EMPLOYMENT AND RESIDENCE RIGHTS OF THE EUROPEAN UNION AND TURKISH CITIZENS WITHIN THE ASSOCIATION LAW*

Ortaklık Hukuku Kapsamında Avrupa Birliği ve Türk Vatandaşlarının Çalışma ve Oturma Hakları

Ebru AKDUMAN**

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Abstract

The third country citizens who want to work in an European Union (EU) Member State should comply with the necessities of the host country's immigration and employment regime. However, as discussed in our study the EU-Türkiye association law provide mutual rights and opportunities with regard to the employment of the Turkish citizens in the EU Member States and the EU citizens in Türkiye. The association law consists of the Ankara Agreement, the Additional Protocol, and the decisions of the Association Council. In principle, the favorable regulations of the association law take precedence of the national legislation. However, the Association Council Decision #1/80 applies only to the Turkish citizens who have already started working in a Member State legally and to their family members. In other words, the Decision does not regulate the work permits but, regulates the extension of an existing permission. Although the association law does not entitle Turkish citizens move to an EU Member State freely, it provides advantage to the Turkish migrant workers and their families when compared with many third country citizens. The *standstill* principle grants some protection not only for workers but, also self-employed. Accordingly, after the entry into force of the association law a Member State can only amend its respective legislation in favor of the Turkish citizens.

Keywords: EU and Türkiye association law, freedom of movement for workers, freedom of establishment, freedom to provide services, Turkish foreigners law.

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* There is no requirement of Ethics Committee Approval for this study.

** Asst. Prof. Dr., İzmir University of Economics, Faculty of Law, Department of Private International Law, e-mail: ebru.akduman@ieu.edu.tr, ORCID ID: 0000-0002-6462-7887.

Özet

Avrupa Birliği (AB)'ne üye bir ülkede çalışmak isteyen üçüncü ülke vatandaşları ev sahibi ülkenin göç ve istihdam politikasının gereklerini yerine getirmek zorundadır. Diğer taraftan, çalışmamızda tartıştığımız üzere AB-Türkiye ortaklık hukuku Türk vatandaşlarının AB'de çalışması ve AB vatandaşlarının Türkiye'de çalışması hakkında karşılıklı hak ve imkanlar sunmaktadır. Ortaklık hukuku; Ankara Anlaşması, Katma Protokol ve Ortaklık Konseyi kararlarını içermektedir. Prensip olarak, ortaklık hukukunun lehe hükümleri milli hukuklara öncelikli olarak uygulanmaktadır. Ancak, 1/80 sayılı Ortaklık Konseyi Kararı sadece bir Üye Ülkede yasal olarak çalışmakta olan Türk vatandaşları ile ailelerine uygulanmaktadır. Diğer deyişle, Karar çalışma izinlerini değil çalışma izinlerinin uzatılması halini düzenlemektedir. Ortaklık hukuku, Türk vatandaşlarına serbestçe bir üye devlete yerleşme olanağı sunmamakla beraber Türk göçmen işçilere ve ailelerine birçok üçüncü dünya ülkesine kıyasla avantaj sağlamaktadır. Mevcut durumun korunması (*standstill*) ilkesi ise sadece işçilere değil serbest çalışanlara da koruma sağlamaktadır. Buna göre, ortaklık hukukunun yürürlüğe girmesinden sonra bir Üye Ülke, ilgili mevzuatını sadece Türk vatandaşlarının lehine olarak değiştirebilmektedir.

Anahtar kelimeler: AB ve Türkiye ortaklık hukuku, işçilerin serbest dolaşımı, yerleşim serbestisi, hizmet sunma serbestisi, Türk yabancılar hukuku.

INTRODUCTION

Türkiye is a candidate country and strategically important country for the EU in essential areas of common interest, such as migration, counterterrorism, economy, trade, energy and transport. Its relationship with the EU is dated back to many years. It was one of the first countries, in 1959, which wanted to establish a close cooperation with the "European Economic Community (EEC)" at that time. This cooperation was realized in the framework of an association agreement, known as the "Ankara Agreement"[1] which was signed on 12.09.1963 and entered into force on 01.12.1964. An important element in this association was establishing a customs union so that Türkiye could trade goods and agricultural products with the EEC countries without restrictions.

The aim of the Ankara Agreement was to achieve continuous improvement in living conditions in the EEC and Türkiye through accelerated economic progress and the harmonious expansion of trade, and to reduce the disparity between the Turkish economy and the Community[2]. The Ankara Agreement, apart from aiming to progressively establish a customs union between the EEC

1 [1973] OJ C 113/1; RG 17.11.1964/11858.

2 Serçin Kutucu, *Avrupa Birliği'nde Üçüncü Devlet Vatandaşlarının Serbest Dolaşımı* (Seçkin Yayıncılık 2014) 73.

and Türkiye, also included provisions regarding the freedom of movement for economically active persons. In other words, the Ankara Agreement envisioned creating a customs union but, went beyond a mere free trade agreement and mentioned movement of persons[3].

Türkiye applied for the EU membership on 14.04.1987 and has embarked on a long and arduous journey in order to attain this objective. The Helsinki European Council of December 1999 granted the status of candidate country to Türkiye on the basis of equal criteria with the other accession countries and stated that Türkiye was destined to join the EU.

From 2000 onwards, Türkiye has accelerated its efforts to fulfill the Copenhagen Criteria in order to get a date for starting the accession negotiations from the EU. As agreed at the European Council in December 2004, accession negotiations have been launched on 03.10.2005 with the adoption of the Negotiating Framework by the Council. The aim of the accession negotiations is to enable the accession country to align its legislation and practices with the EU's legislation *(acquis communautaire)* progressively during the pre-accession period.

The main obstacle to the progress in the accession negotiations of Türkiye relates to the Cyprus issues. The extension of the Ankara Agreement to the countries who joined the Union in the 2004 enlargement proved to be problematic due to one of those newcomers being Cyprus. On 29.07.2005, the "Additional Protocol extending the Ankara Agreement to the new Member States that accede to the EU in 2004"[4] was concluded by exchange of letters among Türkiye, the EU Presidency and the Commission. An official declaration was made by Türkiye at the time of signature and in the declaration, it was explicitly stated that Türkiye, by signing the Additional Protocol of 2005, did not recognize the Republic of Cyprus by any means[5]. The EU stipulates that Türkiye has to fulfill its obligation to ensure full and non-discriminatory implementation of the association law to all the EU Member States including the Republic of Cyprus.

The association law examined in the first part of our study is not only applied to the Turkish citizens living in the EU but, also to the EU citizens living in Türkiye (reciprocal effect) and provides convenience in their employment as examined in the second part of our study. In the first part, Turkish citizens' rights of employment, establishment and provision of services in the European Union (EU) within the scope of the EU-Türkiye association law are analyzed in the

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3 Gözde Kaya, "Free Movement of Turkish Citizens after the Soysal Judgment" in Cengiz Fırat and Lars Hoffmann (eds.), *Turkey and the European Union: Facing New Challenges and Opportunities* (Routledge 2014)121, 121; Kutucu (n 2) 59; Arif Köktaş, *Avrupa Birliği'nde İşçilerin Serbest Dolaşım Hakkı ve Türk Vatandaşlarının Durumu* (Nobel Yayın 1999) 451.

4 [2005] OJ L 254/58.

5 https://www.mfa.gov.tr/ek-protokol-ve-deklarasyon-metni.tr.mfa (date of access: 12.07.2024).

light of the respective European Court of Justice (ECJ) decisions. In the second part, the reciprocal rights of the EU citizens in Türkiye are examined and the provisions concerning the EU citizens in the Turkish foreigners law are provided.

I. EU-TÜRKİYE ASSOCIATION LAW

A. ANKARA AGREEMENT AND ADDITIONAL PROTOCOL OF 1970

The relations between Türkiye and the EEC have initiated by signing of the Ankara Agreement. The "Additional Protocol"[6], which was signed on 13.11.1970 and entered into force on 01.01.1973, constitutes the integral part of this Agreement. They are both accepted as the primary sources of the association law[7]. This body of law, provides reciprocal rights for both Turkish nationals and nationals of the EU Member States, including employment related rights and freedoms[8].

The association agreements are binding both on the Member States and the Union and they create obligations for all the parties. Within the legal order of the Union, association agreements constitute *sui generis* international agreements which signify less than accesion to the Union but, much more than a mere trade agreement[9]. Ankara Agreement, establishes some sort of preliminary or preparatory stage for membership of Türkiye to the European integration. It is almost a "pre-accession agreement" or a "pre-accession association"[10].

Arts. 12, 13 and 14 of the Ankara Agreement are related to the freedom of movement for workers, freedom of establishment and freedom to provide services. The Ankara Agreement's provisions refer to Arts. 48, 49 and 50 of the EEC Agreement [now Arts. 45, 46 and 47 of the Treaty on the Functioning of the EU (TFEU)] in realization of the freedom of movement for workers; Arts. 55, 56 and 58 to 65 of the EEC Agreement (now Arts. 51, 52 and 55 to 62 of the TFEU) in realization of the freedom of establishment and Arts. 52 to 56 and 58 of the EEC Agreement (now Arts. 49 to 52 and 54 of the TFEU) with regard to the freedom to provide services.

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6 [1973] OJ C 113/17; RG 03.08.1971/13915.

7 İlke Göçmen, *Türkiye - Avrupa Birliği İlişkileri: Hukuki Boyut* (Ankara Üniversitesi Yayınları 2022) 71.

8 Bülent Çiçekli, "Rights of EU Citizens in Turkey" in *Turkey-EC Association Law: Developments Since Ankara Agreement 1963 (The Rights of EU Citizens in Turkey and of Turkish Citizens in the EU Countries)* (Legal Yayınevi 2010) 77, 77.

9 Sanem Baykal, "Turkey-EC Association Laww and Recent Developments Regarding the Freedom of Establishment and Free Movement of Services" in *Turkey-EC Association Law: Developments Since Ankara Agreement 1963 (The Rights of EU Citizens in Turkey and of Turkish Citizens in the EU Countries)* (Legal Yayınevi 2010) 11, 12.

