actual need for a refugee council in Turkey, and the necessary process was launched last year, with discussions on the budgeting and structure of the council, yet there is still a long way to go. AI also stressed that they, like the other NGOs in general, would not approve of any organization that would include the government officials. HCA considers that the Refugee Council is still only a matter of discussion, which requires the participation of various organizations, and its financial independency should be discussed further.

According to the UNHCR representative, the Refugee Council intended to include the organizations that are involved in both rights advocacy and social support; however, some of the NGOs opposed the council, primarily because the idea originated from the UNHCR. The organization believes that the process came to a halt only because the intention of the opponents was to criticize the UNHCR. ASAM also complains about the failure to maintain proper coordination among so few NGOs, and asserts that while there are no disputes on the issues of education, healthcare and deportation, the difference in perspectives may lead to problems even when working towards the same end. Therefore, according to them, currently there is no plan for joint action in collaboration, which they deem necessary, and also reassert the necessity for an organization similar to the Refugee Council. Kemal expressed his own opinion on the issue as, "We cannot keep going round in circles worrying about the possible outcomes even before setting out; we need to take some steps."

Although the attempts to establish a Refugee Council that would include all NGOs involved in the field have failed, there is at least the Turkey Coordination for Refugee Rights. The latter was created through the efforts of some NGOs in the field of rights advocacy with the aim of joining their strengths and defending the rights of refugees together. Seven human rights organizations, including AI International, HCA, Human Rights Association, Mazlum-Der, Human Rights Agenda Association, Mülteci-Der and Human Rights Research Association, have been gathering for the past two years for periodical meetings under the umbrella of the Human Rights Joint Platform (İHOP). Kaya underscores that the platform includes only the human rights organizations because it is difficult for them to speak the same language as the aid organizations, and that it was difficult even to draw seven organizations into the same melting pot. On March 15, 2010, the platform set out to establish the Turkey Coordination for Refugee Rights.

Havva from Mazlum-Der summarizes the founding objectives of the coordination under three main titles: tracking government policies and implementations, contributing to efforts to establish laws and institutions based on international norms and raising awareness on the problems of refugees and migrants. She also states that their collaboration with the other NGOs in the coordination has not started with the IHOP, as they had been conducting activities together in various fields, and although they handle issues jointly, every organization has its own mission.

### *Differentiation of rights vs. social support*

During my earlier interviews, I recognized a certain split in the field as a result of the criticisms of the NGOs towards each other and the manner in which they distinguished themselves from the others. I observed that there is a difference between the service-providing NGOs and rights-defending NGOs in terms of field of activity, as well as the relations with the government. As I intend to focus particularly on the legal aspects of the issue of asylum, I initially preferred to interview the NGOs that offer legal support to refugees, and I did not plan to visit any of the charity organizations. However, later, when I observed a differentiation among the NGOs, which has "NGOs based on advocacy of rights" on one side and "NGOs based on psycho-social support" on the other side, I interviewed Caritas in order to understand the difference between psycho-social support and charity. Now, I believe it was an appropriate decision to include Caritas in my interviewees because it helped me to recognize that a charity organization can indeed be involved in advocacy of rights.

The NGOs based on psycho-social support defined their functions as giving recommendations to the government and supporting the government in its shortcomings. Consequently, it could be suggested that these organizations have a more reconciliatory and conformist relation that tries to minimize the tensions with the government. On the other hand, the NGOs involved in rights advocacy explained their tasks as monitoring the government, functioning as a mirror in cases of violation of rights and criticizing it. Therefore, their relations with the government, which did not favor being criticized, were tenser and less favorable. I will elaborate these changing relations of the NGOs with the

government in Chapter 5. During my later interviews, I tried to inquire whether such a sharp dichotomy really exists and where the NGOs positioned themselves within this dichotomy.

Bilge stresses that every NGO has become expert in different areas; for instance, HCA focuses on rights claims, while HRDF offers consultancy and social-psychological support services, both the kinds of assistance needed in the field. He also says that collaboration and division of labor among the NGOs are highly beneficial and that the exclusion of a single organization would affect the others as well and would interrupt the course of service provisions. In this sense, he says, there is an unspoken division of labor among these organizations. Bilge suggested that these NGOs were interdependent in a sense, and therefore should conduct their work without harming or excluding one another. Similarly, Mazlum-Der considers it is natural to have such a division of labor among the NGOs, that the activities in both fields are of great value, and that both can continue their work as long as the ultimate objective is positive. This organization stresses that its operations are based on rights and freedoms and therefore disputes with the government are inevitable. ICMC also reasserted the importance of different tasks and roles of the NGOs and denied the existence of a hierarchy among them.

Mülteci-Der states that their organization highlights both legal and social assistance to refugees; however, since social assistance requires financial resources, they focus on the legal issues as they do not significant financial sources. The organization has concentrated the majority of its tasks on the area of first-generation rights. These are civil rights such as the right to live, personal liberty, and the right to justice, which mean protection from state, an issue on which Mülteci-Der lays great emphasis. However, this group also believes that access to fundamental needs and services, that is the social and economic rights, is also important and necessary for a humane life. They perceive that social assistance providers may not engage in frequent disputes with the government and may enjoy collaboration with the government at greater levels; for instance, they think that ASAM receives a great deal of assistance. Betül asserts that the NGOs that define themselves as defenders of human rights in their statutes may experience more difficult relations with the government agencies, a situation that is due to the general approach (or lack of) to human rights in Turkey. She therefore finds that the critical approach taken by the NGOs and their attempts to uncover human rights violations inevitably lead to disputes with the government. Betül also adds that it is not mandatory for every organization to get involved in both rights advocacy and psycho-

social support. Similarly, the ICMC representative says that each NGO in Turkey has a different role. As an organization operating as an OPE that resettles refugees in the US, it is not engaged in other fields. However, their headquarters in Geneva assumes more extended roles, including defense of human rights and recommendation to the government.

Dicle from HCA says that in order to classify the NGOs, one must first look at the particular audience each individual NGO targets. For example, if an NGO primarily addresses the refugees, it may be categorized as a charity or assistance organization. On the other hand, if the organization defines its addressees as all of the actors in the field, including the government, the UNHCR, refugees, other NGOs and the society in general, and tries to intervene in their actions to ensure the implementation of the existing standards while criticizing them, it can also be categorized as having a distinct path. AI also suggests a distinction between human rights organizations and aid organizations. The AI representative adds that the activities of humanitarian assistance organizations are of great value and they do not have any disputes with these organizations. Whereas the AI bases its actions on the Universal Declaration of Human Rights, the humanitarian aid organizations may not have to consider this declaration because their tasks do not involve this issue. The representative believes that since these organizations work to alleviate governmental burdens, the state is amicable with their activities and that, in an effort to maintain this relationship, these organizations try not to take the risk of countering the government. As an NGO based on the defense of rights, the AI representative wishes that these humanitarian aid organizations operated more on the perspective of helping people because it is their right, rather than on the perception that they are persons in need of charity. For instance, when dealing with deportation cases, the AI may claim that Turkey is in violation of international laws and may work to pressure the state to change its practices, while the humanitarian aid organizations may approach the issue more softly.

Besides these distinctions, according to Bilge, there may also be a natural competition among the NGOs. The organizations try to promote their own accomplishments so as to gain a firmer hold in the field. He thinks however, that such behavior is not considered to be unfavorable; but, on the contrary, it is viewed as altogether normal. Bilge goes on to explain that the "back-biting" among the NGOs may stem from a desire to give oneself a stronger appearance in the field by exaggerating their priorities based on a pragmatist view. However, undermining one NGO because it is closely dependent on the existence of another can never

be considered ethical behavior. The Caritas representative also mentions this state of competition and stresses that, as an organization that defends maximum reconciliation, their only objective is to transform the relations in favor of the refugees. The organization also underlines the need to eliminate NGO-related egos that may hinder any possible cooperation. Concerning this competition, Bilge explains the primary highlight of the rights-based NGOs as follows:

“But what will happen to the refugees? Who will provide services to them? Today we have a great number of people in need for help. We cannot just tell them to wait and starve until we pass a law. We have to maintain our contacts with government agencies to provide these services and offer some support. In other words, we try to maintain favorable relations with police officers in order to obtain permissions for more refugees, to provide them with food and other necessities. When we deny this in principle, we make a decision regarding the rights of the refugees. And I think we do not have the right to do so.” (Bilge)

Stated in other words, Bilge suggest that criticism of the police department and the government by the NGOs during conferences like the Conference on Recent Developments on Refugees and Asylum-Seekers, held by the Governorship of Istanbul, Commission of Human Smuggling, Refugees and Illegal Migrants on May 8, 2010, is a mere demonstration of power; however, convenient interventions, for instance insisting on the need for identifying the victims of human trafficking, may have greater effects.

*Where do the NGOs stand on the scale of rights?*

As I mentioned earlier, at first there seemed to be a dichotomy among the “NGOs based on rights advocacy” and the “NGOs based on psycho-social support.” Later on, I tried to understand what my interviewees referred to when they employed concepts such as rights, support and services. As I soon realized from their usage of the term, no single and accepted definition of the concept of “right” exists, and that the term “rights” is itself a multi-faceted concept. First of all, there are the civil rights that includes the right to life, personal liberty, right to property, freedoms of speech, thought, and faith; right to fair trial, which mean

protection from the state and protection from discrimination. There is also another category of social rights that includes welfare, education, health and the right to work, as well as the category of political rights that covers the right to exercise political power, the right to vote and to be elected and freedom of information. After that, I tried to determine the kind of rights that the NGOs referred to and where they might be positioned in the scale of rights. To that end, I also inquired in my following interviews whether asylum is also a fundamental right that should be given to refugees. Here, I will convey the opinions of NGOs along the scale of rights from civil rights towards social rights respectively.

First of all, ICMC focuses on pure civil rights as their tasks involve the implementation of the final phase of the right of asylum. Deniz explains his personal opinion that asylum is a fundamental human right, which should ensure that all refugees are protected and given equal rights as the citizens of the country of asylum. In all of my interviews, Deniz was the first and only person who suggested this idea.

