

RESPOND

Working Papers

Global Migration: Consequences and Responses

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Turkey – Country Report

Legal & Policy Framework of Migration Governance

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List of abbreviations

AFAD	Disaster and Emergency Management Authority
AIDA	Asylum Information Database
BSECA	Black Sea Economic Cooperation Area
CIP	Circular on International Protection
CL	Citizenship Law
Const.	Constitution
DGMM	Directorate-General for Migration Management
EC	European Commission
EU	European Union
FRONTEX	European Border and Coast Guard Agency
GDI	Gender Development Index
HDI	Human Development Index
ILF	International Labour Force Law
IOM	International Organization for Migration
IR	Implementation Regulation
LFIP	Law on Foreigners and International Protection
LWPF	Law on Work Permits for Foreigners
MFSP	Ministry of Family and Social Policies
MFA	Ministry of Foreign Affairs
Mol	Ministry of Interior
OECD	Organization for Economic Co-operation and Development
PDMM	Provincial Directorate of Migration Management
RA	Readmission Agreement
RESPOND	Multilevel Governance of Migration in Europe and Beyond
RSD	Refugee Status Determination
TGNA	The Turkish Grand National Assembly

THEC	Turkish Higher Education Council
TOKİ	Toplu Konut İdaresi Başkanlığı (Directorate of Public Housing Administration)
TPR	Temporary Protection Regulation
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
WP1	Work Package 1

Executive summary

This country report focuses on developments that took place during the period of 2011-2017 in the field of migration in Turkey. Traditionally a country of emigration, starting from the early 1990s, it has also become an important country of immigration, asylum and transit. Most recently, the increasing pressure of the refugee challenge, particularly given the high number of arrivals from Syria, has put the country once again under international spotlights.

This report provides relevant migration statistics that are available as open source data. It briefly reviews the socio-economic, political and cultural characteristic of the country as well as its brief migration history. The report also delves into a detailed analysis of the constitutional, legal and institutional framework of Turkey's national migration management system, which has gone through significant transition in the last few years. The report points out that due to Turkey's geographical limitation to the 1951 Geneva Convention Relating to the Status of Refugees (1951 Convention), and its associated 1967 Protocol; Turkey does not grant refugee status to people fleeing from conflicts and persecution in non-European countries. But it does provide 'conditional refugee status' along with 'refugee' and 'subsidiary' protection. The introduction of new sets of legislation, including the Law on Foreigners and International Protection (LFIP) in 2013, and Temporary Protection Regulation (TPR) in 2014, together with the development of new state agency to deal with migration affairs, the Directorate General of Migration Management (DGMM), paved the way for a more centrally organised national migration governance system. Moreover, the legal framework created with the LFIP and the TPR also established clearly defined migration categories such as regular migrant, irregular migrant, forced migrant and it set the criteria for granting temporary protection status.

The report reveals a key duality regarding European and non-European asylum seekers to be an important characteristic of Turkey's asylum system. The first group can obtain 'refugee' status'; while the second group can only obtain 'conditional refugee status'. However, regardless of their nationality, due to the Syrian mass migration, Syrian refugees⁷¹⁸ are given another international protection status, which is called 'temporary protection'. Thus, together the LFIP and the TPR created a legal basis for asylum seekers from Syria and those from other countries to be the subject of two different asylum regimes in Turkey, with distinct sets of procedural rules, reception provisions and detention considerations (Refugee Rights Turkey, 2015, p.11).

The report concludes by highlighting that part of Turkey's recent migration policy efforts are tied to encouragement coming from the EU for Turkey to improve conditions regarding access to the asylum process and status determination as well as enhancement of its facilities for asylum-seekers' protection. Although these developments bring Turkey closer to satisfying the EU demands on migration and asylum policy, Turkey is still expected to abolish the geographical limitation of the 1951 Convention to create a full-fledged asylum system and to solve remaining implementation problems. Ensuring equal and fair access to asylum procedures and facilitating the full access of asylum-seekers to legal aid remain priorities still to be achieved.

⁷¹⁸ Although different terminologies have been used to refer to Syrian refugees, such as 'guests' and 'temporary protection status'; throughout this report the term 'Syrian refugees' will be used. When the Syrian mass migration to Turkey started in 2011, Syrians were called 'guests' not as legal refugees. This classification derives from the fact that Turkey still maintains the geographical limitation on the 1951 Geneva Convention for the refugee definition, thus it claims no obligation to recognize Syrians' refugee status. It is important to highlight that the term 'guest', however, has no place in international refugee law. From October 2011 onwards, Turkey granted Syrians 'temporary protection status' by referring to the European Council's Directive on 'Temporary Protection' of 2001 and the adoption of its own Regulation on Temporary Protection in 2014.

1. Statistics and data overview

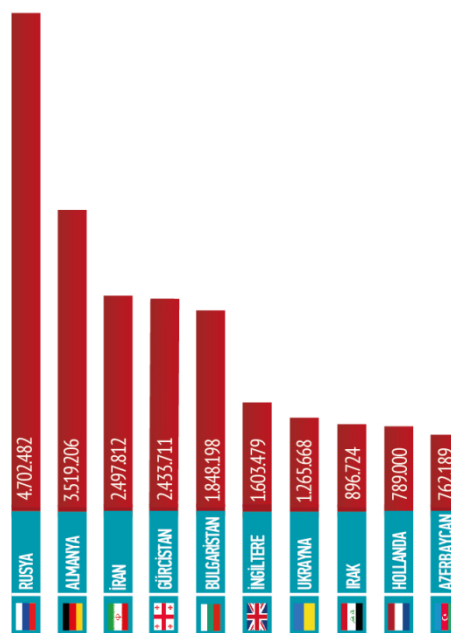
Explanatory note on available statistical data

This report starts with providing statistics and overview data⁷¹⁹ on the immigration to Turkey in order to lay the ground for examination of legal and policy framework. As the emphasis of the RESPOND Project is on mass migration, a specific attention is given to relevant statistics.

