

# THE RIGHT TO ASYLUM AS A FUNDAMENTAL HUMAN RIGHT: A BRIEF ANALYSIS

## Temel İnsan Hakkı Olarak Sığınma Hakkı: Kısa Bir Analiz

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### ABSTRACT

Since the prehistoric periods, people have moved from places to different places where they are located for various reasons. These human movements have revealed the phenomenon of migration. Although the history of migration is very long, it is observed that migration movements have increased considerably, especially during the First and Second World Wars. During these two world wars, millions of people worried about their security migrated to different areas (both inside or outside the country) leaving their locations. Migration movements continue to increase in the time since World War II. The increase in migration movements has also led to an increase in the number of refugees and asylum seekers. The extraordinary increase in the number of asylum seekers has led to many problems for both asylum seekers and countries where they have taken refuge. Human rights violations, particularly for asylum seekers, negatively affect the dignity and prestige of the countries. It is accepted that the rights provided to asylum seekers should not be far behind the rights of citizens. Turkey's fact that it is a natural bridge connecting Asia and the European Continents has made it a natural refuge for asylum seekers. In connection with this, the "right to asylum" in Turkey must be considered a natural and fundamental human right. In this study, the subject of the right to asylum was made in comparative law with Turkey.

**Key Words:** Immigration, Right to Asylum, Asylum Seeker, European Court of Human Rights, European Convention on Human Rights.

### ÖZET

İnsanlar tarih öncesi dönemlerden beri çeşitli sebeplerle buldukları yerlerden farklı yerlere hareket etmişlerdir. Bu insan hareketleri, göç olgusunu ortaya çıkarmıştır. Göç olgusunun tarihi çok eskiye dayanmakla birlikte, özellikle Birinci ve İkinci Dünya Savaşları sırasında göç hareketlerinin oldukça arttığı gözlenmektedir. Bu iki dünya savaşı sırasında, güvenliklerinden endişe eden milyonlarca insan buldukları yerleri terk ederek (ülke içinde veya ülke dışında) farklı bölgelere göç etmişlerdir. Göç hareketleri İkinci Dünya Savaşından günümüze kadarki geçen sürede artarak devam etmektedir. Göç hareketlerinin fazlalaşması, mülteci ve sığınmacı sayılarının da artmasına neden olmuştur. Sığınmacı sayısındaki olağandışı artış, hem sığınmacılar hem de sığındıkları ülkeler için birçok sorunu beraberinde getirmiştir. Özellikle sığınmacılara yönelik insan hakları ihlalleri ülkelerin saygınlığını ve prestijini olumsuz yönde etkilemektedir. Sığınmacılara sağlanan hakların, vatandaşların sahip olduğu hakların çok gerisinde olmaması gerektiği kabul edilmektedir. Türkiye'nin Asya ve Avrupa kıtalarını bağlayan doğal bir köprü konumunda olması, onu sığınmacılar için doğal bir sığınma yeri haline getirmiştir. Bununla bağlantılı olarak Türkiye'de "sığınma hakkının" doğal ve temel bir insan hakkı olarak kabul edilmesi gerekmektedir. Bu çalışmada Türkiye ile birlikte karşılaştırmalı hukukta, sığınma hakkı anlatım konusu yapılmıştır.

**Anahtar Kelimeler:** Göç, Sığınma Hakkı, Sığınmacı, Avrupa İnsan Hakları Mahkemesi, Avrupa İnsan Hakları Sözleşmesi.

### 1.INTRODUCTION

Historically, the migration process, the slave trade, colonial movements, demarcation of nation states, population changes, guest labor, etc. It has arisen for reasons. Immigration affects the national and international sphere as human communities move from their home countries to other countries in line with the interests of colonial states and global capital. Immigration has had the most severe impact, especially in Europe, both with the colonial period and external migration and internal migration with industrialization. Therefore, it can be said that Western societies are largely shaped by migration movements.

With the migration, the rights of migrants and what standards they will have in countries that accept asylum have emerged as an important problem. It is clear that asylum seekers must meet, on the basis of human rights, the same or similar standards as those in the countries where they are admitted. Violations of human rights against asylum seekers will negatively affect the reputation of the country concerned as well as the refugees. The refugee policies implemented today are an important indicator of the importance that states give to human rights to the international community. In the context of refugee policies, a "protective" attitude is expected from developed states, especially European states. However, instead of this, serious human rights violations can sometimes be witnessed in different countries.

In this study titled "The Right to Asylum as a Fundamental Human Right: A Brief Analysis", the issue of asylum in comparative law will be discussed on the basis of "human rights". After initially referred to the historical process of acceptance of asylum seekers will be explained the scope and content of asylum in Turkey. It will also assess the human rights violations by the decisions of the European Court of Human Rights for Turkey. On the other hand, in the context of comparative law, asylum violations in the Russian Federation, the United Kingdom, the Italian Republic, the Republic of Greece and the Federal Republic of Germany will be discussed.

## 2.HISTORICAL DEVELOPMENT OF ASYLUM SEEKER ADMISSION

The League of Nations played a fundamental role in solving the refugee problems after the First World War, which affected the whole world. However, this organization, instead of prescribing general rules regarding the solution of the problems that arise regarding the issue, has decided to create agreements that will provide direct solutions to some special cases. The International Status of Refugees in 1933 and the Status of Asylum Seekers from Germany in 1938 were signed by a limited number of states, and these agreements provided the displaced persons with a limited opportunity of protection. The League of Nations found it sufficient to be outside the country and not be under the protection of any state in terms of benefiting from refugee status (Çalık, 2015:127).