AI reiterated the idea that the organization is based on international documents on human rights, which they listed as the right to life and right of protection from deportation among others. The organization does not make a distinction of civil rights and social rights, but their discourse heavily depends on the former.

HCA lays the primary emphasis on the civil rights that include the right of asylum, protection from deportation to a country where the person will be subject to persecution, and protection from arbitrary detention. The organization also mentioned social rights; however, their capabilities in this field are quite limited. HCA believes that escaping from persecution and seeking asylum in another country is a fundamental human right and wishes everyone to agree with this opinion in this regard.

Mülteci-Der is incapable of conducting many activities on social rights since they do not have stable financial resources. Currently they primarily focus on the importance of civil rights, although they also lay significant emphasis on social rights. The organization believes that asylum is a fundamental human right, and most of the assistance provided for the refugees is based on the idea of charity and benevolence, whereas people in general do not consider access to services as a fundamental right.

Mazlum-Der places equal emphasis on civil and social rights. Havva, the representative of the organization, states that asylum is a right because it is directly related to the right to life. She claims that the people who migrated from another country outside Europe

should also be granted the status of a refugee, rather than the status of an asylum seeker, since their rights to life, fair hearing and physical integrity are under threat due to the risk of long-term imprisonment and torture in their home countries.

When I reminded the Mazlum-Der representatives of the use of the expression on the services that will be “offered” to the refugees in the Circular No. 57, Hasan, to whom I was talking simultaneously with Havva, said: “The expression ‘offering’ may be perceived with the feeling of the sovereignty of the government. This is not correct.” Later, he stressed that the duty of the government is to guarantee the life of everyone residing within its territories.

However, Mazlum-Der, despite its emphasis on the concept of asylum as a fundamental right, also added that the government may and should apply some limitations on the concept for the public order. Havva, in particular, defended the idea that the government should process a profound RSD review since every applicant of asylum cannot be granted a residence permit, and that a quota may be applied against the risk of millions of people migrating into the country every year. Havva and Hasan were in conflict at this point since Hasan believes that the government should not apply any quota against people who qualify for the status of a refugee and that deportation of refugees cannot be deemed acceptable within the framework of human rights. Nevertheless, it can be suggested that Mazlum-Der ignores the rights of the irregular migrants who are not refugees.

ASAM states that the NGOs that see themselves as advocates of rights tend to differentiate themselves from ASAM, but the organization itself does not agree and considers the issue from a different perspective. With a critical approach to these rights-based organizations, ASAM asserts that a right-based activity does not only include signature campaigns, printing postcards, writing reports, applying to courts or listing the rights of the refugees, but also the undertaking of concrete activities directed towards social rights to ensure refugee access to healthcare and educational services. The ASAM representative indicates that their organization does not run as a charity, such as distributing food or clothing, but as an actor that directly intervenes in the judicial processes and applies to the administrative courts when necessary or guarantees access to social rights for refugees. The organization criticizes other NGOs who write reports on detention centers by basing their arguments on their observations from the outside, without actually visiting these centers. They claim that ASAM is the NGO with the greatest network among the refugees, the agency that reaches the greatest number of refugees, with 10,000 people in 16 regions, and therefore they

have a profound knowledge of the field. The organization plans to embody this knowledge in the form of an elaborate report.

ASAM also criticizes the rights organizations that offer legal consultancy services, stating that ASAM also provides legal support to the refugees, and that their task is more complicated by the fact that they directly communicate with the authorities:

“We have access to the bar, the General Directorate of Security and the Department of Public Order to follow the legal procedure for the refugees. I currently have a great number of open judicial case files. Last week we talked to the General Director of Security and the Director of Public Order and explained the situation of the person in question, that is, how he was beaten, etc. We reminded the authorities that no judicial procedure for the refugee exists and concluded the issue. If we didn’t operate the way we do, it would have been much easier to fax the case to the European Commission and file a case.” (Kemal)

ASAM stressed that their aim is to guide the refugees and to do this to guarantee their access to fundamental rights and services “as long as they breathe” in this country. In conclusion, although it seems to be an organization based on social support rather than rights advocacy, ASAM places great emphasis on social rights; however, they almost never emphasize civil rights such as protection from state.

HRDF asserts that they try to maintain a balance between the NGOs that are devoted merely to supporting the refugees and those that are based on rights advocacy. During the first interview, the HRDF representative actually never mentioned the word "right," instead he used the words "support" and "service." He demonstrated neither an emphasis on social rights nor on civil rights. However, during our second interview, I observed that HRDF also stresses the importance of defending rights in certain fields of work, such as human trafficking and sexual labor, although they do not emphasize the rights in the field of refugees.

Bilge claims that, although the civil society seems to be a sector where the service aspect stands out, it is more efficient to have an NGO that would offer alternative methods to the government and exert pressure on it while simultaneously defending rights, rather than an organization that would step in when the state is exhausted. He also states that HRDF does not invariably defend a reconciliatory approach with the government, avoiding disputes for the fear of being deprived of the necessary tools. For instance, HRDF conducts a rights-based

struggle on human trafficking, sexual labor and sexual education and is frowned upon by most of the government agencies. However, since their field of work is quite comprehensive, it is impossible for HRDF to maintain a struggle at the same levels in every field.

Bilge indicates that benefiting from the opportunities may be rendered a right, should the laws support it, and that the failure to do so stems from the fear of refugees in Turkey, which he thinks is easy to understand. Concerning the NGOs that seem to be avoiding an emphasis on rights, Caritas representative asserts that the NGO by its very nature conflicts with the state and thereby, the organizations that speak in harmony with the government do so because there are binding reasons to do so, although they maintain a certain level of opposition. She adds that since it is not recognized by the MOI, Caritas cannot maintain a relationship with the government like the other NGOs. She went on to say that her organization maintains a stance of avoiding disputes while still retaining its oppositional position. Interestingly enough, only the Caritas representative mentioned the concept of political rights, wishing that the refugees could establish their own associations to represent themselves.

In conclusion, as Bilge points out, we can make a distinction between the NGOs that are based on defending rights and the ones that are based on providing social support. However, the distinction is not as clear as it first seems. In other words, we cannot suggest that one side is devoted to the rights advocacy while the other party is not. There are of course differences in priorities; for instance, change of laws and violations of human rights are not issues that are particularly ignored or overlooked by the organizations based on services. On the other hand, it is not the basic approach of the rights-based organizations to defend "the laws and the operation of institutions are of primary importance, and there is nothing else to be done before that." Thus, it would be more accurate to mention the issue of certain priorities when distinguishing among these organizations because they do not completely exclude the functions of one another. Dicle from HCA supports this idea by saying that the fields of operations are not clearly distinguished across NGOs, since there are transitive points. She believes that these organizations cannot stand apart from each other because the moment they contact a refugee the organization has to extend itself to other fields as well. She exemplified the extension of a humanitarian aid organization into the judicial area as follows:

“For instance, when the Foundation for Human Rights and Freedoms and Humanitarian Relief (İHH) wants to have a refugee go under surgery at a

hospital and suggests paying for the costs, and the patient needs general anesthesia but does not have the necessary papers, there will be a problem with the government. The organization will have disputes with the police officers and the government authorities, which will affect the daily practices of the organization. In other words, the man cannot go under, although İHH wants it and can pay for it, because a refugee who does not have the proper documents cannot go through general anesthesia, except for emergency cases. None of the doctors would be willing to assume responsibility for this. The Chamber of Physicians and the Foreigners Department have to be involved in the matter.”  
(Dicle)

During my early interviews, I was not able to grasp the picture accurately, and thought that there was a significant difference between the service-providing and right-defending NGOs. However, I understood that the difference among the NGOs in the field were not really that significant, and now I can see that, despite the differences of the emphasis on civil and social rights, both of these groups actually act with an emphasis on rights.

## Chapter Conclusion

In this chapter, I presented what the NGOs are capable of doing in the asylum system in Turkey touching upon their discourse of rights. The tasks they perform in both rights advocacy and psycho-social support for refugees are not negligible. Some NGOs are involved in individual legal support and case follow-up. They conduct reporting activities that aim to point out the inadequacies in the field concerning the conditions of the people under custody or unaccompanied minors and propose suggestions for possible solutions. Some define their role as an emergency response after an accident. Their lawyer activists have access to the “guesthouses” because of their professional identity and talk directly with the people under custody. They inform the refugees about their legal status and the asylum process, which is usually the information that the refugees most need at that point. In problematic cases of mistreatment of the refugees, they help to convey the issue to the authorized agencies.

Those who are implementing partners of UNHCR undertake tasks such as preregistration, arrangement of appointments, referral, accompaniment and interpretation, and offer psychological consultancy services. In the satellite cities, they try to solve the problems of refugees by mobilizing the local administration, with the help of social service experts, sociologists, psychologists and interpreters. Some others engage in campaigns, training programs, lobbying, raising of public recognition, and publication. Some provide assistance in accommodations, food and clothing, help to benefit from healthcare and educational services and refer individuals to other NGOs, public institutions or local authorities. Some step in for resettlement of refugees in third countries and their cultural orientation.

Contrary to my assumption that they play the role of intermediary between the refugees and the authorities, I discovered that NGOs have a greater role than that of a mere intermediary. I argue that NGOs also intervene in the system and help refugees in line with their principles and values such as human rights, equality or religious references, rather than trying to draw portraits of victims as favored by RSD examiners. Although there is a difference between the service-providing NGOs and right-defending NGOs in terms of field of activity, as well as the relations with the government, this difference is not really that significant. In fact, both of these groups act with an emphasis on rights, despite differing emphasis on civil and social rights.

## CHAPTER 5

### ROLE OF NGOS PART II: WHAT ARE THE LIMITS OF NGOs?

In the proliferating literature on civil society, one tendency has been to glorify it. It is argued that due to globalization, the “emergence of alternative modernities” and the “legitimacy crisis of the strong-state tradition”, there is a shift towards civil society in Turkey. This shift has been too quickly accepted as a glory of civil society. According to Keyman and İçduygu (2003), in the context of European integration, civil society organizations gained “normative and discursive power, influencing us to rethink the state-society/individual relations beyond the strong-state tradition and by employing the globalization of the language of civil rights” (p. 227). Civil society is not only regarded as a development which pushes us to think beyond the strong state tradition, but also as a substitute for the political parties and as “an opportunity for progressive solution against the blockage of the parliamentary democracy and nation-state” which have today become cumbersome by the New Left tradition (Bora & Çağlar, 2002, p. 337).