Arrivals

Figure 1 shows the highest numbers of arrivals to Turkey from non-EU countries occurred during 2017. The total is over 32,000. The open source data provided by the DGMM refers to the total number of arrivals, including from both EU and non-EU countries. It should be noted that arrivals from countries such as Germany and the Netherlands, where Turks emigrated in significant numbers in the past, constitute a significant part of the overall numbers of arrivals to Turkey. Moreover, the DGMM data are not broken down by sex, age, migratory status or routes. Migration statistics about residence permits are relatively more detailed, as can be seen in the next sub-section of this report, and this data gives the reader a better idea about the percentage of different types of migrants living in Turkey.

Figure 1: Arrivals of non-EU citizens in 2017

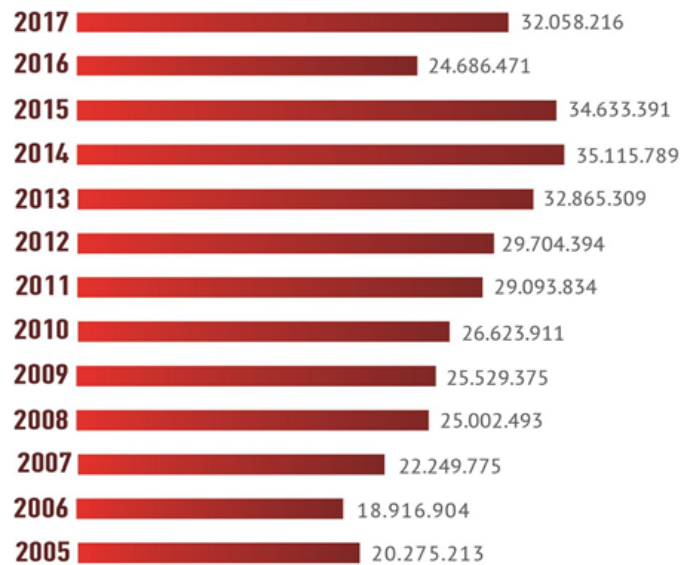


⁷¹⁹ The compilation of data presented below is primarily based on open source statistical data. One of the main sources of these data is the Directorate General of Migration Management (DGMM), which was established under the Ministry of Interior by Law 04/04/2013 No. 6458 on Foreigners and International Protection as the competent authority for migration management (LFIP, Article 103). In addition to the DGMM, the Asylum Information Database is another important provider of relevant open source data. AIDA is the database managed by the European Council on Refugees and Exiles, and contains information on asylum procedures, reception conditions, detention and content of international protection across 23 EU and non-EU countries, including Turkey.⁷¹⁹ While compiling its data, AIDA draws on the publicly available data provided by Disaster and Emergency Management Authority of Turkey and the DGMM, as well as statistical data obtained by Refugee Rights Turkey, the United Nations High Commissioner for Refugees, Turkey and the International Organization for Migration.

Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/giris-cikis_363_378_4708_icerik [Accessed 14 April 2018].

The following figure (2) displays the changes in terms of entrances by years. Numbers of entries to Turkey has steadily increased since 2007, except in 2016, the year of the attempted coup in July. Although an increase over time, in particular 2017, is clear, no details about nationalities are available. Also, these entrance figures do not explain the reason or purpose of arrivals to Turkey.

Figure 2: Entrance to Turkey by years (2005-2017)



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/giris-cikis_363_378_4708_icerik [Accessed 14 April 2018].

Number of residence permits

The Law of Foreigners and International Protection (LFIP) creates the requirement that foreigners who would like to stay in Turkey longer than ninety days must apply for a residence permit, unless they are exempted from obtaining one.⁷²⁰ The types of residence permits are enlisted in Article 30 of the LFIP as:

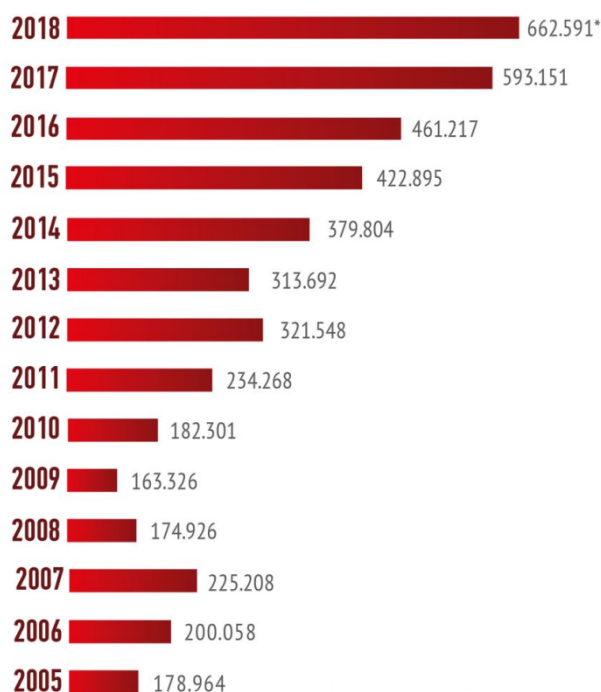
Types of residence permits

- a) short-term residence permit;
- b) family residence permit;
- c) student residence permit;
- d) long-term residence permit;
- e) humanitarian residence permit;
- f) victim of human trafficking residence permit.

⁷²⁰ Exemptions from residence permits have been specified under Article 20 of the LFIP. It is also noted that 'in cases where these foreigners wish to stay in Turkey, after the end of the status that entitled them to an exemption from a residence permit, they must apply to the governorates within ten days to obtain a residence permit', Available at http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf [Accessed 17 April 2018].

One can transfer between different types of residence permits if the initial conditions under which a specific type of residence permit was once issued, no longer apply or 'a different reason appears' (LFIP, Article 29).

