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INTERNATIONAL MIGRATION LAW AND TURKIYE'S MIGRATION MANAGEMENT

Abstract.

The two world wars in the 20th century and the events that followed those wars, caused the phenomenon of international migration to become one of the most important issues of the international relations system. In this direction, immediately after the Second World War, steps that would be effective at the global level began to be taken by international community. The Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967) are among the most fundamental documents of international migration law and despite the long period of time that has passed their importance maintain even today. UNHCR and UN-IOM, as the two main organizations of international migration management, continue their work on the implementation of international migration law. Collaboration of the legal and institutional dimensions of international migration with states is essential for successful migration management. Turkiye has a national immigration law in line with the basic documents of international immigration law. The Law on Foreigners and International Protection, which came into force in 2013, is Turkiye's main national immigration law. In addition, cooperation processes with international migration institutions are also increasing. Established in 2013, the Ministry of Interior Presidency of Migration Management has become the most fundamental institution in Turkiye's migration management processes. In this study, Turkiye's relationship with international migration law and international migration organizations has been examined.

Key words: international migration, international migration law, United Nations High Commissioner for Refugees, International Organization for Migration United Nations, Turkiye.

Introduction.

Turkiye gained significant experience during the migration of Turks living in the Balkans and the Caucasus to Turkiye, which they saw as their homeland, as a result of political pressures. Especially after the labor migration agreement signed with Germany in 1961, Turkiye has become a state that gives intensive labor migration abroad. Apart from these, immigrants coming to Turkiye from different countries from different geographies such as Asia and the Middle East were not permanent in Turkiye, and Turkiye remained mostly as a transit country. Therefore, immigration and the phenomenon of immigrants in Turkiye have not been at the top of the agenda in legal and political terms. However, in line with the developments in the 21st century, Turkiye has become a target country. In this process, especially as a result of the events in Syria started in 2011, millions of Syrians immigrated to Turkiye. After this great immigration wave, Turkiye had to update and rearrange its national immigration law in line with international immigration law. In the context of these legal regulations, Turkiye has also strengthened its policies and institutional structure regarding migration management. In this study,

Turkiye's relationship with the global migration waves in the 21st century will be discussed in its legal and institutional dimension.

Materials and methods of research.

In this study, the convention and protocol of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations International Organization for Migration (UN-IOM) that affect international migration law will be examined. Türkiye's relationship with these institutions and the processes of ratification of legal documents, reservations (at the stage of signature and approval) will be investigated. In addition, the Law No. 6458 on Foreigners and National Protection (YUKK), entered into force in 2013, which is the most basic legal basis of Türkiye's current national immigration law will be examined. Concerning Türkiye's migration policies and migration management, the focus will be on the Ministry of Interior Presidency of Migration Management and its work. The numerical data published on the official website of the Presidency of Migration Management and the reports of official institutions will be taken into account. The research was conducted in Turkish and English languages.

Results and its discussion.

One of the most fundamental documents on international migration law is the "Convention Relating to the Status of Refugees". The Convention was adopted by the United Nations General Assembly resolution 429 (V) dated 14 December 1950 and signed on 28 July 1951 and entered into force on 22 April 1954 [1]. Before moving on to the details of the Convention and Türkiye's legal relation with the Convention, it would be beneficial to refer to the United Nations (UN) Charter referred to in the first paragraph of the Convention on the Status of Refugees and the UN Universal Declaration of Human Rights.

The Charter of the United Nations [2]. Was signed in San Francisco on 26 June 1945 and entered into force on 24 October 1945. Türkiye ratified the Charter on 15 August 1945 and the "Law on the Approval of the United Nations Charter and the Status of the International Court of Justice" (Law No: 4801) was published in the Official Gazette dated 24 August 1945, no. 6902 [3]. The UN Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly on 10 December 1948 [4]. Article 14 of the UN Universal Declaration of Human Rights states that "everyone has the right to seek and to enjoy in other countries asylum from persecution".

