

Legal Status and Economic Membership of Seasonal Migrant Workers in Turkey

Sureyya Sonmez Efe*

Abstract

International labour migration is one of the most debated topics at international and state levels. State policies usually focus regular migrant workers under states' jurisdiction, which often overlooks seasonal migrant workers who are arguably one of the most neglected groups because of their temporary and complex status. This paper takes a cosmopolitan moral approach in this study and argues that seasonal migrant workers constitute a part of the host countries' labour force contributing massively to states' economy. Therefore, states ought recognise these migrants by giving them a clear legal status, which bestows them economic membership with some rights. Thus, this paper analyses the membership status of seasonal migrant workers in Turkey at policy level through problematising the legal status of seasonal migrant workers within Turkish legislation. It also provides insights from the European Union (EU) policies on third country national seasonal migrant workers. For the analysis, the paper uses primary data from interviews and ethnographic observation collected in Turkey; and secondary data derived from legislations, official reports and literature.

Keywords: *Legal Status, Economic Membership, Cosmopolitan Moral Approach, Seasonal Migrant Workers, Turkish Polices.*

* A PhD Researcher and former Lecturer within the Politics and International Relations Group in School of Social Sciences at Leeds Beckett University, United Kingdom.

Türkiye’de Mevsimlik Göçmen İşçilerin Yasal Statüleri ve Ekonomik Üyelikleri

Sureyya Sonmez Efe*

Öz

Uluslararası işçi göçü, uluslararası ve devlet düzeyinde en fazla tartışılan konulardan birisidir. Devlet politikaları genellikle devletlerin yasal yetki alanlarının bünyesindeki düzenli göçmen işçiler üzerinde yoğunlaşırlar; geçici ve karmaşık statülerinden dolayı tartışmasız en çok ihmal edilmiş gruplardan biri olan mevsimlik göçmen işçiler çoğunlukla bu politikalar tarafından gözden kaçırılır. Bu yazı, çalışmada Kozmopolitan ahlaki yaklaşımını esas alır ve mevsimsel göçmen işçilerin evsahibi ülkelerin işgücününün bir parçası olarak ekonomilerine büyük ölçüde katkı sağladığını savunmaktadır. Bundan dolayı, devletler bu göçmenleri belirgin bir yasal statü vererek tanımalıdır; bu aynı zamanda onlara ekonomik üyelik ve bazı haklar da verecektir. Nitekim, bu yazı, Türkiye’deki mevsimlik göçmen işçilerin üyelik statülerini, Türk mevzuatında onların yasal statülerini sorunsallaştırarak analiz etmektedir. Bu analiz aynı zamanda Avrupa Birliği’nin (AB) üçüncü ülke vatandaşı mevsimlik işçiler üzerine politikalarından içeriklere de yer vermektedir. Bu yazı, analizi için mülakatlar ve etnografik gözlem kaynaklı birincil veri; ve yasalar, resmi raporlar ve literatür kaynaklı ikincil veri kullanmaktadır.

Anahtar Kelimeler: *Yasal Statü, Ekonomik Üyelik, Kosmopolitan Ahlaki Yaklaşım, Mevsimlik Göçmen İşçiler, Türk Politikaları.*

* Leeds Beckett Üniversitesi (Birleşik Krallık), Sosyal Bilimler Okulu, Siyaset ve Uluslararası İlişkiler Grubu’nda Doktora Araştırmacısı ve Geçmiş Öğretim Görevlisi.

INTRODUCTION

International (labour) migration is not a new phenomenon which has an impact on both migrant sending and receiving countries in the world. There is a positive impact of the cross-border movements of migrant workers to the migrant receiving countries, as these workers contribute to the economic growth of the host countries with their skills. By the same token, migrant workers benefit from labour migration through remittances and gaining skills from this experience (ILO, 2017).

However, the process of labour migration becomes a complex issue when we include governance of rights and membership status of migrant workers at state level; and international cooperation on management of cross border migratory movements. The complexity of this phenomenon compels the researchers to adopt an interdisciplinary approach for the study of the status of migrant workers. Thus, research in migration studies needs to consider the following areas; political science, economics, sociology, law, cultural studies, history, geography, demography and psychology (Brettel and Hollifield, 2007 cited in Castles and Miller, 2006: 21). This study recognises the need for such a broad approach and includes political, legal, philosophical and economic areas in studying the membership status of seasonal migrant workers. The paper argues that the prominent theories in the areas abovementioned fall short in studying labour migration on their own (Sonmez Efe, 2017: 30). For example, economic approaches focus on structural factors and the supply side of the capitalist system, which overlook the social and legal complexities of labour migration (ibid: 31). This paper argues that the cosmopolitan approach is best suited for studying the membership status of migrant workers as it integrates moral arguments into its analysis; it claims that migrant workers cannot be considered as mere objects part of an economic structure but they are social beings with economic, social and cultural needs (ibid). Within this context, this paper argues that the need for

a moral approach to the case of seasonal migrant workers, which is important, as this group usually lack social protection and rights as a result of the absence of a clear legal status within the host countries or their temporary status. This paper further claims that states' policies need to recognise a humanist approach to labour migration which will arguably eliminate the risk of exploitation of the seasonal migrant workers in the host countries' labour market.

In light of this, the paper problematises the economic membership status of migrant workers at state as well as international levels through the cosmopolitan moral approach with a special focus on the status of seasonal migrant workers in Turkey. A cosmopolitan approach attributes states the duty of designing and implementing ethical policies and facilitate cooperation with international organisations on this issue (Sonmez Efe, 2017). This paper provides a policy analysis at state level, hence, it analyses state policies on migration in Turkey focusing on the legal status and economic membership of seasonal migrant workers.

The structure of the paper starts with the methodology section, which explains the research approach and methods of data collection; how/why such data is important for this analysis; and the key limitations encountered during data collection. It then moves to the theoretical approach that the paper takes in analysing seasonal migrant workers in Turkey and it discusses how this approach is best suited in problematising legal status of seasonal migrant workers and studying their economic membership in a host country.

