

A critical review of Turkey's asylum laws and practices

# Seeking Asylum in Turkey



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# I Introduction

## *Turkey's host and transit roles*

Turkey is currently the country in the world hosting the highest number of asylum seekers and refugees,<sup>1</sup> with 2,749,410 Syrians as at 7 April 2016<sup>2</sup> and 256,700 people of other nationalities as at 1 February 2016 (among the other nationalities, Iraqis constituted 51%, Afghans 25%, Iranians 14%, Somalis 2.5% and Palestinians 1%).<sup>3</sup> While its long land borders with Syria, Iraq and Iran allow for relatively easy entry into the country, the short distance from its west coast to the Greek islands in the Aegean Sea enables relatively easy passage to Europe. In combination with other pull- and push-factors, this makes Turkey the most important transit country in the context of the current migration to Europe. In 2015, there was a total of 1,046,509 recorded irregular arrivals in Europe from Africa, the Middle East and Asia combined, with Syrians accounting for 50%, Afghans 20%, and Iraqis 7%. Of these, 857,363 arrived in the first instance to Greece, all except 3,713 by sea.<sup>4</sup>

## *Migration routes*

A large portion of the asylum seekers and refugees in Turkey enter the country across its long land borders with Syria, Iraq and Iran, while the airports in Istanbul, Ankara and Antalya are also known entry points.<sup>5</sup> Some of the arrivals intend from the outset to move on to Europe at the earliest possibility. Others have plans that involve staying in Turkey but some of those still decide at a later point to move on because they do not see long-term prospects for themselves or their families in Turkey. The overwhelming

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1 The terms “asylum seeker” and “refugee” are generally used in this report as defined and understood under international law. Turkish asylum law uses a different terminology; in particular, “refugee” under Turkish law has a substantially limited technical meaning. This and other aspects of Turkish asylum terminology are explained in Section 3.2.

2 The number of registered Syrians in Turkey is provided on the website of the Directorate General of Migration Management (DGMM) and is updated at regular intervals. For the latest figures, see [http://www.goc.gov.tr/icerik6/gecici-koruma\\_363\\_378\\_4713\\_icerik](http://www.goc.gov.tr/icerik6/gecici-koruma_363_378_4713_icerik) [last accessed 17 April 2016].

3 See the European Commission’s “EU-Turkey Joint Action Plan – Third Implementation Report” dated 4 March 2016, p.6, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/implementation\\_report\\_20160304\\_eu-turkey\\_joint\\_action\\_plan\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/implementation_report_20160304_eu-turkey_joint_action_plan_en.pdf) [last accessed 17 April 2016].

4 See International Organisation for Migration’s (IOM) “Compilation of Available Data and Information (2015)”, available at <http://doe.iom.int/docs/Flows%20Compilation%202015%20Overview.pdf> [last accessed 17 April 2016].

5 See IOM’s transit routes map for an overview of Turkey’s position, available at <http://migration.iom.int/europe/> [last accessed 17 April 2016].

majority of those who want to go to Europe travel to the western coast, paying smugglers to take the short but unsafe boat ride to the Greek islands. The relatively short land borders with Greece and Bulgaria remain little used in comparison. As part of the recent EU-Turkey migration deals, Turkey has intensified its efforts to monitor its sea border with Greece more closely, and a return programme from Greece to Turkey was agreed on 18 March 2016. How these recent developments will impact on the use of existing routes as well as on the potential emergence of new routes, *eg*, routes involving Bulgaria,<sup>6</sup> is yet to be seen. Finally, some asylum seekers and refugees are known to have flown to Russia and taken the Arctic route to Norway and Finland, which became increasingly popular in 2015, especially among Afghans and Syrians.<sup>7</sup> This route to Norway is currently closed.

### *Migrant-smuggling*

Migrant-smuggling has become a highly lucrative source of income in Turkey in recent years, with extensive networks active in big cities like Istanbul and Izmir, as well as in border towns. This “trade” involves many actors, from dinghy and life jacket sellers and “safe operators” (*ie*, where migrants deposit the fee to be passed on to the smuggler once the journey is complete) to corrupt officials.

Contrary to prior years when the phenomenon had far from the necessary attention from Turkish law enforcement agencies, the authorities have stepped up efforts considerably in recent months, increasing sea patrols and prosecuting a high number of smugglers. Recent interviews with both law enforcement officers and smugglers suggest, however, that the authorities are facing very large-scale smuggling operations, increasingly headed by big players, and while it may be easier to catch the smaller actors, it is challenging to get to the big players, due to the highly complex systems and networks in place. In response to the crackdown, smugglers adapt very quickly, developing new tactics to avoid interception. While the nationalities of the smugglers vary, they are known to often mirror the nationality of their customers.<sup>8</sup> Whether through word of mouth or “through ‘agents’ that walk the streets and publicize their services,”<sup>9</sup> it seems easy to find smugglers. As one Syrian smuggler in Istanbul puts

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6 Bulgaria did not receive any sea arrivals in 2015 (see IOM’s “Compilation of Available Data and Information (2015)”, footnote 4). However, this could potentially change.

7 See Frontex’s “Eastern Borders Route” description, available at <http://frontex.europa.eu/trends-and-routes/eastern-borders-route/> [last accessed 17 April 2016]. It should be noted, however, that the Syrians who took the Arctic route to Norway are known to have typically flown from Lebanon to Moscow and not transited through Turkey. See <http://www.wsj.com/articles/syrian-refugees-take-arctic-route-to-europe-1441273767> [last accessed 17 April 2016].

8 See Frontex’s “Eastern Mediterranean Route” description, available at <http://frontex.europa.eu/trends-and-routes/eastern-mediterranean-route/> [last accessed 17 April 2016].

9 See <http://www.syriadeeply.org/articles/2016/03/10167/turkey-europe-qa-smuggler/> [last accessed 17 April 2016].

it, “Go into any store or café in Aksaray [neighbourhood in Istanbul] and say you want to go to Europe – you will get a million offers.”<sup>10</sup> A combination of word of mouth, smugglers, online sources, and family and friends constitute the main sources of information (which can in many instances be inaccurate and outdated) for those taking the journey to and through Europe.<sup>11</sup>

### *The Joint Action Plan*

In response to the so-called “refugee crisis”, there has in the past year been intense European focus on enhancing cooperation with Turkey. As part of this, the European Union (EU) and Turkey agreed on the Joint Action Plan on 15 October 2015 and put it into action with the Migration Deal of 29 November 2015. With this first deal, Turkey agreed to (i) step up its efforts to restrict the migration through Turkey to Europe, and (ii) readmit from the EU (sooner than provided in the EU-Turkey Readmission Agreement) all irregular migrants who transited through Turkey to the EU and were found by the relevant EU member state not to be in need of international protection. In return, the EU agreed to provide financial support (EUR 3 billion) as well as humanitarian assistance for the Syrians in Turkey. The deal, which received severe international criticism for failing to offer credible safe and legal passage to Europe, and for restricting the right to seek asylum, did not achieve the hoped-for decrease in arrivals to Europe and was followed by a second deal on 18 March 2016 (the 18 March deal).

### *The 18 March deal*

The 18 March deal differs fundamentally from the prior deal in that it openly targets return of asylum seekers who have valid asylum claims: Under the 18 March deal, Turkey agrees to readmit from Greece all third-country nationals who cross irregularly from Turkey to Greece on or after 20 March 2016 and (i) who do not apply for asylum in Greece, (ii) whose asylum applications are found unfounded (following a full review of the application and rejection on its merits), or (iii) whose asylum applications are found “inadmissible”. While under existing arrangements, Greece could already return – and Turkey was required to readmit – people falling in the first two categories, the agreement to return and readmit people falling in the latter category is new: Such returns do not fall within the scope of existing readmission arrangements but require making the separate legal (and political) determination that Turkey qualifies

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10 See <http://www.voanews.com/content/turkey-battle-to-stop-migrant-smuggling/3239908.html> [last accessed 17 April 2016]. Also see <http://www.ft.com/cms/s/0/17cf4fco-9ffa-11e5-8613-08e211ea5317.html#axzz44Cylg05B> [last accessed 17 April 2016].

11 For more detail on Syrians’ information sources, see “Migration trends & patterns of Syrian asylum seekers travelling to the European Union”, p.8, available at <http://data.unhcr.org/mediterranean/download.php?id=125> [last accessed 17 April 2016].

as a first country of asylum and/or safe third country for purposes of the EU Asylum Procedures Directive (2013/32/EU). Another key aspect of the 18 March deal is an arrangement to resettle from Turkey to the EU one Syrian for each Syrian returned from Greece to Turkey, up to 72,000 people in total, prioritising vulnerable people among those who have not previously entered or tried to enter the EU irregularly.<sup>12</sup> The 18 March deal has also received severe criticism.

### *Current state of affairs in Turkey*

While Europe has turned to Turkey for cooperation in the hope of reducing the number of arrivals, the political and social climate in Turkey has grown increasingly challenging. Erdoğan-Justice and Development Party (AKP) rule has become increasingly authoritarian over their 14 years in power, and national politics is currently characterised by extraordinary levels of polarization, accusations and distrust. This state of affairs in politics mirrors major social, ethnic and sectarian tensions and divides in the Turkish society at large. Moreover, there are grave concerns with respect to fundamental rights, including press freedom and freedom of speech, as well as with respect to the impartiality of the judiciary. In addition, the security situation in Turkey has deteriorated. The conflict with the Kurdistan Workers' Party (PKK), which resurged in 2015, has led to many civilian deaths. Moreover, in the past year, there have been major bomb attacks in Turkey, leaving many people dead and injured. These developments, combined with Turkey's poor human-rights track record,<sup>13</sup> have raised concerns about the arrangements to return asylum seekers and refugees to Turkey.

### *Purpose of this report*

In light of the EU-Turkey cooperation on returns discussed above, it is crucial to understand what awaits asylum seekers, refugees and migrants in Turkey. This report is written with that consideration in mind, and aims to provide relevant governmental and non-governmental bodies with an overview of Turkey's recently adopted asylum law framework and its implementation in practice, highlighting, where relevant, the main discrepancies between the *de jure* and *de facto* situation. It is also intended to serve as an "issue spotter" that will enable decision makers and others to identify problematic areas into which further research and/or field work may be required for

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12 For the terms of the 18 March deal, see "EU-Turkey statement, 18 March 2016", available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> [last accessed 17 April 2016].

13 Between 1959 and 2013, Turkey was the state-party subject to the highest number of European Court of Human Rights' (ECtHR) decisions (3000 decisions, corresponding to 18% of all decisions in this period), and in only 2% of these cases, the ECtHR found no violation. Moreover, there are major delays in implementing the decisions: As of 2015, there were more than 1,500 cases waiting to be fully implemented. See "Turkey's track record with the European Court of Human Rights", available at [http://www.turkishreview.org/reports/turkey-s-track-record-with-the-european-court-of-%20human-rights\\_549090](http://www.turkishreview.org/reports/turkey-s-track-record-with-the-european-court-of-%20human-rights_549090) [last accessed 17 April 2016].

purposes of determining Norwegian (and other European) migration and asylum policies and practices involving Turkey.