10 Ibid 12-13.

Art. 2 of the Ankara Agreement envisioned three phases for Türkiye's gradual accession to the EU Internal Market through the establishment of a customs union:

- Preparatory phase (1964 - 1970)
- Transition phase (1973 - 1995)
- Completion phase (1996 to full economic integration)

Although the time periods foreseen in Art. 4 (2)[11] of the Ankara Agreement and Art. 36[12] and Art. 61[13] of its Additional Protocol of 1970 have elapsed long time ago, the full accession of Türkiye to the Single Market has not been achieved yet due to political and economic obstacles[14]. While the goods are able to move freely under the customs union rules, their producers do not enjoy the same right. As a result, an unfair competition takes place between the Turkish producers and their European competitors, since the visa regime does not treat them equally but, puts the Turkish producers at a disadvantage in terms of establishing direct business links with their European counterparts[15]. This will, of course, have an adverse effect on the full implementation and proper functioning of the Customs Union[16].

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11 "*This transitional stage shall last not more than twelve years, subject to such exceptions as may be made by mutual agreement. The exceptions must not impede the final establishment of the customs union within a reasonable period.*"

12 "*Freedom of movement for workers between the the Member States of the Community and Turkey shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement of Association between the end of the twelfth and the twenty-second year after the entry into force of that Agreement.*
The Council of Association shall decide on the rules necessary to that end."

13 "*Without prejudice to the special provisions of this Protocol, the transitional stage shall be twelve years.*"

14 Aysel Çelikel and Günseli Öztekin Gelgel, *Yabancılar Hukuku* (27th edn, Beta Basım 2022) 282; Ayşe Burcu Kaplan, *Avrupa Birliği'nde Türk Vatandaşlarının Serbest Dolaşımı* (Beta Basım 2008) 20; Baykal (n 9) 13; Burak Erdenir, "Vize" in Belgin Akçay and Sinem Akgül Açıkmeşe (eds.), *Yarım Asrın Ardından Türkiye-Avrupa Birliği İlişkileri* (Turhan Kitabevi 2013) 471, 480; Çınar Özen and Hacı Can, *Türkiye-Avrupa Topluluğu Ortaklık Hukuku* (Gazi Kitabevi 2005) 258; Hediye Ergin, *Türk Hukukunda Yabancıların Çalışma İzinleri* (Beta Basım 2017) 49; İlke Göçmen, "Türkiye-Avrupa Birliği (AB) Ortaklık Hukukunun Hukuki Çerçevesi" in Gülüm Bayraktaroğlu Özçelik and Elçin Aktan (eds.), *Avrupa ve Uluslararası Göç Hukuku* (Yetkin Yayınları 2022) 269, 276; İlke Göçmen, "Türkiye ve Avrupa Birliği Arasındaki Vize Meselesi" in Işıl Özkan and Kazım Sedat Sirmen (eds.), *Uluslararası Hukukta Göç ve Vatandaşlık* (Yetkin Yayınları 2022) 57. Kaya (n 3) 121; Kutucu (n 2) 59.

15 Narin Tezcan İdriz, "Free Movement of Persons between Turkey and the EU: To Move or not to Move? The Response of the Judiciary" (2009) 46 (5) Common Market Law Review 1621, 1631.

16 Bülent Çiçekli, "The Rights of Turkish Migrants in Europe under International Law and EU Law" (1999) 33 (2) International Migration Review 300, 311, 331.

Many Turkish citizens went to the EU Member States within the scope of the bilateral agreements entered into in the 1960s before signing of the Ankara Agreement but, their rights to continue to work in that EU Member State were secured by the association law[17]. Although the association law does not entitle Turkish citizens move to a EU Member State freely, it provides advantage to the Turkish migrant workers and their families when compared with many third country citizens as discussed in *Eroğlu*[18] case [19].

Ms. Eroğlu is a Turkish national who entered into Germany in April 1980 in order to carry out her studies in a German university. Although her father had been living there and working lawfully without interruption for a long time, her entry was not under family reunification rules. During her studies, she was granted several residence permits until October 1989, all limited to one year and marked "valid only for the purposes of study". Following her studies, she was also granted corresponding work permits but her last application of 29.02.1992, for an extension of her residence permit to allow her to continue her activity with her last employer was rejected. Although Ms. Eroğlu was not eligible for family reunification, she satisfied the conditions set out in Art. 7 (2) of the Decision #1/80 for extension of her work permit. Therefore, the European Court of Justice (ECJ) rendered a favoring judgment.

B. ASSOCIATION COUNCIL DECISIONS

Ankara Agreement created a flexible model which indicated the general direction and nature of the EU-Türkiye relations but, left the details to the decisions of the Council of Association[20]. The Association Council decisions[21] constitute the secondary sources of the association law[22]. The Association Council has determined the principles of the freedom of movement for Turkish migrant workers in the EU in its "Decision #1/80 of 19 September 1980 amending the Decision #2/76".

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17 Köktaş (n 3) 94-95.

18 Case C-355/93 *Hayriye Eroglu v Land Baden-Württemberg,* ECR [1994] I-05113, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0355 (date of access: 13.08.2024).

19 Ceyda Ümit, *Avrupa Birliği Hukukunda Üçüncü Ülke Vatandaşları* (Seçkin Yayıncılık 2013) 271; Çiçekli (n 16) 316; Erdenir (n 14) 480, 487; Göçmen, *Avrupa ve Uluslararası Göç Hukuku* (n 14) 280; Kutucu (n 2) 59; Rıdvan Karluk, *Avrupa Birliği Türkiye İlişkileri: Bir Çıkmaz Sokak* (Beta Basım, 2013) 162-163; Savaş Bozbel, "Türk Vatandaşlarının Avrupa Birliği Ortaklık Konseyi Kararlarından Doğan Çalışma ve Serbest Dolaşım Hakları" (2004) VIII (1-2) AÜEHFD 351, 360.

20 Baykal (n 9) 14.

21 https://www.ab.gov.tr/Files/Ab_Iliskileri/Okk_Tur.Pdf (date of access: 07.08.2024).

22 Göçmen (n 7) 71.

Art. 6 of the Decision #1/80 mainly regulates the extension of the work permit duration of the foreign workers. According to Art. 6 (1); "*The foreign workers who are legally employed in an EU Member State and who are duly registered as belonging to the labor force there have the following rights:*

- After one year legal employment, they are entitled to a renewal of the work permit for the same employer if a job is available.

- After three years legal employment, they may change employers and respond to any other offer of employment for the same occupation subject to the priority to be given to the EU citizens.

- After four years legal employment, they enjoy free access to any paid employment in that EU Member State."

Turkish migrant workers and their families cannot rely on the Agreement to gain entry to the EU labor market or that of any Member State. However, it does provide certain rights within a Member State to those Turkish workers and their families who have been admitted under national regulations to live and work in that state[23]. According to Art. 7; "*The members of the family of a foreign worker duly registered as belonging to the labor force of a Member State, are authorized to join him and they shall be entitled to;*

- Respond to any offer of employment (priority given to the EU citizens) after they have been legally resident for at least three years in that Member State.

- Enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.

Children of the foreign workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years."

In the second paragraph of Art. 7, the children of the foreign workers are given privilege, and they are not required to reside or work in an EU Member State before they are entitled to their rights. This does not preclude them to use their rights according to the first paragraph[24].

Turkish nationals should be given priority over other non-EU nationals (after EU nationals) in regard to eligibility for employment in the EU Member States. This is clearly provided in Art. 8[25] of the Decision #1/80.

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23 Çiçekli (n 16) 331.

24 Özen and Can (n 14) 251.

25 "*1. Should it not be possible in the Community to meet an offer of employment by calling on the labor available on the employment market of the Member States and should the Member States, within the framework of their provisions laid down by law, regulation or administrative*

The "Decision #3/80 of 19.09.1980 on the activation of the Association Agreement and the Additional Protocol" covers solely the issues related to social security. The "Decision #1/95 of 22.12.1995 on the Customs Union" only refers to the liberalization of the public procurement.

The provisions of the Ankara Agreement does not entitle the Turkish citizens with full freedom of movement like the EU citizens. The Turkish citizens are not entitled to move freely throughout the EU but, can benefit from certain rights in the host Member State. The ECJ confirmed this by its decisions in various cases including *Birden*[26] and *Tetik*[27].

Birden case is about a Turkish citizen who was permitted to enter Germany as a result of his marriage with a German citizen. Mr. Birden initially received social assistance and was unemployed for some time. He entered into a contract of employment. After working for a year, that employment relationship was subsequently extended. But, the competent authorities refused to extend Mr. Birden's permit to reside in Germany, on the grounds that he is divorced and his position is temporary since the sole purpose of his contracts was to enable a limited group of persons, in this case recipients of social assistance, to integrate into working life and funded by the public authorities. The ECJ gave a favoring judgment stating that a Turkish national who has lawfully pursued a genuine and effective economic activity in a Member State under an unconditional work permit for an uninterrupted period of more than one year for the same employer, in return for which he received the usual remuneration, is a worker duly registered as belonging to the labor force of that Member State and in legal employment there within the meaning of Art. 6 (1) and therefore, entitled to extension of his permits.

Tetik case is about a Turkish worker who left his job and seek new employment after being employed as a sailor in Germany for a period in excess of four years. The ECJ decided that within Art. 6 (1) of the Decision #1/80, the right of Turkish workers to free access to the labor market after four years lawful employment includes the ones who have voluntarily left their employment. The ECJ decided that a Turkish worker must be able, for a reasonable period, to seek effectively new employment and must have corresponding right of residence

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action, decide to authorize a call on workers who are not nationals of a Member State of the Community in order to meet the offer of employment, they shall endeavour in so doing to accord priority to Turkish workers. 2. The employment services of the Member State shall endeavour to fill vacant positions which they have registered and which the duly registered Community labor force has not been able to fill with Turkish workers who are registered as unemployed and legally resident in the territory of that Member State."

26 Case C-1/97 *Mehmet Birden v Stadtgemeinde Bremen,* ECR [1998] I-07747, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61997CJ0001 (date of access: 08.07.2024).

27 Case C-171/95 *Recep Tetik v Land Berlin,* ECR [1997] I-00329, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61995CJ0171 (date of access: 08.07.2024).

during that period.

The national laws of the Member States regulate the entry, residence and first employment of the third country citizens in that country. The Decision #1/80 applies only to the Turkish citizens who have already started working in a Member State legally and to their family members. In other words, the Decision does not regulate the work permits but, regulates the extension of an existing permission[28]. With regard to the matters within its scope, the provisions of the Decision #1/80 take precedence of national legislation[29]. However, according to Art. 14 (2) of the Decision, if any, the favorable provisions of national laws or bilateral agreements between the Member States and Türkiye shall apply.