Figure 3: Number of residence permits granted (2005-2016)

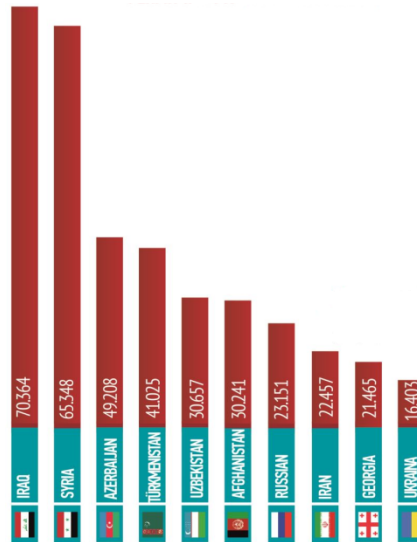


*by the date of 05.04.2018

Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

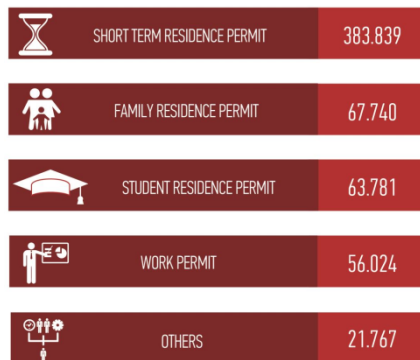
Figure 3 shows the most up-to-date data available about the total number of residence permits issued by the DGMM between 2005 to 2016. From 2013 onwards, the numbers of residence permits granted have gradually increased. The worsening situation in Syria seems to be an important cause leading to such increases as in 2016, those arriving from Syria constituted the second largest group of foreigners who applied for a residence permit. It should be noted that Syrians do not reside in Turkey only as a part of the TPR; but also apply for short-term or different types of resident permits. Thus, this table excludes Syrians, who are under the TPR. As Figure 4 indicates, nationals from neighbouring countries have been granted the most of residence permits during 2017. A breakdown of these cumulative figures, as provided on the DGMM website, reveals that a considerable part of these residence permits are short-term residence permits. These are followed by family residence permits, student residence permits, work permits, and other types of residence permits (i.e. humanitarian residence permit, and residence permits for the victims of human trafficking).

Figure 4: Residence permits granted in 2017 (Top ten nationalities)



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

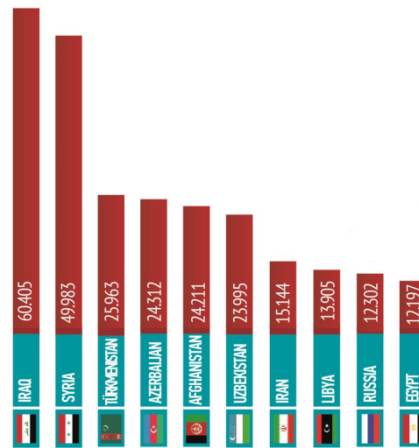
Figure 5: Types of residence permits issued in 2017



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

As noted in Article 31 of the LFIP, a short-term residence permit might be granted to those foreigners who arrive to conduct scientific research, attend educational and training programs, pursue trade activities, receive medical treatment, and for tourism and other short-term stay purposes.

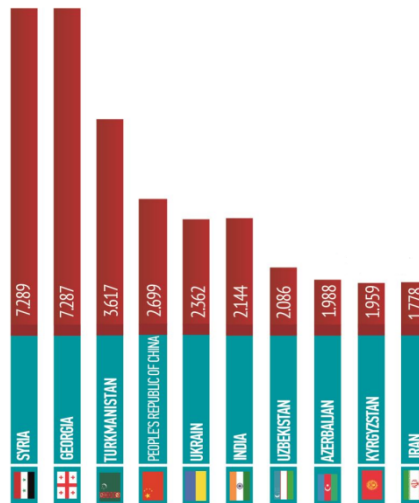
Figure 6: Short-term residence permits issued in 2017 (Top ten nationalities)



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

Article 34 of the LFIP indicates that ‘a family residence permit for a maximum duration of two years at a time’ may be granted to the foreign spouse; foreign children or foreign minor children of their spouse; dependent foreign children or dependent foreign children of their spouse; of Turkish citizens’, persons within the scope of Article 28 of the Turkish Citizenship Law (Law No. 5901) or, foreigners holding one of the residence permits as well as refugees and subsidiary protection beneficiaries.

Figure 7: Family related residence permits issued in 2017 (Top ten nationalities)



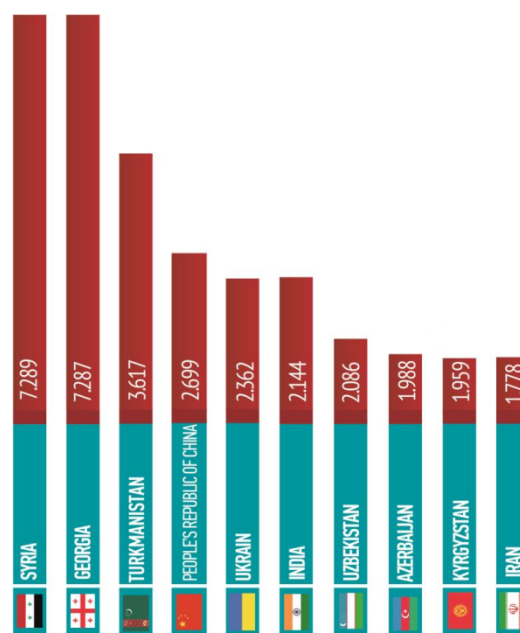
Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

Regarding the conditions that relate to foreigners who would like to apply for a family residence permit to stay with a sponsor in Turkey, in Article 35 (3), it has been noted that these people should not have entered into the marriage for the purpose of obtaining a family residence permit, should be over the age of eighteen, and should not fall within the scope of Article 7 of LFIP, which enlists those conditions for refusing the entry of a foreigner into Turkey.⁷²¹

⁷²¹ According to the LFIP, those foreigners who do not hold a passport, a travel document, a visa or, a residence or a work permit or, whose documents or permits are not genuine; ‘whose passport or

In addition to family related reasons, a portion of those foreigners who are legally in Turkey have work related residence permits. Under the International Labour Force Law (ILF), which is the main source for the procedures and the substance of the work permit related matters, there are two main categories under which work permits are broadly classified as: (1) working permission for a definite period; and (2) working permission for an indefinite period. Working permission for a definite period is valid ‘for at most one year’ and might be extended ‘up to three years, on condition of working in the same workplace or enterprise and in the same job’ (ILF, Article 10). Working permission for a definite period may be given also to the ‘spouses and dependent children, who have come together with the foreigner or afterwards, on condition that they have resided with the foreigner legally and uninterruptedly for at least five years’ (Ibid.).