### *Methodology*

The description and analysis of the legal matters contained in this report is based mainly on review and analysis of the relevant Turkish, EU and international laws (including relevant legislative history, court decisions and texts of agreements), supplemented in part by a review of the relevant academic and non-academic literature. The description of the current practices in Turkey is based mainly on information derived from publicly available sources (including academic and non-academic articles and reports, NGO briefings, newspaper articles, minutes of parliamentary commission meetings on refugee issues, websites of the relevant Turkish ministries etc.), supplemented by a limited number of interviews conducted in Turkey with actors who have extensive knowledge about the relevant laws as well as their implementation in practice. Both Turkish- and English-language sources were used in preparation of this report.



## 2 Executive summary

Turkey is currently the country in the world hosting the highest number of asylum seekers and refugees. It is also the most important transit country in the context of the current migration to Europe. There has consequently been intense European focus in the past year on enhancing cooperation with Turkey and, in particular, on exploring legal avenues to return to Turkey asylum seekers, refugees and migrants who transited through Turkey to Europe. As a result of these recent developments, it has become crucial to understand what awaits asylum seekers, refugees and migrants in Turkey, both in terms of their legal status, rights and entitlements and in terms of how the relevant legal framework is implemented in practice.

Turkey's new migration and asylum law framework, which was developed as part of the EU accession process, features two distinct categories of protection: (i) international protection statuses (*ie*, refugee status, conditional refugee status and subsidiary protection), which are available upon individual assessment of asylum seekers, and (ii) temporary protection status, which can be provided on a group basis in mass-arrival situations where high numbers make individual assessment unfeasible. The distinction between refugees and conditional refugees is a result of Turkey's geographical reservation to the Refugee Convention of 1951 and the Protocol of 1967 (together, the Refugee Convention), under which only "Europeans" can obtain refugee status in Turkey. The Syrians in Turkey are excluded from Turkey's international protection regime; they are instead subject to "temporary protection" on a group basis.

The main issue with Turkey's asylum system is that the protection statuses available under Turkish law (other than actual refugee status) fail to provide a sufficient degree of predictability or long-term prospects in Turkey, and, because of the country's geographical reservation to the Refugee Convention, actual refugee status is available to very few of the people seeking asylum in Turkey. Other key issues relating to the asylum system include a considerable lag in the implementation of the new laws and a pervasive lack of transparency in practice. These and other aspects of Turkey's new asylum framework are described and analysed in Section 3.

The set of social and economic rights to which asylum seekers and refugees are legally entitled is far from sufficient, and access to these rights in practice is even more limited. Key problems include lack of state-funded accommodation, limited access to legal employment and low levels of school enrolment. There is a general lack of awareness and knowledge (both on the part of asylum seekers and refugees and on

the part of the relevant local authorities and other actors) with respect to the rights and entitlements available under the law. In addition, language remains a major barrier to genuine access. In terms of both legal entitlement and practical access to social and economic rights, there are important differences between Syrians and people of other nationalities. Legal entitlement and practical access to social and economic rights is described and discussed in Section 4.

At present, there are major legal concerns involving unlawful detention in and unlawful deportation and refoulement from Turkey of asylum seekers and refugees. Such practices are believed to have increased in recent months as a result of the EU-Turkey negotiations on migration and Turkey's pledge to the EU to restrict the transit through its territory to Europe. In recent months, human rights organisations have made very serious allegations that call for investigation into these matters. Other legal concerns relate to access to legal representation and assistance, and sufficiency of existing appeal procedures. These issues are discussed in Section 5.

Finally, "return to Turkey" has been an increasingly central aspect of the European migration and asylum debate in the past year. In this regard, two developments are key: The first is the parties' decision to give the EU-Turkey Readmission Agreement full effect from June 2016 (which is earlier than the date provided in the agreement), and the second is the 18 March deal. The 18 March deal involves an arrangement between Greece and Turkey for the return of asylum seekers on first-country-of-asylum and/or safe-third-country grounds. Whether it is return of rejected asylum seekers and non-asylum-seeking migrants under the EU-Turkey Readmission Agreement, or return of asylum seekers on first-country-of-asylum and/or safe-third-country grounds, return to Turkey raises important legal questions. These and other aspects of return to Turkey are discussed in Section 6.

# 3 Overview of Turkey's new asylum regime

## 3.1 Background

Turkey's new migration and asylum law framework, which was developed in the last three years, features two distinct categories of protection: (i) international protection statuses, which are available upon individual assessment of asylum seekers, and (ii) temporary protection status, which can be provided on a group basis in mass-arrival situations.

The international protection framework is to a large extent shaped by Turkey's geographical reservation to the Refugee Convention, which means that in Turkey, only those people applying for international protection "as a result of events occurring in European countries" can obtain actual refugee status in line with the Refugee Convention. Those not originating from Europe but who otherwise fall within the definition of refugee under the Refugee Convention are instead eligible for the "conditional refugee" status under Turkish law. This is a temporary and lesser type of protection that is provided pending their expected resettlement by the United Nations High Commissioner for Refugees (UNHCR) in other countries. The Syrians in Turkey are not part of the country's international protection system; they are, as a group, subject to the separate temporary protection system. Separately, some Iraqi asylum seekers reside in Turkey pursuant to a "humanitarian residence permit" and fall entirely outside of the country's protection regimes (This is explained in more detail in Section 3.5.1 below).

At the centre of the new framework are (i) the Law on Foreigners and International Protection (the LFIP),<sup>14</sup> and (ii) the Temporary Protection Regulation (the TPR).<sup>15</sup> The LFIP is Turkey's first actual law (as opposed to secondary legislation) governing matters of migration and asylum. Enacted in April 2013 and fully in force since April 2014, it incorporates into Turkish law some of the key concepts and procedural safeguards

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14 Yabancılar ve Uluslararası Koruma Kanunu [Law on Foreigners and International Protection], available in English translation at [http://www.goc.gov.tr/icerik6/yukk\\_327\\_328\\_329\\_icerik](http://www.goc.gov.tr/icerik6/yukk_327_328_329_icerik) [last accessed 17 April 2016].

15 Geçici Koruma Yönetmeliği [Temporary Protection Regulation], available in English translation at [http://www.goc.gov.tr/icerik6/gecici-koruma-yonetmeliği\\_333\\_336\\_1473\\_icerik](http://www.goc.gov.tr/icerik6/gecici-koruma-yonetmeliği_333_336_1473_icerik) [last accessed 17 April 2016].

of the EU migration and asylum *acquis*, thereby constituting a major milestone from a legal perspective.

While the adoption of the new framework constitutes a positive step for the protection of asylum seekers and refugees in Turkey, as well as for the overall development of Turkey’s migration and asylum law, maintenance of the geographical reservation means that the overwhelming majority of international protection applicants in Turkey, by virtue of not originating from Europe, will continue not having Refugee Convention-level protection or long-term prospects in Turkey. Separately, the temporary protection regime applicable to the Syrians has clear shortcomings in terms of the level of legal protection and certainty it provides. Moreover, it is crucial to emphasize that implementation of the new laws has not yet caught up with the standards they set. This report therefore highlights, where relevant, the main discrepancies between the *de jure* and *de facto* situation for the asylum seekers and refugees in Turkey.

## 3.2 International protection statuses under Turkish law

The LFIP provides three international protection statuses, all of which are granted on an individual basis following individual assessment of the applicant: (i) refugee status, (ii) conditional refugee status, and (iii) subsidiary protection. As at 1 February 2016, there were 256,700 non-Syrian asylum seekers and refugees registered with Turkish authorities as part of Turkey’s international protection regime, with 141,059 applications pending review.<sup>16</sup> There is no publicly available data on the breakdown of these numbers by each of the three protection statuses.

### 3.2.1 Refugee status

The definition of “refugee” under Turkish law tracks the definition set out in the Refugee Convention with the fundamental difference that it is available only to persons seeking asylum “as a result of events occurring in European countries”, thus incorporating into domestic law Turkey’s geographical reservation to the Refugee Convention. As Turkey does not typically receive asylum seekers from Europe, there are currently very few (*ie*, less than a hundred) people with actual refugee status in Turkey. While, as part of the Roadmap Towards a Visa-Free Regime, it has been demanded that Turkey lift its geographical reservation, the government’s official position is that it will consider doing so only after achieving full EU-membership. It should be noted, however, that the term “European countries” is defined in the LFIP as “Member States of the Council of Europe as well as other countries to be determined by the [Turkish] Council of Ministers”

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<sup>16</sup> See “EU-Turkey Joint Action Plan – Third Implementation Report”, p.6.

(*ie*, the cabinet). Therefore, there is already a legal basis for a potential governmental decision to extend the availability of refugee status to additional nationalities.

### 3.2.2 Conditional refugee status

The definition of “conditional refugee” under Turkish law tracks the Refugee Convention definition of refugee with the fundamental difference that it is for persons seeking asylum “as a result of events occurring outside of European countries”. As such, this is the category generally applicable to asylum seekers in Turkey (except Syrians, who fall in a separate category), most of whom are Iraqis, Afghans, Iranians and Somalis. This status entitles its holders to a temporary type of protection with limited rights pending their expected resettlement by the UNHCR.

Unlike refugees and subsidiary protection beneficiaries, conditional refugees do not have an automatic right to work. They may apply for a work permit but, in practice, only very few of them will receive one. In addition, also unlike refugees and subsidiary protection beneficiaries, they do not have family unification rights. While the number of people seeking international protection in Turkey and falling into this category has drastically increased over the past years, the available resettlement quotas have not. Consequently, this category, designed as a temporary status not intended to achieve meaningful integration of its holders, is becoming the long-term reality of tens of thousands of people who simply get “stuck” in Turkey.

### 3.2.3 Subsidiary protection

The definition of “subsidiary protection” under Turkish law tracks the definition of that concept in the EU Qualification Directive (2011/95/EU). As such, it is available to people who do not qualify for refugee or conditional refugee status under Turkish law but who nevertheless need protection, because, if returned, they would face (i) a death sentence or execution of the death penalty, (ii) torture or inhuman or degrading treatment or punishment, or (iii) serious threat to self by reason of indiscriminate violence in situations of international or nationwide armed conflict. An important observation in this context is that while Turkey may be keen to import EU-law concepts, it does not necessarily consult or follow EU case-law in determining their application in practice.<sup>17</sup> While, contrary to conditional refugees, subsidiary protection beneficiaries have both family unification rights and the right to work, this status is still not designed to offer long-term prospects in Turkey.

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<sup>17</sup> For example, the *Elgafaji* decision (17.2.2009, C-465/07) of the Court of Justice of the EU is fundamental in interpreting when there exists a serious threat to a person in an indiscriminate violence situation, but Turkish authorities and/or courts may not necessarily follow that interpretation.

