



SYRIAN ASYLUM SEEKERS IN TÜRKIYE IN LIGHT OF INTERNAL AND INTERNATIONAL LAW: LESSONS FROM TODAY FOR THE FUTURE

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Article Info	ABSTRACT
Article type: Research Article	International refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it. In the context of the Syrian conflict, more than 3.6 million Syrian asylum seekers are under temporary protection in Türkiye. As this country is the number one host country for Syrian asylum seekers in the world. One of the current discussions about the fate of Syrian asylum seekers in Türkiye is their status after the end of temporary protection. In this context, the regulations on the end of temporary protection in Turkish legislation will be discussed in light of global standards on international protection. The aim of this study is to discuss Article 11 of the Turkish Temporary Protection Regulation in comparison with the UNHCR Guidelines on Temporary Protection or Residence Arrangements and International Humanitarian Law. In this context, the conditions for the termination of temporary protection, the legal and policy basis for a decision to return asylum seekers, the conditions for acquiring Turkish citizenship, and the compliance of Turkish legislation with global standards are discussed. This study will stand for a decision to terminate based on the voluntariness of asylum seekers in accordance with UNHCR guideline.
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Introduction

The "right to seek and be granted asylum in a foreign territory" is enshrined in Article 14 (1) of the Universal Declaration of Human Rights (1948) and subsequent regional human rights instruments. The 1951 Convention relating to the Refugees and its 1967 Optional Protocol relating to the status of Refugees laid the foundation upon which subsequent regional instruments have built, including the 1969 OAU Convention,¹ the 1984 Cartagena Declaration,² the EU Qualification Directive³ and other relevant instruments of the EU asylum *acquis communautaire*, and the 1966 Bangkok Principles.⁴ Collectively, this body of law, complemented by international human rights law, makes up the international refugee protection regime under which UNHCR exercises its mandate responsibilities.⁵ Consistent with Article 1(A) (2) of the 1951 Convention, a refugee is "an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group."

As for the situation in Syria, it should be noted that the civil war in Syria has led to a mass

1. The 1969 OAU Convention refugee definition set out at Article I covers, in addition to those included in the 1951 Convention definition, 'every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.' Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (September 10, 1969) 1001 UNTS 45, <http://www.refworld.org/docid/3ae6b36018.html>

2. Conclusion III (3) of the Cartagena Declaration recommends a refugee definition that covers, in addition to those included in the 1951 Convention definition, 'persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.' Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, (November 22, 1984), <http://www.refworld.org/docid/3ae6b36ec.html>

3. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), (December 20, 2011), OJ L 337.

4. Asian-African Legal Consultative Organization (AALCO) Bangkok Principles on the Status and Treatment of Refugees, (December 31, 1966) (final text adopted June 24, 2001).

5. UN General Assembly, 'Statute of the Office of the United Nations High Commissioner for Refugees', (December 14, 1950), A/RES/428(V), <http://www.refworld.org/docid/3ae6b3628.html>; UNHCR, 'Note on the Mandate of the High Commissioner for Refugees and his Office', (October 2013), <http://www.refworld.org/docid/5268c9474.html>



influx into neighboring countries including Türkiye. Since 2011, when the clashes began, approximately 5.6 million Syrian citizens have been forced to migrate to other countries, mainly Türkiye, Lebanon, and Jordan (Table 1).

TABLE 1: SYRIAN ASYLUM SEEKERS PER COUNTRY

Total Persons of Concern by Country of Asylum					
Location name	Source	Data date		Population	
Turkey	Government of Turkey	7 Jan 2022		65.7%	3,736,925
Lebanon	UNHCR	31 Dec 2021	14.8%		840,929
Jordan	UNHCR	31 Dec 2021	11.8%		672,952
Iraq	UNHCR	31 Dec 2021	4.5%		254,561
Egypt	UNHCR	31 Dec 2021	2.4%		136,727
Other (North Africa)	UNHCR	31 Dec 2020	0.7%		42,578