The displacement of large numbers of people in Europe at the end of the Second World War or in the period after 1945 has mobilized international organizations. The mentioned period was the period in which relations and cooperation between states were experienced the most in order to establish international organizations. At the same time, most of these states have also made their own internal reforms, which give citizenship important meanings. The understanding of "internationalization", in which everyone is at its center, has become more visible with the development of social citizenship. These developments and the adoption of the newly created United Nations regime by the member states pushed the international community to find permanent solutions to the refugee problem. In this respect, the right to asylum was expressed as a fundamental human right in Article 14 of the Universal Declaration of Human Rights announced in 1948. According to the relevant article, "Everyone has the right to leave any country, including his own, and to return to his country." "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Likewise, in the United Nations Covenant on Personal and Political Rights, "Everyone is free to leave a country, including his own country" and "No one shall be arbitrarily deprived of the right to enter his own country." It was emphasized that the right to asylum is a basic human right (Çalık, 2015:128).

The European Convention on Human Rights does not contain direct provisions on the "principle of non-refoulement", which is considered as the basic principle in the protection of the right to asylum and the right to asylum. However, the European Convention on Human Rights may, in some cases, provide more comprehensive protection for refugees than international regulations. Proving that the rights and freedoms of an asylum seeker who wants to benefit from the protection of the European Convention on Human Rights will be violated only in case of deportation or returning, is deemed sufficient to benefit from this protection. In addition, the person is not required to prove that he / she is in fear of being persecuted for reasons such as his / her ethnic origin, religion, nationality, membership of a certain group or political opinion. The European Convention on Human Rights provides asylum seekers with protection independent of the reasons that place them in this status (Korkut, 2008:24).

The 1951 Geneva Convention on the Legal Status of Refugees, which is a very important international convention in terms of asylum law, is based on the United Nations Convention, the Universal Declaration of Human Rights and the prohibition of discrimination, which adds an international dimension to the issue of refugee, the legal status of refugees and the states, legal, It has been prepared to regulate its political,



economic and social responsibilities. The aforementioned Convention entered into force on April 22, 1954 (Barkin, 2014:338).

The 1951 Convention is only available to those who have become refugees as a result of events that occurred before 1 January 1951. However, the refugee movements in the following years have revealed that refugee status is not only a temporary situation experienced after the Second World War. Towards the end of the 1950s and the early 1960s, new refugee groups emerged, especially in Africa. These refugees could not have refugee status due to the time limit of the 1951 Convention. The Protocol on the Status of Refugees, adopted in 1967, abolished the time limitation of the Geneva Convention on the Legal Status of Refugees by adding refugees to the application field of the 1951 Convention as a result of the events that took place after January 1, 1951 (Çalık, 2015:129).

In the European Union law, the right to asylum has been handled with the different interpretation and application of the common asylum provisions of the European Union member states until the Amsterdam Treaty. In this process, member states have established their own national asylum systems and have tried to regulate these systems in such a way that they can keep the number of refugees at the lowest level. With the signing of the Dublin and Schengen Conventions in 1990, it was aimed to eliminate the incompatibility between the national asylum policies and the European Union asylum policies (Keskin Ata, 2013:84). With the 1993 Maastricht Treaty, asylum and immigration policies were included in the fields of justice and home affairs (Çalık, 2015:137).

### 3. RIGHT TO ASYLUM IN THE REPUBLIC OF TURKEY

It can be said that the right to asylum can be described as a foreign concept in terms of the Turkish constitutional order. It is observed that the right to asylum is not included in any constitution, including the 1982 Constitution. Although it is stated that the 1948 Universal Declaration of Human Rights was taken as basis in the construction stages of the 1961 and 1982 Constitutions, there is still no regulation on the right to asylum. Özcan this situation, Turkey's attempt to ignore the right of asylum and putting declaration of geographical limitation is even connect it to refrain from taking into account the objectives of the 1951 Geneva Convention (Özcan, 2017:145-146). However, the author defends the view that the right to asylum in the Declaration will continue to exist as an unwritten right even if it is not regulated in our constitutions (Özcan, 2017:145-146). Özcan defines the right to asylum as "the right that is recognized at the national level, which grants protection against the state of origin or permanent residence upon request of a person against persecution or the threat of persecution" (Özcan, 2017:121).

The right to asylum in Turkey is primarily based on the Law on Foreigners and International Protection no. 6458. Law No. 6458 regulates the duties, powers and responsibilities concerning the entry of foreigners to Turkey, their stay in Turkey and the procedures and principles for the implementation of protection to foreigners seeking protection from Turkey, as well as the establishment of the General Directorate of Migration Administration of the Ministry of Interior. Article 61 of The Law No. 6458. "Due to events in European countries; Because he fears that he will be persecuted for reasons of race, religion, naturality, belonging to a particular social group or his political ideas, he is described as "citizens who are outside the country where he is a citizen and who do not want to benefit from the protection of this country or who do not want to benefit from such fear, or who are outside the country of residence where he lived before, who cannot return there or do not want to return because of such fear." Article 62 of The Law No. 6458. "People who seek refuge in Turkey due to the conditions that occur outside european countries..." conditional refugee status. It is also highlighted as part of the article regulation that the person can remain until he is placed in a third country in the country thanks to his conditional refugee status. It has also been stated that Turkey has no obligation to provide residency in Turkey for those who seek refuge in their country due to incidents in European countries. It is reported that the person who cannot be considered a refugee or conditional refugee by obtaining the same definition in the 2004/83/EC Directive in Law No. 6458, but who cannot be considered a citizen, or if he returns to his country of residence, may face similar harms that are predicted to face if refugees or conditional refugees return to the countries where they come from, they are also under international protection. In Law No. 6458, article 91, titled "Temporary Protection", is a "Temporary Protection" section of the Law. The first paragraph of the article said: "Temporary protection can be provided to foreigners who have been forced to leave their country, who cannot return to the country where they leave, who come to our borders mass in order to find urgent and temporary protection, or cross our borders." Article 92 of The Law No. 6458. article regulation of the international institutions and

organizations and non-governmental organizations to be cooperated with the pointed out. However, it should not be ignored that the obligation of coordination within the framework of this cooperative relationship is in the refuged state (Büyüçalık, 2014:132).