### 3.3 Separate category: The temporary protection regime for Syrians in Turkey

Soon after the first set of arrivals from Syria in March 2011, the Turkish government declared an open-door policy vis-à-vis Syrians taking refuge in Turkey. This policy was rooted initially in a discourse of neighbourly charity, as opposed to being human-rights based or international-law driven. It was decided early on that the arrivals would not be considered on an individual basis for international protection, but they would be taken care of during their temporary stay in Turkey. The assumption was that the situation would soon get better in Syria and these “guests” would go back to their homes. Gradually, a *de facto* temporary protection regime developed, but it was only with the entry into force of the TPR in October 2014 that this regime acquired a clear legal basis. The TPR, which provides the legal framework for the temporary protection of the Syrians in Turkey, was inspired by and loosely resembles the EU Temporary Protection Directive (2001/55/EC) of 2001, which has, to date, not been activated.

The TPR defines temporary protection as “the protection status granted to foreigners who were forced to leave and are unable to return to their countries, arriving at or crossing our borders in masses or individually during such period of mass influx, for the purpose of seeking urgent and temporary protection and whose international protection claims cannot be assessed individually.” The TPR is a general (*ie*, not Syria-specific) regulation that can, upon decision of the Turkish Council of Ministers (*ie*, the cabinet), be applied in any mass-arrival situation. It contains provisional articles that declared it immediately applicable to the Syrian case with retroactive effect: The current Syrian temporary protection regime in Turkey covers Syrian nationals, stateless persons (*eg*, stateless Palestinians in Syria) and refugees (*ie*, non-Syrians who were refugees in Syria) who fled from Syria to Turkey on or after 28 April 2011.<sup>18</sup> Accordingly, where this report refers to Syrians under temporary protection in Turkey, it should be understood as to include all three aforementioned categories of people.

A recent amendment to the TPR<sup>19</sup> provides that those Syrians who have irregularly transited through Turkey to Greece and are returned by Greece on or after 20 March 2016 *may* (*ie*, not “shall”), upon request, be provided with temporary protection under the TPR. This is in contrast to the general provision under the TPR that all Syrians who have fled Syria since 28 April 2011 and come to Turkey for protection are entitled to temporary protection.

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18 Syrians who have entered Turkey in a regular manner after 2011 and have not sought protection, reside and work in Turkey subject to the same rules as other foreign nationals.

19 See the amendment made on 7 April 2016 at <http://www.resmigazete.gov.tr/eskiler/2016/04/20160407-18.pdf> [last accessed 17 April 2016].

As at 7 April 2016, there are 2,749,410 registered Syrians under temporary protection in Turkey, compared to 2.5 million at the end of 2015 and 1.5 million at the end of 2014. Of this population, 49.3% is younger than 19 and only 10% stay in one of the 26 state-funded camps, while the remaining 90% have to secure their own housing and subsist on their own means.<sup>20</sup>

## 3.4 Key elements of Turkey's new framework

### 3.4.1 Implementation lag

As described above, Turkey's current legal framework for migration and asylum matters is brand new and incorporates into domestic law some of the key concepts and safeguards of the EU migration and asylum *acquis*. There is, however, a considerable lag on implementation, and the transition results in inconsistencies in practice, as discussed under multiple headings in this report. As an example, although the LFIP required that a separate regulation be issued to determine specific aspects of its implementation, two unpublished (*ie*, not publicly available) circulars have instead been shaping the practice,<sup>21</sup> and the long-awaited main implementing regulation was adopted only very recently on 17 March 2016, after a one and a half year delay.<sup>22</sup>

### 3.4.2 Directorate General of Migration Management (DGMM)

The LFIP created the DGMM<sup>23</sup> (under the Ministry of Interior Affairs) as the agency solely in charge of migration and asylum matters, which were previously seen as an issue of national security, falling within the authority of the National Police. Following a provisional arrangement to assist the transition, the DGMM fully assumed its role in May 2015. International protection applications were previously decided centrally in Ankara; now, however, the provincial DGMM offices across the country are authorised to make these decisions. While the establishment of a separate specialised entity is regarded as a positive development and while local decision making can increase efficiency, creating a brand new country-wide structure that is fully operational in practice, with the necessary resources and specialised and competent personnel, is likely to take more time, during which continued inconsistent practices and delays are to be expected. The DGMM is also responsible for the administration of the separate

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20 See [http://www.goc.gov.tr/icerik6/gecici-koruma\\_363\\_378\\_4713\\_icerik](http://www.goc.gov.tr/icerik6/gecici-koruma_363_378_4713_icerik) [last accessed 17 April 2016]. Also see footnote 2.

21 These are Circular on International Protection and Circular on Foreigners.

22 *Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına İlişkin Yönetmelik* [Regulation on the Implementation of the Law on Foreigners and International Protection], available in Turkish at <http://www.resmigazete.gov.tr/eskiler/2016/03/20160317-11.htm> [last accessed 17 April 2016].

23 In Turkish, "Göç İdaresi Genel Müdürlüğü". Website: [http://www.goc.gov.tr/main/Eng\\_3](http://www.goc.gov.tr/main/Eng_3).

temporary protection regime applicable to the Syrians in Turkey, and the system is currently overburdened.

### 3.4.3 UNHCR<sup>24</sup>

In the past, asylum seekers (other than Syrians) registered with both the UNHCR and Turkish authorities, and while not legally binding on them, Turkish authorities typically followed the UNHCR's refugee status determination (RSD) decisions and resettlement recommendations. Following the adoption of the new legal framework, however, this relationship is reportedly undergoing changes, with the DGMM described as "keen to gradually assert itself as the sole decision maker on asylum applications."<sup>25</sup> Once the transition is complete, the UNHCR will continue registering all asylum seekers in Turkey (other than Syrians) with a view to overseeing their access to protection, but will carry out its own separate interview and RSD work only in select cases. How these changes in decision-making (*ie*, provincial DGMM offices making decisions on an independent basis as opposed to the central decision-making of the past, which followed UNHCR's assessment) will affect the rate of positive versus negative decisions on asylum applications is yet to be seen. It should also be noted that the UNHCR's workload in Turkey has increased immensely over the years, and at present, asylum seekers are given interview dates in 2022.<sup>26</sup>

UNHCR provides support to the relevant Turkish authorities with respect to the temporary protection of Syrians in Turkey. As a general rule, it does not conduct registration and RSD work in respect of Syrians. It does, however, work with the DGMM for identification, protection and resettlement of a small number of Syrians with special protection needs. In 2014, 284 of the 8,944 refugees resettled by the UNHCR from Turkey were Syrians, compared to 22 out of 7,226 refugees in 2013.<sup>27</sup>

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24 This description of the UNHCR's changing role in Turkey is based largely on "AIDA Country Report: Turkey" from December 2015, available at [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_tr\\_update.i.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_update.i.pdf) [last accessed 17 April 2016]. For a more detailed analysis, see pages 18-22 of that report, which was prepared by Refugee Rights Turkey (in Turkish: Mülteci Hakları Merkezi), a prominent Turkish refugee-rights NGO based in Istanbul.

25 See AIDA Country Report: Turkey, p.21. The report also explains that asylum seekers typically went to the UNHCR first and not all those then directed by the UNHCR to the DGMM for registration follow the advice. Consequently, there were 235,901 non-Syrian asylum seekers registered with the UNHCR in Turkey as at 31 October 2015, compared to 134,140 asylum seekers registered with the DGMM as at 8 December 2015 (p.9).

26 See <http://test-temp.aljazeera.com.tr/al-jazeera-ozel/ab-ile-anlasmadaki-bazi-maddeler-multecilerin-hayatini-tehlikeye-atabilir> [last accessed 17 April 2016]. In 2012, asylum seekers were given appointments for 2017. See [http://multeci.net/index.php?option=com\\_content&view=article&id=314%3Atuerkiyede-ki-afgan-muelteciler&catid=3%3Aav-taner-klc&Itemid=48&lang=tr](http://multeci.net/index.php?option=com_content&view=article&id=314%3Atuerkiyede-ki-afgan-muelteciler&catid=3%3Aav-taner-klc&Itemid=48&lang=tr) [last accessed 17 April 2016].

27 See "UNHCR Projected Global Resettlement Needs: 2016", p.54, available at <http://www.unhcr.org/558019729.html> [last accessed 17 April 2016].



In 2015, 8,091 of the 18,260 refugees submitted for resettlement from Turkey were Syrians.<sup>28</sup>

#### 3.4.4 International Organisation for Migration (IOM)<sup>29</sup>

IOM coordinates closely with the UNHCR to resettle refugees both in Europe and in the USA, Canada and Australia based on quotas provided by the receiving countries. In 2015, IOM resettled 10,513 people in total from Turkey (4,877 in USA, 1,464 in Canada, 413 in Australia and 3,759 in European countries). The majority of the people resettled in the USA, Canada and Australia were from Iraq and Iran, while the majority of those resettled in European countries were from Syria. IOM's Assisted Voluntary Return (AVR) work in Turkey is foreign-funded. In 2015, IOM assisted voluntary return of 443 people in total from Turkey, and the top three nationalities among the returnees were Afghans, Pakistanis and Bangladeshis. Funding is needed to increase AVR assistance in Turkey.

#### 3.4.5 Lack of transparency

The overarching lack of transparency of the asylum system in Turkey manifests itself in many different ways. To begin with, implementation of the new legal framework has so far been shaped to an important extent by various governmental and administrative decisions that are not made publicly available. Public officers and the police are often reported as referring to non-public orders, letters or circulars to justify their actions or decisions, refusing to show these documents to the lawyers and others concerned. The legal text which is intended to explain the reasoning behind the various articles of the LFIP, thereby providing guidance for its application (which can be translated from Turkish as “the Law’s rationale”), is a superficially-drafted document which in practice provides no additional insights. Publicly available statistical data is close to non-existent with respect to international protection and limited with respect to temporary protection.<sup>30</sup> A confidential letter was sent to all Turkish universities in April 2015, instructing them not to approve any academic research proposals involving data collection or field work on asylum seekers and refugees in Turkey without the prior permission of the relevant ministries (the stated reason for this restriction was

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28 See UNHCR's “Resettlement Fact Sheet 2015”, available online at <http://www.unhcr.org/524c31a09.html> [last accessed 17 April 2016].

29 The information in this paragraph was provided by IOM's Istanbul office in March 2016.

30 There is a general lack of reliable and publicly available statistical data relating to international protection applicants and status holders (in relation to the number of people holding each of these statuses, schooling, access to work, age distribution etc.). While the amount of publicly available statistical data on Syrians is also limited, it is significantly larger. The figures relating to Syrians should, however, be approached with a certain degree of caution, among other reasons because Syrians in Turkey are not currently subject to periodic reporting requirements.

privacy-protection of asylum seekers and refugees).<sup>31</sup> Separately, with the provincial DGMM offices becoming authorised to make decisions, the courts in the respective provinces now have jurisdiction over asylum-related cases. When decisions were made centrally in the past, it was relatively easier to get access to the relevant decisions of Ankara courts but with local courts attending to these cases, and with court decisions not being routinely published in Turkey, it is difficult to understand whether the courts around the country are interpreting the new asylum laws in a consistent manner.<sup>32</sup> All of this contributes to a major lack of transparency about how Turkey's new legal framework is implemented in practice.<sup>33</sup>

### 3.4.6 TPR is secondary legislation

The TPR is secondary legislation, and, as such, does not provide the level of legal certainty that a *law* on temporary protection would have provided. The TPR's legal basis is found in the LFIP, which states that the Council of Ministers shall, with a regulation, set out the terms of temporary protection that may be provided to foreigners in mass-arrival situations. The types of fundamental rights, obligations and measures set out in the TPR would normally be expected to be set out in an actual law.