The section about the seasonal migrant workers elaborates on the 'facts about seasonal labour migration in Turkey', which briefly discusses the statistical data on seasonal migrant workers; the key characteristics of these migrants present in Turkey; the key industries where seasonal migrant workers are the most present; and the facts about their legal position in Turkish labour market.

The last section of the paper focuses on legal status of seasonal migrant workers within Turkish legislation and elaborates on the ap-

proach that state policies take for defining their legal status and laying down their rights. It aims to problematise the legal status of seasonal migrant workers in order to illuminate the problematic areas of Turkish legislation that creates legal loopholes about locating seasonal migrant workers within state policies, which arguably results with a lack of protection and social security for these workers in Turkish labour market.

METHODOLOGY

This paper takes a cosmopolitan constructivist worldview in its analysis of the legal status and economic membership of seasonal migrant workers in Turkey, which puts an emphasis on the persons and procedures which are two key components of law making process (Sonmez Efe, 2017:10). According to this approach state laws and international law is created by persons who are free, equal and moral persons who are capable of being reasonable, rational agents with moral worth (Rawls, 1980, 518 cite in *ibid*:11). Thus, the methods that are used in this paper for collection and analysis of data corresponds with the cosmopolitan moral worldview, as the paper uses qualitative research methods which are as follows; qualitative interviewing, legal official documents, participant observation and secondary literature.

All these methods aforementioned consider the persons as key factor for creating subjective meanings of the world, who construct the procedures based on the social, political, economic, and moral conditions that are entrenched in the community they live in. In light of this, it becomes crucial to understand and pinpoint the perceptions of persons that are interviewed and observed who are also authors of the legal documents (Sonmez Efe, 2017). Taking up a moral approach in the construction of data and methods of data collection, this paper follows its initial brief which locates morality at the core of its analysis in studying seasonal migrant workers who are moral persons within a community of host country.

This paper attempts to prove the complexity of the definition of 'a seasonal migrant worker' in state laws, thus, problematises the legal

status of seasonal migrant workers in Turkish legislation. The focus of this paper in defining legal status and membership of seasonal migrant workers in host countries is on UN Convention on Migrant Workers (ICRMW, 1990) as well as Turkish legislation concerning migrant workers. The paper uses the key terminology used in international law in its argument and uses the term 'seasonal migrant worker' whereas Turkish legislation uses the term 'foreigner' as an umbrella term for all migrants including migrant workers. Thus, the term 'seasonal migrant worker' in this paper refers to 'persons who involve in remunerated activities in Turkish labour market in the sectors during certain seasons, and who are not Turkish nationals'. The paper includes seasonal migrant workers on irregular status in this definition, who may have resided in the country longer period but who somehow has joined the seasonal labour force; such as transit migrants, Syrian migrants (on irregular status), and so on. Thus, the paper suggests that the case of seasonal migrant workers is more complex than it is imagined and the urgent need for a policy attention in Turkey.

The fieldwork for data collection¹ from interviews and participant observation took place between December 2014 and February 2015 in three key locations in Turkey; Ankara, Istanbul and Bursa (Sonmez Efe, 2017). The reason for choosing these locations is that the key governmental and non-governmental institutions are identified in these cities which have been significant for this study to interview persons from key institutions concerning migrants/migrant workers; to provide different perceptions on the issue; and ultimately to convey an objective analysis. The paper initially used pre-determined contacts in United Kingdom and Turkey to find participants for interviews, then it used snowballing technique to find more participants.

1 All the data collected and utilised in this paper are collected for the Unpublished PhD Thesis (Sonmez Efe, 2017) titled 'Legal Rights of Migrant Workers in Contemporary Turkey'; and the data concerning seasonal migrant workers are emerged from the data aforementioned which has been useful for analysis of legal status and economic membership of seasonal migrant workers in Turkey.

Twenty-four semi-structured interviews were conducted during fieldwork which has a flexible and less-structured character that enables the interviewer to ask pre-prepared topics/questions; by the same token gives an opportunity to manoeuvre around the topics to narrow down on a specific theme (Sonmez Efe, 2017). The list of key institutions for interviews are as follows; six interviews from governmental institutions; three interviews from national non-governmental organisations (NGOs); four interviews from international NGOs; three interviews from trade unions (TUs); five interviews from universities (departments concerning migrants/migrant workers); and three interviews from other institutions concerning migrants/migrant workers (Ibid).

The participant observation took place during the First National Workshop for Migration organised by Ministry of Interior in Turkey held on 19-20 December 2014 (ibid) which allowed the researcher to collect data relevant to migrant workers and see the perceptions of policy makers and officials from various departments concerning migrants/migrant workers on the issues of migration/international labour migration.

The legal official documents used in this analysis are as follows; Turkish laws concerning migrants/migrant workers; Decrees on migrants/migrant workers; UN and ILO treaties NGO reports on migrants; EU Directives on labour migration (ibid). Most documents were accessed through official websites of the institutions; and others were collected after negotiations with the gatekeepers. The key documents that are focused in this paper are UN Convention on Migrant Workers (ICRMW, 1990); the EU Directive on the Conditions of the Entry and Stay of Third-country Nationals for the Purpose of Employment as Seasonal Workers (2014); European Convention on the Legal Status of Migrant Workers (ECLSMW, 1977); International Labour Force Law (ILFL, 2016); Law on Work Permits for Foreigners (LWPF, 2003); Law on Foreigners and International Protection (LFIP, 2013); and the Citizenship Law (2009).

The method for analysing the collected data is thematic analysis which involves, transcription of recorded/noted data; coding, creation of themes and analysis of the data through themes (Sonmez Efe, 2017). The issue of seasonal migrant workers emerged from the analysis of the large data that has been used for an Unpublished PhD Thesis titled ‘Legal Rights of Migrant Workers in Contemporary Turkey’. The data related to seasonal migrant workers has emerged from this data which has been used in this paper for analysing their legal status and economic membership in Turkey.