Constitution of the Republic of Turkey of certain substances can also be applied for asylum. As a matter of fact, article 10 titled "Equality Before Law", article 16 stating that fundamental rights and freedoms can be restricted by law in accordance with international law, "Rights and Duties of the Person" in section 2, "Political Rights and Duties" in section 4, there are articles concerning the refugees.

### **3.1.Regulations on Social Rights of Refugees in the Republic of Turkey**

What is the social rights of asylum seekers in Turkey is an important issue and how it's dealt with in Turkish Law. Below we will take a closer look at national law in the context of housing, health, employment and education rights.

The "right to housing", which we will consider first, was expressed as "housing right" in the "Social and Economic Rights" section of the 1982 Constitution. In the Law No. 6458, the attitude of meeting the accommodation needs of the applicants or international protection status holders themselves has been adopted. This has been explicitly mentioned in the first paragraph of the article 95 titled "Reception and Accommodation Centers". In the continuation of the same article, it is stated that the General Directorate of Migration Management will give priority to the accommodation of the people with special needs, after the opportunity to establish reception and accommodation centers where the accommodation, food, health, social and other needs of the applicant or the beneficiary of international protection will be met (Büyüçalık, 2014:168-178).

The right to health is stated in the first paragraph of Article 17 of the 1982 Constitution titled "The immunity of the person, his material and spiritual existence". In the second paragraph of the article 89 of the Law No. 6458 on access to social assistance and services, it is stated that applicants and those who need international protection status can access social assistance and services. The regulation regarding the right to health in the third paragraph of Article 89 of the Law No.6458, international applicants who do not have the ability to pay any health insurance or health expenses and the international protection status holders can have access to the right to health through the provisions of the Social Insurance and General Health Insurance Law No.5510, has made the provision that it will be provided (Büyüçalık, 2014:180 ed seq.).

The right to work is expressed in Article 49 of the 1982 Constitution under the third part titled "Social and Economic Rights and Duties". The study was organized as the right and duty of everyone and it was emphasized that the state has some responsibilities in this area. Foreigners only able to work in jobs that the law themselves ban in Turkey stated that Article 15 of the Law on Residence and Travel of Foreigners in Turkey, also applies to refugees and asylum-seekers can receive a work permit under the same conditions with foreigners. Asylum seekers and refugees who apply for a work permit must also find an employer who wants to employ them. Because, in order to apply for a work permit, it is required to obtain a job offer and to apply for a work permit to work in this designated place, proving that this job has a special ability. In addition, it must be proved that the position in which the employer will employ the person concerned cannot be filled by a Turkish citizen in order to give the person a work permit (Büyüçalık, 2014:191-192).

The right to education is regulated in the first paragraph of Article 42 of the 1982 Constitution titled "Education and training right and duty". In this article "Nobody can be deprived of the right to education and training." regulation explains that there is no discrimination between citizens and foreigners in access to education and training. In from obvious that educational opportunities that the state's monopoly on the practice in Turkey benefit of persons under international protection status regulated by law and the 6458 Law No. 89 substances, the person with the applicant or international protection and are said to benefit from primary and secondary service of their family members (Büyüçalık, 2014:195-196).

#### **3.2.1. Evaluation of The Right to Asylum in the Republic of Turkey in the Context of Human Rights Violations**

European Human Rights Turkey's human rights violations in the context of asylum by the Court that some of the decisions made will be referred to below.

First, we'll discuss the decision named Alimov / Turkey of the European Court of Human Rights. The applicant and his family left the Republic of Uzbekistan in 2010 to escape the pressure they faced because

of their religious beliefs. The applicant and his family to Turkey in 2010 after spending a certain time in the Republic of Kazakhstan has entered the legal way. The applicant and his wife were found after arriving in Turkey to seek asylum. The applicant's husband was granted a residence permit in Gaziantep province until the asylum application was finalized. However, the applicant could not obtain a residence permit as he could not pay the required fee for the permit. Accordingly, the applicant had resided illegally in Gaziantep. The applicant and his family on 5 April 2011, the applicant's medical treatment of his wife in order to have traveled from Turkey to Ukraine. Turkish border police, illegal residence in Turkey on the grounds that the applicant has given 900 Turkish lira fine. Moreover, the applicant was banned from entering the country for five years. The applicant objected to the refoulement to be made on 5 May 2012 and made a new asylum application. The European Court of Human Rights found that the complaints under Article 5 paragraphs 1, 2, 4 and 5 of the Convention (concerning the applicant's right to liberty) and under Articles 3 and 13 of the Convention (the applicant's Sabiha Gökçen Airport detention center and Kumkapı Removal Center) The complaints regarding the physical conditions of detention in The Supreme Court has ruled that there has been a violation of Article 13 in conjunction with Article 3 of the Convention due to the lack of effective legal remedies to complain about the conditions of physical detention at the Sabiha Gökçen Airport detention center and Kumkapı Removal Center (Alimov v. Turkey, Application No: 14344/13).