The Convention Relating to the Status of Refugees, with a time limit, linked refugee status to events that occurred before 1 January 1951. Thus, the Convention covered persons who became refugees as a result of events that occurred before 1951. Türkiye signed the Convention on 24 August 1951, by (i) imposing a geographical (events taking place in Europe) limitation, (ii) making a reservation that no provision of the Convention may be interpreted as granting to refugees' greater rights than those accorded to Turkish citizens in Türkiye. The Convention was approved by the "Law on Approval of the Convention on the Legal Status of Refugees" (No.359), dated 29 August 1961 and was published in the Official Gazette dated 5 September 1961 (no.10898) [5].

Article 1/A-2 of the Convention Relating to the Status of Refugees, refugee is defined as "any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

The temporal (before 1951) and a geographic (Europe) limitation contemplated in the Convention on the Status of Refugees rendered the Convention inadequate in the following period. The emergence of people who could not return to their country of citizenship after 1951 and due to events that took place outside of Europe, and the need for them to have refugee status, led to the emergence of the Protocol on the Status of Refugees, which was accepted in 1967, in New York. The temporal limitation in the Convention Relating to the Status of Refugees has been removed with the adoption of the Protocol, Article 1-2 and geographical limitation has been removed with Article 1-3. Türkiye joined the Protocol on the Status of Refugees with the decision of the Council of Ministers dated 1 July 1968 (no. 6/10266) and the decision of the Council of Ministers was published in the Official Gazette on 5 August 1968 (no. 12968) [6]. However, Türkiye did not remove the geographical limitation while becoming a party to this Protocol and continued to relate and limit refugee status to “events occurring in Europe”. Therefore, Türkiye accepts foreigners who seek asylum as refugees due to the events taking place in Europe. Türkiye grants “temporary protection” status, not refugee status to persons coming from states that are not members of the Council of Europe.

The international organization that undertakes the most important task to deal with the refugee problem worldwide is the United Nations High Commissioner for Refugees (UNHCR) [7]. UNHCR, was founded in 1950 to help millions of Europeans after World War II. During the establishment phase, it was envisaged that the term of office would be limited to 3 years and that UNHCR would complete its tasks within these 3 years. However, over the past 72 years, UNHCR has continued its mandate and its mandate has gradually expanded from Africa to Asia, from the Middle East to Latin America. In 2022, UNHCR continues to work in many countries such as Syria, Ukraine, Afghanistan, Ethiopia, Yemen, Brundi, Venezuela, Rohingya and South Sudan. UNHCR has done / is doing important works on refugee rights around the world during the COVID-19 pandemic. The fact that UNHCR won the Nobel Peace Prize in 1954 for its groundbreaking work in Europe is an important institutional detail. UNHCR has been working closely with Türkiye on asylum and refugee issues since 1960. The existing cooperation between Türkiye and UNHCR has been formalized with the “Host Country Agreement between the Government of the Republic of Türkiye and the United Nations High Commissioner for Refugees” [8]. Signed on 1 September 2016 and the cooperation has gained a strong legal basis. The said agreement, signed on September 1, 2016, was approved on March 7, 2018 and published in the Official Gazette (no. 30353) of “The Law on Approval of Notes on the Amendment of the Agreement with the Host Country Agreement between the Government of the Republic of Türkiye and the United Nations High Commissioner for Refugees” [9]. UNHCR has offices in Türkiye, in Ankara (headquarters), Istanbul, Izmir, Gaziantep, Hatay, Sanliurfa and Van [10]. Ekşi states that UNHCR has gathered its operations in Türkiye under the umbrella of consultancy and assistance services since September 2018, and criticizes UNHCR’s failure to assist with voluntary returns and resettlements [11].