In the aftermath of the 1980s, in parallel with the global liquidation of the social welfare state and the neo-liberal transformations, the NGOs have stood out as the solution for various issues. They have overtly been presented as institutions to replace the state as a significant service provider. In Turkey, “we have seen, starting in 1990s, the civil society has lost significance as an area of 'opposition to the government' and 'right-seeking', and volunteer organizations supporting the state stood out" (İpek Can, 2007, p. 96). Furthermore, with the settlement of market economy in Turkey, the idea that “the state cannot undertake every service, moreover, it may hinder achievement of many tasks” (İlter Turan in Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1998, p. 13) and that new organizational structures are required for the tasks that the state cannot undertake has gained acceptance.

Another reason for the recent emphasis on the civil society in Turkey is the regard of the civil society the same as political democracy. In other words, we are searching for democracy and see the civil society as a prerequisite for it. According to Fincancı (1991), "in Turkey, civil society is considered as a structure that will be the generator for the fundamental rights and freedoms whose absence is perceived in every aspect of the social life" (p. 14). Despite legal procedures and administrative practices that consider NGOs as the axis of potential "mischief", there is an anticipation of a high possibility for political reforms to proliferate with a significant aspect of consensus in regions where civil society matures (Aydın Uğur in Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1998, p. vii). While civil society in daily language is used to refer to the pluralist, participatory and liberal social terms which break the state monopoly, democracy is regarded as an objective which can be achieved through undermining the state. However, according to Fincancı (1991), "civil society is not related to the broadness or narrowness of the state; it is related to its auditability" or, according to Şahin Alpay, one should not draw the conclusion that the state is the absolute evil, and the civil society is the absolute good. (in Fincancı, 1991, p. 16, 24)

Despite these views that exalt the current condition of the civil society, there are some who are rather skeptical of the subject. One argument states that although the number of NGOs is quite adequate in quantity (which is about 61.000 in 2004), "their impact on and participation in public life is relatively trivial" (Şimşek, 2004, p. 48). Şimşek also argues that Turkish civil society is still very far from contributing to democratization and that Turkey still needs more liberalization before democratization. Karaman and Aras (2000) also state that civil society in Turkey remains underdeveloped and they list the obstacles as unstable democratic process, bureaucratic centralization, intolerance of political opposition, state dominance over civil rights and ideological structure of state control.

Both those who uplift the civil society as a tool of solution for social problems and a prerequisite for democratization and those who are skeptical about it defending that it has not developed sufficiently lay great expectations on the concept of civil society and on NGOs, which they regard as an alternative to the state. There are also others who represent yet another view such as İpek Can (2007) who considers the relations between civil society and neo-liberalism with a critical eye. According to Bora and Çağlar (2002), with such rise in the expectations, "the perspective that takes the internal conflicts and the power elites inside the civil society into account and that handle the relationship of civil society with the state with

its interactions and transitions, rather than with dichotomic antagonisms has become indistinct" (p. 345-346). In this thesis, I will try to probe the point of view that lays great expectations on civil society. In the following pages I will respectively discuss the limits, as well as the ideas of the NGOs of their roles in the asylum system and point out their interactions with the state and the UNHCR. Finally I will look into their approaches to the distinction between refugees and migrants, and the dreams of NGOs for another world.

### Limits of NGOs

“People are desperate, and they ask for help yet you are desperate too. Sometimes you apply every agency and still cannot achieve any outcome.” (Betül)

The NGOs, whose fields of activity and capabilities I tried to explain briefly in the fourth Chapter, may encounter certain situations where their hands are tied, besides their personal legal consultancy services, psycho-social support services, campaigns, trainings and lobbying activities. The conditions that restrain the NGOs can be listed as insufficient financial resources, ignorance of the government officials and problems related to legislation. First of all, almost all of the NGOs pointed out the problems with resources as the major reason constricting their tasks. The majority of the NGOs I have interviewed received their financial resource from the European Union, the United Nations and the embassies. Furthermore, the ICMC received funds from the US State Department, and Caritas from the Catholic community. Only two NGOs, that are AI International and Mazlum-Der, said they did not avail themselves to such funds and ran on their own resources.

Irregularity of resources and their limited availability under certain programs and based on projects leads to provision of certain services only temporarily and an obscurity of the course of tasks. The funds provided for projects do not amount to great figures; these funds are availed for specific activities and the expenses are defined. It is not certain whether they will be able to afford the office rent when the fund expires, which is a significant concern about the continuity of the activities. On the other hand, the government does not have any intention to offer financial support to NGOs.

For example, HCA stated that their task is not a short-term project but a work that would continue in the long run. Due to the structure of the task it particularly should not be project-based or short-term because their work requires accumulation of information and there are very few experts in this field in Turkey. HCA emphasized that continuity is a priority in their field, and that they aim to establish expertise. As they undertake certain tasks such as file processing and direct legal consultancy, the refugees applying to the HCA tell everything they encounter, which renders the accumulated information rather valuable. They need to continue their work for a very long time in order to transform the accumulated information into reusable resource.

Besides these, HRDF stressed that it is important for NGOs to stand on a firm ground, to have resources standing on a base or an enterprise and to have a certain source of income because they do not have the capability to provide food to the hungry or pay the fares for those who cannot afford to travel. The organization also stressed that social and financial support is insufficient while intellectual support can be gained rather easily. Moreover, HRDF representative told that they do not own a shelter for refugees and although they have one for victims of human trafficking they cannot take refugees in there.

While Ferhat Kentel defined the reasons for such problems of NGOs as “failure to reach the masses” or “being restrained to project fetishism”, Serdar Değirmencioğlu suggests the mobilization of local dynamics as a solution (in *Türkiye Ekonomik ve Toplumsal Tarih Vakfı*, 2003, p. 11, 22). However, the majority of the NGOs I interviewed did not suggest localization or socialization as a remedy for the discontinued foreign funds provided to short-term projects. Although Cooley and Ron (2002) assert that “When placed in competitive, market-like settings, nonprofit groups are likely to behave like their for-profit counterparts” (p. 36), I did not observe any competitive behavior among the NGOs engaged in refugees due to financial reasons. On the contrary, some NGOs have established a union under the umbrella of Human Rights Joint Platform (İHOP) to receive EU funds.

However, Mazlum-Der, unlike all of the other NGOs, stated that they did not encounter any monetary issues, despite certain occasional problems, because handling the issues of refugees, in their point of view, did not have anything to do with money. The organization considers that the concept of "professionalism" is against the grain of their work, that it should be done voluntarily and that people cannot be forced to defend human rights. That is the reason why Mazlum-Der withdrew from the İHOP, which, as they define, was

established to have access to the EU funds in the first place and did not undertake any activities directly. Therefore Mazlum-Der, based on the principle to deny any funds from foreign governments, organizations and agencies, decided to resign from İHOP.

Secondly, the problems arising out of unavailability of access to the asylum system for the people and the restraints on applications are directly reflected to the activities of NGOs. Although they may achieve to get indirect response to their applications from the provincial human rights boards, ignorance of the authorities may leave the NGOs desperate. For example, Betül from Mülteci-Der defines the problem as follows:

“It is very often that the response is 'Who are you to ask?', whomever you call at the Foreigners Section or any other office. Those who are more knowledgeable and polite say ‘Unfortunately we cannot provide information to third parties’, but there are also those who overtly say ‘Why should I give any information to you? Who are you?’. All in all, both leads to the same end, but the way they put it is also very important. Usually we feel that we are talking to walls.” (Betül)

AI, whose one of the primary fields of activity is training, stated that they were often suggested to provide trainings to police officers. However, the contact points with the government once again establish the limits of their activity because the recognition of the AI by MOI and General Directorate of Security as a partner is required for such training, which is out of question.

ASAM points out that the global view on the refugees and asylum seekers has dramatically changed due to the attack on September 11, 2001 and the financial problems in Europe, and that specifically in Turkey the public officers have a similar view of the refugees as well. Besides, due to the lack of public awareness of the subject, the authorities may be prejudiced, therefore leading to problems and difficulties in changing the perspective on refugees. For instance, my interviewee at ASAM stressed that signature campaigns and similar activities are not enough to solve the problem, and that instead, direct communication with the authorities is required. However, the fact that very few NGOs are recognized to attend the talks with the authorities is a limiting factor.

The third situation where NGOs may be left desperate are the issue arising out of legislation, and the representatives state that they are usually incapable achieving their tasks.

Furthermore, there is not a systematical social support mechanism provided by central or local governments or the UNHCR in Turkey; the idea is everyone should take care of themselves. As there is a work permit only in theory, it is almost impossible for the refugees to find a job in practice. Moreover, there are the problems of unfamiliarity of language, procedures and culture. Healthcare is one of the most important problems, because in some cities, for instance at the Provincial Social Assistance and Solidarity Foundation in Izmir, the authorities are rather strict, refusing to offer services to anyone who does not have a foreigner identity number, that is a residence permit. Other cities may apply different procedures; for example, the procedure applied in Isparta is rather appreciated in that a committee established under the Governorship, including all relevant units such as foreigners department, directorate of healthcare, etc. provides health certificates for asylum seekers.

