

LEGAL DISPUTES: EXPERIENCED BY THE BALKAN MIGRANTS IN TURKEY

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Abstract

In terms of “migration” which is a concept dating back to the history of humanity, Turkey plays an important role as a transit country for the migrants, as being located on the migratory route of Middle East and Central Asia and also as a country letting in migrants from these regions along with the muslims and Turkish descendants from the Balkans due to many reasons. The problems of the migrants are not resolved upon their arrival in the country allowing the migration, on the contrary, these people face with new problems therein. Legal disputes experienced by the Balkan Migrants in Turkey, which is the subject of this study, have been considered with regard to the concrete examples of Bulgarian migrants.

The arrivals of Bulgarian migrants to Turkey took place in various periods and few of these migrations were planned but as the majority of these were unplanned and massive, the number of the problems, which were faced, increased. The migrations realized between 1923 – 1933 were planned and there were not many problems regarding especially the accomodation and habitation, as Turkey had been prepared for this. During the following periods, it is seen that the migrants faced problems due to the outbreak of planned migrations, in spite of Turkey’s good will. Especially, the efforts of the Government to provide housing for the migrants of 1989 failed and the migrants were distressed. Although the legal remedy proposed for the relief of this distress was not sufficient, upon the decree of annulment by the Constitutional Court, further distress of the migrants was prevented.

The “retirement” issue experienced by the migrants of 1989 regarding social security was tried to be resolved by the decisions of the Council of State and the Supreme Court of Appeals at first and later a more solid solution was generated upon the amendment in the related legislations.

Regarding the resolution of the mentioned problems of the migrants, the significance of the support of both High Courts can be seen. The decisions of the these courts constitute the most important part of this study.

The majority of the problems faced by the migrants is related to the country they come from and the solution depends on the negotiations between Turkey and Bulgaria.

Keywords: *Balkan Migrants after the Ottomans / inhabiting and housing / Turkish-Bulgarian Residence Agreement/adding foreign service periods to the period of insurance through debt / adaptation and accession.*

Introduction

As Turkey is located in the middle of the migratory route due to its geographical position, it is a transit country for the Middle East and Central Asia and not only it provides manpower and trained personnel for abroad, it also allows individual or mass migrations of muslims and Turkish descendants from the Middle East, Central Asia, Caucasians and the Balkans due to the ethnical and political issues they face in their countries.

The conquest of Anatolia by the Turks and the territorial expansion of the Ottoman Empire caused the Turks to get settled on a wide area but as the result of the Empire's period of regression and the pressure and mistreatment of the new States founded on the lost lands towards the muslims and the Turkish descendants, migrations started to the Ottoman and then the Turkish Lands. When the 300 year old migration history is studied, it is seen that the most massive migration is from the Balkan countries (AĞANOĞLU, ÜNAL/DEMİR, 2001:381). The Balkan migrants can be listed as migrants who are ethnically Turks (Turks from Greece, Bulgaria and the migrants or Turks from the former Yugoslavian Republic of Macedonia), Bosnia originated muslim migrants from the former Yugoslavia who are not ethnically Turks and former Yugoslavian Republic of Macedonia originated muslim migrants who are not ethnically Turks (ÜNAL/DEMİR, 2001:382).

In our study, the problems experienced by the Balkan migrants especially by the Bulgarian ones in Turkey after the migration, will be analysed on a legal basis in the light of Jurisdiction and Adjudication Decisions.

Inhabiting and Housing Issues

The continuation of the Balkan migrations, which started in the 19th century, during the Turkish Republic period was related with not only the problems the Turks faced in their countries but also with the population policy of the then young Turkish Republic. As Turkey had to develop socially and economically and protect the country against the external threats it had to have a policy of an increasing population so migrant from outside were allowed (DUMAN, 2009: 474).

However, as the Ministry of Development and Housing reserved all its capability for the migration and the inhabiting of the refugee Turks from Greece during the 1923 – 1933 migrations, a stipulation of being a free migrant was set forth, which means the condition of not demanding any inhabiting and they were asked to bring a certain amount of money with them. Yet, the implementation of this system was not so easy and many migrants, although they had financial problems but just to be able to migrate to Turkey, signed a letter of undertaking stating that they would not demand any inhabiting support. Here, as the indigent migrants from Bulgaria, Romaina and Yugoslavia became indigent in time, they were started to be get inhabiting support as of year 1928 within the bounds of financial facilities (DUMAN, 2009: 476) .