Figure 8: Work related residence permits issued in 2017 (Top ten nationalities)



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

Foreigners holding a work permit for an indefinite period are also legally entitled to benefit from the same rights as long-term residence permit holders (LFIP, Article 6).

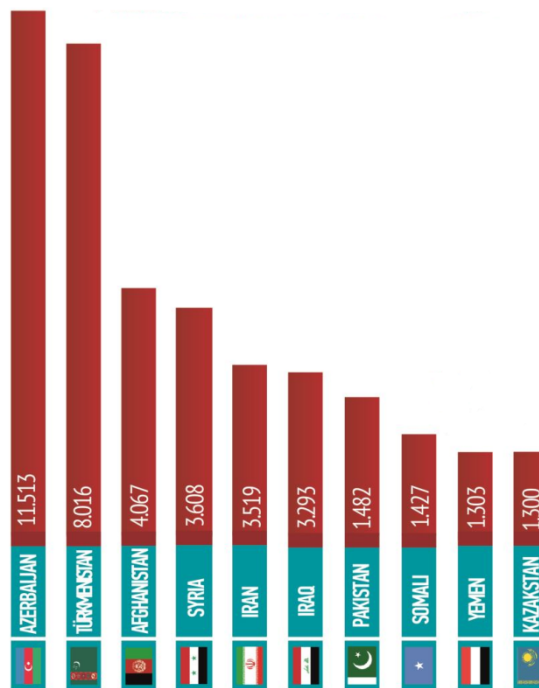
Apart from these, as mentioned at the outset of this section, other types of residence permit include student residence permit, humanitarian residence permit, and residence permit for victims of human trafficking. Among these, student residence permit is granted to those foreigners who would like to pursue primary, secondary or higher education (undergraduate, graduate or postgraduate education) in Turkey. Foreign students can also work in Turkey, if they hold a work permit but they can apply for one only after the first year of their studies, and their weekly working hours cannot exceed twenty-four hours (LFIP, Article 41). Humanitarian residence permit with a maximum duration of one year can be granted under the following conditions as described in the law (LFIP, Article 46).

travel document expires sixty days prior to the expiry date of the visa, visa exemption or the residence permit’ should not be allowed entry into Turkey [Article 7(1)].

Finally, victims of human trafficking can also be granted residence permits that will be valid for thirty days by the governorates to ‘allow them to break from the impact of their (negative) experience and reflect on whether to cooperate with the competent authorities’ (LFIP, Article 48). Residence permits of such kinds can be ‘renewed for six months periods for reasons of safety, health or special circumstances of the victim’, up to a maximum period of three years (ibid.).

Among these other types of visas, as seen in Figure 9, the DGMM provides open source data only about the number of student residence permits for 2017, and about the top ten nationalities that were granted this type of visa.

Figure 9: Student residence permits issued in 2017 (Top ten nationalities)



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 14 April 2018].

Data on the number of humanitarian residence permits and residence permits granted to victims of human trafficking are not disaggregated. Instead, cumulative figures for all types of residence permits issued in 2017 are available on the DGMM’s web site, as seen in Figure 10.

Figure 10: Distribution of foreigners with residence permit (as of 05.04.2018)

PROVINCE NO	PROVINCE	TOTAL	PROVINCE NO	İLLER	TOTAL*
	GRAND TOTAL	662.591		GRAND TOTAL	662.591
1	ADANA	5.766	42	KAHRAMANMARAŞ	1.376
2	ADIYAMAN	357	43	KARABÜK	2.540
3	AFYONKARAHİSAR	1.118	44	KARAMAN	214
4	AĞRI	422	45	KARS	861
5	AKSARAY	2.075	46	KASTAMONU	2.151
6	AMASYA	419	47	KAYSERİ	3.586
7	ANKARA	55.017	48	KIRIKKALE	781
8	ANTALYA	55.572	49	KIRKLARELİ	1.187
9	ARDAHAN	352	50	KIRŞEHİR	340
10	ARTVİN	452	51	KİLİS	689
11	AYDIN	5.337	52	KOCAELİ	6.385
12	BALIKESİR	2.431	53	KONYA	6.463
13	BARTIN	300	54	KÜTAHYA	1.928
14	BATMAN	258	55	MALATYA	1.544
15	BAYBURT	147	56	MANİSA	2.141
16	BİLECİK	606	57	MARDİN	558
17	BİNGÖL	85	58	MERSİN	15.032
18	BİTLİS	106	59	MUĞLA	13.188
19	BOLU	1.388	60	MUŞ	78
20	BURDUR	546	61	NEVŞEHİR	653
21	BURSA	21.442	62	NİĞDE	852
22	ÇANAKKALE	3.985	63	ORDU	1.185
23	ÇANKIRI	230	64	OSMANIYE	400
24	ÇORUM	1.232	65	RİZE	924
25	DENİZLİ	2.872	66	SAKARYA	7.039
26	DIYARBAKIR	597	67	SAMSUN	8.800
27	DÜZCE	916	68	SİİRT	296
28	EDİRNE	2.444	69	SİNOP	384
29	ELAZIĞ	655	70	SİVAS	548
30	ERZİNCAN	440	71	ŞANLIURFA	3.028
31	ERZURUM	1.240	72	ŞIRNAK	317
32	ESKİŞEHİR	4.167	73	TEKİRDAĞ	3.066
33	GAZİANTEP	12.832	74	TOKAT	629
34	GİRESUN	1.291	75	TRABZON	3.589
35	GÜMÜŞHANE	86	76	TUNCELİ	28
36	HAKKARİ	403	77	UŞAK	2.780
37	HATAY	2.505	78	VAN	1.036
38	İĞDIR	300	79	YALOVA	8.752
39	ISPARTA	1.623	80	YOZGAT	565
40	İSTANBUL	344.585	81	ZONGULDAK	1.364
41	İZMİR	18.655			

Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/residence-permits_915_1024_4745_icerik [Accessed 15 April 2018].