The Decision #1/80 does not entitle the family reunification right and therefore, entry and residence of family members are also subject to national laws as stated in *Kadıman*[30] and *Eyüp*[31] cases[32]. The "Council Directive 2003/86/EC of 22.09.2003 on the right to family reunification (Reunification Directive)"[33] filled this gap and the family of the Turkish workers may claim family reunification grounding on this Directive[34].

Residence right is not regulated under the association law but, acknowledged as a component of the employment right by the decisions of the ECJ in various

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28 Andrea Ott, "The Savas Case - Analogies between Turkish Self-Employed and Workers?" (2000) 2 European Journal of Migration and Law 445, 457; Baykal (n 9) 24; Bozbel (n 19) 355-356; Çiçekli (n 16) 318, 320-321; Erdenir (n 14) 480; Göçmen, *Uluslararası Hukukta Göç ve Vatandaşlık* (n 14) 57; Kaplan (n 14) 21; Fiona Kinsmann and Nuray Ekşi, *Avrupa Birliği'nin Kişilerin Serbest Dolaşımı Müktesebatı ve Türkiye'nin Uyumu* (İktisadi Kalkınma Vakfı 2002) 28; Özen and Can (n 14) 239, 244; Ümit (n 19) 269.

29 Bozbel (n 19) 357-358; Bülent Çiçekli, "Türk-AB Ortaklık Hukuku Çerçevesinde Türkiye'deki AB Vatandaşlarının Çalışma ve İkamet Hakları Üzerine Bir Değerlendirme" (1999) 19 (1-2) Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 213, 214-215, 221, 225; Bülent Çiçekli, *Yabancılar ve Mülteci Hukuku* (6th edn, Seçkin Yayıncılık 2016) 128-129; Bülent Çiçekli, *Yabancıların Çalışma İzinleri* (Türkiye İşveren Sendikaları Konfederasyonu Yayınları 2004) 65-68; Ergin (n 14) 48; Hamit Tiryaki, *Yabancıların Türkiye'de Çalışma İzinleri* (2nd edn, Bilge Yayınevi 2016) 106; Kaplan (n 14) 19, 21.

30 Case C-351/95 *Selma Kadiman v Freistaat Bayern,* ECR [1997] I-02133, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61995CJ0351 (date of access: 08.07.2024).

31 Case C-65/98 *Safet Eyüp v Landesgeschäftsstelle des Arbeitsmarktservice Vorarlberg,* ECR [2000] I-04747, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61998CJ0065 (date of access: 08.07.2024).

32 Özen and Can (n 14) 244-245.

33 [2003] OJ L 251/12.

34 Ümit (n 19) 234.

cases including *Sevince*[35], *Kuş*[36] and *Günaydın*[37]. When a Turkish migrant worker leaves working life permanently, the residence right expires as well[38]. In *Bozkurt*[39] case, the ECJ ruled that the rights of the Turkish migrant workers, who are permanently incapacitated for work, to remain in an EU Member State are governed exclusively by the national laws of the host state concerned. However, according to the "Council Directive 2003/109/EC of 25.11.2003 concerning the status of third-country nationals who are long-term residents (Directive on Long-term Residents)"[40], long term-residents may remain in the host country if their working life expires due to situations like retirement or incapacity to work. According to Art. 4 (1) of the Directive, Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years.

According to Art. 14 (1) of the Decision #1/80, the rights regulated under the association law can only be restricted on grounds of public policy, public security and public health parallel to Art. 45 (3) of the TFEU in compliance with the proportionality principle[41].

These detailed rights cannot be transposed automatically on the self-employed Turkish citizens. The national laws applicable to self-employment enumerate other criteria for setting up an independent business than working as a dependent for a company. In other words, the national laws of the Member States regulate the entry and residence of the self employed third country citizens in that country but, in compliance with the *standstill* principle[42].

Since services and establishment rights have a broader scope and the countries are sensitive with this respect, it is hard to achieve freedom of movement on these before full membership[43]. Freedom of establishment grants the right to

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35 Case C-192/89 *S. Z. Sevince v Staatssecretaris van Justitie,* ECR [1990] I-03461, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61989CJ0192 (date of access: 08.07.2024).

36 Case C-237/91 *Kazim Kus v Landeshauptstadt Wiesbaden,* ECR [1992] I-06781, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61991CJ0237 (date of access: 08.07.2024).

37 Case C-36/96 *Faik Günaydin, Hatice Günaydin, Günes Günaydin and Seda Günaydin v Freistaat Bayern,* ECR [1997] I-05143, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61996CJ0036 (date of access: 08.07.2024).

38 Özen and Can (n 14) 257; Ümit (n 19) 274-275.

39 Case C-434/93 *Ahmet Bozkurt v Staatssecretaris van Justitie,* ECR [1995] I-01475, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0434 (date of access: 13.08.2024).

40 [2004] OJ L 016/44.

41 Göçmen, *Avrupa ve Uluslararası Göç Hukuku* (n 14) 279.

42 Göçmen, *Uluslararası Hukukta Göç ve Vatandaşlık* (n 14) 58; Ott (n 28) 454.

43 Anonymous, *Avrupa Birliği'nin Hizmetlerin Serbest Dolaşımı ve Bankacılık Müktesebatı ve*

do business with no remuneration, to establish and govern enterprises and partnerships in another Member State under the same conditions as its own citizens. Freedom to provide services comprises industrial, commercial, craftsmen and self-employed activities, normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. The personal and material scope of these freedoms are set by the ECJ decisions[44].

Art. 41 (2) of the Additional Protocol of 1970 states that; "*The Association Council shall, in accordance with the principles set out in Arts. 13 and 14 of the Ankara Agreement, determine the timetable and rules for the progressive abolition by the Contracting Parties, between themselves, of restrictions on freedom of establishment and on freedom to provide services.*" Although 51 years passed upon entrance into force of the Additional Protocol of 1970, no decision was taken by the Association Council regarding the freedom of establishment and to provide services[45]. In this sense, the Turkish citizens are likely to feel that they are subjected to discrimination, since Türkiye is the only EU candidate country whose citizens still need a visa to travel to the EU[46].

C. OTHER DOCUMENTS

Upon acceptance of Türkiye as a candidate country, apart from the Ankara Agreement, the Additional Protocols and the Association Council Decisions, other documents, including "Negotiating Framework of 2005", "Accession Partnership Documents of 2001, 2003, 2006 and 2008", "National Programmes of 2001, 2003 and 2008", "National Action Plans of 2016-2019 and 2021-2023", "Türkiye-EU Common Action Plan of 2015", "Türkiye-EU Summit Statements of 2015 and 2016", "Statement of the EU Heads of State or Government of 2016", yearly country reports and enlargement strategy papers, were issued[47].

Negotiating Framework regulates the principles, substance and procedures of the negotiations to be realized for accession to the EU. Accession Partnership Documents set out the areas in which the candidate country needs to make progress in the short and medium term, based on the accession criteria. National Programmes show the obligations of the candidate country for adoption of the *acquis*. Similarly, National Action Plans are the main roadmaps in the accession process and reveal steps for the period covered in respect to legislative alignment,

Türkiye'nin Uyumu (İktisadi Kalkınma Vakfı 2004) 76; Kaya, (n 3) 122.

44 Ender Bozkurt and Arif Köktaş, *Avrupa Birliği Hukuku* (9th edn, Legem Yayınları 2024) 464.

45 Erdenir (n 14) 480; Karluk (n 19) 133, 167; Kutucu (n 2) 66; Özen and Can (n 14) 260.

46 Kaya (n 3) 122.

47 https://www.ab.gov.tr/main-documents_113_en.html (date of access: 09.07.2024).

as well as institutional and administrative measures. The EU-Turkey Summits held and the Joint EU-Turkey Action Plans activated first in 2015 to strenghten the dialogues and render joint decisions. Country reports are the annual reports prepared by the European Commission evaluating the progress achieved by the candidate countries with respect to the Copenhagen criteria. Similarly, enlargement strategy papers are the reports on progress towards accession by each of the candidate countries. In summary, all this documents are required to accelerate and monitor the course towards accession.

D. NON-DISCRIMINATION PRINCIPLE

The Turkish citizens working legally in an EU Member State are also entitled to the same working conditions as the citizens of that country.

According to Art. 9 of the Ankara Agreement; "*The Contracting Parties recognize that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty Establishing the Community.*"

Under Art. 37 of the Additional Protocol of 1970; "*As regards conditions of work and remuneration, the rules which each Member State applies to workers of Turkish nationality employed in the Community shall not discriminate on grounds of nationality between such workers and workers who are nationals of other Member States of the Community.*"

Art. 37 of the Additional Protocol of 1970 prohibits discrimination only for the Turkish citizens working in the EU but, the EU citizens may rely on Art. 9 of the Ankara Agreement which contains a general ban on discrimination on grounds of nationality[48].

Non-discrimination principle is also regulated by the Decision #1/80. According to Art. 10;

"*1. The Member States of the Community shall as regards remuneration and other conditions of work grant Turkish workers duly registered as belonging to their labor forces treatment involving no discrimination on the basis of nationality between them and Community workers.*

2. Subject to the application of Articles 6 and 7, the Turkish workers referred to in paragraph 1 and members of their families shall be entitled, on the same footing as Community workers, to assistance from the employment services in their search for employment."

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[48] İlke Göçmen and Orhan Ersun Civan, "The Principle of Non-Discrimination on Grounds of Nationality with regard to Turkish Workers in the European Union and Union Workers in Turkey" in Belgin Akçay and Şebnem Akipek (eds.), *Turkey's Integration into the European Union* (Lexington Books 2013) 95, 110-111.

In the case of *Commission v. Netherlands*[49], the ECJ found a national measure, contrary to the general rule of non-discrimination laid down in Art. 9 of the Ankara Agreement. It is therefore clear that the ECJ considers this provision directly effective. Besides, Art. 9 of the Ankara Agreement contains a clear and precise obligation (prohibition of discrimination on the grounds of nationality) which is not subject, in its implementation or effects, to the adoption of any subsequent measure[50]. In its preliminary ruling for the *Verfassungsgerichtshof (Austria)* [51], the ECJ interpreted Art. 10 (1) of the Decision #1/80 having direct effect in the Member States. Similarly the ECJ ruled in *Real Sociedad de Fútbol SAD and Nihat Kahveci*[52] case that Art. 10 (1) of the Decision #1/80, which repeats the rule laid down in Art. 37 of the Additional Protocol of 1970, lays down in clear, precise and unconditional terms a prohibition precluding the Member States from discriminating, on the basis of nationality, against Turkish migrant workers duly registered as belonging to their labor force as regards remuneration and other conditions of work.