MEMBERSHIP OF MIGRANT WORKERS THROUGH THE LENS OF COSMOPOLITANISM

The concept of membership status comprises three key elements; persons (migrants) and states (legal duty bearers) and the law (that determines the status of migrants and the duties of the states). Persons are both subjects and authors of the laws both of whom become a part of the procedures of law making process. In this context, the meanings and understandings of the membership status of a migrant is defined with the inclusion of two key components into the law-making process; persons and procedures (Sonmez Efe, 2017).

To understand the concept of membership status this section initially needs to define the meaning of ‘labour migration’ and ‘a migrant worker’. The IOM defines a migrant worker as;

...any person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of the person’s legal status; whether the movement is voluntary or involuntary; what the causes for movement are; or what the length of stay is (2011).

The UN Convention on Migrant Workers (ICRMW, 1990) defines a migrant worker as;

...a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national (1990).

The IOM definition of a migrant takes a holistic approach, which encompasses various factors within the status of migrant workers as the cause of migration is left out of the context. On the other hand, the IOM defines labour migration as;

...the movement of persons from one state to another, or within their own country of residence, for the purpose of employment (2011).

Such a definition aligns with aforementioned ICRMW (1990) definition of a migrant worker. There is however a notable difference that the IOM also defines persons, as who are seeking employment within a different state and also within their own country, as migrant workers. The ICRMW definition seems to only encompass non-nationals in its definition of a migrant worker.

However, this definition becomes more complex as this paper claims that regardless of the concept of ‘the cause of migration’ a person (migrant) can become a migrant worker; for example, one can migrate into a host country as a refugee but can also join the labour market and become a migrant worker; thus, he can be identified with the multiple statuses, such as ‘refugee’ and ‘migrant worker’ (Sonmez Efe, 2017). In this context, the notion of migrant is used as an umbrella term which also encompasses other concepts such as; ‘migrant worker’, asylum seeker’, ‘refugee’ (Sonmez Efe, 2017: 35), and ‘seasonal migrant worker’.

This paper bases its definition of ‘a migrant worker’ on what is suggested by the ICRMW (1990); and refers to the group of persons who work in the labour market in Turkey, who are not Turkish nationals, and who do not share ethnic/racial heritage with Turkish nationals. This paper suggests that the status of ‘seasonal migrant worker’ is derived from the term ‘migrant worker’ which is defined by the UN Convention as;

The term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and

is performed only during part of the year (ICRMW, Article 2/2 (b), 1990).

This definition arguably focuses on three key elements; one the nature of work which is based on seasonal conditions; the temporary nature of work; and legal membership of these migrants based on their national affiliation, which is specified in the definition of a ‘migrant worker’ mentioned above. In this context, in this paper the seasonal migrant workers in Turkey can be defined as *‘the people who migrate into Turkey temporarily (on seasonal bases); work in the Turkish labour market in seasonal jobs; and who are not Turkish nationals (who hold regular or irregular status)’*.

The key elements of the aforementioned definitions are ‘*person*’, ‘*act of migration*’, ‘*cause of migration*’, ‘*the legality*’ (status) and ‘*the destination of migration (states)*’ (Sonmez Efe, 2017). These concepts are important in understanding the meanings and the legal structure of ‘membership’ statuses of migrant workers within the states’ jurisdiction. The cosmopolitan moral thought describes the *concept of person* as free and equal who is a rational agent and capable of reason (Rawls, 1980: 518 cited in *ibid*:11). In this context, the concept of a society can be defined as persons of moral worth (Rawls, 1989: 99) who are capable of making just and ethical procedures at state level (Sonmez Efe, 2017:11). This concept considers everyone in a society as free and equal who have rights under the state’s jurisdiction that is constructed by a just society. However, this notion is contested when the argument of legality and the concept of membership is included, particularly within the context of the status of migrant workers. This paper argues that legal definitions cannot be detached from the political, cultural and historical context which helps to create the political culture and identity of a society. When we talk about migrant workers’ membership status in a host country all these elements need to be included into the discussions of the concept of membership. Therefore, the concept of membership is intertwined with the notion of integration. For the former this paper refers to legal, economic and

political attachment to the host country; and the latter is explained with the *degree* of migrants' political, social and cultural attachment and *understanding* of the host community.

The act of migration and *the cause of migration* are also important in determining the status of migrant workers in legal and social terms, as according to the cosmopolitan moral approach laws are constructed by moral persons who are social beings. Therefore, one cannot make a crude distinction between the legal status of migrant workers and the sociological understandings and meanings attributed to them as they are inextricably bound. Every society has their own political, historical and cultural attachments and these attachments impact on the legal language of their policies. In other words, laws and policies of the states are intrinsically laden with these attachments which are constructed by the community. This paper claims that on the one hand, state policies are in constant transformation; on the other hand, there are the continuities of political culture and attachments (Sonmez Efe, 2017), which prove significant in shaping the type of transformation occurring but also the pace. The analysis of the primary data from the interviews on the definition of migrant workers and their membership status supports this argument which is elaborated upon in the latter section.

According to the cosmopolitan concept of hospitality the *act of migration* and *rights* of migrant workers ought to be recognised by states as long as the process is peaceful. The right to hospitality is defined as;

...the right of a stranger not to be treated with hostility when he arrives on someone else's territory...One may refuse to receive him when this can be done without causing his destruction; but, so long as he peacefully occupies his place, one may not treat him with hostility...A special contract of beneficence would be needed in order to give an outsider a right to become a fellow inhabitant for a certain length of time...They have it by virtue of their common possession of the surface of the earth, where, as a globe, they cannot infinitely disperse and hence must finally tolerate the presence of each other (Benhabib, 2004: 27 cited in ibid:50).

This concept bases its argument on the shared ownership of the spherical surface of the Earth and common humanity (Flikschuh, 2010: 475). States have the moral duty to create conditions for persons to exercise justice and freedom of movement; and to prevent constraining conditions (Sonmez Efe, 2017: 37) such as restrictive immigration and border policies. In other words, states' role in this process is to design policies that accommodate freedom of movement through bestowing migrant workers a legal membership status with rights.