The second decision we have reviewed is the decision of Abdolkhani and Karimnia/Turkey. The applicants arrived in Turkey at an unspecified date and were captured by security forces. They were deported to the Republic of Iraq on June 17, 2008 for illegally entering Turkish territory. The applicants re-entered Turkey after their deportation. On June 21, 2008, the applicants were caught with a fake passport at the traffic checkpoint by gendarmes stationed at Muş-Gökyazı gendarmerie station. The European Court of Human Rights ruled that the deportation of applicants to the Islamic Republic of Iran or the Republic of Iraq would violate article three of the European Convention on Human Rights (a ban on torture), violating the first, second and fourth paragraphs of article five of the European Convention on Human Rights (right to freedom and security) (Abdolkhani and Karimnia v. Turkey, Application No: 30471/08).

The final decision we have reviewed for the Republic of Turkey is the Yarashonen/Turkey decision. In 2000, after his father and brother were allegedly killed by Russian security forces, he fled the Russian Federation at an unspecified date and came to Turkey. He was arrested at Istanbul Ataturk International Airport on October 25, 2010, after an identity check that he entered Turkey illegally and applied for no passport. The applicant was detained at the Police Department at the airport. The applicant was transferred to Kumkapı Removal Center on November 1, 2010. The applicant requested asylum on April 18, 2011. The European Court of Human Rights stated that there has been a violation of Article 5, paragraphs 1, 2, 4 and 5 (right to liberty and security) of the European Convention on Human Rights, due to the material conditions of the application of the applicant's detention at Kumkapı Removal Center. It held that there had been a violation of Article. (prohibition of torture) (Yarashonen v. Turkey, Application No: 72710/11).

#### **4. RIGHT TO ASYLUM IN COMPARATIVE LAW**

Under this topic, information will be provided on the right to asylum in the Russian Federation, United Kingdom, Italian Republic, Republic of Greece and the Federal Republic of Germany.

##### **4.1. Right to Asylum in the Russian Federation**

On February 19, 1993, the Law on Refugees of the Russian Federation was adopted on February 19, 1993, of the Russian Federation. The definition of refugees is 1/1 of the Russian Federation's Refugee Law. is done in substance. The text of the article reads: "The refugee is a foreign erwho is not bound by citizenship to the state of the Russian Federation, who is concerned that he will be persecuted in the country where he is a citizen because of his race, religion, nationality, loyalty to a particular social group or political opinion, who is out of the country where he is a citizen, and who is deprived of his patronage because of his concerns." This definition is important to understand that the law of the Russian Federation does not subject refugees to geographical restrictions and that the country in terms of the acquisition of refugee status in the Russian Federation has no significance (Tessier, 1995:248).

The term asylum seeker, which has a different meaning than the refugee, also finds its place in the law of the Russian Federation. However, the Russian Federation law uses the concept of "temporary asylum seekers" instead of asylum seekers. Provisions concerning temporary asylum seekers are found in the 1993 Russian Federation Refugee Law and the Decision of the Council of Ministers of the Russian Federation on

the Provision of Temporary Asylum in the Russian Federation no. 274 dated 2001. The concept of temporary asylum seekers is explained in Article 12/2 of the Russian Federation's Refugee Law. According to the relevant item text; Only two cases in the Russian Federation are mentioned as temporary asylum seekers. These are (Ganiyeva, 2016:62-63):

- Although they have the characteristics of being refugees, only those who request temporary stay on the territory of the Russian Federation can be temporary asylum seekers.
- Although it does not have the characteristics of being a refugee, those who cannot be deported due to humanitarian considerations can be temporary asylum seekers.

Article 12 of The Council of Ministers of the Russian Federation, dated 2001 and No. 274, was amended. According to the article, temporary asylum is limited to one year. However, the Provincial Migration Administration can ensure that this period is extended by up to one year at a time by the decision taken at the request of the temporary asylum seeker (Ganiyeva, 2016:63-64).

Since the rights and freedoms of refugees are regulated in parallel with the Geneva Convention of 1951 in the law of the Russian Federation, it is largely in line with the regulation of Turkish law. Therefore, the right to residency and travel to refugees in the Russian Federation, right to work, right to health, right to education and education, the right to social assistance, as well as other rights and freedoms are recognized in Turkish law (Ganiyeva, 2016:78).

In Russian law, refugees and temporary asylum seekers are subject to different legal regimes, but they are granted the same rights in terms of health, education and freedom of work. 6/1 (3) of the Russian Federation Refugee Act, which separates refugees from the temporary asylum seeker. One-time monetary assistance for the refugee and their family members, the unforeseen (Article 12/4 of the Russian Federation Refugee Act) stated that asylum seekers, unlike the refugee, have the right to reside in the Russian Federation temporarily until they find the third reliable country. In addition, refugees are granted travel certificates under the Geneva Convention of 1951 to travel to other countries (Article 8/13 of the Law on Refugees of the Russian Federation) and temporary asylum seekers are not granted such a right. However, only necessary assistance is provided to temporary asylum seekers in and out of the country by the Russian state in accordance with the 2001 Council of Ministers' Resolution. The Law on Refugees of the Russian Federation 8/14. While the refugees were granted indefinite residence permits or apply for Russian citizenship in the Russian Federation, temporary asylum seekers were deprived of this right. Finally, those who have refugee or temporary asylum seeker status have the right to work in the Russian Federation without a work permit (Ganiyeva, 2016:74-75).