E. STAND-STILL PRINCIPLE

Standstill principle means that a Member State can only amend its respective legislation in favor of the Turkish citizens. Otherwise, the Turkish citizens can demand the application of the more favorable provisions of the national laws existed at the date the instruments of the association law entered into force[53].

Art. 13[54] of the Decision #1/80, precludes the Member States from adopting new restrictive measures to the employment of the foreign workers already obtained residence and work permits. The *standstill* clause is also foreseen

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49 Case C-508/10 *European Commission v Kingdom of the Netherlands,* [2012] OJ C 174/7, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62010CJ0508 (date of access: 08.07.2024).

50 İlke Göçmen, "The Freedom of Establishment and to Provide Services: A Comparison of the Freedoms in European Union Law and Turkey-EU Association Law" (2011) 8 (1) Ankara Law Review 67, 86-87.

51 Case C-171/01 *Wählergruppe Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG, and Bundesminister für Wirtschaft und Arbeit and Others,* ECR [2003] I-04301, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:C2003/146/15 (date of access: 08.07.2024).

52 Case C-152/08 *Real Sociedad de Fútbol SAD and Nihat Kahveci v Consejo Superior de Deportes and Real Federación Española de Fútbol,* ECR [2008] I-06291, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CB0152 (date of access: 08.07.2024).

53 Kutucu (n 2) 63-64.

54 "*The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.*"

for freedom of establishment and to provide services under Art. 41 (1)[55] of the Additional Protocol of 1970.

The rights stemmed from the *standstill* clause were confirmed by some decisions of the ECJ namely, *T. Şahin*[56]*, F. Toprak and I. Oğuz*[57]*, C. Demir*[58] regarding the freedom of movement for workers and *Savaş*[59]*, Abatay and Şahin*[60]*, Tüm and Darı*[61]*, Soysal and Savatlı*[62]*, Tural Oğuz*[63]*, Leyla Ecem Demirkan*[64] regarding the freedom of establisment and to provide services. Accordingly, the Member States cannot bring heavier restrictions like, visa requirements and additional custom duties, after entry into force of the related documents of the association law. Otherwise, they impede the rights of Turkish citizens and therefore, act against the Association Agreement[65]. Even so, visa requirements for Turkish citizens have been reintroduced in some Member States such as the Netherlands, Belgium, France and Germany in 1980 in accordance with the "European Agreement on

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55 "*The Contracting Parties refrain from bringing new restrictions on the freedom of establishment and freedom to provide services of their citizens.*"

56 Case C-242/06 *Minister voor Vreemdelingenzaken en Integratie v T. Sahin,* ECR [2009] I-08465, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62006CA0242 (date of access: 06.08.2024).

57 Joint Cases C-300/09 and C-301-09 *Staatssecretaris van Justitie v F. Toprak and I. Oguz,* ECR [2010] I-12845, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CJ0300 (date of access: 06.08.2024).

58 Case C-225/12 *C. Demir v Staatssecretaris van Justitie,* [2014] OJ C 9/9, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CA0225 (date of access: 06.08.2024).

59 Case C-37/98 *The Queen v Secretary of State for the Home Department, ex parte Abdulnasir Savas,* ECR [2000] I-02927, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61998CJ0037 (date of access: 08.07.2024).

60 Joint Cases C-317/01 and C-369/01 *Eran Abatay and Others and Nadi Sahin v Bundesanstalt für Arbeit,* ECR [2003] I-12301, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62001CJ0317 (date of access: 08.07.2024).

61 Case C-16/05 *The Queen, Veli Tum and Mehmet Dari v Secretary of State for the Home Department,* ECR [2007] I-07415, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62005CJ0016 (date of access: 08.07.2024).

62 Case C-228/06 *Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland,* ECR [2009] I-01031, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0228&qid=1720455511118 (date of access: 08.07.2024).

63 Case C-186/10 *Tural Oguz v Secretary of State for the Home Department,* ECR [2011] I-06957, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62010CA0186 (date of access: 08.07.2024).

64 Case C-221/11 *Leyla Ecem Demirkan v Federal Republic of Germany,* [2011] OJ C 232/15, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CA0221 (date of access: 08.07.2024).

65 Kutucu (n 2) 65, 67-68.

Regulations governing the movement of persons between the Member States of the Council of Europe"[66] and the situation worsened for the Turkish citizens[67].

In *T. Şahin* case, the ECJ determined that the standstill clause in Art. 13 of the Decision #1/80 is of the same kind as that contained in Art. 41 (1) of the Additional Protocol of 1970 and that the objective pursued by those two clauses is identical and both should be interpreted equally.

In 2000 the ECJ, in Savaş case for the first time dealt with the establishment provisions. The case is about a couple who entered the UK with tourist visa. Although their entry visa carried an express condition prohibiting them from taking employment or engaging in any business or profession they started to operate a shirt factory. The Secretary of State refused the application for leave to remain and informed the couple of the intention to serve a deportation order to them. The Court reinforced that the *standstill* clause implies that Art. 41 (1) of the Additional Protocol of 1970 precludes a Member State from adopting any new measure having the object or effect of making the establishment and, as a corollary, the residence of a Turkish national in its territory subject to stricter conditions than those which applied at the time when the Additional Protocol of 1970 entered into force with regard to the Member State concerned and it is for the national court to determine whether the applied domestic rules are worsening the position of the applicant. In other words, the *standstill* clause is not in itself capable of conferring upon a Turkish national the benefit of the right of establishment and the right of residence.

In *Demirkan* case, the ECJ decided that in the association law, the freedom to provide services do not include the right to receive services. Because the freedom to provide services is interpreted and accepted as to include passive services in *Luisi and Carbone*[68] case long after the Ankara Agreement and the Additional Protocol of 1970 entered into force long before that.

In conclusion, the *standstill* clause does not necessarily lead to a right to a residence permit, national laws regulate the entry and residence of the individual. The national courts have to assess if the situation for the self-employed has worsened since the entry into force of the related provision in the association law[69].

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66 *https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=025* (date of access: 11.08.2024).

67 For the discussions see Göçmen, *Uluslararası Hukukta Göç ve Vatandaşlık* (n 14) 57-61; Ott (n 28) 457.

68 Joint Cases C-286/82 and C-26/83 *Graziana Luisi and Giuseppe Carbone v Ministero del Tesoro,* ECR [1984] 00377, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61982CJ0286 (date of access: 08.07.2024).

69 Ott (n 28) 457.

F. DIRECT EFFECT PRINCIPLE

According to the case law of the ECJ[70], direct effect of a provision means that it grants to individuals rights that can be invoked before national administrations and national courts which must be protected by them[71].

With regard to the direct effect of the association law, the Association Council can forward the respective disputes to the ECJ (Art. 25 of the Ankara Agreement)[72] or the Turkish citizens can request from the national courts to ask for a preliminary ruling of the ECJ (Art. 267 of the TFEU)[73].

On the other hand, direct applicability is about the application of the EU norms in the Member States. No implementation laws or no other local law mechanisms are required for the direct application of the EU Treaties and regulations. The respective case law changed in time in a way that the nationals can ground their rights on other norms such as the EU directives if these are eligible to have direct effect. In such cases, it is encountered that the Member State did not realize the necessities for the direct application of these instruments within the duration given[74]. Direct applicability thus makes direct effect possible, but the former will not automatically imply the latter. Direct effect is therefore narrower than direct applicability: all provisions of the EU law are directly applicable, whereas not all provisions of the EU law will have direct effect[75].

As per Art. 216 (2) of the TFEU, *"Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States"*. Accordingly, the international agreements form an integral part of the EU legal system, they would be directly applicable in the Member States and have the capacity to

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70 This principle was emerged in Case C-26/62 *van Gend en Loos v Netherlands Inland Revenue Administration,* [1963] ECR 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A61962CJ0026 (date of access: 11.08.2024).

71 Deniz Tekin Apaydın, "Monizm ve Düalizm İkileminde Türk Hukuk Sistemi: Uluslararası Hukuka Bakış Üzerine Doktrinel Uzlaşmazlığın Nedenleri ve AB Hukuku Işığında Bir Değerlendirme" (2018) 9 (1) İnÜHFD 529, 546.

72 "*1 . The Contracting Parties may submit to the Council of Association any dispute relating to the application or interpretation of this Agreement which concerns the Community, a Member State of the Community, or Turkey. 2. The Council of Association may settle the dispute by decision; it may also decide to submit the dispute to the Court of Justice of the European Communities or to any other existing court or tribunal.*"

73 Işıl Özkan, *Yabancıların Çalışma Hürriyeti ve Avrupa Topluluğunda Kişilerin Serbest Dolaşımı* (Kazancı Hukuk Yayınları 1987) 122-123.

74 Ahmet Güneş, *Avrupa Birliği Hukukuna Giriş* (5th edn, Ekin Yayınları 2022), 140; Apaydın (n 72) 547; İlke Göçmen, *Avrupa Birliği Hukukunun Temelleri* (2nd edn, Seçkin Yayıncılık 2023)396-397; Robert Schütze, "Direct Effects and Indirect Effects of Union Law" in Robert Schütze and Takis Tridimas (eds.), *Oxford Principles of European Law: European Legal Order V. I* (Oxford University Press 2018) 268.

75 Schütze (n 74) 268.

contain directly effective provisions[76]. Beginning with *Demirel*[77] and *Sevince* cases, the ECJ analysed the direct effect of the EU-Türkiye association law stating clearly that the Ankara Agreement and the secondary law constitute an integral part of the Community legal order[78]. Since then, the ECJ has discussed in its various cases if the foreign workers and their families have direct rights based on Art. 12 of the Ankara Agreement, Art. 36 of the Additional Protocol of 1970 and the Arts. 6-7 of the Decision #1/80.