The status of migrant workers and non-migrants (nationals) is described through their membership status (Benhabib, 2004: 1), which can be called legal membership (Sonmez Efe, 2017: 3). Legal membership of non-members (migrants) is determined by the aforementioned key elements of migration; *the cause of migration, the act of migration* and *the legality of migration*.

legal membership' here is a status that encompasses; temporary/permanent membership, economic membership (e.g. right to work), political membership (e.g. right to vote) and full membership (citizenship)...which is important for...determining the scope of the rights they are entitled to receive from the host countries legal system such as Economic and Social Rights (ESRs), Civil and Political Rights (CPRs) (Sonmez Efe, 2017: 3).

In this context, legal membership is the first step to full membership of migrant workers in the host country which determines their status and which rights they are entitled to. Economic membership is the second step 'as integration into the labour market facilitates a decent life with decent living conditions which will make it easier for migrants to fully integrate into the community' (ibid: 67). It can be argued that economic membership of migrants is less problematic than the political membership; as for the latter political integration becomes paramount which refers to 'those practices and rules, constitutional traditions and institutional habits that bring individuals together to form a functioning political community' (Benhabib, 2004:

121 cited in *ibid*: 228). *The length of time* of residence becomes an important condition for migrant workers to gain political membership which determines the degree of their familiarity with the political culture of the host country.

On the other hand, this paper argues that within the context of economic membership, the legality and length of time are both important; as the state laws usually make a distinction between regular (legal) and irregular (illegal) migrant workers; and between their temporary and permanent status when laying down their rights by the state law. The primary and secondary data illustrates the complexity of economic membership of seasonal migrant workers as a result of their temporary status and lack of legal recognition. This paper, however, argues that despite of their temporary status, seasonal migrant workers make up a segment of the host state labour force who should be considered on equal terms with nationals regarding to their contribution to the growth of the economy. Furthermore, state policies ought to recognise all migrant workers as social beings with social demands and as a part of their labour force.

Before discussing the membership status of migrant workers in Turkish legislation, the paper will explain facts about seasonal migrant workers in Turkey including statistical and geographical data of seasonal labour migration.

SEASONAL MIGRANT WORKERS IN TURKEY

This section begins with explaining facts about seasonal labour migration in Turkey based on the literature reviewed on seasonal migrant workers. It continues to analyse the membership status of seasonal migrant workers in Turkey based on the primary and secondary data from interviews, participant observation and official documents.

Facts about Seasonal Labour Migration in Turkey

International labour migration has impacted on Turkish labour market especially in recent decades as a result of four key reason (Sonmez

Efe, 2017); firstly, Turkey geographically bridges between Asia and Europe, thus it becomes prone to transit migrants who aim to travel to European countries. Secondly, the political shifts in the region and regional conflicts has caused migratory movements in the region which resulted with mass influx of migration particularly from Syria to Turkey. Thirdly, economic transformation of contemporary Turkey attracts economic migrants from ex-Soviet countries, the Middle East, Asia and Europe. Lastly, Turkey's foreign policy which does not only focus on Turkey-EU relations but also on the other countries in Eastern Europe, the Middle East, Africa and Asia; which has led to bilateral agreements and visa liberalisations with many countries that Turkey has political and economic ties. This paper argues that all these factors contributes to the seasonal labour migration into the country which has become an important phenomenon in contemporary Turkey and needs to be focused on at policy level.

As this paper problematises the legal status of migrant workers, it studies seasonal migrant workers regardless of the cause of their migration. In other words, as discussed above, the paper claims that a refugee or transit migrant or irregular migrant can become a seasonal migrant worker if he is engaged in remunerated activity in the sectors where work is carried out temporarily in particular seasons. In this context, the statistical and regional facts about seasonal migrant workers in this paper will encompass seasonal migrant workers from various statuses which also reflects the complexity of their status.

After the review of the literature and the analysis of Turkish legislation concerning migrants/migrant workers, the paper suggests that there is a lack of statistical data on seasonal migrant workers and data on their working patterns in different sectors. In can be argued that one reason for such limitation is that the studies on seasonal migrant workers in Turkey usually focus on agriculture sector (Dedeoglu: 2016; Kaplan et.al.: 2016; Selek Oz and Bulut: 2013) and seasonal workers' right to annual leave (Yucel-Bodur: 2014); which results with a lack of data on seasonal migrant workers from the occupations

within other sectors mentioned above. The second reason is arguably the legal loophole in Turkish policies where a legal status for seasonal migrant workers does not exist in Turkish legislation. As a result, it becomes difficult to gain an exact number of seasonal migrant workers recruited by Turkish employers; and to study their sectorial presence within Turkish labour market. The fieldwork data (Sonmez Efe, 2017) and literature suggests that some seasonal migrant workers work under different legal status such as Syrian migrants on Temporary Protection; some on temporary visas (tourist or other); and some on irregular status (transit migrants or other).

Thus, this section can provide statistical and geographical data on seasonal migrant workers working in Turkey based on limited data on seasonal workers in Turkey, primary data from interviews and official documents. The key sectors that seasonal migrant workers are working are agriculture, construction, entertainment and tourism (ibid). These sectors are pinpointed based on the analysis of primary data and official documents that focus on work permits and visa regulations concerning migrant workers. Most of the interviewees claim that the seasonal labour migration is a fact in contemporary Turkey, however, these workers are usually invisible and/or work in informal sector.

According to a study provides a map for the key countries of origin of migrants working in various cities in Turkey as seasonal workers in agriculture sector which are as follows: Afghanistan (Central Anatolia), Azerbaijan (Eastern and South-East Anatolia), Armenia (North East Anatolia), Georgia (North and South-East Anatolia), Kazakhstan (Central Anatolia), Kirgizstan, Iraq (Central and South-East Anatolia), Iran, Uzbekistan (Central Anatolia), Russia (North East Anatolia) and Syria (in all regions) (Kaplan et.al. 2016). Because this map only includes the seasonal migrant workers in agriculture sector, it does not provide the information of workers from other sectors.

