

## Chapter 6. Deportation of Foreigners in Turkey: What Has Changed After the *Law On Foreigners and International Protection* and the Creation of the *Directorate General of Migration Management*? Evidence from Kocaeli

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### Introduction

Historically, the deportation of foreigners has been considered as an indispensable tool by the nation states firstly for the construction of their “imagined communities” (Anderson, 2006) and then for the implementation of their migration policies. In this regard, Turkey has not been an exception. As it is rapidly transforming into a country of immigration, the deportation of foreigners has become an essential tool of this country’s immigration policies<sup>4</sup>.

Despite popular belief, migration is hardly a new phenomenon in Turkey. However, the surge in migration in recent years has attracted the “increasing” attention of the Turkish government and led it to seek solutions to various problems encountered and develop new policies and tools in this area. In this regard, the accession negotiations with the European Union (EU) and the pressure exerted by the latter on Turkey to control migration flows passing through this country towards Europe have been crucial.

This paper will primarily address some of the key outcomes of the social science studies on deportation. It will then focus on the legal and administrative framework in Turkey. We will briefly analyse the deportation of foreigners with a focus on the Law on Foreigners and International Protection (LFIP) and the Directorate General of Migration Management (DGMM) founded in 2013. We will try to explain some of the main changes in the case of Kocaeli province, after the LFIP entered into force in April 2014. We should also mention that this paper is based on a research project conducted in Kocaeli province in November 2015 and funded by the Friedrich-Ebert Foundation (Turkey). As part of it, we conducted some twenty interviews with officials, police officers and foreigners threatened with deportation and we also made some observations in the DGMM local branch and Kocaeli Removal Center. In addition, the paper is also extensively supported by the Turkish section of a comparative study, which was carried out between 2012 and 2015, and the data collected therein<sup>5</sup>.

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<sup>4</sup> For example, according to the DGMM, Turkey deported 25098 foreigners in 2013 (DGMM, 2015), (the last year for which the number of foreigners deported from Turkey was published to our knowledge.)

<sup>5</sup> Entitled “The deportation of undocumented migrants and foreign offenders: For a comparative sociology of the deportation of undesirable foreigners in Switzerland, France and Turkey,” the research

## Deportation of Foreigners in Social Sciences<sup>6</sup>

In the scientific literature examining international migration, it is widely accepted that deportation was put forward by several Western European countries towards the end of the 20<sup>th</sup> century, after they realised that measures concerning the entry of migrants into their territories were largely ineffective. Thus, their efforts to ensure the rapid and effective removal of foreigners intensified (Withol de Wenden, 2011). In relation to this major change, deportation is no longer a subject that interested primarily legal scholars and to some extent historians were interested in. Through efforts of researchers from different disciplines of the social sciences, various aspects of deportation have been analysed since then.

Studies on the historical background of deportation are important to understand its development. During the age of empires, deportation was mainly carried out between cities of the same empire. "Cross border" deportations, such as the expulsion of Protestants from France (*Huguenots*) or Muslims from Spain (*Moriscos*), were rare (Kedar, 1996). Walters (2002) notes that deportation was used as a tool against the poor, who were seen as a burden to society. The acceptance of the principle that only foreigners could be deported was a result of the formation of nation-states. Indeed, as Weber (1996) shows through the case of Germany, this principle was established much later than the country's transformation from city-states (*Länder*) to a unified nation-state. According to Walters (2002), it was only in the 20<sup>th</sup> Century that the deportation of foreigners turned into an instrument of the migration policies in Europe. Migrants were much sought after during the economic expansions; however, whenever there was an economic recession, efforts to deport foreigners increased as they were seen as a burden by the receiving countries.

One of the most important studies dealing with the deportation of foreigners on a macro-level and from a historical perspective is Kanstroom's (2007) work on the United States of America (USA). In this country formed mainly by European migrants, where migration has been seen as an indispensable component of its nation, the author observes that deportation has been constantly used as a tool and millions of foreigners have been deported from the USA. Similarly, Cohen (1997) emphasizes that although the target groups have changed over the time, deportation has been used against unwanted foreigners in the United Kingdom (UK) as well.