Demirel case is about Mrs. Demirel who went to Germany to rejoin her husband. However, she did not possess a visa issued for family reunification but, only for a visit. Therefore, she faced an order to leave the country. The ECJ firstly stated that it had no jurisdiction to investigate the compatibility of the national rules on family reunification with Art. 8 of the "European Convention on Human Rights"79, since those rules were outside the scope of the Community law. After the adoption of the Reunification Directive, those national rules are considered within the scope of the Community law, and subject to review by both national courts and the ECJ. With regard to the application of the respective provisions of the association law, the ECJ decided that: "*A provision of an international agreement is directly effective when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. Article 12 and Article 36 of the Ankara Agreement essentially serve to set out a programme, whilst Article 7, which does no more than impose on the contracting parties a general obligation to cooperate in order to achieve the aims of the agreement, cannot directly confer on individuals rights which are not already vested in them by other provisions of the agreement.*"

In Sevince case, the ECJ ruled that Art. 6 (1) of the Decision #1/80 has direct effect in the Member States and Turkish nationals who satisfy its conditions may therefore rely directly on the rights given them by the various indents of this provision. *Sevince* case concerns Mr. Sevince who had obtained permission to stay in the Netherlands in order to be with his Turkish wife, who lived in the Netherlands. After he ceased living with his wife the Dutch authorities refused to extend his residence permit. This case has significant importance since it defined that the Ankara Agreement and the Decisions of the Association Council are a part of the Community legal order and the provisions of these instruments are directly applicable.

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76 Ibid 283.

77 Case C-12/86 *Meryem Demirel v Stadt Schwäbisch Gmünd,* ECR [1987] 03719, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61986CJ0012 (date of access: 08.07.2024).

78 Baykal (n 9) 14; Çiçekli (n 16) 315; Göçmen (n 7) 72-73; Ott (n 28) 445.

79 RG 19.03.1954/8662.

In the subsequent cases concerning these provisions, namely *Savaş, Abatay* and *Şahin*, *Tüm* and *Darı* and *Soysal* and *Savatlı* cases, the ECJ clarified the interpretation of Arts. 1380 and 1481 of the Ankara Agreement regarding self-employed persons.

In *Savaş* case, The ECJ interpreted Art. 13 of the Ankara Agreement and Art. 41 (2) of the Additional Protocol of 1970 stating that they do not constitute rules of the Community law that are directly applicable in the internal legal order of the Member States but, accepted that Art. 41 (1) has direct effect in the Member States.

In *Soysal and Savatlı* case, it paved the way for certain Turkish citizens to travel to some of the Member States without a visa which was met with rousing enthusiasm in Türkiye[82].

II. REGULATIONS IN THE TURKISH FOREIGNERS LAW CONCERNING THE EU CITIZENS

A. GENERAL

The association law examined in Part I[83] of our study is not only applied to the Turkish citizens living in the EU but, also to the EU citizens living in Türkiye and provides convenience in their employment. According to Art. 11 of the Decision #1/80; "*Nationals of the Member States duly registered as belonging to the labor force in Turkey, and members of their families who have been authorized to join them, shall enjoy in that country the rights and advantages referred to in Articles 6, 7, 9 and 10 if they meet the conditions laid down in those Articles.*"

Since neither the entrance rights nor the employment rights of foreign workers are regulated and only the EU citizens already working in the Turkish market are covered by the Decision #1/80, the necessities foreseen in the Turkish foreigners law for entrance, residence and employment should be complied with. Only after obtaining the permits accordingly, the facilities provided in the association law are activated[84].

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80 "*The Contracting Parties agree to be guided by Articles 52 to 56 and Article 58 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom of establishment between them.*"

81 "*The Contracting Parties agree to be guided by Article 55, 56 and 58 to 65 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom to provide services between them."*

82 Göçmen (n 51) 72.

83 See Part I "EU-Türkiye Association Law", Chapter B "Association Council Decisions" above.

84 Çiçekli, *Yabancıların Çalışma İzinleri* (n 29) 69; Ergin (n 14) 52; Tiryaki (n 29) 106.

The EU citizens who want to obtain residence and work permits in Türkiye should comply with the general principles and rules of the Turkish foreigners law like the other countries' citizens. The difference of the EU citizens from the other countries' citizens is that they are exempt from some formalities. It should be noted that the provisions of the Decision #1/80 take precedence of national rules[85]. On the other hand, according to Art. 14 (2) of the Decision, if any, the favorable provisions in national laws or bilateral agreements between the Member States and Türkiye shall apply.

Ankara Agreement and the Additional Protocol of 1970 constitute an integral part of the Turkish law but, the status of the Association Council decisions is under discussion[86]. The international agreements of Türkiye which are enforced in compliance with the procedure foreseen under Art. 90 (5) of the Turkish Constitution #2709 of 18.10.1982[87], have the same strength and applicability with the Turkish laws. The citizens may claim their rights arisen from the said international agreements before the Turkish courts. The Turkish courts have an affirmative practice in resolving the disputes according to the said international agreements including the EU-Türkiye association law[88]. Furthermore, in interpretation of the association law instruments, the Turkish courts may consider the respective decisions of the ECJ but, they are not binding on them[89].

According to the *standstill* clause mentioned in Art. 13 of the Decision #1/80, Türkiye can only amend its foreigners law in favor of the EU citizens. Otherwise, the EU citizens can demand the application of the more favorable provisions existed at the enforcement date of the Decision[90]. An identical *standstill* clause is foreseen as per Art. 41 (1) of the Additional Protocol of 1970 for freedom of establishment and to provide services. Accordingly, the Member States and Türkiye refrain from bringing new restrictions on the freedom of establishment and freedom to provide services of their citizens.

The "Foreigners and International Protection Act #6548 of 04.04.2013 (Foreigners Act)"[91] and the "Regulation on the Foreigners Act"[92], cover and

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85 Bozbel (n 19) 357-358; Çiçekli, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni (n 29) 213, 214-215, 221, 225; Çiçekli, *Yabancılar ve Mülteci Hukuku* (n 29) 128-129; Çiçekli, *Yabancıların Çalışma İzinleri* (n 29) 65-68; Ergin (n 14) 48; Tiryaki (n 29) 106; Kaplan (n 14) 19, 21.

86 Göçmen (n 7) 91-97.

87 RG 09.11.1982/17863.

88 Özen and Can (n 14) 371.

89 Çiçekli, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni (n 29) 216-217, 230; Çiçekli (n 8) 84.

90 Çiçekli, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni (n 29) 219-220.

91 RG 11.04.2013/28615.

92 RG 17.03.2016/29656.

regulate such areas as the right to enter in and leave Türkiye, issuance of residence permits, right to asylum, deportation.

The "International Labor Force Act #6735 of 28.07.2016 (ILF Act)"[93] and the "Regulation on the ILF Act"[94], regulate the determination, application and monitoring of the policies related to employment of international labor force as well as the procedures and principles and the responsibilities and authority related to processes and transactions to be followed on work permits and work permit exemptions granted to foreigners and to regulate the rights and obligations in the field of employment of international workforce.

According to the ILF Act Art. 2 (1), the Act applies to foreigners who applied to work or actively working in Türkiye; foreigners applied to receive or already receiving vocational training with an employer; cross-border service providers staying in the country for the purpose of providing temporal service; and real persons and legal entities applied to employ or employing foreigners in Türkiye. According to pr. (3), this Act shall be implemented without prejudice to provisions of international bilateral or multilateral agreements to which Türkiye is a party. As it is expressly stated in this Article, the working rights of the EU citizens which are guaranteed by the association law should be considered first but, the more favored provisions of the ILF Act, if any, shall be applied.

In order to regulate the principles to encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standards; to establish a notification-based system for foreign direct investments rather than screening and approval; and to increase foreign direct investments through established policies, the "Foreign Direct Investments Act #4875 of 06.06.2003 (FDI Act)"[95] and the "Regulation on the FDI Act"[96] have been enacted. According to the "Regulation on the Key Staff Working in the FDI (Key Staff Regulation)"[97], the work permits of the key staff to be occupied by the investments considered special are subject to a simplified regime.

Apart from the matters regulated by the above-mentioned laws, the "Labor Act #4857 of 22.05.2003"[98] will be applicable, except for the exceptions in the Labor Act Art. 4[99], to the employment relationships of foreign employees working in Türkiye.

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93 RG 13.08.2016/29800.

94 RG 02.02.2022/31738.

95 RG 17.06.2003/25141.

96 RG 20.08.2003/25205.

97 RG 29.08.2003/25214.

98 RG 10.06.2003/25134.

99 "*The provisions of this Act shall not apply to the activities and employment relationships mentioned below:*
a) Sea and air transport activities.

Refugees, conditional refugees and subsidiary protection beneficiaries as well as persons under temporary protection are excluded from the scope of this second part of our study.

B. RESIDENCE PERMIT AND RESIDENCE PERMIT EXEMPTION

According to the Foreigners Act Art. 19 (1), "*The foreigners who would stay in Türkiye beyond the duration of a visa or a visa exemption or, in any case longer than ninety days should obtain a residence permit. The residence permit shall become invalid if not used within six months.*"

According to the Foreigners Act Art. 20 (1), some foreigners are exempt from obtaining residence permit. Among them, we should mention; "*c) members of the diplomatic and consular missions in Türkiye, ç) family members of diplomatic and consular officers, provided they are notified to the Ministry of Foreign Affairs, d) members of the representations of international organizations in Türkiye whose status has been determined by virtue of agreements, e) persons who are exempt from a residence permit by virtue of international agreements which Türkiye is a party to.*"

According to the Foreigners Act Art. 21 (1), applications for residence permits shall be lodged with the consulates in the foreigner's country of citizenship or legal stay. According to pr. (5), the assessment of the applications shall be finalized in no later than ninety days. The foreigners are obliged to register to the "Address Registration System" within the latest twenty days from the date they have entered the country.

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b) In establishments and enterprises employing a minimum of 50 employees (50 included) where agricultural and forestry work is carried out.
c) Any construction work related to agriculture which falls within the scope of family economy.
d) In works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3rd degree (3rd degree included).
e) Domestic services.
f) Apprentices, without prejudice to the provisions on occupational health and safety.
g) Sportsmen.
h) Those undergoing rehabilitation.
i) Establishments employing three or fewer employees and falling within the definition given in the Tradesmen and Small Handicrafts Act Art. 2,
However, the following shall be subject to this Act:
a) Loading and unloading operations to and from ships at ports and landing stages.
b) All ground activities related to air transport.
c) Agricultural crafts and activities in workshops and factories manufacturing implements, machinery and spare parts for use in agricultural operations.
d) Construction work in agricultural establishments.
e) Work performed in parks and gardens open to the public or subsidiary to any establishment.
f) Work by seafood producers whose activities are not covered by the Maritime Labor Act and not deemed to be agricultural work."