Another study on seasonal migrant workers in agriculture focuses on Georgian, Azerbaijani and Syrian workers (Dedeoglu: 2016), which suggests that the number of migrants entering Turkey during

specific seasons of agriculture is quite high. For example, the number of Georgian migrants entered Turkey was 1,755,289 in 2014; and it is observed that this number rises in May and August which coincides with tea and hazelnut picking season in Northern Turkey (ibid:15). Similarly, the migrants entered the country from Azerbaijan reaches to 657,684 in 2014, and it is also observed that this number reaches its peak in August during the time for harvesting of grass for animals in Kars and Ardahan (ibid). Syrian migrants consist of the highest number of migrants working in agriculture and farming sectors (ibid). After the enforcement of the Regulation No.8375 (2016) Syrian migrants under Temporary Protection status have become entitled to work in agriculture sector; the five to one rule² for the employment of foreign workers does not apply to these workers which has increased the number of Syrian migrants on Temporary Protection working in agriculture sector. The fieldwork data from interviews also suggests the presence of a high number of Syrian migrants in agriculture sector as seasonal workers (Sonmez Efe, 2017); many has become labour force as seasonal workers in informal economy with lower rates (Semerci et.al., 2014; Study for EMPL Committee, 2016). The statistical evidence from the Ministry of Interior Directorate General of Migration Management (DGMM) data shows the number of Georgian, Syrian and Azerbaijani migrants applied to temporary work permit is quite high which is 8,014; 7,053; and 1,765 respectively (2017).

According to a study, social networks and kinship with the locals is an important factor for seasonal migrant workers working in agriculture and farming sectors (Dedeoglu, 2016: 23). However, the fieldwork study disputes this argument as it is argued that migrants particularly on irregular status who do not have any social ties with the locals still work in Turkish labour force, who work in difficult con-

2 Which means under the MLSS work permit criteria Turkish employers must recruit a minimum of five Turkish workers for every foreign worker employed in the same workplace (MLSS, 2014).

ditions in agriculture sector with minimum or no rights (Interviews, 2015, cited in Sonmez Efe, 2017).

The statistical evidence based on MLSS data (2015) shows the number of migrants who obtain temporary work permit for entertainment and tourism. The number of temporary work permits given to migrant workers in entertainment sector can include two subcategories; creative arts and entertainment activities; and sports activities and amusement and recreation. The number of work permits given for the former is 3,057; and for the latter is 2,016 according to the MLSS report on work permits of foreigners (2015). The report provides the number of applications for tourism sector under two subcategories; accommodation; and travel agency, tour operator reservation service and related activities. The number of work permits given for the former is 10,500; for the latter is 1,115 (ibid). It is important to point out here is that this data only include the regular migrant workers on temporary status based on the temporary work permit of minimum 1 year; thus, according to Turkish law this status is not defined as 'seasonal worker' in legal terms. The fieldwork data reveals that there is a high number of migrants working in tourism and entertainment sector from particularly Ex-soviet countries who come to the country during holiday seasons (Interviews, 2015 cited in Sonmez Efe:2017). However, because there is no legal status for migrants working as seasonal workers within Turkish laws (which is discussed in the section below), this figure only gives us a rough figure of labour migration in these sectors; thus, the data does not include irregular migrants working in tourism and entertainment sectors on seasonal conditions.

According to a study (Lordoglu, 2009) the number of irregular migrant workers in tourism and entertainment sector in Turkey is the highest within service industry except construction sector. This prediction is made from the data derived from apprehensions of irregular migrant workers (ibid). Because of the seasonal nature of the jobs in tourism and entertainment sectors, it is not possible for migrant workers to

obtain long term employment which includes them into the category of seasonal migrant workers whether they have legal status or not. The key cities where these workers are accumulated are the big cities like Istanbul and the ones by the Mediterranean Sea such as Antalya.

Lastly, the construction sector can arguably be included in seasonal employment as the nature of jobs in this sector are usually contract based on short term period: which can be included within campaign work (kampanya isleri (mentioned in Labour Law, 2003: Article 29/c)). Construction is one of the sectors where migrant workers are preferred by the employers in Turkey; because of their irregular status these workers provide cheap labour. The demand for migrant workers in this sector is visible from the statistical evidence; there have been 1,719 applications to construction of buildings; and 2,704 to civil engineering (MLSS, 2015). However, these numbers do not reflect the overall figure, because similar to the agriculture sector, majority of the migrant workers in this sector are employed on irregular status. Migrant workers employed in construction sector are predominantly from Georgia, Azarbaijan, Turkmenistan, Afghanistan and Uzbekistan (Bozkurt, 2015).

Thus, this section discussed the facts about seasonal migrant workers in Turkey focusing on key sectors which have the highest employment of these workers. The section suggests the lack of data on seasonal migrant workers because there is small number of or no studies that focus on this issue. This paper further suggests that the key reason for the lack of data on seasonal migrant workers is that Turkish policies are not clear about laying down their legal status which is discussed in the next section. Through providing primary and secondary data from Turkish policies as well as the EU policies, the next section discusses the membership status of seasonal migrant workers. The arguments of the section aim to locate the conceptual arguments of the membership status of migrant workers into the context of seasonal workers in Turkey.

The Membership Status of Seasonal Migrant Workers in Turkey

This section discusses the membership status of seasonal migrant workers in Turkey through the analysis of the contemporary national laws concerning migrant workers. It also sets out to give some insights from the EU Directive on this area as the paper argues that as well as political and economic dynamics, the EU *acquis* have impacted recent Turkish policies concerning migrant workers massively. This paper does not claim that the EU *acquis* is the sole factor that influences Turkish legislation which agrees with the claim of ‘Turkey’s policy needs are not one-dimensional’ (Sagiroglu, 2016: 42). The section continues to contribute to the initial aim of this paper as it problematises the membership status of migrant workers in Turkey through providing evidence from primary data from interviews, observations and official documents.