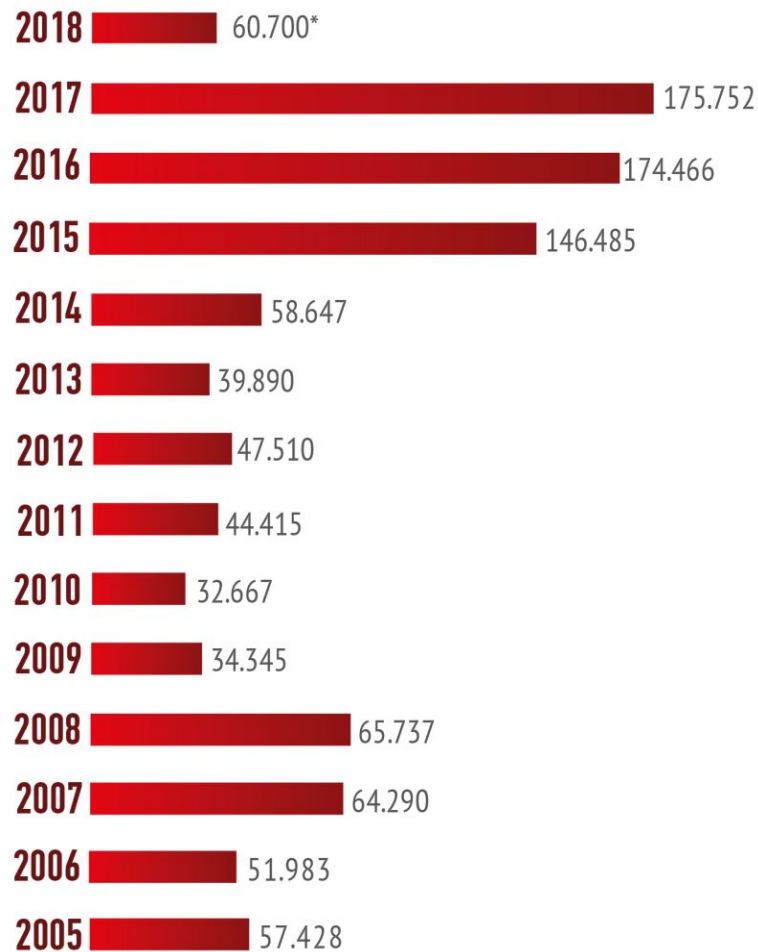
Irregular migration

Irregular migration is defined as ‘migration whereby foreigners enter into, stay in or exit from Turkey through illegal channels and work in Turkey without a permit or international protection status’ (LFIP, Article 3).

As Figure 11 shows, the number of irregular migrants apprehended at Turkish borders increased considerably in 2015. The fact that both in 2016 and in 2017, the majority of those who were apprehended at Turkish borders while trying to enter irregularly were of Syrian

nationality demonstrates the connection between the deepening of the conflict in Syria and the rise in numbers of those who try to reach Turkey through irregular ways.

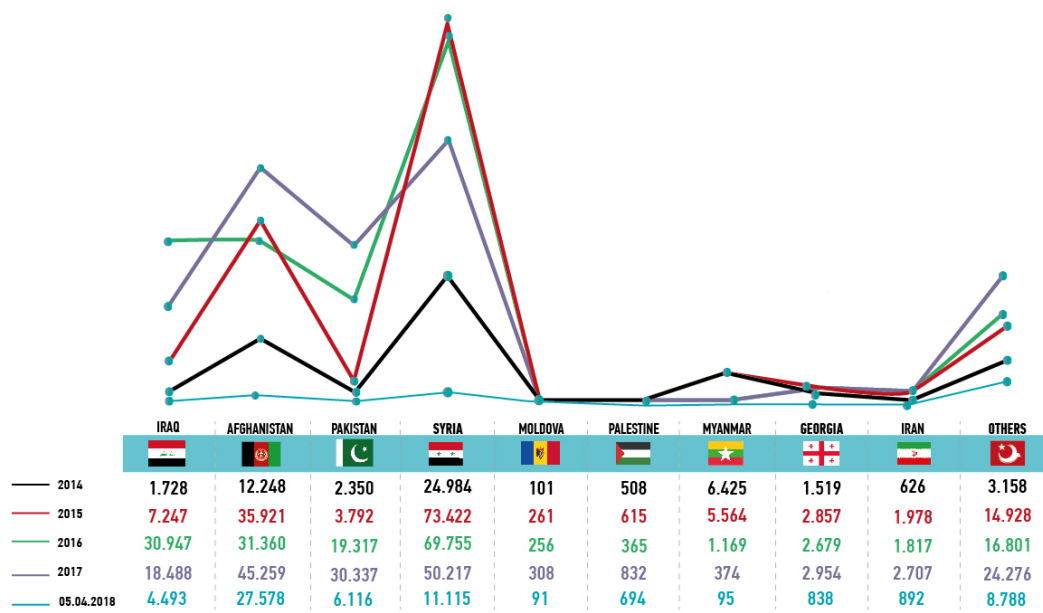
Figure 11: Numbers of irregular migrants apprehended



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/irregular-migration_915_1024_4746_icerik [Accessed 14 April 2018]. Note: Data about 2018 covers till 14 April.

As can be seen from Figure 12, the top nationalities in terms of irregular migration are Syrians (50,127), Afghans (45,259) and Pakistanis (30,337). The sharp increase in the number of Syrians reflects the nexus between irregular and forced migration as will be discussed below in the section titled *Irregular Migration*.

Figure 12: Distribution of nationalities of irregular migrants who were caught at the Turkish border



Source: Directorate General of Migration Management, Available at <http://www.goc.gov.tr/icerik6/irregular-migration-915-1024-4746-icerik> [Accessed 14 April 2018].

In terms of spatial distribution, border cities observe higher apprehensions of irregular migrants.