Total Registered Syrian Refugees	
5,684,672	Source - UNHCR, Government of Turkey
Last updated 07 Jan 2022	

Source: (UNHCR, 2021a;¹ TDGMM, 2021²)

When examining the records of the United Nations Refugee Agency (UNHCR) based on the data of the Turkish Directorate of Migration Management (TDGMM), one finds that Türkiye is the country most affected by the aforementioned migration wave.³ UNHCR also reports that Türkiye will be the leading country in receiving refugees by the end of 2020.⁴ Since the beginning of the Syrian civil war, Türkiye has had an open-door policy for Syrian refugees. However, the influx created confusion and debate over the legal status of asylum seekers due to a lack of appropriate legal provisions.

Türkiye is a signatory to the Convention Relating to the Status of Refugees (hereinafter 1951 Convention) and its 1967 Protocol, with one geographical restriction. Of course, Grandi, the UN High Commissioner for Refugees said the treaty was a crucial component of international human rights law and remained as relevant now as it was when it was drafted and agreed.⁵ Türkiye made a declaration under Article 1(B) of the 1951 Convention that it would apply the Convention only to persons who became refugees as a result of "events which took place in Europe before January 1, 1951". By a declaration with its instrument of accession to the 1967 Protocol, Türkiye has maintained the geographical limitation of the 1951 Convention. As a result, Türkiye does not grant 'refugee status' and does not apply the 1951 Convention to asylum seekers coming from Syria. Subsequently, Türkiye adopted its legislation on interna-

1. United Nations High Commissioner of Refugees [UNHCR], 'Operational Data Portal', (2021a), available at: <https://data2.unhcr.org/en/situations/syria>

2. Turkish Directorate General of Migration Management [TDGMM], 'Yıllara Göre Geçici Koruma Altındaki Suriyeliler' (2021), available at: <https://www.goc.gov.tr/gecici-koruma5638>

3. For more information see: <https://en.goc.gov.tr/international-protection> and <https://en.goc.gov.tr/irregular-migration>

4. United Nations High Commissioner of Refugees [UNHCR], 'Refugee Data Finder', (2021b), available at: <https://www.unhcr.org/refugee-statistics/>

5. UNCHR, 'The 1951 Refugee Convention: 70 Years of Life-Saving Protection', (July 28, 2021), available at: <https://www.unhcr.org/neu/64169-the-1951-refugee-convention-70-years-of-life-saving-protection-for-people-forced-to-flee.html>

tional protection of refugees under the Law on Foreigners and International Protection¹ (hereinafter LFIP). Part three of the LFIP, similar to the 1951 Convention, emphasizes their various rights, including the right to a fair trial. In fact, in the third part the Turkish law specifies kinds of international protection, general procedures for applications, administrative reviews and judicial remedies, exclusion, termination and cancellation of international protection, rights and obligations, and temporary protection status. The LFIP, in turn, designates three statuses of 'refugees' as refugees, conditional refugees and subsidiary protection. Art. 61 describes 'refugees' as follows:

"A person who, as a result of events occurring in European countries, owing to a 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 former residence as a result of such events, is unable or, owing to such fear, is unwilling to return there."

The LFIP obviously borrows from the 1951 Convention the definition, but with a geographic restriction in accordance with Türkiye's declaration to the Convention. Thus, Türkiye undertakes to grant refugee status to those who have forcibly left their country in Europe for one of the five reasons listed above. Article 62 provides a transitional regime, namely conditional refugees, for asylum seekers who come from outside Europe for the five reasons mentioned above. These persons are allowed to stay temporarily in Türkiye until they are resettled in a third country. In the analysis of this article of Turkish law, it should be said that this article complies with the provisions of the 1951 Convention, including Article 6. Art. 63 further grants asylum to an alien or stateless person who cannot be classified as a refugee or a conditional refugee but who "upon return to the country of origin or country of [former] habitual residence:

1. would face death sentence or execution;
2. (b) be subjected to torture or inhuman and degrading treatment or punishment;
3. is seriously threatened by indiscriminate violence in international or national armed conflicts."