When the legislation is not clear, the government officers may arbitrarily make unfavorable decisions. The lawyer from Mazlum-Der, for instance, pointed out that lawyers have the right to review all files, including court files, without any requirement for a letter of attorney, but in one case, the authority at a “guesthouse” insisted that they could not. The same lawyer told the following case she witnessed at the Kumkapı “Guesthouse”:

“I went to the guesthouse to interview someone, but he rejected my request. Then I asked why, I said I know the person in question was under custody. He explained that there could not be any custody at a guesthouse. Then I said even if he is under custody, he has a right to see his lawyer. And if he is not under custody, it is still his right to see people. I asked him to bring the person in question if he is not under custody, because he cannot keep him locked if he is not in detention. I somehow achieved to talk to the refugee, and after that, the authority told me not to forget his favor. I said to him that it was not a favor of him to allow me, and I warned him to watch his words because what he did was what was exactly to be done, that is his duty. These are the problems we usually encounter.” (Havva)

Despite not being an NGO and having relatively wider authority, UNHCR may also be left desperate in certain situations. They often complain that the humanitarian aspect cannot be included in the framework of their tasks as they often involve RSD, and that sometimes they cannot help people even though they want to. As the authorities consider many situations as criminal cases, UNHCR is paralyzed. After all, UNHCR is an international organization

which has a delicate diplomatic relation with the government. Although it is frequently criticized by NGOs for their lack of activity in the field and remaining silent in terms of criticism, UNHCR considers itself rather active in the field. They state that they prefer to criticize the state privately, rather than in public for the fear of falling back from the position they have achieved. For instance they have cold feet on pressing the government for the fear that the migrants in detention may be deported.

My objective in asking the NGOs and the UNHCR about their incapacities was to explain the capacity and power that they have within the system. As far as I can see, the limitations of NGOs are their contact points with financial sources and the government, which restrain their capabilities.

### What Do the NGO Representatives Think About Their Roles in the System?

Bora and Çağlar (2002) assert that there is a rise of interest in the “social-political activities that are conducted on short-term mobilization focused on a certain demand, usually with campaigns, within the informal network of relations” of the NGOs, because the working style of NGOs is compatible with the demand of "urban middle classes for 'low-intensity' political engagement" (p. 339). Indeed, it can be claimed that there is an increasing interest among the civil society, media and academy in the NGOs, in particular in the field of refugees, which is an idea approved by most of my interviewees.

Mülteci-Der and HCA relate the rise of interest in the refugees among the civil society to the geographical location of Turkey, which stands on the intersection of migration routes, and to the non-negligible rise in the migration traffic due to stricter control of European borders against trespassing. They state that, along with the recent development of the civil society in Turkey, the abovementioned condition may have had its effects in the field of refugees. They suggest that as soon as this issue is taken seriously by the government, it is reflected in the field of NGOs and it becomes more visible. As the idea that refugee rights are a part of human rights is acknowledged, the NGOs which had been engaged in human rights for a long time have begun to show interest in the issue; however, the outstanding actors in the field have not changed in the last 4 or 5 years. According to ICMC, the rise in the number of NGOs involved in refugee rights is closely related to the democratization in Turkey, which

allows for a wider space of civil society because the role of the NGOs to fill in certain gaps has been acknowledged during this process. Some of the representatives of NGOs particularly emphasized the relationship between the penetration of refugee rights into the agenda of the government and the civil society and the pressure applied by the EU authorities.

HRDF, contrary to my other interviewees, pointed out that there was not any increase in the number of NGOs, and there not many NGOs working with the refugees. According to them, there have been 3 or 5 organizations involved in the field of asylum for a long time but there are too many organizations involved in the field of migration and solidarity with migrants.

How do these non-governmental organizations see their roles in this field, which has become more visible in the society through media and academy? Mülteci-Der states that the role of the NGOs in the field of asylum is just being clarified as the discussion is rather new in Turkey. They say that the obscurity of their role does not merely stem from the NGOs as the policy of the government has not been defined yet. They explain that the civil society on asylum is newly emerging, however it may be limited under the given conditions, and that the role of civil society is closely related to the opportunities provided by the government. They stress that the more energy they gain through overcoming the obstacles created by the government, the more they can achieve. Due to the rules in Turkey, for instance, NGOs cannot have access to the “guesthouses”; therefore they cannot manage to interview the people there to encourage transparency. ICMC, maybe with certain optimism, asserts that the government is more willing to collaborate with NGOs, and that they could not be able to operate if the MOI did not provide the necessary permission, which they consider as an improvement.

The representatives of NGOs I have interviewed listed resorting to judicial review, following the violations of rights and monitoring the government as their important tasks. Caritas points out that the government seems to be offering rights but takes them back immediately through bureaucracy to complicate matters. They also reminded that NGOs have the role of a mirror, showing the government how it acts and registering these actions. If it is to be frowned upon by the state, then it is considered as a benefit of the NGOs.

AI says that NGOs have the primary role of establishing the infrastructure of judicial review against administrative procedures in the refugee law, which neither jurists nor the refugees have a good command of. They often focus on the activities to increase the number

of cases and decisions so as to remind the administration its limitations and force them to act within the limits of law. In this sense, the applications of HCA to the ECtHR are very important. Kaya from AI provides examples from the statistics of the urgent interim measure decisions made by the ECtHR against the deportation orders for refugees. According the data provided by the MOI, ECtHR made only 2 decisions for urgent interim measure in 2006, which increased to 7 in 2007 and to 27 in 2008. Kaya considers this as an overt indication of the effectiveness of using legal mechanisms, instead of interpreting it as a result of the increase in the number of violations from 2000 to 2008. Kaya stressed the role of HCA in ensuring these decisions and reminded that, there is a difference of 300-400% in number of the deportation cancellation decisions between 2006 and 2009 given by the administrative courts. He suggests, formerly, violations of human rights were widespread to the extent that the death of the refugees on the Tigris river<sup>16</sup> were not considered as important, yet today any similar incident would lead to great reactions as the tolerance for such violations is not as common.

According to Mazlum-Der, when government agencies fail to undertake their legislative liabilities, the NGOs step in to ensure that they do. They inform the government officials about the rights provided by the new legislation to the refugees, the required procedure and the ideal ways of solution because they believe that nothing can be achieved as long as they do not press the public offices for a solution, hence the phrase "rights are not given, rights are taken." Nevertheless, they stressed that it is duty of a state to ensure social rights and security of all the people in its territory and that they usually have to remind the government officials of their duties, and they stated that if the government fully realized its duties, there would not be any need for the civil society.

Additionally, my interviewees said that the NGOs have other responsibilities such as creating empathy and raising awareness in the society, and defended that their activities were necessary to alter prejudices and perceptions in a society which already has a tendency to encourage xenophobia. They also stated that more NGOs should work in the refugee areas which are not supported by the state.

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<sup>16</sup> On 23.04.2008 "18 Syrian and Iranian nationals, including 5 UNHCR-recognized refugees, were forced to swim across an unpatrolled stretch of the Tigris River that separates Turkey and Iraq. This is an instance of unilateral, "black" deportation of people to a third country they have no relation to. 4 of them drowned, including one of the UNHCR recognized Iranians." (ECRE, 2009)

Thus, in general, the NGOs state that the role of civil society is closely related to the government and that they cannot be totally ignored although their activity is limited. In contrast to the NGOs which undertake these positive roles, Kemal from ASAM stressed that the role of civil society should not be exaggerated and that they do not make a real contribution towards solving the problems. Kemal complained about the incapability of the civil society to offer any solutions to the problems such as global inequality that forces people to escape from their countries, and said:

“volunteer organizations only deceive themselves, that is the volunteers will feel relieved; for the ones that have an ideological perspective it will be just an ideological masturbation. Everyone will feel themselves important because of the work they do but all of this will not eliminate the reasons that forces a man in Africa or Iraq to leave this country.” (Kemal)

Kemal also stated that the civil society, rather than working for human rights, tends to play on rights politics, and stressed the meaninglessness of discussing rights and law in a system where a sector of the society is left in poverty to sustain the wealth of another sector, and the NGOs that oppose the violations of rights merely play their games in their own restricted area. He asserted that the NGOs support the maintenance of a system of inequalities as long as they offer help, becoming a part of the system, and that, therefore, NGOs should not have any ideals to save the world.

Although ASAM believes that the NGOs are a form of controlled opposition that prevents the contact of people to main points, they can still influence administrative processes based on the power of thousands of people that they offer services to, which is the reason that keeps them within the system. However, they do not forget to stress that NGOs should not overestimate their roles.

I asked the NGOs about their opinion on the academic criticisms against these organizations which assert that NGOs can only think on short terms, rather than on macro levels, that they are not sufficiently familiar with the legal framework, and that they are not usually mastered in the field. Almost all of my interviewees accepted this criticism in that every NGO may have a different level of knowledge but they stated that it cannot be considered valid for their own organization. The majority of the interviewees said that they

are well-experienced in the field and reminded that it would be difficult for an NGO to embark on this field without sufficient knowledge of the issue.

According to ICMC, everyone has to have sufficient information on the refugee system in Turkey, the routes and reasons of refugees to arrive in here, the procedures applied and the potential obstacles as well as the legal framework and documents. As they have been involved in the process of preparation of the National Action Plan with their advices, they are familiar with the legal framework. HCA also asserted that they are competent in legal terms and on the macro level because they have direct contact with the refugees, who are the most important individual actors of the field, to find out about their problems, and they closely follow the discussions in Europe and in Turkey.

AI points out that the NGOs, academicians and lawyers in this field are all new, which justifies the criticisms, yet they do not believe that such criticism is valid for certain organizations such as HCA or AI. The AI representative said that they are in constant interaction with the academy, in a way that both provides the organization with information and attracts the attention of academicians to the field. Mazlum-Der also rejected the criticisms because the task was assigned to the lawyers that are engaged in refugee rights. They remind that it is impossible to know the whole legislation in any field, yet they are familiar with the fundamental principles of the legislation and have a legal logic to understand what they read, and they find out about the issues as they encounter with cases and read about them. They also stress that it is normal to have shortcomings if the work is not handled by a jurist, yet it is also impossible to have any shortcomings when professionally trained people handle the work. Furthermore, according to Havva, the NGOs often undertake these tasks by volunteering, they do not do it just for the sake of doing, that is, they are engaged in the field to help to find solutions to problems, and thus they always search for the most convenient options and try to do their best.