The Savriddin Dzhurayev/Russia decision is one of the important decisions made by the European Court of Human Rights in the context of the violation of the right to asylum in the Russian Federation. The applicant fled his native Tajikistan Republic for fear of being tried for his religious activities. The applicant went to the Russian Federation and was granted temporary asylum here after a while. Meanwhile, officials of the Republic of Tajikistan have requested the extradition of the applicant on charges of conspiracy to commit a crime. The authorities of the Russian Federation have accepted this request. However, the European Court of Human Rights ruled that the 39th Amendment of the Charter of Human Rights was the first time that the Constitution would be held in the 3 in accordance with the temporary measure ordered in accordance with the article, the return of the applicant has been postponed. However, the applicant was abducted in Moscow on October 31, 2011 by unidentified persons who applied. After being detained for a day or two, the applicant was forcibly taken to the airport, placed on a plane to the Republic of Tajikistan, where he was immediately arrested. The European Court of Human Rights is in the third place on the grounds that the applicant faces a real and imminent danger of torture and mistreatment, that the authorities against the forced transfer to the Republic of Tajikistan do not protect the applicant, that there has not been an effective investigation into the incident and that state officials have been directly or indirectly involved in the operation. has decided that the substance had been violated (Savriddin Dzhurayev v. Russia, Application No: 71386/10).

Another decision of the European Court of Human Rights on the Russian Federation is the Kiyutin v. Russia decision. The applicant was born in 1971 in the Uzbekistan Soviet Socialist Republic. After the collapse of the Union of Soviet Socialist Republics, the applicant became a citizen of the Republic of Uzbekistan. In October 2002, his brother bought a house and a plot adjacent to it in Lesnoi (Russian Federation, Orel region). In 2003 the applicant, his half-brother and mother left the Republic of Uzbekistan

to settle in Lesnoi. On 18 July 2003 the applicant married a Russian national and in January 2004 they had a child. In the meantime, in August 2003 the applicant applied for a residence permit. However, as a result of the medical examination requested from him, he was revealed to be a carrier of HIV virus and his residence permit request was therefore rejected. On 13 October 2004 the Orel Administrative Court firmly upheld this refusal. The European Court of Human Rights has decided that Article 14 (prohibition of discrimination) of the Convention was violated together with Article 8 (right to respect for private and family life) (Kiyutin v. Russia, Application No: 2700/10).

#### 4.2. Right to Asylum in the United Kingdom

A person seeking asylum in the UK and waiting for a decision on this request is legally defined as an asylum seeker. A person who has received a positive decision on his asylum claim is also called a refugee. Although some asylum seekers can enter the UK illegally, they cease to be "illegal" after applying for asylum. Every person seeking protection has the right to stay in the UK while awaiting a decision on their asylum claim. The right to seek asylum exists in international law. Governments are obliged to provide protection to persons meeting the asylum requirements. The UK has signed these international conventions and these conventions are considered as part of UK legislation (Faas, Bettin and Ali, 2016:61).

Three international conventions can be used to support an asylum application in the UK. Under the first of these, the 1951 Geneva Convention on the Status of Refugees, asylum-seekers demonstrate that they have a well-founded fear of persecution because of their race, religion, nationality, political views or membership of a particular social group, and that they are unable or unwilling to seek protection from the authorities in their country. It is being sought. The second international convention is the 1950 European Convention on Human Rights. Accordingly, it is also possible for the person to apply to stay in the United Kingdom in cases where removal from the country would constitute a violation of the stated rights. This situation is often referred to as a human rights claim. The third international protection in the UK is the European Union's Asylum Eligibility Directive. This Directive has been adopted by the member states of the European Union as part of the process of establishing a common European asylum system (Faas, Bettin and Ali, 2016:61; Home Office 2019:6).

If their claims for asylum seekers are refused, they have the right to appeal to the UK first instance court. In addition, those who seek asylum seeker can stay in the UK while waiting for the application result. However, some applicants do not have an automatic right to apply within the UK, for example if they come from countries where the Home Office has clearly assumed unfounded asylum claims or they have already made an asylum claim in a third safe country. Applications of these people are only possible after being deported from the UK (Faas, Bettin and Ali, 2016:63).

Although there are legal regulations for asylum seekers in the UK today, as Bloch stated, asylum seekers and asylum seekers in the UK do not feel safe due to their not having "immigrant status", and it is also observed that they cannot find a place in the society they take shelter in, find a job and have difficulty in establishing their lives. In this regard, it can be said that the asylum policy in the UK needs further development (Bloch, 2000:75-88, narrator: Şimşek, 2018:372-373).

The Soering v. United Kingdom decision stands out as a case in which the European Court of Human Rights found the UK unjust regarding the asylum seeker. In the incident subject to the case, a citizen of the Federal Republic of Germany committed a murder crime in the State of Virginia, United States of America and was sentenced to death. Before the decision was made, the applicant, who fled to the United Kingdom, was requested by the United States of America to extradite it to the United States under the "Extradition Agreement". Since Article 3 of the European Convention on Human Rights prohibits inhuman, degrading treatment and torture, the European Court of Human Rights has decided that the return of the person is a violation of Article 3 of the Convention. The European Court of Human Rights has applied the "non-refoulement principle" here (Soering v. UK, Application No: 14038/88).

Like the Soering decision, the Chahal v. United Kingdom decision is a case that the United Kingdom has been found unjustified by the European Court of Human Rights. In the case at issue, the applicant, a citizen of the Republic of India, requested asylum in the United Kingdom. However, his application was rejected on the grounds that he supported terrorist activities and posed a threat to national security and the host country community, and his deportation decision was given. However, given the applicant's political personality, there was a risk of death or torture if returned to his country of origin. Although the United

Kingdom wanted to deport this person for security reasons, the European Court of Human Rights decided that the deportation of the person would be a violation of Article 3 of the Convention (Chahal v. UK, Application No: 70/1995/576/662).