Consequently, none of the three international protection categories cover Syrian asylum seekers. On the other hand, LFIP Art. 91(1) defines temporary protection as: "Temporary protection may be granted to foreigners who have been forced to leave their country, who cannot return to the country they left, and who have arrived in Türkiye in a situation of mass influx or have crossed the borders of Türkiye and are seeking immediate and temporary protection".

1. Legal Status of Syrian Asylum Seekers in TÜRKIYE

As mentioned above, although Türkiye is a party to the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Additional Protocol, the asylum seekers who arrive

1. See https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP_ENG_DGMM_revised-2017.pdf



at Türkiye from Syria cannot be considered refugees due to Türkiye's geographical limitation that the Convention only applies to events in Europe. Türkiye is now one of the 145 countries of the 1951 Convention. In this regard, asylum seekers who come from outside Europe are not accepted as asylum seekers in Türkiye. The LFIP also excluded Syrian asylum seekers from refugee status. Against this background, Türkiye issued the Temporary Protection Regulation (TPR) in 2014, referring to Article 91(2) of the LFIP. The TPR defines its objective in Article 1 as:

"To establish the procedures and principles for temporary protection procedures for foreigners who have been forced to leave their countries and who cannot return to the countries they left and arrived in, or who have crossed our borders en masse to seek urgent and temporary protection and whose applications for international protection cannot be accepted on a case-by-case basis; To determine the procedures to be carried out in connection with their reception in Türkiye, their stay in Türkiye, their rights and obligations and their departure from Türkiye, to regulate the measures to be taken against mass movements and the provisions related to cooperation between national and international organizations."

Art. 5(1) of the TPR provides that illegal entry and stay shall not be punished in the case of a mass influx placed under temporary protection by the Council of Ministers. Accordingly, the Council of Ministers is empowered to decide on persons placed under temporary protection and on the commencement, duration, extension or termination of temporary protection (TPR Art. 10).

An international call for the declaration of temporary protection is not addressed in the Turkish legislature, however, LFIP Art. 92 allows the Ministry of Interior to cooperate with UNHCR, the International Organization for Migration, other international organizations and non-governmental organizations on issues related to the procedures and implementation of temporary protection. On the other hand, temporary protection may not be granted or revoked for the same reasons as exclusion from international protection (TPR Art. 8): if a person enjoying temporary protection has died, if he or she leaves Türkiye of his or her own free will, if he or she claims the protection of a third country, or if he or she is admitted to a third country for humanitarian reasons or in the context of resettlement (TPR Art. 12). The TPR recognizes the right to health care (Art. 27), the right to education (Art. 28), the right to settle in the country, the right to housing and the right to travel freely (Art. 25), the issuance of an ID card (Art. 22), the right to social security and housing (Art. 27), the right to employment (Art. 29), the right to social assistance (Art. 30), administrative services and interpretation services (Art. 31(1)) for persons placed under temporary protection.

Apart from these services, the TPR allows additional services provided by other public institutions and organizations within the scope of services (Art. 26(2)). The Temporary Protection Card ID gives its holder a residence permits in Türkiye, but this does not mean full freedom in terms of residence and is subject to compliance with certain regulations, which can be adjusted according to the criteria of security, order, economy and society. The Temporary Protection Card ID does not provide the right to apply for citizenship (TPR Art. 25). In addition, asylum seekers under temporary protection who do not have a valid travel document have the right to a "travel card" issued in accordance with the Passport Law (TPR Art. 43).

1.1. Scope of Temporary Protection

The 1951 Convention on the refugee protection system suffers from serious inconsistencies. It is lamentable that a greater number of states are passive by shrinking their duties and obligations under international refugee law, and in effect fewer asylum seekers have access to protection today. Restrictive and selective refugee policies are, indeed, not a new trend in Western countries as they tend to keep problems away from their borders and expect the rest of the world to accept refugees.¹

Another fundamental flaw in international refugee law is individual state responsibility, where states' responsibility to refugees is based primarily on the relative ability of states to control their borders.² Another problem³ arises from the individualistic nature of the refugee process, which may mean that, at the very least, the process cannot be effectively and properly applied in the event of a mass influx. Moreover, victims of intricate contemporary social and political problems, as well as environmental disasters, might be excluded from international protection mainly due to the limitative nature of the definition of refugee in international law.