Turkish legislation mentions seasonal workers in few areas discussed below; however, none of the laws clearly define or describe the status of seasonal migrant/workers (Sonmez-Efe, 2017; Yucel-Bodur, 2014). Thus, this paper problematises the status of seasonal migrant workers in Turkey based on the laws that implicitly describes such status. Before the analysis of Turkish laws, the paper needs to define what it means by seasonal work and seasonal worker. Seasonal work can be defined as;

...remunerated activities that are carried out on certain seasons or throughout the year where the work is concentrated in certain periods of the year (Alpagut, 1998:103; Mollamahmutoglu et al. 2014:255; Narmanlioglu, 2012:703; Balkir, 1997:151 cited in Yucel Bodur, 2014:133; Suzek, 2011:241).

According to the supreme court, seasonal work is described similarly as mentioned above, which can be shorter or longer term based on the nature of the work (Yrg.9. HD.’nn. 12.10.2010 tarih ve E. 2008/35528, K.2010/28674 sayili karari cited in Selek Oz and Bulut, 2013:96). Turkish law describes ‘seasonal’ work along with ‘campaign’ work where the work carried out in short space of time in various

industries (Taskent, 2010:227-228). ‘Seasonal worker’ is referred to someone who carry out seasonal work activities on temporary bases.

When we look at Turkish legislation, as mentioned above the status of ‘seasonal worker’ or ‘seasonal migrant worker’ has not been defined. Therefore, this paper analyses other definitions of migrant worker exist within key Turkish laws concerning migrant workers, which in turn will help this study to identify the legal position of seasonal workers under Turkish legislation. The key law concerning migrant workers in Turkey, the International Labour Force Law (ILFL), defines a *migrant worker* using the term ‘*foreigner*’ as;

...someone who is not a citizen of the Republic of Turkey (ILFL, 2016).

The Law (ILFL, 2016) continues to define a *foreigner* (in the context of migrant workers) similar to its predecessor, the Law on Work Permits for Foreigners (LWPF, 2003), which takes the Citizenship Law (CL, 2009) as guidance. This definition places an emphasis on *the legality* and *national affiliation* of persons into the host country as two key components for the membership status of migrant workers. The former requires migrant workers to develop a legal attachment to the host country through legal membership, whereas the latter is laden with political, social and cultural attachments, as nationality for migrant workers means full membership, namely citizenship (Sonmez Efe, 2017).

It can be argued that the aforementioned definition moves away from the international definition partly as it does not include the economic activity that foreigners are engaged in within the host country. This general definition of a migrant worker encompasses the foreigners who legally hold temporary, indefinite, independent and exceptional work permits (ILFL, 2016). In other words, according to the Law (ILFL, 2016) a foreigner in this context can be a temporary or permanent migrant worker who acquires temporary or permanent membership (legal and economic membership) status and who does not possess a full membership (legal, economic and political) status (citizenship).

The ILFL (2016) does not define a legal status for seasonal migrant workers (or foreigners) and indeed no temporary work permit exists for such workers. The Law on Foreigners and International Protection (LFIP, 2013) and the ILFL (2016) mention seasonal workers in the context of agricultural labour; however, the membership status of these migrant workers is left unclear which also excludes the seasonal migrant workers employed in other sectors such as tourism in Turkey (Sonmez Efe, 2017: 164). The data from interviews illustrates that the seasonal workers employed within Turkey's tourism sector are predominantly from Ex-Soviet Union countries (Sonmez Efe, 2017). For example, an Official from the Ministry of Labour and Social Security (MLSS) confirms tourist guides' legal right to work in Turkey on a temporary status (for the summer season) based on 8 months visa allowance granted by the MLSS; however, he further points out that Turkish Law does not mention such type of seasonal worker status (Sonmez Efe, 2017).

On the one hand, Turkey implements a flexible visa regime to the countries that it has bilateral or multilateral agreements with, which enables seasonal migrant workers who reside and work in Turkey temporarily to benefit from the country's labour market. On the other hand, despite of the state recognition of seasonal migrant workers as 'Turkey's needed foreign labour force' (ILFL 2016, Article 27/10), where their legal membership status has not been clearly laid down by the Turkish legislation. For example, according to an Official, there are an estimated 40 to 100 thousand Armenian migrant workers in Istanbul who are described as circular migrants (Sonmez Efe, 2017). The same Official gives another example for seasonal workers who are coming from Ex-Soviet Union countries and work in the hazelnut fields three times a year and tea fields during the harvest season (ibid). These migrants either stay in Istanbul for 90 days of their visa allowance or some of them exceed this allowance and work on irregular bases without social security. On the one hand, this flexible visa policy provides opportunities for seasonal and/or circular migrants to enjoy

the Turkish labour market; on the other, in terms of social security rights the flexible visa policy makes it difficult for these migrant workers to receive rights during their short-term employment.

As discussed earlier in the paper, Turkish immigration policy is influenced by internal and external political and economic factors; however, this section focuses on the impact of the EU *acquis* on Turkish policies regarding the study of the status of seasonal migrant workers. It can be argued that the recent policies concerning migrant workers in Turkey is highly influenced by the EU *acquis* as a part of Turkey's accession process into the EU (Demiryontar, 2016; Icduygu, 2006; Kale, 2005; Kaya and Tecmen, 2016; Kirisci, 2005a, 2005b, 2007; Tolay, 2012). This paper further argues that an absence of a common policy on labour migration in the EU arguably reinforces the lack of clarity of the membership status of seasonal migrant workers in Turkey. The analysis of the EU policies shows that there is 'no single unified EU regulation covering the regulation of seasonal workers which proves a lack of guidance for Turkey as a candidate country' (Sonmez Efe, 2017:164).

The EU treats seasonal migrant workers separately within the scope of the ECLSMW (1977) similar to the UN Convention on Migrant workers which defines seasonal migrant workers as;

...a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during a part of a year (ICRMW, 1990).