Figure 13: Distribution of the apprehended irregular migrants across different provinces in Turkey in 2017



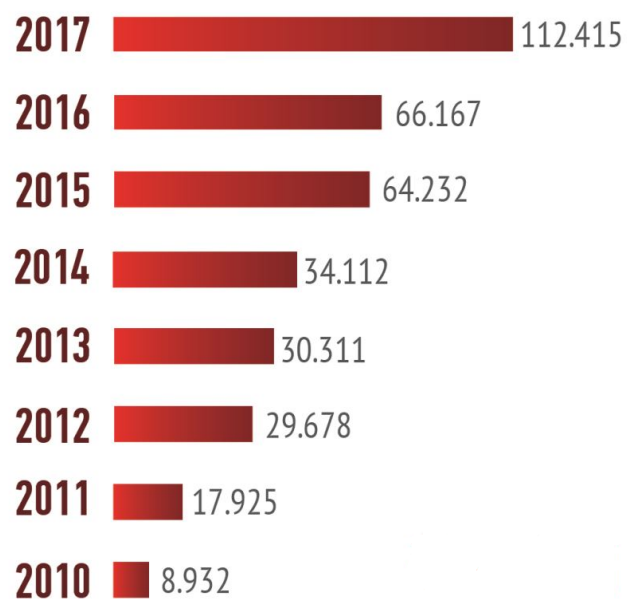
Source: Directorate General of Migration Management, Available at <http://www.goc.gov.tr/icerik6/duzensiz-goc-363-378-4710-icerik> [Accessed 14 April 2018].

Number of applications for international protection

In the LFIP, international protection is defined as the status granted to ‘refugees, conditional

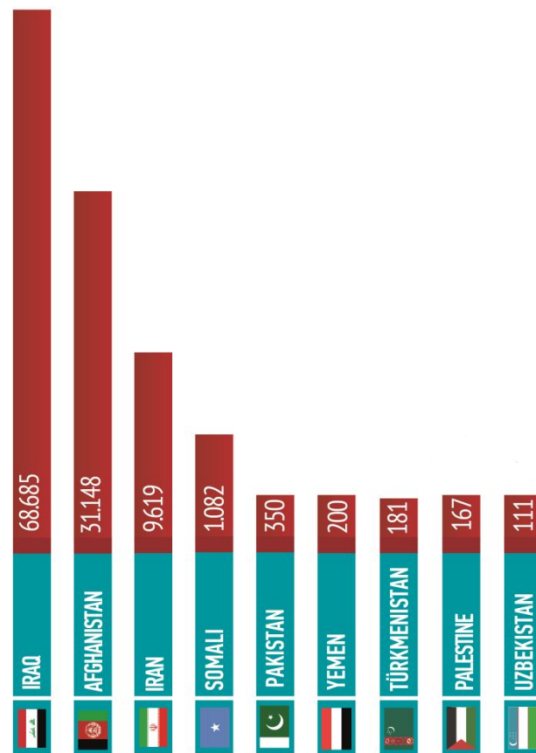
refugees, and those needing subsidiary protection’ [Article 3(1)-r]. While a detailed account of the beneficiaries of international protection is provided under section 5 of this report, for purposes of some initial clarifications, a brief explanation of the different categories of migrants who fall under the terms of international protection is given below after the presentation of the figures. As can be seen from Figure 14, applications since 2017 doubled compared to previous years; while 2015 and 2016 figures moderate. It should be noted that the below figures do not reflect the high numbers of Syrian refugees, since they are not part of the international protection system, instead falling under the ‘temporary protection regime’ in Turkey. The percentages of acceptances and rejections are as important as the number of international protections. In 2016, out of 66,167 applications, 23,886 were resulted in positive decisions (DGMM, 2016, p.74)

Figure 14: International protection applications by year



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/international-protection_915_1024_4747_icerik [Accessed 14 April 2018].

Figure 15: Nationalities of major groups of international protection applicants in 2017



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/international-protection_915_1024_4747_icerik [Accessed 15 April 2018]].

As will explained under *International Protection* section, in Turkey there are three different international protection statuses, including ‘refugee status’, ‘conditional refugee status’ and ‘subsidiary protection status’. Syrian refugees are under ‘temporary protection’. The above-given Figure 15 only displays ‘international protection’, but not ‘temporary protection’, and thus Syrians are not included in these figures.

When compared with statistics on the arrivals of non-EU citizens to Turkey, more detailed data regarding the country and gender/age details of applicants international protection are available via UNHCR Turkey as summed up in Table 1. Out of the total number of 356,000 people that are registered with UNHCR (as of 30 November 2017), most are of Afghanistan nationals (44%) followed by Iraqis (43%), then Iranians (9%), Somalis (1%) and others (3%) (UNHCR, 2017). In total, out of 3.7 million people that are of concern for the UNHCR, some 3.3 million are Syrians. Yet, as persons who have fled Syria, they are subject to a separate asylum procedure as specified in the Temporary Protection Regulation (2014).

Table 1. Breakdown by countries of origin and gender/age of the total numbers of international protection applicants (percentages) (as of 30 November 2017)

	Total number	Children	Female	Male
Afghanistan	157,000	29%	17%	54%
Iraq	152,000	41%	24%	35%
Iran	33,000	20%	31%	49%
Somalia	4,000	26%	38%	36%

Other Nationalities	10,000	22%	34%	44 %
Total	356,000	33%	22%	45%

Source: UNHCR Türkiye: Kilit Veriler ve Sayılar (Kasım 2017), Available at <http://www.unhcr.org/tr/unhcr-turkiye-istatistikleri> [Accessed 15 April 2018].