In this regard, temporary protection has been viewed as an exceptional measure and a pragmatic tool to address particular situations of mass influx where national asylum systems may be overwhelmed.⁴ The temporary protection regime does not have a uniform and agreed-upon definition in international law and has different meanings and applications depending on the context and country. It is most commonly understood as a short-term emergency response to a 'mass influx' of asylum seekers to mitigate the severity of the situation when it is difficult to manage the mass movement and effectively distinguish between asylum seekers and others.⁵ Temporary protection thus has two faces: first, in a positive sense, extending emergency humanitarian assistance and improving the situation of masses who unfortunately fall outside the scope of the 1951 Convention. Second, temporary protection may be used suspiciously by some countries to displace regulation and protection under international refugee law and to shirk their corresponding responsibilities.⁶

According to Article 2 of the European Commission Directive 2001/55/EC of July 20, 2001, the persons covered by the temporary protection regime are, in other words, "displaced persons":

"Third country nationals or stateless persons who have had to leave or have been evacuated from their country or region of origin, in particular as a result of an appeal by international organizations, and who cannot return under safe and

1. Bhupinder Chimni, 'Globalisation, Humanitarianism and the Erosion of Refugee Protection', (2000), 13 Journal of Refugee Studies, 251-252.

2. James Hathaway, 'Temporary Protection of Refugees: Threat or Solution' in Jonathan Klaaren, Jeff Handmaker and Lee Anne de la Hunt (eds), Perspective on Refugee Protection in South Africa, (Lawyers for Human Rights 2001), 43-44.

3. For some problems of refugees see: drc.ngo/it-matters/current-affairs/2020/12/syrian-refugees-struggling-to-find-a-new-life/

4. UNHCR, 'UNHCR Summary Observations on the Commission Proposal for a Council Directive on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx (COM(2000) 303, 24 May 2000)', (September 15, 2000), available at: <http://www.refworld.org/docid/437c64b04.html>

5. Alice Edwards, 'Temporary Protection, Derogation and the 1951 Refugee Convention', (2012), 13 Melbourne Journal of International Law, 5-6.

6. Joan Fitzpatrick, 'Temporary Protection of Refugees: Elements of a Formalized Regime', (2000), 94 American Journal of International Law, 279.



durable conditions because of the situation prevailing in that country, and who may fall within the scope of Article 1A of the Geneva Convention relating to the Status of Refugees or other international or national instruments granting international protection, in particular:

- (i) Persons who have fled areas of armed conflict or endemic violence;*
- (ii) Persons who are at serious risk of becoming victims of systematic or generalized human rights violations or who have suffered such violations.*

For its part, as noted in paragraph 9 of the UNHCR Guidelines on Temporary Protection or Residence Arrangements¹, UNHCR advocates temporary protection arrangements in particular as an appropriate response to:

- (i) large flows of asylum-seekers or other similar humanitarian crises;*
- (ii) Complex or mixed cross-border population movements, including boat arrivals and sea rescue scenarios;*
- (iii) fluid or transitory contexts [e.g., at the beginning of a crisis when the exact cause and character of the movement may be uncertain, or at the end of a crisis when the motivation for departure may require further assessment]; and*
- (iv) other exceptional and temporary circumstances in the country of origin that require international protection and prevent return in safety and dignity".*