The International Organization for Migration (IOM) is another international organization that was established after the World War II, especially after the mass migration movements that took place in Western Europe. IOM was established in 1951 to assist European states with the plight of approximately 11 million migrants. IOM has taken important roles in many different political/military problems, natural disasters and in many different geographies, such as Hungary (1956), Czechoslovakia (1968), Chile (1973), Vietnam (1975), Kuwait (1990), Kosovo (1999), Timor (1999) Tsunami disaster (2004), Pakistan earthquake (2005), etc [12]. The Constitution of the International Organization for Migration [13]. Which provides the framework for the purposes, functions, legal status, financing, membership and other issues

of IOM, is one of the fundamental documents of international migration law. With the agreement signed between IOM and the UN in 2016 [14]. IOM has become a part of the UN system. The “World Migration Report”, published biennially by IOM since 2000, is an extremely valuable and important study in the context of international migration. The World Migration Report includes basic information about migration and immigrants, statistics, data, current migration issues and analysis. The World Migration Report - 2022, the eleventh in the World Migration Report series, was published in December 2021 to contribute to a better understanding of the phenomenon of migration and migration mobility around the world [15].

IOM opened offices in Türkiye in 1991 after the Gulf War. Relations became stronger after Türkiye became a member of IOM on 30 November 2004. IOM Türkiye has offices in Ankara (headquarters), Istanbul, Gaziantep, Hatay, Sanliurfa and Izmir.

Türkiye’s relationship with international migration law and international migration institutions is increasing legally and institutionally. The Law on Foreigners and International Protection (YUKK) No. 6458, which entered into force on April 4, 2013 in Türkiye [16]. Is the most important national legal document in the context of Türkiye’s immigration law and migration management. With the YUKK, many issues such as the situation of foreigners in Türkiye, visa, residence, education, work, temporary protection, asylum, etc. have been regulated in detail. In addition, in Article 3 (1/b) of the YUKK titled “Definitions”, “European” countries are defined as countries that are members of the Council of Europe.

In addition, the General Directorate of Migration Management was established under the Ministry of Interior with the YUKK. The duties of the General Directorate of Migration Management were rearranged with the Presidential Decree No. 4 [17]. Published in the Official Gazette dated 15 July 2018 (no. 30479). It’s “status as General Directorate” was changed as “Presidency” of the Migration Administration with the Presidential Decree No. 85 [18]. Published in the Official Gazette dated October 29, 2021 (no. 31643). With this change, the institutional structure of the Presidency of Migration Management, Türkiye’s most important institution in terms of migration management, has been enlarged and strengthened. In the Central Organization of the Presidency of Migration Management, there are five Directorate Generals serving: (i) Directorate General of Foreigners, (ii) Directorate General of International Protection, (iii) Directorate General of Combating Irregular Migration and Deportation Procedures, (iv) Directorate General of Harmonization and Communication, (v) Directorate General of Management Services and Department of Foreign Relations and Office of Legal Counsellor. The Presidency of Migration Management also established Provincial Organizations in each cities of Türkiye. The Presidency of Migration Management also performs secretarial services of The Migration Board “is responsible for determining Turkey’s migration strategies related with the foreigners and following the coordination and implementation; and is chaired by the Minister of Interior and consists of representatives from ministries, institutions and establishments determined by the Ministry of Interior.” the Migration Board made decisions on (i) Starting the preparations for the creation of the migration strategy document, (ii) Adoption of “Turkey’s Harmonization Strategy Document” and “National Plan of Action”, (iii) Making arrangements for the issues within the scope of its duty regarding residence permits in various boards, (iv) the Migration Action Plan, which sets forth the current situation in the field of migration in detail, was presented to the board members.

As of August 2022, according to official data, there are 5.5 million foreigners in Türkiye, 3.6 million of whom are Syrians. In Türkiye, the number of people with refugee status who are citizens of Council of Europe member states such as Greece, Bulgaria, Serbia, Azerbaijan and Albania is

approximately 50. The existence of such a large migrant population in Turkey has made it a necessity for the immigration management to be legally and institutionally strong. This situation not only affected Turkish Foreign Policy, but also became a controversial issue in Turkey's domestic policy. The return of approximately 4 million Syrians living in Turkey to Syria depends on the end of the internal turmoil in Syria and the normalization of Turkey - Syria relations. Turkey also cooperates with organizations such as European Union (EU), UNHCR, UNIOM in order to settle migrants in Turkey who want to go to European countries, USA, Canada, etc. In this context, "Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation" signed between Turkey and EU in 2014 is an important legal document, although there have been problems and criticisms regarding the operation of this agreement, which aims to prevent irregular migration and the humanitarian suffering it brings [19]. The fact that all immigrants in Turkey in general, and Syrians who have lived in Turkey for more than 10 years in particular, live in suitable conditions in Turkey necessitates efforts to work in areas such as adaptation, health, education, housing and work.