The O'Donoghue and others v. United Kingdom decision is also a notable decision in terms of human rights violations by asylum seekers. The second applicant, a national of the Federal Republic of Nigeria, arrived in Northern Ireland in 2004, met the first applicant there and proposed marriage in May 2006. The applicants did not want to marry in the Anglican Church, as they were Catholic and there was no Anglican Church in Northern Ireland anyway. Therefore, they requested an acceptance document. However, the second applicant, who was a refugee, only met in June 2007, that is, with the entry into force of the third version of the regulation. The applicants requested a letter of admission in July 2007. However, the applicants requested that they be exempted from the file fee due to the fact that the first applicant lived on social benefits, the second applicant was admitted to the UK temporarily and he did not have the right to work. Their requests were denied because they did not pay the file fee. The European Court of Human Rights, in conjunction with Article 12 (right to marry), in violation of Article 14 (prohibition of discrimination); In conjunction with Article 9 (freedom of thought, conscience and religion), it also ruled against the violation of Article 14. (O'Donoghue and others v. UK, Application No: 34848/07).

### 4.3.Right of Asylum in the Italian Republic

The Italian Republic adopted the Decree Law No. 142/2015 implementing the Amended Reception Conditions Directive and the Amended Asylum Procedures Directive on 15 September 2015. Decree Law No. 142/2015 entered into force on 30 September 2015. In the presidential decision numbered 21/2015, many provisions aimed at clarifying the different stages of the asylum procedure. In this decision, the formation and functioning of the Regional Commissions (CTRPI) and the National Commission on Asylum (CNDA) has been clarified. Regarding the procedure, the statute also stipulates norms regarding the submission of the asylum claim, examination, judgments and court proceedings against negative decisions. In the Italian Republic, the validity period of the residence permit of asylum seekers has been extended up to 2 years on the basis of humanitarian considerations (AIDA, 2015:12).

Within the scope of Legislative Decree 142/2015, the CNDA can regularly identify countries of origin or parts of these countries where personal interviews can be waived for citizens. The CTRPI may even waive the interviews of applicants from countries identified by the CNDA, while considering that there are sufficient grounds for granting subsidiary protection. However, before taking such a decision, the competent regional commission informs the applicant that it has the opportunity to have a personal interview within 3 days of the date of notification, and if such a request is not made, CTRPI automatically takes the decision to waive the interview (AIDA, 2015:12).

Regarding the duration of the examination procedure, the Decree Law No. 142/2015 stipulates that the CTRPI will interview the applicant within 30 days after receiving the application and make a decision within 3 working days. In case the CTRPI cannot make a decision within this period and the necessity of obtaining new elements arises, the examination procedure is completed within six months following the application. In the following cases, CTRPI may extend the period not exceeding nine months (AIDA, 2015:12-13):

- Factually and / or legally complex issues exist.
- Multiple asylum applications made at the same time.
- The delay is due to the applicant's express failure to comply with the obligation to cooperate.

As an exception, in duly justified cases, the CTRPI may extend this period for a further three months where necessary for an adequate and complete review of the international protection application. In the light of different extension possibilities, the asylum procedure can take up to 18 months (AIDA, 2015:13).

The Decree Law No. 142/2015 of the Italian Republic introduced an accelerated procedure for the first time. In this procedure, the head of the CTRPI identifies cases under priority or accelerated procedures. In cases where the application is made by applicants placed in administrative detention centers, the police station immediately transmits the required documents to the CTRPI upon receipt of the application. CTRPI also takes the necessary measures for personal expression within 7 days of receiving the documents. It is

also ensured that the decision is taken within 2 days following this period. These times are doubled in the following cases (AIDA, 2015:13):

- The application is clearly baseless.
- The applicant submits a subsequent application for international protection.
- If the applicant filed his application after being stopped while avoiding or attempting to avoid border checks, or after being suspended for illegality, only to delay or complicate the acceptance or enforcement of the refusal at an earlier date at the border.

The asylum system of the Italian Republic stipulates a uniform regular procedure for determining both refugee status and subsidiary protection status. Under this procedure, the CTRPI can decide which cases fall under the priority procedure and which are within the accelerated procedure. There is no official deadline for submitting an asylum claim under the law of the Italian Republic. The intention to apply for asylum can also be expressed orally by the applicant in his own language. However, asylum seekers are required to submit their applications as soon as possible. As a general rule, immigration law provides for an 8-day appointment (deadline) following the arrival in the Italian Republic for immigrants to introduce themselves to the authorities (AIDA, 2015:18).

The Saadi v. Italy decision of the European Court of Human Rights on the Italian Republic is an important decision regarding the violation of the human rights of the asylum seeker.

In the case in question, the applicant, a citizen of the Tunisian Republic, Saadi, lives in Milan. However, the Italian Republic requested the applicant to be returned to the Tunisian Republic for his international terrorist activities. The applicant applied for political asylum. However, the application was rejected for national security reasons. On the other hand, if returned, the applicant risks being subjected to torture, inhuman and ill-treatment. It was decided by the European Court of Human Rights that the applicant's return to the Republic of Tunisia would be a violation of Article 3 of the Convention, taking into account this risk. According to the European Court of Human Rights, in such cases, the applicant must be sent to the safe third country (Saadi v. Italy, Application No: 37201/06).

In the Hirsi Jamaa and others v. Italy decision, there is a violation decision of the European Court of Human Rights. The case was brought before the European Court of Human Rights on 26 May 2009 against the Italian Republic by eleven citizens of the Federal Republic of Somalia and thirteen States of Eritrea. The applicants, eleven citizens of the Federal Republic of Somalia and thirteen States of Eritrea, were part of a group of two hundred people, who left the Libyan State in three boats to go to the shores of the Italian Republic. The applicants alleged, in particular, that their referral to the Libyan State by the authorities of the Italian Republic had violated Article 3 of the Convention and Article 4 of Protocol No. 4, and for the examination of their complaints, Article 13 of the Convention. They complained about the lack of an application remedy. The European Court of Human Rights found that there had been a violation of Article 3 of the Convention as the applicants were at risk of being transferred to the Federal Republic of Somalia and the State of Eritrea, and that Article 4 (prohibition of the mass expulsion of foreigners) of Protocol No. 4 was violated. has decided that it has been done (Hirsi Jamaa and others v. Italy, Application No: 27765/09).