Evidently, both definitions are intent on providing emergency measures in the event of a mass influx of people who may fall within the scope of the 1951 Convention to normalize circumstances at least to a point their lives and human dignity are in no more danger. In this sense, these regulations are not able to cover new threats to people under the influence of climate change and victims of probable environmental disasters not mentioned in the 1951 Convention. According to the Executive Committee of UNHCR, "asylum seekers who are part of these large refugee flows include persons who are refugees within the meaning of the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees, or who are forced to seek refuge outside that country as a result of external aggression, occupation, foreign domination, or events seriously disturbing public order in part or all of the country of their origin or nationality".² On the other hand, UNHCR recognizes the risk of displacement due to climate change and calls on all concerned parties to work together and cooperate to find the available responses to climate-induced displacement, which "must be guided by the fundamental principles of humanity, human dignity, human rights and international cooperation".³

1.2. Rights of Asylum Seekers Under Temporary Protection in TÜRKİYE

The TPR grants persons under temporary protection the right to health, education, residence in the country, housing, access to the labor market, social assistance, interpreters and similar services (Arts. 26-32), which covers the main obligations of the host states as mentioned above.

1 . See <https://www.refworld.org/pdfid/52fba2404.pdf>; see also UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements', (2014), available at:

<https://cms.emergency.unhcr.org/documents/11982/44933/UNHCR,+Guidelines+on+Temporary+Protection+or+Stay+Arrangements,+2014/373af576-cd03-4134-9d49-e03a1add6a9e>

2. Executive Committee of the High Commissioner's Programme, 'Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII) – 1981', October 21, 1981, No. 22 (XXXII), available at: <https://www.refworld.org/docid/3ae68c6e10.html>

3. UNHCR, 'Summary of Deliberations on Climate Change and Displacement' (2011b), available at: <http://www.refworld.org/docid/3ae68c6e10.html>

Within this framework, most of the work is done in cooperation with UNHCR and other international charities. Moreover, Türkiye has not imposed any special requirements for foreigners to access the labor market and has issued the necessary work permits to Syrian immigrants. In this regard, Türkiye has adopted a self-regulatory approach to the labor market for immigrants and avoided a potential social and economic crisis.¹

A) Healthcare: Article 27 of the TPR regulates healthcare for asylum seekers with temporary protection status. Asylum seekers are entitled to all basic health care services available to Turkish citizens. Health care for asylum seekers in Türkiye is provided by the Ministry of Health inside or outside temporary accommodation centers. The TPR requires the Ministry of Health to establish a sufficient number of health centers and to provide sufficient medical personnel and ambulances at the established health centers. The ministry has increased equipment and personnel accordingly.² However, it is frequently reported that health care for Syrian asylum seekers often falls short due to the insufficient number of medical staff and language and cultural differences.³ Another shortcoming in access to health services for Syrian asylum seekers is that they are required to pay a "contribution fee" for health care, like all Turkish citizens, except for patients in emergencies. Since those with temporary protection status come from other countries, the necessary examinations and vaccinations are carried out with regard to infectious diseases. The legislation also stipulates that the environmental conditions in which the temporary shelters for asylum seekers are located must be made suitable for health. Under Article 27(5) of the TPR, assurances are given that "psychosocial services for persons enjoying temporary protection are carried out [in cooperation] with partners for support solutions, which are also listed in Türkiye's Disaster Plan published by the Ministry of Family and Social Policy."

B) Educational Services: The Ministry of National Education provides the Syrian asylum seekers under temporary protection with educational services for within or outside the temporary accommodation centers. Regulations regarding educational services are stipulated in Art. 28 of the TPR. Consistent with it, preschool, primary and secondary education and trainings are given to children. It is considered the exclusive right of children of all ages who wish to have access to courses such as obtaining professions and learning foreign languages. The Presidency of the Council of Higher Education decides whether higher education be given outside the specified trainings.. In line with Art. 28(3) of the TPR, in the event that an asylum seeker had received education under a different curriculum, documents must be submitted for evaluation by relevant units of the Ministry of National Education or Presidency of Council of Higher Education. The equivalence proceedings issued accordingly entitles the asylum seeker the right to perform their profession.