According to the Foreigners Act Art. 22 (1), in some cases applications for residence permits may exceptionally be lodged in Türkiye. Among the ones listed we should mention the ones who apply for; "*c) long-term residence permits, f) changing from a family residence permit to a short-term residence permit, h) residence permit applications lodged within the scope of Art. 20 (2).*" According to Art. 20 (2), in cases the foreigners listed in subparagraphs (c), (ç), (d) and (e) of pr. (1) wish to stay in Türkiye, after the end of their status that entitled them to exemption from a residence permit, shall apply to the governorates within ten days to obtain a residence permit.

According to the Foreigners Act Art. 27 (1), work permit and work permit exemption confirmation documents shall be considered as residence permit.

According to the Foreigners Act Art. 28 (1), "*For the purposes of this Act, any stay outside of Türkiye exceeding a total of six months within one year or a total of one year within the last five years for reasons other than compulsory public service, education or health shall be considered interruption of residence.*"

Under the Foreigners Act Art. 30, the types of residence permits are listed as: "*a) Short-term residence permit, b) Family residence permit, c) Student residence permit, ç) Long-term residence permit, d) Humanitarian residence permit, e) Victim of human trafficking residence permit.*"

Among the ones who are qualified for short-term residence permit under the Foreigners Act Art. 31 (1), we should mention the ones who; "*a) arrive to conduct scientific research, b) own immovable property in Türkiye, c) establish business or commercial connections, i) apply within six months upon graduation from a higher education programme in Türkiye, j) do not work in Türkiye but will make an investment within the scope and amount that shall be determined by the Turkish President, and their foreign spouses, his and her minor children or foreign dependent children, ğ) transfer from a family residence permit.*" They are granted for a maximum of two years except for sub pr. (j) which is granted for a maximum of five years. The duration can be extended.

According to the Foreigners Act Art. 34 (1), a family residence permit for a maximum duration of three years at a time may be granted to: "*a) foreign spouse, b) foreign children or foreign minor children of their spouse, c) dependent foreign children or dependent foreign children of their spouse of; the Turkish citizens, persons within the scope of the 'Turkish Citizenship Act #5901 of 29.05.2009'*[100] *Art. 28 or foreigners holding one of the residence permits as well as refugees and subsidiary protection beneficiaries.*"

According to the Foreigners Act Art. 42 (1), "*A long-term residence permit shall be issued by the governorates, upon approval of the Ministry of Internal*

[100] RG 12.06.2009/27256.

Affairs, to foreigners that have continuously resided in Türkiye for at least eight years on a permit or, foreigners that meet the conditions set out by the Migration Policies Board."

C. WORK PERMIT AND WORK PERMIT EXEMPTION

As a rule, foreigners cannot work in Türkiye without a work permit or work permit exemption; administrative fines will be imposed on both the employee and the employer for work performed contrary to this, as stipulated in the ILF Act Art. 23.

According to the ILF Act Art. 7 (1), "*Work permit applications in Türkiye shall be made directly to the Ministry of Labor and Social Security and the applications abroad shall be made to the embassies or consulate generals of the Republic of Türkiye in the foreigner's country of citizenship or legal stay.*" It is important to note that, foreigners with a valid residence permit of minimum six months in total and employers who want to employ such foreigners can apply for a domestic work permit. According to pr. (3), "*A work permit can be extended on condition that the application is made within sixty days prior to the expiration of the work permit.*" According to pr. (8), "*Duly made application shall be assessed within thirty days on condition that information and documents are complete.*" According to the ILF Regulation Art. 15 (3), "*Some foreigners who are determined by the Directorate General of International Labor Force can apply for work permit without a valid residence permit.*"

According to the ILF Act Art. 8, "*(1) Obtaining preliminary permission is compulsory on the assessment of work permit applications of foreigners seeking to work in healthcare and educational services that require professional competence. (2) Preliminary permission for professionals of healthcare services shall be granted by Ministry of Health, and for professionals of educational services shall be granted by Ministry of National Education... (3) On the assessment of foreigners' work permit applications that are granted preliminary permission, the first paragraph, subparagraph (d) of Art. 9 of this Act is not applicable. (4) Work permits of foreign national faculty members who are to work within the scope of Art. 34 of the 'Higher Education Act #2547 of 04.11.1982'*[101] *shall be granted by the Ministry of Labor and Social Security relying on the preliminary permission of Higher Education Council. On the work permit assessment of above said faculty members, fourth, fifth and sixth paragraph of Art. 7, and the first paragraph of Art. 9 without prejudice to subparagraph (f), (g) and (ğ) are not applicable.*"

Among the applications that shall be rejected we put an emphasis on; ç) the applications made for occupations and professions confined exclusively to

[101] RG 06.11.1981/17506.

the Turkish citizens in other laws and g) the applications made by foreigners whose employment is objectionable on grounds of public order, public security or public health [ILF Act Art. 9 (1)].

According to the ILF Act Art. 10 (1), foreigners are granted with a work permit valid for a maximum of one year, provided that it does not exceed the duration of the employment contract. In a relevant decision[102], the Turkish Court of Cassation ruled that: "*...since the plaintiff worked with temporary permits, there is a substantial reason to make a fixed-term employment contract, and the renewed fixed-term employment contract will not become indefinite...*" In other words, in case of renewal of the temporary work permits, the employment contract will not turn into an indefinite-term employment contract. However, if the foreign worker has obtained a permanent work permit, the contract will be accepted as an indefinite-term employment contract. In a fixed-term employment contract, the foreign worker will be deprived of certain rights. For instance, severance and notice pay will not be possible when the fixed-term employment contract ends and the foreign worker is not covered by job security[103].

According to the ILF Act Art. 10 (2), "*a foreigner serving under same employer will be given upmost two years extension on the first application and maximum three years for the ensuing applications. However, applications lodged for employment under different employer shall be assessed as per first paragraph of this Article.*" According to pr. (3), "*foreigners holding long-term residence permit or minimum eight years of legal work permit may apply for permanent work permit.*"

According to Art. 6 (1) of the Decision #1/80, after one year of employment the Turkish workers can renew their permits on condition that they work for the same employer. After three years, they are entitled to change their employers on condition that they remain in the same occupation. After four years, they enjoy free access to any paid employment. There are no such restrictions foreen under the ILF Act but, the applications for renewal of work permits are considered as a new work permit application if the employer changes. A new work permit is granted for upmost a year whereas renewals are provided for up to two-three years.Therefore, if the foreign worker plans to change his/her employer or occupation within four years of his/her employment he/she shall rely on the ILF Act.

According to Art. 4 (1) of the Directive on Long-term Residents, the Member States shall grant long-term resident status to third-country nationals who have

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[102] 9th Civil Chamber, 11.10.2005, Main # 2005/12936, Decision #2005/33070.

[103] Gül Setenay Horuztepe, *Türkiye'de Çalışan Yabancıların İş Kanunu'ndan Kaynaklanan Hak ve Görevleri,* Aile Çalışma ve Sosyal Hizmetler Bakanlığı Expert Thesis (2021), https://www.csgb.gov.tr/media/89560/gul-setenay-horuztepe_turkiye-de-calisan-yabancilarin-is-kanunundan-kaynaklanan-hak-ve-yukumlulukleri-1.pdf (date of access: 25.07.2024), 91-93.

resided legally and continuously within its territory for five years. Since this Directive is not an association law instrument, Art. 42 (1) of the Foreigners Law will be applied to the EU citizens in Türkiye. Accordingly, a long-term residence permit shall be issued to foreigners that have continuously resided in Türkiye for at least eight years on a permit or to foreigners that meet the conditions set out by the Migration Policies Board.

According to the ILF Act Art. 10 (4), "*foreigners holding permanent work permit shall benefit from the same rights long-term residence permit provide. Holders of permanent work permit, without prejudice to acquired rights with respect to social security and provided that they are subject to conditions set forth in applicable legislation in the enjoyment of these rights, shall benefit from the same rights as accorded to the Turkish citizens with the exception of the provisions in laws regulating specific areas. Those foreigners have no right to elect and be elected, to enter into public service, to import motor vehicles and house goods and they have no obligation of compulsory military service.*"

According to the ILF Act Art. 10 (5), "*managing partner of limited liability companies, partners of joint-stock companies who are also member to board of directors and acting (commandite) partners of commandite companies with a capital divided into shares which are established under the 'Turkish Commercial Act #6102 of 13.01.2011 (Commercial Act)'*[104] *may work by obtaining a work permit.*" On the other hand, according to the ILF Act Art. 13 (7), "*board members of joint-stock companies and non-executive partners of other companies shall be assessed in the scope of work permit exemption.*"

According to the ILF Act Art. 10 (6), "*foreign members of profession might be granted independent work permit provided that they satisfy the special terms set forth in other laws.*" According to pr. (7), "*in the assessment of independent work permit application with respect to international labor force policy, foreigners' educational level, professional experience, contribution to science and technology, effect in-country activities or investments on Türkiye's economy and employment, and in case of being foreign company partner the share of capital and other issues determined by Ministry Labor and Social Security in line with the suggestions of International Labor Force Policy Advisory Board shall be taken into consideration.*" According to pr. (8), "*independent working permit shall be arranged for a defined period of time without being subject to period restrictions in this Article.*" Apparently, the ILF Act does not only cover the dependent foreign workers but also the ones who wish to work independently on his/her own behalf and account in Türkiye in line with the freedom of establishment and to provide services as mentioned in the association law.