There are also some organizations who respond to these criticisms differently. For instance, Caritas representative agrees with these criticisms and defends that the capacity and equipment of NGOs is very limited but argues that the critics should step out of the academic world to offer practical help. According to HRDF, the macro framework is not defined and the legislation is not very profound anyway, therefore, there is very little that a jurist can do. Besides, one does not have to be a lawyer to settle some legal issues; for instance, social workers can handle petitions as they gain experience in time. All in all, the above assessment

cannot be exactly justified as the work is undertaken on a very unsteady and slippery ground. It may not be very easy to assert that they do not know the macro framework because sometimes even though it is known, it may not help. According to a volunteer at Mülteci-Der, it is more important to use this general framework in daily tasks that will have immediate effect on the lives of people.

ASAM, on the other hand, redirects this criticism back to the academy, suggesting that the real problem is with the academicians who have to relate to facts and remember the reality rather than just reading. They believe that they can handle any discussion on any kind of legal document, but that the reality is not in what is written. They say that academicians are unaware of some regulations and circulars which often block the standards. Hasan from Mazlum-Der stresses that the persons who will suggest solutions are the ones who are practically inside the field, who see the disruptions in practices, not "the instructors or lawyers with various titles sitting at their desks in their suits".

In conclusion, as I mentioned earlier, the role of NGOs in the refugee system in Turkey is newly emerging and it primarily depends on the dispositions and actions of the government. Problems of financial sources, ignorance of government officials, unclarity of the legislation and arbitrariness may limit their capabilities; however, they have a certain role in the field: it is not a mere intermediary role between the refugees and the authorities, because the NGOs are actors intervening in the system in line with their own values. In general, the function of the NGOs is defined as to help people raise their voice for their demands, to function for a pluralist social structure, and to act as a buffer against the mechanisms of the state and market economy (Erözden, 1997, p. 15). Particularly the NGOs engaged in the human rights field have a function of collection, generating and distribution of information; that is "fact finding" to "make a legal effect or to contribute to law and law-making and to affect the prescriptive mechanisms" (Turgut Tarhanlı in Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1998, p. 16). The NGOs I have interviewed, in approval of the above, define their roles as resorting to judicial review, processing violations of rights, monitoring the state and to raise public awareness on the issue.

## Relations of NGOs with the State

What is the approach of the state, probably the most important actor that has relations with the civil society, against NGOs? Which government agencies do the NGOs interact with and how? Do they manage to affect government policies? As the relations with the state cannot be uniform and plain, some of the NGOs have quite good relations with government agencies while others state that they are not usually welcome. Their most frequent contact is the Directorate of Security, Foreigners Department, Social Services, municipalities, Ministry of Interior and the Ministry of Foreign Affairs. Since the concept of state is rather comprehensive, the quality of their relations with the state varies across agencies, sometimes even across different people at an agency. According to Kemal from ASAM, the origins, the sources of funds, the title and the cooperating figures of the NGOs can be the main reasons that affect the approach of government agencies towards the organizations.

For instance, Mülteci-Der said that they are not welcome by the government, particularly by the police department solely because it is an NGO, working for the rights and preventing deportation of refugees. However, due to the urge from the EU for a systemic change, the approach of the state both towards the issue and towards the civil society has changed to the extent that it now calls NGOs to meetings and seems more willing to establish communication. Similarly, HCA points out that there are different relations at different levels. Since they are one of the most critical organizations in the field, there are certain limitations applied, and their criticism is not welcome; however, in general, they try to establish communication.

These NGOs, with a rather critical disposition to the government, believe that they may have a certain effect on the changes in government policies through lobbying activities and petitions as a tool of pressure. Although they cannot directly change these policies, merely a phone call or fax to the police department on a problem forces the officers to behave more carefully. For instance, they believe that the NGOs have had effects on bringing about the idea that it is unacceptable to deport people rashly.

In terms of lobbying, AI has had various talks with the deputies and group deputy chairmen of political parties. According to Kaya, the issue should be taken into the agenda by political parties and the parliament should be involved in the issue as an actor. The parliament

has a significant mission on the subject because it is important that some of the political parties vote in favor of the refugees when the resolution is brought to the general assembly. A parliamentary vote of the law in accordance with the human rights standards will affect all refugees for decades to come. Therefore, AI has focused all of its work on following the procedure of the abovementioned resolution.

Kaya reminded that HCA was formerly excluded from the gatherings of government officials with NGOs due to its severely critical report<sup>17</sup>, and said that the same may happen to AI in the future. He believes that the state should recognize the existence and mission of the NGOs. He added that the gradual positive changes in the prohibitive disposition of the state may be recorded in history as a very favorable example both for the NGOs and for the Turkish legislative process. However, he also warned that things may not go as expected and the process may be interrupted suddenly.

Mazlum-Der, which is not as critical as HCA, Mülteci-Der and AI, has a relationship with the government based on correspondence because even one sentence of response in written form, whether positive or negative, ensures that they can later use it against government agencies. Havva said that sometimes their letters to government institutions were not replied, in which case they write another letter in a different style, which usually ensures a response. However, the answers are frequently insufficient, such as "your application has been put into process", and in many cases the applications can be concluded in six months, as the refugee process takes rather a long time. Havva also points out that, although their tasks do not cover law-making, they can still conduct advisory research; for example they prepare reports on the observed problems and submit them to the government officials on appointments. As a result, although they cannot make the desired influence on government policies, they can still achieve favorable results.

Hasan from Mazlum-Der criticized some of the NGOs without mentioning any names, which he accused of absolute opposition to anything that comes from the state. He asserts that such presupposition may lead to inaccurate results, and believes that also favorable things can be achieved by the government agencies.

ICMC, HRDF and ASAM state that they have good relations with the state. ICMC says that they do not exert pressure on the government, as their relationship with the state is

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<sup>17</sup> HCA-RASP. Unwelcome Guests: the Detention of Refugees in Turkey's "Foreigners' Guesthouses", November 2007

based on the intermediacy of UNHCR rather than a direct contact. HRDF suggests that they have favorable relations with government institutions, starting with the activities in human trafficking in the past and as an NGO supported by the government, they have been assisted by government agencies to open a shelter for the victims of human trafficking under the umbrella of an NGO.

ASAM reminded that the circular no. 57, which is a fundamental document on the current situation in Turkey, Anatolian Development Foundation, HRDF, ICMC and ASAM are included among the NGOs who can be collaborated with in certain activities such as psycho-social support. The document can be helpful at times to open the doors in order to expand services for refugees. Kemal said that they usually prefer to take the path of least resistance in their relations with the government, which facilitates procedures such as exemption from residence fee and travel permit. For example, I attended their trip to Cappadocia for refugee women on March 8<sup>th</sup>, the International Women's Day, where I found out that the costs of the lunch for the participants were met by the Nevşehir Municipality, which can be an example of their favorable relations with government agencies. According to ASAM, they report their advisory notices to law enforcement bodies, who also consult ASAM based on their experience on the field. For instance, they ask their opinions on the new law draft as well as the management and the structure of reception centers. Furthermore, the architecture company which would construct the reception centers once visited them to ask about their key issues. Kemal points out that they may both have arguments with the governments at some times, and also collaborate to find solutions to problems in reconciliation in order to help the system run more efficiently.

### *Does the Tension Arise out of the Legislation or Implementers?*

When I reminded my interviewees that the state is not a monolithic body, and asked them about their different relations with different government agencies, I could not get any satisfactory answer. That means, they usually did not differentiate between different government agencies. They often stated that the enforcement of the legislation varied across cities, agencies and even across people in a single agency; however, they did not mention the variance of their relations with various agencies. For instance, Mazlum-Der stated that they

did not make any discrimination against government agencies as good and bad offices, and prefer to stand at equal distance to all of them. According to the representative of Mazlum-Der, if the agency does not undertake its task due to the mistake of an official, it becomes the mistake of the agency, because the agency acknowledges the act by failing to punish the relevant person or failing to undertake its task. In such cases, Mazlum-Der explains the agency about their mistakes and strives to correct it.

I also inquired the reasons of the tension in inconveniences encountered by the NGOs in their relations with the state as well as in the field, and asked whether it was the legislation or the implementing people at the agencies that determine the level of tension. Unfortunately, the relations often depend on the specific people; the relations with the superiors may be better while the daily encounters may be more difficult. Bilge from HRDF stated that individuals may usually determine the quality of the relations with and implementations of the government institutions; however, the organization does not favor a relation dependent on the individuals, and rather prefers to establish certain principles to act upon.

Bilge also mentioned the problems within the government agencies arising out legislation and shortcomings. For instance, the legislation on human trafficking restrains the actions of the General Directorate of Security, whose mere task is to “determine the victim, seize the trafficker” but not to support the victim. Bilge reminded that the police officers are not psychologists, and therefore cannot approach the issue from the perspective of the victims. He said that haphazard criticism of the police department would be unfair as they do their best and sometimes use initiative as if they work in an NGO, and the violations of human rights by some security officers should not be considered as a common action across the department. According to the Caritas representative, it is usually the case that the administrator at the government agency is willing to help but restrained by the legislation. For instance, a police officer once had to charge the book fee to a refugee for residence permit, rejecting to make an exemption, but later provided the refugee with coal aid.

Mazlum-Der, which is not as tolerating against the implementing officials as the other NGOs, stated that the problems usually arise out of both the legislation and the implementers, but that the actual solution is in the hands of the latter. The Mazlum-Der representative said that attempts can be made to make an official report of a problem to the superior desk, but this is quite rare as people are usually satisfied with the existing conditions.

Dicle from HCA stressed that the police officers usually did not have a profound knowledge of the rules that they are subject to, which may be a source of problem and

tension. For example, when a police officer does not allow a refugee to leave the city to visit his legal consultant, Dicle submits a petition for permission, but the police officer still does not allow her departure. In such cases, Dicle cannot be sure whether the police officer has an accurate knowledge of the procedures or just pretends to know; however, eventually, the tension hinders the solution of the problem.