In the Gallardo Sanchez v. Italy decision, it was concluded by the European Court of Human Rights that there was a violation of human rights. It is known here that the applicant is a national of the Bolivarian Republic of Venezuela. In April 2005 the applicant, who was charged by the authorities of the Republic of Greece of deliberate fires, was detained in order to execute the arrest warrant issued by the authorities of the Italian Republic under the European Extradition Convention. It was returned to the Republic of Greece in October 2006. The applicant complained to the European Court of Human Rights about the period of detention he was subjected to within the framework of his extradition. In the incident, the arrest for the purpose of extradition lasted approximately one year and six months, and delays were experienced at different stages of the extradition procedure, for which the officials of the Italian Republic were to be held responsible. The European Court of Human Rights ruled that the applicant's detention, article 5/1-f of the European Convention on Human Rights (or detaining or detaining the person in accordance with the law due to the fact that the applicant is unlawfully detained or denied a detested deportation or extradition process) shall not be counted in accordance with the law, taking into account the structure of the extradition

procedure intended to be investigated in a third country and for delays caused by the Italian judicial authorities (Gallardo Sanchez v. Italy, Application No: 11620/07).

#### 4.4.Right of Asylum in the Republic of Greece

It is observed that the asylum applications made by unaccompanied children in terms of asylum right in the Republic of Greece are always examined with priority and in accordance with the usual procedure. In addition, the cases to be examined with priority on the right to asylum in the Republic of Greece are as follows (Faas, Bettin and Ali, 2016:49):

- Groups in need of protection,
- Persons who make a request while in detention or while in the transit areas of ports or airports, or while in an initial reception services facility,
- Applicants who may be subject to the Dublin Regulation,
- Applicants whose claims are considered to be reasonably based,
- Applicants whose requests are clearly considered baseless,
- Applicants who are found to be a threat to national security or public order by the police,
- Applicants who submit a subsequent application at the admission stage.

Since September 2014, the asylum services of the Republic of Greece have been processing the applications made by the citizens of the Syrian Arab Republic, provided that they have applied for asylum for the first time and have an original national passport. Within the scope of this procedure, the asylum requests of the citizens of the Syrian Arab Republic are recorded and decisions are made on the same day. In order for the applicant, who is a citizen of the Syrian Arab Republic, to be subjected to rapid procedure, other identity documents such as national identity cards or driver's licenses can be used, but this method was abandoned due to the high risk of fraud and the original passport requirement was started (Faas, Bettin and Ali, 2016:49).

Greece Republic Parliament adopted in April 2016 "Common Procedures Towards Ensuring International Protection and Withdrawal entitled" law (Law No. 4357/2016), regarding the management of the new asylum procedures and with the hot spot of the Greek government, the European Union and the Republic of Turkey Agreement The way has been opened for him to apply. Accordingly, new asylum applications registered at the borders or in the camps will be examined and processed by the Republic of Greece authorities within 7 days. The registration of the asylum application can be made by the police or army officers in extraordinary situations, and the appeals against a negative decision will be examined by the newly formed Appeal Committees within 7 days and finalized. The appeal process will be conducted in the absence of the applicant, on the basis of a review of the files and the Appeals Committee will make the final decision on whether to interview or not. In this process, it was also ensured that the applicant could request to be interviewed even up to two days before the start of the appeal process. Unaccompanied minors and vulnerable asylum seekers (victims of torture, rape or other serious psychological, physical or sexual violence, traumatized individuals such as shipwrecked victims) are exceptions to the rapid procedure (Faas, Bettin and Ali, 2016:53).

In the Republic of Greece, applicants can apply for an administrative appeal in accordance with the usual procedure by the appeals authority against the first-degree decision of asylum services refusing to apply and providing secondary protection instead of refugee status or withdrawing international protection. Durations are arranged for 30 days for non-baseless claims and 15 days for demands that are considered clearly baseless (Faas, Bettin and Ali, 2016:51).

It is possible for those who seek asylum in the Republic of Greece to move freely in the country. Asylum-seekers can request to be hosted in a reception center if they do not have a home and if there is a place, they can work subject to the same rights and obligations as citizens of the Republic of Greece, under the conditions stipulated by the laws of the Republic of Greece. In case of approval, the asylum seeker can also be given a three-year residence permit (Faas, Bettin and Ali, 2016:32).

A few decisions of the European Court of Human Rights regarding the violations of the human rights of asylum seekers in the Republic of Greece will be mentioned below.



Let's first look at the European Court of Human Rights' decision in M.S.S./Belgium and Greece. The applicant left Kabul before 2008. Then, through the Islamic Republic of Iran and the Republic of Turkey has entered the European Union through Greece's Lesbos Republic of fingerprints taken. The applicant was held there for a week and was released on the condition that he left the country. The applicant did not apply for asylum while in the Republic of Greece. The applicant, transiting through the French Republic, arrived in the Kingdom of Belgium on 10 February 2009 and introduced himself to the Aliens Office where he applied for asylum without an identity document. An "equivalence" report obtained as a result of comparing the applicant's fingerprints taken here on Eurodac revealed that the applicant was registered in the Republic of Greece. The applicant stated that if the asylum application is to be transferred to the Republic of Greece, there is little possibility that the application will be properly examined and that the conditions of admission and detention of asylum seekers in the Republic of Greece are terrible. When the applicant was sent from the Kingdom of Belgium to the Republic of Greece, it was known by the Kingdom of Belgium that the applicant's rights in the Republic of Greece would not be guaranteed by the Republic of Greece and the Kingdom of Belgium also violated Article 3 (prohibition of torture) of the European Convention on Human Rights. It was established by the European Court of Human Rights (M.S.S. v. Belgium and Republic of Greece, Application No: 30696/09).