### 3.4.7 Hostility against asylum seekers and refugees

While there are many examples of Syrians being made to feel welcome and supported in their local communities, there is also considerable hostility against them. This might partly be due to the lack of use of a human-rights based approach at the state level with respect to asylum seeking, as well as a general lack of awareness in the society about human rights: The support provided to Syrians is perceived by many as an act of charity as opposed to a legal right/obligation, and the Syrians are consequently seen as unfairly benefiting from the limited resources of a country where many Turkish citizens live in poverty. Ethnic-religious factors also play a role.<sup>34</sup> As mentioned above, 90% of the Syrians under temporary protection live outside of camps, in small

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31 See <http://www.diken.com.tr/25-milyon-suriyeli-var-arastirma-yok-akdemide-fiili-yasak-suruyor/> [last accessed 17 April 2016].

32 Interview with Asst. Prof. L. Bertan Tokuzlu on 15 March 2016.

33 The author of this report has made a formal request to the relevant Turkish ministries (*ie*, the Ministry of Interior and the Ministry of Labour and Social Security), asking for (i) the number of international protection applicants, and the number of refugee, conditional refugee and subsidiary protection status holders, (ii) the rate of school enrolment among children who are international protection applicants or status holders, and (iii) the number of conditional refugees and the number of Syrians under temporary protection who have been granted work permits. The requested figures have not been provided.

34 Initially, the vast majority of Syrians fleeing to Turkey were Sunni Muslims. However, the make-up began to change in 2014 when Yazidis, Armenians, Assyrians, Kurds and Alewives also started to come to Turkey. See "Syrians in Turkey: Social Acceptance and Integration Research" from December 2014, p.31, available at <http://www.hugo.hacettepe.edu.tr/TurkiyedekiSuriyeliler-Syrians%20in%20Turkey-Rapor-TR-EN-19022015.pdf> [last accessed 17 April 2016].

towns as well as in big cities, more often than not in areas where the local population is also poor. They are often blamed, among other things, for causing an increase in rents, competing with the local population over jobs, driving wages down by working illegally, and for overcrowding and making public services (like healthcare) less accessible to the local population. Anti-Arab sentiment is not new in Turkey but it seems to have become more prevalent in recent years. A 2014 study conducted in 18 cities shows that only 17% of the Turkish population feels that they share the same culture as Syrians, while 50% do not want to be neighbours with them. 52% of those who do not want to be neighbours with Syrians fear that Syrians would cause them or their families harm.<sup>35</sup> The general perception that “Europe is doing everything to keep the Syrians away” exacerbates the situation.

Non-Syrian asylum seekers and refugees in Turkey are less visible but they are subject to similar types of hostility in their communities. MülteciDer’s 2015 report “Reception Conditions and Refugee Access to Rights and Services in Turkey,”<sup>36</sup> which is based on interviews with 93 people of Iraqi, Iranian, Afghan, Syrian, Palestinian, Sudanese and Egyptian origin, reveals valuable details in this respect: Interviewees generally report being treated badly, humiliated or being seen as beggars, terrorists or potential criminals. Some report not going to local centres that provide social assistance and services because of such treatment, while others report keeping their children at home to avoid trouble. Many state that Turkish landlords are generally unwilling to rent out to asylum seekers and refugees or may demand higher amounts, and that it can be very difficult to secure housing unless they get help from other people with the same background. The Sudanese report being denied work and housing because of their skin colour (and other research confirms this about both the Somalis and the Sudanese), those with non-Muslim and non-Sunni backgrounds also report being discriminated against, and yet others report hiding their religion/sect. Increase of both anti-Arab and anti-immigrant sentiments in the last few years (following the Syrian arrivals) negatively affects the lives of asylum seekers and refugees in general. It should also be noted that the cities where international protection applicants and status holders are required to reside (which exclude big cities like Istanbul, Ankara, Izmir, Bursa and Antalya) are typically more socially conservative, and differences (cultural, religious, skin colour, sexual orientation, clothing style etc.) are likely to attract more negative attention in such communities.

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35 See “Syrians in Turkey: Social Acceptance and Integration Research”, p.31-2.

36 “Türkiye’de Mültecilerin Kabul Koşulları, Hak ve Hizmetlere Erişimleri” [Reception Conditions and Refugee Access to Rights and Services in Turkey], available at <http://multeci.org.tr/DosyaIndir.aspx?t=do-kuman&Id=104> [last accessed 17 April 2016]. MülteciDer is a prominent Turkish refugee-rights NGO based in Izmir.

### 3.4.8 Timeframe

The LFIP provides both regular and accelerated procedures for the review of international protection applications. Under the regular procedure, an asylum seeker who approaches the DGMM and registers as an international protection applicant is required to be interviewed within one month. After the interview, the applicant is issued an international protection applicant ID card with a foreigner ID number, which he/she needs to be able to benefit from the various rights and services provided under the LFIP, including healthcare. In practice, this interview-waiting period during which the applicant does not have access to services may be considerably longer, mainly due to the workload of the DGMM<sup>37</sup> but also due to other reasons, including shortage of interpreters.<sup>38</sup> Moreover, while the law states that the assessment of the application is to be finalised within six months of registration, it goes on to say that, where a decision cannot be reached within six months, the applicant will be informed. Based on the latter statement, the six-month period can be interpreted as a guiding rather than a binding timeframe. As at present, there is no publicly available data on average processing times.

### 3.4.9 No long-term prospects

Syrians are legally barred from applying for international protection under Turkish law while the current temporary protection regime continues to be in place, and neither the TPR nor the particular Syrian temporary protection currently in place in Turkey has an upper limit on how long their temporary protection can or will last. This means that what was originally intended as a temporary, extraordinary regime offering limited rights can potentially subsist for many more years, leaving its beneficiaries in a perpetual state of limbo. The Turkish Council of Ministers have full discretion to terminate the temporary protection of Syrians at any time, as well as to determine what happens after such termination: Time spent in Turkey under temporary protection does not count towards fulfilment of continuous residency requirements of permanent residence permit and Turkish citizenship, and temporary protection status does not otherwise entitle its holder to apply for Turkish citizenship. This extreme uncertainty puts the Syrians in Turkey in a precarious position and is seen as a major push-factor contributing to many Syrians' decisions to make perilous journeys to Europe, now that the initial hopes of returning back home are largely lost.

International protection status holders are in a similar situation: While foreigners who

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37 MülteciDer Report states that there were major delays in registration following the entry into force of the LFIP in 2014, and in some instances, asylum seekers were given an appointment for one year later (p.19). AIDA Country Report: Turkey also confirms that the overload continued to cause waiting periods and delays in processing in 2015 (p.10).

38 See AIDA Country Report: Turkey, p.31.

have continuously resided in Turkey for at least eight years are eligible for a permanent residence permit, the amount of time refugees, conditional refugees and subsidiary protection beneficiaries (as well as humanitarian residence permit holders – see the special case of Iraqis below) spend in Turkey in one of these categories does not count towards the eight-year residency requirement or otherwise entitle them to apply for Turkish citizenship.<sup>39</sup> Accordingly, if the international protection status of a person terminates pursuant to the law, (*eg*, because the conditions giving rise to the need for international protection have ceased to exist and the person can avail him/herself back to the protection of his/her country), the person loses the legal right to stay in Turkey as well as the various rights attached to his/her protection category.

## 3.5 The special cases of Iraqis and Afghans

### 3.5.1 Iraqis in Turkey

Iraqis have been seeking refuge in Turkey over the past decades both individually and in big groups, and their number has increased considerably since mid-2014 as the so-called Islamic State captured more territory in Iraq, and Iraqis (including the particularly-targeted Yazidi community) started to flee to Turkey in groups. Turkey's initial reaction to these group-arrivals was to bar the newcomers from individually applying for international protection under Turkish law and instead allow them to stay in Turkey pursuant to a "humanitarian residence permit." While this legalised their status in Turkey, it put them outside of Turkey's international protection regime and gave them very limited rights and access to services, and this was largely criticised by refugee rights and human rights organisations in Turkey. This initial approach (set out in a non-public DGMM circular from August 2014) was later replaced by a new approach (set out in another non-public circular from February 2015): Since February 2015, Iraqis in Turkey have the option of choosing between applying for international protection and humanitarian residence permit.<sup>40</sup> It is doubtful, however, that they possess the information necessary for them to make an informed choice. As at present, there is no publicly available data on the number of Iraqis in each of these two categories.

It is important to emphasize that humanitarian residence is not a protection status under Turkish law but is one of the six residence permit types that foreigners can be is-

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39 This should be considered in light of Article 34 of the Refugee Convention, which requires states to facilitate the assimilation and naturalization of refugees.

40 See <https://www.amnesty.org.tr/icerik/37/1504/icisleri-bakanligi%E2%80%99nin-yeni-genelgesi-irak%E2%80%99gtan-gelen-multecilerin-haklara-erisimini-kolaylastirabilir> [last accessed 17 April 2016] and AIDA Country Report: Turkey, p.68-9.

sued in Turkey (the other five are short-term and long-term residence permits and residence permits for students, families and victims of human trafficking). Humanitarian residence permit can be granted in a number of limited circumstances enumerated in the LFIP (such as where the best interests of a child is concerned, or where a person cannot be deported due to health concerns or because it would violate the principle of non-refoulement) as well as in other “extraordinary circumstances” not covered by this list; it is the latter category Iraqis fell into. As Iraqis who hold humanitarian residence permits are outside of Turkey’s international protection regime, they cannot benefit from the various rights and services provided under it.

### 3.5.2 Afghans in Turkey

The number of Afghan asylum seekers and refugees in Turkey increased considerably in 2012 with arrivals from Iran. In May 2013, the UNHCR declared a six-month freeze (which was later extended) in respect of the Afghan asylum seekers in Turkey, during which time no new applications were to be registered, and the existing applications and RSD work were to be put on hold, except in respect of the most vulnerable select cases. This was believed to have a number of causes, including a huge backlog (in 2012, applicants were given UNHCR appointments for 2017), reduced quotas from third countries for Afghans (because of the prioritisation of Syrians), the expected amelioration of their situation under Turkey’s new asylum laws, as well as the assumption that the large number of Afghans who came to Turkey after many years in Iran could in fact go back to Iran.<sup>41</sup> A long Afghan demonstration accompanied by hunger strikes in 2014 did not catch much media attention, and the Afghans in Turkey are generally reported as feeling discriminated against. MülteciDer’s report states that all the Afghans they interviewed expressed feelings of injustice, discrimination and consequent feelings of anger about their treatment in Turkey.<sup>42</sup> In the past year, many of them left Turkey for Europe.