Conclusion.

The phenomenon of migration, especially in the process that started after the World War II, has occupied the agenda of the international community, and in the 21st century, it has become an issue of increasing national and international dimensions and importance throughout the world. In this context, the establishment of international migration law and the establishment of international organizations that will deal with the international dimension of migration have become a necessity in direct proportion to the developments in the international system. In this context, the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967) are among the most fundamental international migration law documents. The United Nations (UN) Charter and the UN Universal Declaration of Human Rights are other important international human rights law documents that also protect the human dimension of migration and directly contribute to international migration law. UNHCR and UN-IOM, which were established to manage international migration in line with this legal framework, continue to work as two important organizations of international migration management.

Türkiye, as a state with thousands of years of experience on migration establishes a legal and institutional infrastructure compatible with the developments and changes in international migration system at the national level and creates national migration policies in coordination with international migration law and international migration institutions. In this context, the Law on Foreigners and International Protection, which came into force in 2013, and the Ministry of Interior Presidency of Migration Management, which was established in the same year (2013), are at the base of this legal and institutional implementations.

Events in a wide geography from Ukraine to Syria, from Afghanistan to Russia, from Africa to Latin America show that the phenomenon of migration will be one of the most fundamental and important issues of the international system in the 21st century as it was in the 20th century. These current global developments indicate that the importance of international migration law will increase and the relationship between international migration law and international human rights law will further develop. At this point, states and international organizations, the two main actors of the international relations system, have a great responsibility. It is vital that national migration laws are compatible with international migration law and that national migration management agencies cooperate with international migration agencies.

In this study, Türkiye's relationship with international migration law and international migration management institutions has been examined from this perspective. The international dimension of Türkiye's national migration law and national migration management has been researched.

REFERENCES

- 1 For the full text of the Convention, see: "Convention and Protocol Relating to the Status of the Refugees". Available at: — URL: <https://www.unhcr.org/3b66c2aa10> (accessed 04.07.2022)
- 2 For the full text of the Charter, see: "United Nations Charter". Available at: — URL: <https://www.un.org/en/about-us/un-charter> (accessed 04.07.2022)
- 3 The Law on the Ratification of the Status of the International Court of Justice by the Treaty of the United Nations. Available at: — URL: <https://www.resmigazete.gov.tr/arsiv/6092.pdf> (accessed 21.06.2022)
- 4 Universal Declaration of Human Rights. Available at: — URL: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 06.05.2022)
- 5 Law on the Ratification of the Convention on the Legal Status of Refugees. Available at: — URL: <https://www.resmigazete.gov.tr/arsiv/10898.pdf> (accessed 19.07.2022)
- 6 Number of Decisions: 6/10266. Available at: — URL: <https://www.resmigazete.gov.tr/arsiv/12968.pdf> (accessed 19.07.2022)
- 7 History of UNHCR. Available at: — URL: <https://www.unhcr.org/tr/unhcrnin-tarihcesi> (accessed 19.07.2022)
- 8 For the full text of the Agreement, see: "Draft Law (1/787) Decrees that It is Appropriate to Approve the Notes on the Host Country Agreement and Amendments to the Agreement Between the Government of the Republic of Turkey and the United Nations High Commissioner for Refugees and the Report of the Foreign Affairs Commission". Available at: — URL: <https://www.tbmm.gov.tr/sirasayi/donem26/yil01/ss461.pdf> (accessed 22.07.2022)
- 9 The Law Decrees that It is Appropriate to Approve the Notes on the Host Country Agreement and Amendments to the Agreement Between the Government of the Republic of Turkey and the United Nations High Commissioner for Refugees. Available at: — URL: <https://www.resmigazete.gov.tr/eskiler/2018/03/20180307-10.htm> (accessed 05.07.2022)
- 10 UNHCR in Turkey. Available at: — URL: <https://www.unhcr.org/tr/turkiyede-unhcr> (accessed 19.07.2022)
- 11 Nuray S. (2019) The Activities of the United Nations High Commissioner for Refugees in Turkey and the Changing Role of the Turkish Asylum System. Istanbul Law Journal. №77 (1). P. 343–370
- 12 IOM History. Available at: — URL: <https://www.iom.int/iom-history> (accessed 19.07.2022)
- 13 Constitution of the International Organization for Migration. Available at: — URL: <https://www.iom.int/constitution> (accessed 15.07.2022)
- 14 Agreement concerning the Relationship between the United Nations and the International Organization for Migration. Available at: — URL: https://digitallibrary.un.org/record/837208/files/A_RES_70_296-EN.pdf?ln=en (accessed 05.07.2022)
- 15 World Migration Report. Available at: — URL: https://publications.iom.int/system/files/pdf/WMR-2022_0.pdf (accessed 05.07.2022)
- 16 Law No. 6458 on Foreigners and International Protection. Available at: — URL: <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6458.pdf> (accessed 05.07.2022)
- 17 Presidential Decree on the Organization of Related, Related Institutions and Organizations Affiliated to Ministries and Other Institutions and Organizations. Available at: — URL: <https://www.mevzuat.gov.tr/Mevzuat-Metin/19.5.4.pdf> (accessed 12.06.2022)
- 18 Presidential Decree on the Amendment of Some Presidential Decrees. Available at: — URL: <https://www.resmigazete.gov.tr/eskiler/2021/10/20211029-35.pdf> (accessed 12.07.2022)
- 19 For the full text of the Agreement, see: "Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation". Available at: — URL: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507(01)&from=EN) (accessed 05.07.2022)