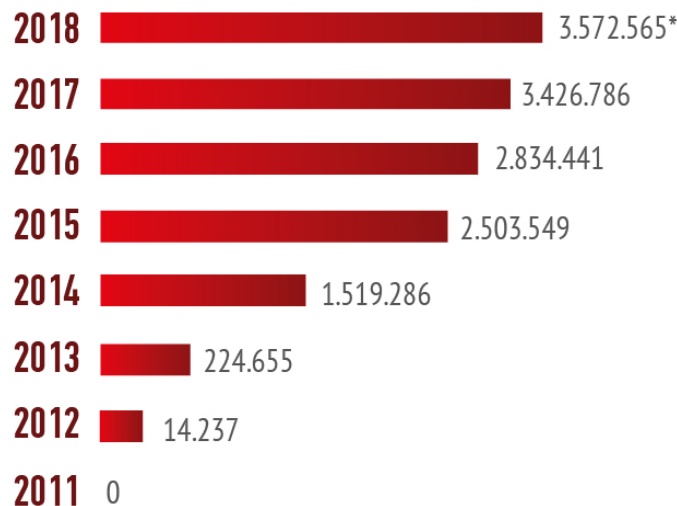
In this table, countries of origin and gender/age distributions show the numbers of international protection applicants coming from Afghanistan and Iraq are quite similar. But, the majority of international protection applicants from Afghanistan are men and children, while for Iraqis, the number of children is higher than male and female applicants. In the case of Iranians and Somalians, the numbers of these groups are more balanced.

Temporary protection

According to Article 91 of the LFIP, ‘temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and who have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection’.⁷²² As of April 2018, Syrians are the only nationals granted temporary protection status, thus the statistics will be about this nationality.

As Figure 16 displays, the difference between 2014 and 2015 is twice as large. This is due to not only to the increasing numbers of Syrians but also to the increasingly important role of registering Syrians. In April 2014, the DGMM started a new campaign with the motto ‘Register and Benefit from Rights and Services’ and recorded 1,097,740 Syrians both in camps and in urban areas.⁷²³ This can be seen as an important factor explaining the increase in the number of Syrians under temporary protection.

Figure 16: Number of Syrians under temporary protection by year



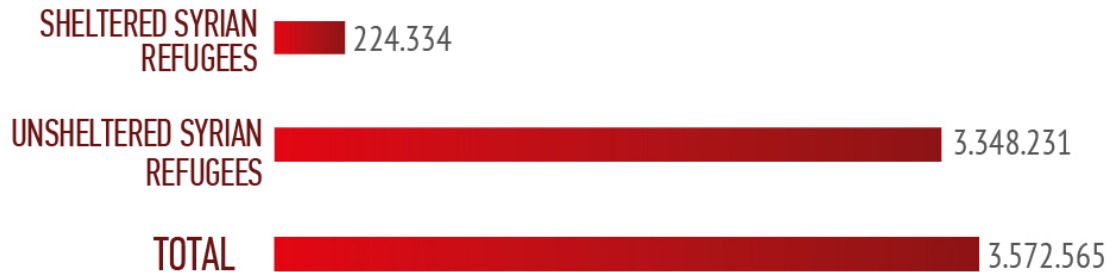
Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik [Accessed 15th April 2018].

⁷²² Available at http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf [Accessed 2 March 2018].

⁷²³ The statement of the Director of the GDMM at the First National Migration Research Workshop on 19th Dec. 2014, Ankara; HUGO (2014). Türkiye’deki Suriyeliler: Toplumsal Kabul ve Uyum Araştırması”, Available at <http://www.hugo.hacettepe.edu.tr/HUGORAPOR-TurkiyedekiSuriyeliler.pdf> [Accessed 17 April 2018].

In Turkey, the majority of the Syrian refugees reside in cities rather than in temporary shelters as can be seen from Figure 17.

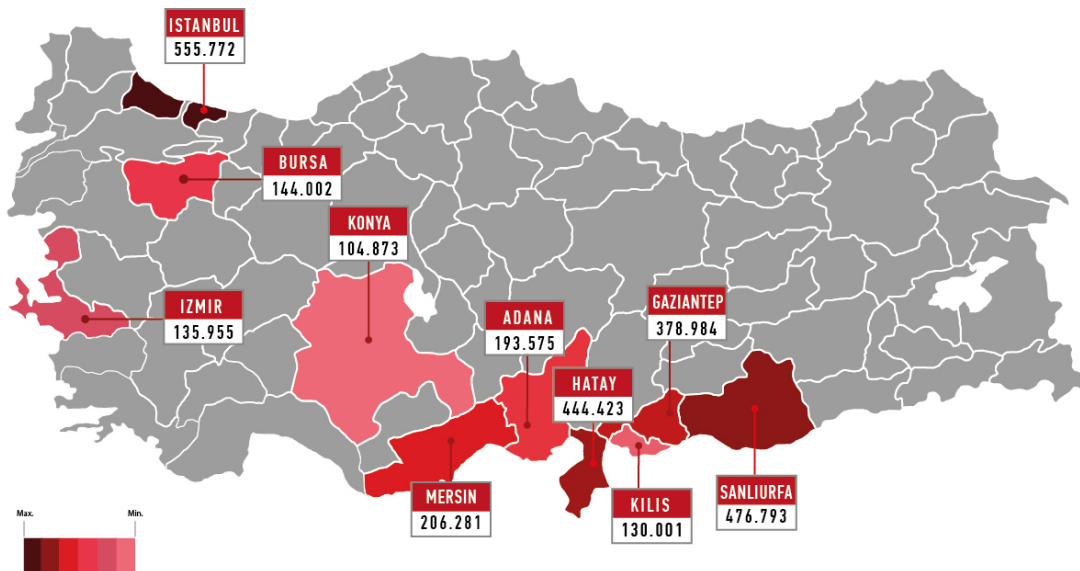
Figure 17: Sheltered and unsheltered Syrian refugees by temporary shelter centres



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik [Accessed 15th April 2018].

Figure 18 displays the spatial distribution of Syrian refugees across the country. The majority reside in Istanbul, while the main border cities between Syria and Turkey (Şanlıurfa, Hatay, Gaziantep) follow it. The cities with the highest percentage of refugees, and in particular Syrians, living in temporary accommodation centres, or in other words, camps are Şanlıurfa, Kilis, Gaziantep, Kahramanmaraş, Hatay, Adana, Adıyaman, Osmaniye, Mardin and Malatya (DGMM, 2018).

Figure 18: Distribution of Syrian refugees in the scope of temporary protection by top ten province



Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik [Accessed 15th April 2018].