Nevertheless, Dicle does not consider the relations between the state and the NGOs are subject to great tension, because she believes that the tension is usually reflected upon the refugees instead of the NGOs. Dicle put this as follows:

“We constantly bear the reservation that our acts might cause harm to the refugee. I am doing something, but the officials know who I am doing this for, and I cannot be sure about what will happen later. What if they try to pay off with the refugee? I know that the official will not ask anything to me because I am from here and I will be away from the scene.” (Dicle)

Similarly, Melisa from Caritas also said that the refugees are objectified between the NGOs and the government, and frequently the problems between the two are reflected upon the refugees.

In literature, the disposition of the state against NGOs has been defined as “the state allows –under the pretext of a democratic regime- the organizational appearance of civil society;” yet it turns “a deaf ear to those groups that it does not favor” (Karaman & Aras, 2000, p. 43). Although the state prefers to establish a dialogue with some NGOs while none with others, closely collaborates with the NGOs that are involved in certain areas such as healthcare, education and social services and exerts a certain pressure on those involved in human rights advocacy, the results of the interviews indicate that the abovementioned demeanor of the government has been gradually changing and channels of communication have been opened.

In terms of the stand of the NGOs vis-à-vis the government, the level of criticism may change, as can be observed in the interviews; however, as Belge (1997) stated, “if an organization defines itself as an NGO, it defines a significant distance between itself and the government” (p. 31). Belge’s assumption does not have to be necessarily the case in the general of civil society; nevertheless I observed that in the field of asylum even those NGOs in good relations with the government defined a distance between themselves and the

government. According to Belge (1997), an NGO which undertakes a task that is not appropriately handled in a society may have disputes with local or national authorities. The NGOs that avoid such disputes may turn into a “semi-official charity organization”. Both of these, particularly the latter are not favorable stands (p. 37). Despite their criticism and skepticism of the governments, the NGOs have to presume the permanent existence of the states. Therefore, NGOs differ from political parties by not aiming to seize the power; however, due to the very same reason, their activities may be limited to defining what is going wrong.

### Relations of NGOs with the UNHCR

The relations between NGOs and the UNHCR which is an important actor and a decisive authority in the field of asylum in Turkey merits to be analyzed in a special section. In the interviews I asked the NGO representatives their relations with the UNHCR as well as their opinions on its role in the system. Generally, because the UNHCR plays a leading role and has an inclusive attitude towards all NGOs, the relations are good. Although the UNHCR is sometimes criticized for not working rapidly and actively, it has to be emphasized that the UNHCR is not an NGO and has its own limitations.

As mentioned in the preceding chapters, there is a certain dual procedure on RSD in Turkey, and, although the reviews are conducted by the UNHCR, the final decision is up to the MOI. According to Mülteci-Der, although there seems to be a dual procedure, in fact the MOI has acknowledged the procedure of UNHCR in Turkey concerning RSD. In other words, the MOI counts on the conclusion of the UNHCR review. AI, on the other hand, is slightly different, and claims that the MOI has a greater initiative than in the past. Kaya says the actual power used to be UNHCR while in the last 5-6 years the MOI is aware of the responsibility it has undertaken and as a result the UNHCR decisions are now considered as advisory notices. Indeed, the position of the UNHCR has varied across periods; in the past they had a tense relation with the government whereas they encourage reconciliation today. According to Bilge from HRDF, the UNHCR expects the RSD activities to be transferred to Turkish authorities in a short period after Turkey establishes its own legislation and systems. Kemal from ASAM added that the UNHCR should continue its activities in Turkey as long as there

is a geographical limitation, and despite the dispute on power between the MOI and the UNHCR, the former does not want the commissioner organization to discontinue its work.

According to Kaya, “UNHCR is still considered a pirate institution that does not have an agreement with the government.” He said that the MOI does not assign the UNHCR a mission for status determination in Turkey, and its task is limited to resettlement of refugees in third countries. As there is not any agreement between the government and the UNHCR and any code that regulates the activities of the Commissioner, the Turkish government allows its activities in practice but it can decide to end it in the future. Therefore, the UNHCR tries to maintain close collaboration with the government and to avoid any disputes.

The UNHCR representatives, in response to the claims mentioned above, asserted that the organization does not require a specific agreement as there is already an agreement between the government and the UN. Nevertheless, since they still lack a solid role in the Turkish asylum system, they may have certain shortcomings; for instance, they have an office in Van, yet they may not be informed about the deportations from Van. Although a former employee of UNHCR defended that it is a political organization that maintains a certain balance between refugees, which occasionally may shift in favor of the government, my interviewees at the Istanbul office emphasized mostly the issues of non-refoulement and access to protection. Furthermore, they defy the discourse on refugees in Turkey, which goes as “they are our guests, of course we will help them” because they believe asylum is not a favor, but a right. However, several NGOs drew attention to the difficulties UNHCR has in implementing the idea.

Hasan from Mazlum-Der, who seems to be unaware of the difficulties that UNHCR experiences, emphasizes the importance of applying pressure on the government via UN, and said that he suggested both Pelin and Alp to stand on the power of the UN in their tasks. However, he thinks that despite their benevolent character and harsh struggle, they try to resort to individual channels instead of relying on the support of their organization.

The ASAM representative points out that it is difficult for the UN, as an international organization, to operate efficiently in Turkey due to the procedures and diplomacy. Therefore, the UN often has to collaborate with the NGOs as implementing partners in order to ensure a more efficient mechanism of protection in the field. Bilge from HRDF reminds that the Istanbul office of the UNHCR formerly used to undertake the tasks that are currently handled by the HRDF; however, later on, the limitation on the organization was recognized. For instance, interviewing and providing assistance to people whose files have been rejected by

the MOI can be considered as helping an “illegal migrant” who has to be deported. While it is usual for an NGO to do this, for UNHCR it is not. The organization cannot offer assistance or interview every refugee, and cannot officially provide them with alternatives. Therefore, there is a certain level of benefit in the collaboration of the UNHCR with the NGOs as the implementing partner in the field. Thus, the NGOs make use of their capacity in the field and they can do more than that the UNHCR can handle based on the same resources.

ASAM states that the role of an implementing partner has both its advantages and disadvantages. As they collaborate with the UNHCR, some believe that they are not able to criticize the organization. However, ASAM asserts that they can be critical of the UNHCR and point out their mistakes, which is often taken into consideration by the UNHCR and can be influential on changes of policy thanks to their field experience. ICMC, on the other hand, states that they worked as an implementing partner of the UNHCR in the past, when they conducted several social services, child education and social development programs and that the organization applied limitations on the ICMC in terms of budgeting. They still work in an indispensable coordination with the UNHCR because the ICMC is engaged in resettlement of the refugees who are referred by the UNHCR. I have heard from several NGOs that being an implementing partner of UNHCR might be suspected and turned down for the sake of maintaining independency and rejecting funds from the organization. They are concerned that they might lose independency and their position as an NGO when they are financially dependent on an international organization. In such a case NGOs can operate as the operational partner of the UNHCR instead of implementing partnership like Mülteci-Der does.

Apart from the implementing and operational partners, UNHCR has relations with all NGOs in the field. These organizations state that they have constant communication with the UNHCR, which tries to include everyone as far as possible. AI is neither intimate with nor hostile against the organization; it has a certain level of relations, and the two organizations get together at meetings. Mazlum-Der also indicates that they have close relations with the UNHCR, which they contact by phone in order to find out about the files of the applicants and get brief information without too many details.

HCA states that they have a significant collaboration with the UNHCR particularly on the issues of deportation and detention, with UNHCR providing information as well as support letters for their applications to administrative courts. When a concern about the security of the refugees in Turkey is in question, for instance, if a woman who is exposed to

domestic violence is not safe in the satellite city she resides and has to leave, the organization contacts the UNHCR and applies the MOI with the support letter of the UNHCR to resettle the woman in another satellite city. However, as the UNHCR is a decision-making institution in the RSD process, and HCA represents the applicants, there are limitations to the relationship of the two organizations.

Mülteci-Der also has a close relationship with the UNHCR. For people who come to their office without an application to seek asylum submitted to the UNHCR, they send brief information of them to the organization and refer these people accordingly. Due to UNHCR's problems of understaffedness and overload of files, they try to accelerate the process at the UNHCR when urgent cases are concerned. Furthermore, in cases of detention or deportation they inform the UNHCR, who sends the MOI a support letter. Both HCA and the Mülteci-Der indicated that these support letters have a limited effect since the position of the UNHCR has not been firmly established yet.

In spite of the close relations between the UNHCR and the NGOs, the interviews indicated findings that demonstrate the problems in the perception of the civil society on the UNHCR. For instance, according to AI, the perception of the civil society on the UNHCR is erroneous because the majority of them regard the organization as an NGO, whereas the UNHCR is an authority in the system. The UN, by nature, is an organization that is established on the cooperation of governments and thus has its budget resources from the states, and it has the role of an authority particularly in Turkey. AI considers that UNHCR is more convenient to collaborate than the government since it is more civil and has a more humane aspect; however, it would be erroneous to suppose the organization to operate like an NGO.

The UNHCR employees are also critical of this approach of the NGOs; because, while the NGOs expect the UNHCR to work more rapidly and actively, the UNHCR says that it is not in their mandate to handle urgent issues. According to them, the NGOs can severely criticize the UNHCR, whereas it cannot act as comprehensively as the NGOs and has to apply certain criteria to offer services. Alp stressed that the NGOs have to be aware of the fact that they have so much to say, yet cannot do so because of being an employee of the organization, although it eats his heart out.

## What about the Migrants?

The NGOs that have been mentioned so far strive to expand their space in the field of migration and asylum to avail themselves a realm of existence. However, they often focus on the issue of asylum whereas they fail to conduct any work on the issue of irregular migration which has been discussed in the first chapter. Nevertheless; I was curious about those who are not in a position to make asylum claims, or who do not fulfill the criteria of the global refugee regime as well. Therefore; during my interviews, I asked the representatives of NGOs about the reasons that pushed them into the field of asylum and whether they offer assistance to the irregular migrants as well. Not all NGOs addressed this question, and that shows undocumented migration is not within the field of concern for all.