ХАЛЫҚАРАЛЫҚ КӨШІ-ҚОН ҚҰҚЫҒЫ ЖӘНЕ ТҮРКИЯНЫҢ КӨШІ-ҚОНДЫ БАСҚАРУЫ

Андатпа.

XX ғасырдағы екі дүниежүзілік соғыс және сол соғыстардан кейінгі оқиғалар халықаралық миграция феноменін халықаралық қатынастар жүйесінің маңызды мәселелерінің біріне айналдырды. Осы бағытта екінші дүниежүзілік соғыстан кейін бірден әлемдік қоғамдастық тарапынан жаһандық деңгейде нәтижелі болатын қадамдар жасала бастады. Босқындар мәртебесі туралы конвенция (1951 ж.) және Босқындар мәртебесіне қатысты хаттама (1967) халықаралық көші-қон құқығының ең негізгі құжаттарының бірі болып табылады және ұзақ уақыт өткеніне қарамастан олардың маңыздылығын бүгінгі күнге дейін сақтап келеді. БҰҰ БЖКБ және ХҚҰ – БҰҰ халықаралық көші-қонды басқарудың екі негізгі ұйымы ретінде халықаралық көші-қон құқығын жүзеге асыру бойынша жұмысын жалғастыруда. Көші-қонды табысты басқару үшін халықаралық көші-қонның құқықтық және институционалдық өлшемдерінің мемлекеттермен ынтымақтастығы маңызды. Түркияда халықаралық иммиграциялық құқықтың негізгі талаптарына сәйкес ұлттық көші-қон заңы бар. 2013 жылы күшіне енген Шетелдіктер және халықаралық қорғау заңы Түркияның негізгі ұлттық иммиграциялық заңы болып табылады. Сонымен қатар, халықаралық көші-қон институттарымен ынтымақтастық процестері де артып келеді. 2013 жылы құрылған Ішкі істер министрлігі Көші-қон басқармасы президенттігі Түркияның көші-қонды басқару процестеріндегі ең іргелі мекемеге айналды. Бұл зерттеуде Түркияның халықаралық көші-қон құқығы және халықаралық көші-қон ұйымдарымен қарым-қатынасы қарастырылды.

Негізгі сөздер: халықаралық көші-қон, халықаралық көші-қон құқығы, Біріккен ұлттар ұйымының босқындар ісі жөніндегі Жоғарғы комиссары, Біріккен ұлттар ұйымы Миграция жөніндегі халықаралық ұйым, Түркия.