In the meantime, the Turkish – Bulgarian Residence agreement, as an annex to the Turkey – Bulgaria Treaty of Friendship signed on October 18, 1925, provided assurance for the Bulgarians in Turkey and for the Turks in Bulgaria who intermigrated / were made to intermigrate during the Ottoman – Russia Wars between the years 1878 – 1925. As can be understood, the treaty comprises not only the Bulgarians migrating to Turkey, but also the Turks migrating from Bulgaria. As per this Residence Agreement, the migrants will have the right to bring their movable properties and animals with them. They have to sell out their real estate properties within two years after the migration.

As the migrants who arrived between the years 1934 – 1938 had the status of an inhabitant, they were accommodated to the previously planned regions by the local people and residence constructions for the migrants were started as a permanent solution. As per the Settlement Law Numbered 2510 and introduced in 1934, about 18.000 houses were built for the migrants between 1934 – 1937 and the migrants were held liable to pay the value of these houses in 28 years without any payments in the first 8 years and pay the rest of the amount in monthly installments for 20 years (DUMAN, 2009: 487).

Upon the diplomatic note delivered by the Bulgarian Government on August 10, 1950 stating “in keeping with the spirit of the treaty signed in 1925, 250.000 Turks, who are Bulgarian citizens voluntary to migrate, shall be accommodated within three months”, a new wave of migration was started. The Turkish Government, with a counter note dated August 28, 1950, stated that they will not refrain from accepting the Turks who wish to migrate from Bulgaria (ÖZGÜR, 2007: 46-47).

The Council of Ministers, in their meeting held on 16.04.1951, decided that the Turks who already came and will be coming to our Country using the free migrant visa will be deemed as emigrants as per Paragraph 2, which was amended by Law numbered 5098, of Article 15 of Settlement Law numbered 2510 and that they will undergo the inhabiting process and that the local consulates will provide an emigrant visa instead of a free migrant visa as per Law numbered 3659. The Council of Ministers, by approving the main inhabiting programme of the year 1951 which was set forth with Article 1 of the Law numbered 5098, dated June 24, 1947 which amends the Law numbered 2510, came to the decision that, in order to provide the emigrants to own a house, the residences to be constructed will be such as to only fulfill the needs and comprise of one room, one barn or a shop (ÖZGÜR, 2007: 90). During the 1951 migration, although the Turkish Government had difficult times regarding the inhabiting of the migrants due to accepting quite a lot number of migrants in a short time, the result was a success.

As the Turkey - Bulgaria Close Relative Migration Agreement was all about putting the shattered families together, there was no accommodation problem as the migrants were settled by their families in Turkey.

In 1989, when the Bulgarian Government forced the Turkish descendants to migrate, the migrants were transferred and left at the Turkish borders in massive groups and as a result Turkey had to accept the most intensive and forced migration

seen throughout Europe, after the World War II, in such a short period like three months (DOĞANAY,1997:191-203).

Some part of the migrants, who arrived in this period, settled using their own financial facilities to the places where their previously migrated relatives or neighbours were in majority and some part of them were settled by the Government to total 21438 residences in 14 city centers and 23 districts and regions within a 5 year period with the financial contribution and obligation of migrants method (DOĞANAY, 1997: 191-203). However, for the Bulgarian migrants subject to forced migration and therefore who wanted to come to Turkey and settle, adjustments regarding the migrate settlement were done upon the amendments with Law numbered 3805, dated May 27 1992 and Law numbered 3583 dated 16.06.1989 and as a result the coordinatorship of immigrant houses was established with the order of Ministry of State upon the 90/T-03 numbered and 27.11.1990 dated decision of the Higher Planning Council. Upon the announcement of the The Ministry of State, functioning for the coordination of immigrant houses, immigrant houses were built by taking an advance amount between 2,5 Million TL and 14 Million TL, in terms of the currency between 1991 – 1995 period, and they were sold to these citizens in installments upto 10 years. 23495 of the migrants who made applications were provided with houses and 3975 of these were provided with lands whereas 17000 of these migrants could neither own a house nor land even though they paid the mentioned advance amount. For this reason, some provisions regarding the migrant citizens were adjusted with the Law numbered 5543, dated September 19, 2006 which amended the Settlement Law numbered 2510.