The EU's approach to a common immigration policy makes distinctions for the economic membership status of migrant workers between skilled and unskilled; and temporary and permanent migrant workers (Sonmez Efe, 2017: 164). A similar distinction is made by the EU for the type of labour migration; self-employment, employment and seasonal work; which partly is mirrored by Turkish policies as the first categories are included, but seasonal workers are excluded from such categorisation (ibid, footnote 23). Such a crude distinction does not illustrate the complexity of the membership status seasonal

migrant workers which leaves their status unclear and their rights concomitantly unregulated.

On the one hand, the EU Directive on the Conditions of the Entry and Stay of Third-country Nationals for the Purpose of Employment as Seasonal Workers (2014) lays down the visa regulations, status and rights of seasonal workers from third-country nationals which provides the member states some sort of guidance for a unified approach to the issue. The key aim of the Directive (ibid) is to encourage legal migration through providing a route of lawful labour migration for irregular seasonal migrant workers as it is claimed that a large proportion of these workers employed in the agriculture sector within member states were on an irregular status (Fudge and Olsson, 2014:445).

On the other hand, within the Directive (2014) the national institutions of the member states are given the full responsibility and authority to implement such regulations at local level; to give nation states the right to prioritise local and EU national workers; to decide on the scope of the rights that these workers will enjoy during their stay in the host country. The supranational character of the Directive which has had far reaching implications for member states' power to manage their borders is considered to be too intrusive (Fudge and Olsson, 2014:446) by the EU nation states. The member states' demands for preserving their policies concerning seasonal migrant workers such as maintaining low wages; determining the sectors for recruitment of such workers; and admission rules has clashed with the Directive's main unified goal of a policy for seasonal migrant workers that aims for equal treatment of these workers with more rights. Thus, the final draft of the Directive (2014) gives flexibilities for the member states with regard to the admissions and implementation of the regulations. In other words, it can be argued that the regulation of these workers is left to the national laws of the member states who can expand or restrict their admissions and rights. For example, the United Kingdom Department for Business Innovation and Skills Research Paper on the impact of migrant workers on UK businesses recognise the undeni-

able impact of seasonal workers on supporting recruitment with the flexibility of work locally (2015:50); however, the EU and British policies prioritise British and EU nationals over the third country nationals which potentially pushes the latter group into an irregular status. With the Brexit imminent (the UK leaving the EU), similar concerns apply to the seasonal migrant workers who are EU nationals, particularly from Ex-Soviet EU countries despite of the massive demand for these workers, particularly in the UK's agriculture sector.

Thus, the analysis shows that the EU policies indeed have a separate category for seasonal migrant workers which lays down their legal status and rights; however, the EU member states have full responsibility over the management and regulation of this group of migrants and on deciding on what rights they receive under the states' jurisdiction. The EU policies are also quite discriminatory towards third country nationals and prioritise the applicants from member states; this poses a potential problem for seasonal migrant workers joining the EU labour market on an irregular status, which can impact them detrimentally in terms of exploitation at the hands of unscrupulous employers.

According to the Observational data (2014), although Turkey shows its commitment to the EU accession process for a strategic plan on migration and refugee issues which has accelerated since 2005; based on its different experience of labour migration compared to the EU member states Turkey could not imitate the EU policies directly within its national laws. Moreover, as discussed above, the EU member states also have difficulty in creating a single regional policy for seasonal migrant workers as a result of the varying demands of each nation state. However, in the context of seasonal migrant workers, as an Official from Istanbul Chamber of Industry (Sonmez Efe, 2017) points out there is a need for a special politics of rights for these workers in Turkey which should cover their social security rights during their short term stay which ideally prevents their exploitation under unscrupulous employers.

The data from interviews demonstrates the complexity of this issue which is reflected in the governance and management of seasonal migrant workers in Turkey. At this point as discussed earlier, it is challenging to have a precise estimate number of seasonal migrant workers in Turkey for two reasons; one, the status of seasonal migrant workers does not exist as a separate category in Turkish Laws which makes it difficult to get the statistics of the official applications for such a status; two, most of these workers are undocumented employed without registering for social security and they are not included in the statistics. The latter is also addressed by a Senior Academic in the field of Labour Migration and TARIM-IS Official that is interviewed;

“...90% of seasonal workers working particularly in the agriculture sector are informal and there is no policy that regulates these workers...” (Interviewed in 2015 cited in Sonmez Efe: 2017).

According to an Official interviewed from Multeci-Der (Interviewed in 2015) the seasonal migrant workers employed in the agriculture sector are now usually of Syrian origin who replaced internal seasonal migrant workers from the Kurdish population from Turkey's rural areas (Sonmez Efe, 2017, footnote 33). The status of Syrian migrant workers in Turkey is defined by the LFIP (2013) as 'Conditional Refugees' which further gives them a 'Temporary Protection' under Turkish state jurisdiction. The temporary membership status is important and useful for Syrian migrant workers who work as seasonal workers as when/if they are registered in the cities, districts and villages is determined by the MLSS (the Regulation No.6883, 2014, Article 29/2).

According to a Senior Academic in migration studies (2015), DGMM has been successful in processing the legal registration of Syrian migrants which illustrates an increase of formal registries within national statistics from 57 per cent in 2014 to 93 per cent in 2015. The ILFL bestows these migrants the right to work after six months of residence in satellite cities (ILFL, 2016, Article 17/1). Such legal

registration in satellite cities also bestows Syrian migrants the aforementioned temporary protection status, which allows them to benefit from various rights including health, education, social security and minimum wage. In this context, Turkish laws recognise the presence of Syrian migrants in seasonal sector on irregular status; and give these migrants right to work after six months residence under the status of Temporary Protection (ILFL, 2016); which is a 'heroic policy move' considering the fact that there is a high number of Syrian migrants currently living in Turkey. Thus, this policy and Turkey's flexible visa regime policy with non-EU countries suggests that despite the undeniable influence of the EU *acquis* on Turkish policies concerning migrant workers, it cannot be a sole impact on Turkish policies.