C) Access to the Job Market: Under Art. 29 of the TPR, the Ministry of Labor and Social Security (MLSS) is the authority to decide on the right to employment to be given to asylum seekers under temporary protection by the Government.. Submitting their temporary protection certificates to the MLSS, and one can apply to receive a work permit. It includes both paid

1. Arda Akçiçek, 'Türkiye'de Suriyelilerin Toplumsal ve Ekonomik Uyum', (2018), 80 *Liberal Düşünce*, 51-61.

2. Nagihan Önder, 'Türkiye'de Geçici Koruma Altındaki Suriyelilere Yönelik Sağlık Politikalarının Analizi', (2019), 5 *The Journal of Migration Studies*, 141.

3. Ömer Yavuz, 'Türkiye'de Suriyeli Mültecilere Yapılan Sağlık Yardımlarının Yasal ve Etik Temelleri', (2015), 12 *Mustafa Kemal University Journal of Social Sciences Institute*, 269.



works and self-employment. All persons under temporary protection who are employed shall have access to ordinary social security facilities. Although numerous projects have been developed for the employment of the Syrian asylum seekers, sadly, reports indicate that most of the employment is cheap, unrecorded and without social and job security.

D) Social Assistance and Services: Regulations regarding social assistance and services for the people under temporary protection are enshrined in Art. 30 of the TPR. The Article provides that access to social assistances shall be given to asylum seekers under temporary protection who are in need. Social benefits for asylum seekers are carried out by the Ministry of Family and Social Policies.

E) Family Reunion: Under Art. 49 of the TPR stipulates that asylum seekers under temporary protection may apply for family reunification in Türkiye to reunify with a spouse, an underage child who has not attained maturity and a dependent child who is in another country. The applications are evaluated by the TDGMM and appropriate actions may be taken in collaboration with relevant public institutions and organizations, international organizations, and civil society organizations. Minors who are found unaccompanied proceed with the process of family reunification without prior request. Consistent with Article 3 of TPR, family members include the beneficiary's spouse, minor children and dependent adult children. The Article also provides that "family reunification steps [for the unaccompanied children] shall be initiated without delay and without the need for the child to make a request". Family reunification applications, especially reunification of children with their families inside Türkiye and in the border regions are typically examined by Türk Kızılay and AFAD, respectively.. The Türk Kızılay also provide accompaniment in case of child reunification in Türkiye and family tracing services.¹ Statistics reveal that as of January 2021 a total number of 3,239 family reunification requests have been received by the Türk Kızılay.²

F) Right to Nationality and Right to Property: The UNHCR Guideline underlines that TP-SA's are complementary tools to international protection and shall not obstacle the rights of an asylum seeker. It is, as well, stipulated in Art. 18 of EC Directive that "persons enjoying temporary protection must be able to lodge an application for asylum at any time". However, the TPR maintains that persons under the scope of temporary protection may not proceed with individual international protection applications during the temporary protection period. It is especially evident in applying for citizenship. According to Art. 11(b) of Turkish Citizenship Law (TCL) , to qualify for a citizenship, a foreigner must have lived in Türkiye continuously for at least five years. A relevant regulation, Art. 16 of the TCL maintains that persons under temporary protection regime who are married to a Turkish national for at least for three years could apply for citizenship.. The obstacle before the right of citizenship also affects the right of property acquisition for Syrians in light of the 1927 Law of Reciprocity which prohibits the acquisition of immovable in Türkiye to the nationals of Albania, Lebanon, Syria, Bulgaria and Greece. However, long-term residence rental contracts are possible.

Findings of surveys indicate that Syrian asylum seekers under temporary protection in Tür-

1 . See <https://asylumineurope.org/reports/country/turkey/content-temporary-protection/family-reunification/>

2. Türk Kızılay, Syrian Crisis Humanitarian Relief Operation, (January 2021) 4, available at: <https://www.kizilay.org.tr/Uppload/Dokuman/Dosya/january-2021-syria-crisis-humanitarian-relief-operation-09-03-2021-41886931.pdf>

kiye still suffer mostly from language problem, access to fundamental needs and unemployment in spite of the many legislations, regulations and projects which have been implemented.¹

1.3. Non-refoulement Under Temporary Protection TÜRKİYE

Reaffirming the universally-acclaimed principle of non-refoulement, Art. 6(1) of the TPR maintains that:

"No one within the scope of this Regulation shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion."