Another decision of the European Court of Human Rights within the scope of human rights violations is the decision of Sharifi and others v. Italy and Greece. The four applicants entered the Republic of Greece from the Islamic Republic of Afghanistan at various dates in 2007 and 2008. After illegally boarding the ship with the intention of going to the Italian Republic, the applicants arrived at Ancona Port, where between January 2008 and February 2009 the border police caught them and expelled them back to the Republic of Greece as soon as possible. According to the applicants, the implementation of the rapid return had already been followed by the authorities of the Italian Republic for several months. Neither the Italian Republic nor the Republic of Greece have authorized themselves to apply for asylum. As regards the Republic of Greece, the applicants complained of the difficulties they faced in the procedures for obtaining asylum. With regard to the Italian Republic, the applicants alleged that they could not communicate with lawyers or translators. No information was given to the applicants about their rights. Likewise, no "official, written and translated" documents regarding their return have been provided. The applicants alleged that as soon as they stepped ashore, the border police of the Italian Republic had taken them back directly to the ships. The European Court of Human Rights, unanimously, concluded by the Republic of Greece of Article 13 (right to an effective remedy) in conjunction with Article 3 (prohibition of torture) of the Convention and Article 4 of Protocol No. 4 (the mass expulsion of aliens is prohibited). held that there had been a violation of Article 13 and Article 3 of the Convention by the Italian Republic (Sharifi and others v. Italy and Republic of Greece, Application No: 16643/09).

#### **4.5.Right to Asylum in the Federal Republic of Germany**

In the Federal Republic of Germany, the right to asylum is not only provided on the basis of an obligation under international laws arising from the 1951 Geneva Convention on Refugees, as in many other countries, but also under the constitutional status as a fundamental right. The right to asylum is seen as the only fundamental right granted to foreign nationals. Candidates for asylum are not recognized if they enter the Federal Republic of Germany through a safe third country. It should also be noted that this also applies to situations where return to this third country is not possible, for example, where the country is not well known due to the lack of relevant information provided by the asylum seeker (Faas, Bettin and Ali, 2016:44).

In the Federal Republic of Germany, free meals in reception centers for asylum seekers, in addition to "basic needs", a monthly increase of 143 Euros and a maximum of 216 Euros after three months, cash aid is provided. In the Federal Republic of Germany, the three-month period in reception centers was later increased to six months in order to keep cash payments at a low level for a longer period. It is seen that Berlin's attitude is to increase in-kind aid rather than cash aid as much as possible. In the Federal Republic of Germany, an allowance of up to 92 Euros per child is also given depending on the age. After 15 months or after the asylum claim has been approved, basic income of around 400 Euros per month is provided for asylum seekers, in addition to accommodation and heating costs (Faas, Bettin and Ali, 2016:32).

In the context of violation of the right to asylum in the Federal Republic of Germany, it is necessary to look at the decision of Altun / Federal Republic of Germany issued by the European Court of Human Rights.



The case subject to the Republic of Turkey in the event, the scope of extradition due to participate in the political actions of the Federal Republic of Germany as a refugee applicant who has asked to be sent to Turkey. European Court of Human Rights, will be subjected to torture in the event of suspicion that Turkish citizens to be returned to Turkey Altun, the Convention has decided that it would be sent back to the applicant for breach of Article 3 (Altun v. Federal Republic of Germany, Application No: 10308/83).

## 5.CONCLUSION

Asylum seeker movements, which result in the forced or compulsory departure of a part of the society from the country they live in to another country due to reasons such as war, poverty and oppression, are considered as one of the important problems of the world today. The fact that asylum seekers are left alone with the legal problems in the countries where they took refuge results in violation of international law. With the emergence of refugee movements in developed countries, the steps taken by these countries on the refugee problem have also become important. The fact that the welfare level of Western countries is higher than other countries has caused refugees to prefer these countries due to security and economic concerns. However, as can be seen in the decisions of the European Court of Human Rights, these expectations did not go smoothly in terms of asylum seekers. European countries still lack a codification in their domestic law that will deal with asylum seekers in all legal aspects. As a matter of fact, the emerging new refugee movements require legislative updates in these countries.

It is extremely important that asylum seekers are not deprived of fundamental human rights such as the right to life, the right to health, the right to housing and the right to education. Based on the fact that the asylum-seeker is a “human” after all, it is an attitude expected by the international community to be regarded as equal to the citizens of the country where they take refuge and to ensure this in the constitution. It can also be said that the shaping of refugee policies in the countries of asylum is related to the influence of political parties.

Preventing human rights violations will increase the confidence of asylum seekers in the law. It is seen that the European Court of Human Rights fulfills its duty very well in this regard. It is seen that the European Court of Human Rights has made many decisions stating that the member states of the Council of Europe are not sufficient to protect the rights of asylum seekers. The European Court of Human Rights takes a clear stance against the violations experienced especially regarding the return of asylum seekers. In violation of the European Convention on Human Rights, the members who send the asylum seekers to their countries of origin should evaluate in detail whether the sending is justified. The approach of the European Court of Human Rights against the violations of human rights against asylum seekers is important in terms of the other members' view of the refugee rights. As a matter of fact, the violation decisions made by the European Court of Human Rights cause the meaning of the member states to ascribe to asylum law to change positively and the states to act more sensitive on this issue.

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