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41 See [http://multeci.net/index.php?option=com\\_content&view=article&id=314%3Atuerkiyedeki-afgan-muelteciler&catid=3%3Aav-taner-klc&Itemid=48&lang=tr](http://multeci.net/index.php?option=com_content&view=article&id=314%3Atuerkiyedeki-afgan-muelteciler&catid=3%3Aav-taner-klc&Itemid=48&lang=tr) [last accessed 17 April 2016], [http://www.multeci.net/index.php?option=com\\_content&view=article&id=339%3Atuerkiyedeki-afgan-mueltecilerin-durumu&catid=51%3Amkacan&lang=tr](http://www.multeci.net/index.php?option=com_content&view=article&id=339%3Atuerkiyedeki-afgan-mueltecilerin-durumu&catid=51%3Amkacan&lang=tr) [last accessed 17 April 2016] and <http://www.thenational.ae/arts-lifestyle/the-review/afghan-refugees-in-turkey-are-homeless-and-hopeless#page1> [last accessed 17 April 2016].

42 See MülteciDer Report, p.87.

# 4 Social and economic rights

## 4.1 Overview

Both the LFIP and the TPR contain various provisions relating to social and economic rights and services; however, not all of these are binding upon the state, as will be discussed below. It is important to note that the TPR is drafted in such a way that it particularly refrains from imposing an obligation on the state in these regards, stating in various contexts that services and assistance will be provided as feasible/permitted by resources. In both cases, access to the already limited resources is further hindered by a number of factors, which include: (i) delays in completing registration with the DGMM due to the overload of the system, (ii) a general lack of awareness and knowledge (both on the part of asylum seekers and refugees and on the part of the relevant local authorities and other actors) with respect to the rights and entitlements available under the law (including with respect to schooling, healthcare, work permits and financial aid), and (iii) language barriers.

## 4.2 Healthcare

While all Syrians under temporary protection in Turkey are legally covered by Turkey's public healthcare system, international protection applicants and status holders do not automatically qualify for it and only those who do not have a medical insurance or the financial means to otherwise cover their own medical expenses are legally entitled to benefit from the public healthcare system. It is reported, however, that in practice, "no such means determination is carried out by Provincial DGMM Directorates and all applicants are extended free healthcare coverage under the general health insurance scheme."<sup>43</sup> As a general rule, the healthcare coverage applies only in the province where the person is registered and required to reside. Language remains a major barrier to access to healthcare.

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<sup>43</sup> See AIDA Country Report: Turkey, p.87.

## 4.3 Accommodation

### 4.3.1 Satellite city system

Under the so-called satellite city system, each international protection applicant is assigned to one of 62 designated provinces (out of the 81 provinces in Turkey) where he/she is required to register, reside and periodically report to the authorities during the application assessment process.<sup>44</sup> Non-compliance with the reporting requirement (which is typically weekly), or with the requirement not to leave the province without official permission, may have grave consequences for international protection applicants, including potential restriction of their access to services as well as being deemed to have withdrawn their international protection applications. Once the application is decided, those who are granted conditional refugee status or subsidiary protection (but not those with refugee status) are subject to similar rules to reside and periodically report in the satellite cities. As a general rule, international protection applicants and status holders are entitled to healthcare, schooling and other services only in the provinces where they are registered and required to reside. It should be noted that the list of satellite cities excludes big cities like Istanbul, Ankara, Izmir, Bursa and Antalya, which makes international protection applicants and status holders less visible to large portions of the general public. The satellite city system does not apply to the Syrians under temporary protection, many of whom reside in the above-mentioned big cities.

### 4.3.2 International protection applicants and status holders

The LFIP states that as a general rule, international protection applicants and status holders are to secure accommodation on their own means but the DGMM *may* establish reception and accommodation centres providing free accommodation, where priority will be given to persons with special needs. As of November 2015, there was only one such reception and accommodation centre in entire Turkey, with a capacity for 100 people.<sup>45</sup> While six additional reception and accommodation centres (with a 750-person capacity each) financed largely by EU funds were planned to become operational,<sup>46</sup> the plans have reportedly changed, and five out of these six facilities are/will be used as removal centres instead, in furtherance of Turkey's undertakings to manage and restrict irregular migration to Europe as per the migration deals between Turkey and the EU.<sup>47</sup>

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44 See <http://www.alo157.gov.tr/sss.php> [last accessed 17 April 2016].

45 This centre is in Yozgat in central Turkey. See [http://www.goc.gov.tr/icerik6/G%C3%B6%C3%A7menler%20Genel%20M%C3%BCd%C3%BCrl%C3%BC%C4%9F%C3%BCnce%20Devral%C4%B1nacak%20Mevcut%20Kabul%20ve%20Bar%C4%B1nma%20Merkezleri\\_323\\_326\\_4616\\_icerik](http://www.goc.gov.tr/icerik6/G%C3%B6%C3%A7menler%20Genel%20M%C3%BCd%C3%BCrl%C3%BC%C4%9F%C3%BCnce%20Devral%C4%B1nacak%20Mevcut%20Kabul%20ve%20Bar%C4%B1nma%20Merkezleri_323_326_4616_icerik) [last accessed 17 April 2016].

46 See [http://www.goc.gov.tr/icerik3/goc-idaresi-genel-mudurlugunun-devam-eden-projeleri\\_409\\_570\\_3609](http://www.goc.gov.tr/icerik3/goc-idaresi-genel-mudurlugunun-devam-eden-projeleri_409_570_3609) [last accessed 17 April 2016].

47 See AIDA Country Report: Turkey, p.76.



The lack of state-funded accommodation for international protection applicants is a major problem with the asylum system in Turkey and places the applicants in a very vulnerable situation, especially considering that they have no access to legal work during the same period. MülteciDer's report, which is based on interviews conducted during 2013 and 2014, in 6 separate satellite cities, with 93 asylum seekers and refugees of Iraqi, Iranian, Afghan, Syrian, Palestinian, Sudanese and Egyptian origin, reveals valuable details about the living conditions in these cities. Interviews show that many asylum seekers and refugees have difficulty finding accommodation and may live, at least for some initial period, on the street or in parks, sometimes taking refuge in parking lots or mosques at night. While six adults may share a small hotel room together, extended families may live in a rental room without any bathroom or kitchen facilities and not so rarely, without any heating.

### 4.3.3 Syrians under temporary protection

Turkey's Disaster and Emergency Management Authority<sup>48</sup> is in charge of building and managing the camps for Syrians, of which there are currently 26 in southeast and south Turkey, mainly but not exclusively in provinces bordering Syria.<sup>49</sup> As the current camps have capacity to host only about 10%<sup>50</sup> of the Syrians under temporary protection, persons with special needs are given priority. Access to camps for observation and research purposes is limited, causing a major lack of transparency and potential for arbitrary management. Turkey's camps have a reputation for generally having higher standards than other camps in the region but the standards among the various camps in Turkey are known to vary greatly.

The TPR does not impose an obligation on the state to provide accommodation to the Syrian temporary protection beneficiaries, and 90% of the Syrians in Turkey need to find accommodation and subsist on their own means. Without government-provided shelter and with no access to legal employment until recently, many Syrians have been living in extreme poverty over the past years. The satellite city system discussed above does not apply to the Syrians under temporary protection in Turkey, and those not staying in camps are spread around the country, with Şanlıurfa, Istanbul, Hatay and Gaziantep hosting the highest Syrian populations (more than 325,000 people in each). Izmir, Bursa and Ankara, which are excluded from the list of satellite cities, also currently have very high numbers of Syrians.

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48 In Turkish, "Afet ve Acil Durum Yönetimi Başkanlığı". Website: <https://www.afad.gov.tr/en/Index.aspx>.

49 For locations of the camps, and number of temporary protection beneficiaries staying in camps versus in cities across the country, see [http://www.goc.gov.tr/icerik6/gecici-koruma\\_363\\_378\\_4713\\_icerik](http://www.goc.gov.tr/icerik6/gecici-koruma_363_378_4713_icerik) [last accessed 17 April 2016].

50 As at 7 April 2016.

## 4.4 Education

While all children (whether part of the international protection regime or under temporary protection) are legally entitled to free primary and secondary education in Turkey, language constitutes a major barrier against access to schooling, with young children having better chances of staying in school, compared to older children. In addition, many children have to work to contribute to the livelihood of their families, for many of whom even the daily bus fare to school can be an unaffordable expense. Outside of the formal school system, Public Education Centres offer various courses, including Turkish language classes. However, both in terms of capacity and the content of education provided, these remain insufficient. According to UNHCR estimates, the rate of school enrolment among Syrian children under temporary protection was only 36.8% as at 31 October 2015. There is no publicly available information on non-Syrian children's rate of enrolment.

In camps, Syrian teachers teach, in Arabic, a revised version of the Syrian school curriculum.<sup>51</sup> Outside of camps, Syrian children have the legal right to attend Turkish public schools in the provinces where they are registered; however, language remains a major barrier against it. The alternative is attending one of the private schools run by Syrian charities (where, like in camps, Syrian teachers teach the revised curriculum in Arabic); however, these schools are generally not free, in addition to being limited in number and capacity. These non-Turkish schools in and outside of camps are called “temporary education centres” and are, since September 2014, under the supervision of the Ministry of Education.<sup>52</sup> According to UNHCR figures, as at 31 October 2015, the estimated number of school-age Syrian children under temporary protection in Turkey was 756,000; the number of those attending temporary education centres in camps was 78,707; the number of those attending temporary education centres outside of camps was 144,823; and the number of those attending Turkish public schools was 55,360.<sup>53</sup> The government's goal is to have 450,000 Syrian children enrolled by the end of 2016.<sup>54</sup>

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51 The revised curriculum excludes pro-Assad and anti-Turkey/Ottoman statements included in the actual curriculum. See minutes of the 24.2.2016 meeting of the Parliamentary Subcommittee on Refugees, p.4, available at [https://www.tbmm.gov.tr/develop/owa/komisyon\\_tutanaklari.goruntule?p-TutanakId=1512](https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?p-TutanakId=1512) [last accessed 17 April 2016].

52 Until September 2014, these schools operated without a legal basis but were simply “tolerated”. See AIDA Country Report: Turkey, p.132-3.

53 See AIDA Country Report: Turkey, p.133-4.

54 See minutes of the 24.2.2016 meeting of the Parliamentary Subcommittee on Refugees, p.3. Separately, Human Rights Watch's report “Preventing a Lost Generation: Turkey” from November 2015 provides valuable insight into the barriers to Syrian children's access to education in Turkey. Available at <https://www.hrw.org/report/2015/11/08/when-i-picture-my-future-i-see-nothing/barriers-education-syrian-refugee-children> [last accessed 17 April 2016].