2. Termination of Temporary Protection Under Turkish Law

Consistent with Art. 11 of the TPR, upon the proposal of the Minister of Interior Affairs, the Head of Republic may use his authority to declare the termination of temporary protection regime with a Decree. The Head of Republic, in this case, is able to either make the decision on his own or inquire consultations of other States or international organizations. Neither LFIP nor TPR contain objective criteria for the termination of the international protection. Furthermore, there is no requirement to take the voluntariness of the asylum seeker into consideration. In the Decree of Termination, the Head of Republic may also decide: a) To fully suspend the temporary protection and to return of persons benefiting from temporary protection to their countries; b) To collectively grant the status, the conditions of which are satisfied by persons benefiting from temporary protection, or to assess the applications of those who applied for international protection on an individual basis; c) To allow persons benefiting from temporary protection to stay in Türkiye subject to conditions to be determined within the scope of Art. 11 of the TPR.

Excluding the refugee status, the following possibilities are available for Syrian asylum seekers upon the termination decision:

- A collective expulsion;
- Granting citizenship to some or all the asylum seekers under TCL Art. 12;
- Granting conditional refugee or subsidiary protection until their removal to a third country under LFIP Art. 62 and 63;
- Allowing some or all asylum seekers to stay in Türkiye as foreigners;
- Making a special regulation for Syrian asylum seekers.

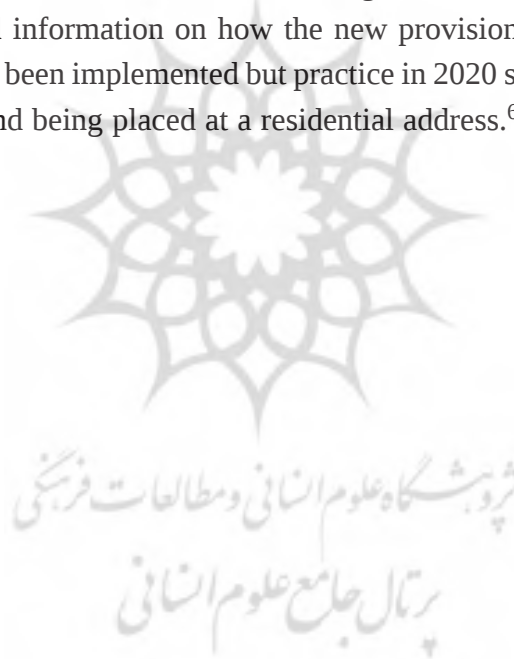
Furthermore, in line with Article 57 (2) of LFIP, detention for the purpose of removal may be issued to persons who: "1) Present a risk of absconding; 2) Have breached the rules of entry into and exit from Türkiye; 3) Have used false or forged documents; 4) Have not left Türkiye after the period of voluntary departure, without a reasonable excuse; 5) Pose a threat to public or-

1 . Hamza Ateş and Mücahit Bektaş, 'Suriyelilerin Toplumsal, Kültürel ve Ekonomik Entegrasyonu', in Yıldırım Deniz and Fatih Bilgin (eds), Uluslararası Sosyal Bilimler Sempozyumu, (TESAM 2016), 3-31; Sait Yılmaz, Özlem Arzu Azer and, Dikran M Zenginkuzucu, İstanbul Esenyurt İlçesi Suriyeli Sığınmacıların Sosyal ve Ekonomik Durumları (İstanbul Esenyurt Üniversitesi 2019), 60.



der, public security or public health.” The law furthers that “detention shall immediately cease where it is no longer necessary.”¹ Orders from Magistrates’ Courts of Antalya and Hatay in 2018 held that there is no basis for detention under Article 57 of LFIP in the event that the removal process cannot be carried out in light of interim measures from the Constitutional Court and the Administrative Court.² Conversely, the Magistrates’ Court of Van has held an opposite view in similar cases.³