104 RG 14.02.2011/27846.

According to the ILF Act Art. 11, "*(1) in line with the international labor force policy, foreigners whose application accepted as appropriate with regard to their educational level, professional experience, contribution to science and technology, effect of their in-country activities or investments on Türkiye's economy and employment, and the suggestions of International Labor Force Policy Advisory Board and procedures and principles determined by the Ministry of Labor and Social Security shall be granted Turquoise Card. (2) Turquoise Card shall be given on condition that its first three years will be deemed as transition period. The Ministry of Labor and Social Security may request information and documents from employer or employed foreigner as regard to conducted activities. In case Turquoise Card is not canceled pursuant to Art. 16 within transition period, the transition period reservation that put on in shall be removed upon foreigner's application and he shall be granted permanent Turquoise Card... (3) Turquoise Card owner's spouse and children who are dependent in line with governing legislation shall be given a document that substitutes the residence permit and shows that they are relatives of Turquoise Card owner. (4) Turquoise Cards owners shall benefit from the same rights provided by permanent work permit arranged in this Act.*"

According to the ILF Act Art. 12 (1), "*work permit or work permit exemption granted under this Act shall be deemed as residence permit pursuant to the Foreigners Act Art. 27. However, foreigners are obliged to register to the 'Address Registration System' within the latest twenty days from the date they have entered the country.*" According to pr. (2), "*a foreigner who is granted work permit upon his/her application abroad must come to Türkiye within six months after the date of work permit's validity starts. Otherwise the residence permit shall be cancelled.*" According to pr. (3), "*without prejudice to the rights provided by the bilateral or multilateral agreements to which Türkiye is a party and within the framework of reciprocity principle, the work permits may be restricted for a certain time in agriculture, industry or service sectors and for a certain profession, job or territorial and geographical area, in cases where the conditions in business market and developments in the labor life, sectorial and economic conjuncture conditions regarding employment require.*" As it is expressly stated in this Article, the working rights of the EU citizens in Türkiye are guaranteed by the association law and not likely to be adversely affected from the said situations.

According to the ILF Act Art. 13 (1), foreigners who are in the scope of work permit exemption (ILF Regulation Art. 48)[105] may work, provided that they obtain

[105] "*(1) Save for the provisions in the special laws and liabilities of the foreigner and employer arising from the other laws,*
1) Foreigners who will work within the framework of scientific, cultural and artistic activities, for up to one month.

a work permit exemption. As per pr. (6), "*duration spend under work permit*

2) *Foreigners who will come to Türkiye for training with respect to the use of the goods and services exported from Türkiye or imported to Türkiye or to provide training eith respect to the assembly, maintenance and repair of the goods and services imported to Türkiye or to receive the equipment or for the repair of the vehicles broke down in Türkiye, for up to three months in total.*
3) *Cross-border service provider foreigners, for up to three months.*
4) *Members of the board of director of the joint stock companies established as per the Act #6102 not residing in Türkiye and non-management partners of the other companis and foreigners to work in Türkiye and non-management partners of the other companies and foreigners to work in Türkiye authorized to represent and bind at the highest level despite of not being a partner in these relevant companies, for up to three months.*
5) *Those who will work in Türkiye among the foreigners residing abroad and determined as Turkish origin by the Ministry of Interior or Foreign Affairs, for up to three months.*
6) *Foreigners who will work within the framework of sportive activities, for up to four months.*
7) *Foreigners who will do internship within the framework of the student exchange programs made between Turkish universities and universities in the foreign countries and approved by the Council of Higher Education, for up to four months.*
8) *Foreigners who will work in the seasonal agriculture and animal husbandry works determined by the Directorate General, for up to six months.*
9) *Foreigners who will work in the fairs and circuses active outside the licensed torism establishments, for up to six months.*
10) *Foreigners determined to provide significant service and contribution to Türkiye in the economic, socio cultural and technological areas and areas of education by the relevant public institutions and organizations, for up to six months.*
11) *Foreigners who will work as tour opearator representative, for up to eight months,*
12) *Foreigners who will do internship within the framework of the intern student exchange, newly graduated intern exchange or youth exchange programs approved by the Directorate General, for up to twelve months.*
13) *Foreigners who will come to Türkiye to carry out researches in the universities and public institutions and organizations or increase their knowledge and experiences, as to be limited with the period of study and in any case, up to two years.*
14) *On condition of the assent of the Ministry of Youth and Sports of Turkish Football Federation, foreign professional sportspersons and trainers coming to Türkiye with the visa annotated for sports and sports phsician, sport physiotherapist, sports mechanician, sports masseuse or masseur and similar sports staff foreigners, during the term of the agreements with the sports federations and sports clubs.*
15) *As per the bilateral protocols made with the states according to 1/10 Principle of the on Standards of Training, Certification and Watchkeeping for Seafarers, foreign seafarers appointed in the ships which have received Certificate of Conformity, are registered to Turkish International Ship Registry and are working outside the cabotage line, during the term of the employment or service agreement.*
16) *Foreigners appointed in the programs or projects carried out within the framework of Türkiye-European Union Financial Co-operation programs, during the term of office.*
17) *Those required to do compulsory internship within the framework of the vocational training as per the relevant legislation among the foreign students enrolled to a formal eduction program in Türkiye, during the term of compulsory internship.*
18) *Foreigners appointed in schools and instituttions of culture and institutions of religion not regarded as an organizational unit of the diplomatic and consular representations of the foreign countries in Türkiye, during the term of office.*

exemption shall not be taken into account on calculation of legal work permit or residence permit periods." As per pr. (7), "*cross-border service provider whose in-country activities not exceeding ninety days within the period of hundred and eighty days shall be assessed in the scope of work permit exemption.*" According to the ILF Regulation Art. 50 (2), "*the work permit exemption applications made for three months and longer are evaluated by the Ministry of Labor and Social Security.*"

Art. 14 of the ILF Act regulates the work permit applications which will be made to the Ministry of Foreign Affairs. According to pr. (1), "*foreigners may work in schools, cultural institutions, institutions of religion belong to foreign diplomatic missions and consulates in Türkiye by; a) obtaining a work permit exemption for working in those that operate as associated unite of said foreign missions, b) obtaining a work permit for working in those that are not deemed as associated unite of said foreign missions according to the 'Vienna Convention on Diplomatic Relations' of 18.04.1961 and the 'Vienna Convention on Consular Relations' of 24.04.1963."* According to pr. (2), "*some relatives and the employees who are at special service of; diplomatic staff, consulate officer, administrative and technical staff and consulate attendant in foreign diplomatic missions and consulates in Türkiye and of international officials and administrative and technical staff in international organizations in Türkiye may work.*" Requirements for those are as follows: "*a) Spouses and children, and relatives determined according to reciprocity principle or bilateral agreements with the relevant country, should obtain a work permit, without prejudice to provisions as regard to work permit exemption mentioned in this Act and in relevant bilateral agreements and legislation. b) Foreigners employed for private services should obtain work permit exemptions.*"

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19) *Diplomatic staff member, consular officer, administrative and technical staff member and consular assistant in the diplomatic and consular representations of the foreign countries in Türkiye and foreigners appointed as international official, administrative and technical staff and service staff in the international institutions in Türkiye, during the term of the employment and service agreement.*
20) *Foreigners who will work in the military factory and shipyards operating within the body of the Ministry of National Defense and Makine ve Kimya Endüstrisi Joint Stock Company, during the term of the employment or service agreement.*
21) *Foreign national staff, researchers and administrators who will work within the body f Turkish Japanese Science and Technology University established with the Act on the Establishment of Turkish Japanese Science and Technology University #7034 of 18.06.2017, during the term of the employment agreement.*
22) *Foreigner receiving specialty training as per the Regulation on Specialty Training in Medicine and Dentistry published in the Official Journal 26.04.2014/28983, during the term of the training, are evaluated within the framework of the work permit exemption.*"

A family residence permit for a maximum duration of three years at a time is granted to the spouses and children of the EU citizens who are working in Türkiye. A short-term residence permit for a maximum five years is granted to the spouses and children of the foreigners who will make an investment in Türkiye. A residence permit exemption is provided to the family members of diplomatic and consular officers. However, no work permit exemption is foreseen and therefore, the spouses and children of the working EU citizens are required to obtain a work permit individually if they wish to work. We believe the restrictions foreseen in Art. 7 of Decision #1/80 should not be applied. Otherwise, they should wait for three to five years to be employed in Türkiye.

According to the ILF Act Art. 16 (1) (e), "*citizens of the countries that are member of the EU are granted work permit exceptionally. They are exempt from some requirements and conditions stated in Arts. 7, 9 and 10."* Furthermore, qualified labor force (pr. a), qualified investors (pr. b), persons who are married to a Turkish citizen and living in Türkiye together (pr. g), cross-border service providers (pr. ı) are also listed as beneficiaries of exceptional work permits among others in the list. It is obvious that the Turkish foreigners law provides convenience to the EU citizens beyond the association law.

According to the ILF Act Art. 18 (1), "*work permit applications of foreigners planning to work in free trade zones in the scope of 'Free Trade Zone Act #3218 of 06.06.1985'*[106]*, shall be made to Ministry of Economy.*"

According to the ILF Act Art. 20 (1), "*foreigners who have assumed the title of engineer and architect by graduating from engineering or architecture faculty of a Turkish university or from the said faculties of foreign universities which are recognized by relevant country authorities abroad and the Higher Education Council in Türkiye may practice their professions by obtaining project-based and temporary work permit.*"

According to the Key Staff Regulation[107], "*the work permits of the key staff to be occupied by the qualified foreign direct investments are subject to a simplified regime. The credentials of such investments and their key staff are listed under Art. 4 of the Regulation.*"

Accordingly, a company or branch must meet at least one of the following criteria to be considered as a qualified foreign direct investment for the year 2024[108]:

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106 RG 15.06.1985/18785.

107 RG 29.08.2003/25214.

108 https://www.csgb.gov.tr/uigm/genel-bilgi/dogrudan-yabanci-yatirimlar/ (date of access: 02.01.2024).

"*a) The turnover of the company or branch must be at least 913 million TL in the past year provided that the total capital share of the foreign shareholders is at least 12.150.526 TL.*

b) Exports of the company or branch must be at least 1 million USD in the past year provided that the total capital share of the foreign shareholders is no less than 12.150.526 TL.

c) The company or branch must employ at least 250 employees registered with the Social Security Institution in the past year provided that the total capital share of the foreign shareholders is at least 12.150.526 TL.

d) If the company or branch will make an investment, the minimum fixed investment amount must be at least 303 million TL.

e) The company must have foreign direct investment in at least one other country other than the one where its headquarters is located."

Employees of a company incorporated in Türkiye having a legal personality are referred to as key staff on condition that they meet at least one of the following criteria:

"*a) Those serving as a company shareholder, chairman of the board of directors, member of the board of directors, general manager, deputy general manager, executive, assistant executive or similar positions, with the authority or role in at least one of the following:*

1) A senior management or executive position in the company.

2) Managing the whole or a part of the company.

3) Supervising or controlling the work of the company auditors or administrative or technical staff.

4) Hiring new employees or terminating the employment of existing employees, or making proposals concerning these issues

b) A person with critical knowledge of the services, research devices, techniques, or management of the company.

c) A maximum of one person at liaison offices who is issued an authorization certificate by the overseas parent company."