With the 5th paragraph of temporary Article 1,the opportunity to withdraw the paid amounts along with the legal interest accrued as of the payment date was given especially to the migrant citizens who could not own a house, provided that they apply for this within one year as of the issue date of the Law. Besides, it was stated that the ongoing lawsuits were to be judged and finalized as per this provision. The Housing Development Administration (TOKİ) was assigned for the implementation. As the result of the implementation of the mentioned article, the citizens were subject to loss of money as the rate of the legal interest was very law and there was inequality among those who filed lawsuits. With regard to the Constitutional State, the most import issue was that the provision possessed the nature of intervening the jurisdiction. Upon the action for annulment by the Main Opposition Party, the provision of “the ongoing lawsuits were to be judged and finalized as per this provision” which was also taken to the Constitutional Court by Ankara 12th Court of First Instance with the reason of contention of unconstitutionality, was cancelled befittingly by the Constitutional Court who came to the decision that this provision was against Articles 2, 10, 36 of the Constitution (Constitutional Court, File no: 2006/158, Decision no: 2008/150, 24.09.2008). Upon this deicison of cancellation, a new amendment was made on the Law of Settlement and with the amendment dated December 5, 2008, the Consumer Price Index was taken as the basis instead of the legal interest and provided that the application conditions determined by TOKİ were fulfilled, an opportunity was given to the migrant citizens to benefit

from the social housing projects aimed for the low income group or the poor by assigning the refund as the advance amount or principal payment for these houses.

Social Security

Social Security is another issue that the Bulgarian migrants face in Turkey. The request of migrant Turkish citizens, working under the security of the former Retirement Fund and the Social Security Institution, to add their pay service creditables in Bulgaria before becoming Turkish citizens to their period of retirement service through a debt demand in Turkey, was rejected as the periods of professional service subject to the mentioned liability was not under Turkish citizenship (Council of State, Chamber 10, File no: 74/1423, Decision no: 75/2216, 27.10.1975 and File no: 1980/202, Decision no: 1981/1407, 5.11.1981). Regarding the same issue, Council of State, Chamber 3 (with Decision no: 1978/1246, File no: 1977/1441 dated 29.03.1978 and, Decision no: 1983/510, File no: 1982/5107 dated: 10.02.1983) found it appropriate to become a Retirement Fund participant on the date of application, provided that the application of the debt demand was fulfilled within the periods set forth by the related laws and did not seek for the condition that the service period to be subject to debt should have been served under the citizenship of Turkey. Due to the conflict of precedents between these two chambers of the State of Council, a decision to merge and unify these precedents was given within the direction of the Decision no: 1983/510, File no: 1982/5107 dated: 10.02.1983 by the Council of State, Chamber 3 as follows: *“It had not been announced that the service period to be subject to debt should have been served under the citizenship of Turkey and according to Article 12 of the mentioned Law, being a Turkish citizen is one of the conditions of the participation, and although it does not fit with the laws to add the previous pay service creditable which took place before the acceptance to the citizenship of the person appearing as the participant on the date of application to their period of retirement service with a debt demand, it is obviously seen that it does not comply with the rules of rights and equity either...”* as per the decision of the State of Council’s Precedent Merging Committee, with file no:1983/3, decision no: 1983/12 dated 29.12.1983.

Upon the this decision of State of Council’s Precedent Merging Committee, İstanbul 3rd Administrative Court made references to the mentioned decision with their decisions in 2006, 2008 and 2009 and decided that the services of the Retirement Fund participant migrate citizens in Bulgaria will be considered in issues of adaptation and accession (3rd Administrative Court, file no: 2005/2755, decision no: 2006/2372 dated 7.11.2006 and file no: 2007/935, decisionno: 2008/1432 dated: 11.7.1008)

In the lawsuit filed upon the rejection of the debt demands of the Bulgarian migrants regarding their services in Bulgaria by the Social Security Institution during their services in Turkey under the security of the mentioned Institution, although the local court decided for the acceptance of the debt, the Social Security applied for an appeal but the Supreme Court of Appeals approved the decision of

the local court stating “To apply for a foreign service debt, it is not required to be a Turkish citizen during the mentioned service period so being a Turkish citizen only at the time of the application for the service debt is adequate” (Supreme Court of Appeals Civil Chamber 10, File no: 2004/354, Decision no: 20004/938 dated 17.2.2004). However, later, the Supreme Court Assembly of Civil Chambers stated in their decision numbered 2005/646, file no: 2005/10-492 dated 23.11.2005 as follows: *“It is not adequate to deem that being a Turkish citizen only at the time of the debt demand is enough considering regardless of the aim and spirit of the Constitution and the Law numbered 3201 so as per Law numbered 3201, only the Turkish citizens serving abroad and citizens during the period of the debt may benefit from the mentioned right of debt. People coming to Turkey as migrants may not benefit from the debt issue as they were not Turkish citizens while they were giving service abroad. Becoming a Turkish citizen upon the decision of the competent authority will not affect the past so the debt issue may only be considered for the periods after the date they gained the rights of becoming Turkish citizens while they were abroad.”*