The number of studies examining deportation in various countries is increasing such as the study by Bloch and Schuster (2005) dealing with deportation as an extreme form of exclusion based on the case of the UK. According to the authors, despite normally being used as an extraordinary measure in times of war and crisis, deportation was "normalized" towards the end of the 20<sup>th</sup> Century. After the collapse of the Eastern Bloc, it has become a tool constantly used. One of the reasons for such practice is the desire of nation-states to show that they are still powerful, despite the relative decline in their power.

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was funded by the Swiss National Science Foundation and conducted in the Institute of Sociology of the University of Neuchâtel under the supervision of François Hainard.

<sup>6</sup> For detailed accounts on this subject see Soysüren (2014a and 2016).

Another study addressing the widespread use of deportation was conducted by Gibney and Hansen (2003) on Canada, the USA and the UK. The authors point out the limits of the use of deportation as a tool by the liberal western states. If they do not want to violate the liberal democratic values that they consider as fundamental, it should not be possible for them to deport all unwanted foreigners present in their territory. However, contrary to this argument, which may be called the "liberal democratic paradox," these states employ methods that disregard the fundamental liberal values (Gibney, 2008) that they seem deeply committed to.

Amongst researchers, De Genova's works (2002 and 2007) have become source for the concept of deportability, which is described as "*the possibility of deportation, the possibility of being removed from the space of the nation-state*" (De Genova, 2002, p. 205). For example, Talavera *et al.* (2010) examine the daily life of undocumented people living in two US towns on the Mexican border. The constant threat of deportation and the conditions they are subjected affect their lives and provoke emotions such as fear, anxiety, isolation and despair. Moreover, they try to become invisible or to hide themselves in order to avoid their deportation.

### **Deportation of Foreigners and Turkey<sup>7</sup>**

As a legal "institution" and a government practice, deportation is based on some internalized assumptions of a world made up of separate nation-states. For it to acquire a meaning, some institutions and assumptions should be considered as "normal." In this context, the existence of the state and the citizens, namely persons bound through their allegiance to a state, are indispensable "conditions." Being a foreigner or being unable to prove his or her citizenship paves the way for potential exclusion (deportability) or deportation. Moreover, it causes persons to become a subject of transactions (including deportation) made by the state on the basis of its sovereignty.

In the case of Turkey, one of the main references on the subject describes deportation as follows: "*In short terms, "deportation" means expelling the foreigner from the country regardless of his or her will.*" (Aybay, 2003, p. 142). When we look at the legal literature on the issue in Turkey, it is seen that deportation is rather defined as a "power" or "privilege" for the state and is based on the principle of its territorial sovereignty (Soysüren, 2014a). The following alternative definition has also been suggested: "*The deportation of foreigners is a temporally and spatially multi-layered process (local, national, international and transnational) involving multiple actors. It is implemented by states, on the basis of their sovereignty, against foreigners unwanted for various reasons, by using several measures that may include the deportation order but also the use of physical force*" (Soysüren, 2014a, p. 167). Since deportation is primarily a legal institution, the purpose of this definition is to take into account social science studies, observations and the outcomes of field research, without forgetting its legal aspects. It aims to emphasize the international and transnational dimensions of the deportation process, in which

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<sup>7</sup> For the deportation of foreigners from Turkey and the LFIP, see for example Dardağan Kibar (2013), Bayraktaroğlu-Özçelik (2013). For a more detailed account of what is summarised here, see Soysüren (2016).

multiple actors are involved. Moreover, this definition makes it possible to analyse deportation as a process open to failure.

The LFIP, which was accepted by the Turkish parliament on 4 April 2013, regulates deportation. In this regard, it is more detailed than the annulled Law on Residence and Travel of Foreigners (LRTF). In addition to being articulated in other parts of the LFIP, deportation is mainly covered within its Section 4 (Articles 52-60) of the Law. It could be said that deportation is utilised as a key tool in the implementation of this Law.