## 4.5 Employment

### 4.5.1 International protection applicants and status holders

In terms of access to legal employment, more favourable rules apply to refugees and subsidiary protection beneficiaries, as compared to conditional refugees. Upon obtaining these legal statuses, the identification documents issued to refugees and subsidiary protection beneficiaries count as work permits, and they have a legal right to be both employed and self-employed, subject to certain job- and profession-related restrictions currently existing under Turkish law and applicable to all foreigners in Turkey. It should be noted, however, that this general right to employment can be restricted for a certain period, sectorally, geographically or based on professions or lines of business, “where the conditions of the labour market and developments relating to employment as well as sectoral and economic conditions relating to employment necessitate.”

Contrary to refugees and subsidiary protection beneficiaries, conditional refugees do not acquire an automatic right to work in Turkey but are allowed to apply for a work permit six months after submitting their international protection application. In so doing, they would be subject to the same rules as “ordinary” (*ie*, non-protection seeking) foreigners seeking to work in Turkey, which means that they are required to work under “sponsored” permits (*ie*, linked to a particular employer). Given the extra cost and administrative burden that sponsoring a foreigner’s work permit puts on a potential employer, it is clear that conditional refugees will not easily secure work permits in Turkey.

Many international protection applicants and status holders (including school-age children) are known to be illegally employed under very exploitative terms, working in construction, textile, cleaning, shoe making, serving and washing in restaurants, and carrying heavy loads. The particular province to which a person is assigned can be very determining in terms of what kind of employment options he/she will have but, generally speaking, the fact that it is not possible to reside in big cities limits chances of finding employment, and in particular, employment that suits the particular qualifications of the individuals concerned.

### 4.5.2 Syrians under temporary protection

The TPR, which entered into force in October 2014, stated that the Council of Ministers would separately determine the terms and conditions pursuant to which temporary protection beneficiaries would be able to work in Turkey, and this long-awaited regulation was finally adopted in January 2016.<sup>55</sup> Under this new regulation, temporary

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55 Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine Dair Yönetmelik [Regulation Regarding Work Permits of Foreigners Under Temporary Protection], available in Turkish at <http://www.resmigazete.gov.tr/eskiler/2016/01/20160115-23.pdf> [last accessed 17 April 2016].

protection beneficiaries do not have an open pass to work but they are now allowed to apply for a work permit six months after initial registration with the DGMM, and if granted, they may, for no less than the minimum wage, legally work, subject to certain geographical and sectoral limitations as well as quotas. For example, the number of temporary protection beneficiaries employed in a workplace may not exceed ten percent of the number of Turkish citizens employed in the same workplace. Seasonal agricultural and livestock work, however, is exempt from the work permit requirement. Over the last five years, many Syrians in Turkey, including school-age children, are known to have worked illegally under very exploitative terms; thus, these rules generally constitute a positive development. To what extent they will be implemented in practice and to what extent they will make an actual positive change for the Syrians, however, remains to be seen. In those border towns where the Syrians constitute a high percentage of the population, the ten percent quota is likely to mean that Syrians will in practice continue not having access to legal employment (for example, there were 90,000 Turkish nationals and 120,000 Syrians in the border province of Kilis in January 2016).<sup>56</sup>

## 4.6 Social assistance and services

While both the LFIP and the TPR state that those in need *may* be provided with social assistance and services, which includes provision of in-kind and monetary assistance, this refers to a general state-aid scheme that is intended to service Turkey's entire population in need (as opposed to being an arrangement specific to asylum seekers and refugees), and its overall capacity is limited.<sup>57</sup> While the UNHCR has a similar in-kind and monetary assistance program, that is also very limited.<sup>58</sup>

## 4.7 Persons with special needs

The LFIP states that international protection applicants and status holders with special needs will be given overall priority, including priority referral to reception and accommodation centres (as discussed above, existing capacity for this is only symbolic), and that treatment shall be provided to victims of torture, sexual assault and other serious psychological, physical or sexual violence. Similarly, the TPR states that persons with

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56 See minutes of the 13.1.2016 meeting of the Parliamentary Subcommission on Refugees, p.53, available at [https://www.tbmm.gov.tr/develop/owa/komisyon\\_tutanaklari.goruntule?pTutanakId=1550](https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=1550) [last accessed 17 April 2016].

57 MülteciDer Report, p.9, and AIDA Country Report: Turkey, p.74.

58 MülteciDer Report, p.50.

special needs will have priority access to services and assistance (which shall be provided as feasible) and that the relevant special legislation will apply for the protection of children, women who have been subject to violence and the victims of human trafficking. In reality, the actual capacity in Turkey for providing such protection and services is very limited,<sup>59</sup> and it is not likely that these provisions are implemented in a way to actually make a meaningful improvement in the lives of such people. It should be noted that child marriages and unofficial polygamous marriages of Syrian girls and women in Turkey remain an important concern.<sup>60</sup>

## 4.8 Freedom of movement

### 4.8.1 International protection applicants and status holders

International protection applicants, conditional refugees and subsidiary protection beneficiaries are required to reside in a designated province, report periodically to the local authorities there and not leave the province without formal permission. This restriction does not apply to refugees. Similarly, while refugees are issued travel documents as per the Refugee Convention, conditional refugees and subsidiary protection beneficiaries are not as such entitled to any passport-like documents that enable them to travel outside of Turkey. They can, however, apply for a “foreigners passport”, which allows either a single entry to or exit from Turkey, or a return trip.<sup>61</sup>

### 4.8.2 Syrians under temporary protection

The precondition to benefiting from temporary protection is registering with the DGMM, which, at the time of registration, appoints the temporary protection beneficiary to a particular province, which is typically the province where the registration takes place. The temporary protection beneficiary is then legally required to reside in the appointed province and obtain permission from the DGMM both for formally moving within Turkey (*ie*, for changing the province of registration) and for leaving Turkey, whether permanently or for temporary travel purposes. Syrians are not subject to periodic reporting requirements and, in the past, they moved within Turkey without such official permission and without resistance from the authorities. This resulted in many of them living without access to basic services, since, as a general rule, temporary protection beneficiaries are legally entitled to healthcare, education and the other services provided under the TPR only in the provinces where they are registered. It is

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59 For more detail, see MülteciDer Report, p.30-1, and minutes of the 10.2.2016 meeting of the Parliamentary Subcommission on Refugees, available at [https://www.tbmm.gov.tr/develop/owa/komisyon\\_tutanaklari.goruntule?pTutanakId=1545](https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=1545) [last accessed 17 April 2016].

60 See AIDA Country Report: Turkey, p.124.

61 See Article 18 of Turkish Passport Law (No 5682).

important to note that recent developments point to a major shift in the authorities' approach in this regard and indicate concerted efforts to control and prevent the movement of Syrians within Turkey with a view to preventing them to cross to EU territory.<sup>62</sup> Under the TPR, those who travel abroad without official permission are reconsidered for and may be denied temporary protection on their return.

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62 An order was reportedly sent to provincial authorities on 29 August 2015, instructing them to take measures to control and prevent the movement of Syrians inside Turkey. See AIDA Country Report: Turkey, p.129.

# 5 Key legal concerns

## 5.1 Detention

### 5.1.1 Administrative detention

Two types of administrative detention are authorised under the LFIP: (i) detention pending review of an international protection application, and (ii) detention pending removal. For temporary protection beneficiaries, only the latter is applicable.

Detention for up to 30 days pending review of an international protection application is authorised (but not legally required) as an exceptional measure in enumerated circumstances, but only if alternative measures would be insufficient. The exhaustive list of circumstances includes a reference to “constituting a serious danger to public order and public safety” as grounds for detaining international protection applicants. It should be noted that such broad formulations are prone to misuse in Turkey and can lead to arbitrary detention decisions, particularly considering that administrative detention under the LFIP is not subject to automatic judicial review (see below).

Detention pending removal of a foreigner in respect of whom a deportation decision has been issued is required (*ie*, not just authorised) in circumstances enumerated in the law. Again, while the list is exhaustive, it does contain a reference to “constituting a threat to public order, public safety or public health” as grounds for detention. Detention pending removal is required to be reviewed by the provincial authorities (*ie*, not by a judge) on a monthly basis and should, as a general rule, not exceed six months. It may, however, be extended for an additional period of up to six months where the removal cannot be executed because of the detainee’s failure to cooperate. A major detention-related problem is that when persons held in detention pending removal subsequently lodge an international protection application, their “detainee status” is not always changed to the correct category, *ie*, the former category under which detention may not exceed 30 days.<sup>63</sup>

In both cases, the detention decision is not subject to automatic judicial review but the detainee (as well as his/her legal representative or lawyer) may apply to the local criminal court to challenge the decision. The judge’s ruling, which is required to be issued within five days, is non-appealable and can only be revisited if the relevant facts

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<sup>63</sup> See AIDA Country Report: Turkey, p.95.

have changed, in which case the detainee's only remedy is to make a new application to the same court. This is potentially problematic for purposes of Article 13 of the European Convention of Human Rights (ECHR), which guarantees the right to effective remedy before national authorities.

### 5.1.2 “Informal detention” under the TPR

Detention of temporary protection beneficiaries, like detention of all other foreigners in Turkey, is supposed to be subject to the legal procedures and safeguards set out in the LFIP. The TPR, however, contains a “hidden” provision that seems to unlawfully allow arbitrary detention: TPR 8 states that those who are excluded from temporary protection<sup>64</sup> may, until their removal, *be accommodated*, for humanitarian reasons, in a special section of temporary accommodation centres or in a separate temporary accommodation centre or in other places determined by the provincial authorities *without an administrative detention decision* required under the LFIP. Despite the use of the word “accommodation”, this provision relates to an informal type of detention. This type of arbitrary deprivation of liberty would be in clear breach of the LFIP (which constitutes the legal basis of the TPR) and the Turkish Constitution, as well as the ECHR, among other obligations of Turkey under international law.

### 5.1.3 Detention practices

Currently, removal centres are used for both types of detention and the overall detention capacity is in the process of being more than tripled. The plan is to have detention capacity for 10,000 people by 1 June 2016, when the EU-Turkey Readmission Agreement comes into full effect.<sup>65</sup> The Global Detention Project's report of April 2014<sup>66</sup> provides valuable insight into the problematic immigration detention practices and conditions in Turkey prior to the adoption of the LFIP, while Amnesty International's report of December 2015<sup>67</sup> points to serious detention-related violations in the last quarter of 2015, which are believed to have increased because of negotiations between Turkey and the EU surrounding the Joint Action Plan. The report points to concerted efforts by Turkish authorities from September 2015, to apprehend on Turkey's western border the people trying or suspected of planning to cross to Greece. According to the many interviews in the report, the apprehension is typically followed by prolonged,

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64 Exclusion grounds, such as terrorist activity or prior conviction of certain types of crimes, are set out in the TPR. The exclusion decision is made by the DGMM.

65 See AIDA Country Report: Turkey, p.97-8.

66 “Immigration Detention in Turkey”, available at [http://www.globaldetentionproject.org/fileadmin/docs/Turkey\\_report.pdf](http://www.globaldetentionproject.org/fileadmin/docs/Turkey_report.pdf) [last accessed 17 April 2016].