МЕЖДУНАРОДНОЕ МИГРАЦИОННОЕ ПРАВО И УПРАВЛЕНИЕ МИГРАЦИЕЙ В ТУРЦИИ

Аннотация.

Две мировые войны в XX веке и события, последовавшие за этими войнами, привели к тому, что явление международной миграции стало одним из важнейших вопросов системы международных отношений. В этом направлении сразу после Второй мировой войны мировым сообществом стали предприниматься шаги, которые были бы эффективными на глобальном уровне. Конвенция о статусе беженцев (1951 г.) и Протокол о статусе беженцев (1967 г.) относятся к числу наиболее фундаментальных документов международного миграционного права и, несмотря на прошедший длительный период времени, сохраняют свое значение и сегодня. УВКБ ООН и МОМ ООН, как две основные организации по управлению международной миграцией, продолжают свою работу по имплементации международного миграционного права. Взаимодействие правовых и институциональных аспектов международной миграции с государствами необходимо для успешного управления миграцией. В Турции действует национальное иммиграционное законодательство, соответствующее основным документам международного иммиграционного права. Закон об иностранцах и международной защите, вступивший в силу в 2013 году, является основным национальным иммиграционным законом Турции. Кроме того, расширяются процессы сотрудничества с международными миграционными учреждениями. Созданное в 2013 году Департамент по управлению миграцией Министерства внутренних дел стало основным и фундаментальным институтом в процессах управления миграцией в Турции. В этом исследовании были изучены отношения Турции с международным миграционным законодательством и международными миграционными организациями.

Ключевые слова: международная миграция, международное миграционное право, Управление Верховного комиссара ООН по делам беженцев, Международная организация по миграции Организация Объединённых Наций, Турция.

REFERENCES

1 For the full text of the Convention, see: “Convention and Protocol Relating to the Status of the Refugees”. Available at: — URL: <https://www.unhcr.org/3b66c2aa10> [in English] (accessed 04.07.2022)

- 2 For the full text of the Charter, see: “United Nations Charter”. Available at: — URL: <https://www.un.org/en/about-us/un-charter> [in English] (accessed 04.07.2022)
- 3 The Law on the Ratification of the Status of the International Court of Justice by the Treaty of the United Nations. Available at: — URL: <https://www.resmigazete.gov.tr/arsiv/6092.pdf> [in English] (accessed 21.06.2022)
- 4 Universal Declaration of Human Rights. Available at: — URL: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [in English] (accessed 06.05.2022)
- 5 Law on the Ratification of the Convention on the Legal Status of Refugees. Available at: — URL: <https://www.resmigazete.gov.tr/arsiv/10898.pdf> [in English] (accessed 19.07.2022)
- 6 Number of Decisions: 6/10266. Available at: — URL: <https://www.resmigazete.gov.tr/arsiv/12968.pdf> [in English] (accessed 19.07.2022)
- 7 History of UNHCR. Available at: — URL: <https://www.unhcr.org/tr/unhcrnin-tarihcesi> [in English] (accessed 19.07.2022)
- 8 For the full text of the Agreement, see: “Draft Law (1/787) Decrees that It is Appropriate to Approve the Notes on the Host Country Agreement and Amendments to the Agreement Between the Government of the Republic of Turkey and the United Nations High Commissioner for Refugees and the Report of the Foreign Affairs Commission”. Available at: — URL: <https://www.tbmm.gov.tr/sirasayi/donem26/yil01/ss461.pdf> [in English] (accessed 22.07.2022)
- 9 The Law Decrees that It is Appropriate to Approve the Notes on the Host Country Agreement and Amendments to the Agreement Between the Government of the Republic of Turkey and the United Nations High Commissioner for Refugees. Available at: — URL: <https://www.resmigazete.gov.tr/eskiler/2018/03/20180307-10.htm> [in English] (accessed 05.07.2022)
- 10 UNHCR in Turkey. Available at: — URL: <https://www.unhcr.org/tr/turkiyede-unhcr> [in English] (accessed 19.07.2022)
- 11 Nuray S. (2019) The Activities of the United Nations High Commissioner for Refugees in Turkey and the Changing Role of the Turkish Asylum System. Istanbul Law Journal. №77 (1). P. 343–370 [in English]
- 12 IOM History. Available at: — URL: <https://www.iom.int/iom-history> [in English] (accessed 19.07.2022)
- 13 Constitution of the International Organization for Migration. Available at: — URL: <https://www.iom.int/constitution> [in English] (accessed 15.07.2022)
- 14 Agreement concerning the Relationship between the United Nations and the International Organization for Migration. Available at: — URL: https://digitallibrary.un.org/record/837208/files/A_RES_70_296-EN.pdf?ln=en [in English] (accessed 05.07.2022)
- 15 World Migration Report. Available at: — URL: https://publications.iom.int/system/files/pdf/WMR-2022_0.pdf [in English] (accessed 05.07.2022)
- 16 Law No. 6458 on Foreigners and International Protection. Available at: — URL: <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6458.pdf> [in English] (accessed 05.07.2022)
- 17 Presidential Decree on the Organization of Related, Related Institutions and Organizations Affiliated to Ministries and Other Institutions and Organizations. Available at: — URL: <https://www.mevzuat.gov.tr/MevzuatMetin/19.5.4.pdf> [in English] (accessed 12.06.2022)
- 18 Presidential Decree on the Amendment of Some Presidential Decrees. Available at: — URL: <https://www.resmigazete.gov.tr/eskiler/2021/10/20211029-35.pdf> [in English] (accessed 12.07.2022)
- 19 For the full text of the Agreement, see: “Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation”. Available at: — URL: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507(01)&from=EN) [in English] (accessed 05.07.2022)