According to Art. 6 of the Key Staff Regulation, "*the Ministry of Labor and Social Security grants work permit to a maximum of one person at liaison offices which activate within the Foreign Direct Investment Act, on condition that they brought at least 200.000 USD or equal amount of exchange from abroad in the last year. Furthermore, it is provided that they have obtained an operating license from the General Directorate of Incentives Implementation and the Foreign Capital of the Ministry of Industry and Technology, limited to the duration of their activities.*"

D. THE SECTORS AND PROFESSIONS PROHIBITED TO FOREIGNERS

In Turkish law, some sectors and professions are prohibited to the foreigners. Therefore, the applicants should hold Turkish citizenship for these jobs. According to the "Act #2527 of 25.09.1981", only the foreigners (therefore EU citizens) of Turkish descent are exempt from prohibitions but, they cannot work for the Turkish Military Forces and Security Organization.

The restrictions brought by the EU countries are mostly related to the entrance to the country. On the other side, the EU citizens do not face visa problems but, face restrictions on employment in Türkiye[109].

When Türkiye becomes a full member to the EU, this citizenship criteria would be brodened in a way to include the EU citizens for harmonization with EU law. In other words, the EU citizens will be able to work in all sectors and professions in Türkiye except for the public services as foreseeen in Art. 48 of the EEC Agreement (now Art. 45 of the TFEU)[110].

The sectors and professions where foreign employees cannot work are regulated by different laws as follows[111]:

- *Civil Servant (*Act #657 of 14.07.1965 Art. 48).

- *Notary* (Act #1512 of 18.01.1972 Art. 7).

- *Judge and Prosecut*or (Act #2802 of 24.02.1983 Art. 8).

- *Advocate.* However; foreigners and foreign advocacy partnerships (including the Turkish lawyers employed) seeking to operate in Türkiye within the framework of Art. 44 can provide consultancy services on foreign legal legislation and international law issues. In such a partnership of lawyers, partners are not required to be registered with the bar (*Act* #1136 of 19.03.1969 Art. 3).

- Mediator (Act #6325 of 07.06.2012 Art. 20).

- Expert Witness (Act #6754 of 03.11.2016 Art. 12).

- Condordat Commissioner (By-law published in the RG 30.01.2019/30671 Art. 4).

- Chief Assistant Manager of International Private Schools (*Act* #5580 of 08.02.2007 Art. 8).

- Turkish and Turkish Cultural Teacher at Minority Schools (Act #6581 of 20.05.1955 Art. 1).

- *Private Hospital M*anager (Act #2219 of 24.05.1933 Art. 9).

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109 Kinsmann and Ekşi (n 28) 34.

110 Ibid 32-34.

111 https://www.csgb.gov.tr/uigm/calisma-izni/turk-vatandaslarina-hasredilen-meslekler/ (date of access: 02.01.2024).

- *Veterinarian* (Act #6343 of 09.03.1954 Art. 2).

- *Pharmacist* (Act #6197 of 18.12.1953 Art. 2), *Dentist (*Act #1219 of 11.04.1928 Art. 30), *Nursing Caregiver (*Act #1219 of 11.04.1928 Art. 63), Foreign Assistant Medical Doctor, ones under specialized training are excluded (By-law published in 03.09.2022/31922 Art. 14). According to the By-law published in 22.02.2012/28212 Art. 5 (1), the health professionals other than the ones listed above can work in the private health institutions on condition that; (a) Their equivalency of the diplomas and/or expert certificates are recognized and registered by the Ministry of Health, (b) They bear no legal obstacles to fulfill the profession, (c) They can speak Turkish, (ç) They obtained work and residence permits according to the related legislation, (d) Regarding the medical doctors, they have compulsory financial responsibility insurance.

- Financial Consultant (Act #3568 of 01.06.1989 Art. 4).

- *Customs Assistant Consultant* (Act #4458 of 27.10.1999 Art. 27).

- *Tourist Guide (*Act #6326 of 07.06.2012 Art. 3).

- Board Member of Cooperative Partnerships (Act #1163 of 24.04.1969 Art. 56).

- *Private Security Offi*cer (Act #5188 of 10.06.2004 Art. 10).

- Founder, Executive, Trainer and Representative appointed by the Legal Person Shareholder of the Private Security Companies (Act #5188 of 10.06.2004 Art. 5).

- Market and Neighborhood Guard (Act #7245 of 11.06.2020 Art. 3)

- Aviation Information Management Trainee Officer (By-law published in the RG 14.06.2017/30096 Art. 16).

- Honorary Traffic Inspector (Act #2918 of 13.10.1983 Additional Art. 6).

- Transportation Work Organizer (By-law published in the RG 27.08.2022/31936 Art. 7).

- Person in Charge of Agency and Travel Agency (Act #1618 of 14.09.1972 Art. 3).

- Exporter of Fish, Oyster, Mussel, Sponge, Pearl and Coral; Diver, Searcher, Pilot, Captain, Mechanic, Clerk, Crew, etc. within the Internal Waters (Act #815 of 19.04.1926 Art. 3).

- Sports Consultant (By-law published in the RG 03.10.2023/32328 Art. 5).

- Agricultural Job Searcher (By-law published in the RG 27.05.2010/27593 Art. 6).

- Ship Agency Officer and Staff (By-law published in the RG 05.03.2012/28224 Art. 7&8).

- Permanent Supervisor, Technical Staff (By-law published in the RG 11.12.2022/32040 Art. 125&130).

- *Mining rights can only be granted to the Turkish real persons and legal persons (*Act #3213 of 04.06.1985 Art. 6).

- Founders of Turkish private schools should be Turkish (*Act* #5580 of 08.02.2007 Art. 3).

- *Foreign travel agencies* can not organize tours abroad but, they can operate in Türkiye (Act #1618 of 14.09.1972 Art. 3).

- If the ship is owned solely by a Turkish citizen, 51% of the ship and yacht staff (other than captain who is required to be Turkish) should be Turkish (Act #4490 of 16.12.1999 Art. 9).

- Transportation of passengers and goods from one point of the Turkish coast to another and port works and guidance within the ports at the beaches can only be done by the Turkish-flagged vessels. Foreign-flagged vessels can only carry passengers and cargo from the Turkish ports to foreign ports or from foreign ports to the Turkish ports (Act #815 of 19.04.1926 Art. 1).

- Vehicles like ferry, tug steamboat, motorboat, barge, etc. can be transported and trade can be done exclusively by the Turkish citizens within the rivers, lakes, Marmara basins and straits including the gulf, port, bay and other places in the internal waters (Act #815 of 19.04.1926 Art. 2).

- The Turkish President may allow; foreign ships pursue activities temporarily and without aiming to gain profit, sea vehicles to be used for petrol search and manufacturing and employment of foreign experts, captains and crew members on the Turkish ships[112] (Act #815 of 19.04.1926 Art. 4).

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[112] "*(1) Every Turkish ship hoists the Turkish Flag.*
(2) The ship owned only by a Turkish citizen is a Turkish ship.
(3) Ships owned by more than one person;
a) In case of joint ownership, the majority of the shares,
b) In case of joint ownership, majority of the owners,
They are considered as Turkish ships provided that they are Turkish citizens.
(4) Established in accordance with Turkish laws;
a) Ships belonging to organizations, institutions, associations and foundations with legal personality, majority of the persons constituting the management body are Turkish citizens,
b) Ships belonging to Turkish commercial companies, the majority of those authorized to manage the company are Turkish citizens and the majority of the votes are in Turkish shareholders according to the company agreement, in joint stock companies and limited partnerships whose capital is divided into shares, the majority of the shares are registered and the transfer of the shares to a foreigner is subject to the permission of the company's board of directors,
provided that they are considered as Turkish ships.
(5) Ships owned by armament subsidiaries registered in the Turkish trade registry are considered Turkish ships, provided that more than half of their shares are owned by Turkish citizens and majority of stakeholder shipowners authorized to manage the subsidiary are Turkish citizens." (Act #6102 of 13.01.2011Art. 940).

- Transportation of passengers, mail and freight by air for commercial purposes between two points within the boundaries of the Republic of Türkiye can be effected with the Turkish aircrafts[113] (Act #2920 of 14.10.1983 Art. 31).

- The majority of the pilots, technicians, flight operation experts and cabin attendants should be Turkish in aircrafts of the commercial air transportation entities with twenty or more seats. All the cabin crew should be Turkish. However, the credentials of the staff appointed for international flights are determined by the General Directorate of Civil Aviation (By-law #SHY-6A of 16.11.2013 Art. 22).

CONCLUSION

A right which remains on the paper does not have any value. The employment right, which is regulated under the EU-Türkiye association law, does only apply to the Turkish citizens who have already obtained residence and work permits in an EU Member State according to its national laws. Alike, the EU citizens in Türkiye can not benefit from full freedom of movement for workers and should possess a work permit according to the Turkish foreigners law.

The conditions are worse with regard to the freedom of establishment and to provide services in the EU-Türkiye association law. While the goods are able to move freely under the EU-Türkiye customs union rules, their producers do not enjoy the same right.

Since Türkiye's membership seems unforeseeable soon, we believe the EU-Türkiye association law still matters. During Türkiye's accession process to the EU, Turkish citizens can at least claim the rights arisen from the association law.

Upon realization of Türkiye's full-membership, the restrictions on nationality shall be abolished and the EU citizens shall obtain the right to work in Türkiye freely in all sectors except for the public services. Even though, like the other Member States, Türkiye, will keep the right to put restrictions on employment of foreigners on grounds of public order, public security and public health.

When compared with the EU Member States' regulations, Turkish foreigners law already provides convenience to the EU citizens to work, establish and provide services in Türkiye beyond the EU-Türkiye association law. They are exempt from some requirements and conditions on exceptional work permits.

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[113] "*A civil aircraft is considered to be a Turkish civil aircraft under the following conditions:*
a) Aircraft owned by public agencies such as occupational organizations, associations, political parties, trade unions and foundations, all established pursuant to Turkish laws, whose executive positions are held by a majority of Turkish nationals.
b) Aircraft owned by trade companies, cooperative societies and their unions registered in the Turkish Trade Register, with a majority of Turkish nationals holding executive and representational powers and the voting majority of which according to the articles of association consists of Turkish stockholders or partners." (Act #2920 of 14.10.1983 Art. 49).

May the migration problems be solved and secured, the Member States shall perhaps consider similar means to support the association law.

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