According to RFIP, in the event that a person who is detained in a Removal Center applies for an international protection, he/she will remain in detention without being subject to a separate detention order for the purposes of the international protection procedure.⁴ This not only is contrary to the LFIP, which provides that applicants for international protection shall be protected from deportation, but it also raises the risk that grounds for detention under Article 68 of LFIP will not be adequately assessed with a view to maintaining or releasing an applicant from pre-removal detention. In practice, asylum seekers remain subject to pre-removal detention orders, although some persons are released after their application for international protection has been registered.⁵ Even this can nevertheless entail a prolonged period of pre-removal detention due to the significant obstacles to the Registration of applications from Removal Centers. There is limited information on how the new provision on alternatives to detention from December 2019 has been implemented but practice in 2020 seems to indicate an increased use of reporting duties and being placed at a residential address.⁶



1. Article ۴۵۷) LFIP.

22 .nd Magistrates’ Court of Antalya, 'Decision 2018/1761' (2 April 2018); 2nd Magistrates’ Court of Hatay, 'Decision 2018/4659' (26 December 2018).

32 .nd Magistrates’ Court of Van, 'Decision 2018/6023', (November 27, 2018); 2nd Magistrates’ Court of Van, 'Decision 2018/6166', (January 7, 2018).

4. Article 96(7) RFIP.

5. Information provided by a stakeholder, February 2018.

6. See section on Alternatives to detention in: <https://asylumineurope.org/reports/country/turkey/detention-asylum-seekers/legal-framework-detention/grounds-detention/>

Conclusion

Türkiye has reviewed its existing laws on international protection and temporary protection in the wake of the mass influx from Syria. As a result, more than 3.715 million Syrian asylum seekers were hosted in the country. Turkish legislature, to some extent, fulfils its obligation under human rights law. However, suspension of international protection procedures during temporary protection and insufficiency on naturalization of persons under temporary protection are the main basic issues to be revisited and improved. In this respect, it is incumbent to make modifications to Art. 16 of the TPR in line with international developments on international treatment principles under temporary protection. It is hoped that Türkiye amend Art. 16 pursuant to the EC Directive Art. 3(1) as temporary protection shall not prejudice recognition of refugee status under the 1951 Convention.

Furthermore, the international arena has changed greatly recently, more specifically, since Türkiye was founded. In the same vein, it is suggested that Türkiye revise its position regarding the 1927 Law of Reciprocity upon meticulous negotiations with the corresponding countries.

Finally, even if Turkish Constitution adopted a monist approach in case of protection of fundamental human rights and the 1951 Convention prevails in case of a gap or contradiction in domestic law –which does not exist in fact- it will be more appropriate that LFIP codifies literally the rights and freedoms of refugees, which shall be equal to a national such as freedom from discrimination, freedom of religion, intellectual property rights, right to fundamental education and other special regulations such as exception from prosecution for unlawful entrance, transfer of assets for refugees as recognized in the 1951 Convention.

In this respect, the following suggestions are made for the improvement in Turkish legislation on international protection and temporary protection:

- The withdrawal of Türkiye's geographical reservation to the 1951 Convention;
- The content of the rights and freedoms enshrined in the TPR shall be extended to cover all the international protection law;
- The 1927 Law of Reciprocity shall be revised and the right to property of the Syrian asylum seekers under temporary protection shall be provided;
- Individual applications for a relevant international protection status shall be allowed to persons under temporary protection;
- Naturalization procedures shall be established and application for citizenship shall be allowed for persons under temporary protection;
- The conditions for the termination of temporary protection shall be clearly fixed in the laws and regulations, especially the determination of the availability of the situation shall be assessed in cooperation with the UNHCR and other concerned international organizations;
- After the termination of temporary protection, the asylum seekers shall not be forced to return unwillingly and regardless of their concerns for legitimate threats.

All in all, greater compliance with international human rights law to protect the rights of refugees is a value that countries, including Türkiye, can consider.



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