As can be seen, both decisions by the State of Council and the Supreme Court of Appeals and the decisions of the local courts as per these, accepted the abroad pre-citizenship services of the migrant Turkish citizens to be considered within the insurance period through foreign service debt only with “high-pressure” statements. This is because the Law exists in order to facilitate and contribute to the social securities of the Turkish workers going abroad for service upon their come backs. The Lawmaker did not consider the immigrants in this case. The regulation regarding the foreign service of the Turkish citizens to be considered within their insurance period through foreign service debt is an exception the the general rule and exceptional regulations may not be subject to more comments or statements. OKUR, in the same direction, states that the decisions of the Supreme Court of Appeals regarding the acceptance of the debt in a way resolve the deficiency in the Law but that the main solution may only be provided through the new regulations by the Lawmaker (OKUR, 2006: 131-132).

Noticing this deficiency in the law and upon the efforts of the Immigrant Associations, pursuant to Law numbered 5754 dated 17.04.2008, an amendment on the Law numbered 3201 “Consideration of the Foreign Services of Turkish Citizens Residing Abroad with Regard to Social Security” was made and with the temporary Article 6, an opportunity for the consideration of foreign services through debt for the people who were forced to migrate from the countries between which a social security agreement was not signed, from the date 01.01.1989 until 08.05.2008 and who became Turkish citizens afterwards.

Issues regarding retirement have not ended for the ones who came to Turkey on their own will after 1993. They cannot benefit from the regulation of the law as they were not forced-migrants.

Another issue is about the migrant Turkish citizens who served in Bulgaria and retired pursuant to the Bulgarian legislation. These retired people are able to draw their retirement salaries from the Turkish Republic Ziraat Bank Branches as per the

Agreement signed with Bulgaria in 1999. However, most of these retired people who get a salary of approximately 130 – 200 TL per month, do not have health securities in Turkey. These people try to benefit from the health services of the Social Security Institution over their family members having such an insurance.

One of the main reasons of the problems the Bulgarian migrants experience in Turkey is that the Bulgarian Government and Administration does not always fulfill its responsibility regarding some issues. For example, even getting a simple official document may require more than one applications.

Conclusion

The conclusion of the study reveals that in spite of letting in immigrants for centuries, the legal arrangements regarding migration are still not sufficient in our country. Compensation of the legislative insufficiency had been tried with the not-so-right and high pressure adjudications and when these were not enough, amendments and renewals in the legal adjustments were applied. Besides this, it was inconvenient and difficult for Turkey to face migrations; planned or unplanned and in mass. Although it has been nearly 20 years since the latest migration from Bulgaria, there are still issues waiting to be resolved (e.g. the negligence in applying the still in effect Turkish-Bulgarian Residence Agreement, 1925 in terms of the Turks). As the resolving of these issues cannot be realized by the Turkish Republic alone, a cooperation with the Bulgarian Government is highly required.

ANNEX: THE NUMBER OF IMMIGRANTS IN TURKEY (DOĞANAY, General Directorate for Rural Services)

1. Within the 60 year period from the Ottoman Empire - until 1922
From Greece 400 000
From Bulgaria 225 000
From Yugoslavia 120 000
From Romania 120 000
Other Countries 10 000
TOTAL 870 000 immigrants
2. From Turkish-Bulgarian Residence Agreement, 1925 until 1949
19 833 families 75 877 migrants having a right to own a house
37 073 families 143 121 free migrant
3. During the period 1950-1952, as the result of deportation and forced emigration by Bulgaria
37 851 families 514 393 migrants having a right to own a house
4. Between 1968-1979, within the scope of Turkey - Bulgaria Close Relative Migration Agreement
32 356 families 116 521 people
5. 1989 – 1995
64 295 families 226 863 free migrant

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