One of the striking differences in the new LFIP is the significant increase in the grounds for deportation. According to Dardağan (2013), one of the motives for this is to balance the list of foreigners “exempt from deportation” as foreseen in Article 55. By looking at the wording of the LFIP, it is possible to classify foreigners into three groups: those to be deported, those who are deportable and those that could not be deported under normal circumstances (Bayraktaroğlu Özcelik, 2013). The first group is covered by Article 54/4 of the Law under the heading “Persons subject to a deportation order”. The second group of foreigners with possibility of being deported are listed in Article 54/2 of the LFIP. These are foreigners who applied for or are already beneficiaries of international protection. For them to be deported there must be serious reasons to believe that they pose a threat to the national security or they must be convicted upon a final decision of an offence constituting a public threat.

According to Article 54 of the LFIP, foreigners for whom “a deportation order is issued” will have a time period of “up to thirty days but not less than fifteen days” to leave Turkey. However, as there are many exceptions for granting this period; it is almost entirely left to the discretion of the administrative authorities whether to grant such a period.

In Article 53, the LFIP provides a period of fifteen days for the foreigner to appeal against the deportation order in front of the administrative courts. The court is required to issue its decision, which shall be final, within fifteen days. An important innovation in the LFIP is that the foreigner shall not be deported until after the finalisation of the appeal proceedings.

Further, although the competent authority to issue the deportation order in the annulled LRTF was the Ministry of Interior, in the new LFIP it is the provincial governorships. According to this Law, governors (“*vali*”) are authorised to issue a deportation order independently or in accordance with the request of the DGMM. A deportation order must be issued in written form, which was not the case during the LRTF.

### **Deportation of Foreigners in Kocaeli Province**

Due to its status as an important industrial centre of the country as well as being close to Istanbul and on the route to Europe, Kocaeli is a province where the number of migrants is gradually increasing. Although limited in scope, according to statistics for 2015, a large number of foreigners live in Kocaeli, including some 15,000 Syrians (ORSAM, 2015). Under the new migration management system, a provincial branch of the DGMM has been established in Kocaeli. The branch started

its activities as of 1 January 2015 with 42 staff members and undertook the management of issues relating to foreigners shortly afterwards.

As a geographically very close province to Istanbul, Kocaeli is experiencing the pros but also the cons of such a position at the same time. When looked at from a migrant's perspective, Kocaeli's proximity brings together different perceptions. For example, this province is seen as the step before Istanbul by some migrants working as domestic workers. Some of those who come to work in Kocaeli want to move to Istanbul, as the pay rates are higher. However, there are some advantages of Kocaeli, such as its smaller size and less controls by authorities.

In terms of the deportation, it appears that Kocaeli's geographical location works in favour of the administrative authorities. To obtain travel documents for foreigners to be deported, police officers, sometimes accompanied by officials from the DGMM, bring foreigners to Istanbul on a daily basis, where the consulates of their alleged countries of origin are usually located. Moreover, since Sabiha Gökçen Airport is close, it is convenient for the administrative authorities to take the foreigners to be deported there to their flights<sup>8</sup>.

During the pre-LFIP era, almost only the police was involved in issues concerning foreigners and deportation; its department of foreigners was the division specialised in this field. Following the promulgation of the LFIP, in order to manage the abovementioned legal process, the DGMM was established and is present in 85 countries abroad, as well as in 81 provinces and 148 districts across Turkey<sup>9</sup>. As declared on its website, the local branches of this Directorate have taken over the responsibility from the police as of 18 May 2015.<sup>10</sup> Thus the authority and the responsibility for duty of the migration management have been transferred to the civilian bureaucracy from the law enforcement units, responsible for providing security. Despite significant changes in the legal framework, it is still within the administrative authority's discretion whether to deport foreigners or allow them to stay in the country. However, the control mechanisms are still very limited and largely ineffective, and this may pave the way for arbitrary interventions in foreigners' lives by administrative authorities.

The interviews and observations in Kocaeli have provided some interesting data about the limitations of the changes following the promulgation of LFIP, especially of what is called "demilitarization" (*sivilleşme*), namely the transfer of migration management issues from the law enforcement units to the civilian bureaucracy. When we visited the Foreigners Department of the Provincial Security Directorate on 9 November 2015, we observed that it was very quiet in contrast to our previous visits, as it used to be the centre for almost all transactions involving foreigners. We also witnessed that some police officers, who we had seen playing a decisive role

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<sup>8</sup> Of course they also may be taken to the Ataturk Airport on the European side of Istanbul as there are more international flights from there.