Mazlum-Der, which does not approve providing assistance to migrants, says that the government is quite high-handed on the issue. The organization usually advises the migrants to go to the police department and make an application, but they do not know how the government officials will act, and thus the organization can do very little. The representative of Mazlum-Der emphasized the distinction between the refugees and the migrants, asserting that migrants leave their country because they are not pleased with the living and working conditions, whereas the refugees are subjected to serious unjust treatment in their countries of origin. Mazlum-Der claims that one has to be realistic about the issue because there are also a great number of people in Turkey who are not pleased with their conditions, in addition to the lack of sufficient infrastructure to handle all of the migrants to Turkey, and adds that an excessive number of migrants may lead to violation of the rights of the citizens. Therefore, according to Mazlum-Der, it would not be right to defend issuing residence permit to every migrant, who are excluded from the field of the interest of the organization because they do not suffer from unjust treatment. However, the representative of the organization also states that the people who would seriously suffer from poverty in their countries of origin should be treated differently from the other migrants.

The representatives of the other NGOs emphasize the importance on engagement in the migrants. Caritas reminds of the loopholes in the law on undocumented migrants, and states that the case is more difficult with the undocumented migrants in a country where the agreements on asylum-seeking cannot be applied yet. In general, the humanitarian aid organizations may offer help to the migrants whereas the rights-based organizations do not regularly handle the issues of migrants, since they have their own limits. Caritas, which is

willing to embark on the issue of migrants after a thorough evaluation of the conditions, tries to take some steps using the contacts at the Caritas offices in Europe.

According to Bilge from HRDF, the UNHCR guides the field based on its own priorities since the organization has assumed a leading role in defending the field and gathering the NGOs. In fact, the UNHCR does not consider migration as a significant issue as long as it does not involve asylum, because UNHCR has the single task of embroil people into the asylum procedure.

Bilge reminds the Conference on Recent Developments on Refugees and Asylum-Seekers, held by the Governorship of Istanbul, Commission of Human Smuggling, Refugees and Illegal Migrants on May 8, 2010, and underlines that fact that this used to be a commission whose title included the term “human trafficking”, which was later removed, and says that it is closely related to the perception of priorities. Bilge says: “If you are engaged in mobility, if you will defend the rights of people, you should look at the women who are exploited, subjected to violence and forcibly made to work in the sexual labor market as the sector of the society where the worst violations of human rights can be observed”, and complains that the NGOs fail to include the issue among their priorities. Bilge also adds that shortcomings in resources are a significant problem in this regard. In response to the accusations against the HRDF that claim the organization does not work on the basis of rights about the issue of asylum, Bilge asserts that none of the NGOs support them in defending the rights of the victims of human trafficking, a field which HRDF leads. Bilge defends that the priority should be the victims of that kind of violence; however none of the NGOs consider this as an issue as was observed during the meeting at the Governorship. However, if there is a stronger advocacy in the field, the police department would be more willing to better focus on the research to identify the victims of human trafficking or the NGOs would be able to intervene. Due to several reasons like the negligence of the NGOs and failure of the police department to identify the victims, HRDF was about to close down the shelter house for the irregular migrants who are victims of human trafficking in May, when I last interviewed the organizational representative.

Dicle from the HCA also mentions a discussion in the intellectual circles on the possibility of a distinction between the migrants and refugees. According to one side of the discussion, such distinction is erroneous because the governments distinguish “the good refugees” from “the bad irregular migrants” in their discourse and grant them rights

accordingly, thus legitimizing the ill-treatment of the migrants. The other side of the discussion defends such distinction because when the governments fail to distinguish migrants from the refugees, they are somehow mingled and refugees cannot have access even to the safeguarded minimum rights. This perspective defends that a distinction of migrants and refugees is necessary to save the latter. Dicle also adds that she has never witnessed a profound and lengthy discussion on the issue among the NGOs.

According to Dicle, there is a need to embark on the other fields of irregular migration without ignoring them as well as a certain perspective because the fields of migration and asylum are indeed inseparable. She asserts that the issue is absolutely not limited to the refugees but extends beyond them. She considers that the NGOs should also get involved with the migrants; however, currently they do not have the sufficient capacity for this. She adds that the people at HCA would not oppose the idea, but the initial preference was to handle the issues of the refugees, which was based on several practical reasons. Their decision was significantly affected by the widespread discussion on the problems of migration across the society, as well as by the well-established position of the discussion on international migration in the social opposition movements and at the HCA during the period when HCA RASP was launched. Dicle hopes that the organization will be capable of doing better things in the future to include the migrants in their work. She reminds that the issues in question can be easily handled by the experts of migration and foreigners legislation, and underlines the urgent need for such experts.

### The Dream for Another World

“Even the idea of adventure, that is the desire to going to places is considered as an abnormal behavior, and this conviction has been printed in our minds to the extent that we think what one must do is to settle somewhere; if you are moving, something is wrong with you.” (İpek)

In the end of my interviews, I asked the representatives of NGOs some different questions than the former ones: I asked them to define their imagination for something other than the existing refugee system and the limitations applied by the system. What were their

suggestions of alternatives to replace this system which they complained about? Furthermore, based on the idea that their organizations may have institutional limitations, I asked about the difference of their imagination of a new system as suggested by an NGO representative and by an independent individual. These questions turned out to be the most troubling ones, although they seem to be easy to answer.

Most of the representatives replied that there would not be much difference in their individual suggestions because their NGOs expressed their ideas, they would be speaking as a blend of an organizational representative and an individual, and they talk by explaining the logic of what they say. In particular the volunteers of Mülteci-Der said that they participated in the organization based on their individual sensitivities. Only İpek from Mülteci-Der said that, sometimes during their activities to support and defend the rights of refugees she asked herself “Who am I to defend their rights?”. She ingenuously expressed her feeling as a part of a point of view which overlooks the people they help.

Dicle from HCA is also among the founders of a political movement called Migrant Solidarity Network (MSN)<sup>18</sup>. I had the idea that she may have joined the MSN to overcome the organizational limitations in HCA, and because HCA helped only the refugees, she may have preferred to support this movement to be able to help the migrants as well. Dicle, on the other hand, provided me with a somewhat different explanation: since HCA is not an activist organization, the members cannot go onto the streets; but Dicle thought there was a certain lack of activism and social opposition in Turkey and she considered MSN as an important actor to express her ideas on a more comprehensive ground.

When I asked about their dreams for another world, the first answers were “there should not be any borders, and people should be able to travel wherever they want without being limited”, “there should not be a sharp distinction between the forced migration and asylum on one hand and voluntary migration due to economical reasons on the other”, “people should not have to convince an institution during RSD that they have arrived in that country for certain reasons”, “there should not be any fear, any wars or borders; people should leave their homes only when they want to, not out of fear” and “people should get accustomed to coexistence.” Those who expressed such wishes later admitted that they were too utopist

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<sup>18</sup> MSN is a horizontal organization of networks that have gathered in fall 2009 on the basis of openness and equality, defending the unconditional free travel right and the right to live in any country for everyone without being arrested for using these rights and freedoms. (<http://www.gocmendayanisma.org/>)

and sought for more realistic suggestions, which they often could not find. Even the representatives of the UNHCR, who suggest that the issue cannot be settled with the security walls rising on the borders and that development and democratization would be a more realistic approach, were locked in at the point where they said “there should be equality, but it is not quite possible.”

Dicle stressed that rising our voice on the issue was the social and humanitarian responsibility of everyone as well as the answer to our imaginations of the world we want to live in. She asserted that the only way to prevent the migration of refugees was to eliminate the conditions that force these people to become refugees, but that requires the imagination of a more comprehensive change. She admitted that a world without nations and borders is a favorable wish but she could not be that utopist; she could at least imagine that, in the existing system, people may not be subjected ill-treatment in the countries where they flee to, and she emphasized the need for more activities such as the works of HCA and MSN.

These sentences are sufficient to demonstrate that neither the civil society and nor an international organization with a humanitarian approach to the issue have the power and capacity to achieve dramatic changes in Turkey or around the world. The answers of the NGOs to the question on their imaginations of another world suggest slight amendments in the existing system instead of struggling for their utopias.

Many of the representatives blamed Europe for the existing system and inequality yet still pinned their dreams for solution on Europe again. For instance, according to Hasan from Mazlum-Der, today the Europe leaves people to death in the middle of seas because these people have started to cause trouble for them as a result of the system that Europe has imposed on the world. In this regard, asylum has emerged as a result of imperialism, which was brought about by the western powers, and some have defended that the western countries, who have exploited the world for the past centuries, should establish a properly running system and accept these people in. When the question of Europe was brought up, Melisa from Caritas, unlike the other representatives, asserted that the issue should not be discussed on the axis of European Union and should be expressed in other terms such as democracy and human rights.

In terms of rights, Melisa suggested that the refugees and migrants should have the right to express themselves politically, and they should be more visible and in contact to

citizens which, as she stressed, are her own opinions, not those of Caritas. It was only Deniz who defended that the refugees should have the same rights as the citizens:

“For the refugees ideally it would be good that they don’t have to prove that they are from a different country, if they are here temporarily, they can go and get a job. They can get education without proving even if they came here illegally. They don’t have to register at certain places they go to get healthcare. I mean those are the needs an individual human being needs. Therefore I think if there were no legal documents, I think this is I mean to have the equality between a refugee and a citizen. My personal opinion.” (Deniz)

According to Mazlum-Der, today it is not practically possible for millions of people to migrate to another region, although it may be deemed legally possible. Dicle from HCA disagreed with Mazlum-Der on this matter. According to Dicle, people believe everyone will flock in here if there were not borders, which may not actually be the case. If there is another place where they will not be treated with xenophobia and they can achieve a certain level of welfare, the people here may want to go to various places as well. Dicle believed that if the mobility of people is not limited and the national borders are made more permeable, there may be some people who want to go to Afghanistan, which can also be a nice place to live. İpek from Mülteci-Der regarded the ideas that defend eliminating the reasons leading to migration such as poverty or civil war as well as encouraging development reflect a patronising point of view, and in an ideal world people should be granted the right to migrate even if their conditions at home are very favorable.