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ГЛАВНОЕ СУДЕБНОЕ РАЗБИРАТЕЛЬСТВО – ФОРМА ОСУЩЕСТВЛЕНИЯ ПРАВОСУДИЯ ПО УГОЛОВНЫМ ДЕЛАМ

Аннотация.

Автор исследует проблемные вопросы судебного разбирательства с позиции реализации правосудия по уголовным делам. Отмечая, что правосудие – исключительная компетенция суда, что учреждение специальных и чрезвычайных судов запрещено Конституцией, автор подчеркивает особую важность действия принципов уголовного процесса в судебном разбирательстве. Анализируется достижение целей уголовного процесса, в целом, через поэтапное и пересекающееся достижение промежуточных целей сторон. Рассматривается структура судебного разбирательства, ее назначение. Судебное разбирательство – это, прежде всего, уголовно-процессуальное исследование. Но этот факт не исключает наличия других этапов доказывания. Проверяются и исследуются материалы досудебного расследования, доказательства, собранные в судебном заседании. В данном случае под исследованием следует понимать анализ и изучение материалов уголовного дела, прежде всего доказательств и их источников, условий получения. Исследование предполагает познание сущности доказательств в их совокупности.

Подчеркивается особая роль судебного следствия как центральной части главного судебного разбирательства. Автор приходит к выводу, что тщательная регламентация главного судебного разбирательства в условиях плавного перехода к англо-саксонской модели уголовного судопроизводства является неизбежной необходимостью. Предложения по реформированию судебной системы в рамках 24 шагов требуют детального анализа и обсуждения всей юридической общественностью.

Судебное следствие – это важная и основная часть судебного разбирательства, которая представляет собой определенную совокупность судебных действий, которыми доказательства собираются, исследуются и оцениваются. То есть в судебном следствии осуществляется весь основной объем работы с доказательствами. То есть суд занимается, так называемым, судебным раскрытием уголовного правонарушения. В свете предлагаемых Верховным судом РК реформ высказано согласие с планами по отделению института проступков от преступлений, оцифровки формирования списка присяжных заседателей, привлечения исполнительной власти и общественности к решению вопросов в стадии исполнения приговора, к ограничению сфер применения содержания под стражей. В то же время вызывает сомнения исключения представления материалов дела в судебном разбирательстве.