On the one hand, with such a policy, Turkey adopts a humane approach to (temporary) legal and economic membership of Syrian migrants; and this kind of temporary status according to an Official from the MoI is 'unique' as it has not been practiced in any other country (Sonmez Efe, 2017). On the other hand, the fieldwork data suggests a high number of Syrian migrants employed on an irregular status still exist in Turkish labour market, including the category of seasonal worker. As the only way of collecting statistical evidence of undocumented migrants is through the police statistics (Observational data, 2014), it becomes difficult to have exact numbers of undocumented seasonal migrants in Turkey as mentioned above. Moreover, despite them joining the labour market as seasonal workers *de facto*, Syrian migrants cannot be considered within the scope of the status of seasonal migrant workers *de jure* as a result of their temporary status aforementioned and the length of their residence in the host country which has been longer than 5 years.

In light of this, the analysis of the fieldwork data and Turkish Laws also reveals that seasonal workers are a special case and their legal and economic membership status needs to be covered as an entire separate group or a separate group under temporary work permit. As indicated in the European Convention (ECLSMW, 1977) and the UN Conven-

tion (ICRMW, 1990) seasonal migrant workers ought to be treated as a separate group to temporary migrant workers within state policies as a result of their unique working conditions such as length of time of employment. For example, the case of contributory and non-contributory benefits for seasonal migrant workers would be different as the entitlements of non-contributory benefits such as health care ought to apply as soon as a migrant worker is employed whereas contributory benefits such as pensions depends on the number of years of the employment in the host country (an Official from UN Committee on Human Rights of Migrants, interviewed in 2015). Similarly, their right to annual holiday becomes problematic because of the nature of their work (Yucel-Bodur, 2014). Thus, this paper suggests an urgent need for a policy in Turkey, which clearly defines the status and rights of seasonal migrant workers either under the category of temporary work permit or as a separate group.

This paper has argued in the previous section that the legal membership status of migrant workers is prerequisite to their economic and political memberships; and the degree of the membership status determines the scope of ESRs and CPRs that migrant workers receive from the host country (Sonmez Efe, 2017). In the context of seasonal migrant workers, considering the fact that there are legal loopholes in state policies resulting in their legal status remaining undefined, it becomes more difficult to discuss their ESRs and CPRs. This paper argues that with the ESRs of migrant workers we talk about the degree of their legal and economic membership in the host country; and with their CPRs we refer to the scope of their political membership (Sonmez Efe, 2017). The analysis of the fieldwork data from the interviews reveals that the length of time and legality are two key determinants (ibid) for seasonal migrant workers' membership status. The interviewees from governmental and non-governmental officials have a common view on the type of rights temporary and seasonal migrant workers should have, which advocates the ESRs of migrant workers regardless of the length of their residence or employment in the country.

The paper further argues that a cosmopolitan moral approach gives states the duty for recognising persons' rights to hospitality and freedom of movement; thus, state laws ought to recognise the presence of seasonal migrant workers in some sectors in Turkey as an important part of the labour force, who contribute to the growth of the economy massively. With such recognition, according to the cosmopolitan approach states treat these migrant workers morally, and not as mere economic components of the labour market, but as social beings possessing economic and social needs. Through legal membership, states accomplish their moral duty of creating legal conditions for freedom of movement and the universal right to hospitality; furthermore, this in turn is the recognition of the act of migration as a peaceful process and fundamental right.

The analysis of the field work data shows that there is a *de facto* status of seasonal migrant worker in Turkey in particularly within the agriculture and tourism sectors; however, this status is not clearly laid down in the state laws *de jure*, which creates a legal loophole for the recognition of their rights at state level. A temporary work permit arguably can encompass these workers; however, the length of this status starts from 1 year which does not correspond the duration of employment of these seasonal migrant workers. Thus, this group of workers can have a separate status. On the other hand, as discussed previously in this section, many seasonal migrant workers benefit from the flexible visa policy which enables them to stay in Turkey for 90 days and these migrants join the labour market with an irregular status; which becomes problematic within the context of their membership status and rights.

Thus, the discussions in this section once again prove the complexity of the membership status of migrant workers within state policies. It further suggests that the state and regional policies ought to be clear about the membership status and rights of seasonal migrant workers in order to prevent legal loopholes that pushes these workers into a vulnerable position within the informal labour market.

CONCLUSION

This paper discussed the concept of the membership status of migrant workers within state legislation and focused on the case of seasonal migrant workers employed in the Turkish labour market. The paper also discussed the EU approach to the same issue as it argued that the EU is an important factor for Turkey having a massive influence on Turkish policies; however, it also argued that the EU has not been the sole factor as other political and economic conditions contribute in shaping Turkish policies. The paper suggests that the EU has influenced Turkish approach legal labour migration which is selective to legal migrant workers with a temporary or permanent status. The category of seasonal labour migration has been left to the nation-states' jurisdiction; and the analysis in this paper suggests that this category has not been clearly defined by Turkish legislation.

On the other hand, the analysis of the primary data from the interviews, observations and official legal documents in this paper suggests that Turkish policies have a humane approach to migrants who have joined the labour market under temporary or international protection. The formalisation process of the status of Syrian migrant workers employed in seasonal jobs informally in Turkish labour market is considered as a 'heroic policy move' as opposed to the EU policies that prevent these migrants from entering the region. However, this policy is limited to migrants on the status of temporary protection that leaves other seasonal migrant workers outside of the scope of legal domain, which is also a widespread global practice.

Thus, the paper suggests that there is a lack of clarity in the legal membership status of seasonal migrant workers in Turkey which impacts on their economic membership status. The fieldwork data reveals that there is a group of migrant workers employed within a *de facto* seasonal status which ought to be recognised as a clear *de jure* status. This in turn will entail legal recognition of these workers' contribution to economic growth and their ESRs during their employment.

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