Havva said that when she tried to look into the possible actions in the existing conditions, the legislation of the criteria in the Geneva Convention can be suggested. However, according to her, although the laws are favorable, it would not mean anything if they are not implemented, and there is a need to raise awareness on this matter. In this regard, Melisa defended that the criteria in the definition of the term refugee could be extended so as to include economical and ecological reasons.

In conclusion, I can suggest that the work of the NGOs that strive to provide the refugees with access to their social and civil rights as well as their daily needs is of great value; however, they all encounter a deadlock at the point where they may imagine more comprehensive systemic changes.

## Chapter Conclusion

In our post socialist world, the ones who gave up on their dreams of another world tend to join the civil society activities just to improve the existing system as far as they can. Here we observe a sublimation of the NGOs as the correct form of social activity as well as a disapproval of macro politics. Although I do not reject the opportunities that the civil society brings in terms of democratization, I agree with those who assert that "the NGOs function as a safety valve, which does not suggest any policies other than temporary solutions that merely delay the time of explosion" (İpek Can, 2007, p. 125); therefore, I think that laying great expectations on NGOs should be questioned, and I do not agree that this form of social activity should substitute macro politics.

Although I do not fully support the attitude of the NGOs to abstain from macro politics, as far as the refugees are concerned, I leave my theoretical rejection aside and tend to settle for all kinds of NGO activities, particularly upon observing their need for help. In this sense, the existence of the NGOs is of valuable importance to ensure the refugees access to rights and services.

Although the NGOs conduct a very valuable work to improve the current conditions of the refugees, they are locked at the point of imagining more comprehensive and systemic changes. In order to prevent the NGOs from deceiving themselves in their own playgrounds as Kemal from ASAM suggests, their roles as a political actor and critic of the government are as important as their missions to contribute in establishing the relevant legislation, generate information, resort for judicial review, follow the violations of rights, monitor the government and raise public awareness on the issue. Otherwise their existence becomes meaningless. In this regard, I agree with the call of İpek Can (2007) and believe in the need for a "reconsideration of political struggle" by the NGOs.

## CHAPTER 6

### CONCLUSION

Within the general framework of this thesis I tried firstly to summarize the legal framework concerning asylum in Turkey and its implementation. Then, in the light of this background, I presented the information I collected on the NGOs active in the field of asylum. The goal of this thesis has been to focus on what NGOs can and cannot do for the solution of problems in both the legal framework and the implementation. Although I totally agree with the solution suggestions the NGOs offer to the state and other international authorities, the goal of this thesis has not been to make any policy implications to anybody. The main claim of this thesis has been to map the asylum field in terms of NGOs and to establish what can be inferred from this map with regard to Turkey.

In the second chapter, I presented the background of the Turkish asylum legislation and discussed the impact of the EU on this legal framework with various thoughts of NGO representatives on the subject. The main reason to start with the legal framework has been the necessity to compare the legislation with the practice, since the latter is known to often be carried out in ways that contravene the laws. I showed that it is impossible to solve the problems with regulations and circulars in the absence of a single and comprehensive law, although realistically we should not expect a solution for everything from the law. I questioned whether 2010 is really “the year of legal reforms,” since the NGOs expressed various doubts regarding the expected legislation.

In the third chapter I touched upon how the texts written in the legal framework are implemented in reality and what kind of problems are faced in the practice. Based on the NGO reports, I tried to show that, counter to the legislation, the rights of refugees are violated in practice. Considering the assumption that the viewpoint of the state to the refugees is based on security and economy whereas it should be based on human rights, I transmitted some

findings of NGOs. Accordingly, NGOs are concerned that refugees do not have access to a national procedure in which their status is to be determined in a way that is fair, satisfying and consistent with international standards. Refugee rights to education, health services, work and accommodation are limited. Besides, refugees face the risk of being held in custody in unfavorable conditions. In violation of the non-refoulement principle, refugees can be forcefully sent back to their countries where they might be victims of serious human rights violations. There are also cases where the resettlement of refugees in third countries might be obstructed by the state authorities. The judicial review against the discretionary power of the administration also remains very limited.

In the following chapters I looked more closely at the role of NGOs in the asylum system and how they locate all these problems and report them. I tried to answer the question of how much power and capacity the NGOs have for the solution of problems. In this thesis, I approached with a perspective based on the point of view that lays great expectations on civil society. As a result of my interviews with the representatives of NGOs and the UNHCR, I saw that the role of NGOs in the asylum system is still emerging and it is in fact very dependent on the attitude and actions of the state. Even if they have limited opportunities because of the shortage of material resources, underestimation by the government officers, lack of clarity of the legislation and arbitrary implementation, nonetheless the NGOs have an important role.

At the beginning I thought about this role that the NGOs functioned as intermediaries between refugees and authorities. In this thesis I aimed at showing how the narratives of refugees are modified, translated and circulated by NGOs. However, at the end I found out that this role is not a simple intermediation between refugees and authorities; rather NGOs are actors who intervene in the system in the direction of their own values and principles. The NGOs I interviewed have approved this and defined their role as applying to the judicial review, following the violations of rights, in this sense monitoring the state and lastly as raising awareness in the society.

Although these actions of NGOs to improve the current situation of refugees are important and valuable, in fact more generally I think that the NGOs function as a rather soft substitute to political participation. How can civil society and democracy be identified in a situation where the way is not cleared for participation in politics? I claim in general that it is only by means of democratic rights that a democratic culture can emerge and that when the

democratic culture is absent, rights cannot be obtained. NGOs, which are seen as a prerequisite for the emergence of democratic culture, struggle for the civil and social rights of refugees (they often do not mention the notion of political rights); however this struggle does not yield results that are truly effective because the state distances itself from a democratic culture. The MOI has gradually begun a process of communicating with some NGOs and has shared the titles of the draft of the new Asylum Law and the Aliens Law with those NGOs. This is something very new for it rarely entered into a dialogue in the past.

Can these facts be evaluated as a step towards democracy culture? Although NGOs welcome these facts with appreciation, unfortunately I agree with the interpretations that this kind of collaboration is just for show and the MOI is only engaged in a playacting of democracy. Why does the state need this performance? I do not think that it is because the NGOs are too powerful; on the contrary, they have very limited power when it comes to pressurizing the state from within Turkey. Nevertheless, when they are ignored by the state, they can use their European connections and can, especially with help of ECtHR, act much more effectively. I hold that foreign politics is what pushes the state towards the performance of democracy mentioned above. As a conclusion, I argue that the role of the NGOs in the asylum system is the provision of both psycho-social and legal support to refugees, which is very valuable in practice; however they are not the prerequisite of democracy as expected from them and they gain power via foreign politics.

During the fieldwork I became increasingly interested in the theme of rights. I realized in the interviews that there is a differentiation between NGOs such as “rights based NGOs” and “psycho-social support based NGOs” and that the various NGOs sometimes criticize one another and differentiate among themselves from others. As a result I understood that such a differentiation is possible, but it is not so black and white in reality. That is, asserting that one side is conducting rights advocacy while the other side is not, would be an incorrect evaluation. Rather, we can claim that the main differences between the two kinds of NGOs lie primarily in their priorities.

This discussion channeled me to a series of different questions: Is asylum a basic human right? What kind of rights should refugees have? How are these rights different from the rights of the citizens? After all the interviews and reading, I came to believe that asylum is a basic right, since it is related to the most basic human right, that is to the right of the individual to life. Moreover, it is included among a list of very important civil rights: non-

refoulement to a place of persecution, protection from arbitrary detention and the right to a fair trial. While at least the civil rights of refugees are taken under protection via international conventions, it is very difficult to say the same thing for social, political and cultural rights.

When I realized that only citizens of a nation state can enjoy total social, political and cultural rights and that the nation state can decide which rights are to be given to refugees, I realized that having access to rights in the broad spectrum called human rights depends on being a citizen of a nation state and it is not universal as argued. Arendt argues in the same vein: “Citizenship, as membership in a polity, conveys full belonging in the category ‘humanity’” and “being stateless deprives one of the essence of humanity” (as cited in Ticktin, 2006, p. 44). Burrell (2010), who demonstrates that the rights are ephemeral, argues that “the universalized idealized subjects of rights” cannot be “removed from contexts of social, political, and economic subordination” (p. 92), and “the limits of these contexts are made clear through transnational migration, where the stripping of citizenship, also means the unavailability of rights” (p. 94).

Paradoxically, the refugee, who should embody human rights in the most typical way, actually indicates the crisis of the concept of human rights instead. As Ticktin (2005) argues, “Immigrants reveal the contemporary logic of political power and domination: their situation speaks to the nature of sovereign power as well as the nature of political belonging” (p. 349). In this sense, my argument necessarily lapsed into a reckoning with the sovereign power, the state and the system.

There is a “gap between functional responsibilities and expectations and the legal obligations of states” (Goodwin-Gil & McAdam, 2007, p. 47); states hold national sovereignty to be above universal human rights, and the inequality within capitalism is not compatible with the rights offered by the social state. On the grounds of these conditions, refugees suffer because of the state and they are condemned to the “revolving door” policies and “permanent temporariness” conditions (De Geneva, 2007) in the gray area between legality and illegality (Kaşlı & Parla, 2009). Even though the goal of this thesis has been to map the asylum field in terms of NGOs and to focus on what NGOs can and cannot do for the solution of problems, the nature of both “refugeeness” and civil society in conflict with the given nation state sovereignty forced me to touch upon these topics.

Finally, since NGOs are the focus of this thesis, I could not interview refugees, although I very much would like to and I could not focus on the experiences of refugees. I was especially inspired by studies arguing that refugee experiences are being standardized, despite the fact that they are not in fact singular, or that refugeeness is constructed in the context of poverty, or that refugees are being objectified and the fact that they are human beings being forgotten. For example, Biehl (2008) examines the securitizing and criminalizing discourses and argues that homelessness, statelessness, loss of identity and uncertainty lead refugees to turn to illegality. Jefroudi (2008) argues that the refugee experiences are not homogenous and she attempts to make a contribution to refute the dehumanized and depoliticized history of refugees. In the light of these past studies and this present thesis, studies in the future can examine how refugees experience their relations with NGOs in different ways and how the refugees perceive the role of NGOs.

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