<sup>9</sup> "Göç İdaresi kuruldu Yabancılar Dairesi tarih oldu" ("Immigration Directorate established, Foreigners Department is history"), <http://aa.com.tr/tr/turkiye/goc-idaresi-kuruldu-yabancılar-dairesi-tarih-oldu/162156> (Last visited: 4 January 2015).

<sup>10</sup> "İl Göç İdaresi Müdürlükleri Çalışmaya Başladı", ("Provincial branches of Immigration Directorate started working"), [http://www.goc.gov.tr/icerik6/il-goc-idaresi-mudurlukleri-calismaya-basladi\\_350\\_361\\_6796\\_icerik](http://www.goc.gov.tr/icerik6/il-goc-idaresi-mudurlukleri-calismaya-basladi_350_361_6796_icerik) (Last visited: 4 January 2015).

in the deportation process at the beginning of 2013, had been transferred from the provincial security directorate to the provincial branch of the DGMM. Furthermore, our interviews and observations showed that the removal centre<sup>11</sup> is still being run by these transferred police officers. According to interviews conducted with some of these officers, the main reason for this is that the civil officials assigned to the provincial branch of the DGMM cannot handle the process well enough. For one of them, “they want to work during normal working hours” (“former” police officer working in Kocaeli Removal Centre, 9 November 2015, Kocaeli). It is worth also noting that a team consisting of some 30 police officers from various districts of Kocaeli are called in to duty whenever necessary to escort foreigners to consulates, courts or to the airport.

### **Closing Remarks**

This study enables us to make some noteworthy conclusions regarding the deportation of foreigners in Turkey. One of them is related to change and continuity in Turkey's migration management. As it is known, under the pressure of the EU and forced by the increasing number of migrants, some very important developments have occurred in Turkish migration policies. One of the most prominent of these is the emergence of a new and comprehensive legal framework on migration. The LFIP and a growing number of various regulations and circulars are concrete evidence of this, even though there are still significant gaps in this regard.

Regarding the changes taking place at the administrative level, the most important one is the establishment of the DGMM. It took time for the local branch level to be operational and to take over the responsibility of migration management from the police. Observations made in Kocaeli show that many issues in relation to the deportation process have not been settled yet. However, it could be said that such problems are understandable as the local branch of the DGMM is a newly established institution seeking its identity. Furthermore, it is not surprising to encounter insufficiencies considering the extent of its responsibility and the massive increase in the number of migrants.

Our observations in Kocaeli show the limits of the claim for “demilitarization,” which can be defined as the transfer of migration management from the law enforcement units to the civilian bureaucracy. The DGMM<sup>12</sup> considered the employment of police officers in its local branches as inevitable for some years at least, so that they could teach the “job” to its freshly hired civil officials. Currently, the deportation process is directed by the same police officers working for the local branch of the Directorate in Kocaeli province. As a result of this, some of the methods, the modes of operation, and the manners of working used by the police in the deportation process are inevitably adopted by the local branch of the DGMM. Moreover, it should not be forgotten that the newly established organization was born into the strict hierarchical and centralized structure of the Turkish administrative tradition. Perhaps one of the most important features of this tradition

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<sup>11</sup> According to the 2015 annual report by the DGMM (2016), the capacity of this center is 50.

<sup>12</sup> It is important to call to mind that there are several former police officers in the direction of the central organisation of the DGMM.

is bending, twisting or ignoring the legal framework because of the state's periodical or general interest or because of concerns about security. An illustrative example of this practice, which was witnessed during the course of research for this study, was the refusal of the right for foreigners held in the Kocaeli Removal Centre to meet with their lawyers based on "an order from Ankara," despite the clear provisions of the law.

We would like to conclude with a question that were exposed to by our findings during our fieldwork: Let's say we consider the new deportation process brought by the new LFIP as a person, would this be a new person or are we dealing with the same old men with merely a new haircut? Based on the evidence demonstrated above it would not be unfair to say that unfortunately the latter is the case.

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