67 “Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey”, available at [file:///Users/ozlemgurakar/Downloads/EUR4430222015ENGLISH%20\(5\).pdf](file:///Users/ozlemgurakar/Downloads/EUR4430222015ENGLISH%20(5).pdf) [last accessed 17 April 2016].



unlawful detentions where the detainees are kept incommunicado in isolated removal centres in the east or southeast of Turkey (namely, in Düziçi and Erzurum), before being deported to Syria or Iraq in some cases. The report also points to instances of ill-treatment during detention.

Following the suspicious suicide of a Syrian detainee at the Erzurum Removal Centre on 31 December 2015,<sup>68</sup> a number of refugee rights and human rights organisations in Turkey issued a common statement about the conditions at Erzurum Removal Centre, stating that the detainees at the centre are denied contact with their families and lawyers (through telephone and otherwise), that lawyers have been denied access to their clients and their files on multiple occasions, and that some detainees are held on “terror suspicion” without any formal investigation or proceedings. The statement demands that the serious allegations of ill-treatment at the centre (including chaining and total isolation of some detainees) be investigated. The statement also refers to 20 children held at the centre with their families.<sup>69</sup> Separately, the Union of Turkish Bar Associations’ report from February 2016 is enlightening in terms of describing the insufficiency of the living conditions at removal centres. The report states that the centres are overcrowded and detainees are denied contact with their families, and it points to various problems in terms of access to lawyers (including procedural problems involving granting power of attorney to lawyers, lack of separate rooms where the detainee and his/her lawyer can talk in confidence and lack of reliable translators).<sup>70</sup>

## 5.2 Administrative and judicial appeal

Administrative and judicial appeal are available against decisions made under the LFIP, and the rules apply equally to decisions under the TPR. While such appeal is pending, the person concerned may not be deported. The administrative appeal authority is the International Protection Assessment Commission, a permanent commission established for this purpose. Administrative appeal is not available for (i) administrative detention decisions, (ii) decisions that an international protection application is inadmissible, and (iii) decisions relating to accelerated review of applications:

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68 A lot of questions have been raised about Dilo Derviş’s death. See (i) <http://t24.com.tr/haber/erzurum-daki-askale-geri-gonderme-merkezinde-olen-dilo-dervis-in-intihar-ettigi-iddia-edildi,322993>, (ii) <http://www.birgun.net/haber-detay/goc-idaresi-nin-keyfiligi-ve-bir-olum-intihar-mi-cinayet-mi-99728.html>, and (iii) <https://bianet.org/bianet/insan-haklari/170800-1-80-boyundaki-dervis-kendini-atkiyla-ranzaya-nasil-asar> [last accessed 17 April 2016].

69 See <http://www.multeci.org.tr/haberdetay.aspx?id=130> [last accessed 17 April 2016].

70 See Union of Turkish Bar Associations report “Asylum Seekers and Refugees Report” from February 2016, available at <http://tbbyayinlari.barobirlik.org.tr/TBBBooks/543.pdf>, p.78-9. [last accessed 17 April 2016].

These decisions can only be appealed directly to the competent court. The court is required to decide within 5 days with respect to cases falling in category (i), and within 15 days with respect to cases falling in categories (ii) and (iii). For all three categories, the court's ruling is final, which is potentially problematic in light of Article 13 of the ECHR guaranteeing the right to effective remedy. It is reported that, despite the 15-day limit, deciding deportation cases may in practice take as long as six months.<sup>71</sup> Separately, many have raised concerns about rulings issued so far, particularly noting that judges have not received training on the application of the new asylum laws and lack the relevant expertise to decide these matters.<sup>72</sup> Finally, since 2012, it has also been possible to lodge an individual complaint with the Turkish Constitutional Court (where breach of fundamental constitutional rights and liberties is concerned and after all other domestic remedies are exhausted), and this procedure is occasionally used to halt potentially unlawful deportations.

### 5.3 Access to lawyers and legal aid

Those international protection applicants, status holders and temporary protection beneficiaries who cannot afford to retain lawyers on their own means may apply to Turkey's state-funded legal aid scheme, subject to the same need-based criteria as Turkish citizens. It should be noted, however, that the capacity for this is very limited, due to limited funding as well as lack of relevant expertise, and in practice, only a small percentage of the applicants can obtain legal assistance. The Union of Turkish Bar Associations' suggestion is that a separate budget be set aside for the provision of state-funded legal aid in the area of international protection and temporary protection. NGOs that provide counselling services are also limited by their budgets. The lawyer-client communication is negatively affected by shortage of dedicated translators as well as lack of private rooms where conversations can be held in confidence, both in removal centres and in camps. Another serious handicap is that due to their inability to provide the right kind of identification documents, many people have been unable to execute powers of attorney to appoint lawyers. Some bar associations are reportedly quicker than others in such cases to refuse to provide legal aid on procedural grounds.<sup>73</sup>

Separately, while international protection applicants, status holders and Syrians under

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71 See Union of Turkish Bar Associations report, p.57.

72 See (i) Union of Turkish Bar Associations report, p.33, and (ii) <http://test-temp.aljazeera.com.tr/al-jazeera-ozel/ab-ile-anlasmadaki-bazi-maddeler-multecilerin-hayatini-tehlikeye-atabilir> [last accessed 17 April 2016].

73 See Union of Turkish Bar Associations report, p.34-6.

temporary protection (as well as their legal representatives and lawyers) are legally entitled to access and obtain copies of the documents in their files, the law allows such access to be denied on the ground that the documents concern protection of national security or public order or the prevention of crime (there are also various other references in both the LFIP and the TPR to national security, public order and public security as possible limitation grounds). Such broad and vague formulations are, as a general matter, prone to lead to arbitrary decisions and actions by the relevant administrative bodies in Turkey. The Union of Turkish Bar Associations reports that there are many instances where lawyers are simply denied access to their clients and/or their files.<sup>74</sup> Amnesty International's report of December 2015 also reports cases where Syrians and others in detention were denied access to their lawyers.<sup>75</sup>

## 5.4 Deportation and non-refoulement<sup>76</sup>

An open-door policy was one of the key features of Turkey's temporary protection of Syrians; however, this changed with the closure of the last two official border-crossing points in March 2015. A Human Rights Watch briefing from November 2015<sup>77</sup> provides valuable insight into the issue: The briefing, based on interviews with Syrians who recently crossed from Syria to Turkey, as well as on information obtained from local NGOs and other actors knowledgeable about the border situation, points out that beginning March 2015, only aid vehicles, authorized traders and those with urgent medical needs were permitted, and ordinary Syrians had to cross to Turkey through the difficult-to-police mountainous areas of the border, mainly by use of smugglers. Additionally, smuggling routes reportedly became more difficult to use after Turkey increased border protection measures following a terrorist attack in July 2015 in the Turkish border town of Suruç.

Based on the aforementioned briefing, those who were detected crossing the border were either immediately pushed back to the Syrian side or detained in Turkey and then expelled in groups, in both cases, in violation of Turkey's domestic and international law obligations stemming from the principle of non-refoulement. Moreover, Turkey refused to open its borders to the large group of Syrians (estimated at around 50,000 people) fleeing Aleppo in February 2016. While Turkey's overall "saturation" with

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74 See Union of Turkish Bar Associations report, p.35-6.

75 See Amnesty International report, p.6-7.

76 For Turkey's history of refoulement, see "Why Turkey is not a 'Safe Country'", p.17, available at <http://www.statewatch.org/analyses/no-283-why-turkey-is-not-a-safe-country.pdf> [last accessed 17 April 2016].

77 See "Turkey: Syrians Pushed Back at the Border", available at <https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border> [last accessed 17 April 2016].

asylum seekers and refugees, as well as terror and security concerns contributed to the latter, government statements on the issue show that this was also a tactical-political decision.<sup>78</sup> After international pressure, Turkey started admitting people “in a controlled fashion”.<sup>79</sup>

Separately, the aforementioned Amnesty International report of December 2015 points to deportation of people apprehended in western Turkey (while trying or planning to cross the western border to EU territory) back to Syria and Iraq, in violation of the principle of non-refoulement. According to the report, some of these people are directly forcibly returned while others are coerced into signing voluntary return papers under threat of continued detention. Amnesty International reported again on 23 March 2016 about 30 Afghan asylum seekers, who were reportedly denied access to asylum procedures and forcibly and unlawfully returned back to Afghanistan where they feared for their lives.<sup>80</sup> Amnesty International reported yet again on 1 April 2016: This briefing, based on recent research conducted in Turkey’s southern border provinces, claims that since mid-January 2016, Turkey has been conducting forced returns to Syria, in big groups and on an almost daily basis. Based on the briefing, many of the returnees are unregistered in Turkey. The briefing also points to recent instances where Turkish authorities have refused to register Syrians and reports that some unregistered Syrians now refrain from approaching the Turkish authorities for registration for fear of being returned to Syria. Two days after this latest briefing, Turkey formally denied these allegations.<sup>81</sup>

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78 See [https://www.washingtonpost.com/world/trapped-between-airstrikes-and-a-locked-gate-syrian-refugees-are-pawns-in-a-wider-war/2016/02/10/c7de23dc-d010-11e5-90d3-34c2c42653ac\\_story.html](https://www.washingtonpost.com/world/trapped-between-airstrikes-and-a-locked-gate-syrian-refugees-are-pawns-in-a-wider-war/2016/02/10/c7de23dc-d010-11e5-90d3-34c2c42653ac_story.html) [last accessed 17 April 2016].

79 See <http://www.reuters.com/article/us-mideast-crisis-syria-turkey-idUSKCN0V1h0P> [last accessed 17 April 2016].

80 See Amnesty International’s briefing from April 2016, “Turkey ‘safe country’ sham revealed as dozens of Afghans forcibly returned hours after EU refugee deal”, available at <https://www.amnesty.org/en/latest/news/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned/> [last accessed 17 April 2016].

81 See [http://www.mfa.gov.tr/no\\_-83\\_-3-nisan-2016\\_-turkiye\\_nin-bazi-suriyelileri-zorla-ulkelerine-geri-gonderdigi-iddialari-hk\\_.tr.mfa](http://www.mfa.gov.tr/no_-83_-3-nisan-2016_-turkiye_nin-bazi-suriyelileri-zorla-ulkelerine-geri-gonderdigi-iddialari-hk_.tr.mfa) [last accessed 17 April 2016].

# 6 Return from Europe to Turkey

To be able to provide a clear overview of return to Turkey, it is essential to distinguish between (i) the return of rejected asylum seekers and migrants, and (ii) the return of asylum seekers whose applications have not been considered on the merits.

## 6.1 Returning rejected asylum seekers and migrants under readmission agreements

Under the EU Return Directive (2008/115/EC), the relevant EU-member states, as well as Norway, are required to either regularise the status of, or issue a return decision to, any third-country national<sup>82</sup> staying illegally on their territory. This includes rejected asylum seekers (*ie*, asylum seekers whose asylum applications have been reviewed on the merits and found unfounded) as well as all migrants who lack the legal right to stay in the host country. As it is difficult to carry out returns without the cooperation of the country of return, destination countries (such as EU-members and Norway) actively seek to conclude readmission agreements with countries of origin and main transit countries (such as Turkey), offering various incentives in return for that cooperation.

The EU-Turkey Readmission Agreement, which had been on the table since 2003, was signed in 2013. It entered into partial force in October 2014, and was scheduled to come into full force (*ie*, with respect to the return and readmission of all third country nationals) in October 2017. However, it is instead being given full effect in June 2016, as per the recent deals between the EU and Turkey. This means that beginning June 2016, Turkey will be required, subject to the terms of the agreement, to readmit from the EU, everyone who transited through Turkey to EU territory and “who do not or who no longer, fulfil the conditions for entry to, presence in, or residence in” the EU. And until June 2016, Greece can rely on its bilateral readmission agreement with Turkey to carry out returns.

Norway is not covered by the EU-Turkey Readmission Agreement;<sup>83</sup> however, signing of a separate bilateral readmission agreement between Turkey and Norway (which

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82 “Third-country national” means any person who is not an EU citizen or a person enjoying the Community right of free movement.

83 Readmission agreements are considered to fall within the scope of EU foreign policy, as opposed to being considered Schengen-related.

closely tracks the Turkey-EU agreement) is imminent.<sup>84</sup> Once that agreement is concluded and in effect, Norway will be able to rely on it to carry out direct returns to Turkey. Separately, Turkey is also indirectly relevant in the context of certain returns from Norway to Russia: Some of the people who took the Arctic Route to Norway transited through Turkey, and if returned by Norway to Russia, they may be further returned from Russia to Turkey based on the readmission agreement between the two countries.

In anticipation of the upcoming entry into force of the EU-Turkey Readmission Agreement, Turkey has also been actively seeking to conclude readmission agreements with countries from or through which it receives a high number of arrivals, its intention being to return the returnees from Europe further to those countries of origin or transit. From a human-rights and international-law perspective, this can lead to highly problematic chain returns, potentially giving rise to legal responsibility of all the countries involved in the chain. As of April 2016, Turkey had signed readmission agreements with Syria, Greece, Kyrgyzstan, Romania, Ukraine, Pakistan, Russia, Nigeria, Bosnia and Herzegovina, Yemen, Moldova, Belarus and Montenegro; agreements with Nigeria, Yemen and Pakistan were awaiting ratification.<sup>85</sup>

Readmission agreements are considered migration-related (as opposed to asylum-related): They are intended to facilitate return of people who do not have a legal right to stay in the host state, whereas lodging an asylum application in the host state gives the applicant a legal right of stay. If that application is reviewed and rejected on its merits, however, the rejected asylum seeker may be returned pursuant to a readmission agreement. In other words, a readmission agreement with Turkey does not in and by itself enable the counterparty to return to Turkey asylum seekers without first processing (*ie*, reviewing on the merits) their asylum applications. This is arguably possible, however, under first-country-of-asylum and safe-third-country rules of asylum law, which are discussed below.

## 6.2 Returning asylum seekers and refugees on inadmissibility grounds

The Asylum Procedures Directive allows EU-member states to deem an asylum application inadmissible on enumerated grounds, including where it is determined that (i) the applicant should have applied and would have received protection in another

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84 See <http://www.aftenposten.no/nyheter/iriks/Flyktet-via-Tyrkia---na-blir-de-returnert-8344155.html> [last accessed 17 April 2016].

85 See <http://www.mfa.gov.tr/soru-cevap.tr.mfa> [last accessed 17 April 2016].

country (the safe-third-country rule), or (ii) the applicant already received protection in another country (the first-country-of-asylum rule). Once the asylum application is rejected on one of these grounds, the relevant EU country needs the agreement of the relevant other country to carry out a return.<sup>86</sup> The 18 March deal between Turkey and the EU involves making such returns from Greece to Turkey:<sup>87</sup> It constitutes EU's implicit acceptance of Turkey as a safe place for purposes of returning asylum seekers and refugees and Turkey's consent to the planned returns. Following the deal, Greece passed the necessary amendments to its laws (without explicitly designating Turkey a safe third country)<sup>88</sup> and started making returns to Turkey on 4 April 2016.

Before analysing the safe-third-country rule in more detail, it is important to note that this concept, which suggests that asylum seekers should always apply for asylum in the first possible country, is not uncontested under international law. Moreover, the Asylum Procedures Directive's particular formulation has been criticised.

Under the Asylum Procedures Directive, Turkey has to fulfil five criteria to be considered a "safe third country". One of these criteria is that there must exist the possibility in Turkey to request refugee status and to receive protection in accordance with the Refugee Convention. As discussed earlier, Turkey maintains its geographical reservation to the Refugee Convention, as a result of which only the handful of asylum seekers originating from Europe receive Convention-refugee status in Turkey. All other statuses under Turkish law (*ie*, conditional refugee, subsidiary protection and temporary protection) provide limited rights and no mechanisms for long-term integration.<sup>89</sup> Other criteria Turkey would have to fulfil include respect of (i) the principle of non-refoulement and (ii) the prohibition on removal in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law. In light of the past violation decisions against Turkey at the European Court of Human Rights (ECtHR),<sup>90</sup> as well as the serious allegations of unlawful deportation and

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86 While, under international law, states are required to readmit their own nationals, they have no such obligation in respect of non-nationals and, in practice, it is difficult to return anyone without the cooperation of the country of return.

87 For details on the deal, see [http://europa.eu/rapid/press-release\\_MEMO-16-963\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-963_en.htm) [last accessed 17 April 2016].

88 See <http://www.reuters.com/article/us-europe-migrants-greece-idUSKCN0Xo05l> [last accessed 17 April 2016]. Under the Asylum Procedures Directive, Greece must have rules in its national asylum laws on the methodology to use to satisfy itself that the safe-third-country concept is applicable in a given return scenario. Such methodology may involve explicitly designating a country a safe third country. This is not required, however, and Greece has not made such designation with respect to Turkey.

89 See footnote 39.

90 There are numerous asylum-related cases where Turkey has been found in violation of Article 3 (Prohibition of torture), Article 5 (Right to liberty and security) and Article 13 (Right to an effective remedy) of the

refoulement discussed elsewhere in this report, there is serious concern over whether Turkey fulfils these criteria.<sup>91</sup>

For Greece to be able to return asylum seekers and refugees in reliance on the first-country-of-asylum rule, it is required that the person concerned either (i) has been recognised in Turkey as a refugee and can still benefit from that protection, or (ii) otherwise enjoys sufficient protection in Turkey, including benefiting from the principle of non-refoulement. Because of Turkey's geographical reservation to the Refugee Convention, the relevant test in this respect is likely to be the latter. Notwithstanding the refoulement-related concerns discussed above and elsewhere in this report, the key question in this regard is whether the protection provided under Turkey's existing framework, both in theory and in practice, can be considered "sufficient" for purposes of the Asylum Procedures Directive.

Under the Asylum Procedures Directive, making an inadmissibility decision on first-country-of-asylum or safe-third-country grounds requires conducting an individual review of each applicant. This is not a full review of the merits of the asylum claim but involves making the assessment that the rule being relied on applies to the particular case of the person concerned (for example, it is not sufficient that Turkey qualifies as a "safe third country" in general; it has to be safe for the particular person concerned). There are also procedural safeguards that need to be followed (for example, the applicant must be permitted to challenge the application of the first-country-of-asylum concept to his/her particular circumstances or, where the safe-third-country-rule is being applied, challenge the existence of a connection between him/her and Turkey). In other words, collective and automatic expulsion is not allowed: Greece is required to individually register all asylum seekers and refugees who enter its territory, and carry out the necessary individual analysis before deciding that the application is inadmissible. All of this constitutes a huge administrative challenge and how it is implemented in practice will be an integral part of determining the legality of returns carried out pursuant to the 18 March deal.<sup>92</sup>

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ECHR. In this respect, *Jabari v. Turkey* (11.07.2000, Application No. 40035/98), *D. and others v. Turkey* (22.06.2006, Application No. 24245/03) and *Abdoulkhani and Karimnia v. Turkey* (22.09.2009, Application No. 30471/08) involving non-refoulement, as well as *Ghorbanov and others v. Turkey* (3.12.2013, Application No. 28127/09) involving unlawful deportation are particularly noteworthy. The ECtHR case-law relating to immigration detention (*ie*, lawfulness and conditions of detention) is also extensive: Some of the recent violation decisions in this respect include *Asalya v. Turkey* (15.04.2014, Application No. 43875/09), *Yarashonen v. Turkey* (24.06.2014, Application No. 72710/11) and *S.A. v. Turkey* (15.12.2015, Application No. 74535/10). Moreover, there are many instances where unlawful deportation decisions of Turkish authorities were stayed with an ECtHR interim measure in the past.

91 For a detailed analysis, see "Why Turkey is not a 'Safe Country'" (see footnote 76).

92 An alleged inadmissibility decision issued to a Syrian on 14 April 2016 has been circulated on Twitter; that document does not reflect any individualised analysis. See <https://mobile.twitter.com/stevepeers/status/721259578311249920> [last accessed 17 April 2016].



Finally, drawing an analogy between “Dublin returns”<sup>93</sup> from other European countries to Greece and returns from Greece to Turkey may provide an interesting angle on the issue. There is important ECtHR case-law on the compatibility of Dublin returns with the ECHR. An interesting case in this respect is *M.S.S. v. Belgium and Greece*,<sup>94</sup> where the court found that Belgium violated the ECHR by sending an asylum seeker back to Greece (under the Dublin II Regulation) and exposing him to risks linked to the deficiencies in the Greek asylum system as well as to detention and living conditions in breach of the ECHR. In light of the deficiencies of Turkey’s asylum system explained under various headings of this report, similar rulings could potentially be issued with respect to returning asylum seekers to Turkey, unless Turkey carries out extensive reforms to establish a fully functional asylum system. The Turkish government seems to have no current intention, however, of making any changes in connection with or as a result of the 18 March deal.<sup>95</sup> Any such changes would in any case be very challenging to fully implement in practice, due to the high number of asylum seekers and refugees involved.

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93 Dublin Regulation is an EU law that sets out which European state will have responsibility for examining the asylum application of a third country national. The responsible state is normally the state through which the asylum seeker first entered the EU. Returns made under this regulation among the relevant European countries are called Dublin returns.

94 *M.S.S. v. Belgium and Greece* (21.1.2011, Application No. 30696/09). Similarly, in *N.S. v. UK* (21.12.2011, C-411/10), the Court of Justice of the EU held that a transfer under Dublin rules is not allowed where a failing asylum system in the receiving state creates a risk of inhuman or degrading treatment.

95 See comments by Turkey's ambassador to the EU, available at <https://euobserver.com/migration/132779> [last accessed 17 April 2016].