The highest numbers both of migrant with international protection and temporary protection status appear in Istanbul. However, since February 2018, refugees arriving from Syria are no longer allowed to register in İstanbul. The DGMM explained the reasoning behind this decision as a concern for ensuring that services offered to Syrians will be continued to be provided in an ‘efficient and sustainable’ manner, and it was noted those Syrians who had registered before the ban decision was taken, will not be affected by this recent development (Sözcü, 2018). The province of Hatay has also been suspended registration of temporary protection beneficiaries due to the high number of persons already registered as it is the case for İstanbul (AIDA, 2018, p.16).

Table 2. Distribution of Syrian refugees in the scope of temporary protection by temporary shelters centres (as of 5 April 2018)

TEMPORARY SHELTER CENTERS	TOPLAM
SANLIURFA	79.492
GAZIANTEP	24.042
KILIS	24.790
KAHRAMANMARAS	17.147
MARDİN	2.739
HATAY	17.265
ADANA	25.644
ADIYAMAN	9.080
OSMANIYE	14.672
MALATYA	9.453
TOTAL	224.334
UNSHeltered SYRIAN REFUGEE POPULATION BY CENTERS	3.348.231
TOTAL SYRIAN REFUGEE POPULATION IN COUNTRY	3.572.565

Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik [Accessed 15 April 2018].

In terms of gender distribution, the Syrian refugee population in Turkey appears as quite balanced with a slightly higher male population. In terms of age distribution, the highest age group is 19-24, which followed by 0-4 and 5-9 as displayed in Table 3.

Table 3. Distribution by age and gender of registered Syrian refugees recorded by taking biometric data

AGE	MALE	FEMALE	TOTAL
TOTAL	1.937.722	1.634.843	3.572.565
0-4	251.662	234.892	486.554
5-9	247.849	232.375	480.224
10-14	197.488	181.967	379.455
15-18	159.779	129.432	289.211
19-24	319.126	227.281	546.407
25-29	200.711	145.409	346.120
30-34	167.824	125.022	292.846
35-39	117.903	92.946	210.849
40-44	79.020	71.365	150.385
45-49	59.623	55.517	115.140
50-54	48.134	46.052	94.186
55-59	32.234	32.214	64.448
60-64	23.225	23.809	47.034
65-69	15.082	15.220	30.302
70-74	8.402	9.347	17.749
75-79	4.793	5.775	10.568
80-84	2.703	3.481	6.184
85-89	1.419	1.768	3.187
90+	745	971	1.716

by the date of 05.04.2018

Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik [Accessed 15 April 2018].

Table 4. Number of Syrians who left to the country in the scope of the one-to-one policy

COUNTRY	TOTAL
GERMANY	4.653
HOLLAND	2.609
FRANCE	1.552
FINLAND	1.002
BELGIUM	823
SWEDEN	742
SPAIN	429
ITALY	332
AUSTRIA	213
LUXEMBOURG	206
PORTUGAL	123
LITHUANIA	84
LATVIA	76
CROATIA	59
ESTONIA	46
MALTA	17
GRAND TOTAL	12.966

Source: Directorate General of Migration Management, Available at http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik [Accessed 15 April 2018].

Finally, Table 4 displays the impact of the EU-Turkey Statement of 18 March, 2016.⁷²⁴ On this date, Turkey agreed to accept the rapid return of all migrants not in need of international protection who had crossed from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters (Article 1). With the 'one-to-one' formula, the Statement also foresaw that for every Syrian returned to Turkey from the Greek islands, another Syrian would be resettled in EU (Article 2). Both sides agreed that all new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 would be returned to Turkey. The below given figure displays the number of Syrians who have left the country and resettled EU member states.

⁷²⁴ The EU-Turkey Statement, 18 March 2016, Available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf> [Accessed 15 April 2018].

2- The socio-economic, political and cultural context

A Brief description of Turkish society

As the end of 2017, Turkey's population was recorded as 80,811,000. Turkey has a young population cohort. 23.6 percent of the population is between 1-14 years old, while 67.9 percent is between 14-65 years old. The percent of those over 65 years old is 8.5. The population growth rate is estimated to be 12.4 percent. The life expectancy at birth is 78 years old (TÜİK, 2018). Almost 74 percent of population live in urban areas (Statista 2018).

In terms of its population composition, Turkey is a multi-ethnic, multi-cultural and multi-denominational country, housing dozens of different Muslim and/or non-Muslim ethnic groups. It is often said that nearly 80 percent of the country's population is Turkish, and that, more than 90 percent is Muslim. However, there are no exact figures for the population size of non-Turkish ethnic groups as ethnic identity is not asked on national census including international surveys such as the World Values Survey due to political sensitivities in the country. After Turks, the largest ethnic group in Turkey is Kurds who have a distinct mother tongue. Other ethnic minorities include Romas, Arabs (Sunni Arabs, Alevi Arabs or Nusayri and Christian Arab), Caucasus groups, Albanians, Pomaks, Circassians and Azari Turks. Religious minorities include Alevis (Muslims), Armenians (Christians), Jews, Greeks (Christians) and Assyrians (Christians). Linguistic minorities include Zazas and Laz. Historically, many of these minority groups have gone through a Turkification process, whereby they have assimilated into Turkish culture and language (Karimova and Deverell, 2001; Mutlu, 1995).

The results of the World Values Survey's 6th Wave (2010-2014) can provide insights about the cultural map of the country and common perceptions about foreigners and immigrants. According to the Survey, 92.7 percent of survey respondents in Turkey (N=1605) reported that religion is 'very important' or 'rather important' in their life. Only 47.4% reported politics to be important in the same way. 99 percent expressed their religion as Muslim. While 97.8 percent believe in God, 83.5 percent perceived themselves to be religious people. Not only religious values but also nationalist and patriotic values are very strong in the country. While 91.3 percent are very and quite proud of their nationality, 77.5 percent would be willing to fight for their country if there is a war (WVSW 6, 2010-2014).

The same survey also gives insights about the native population's perceptions of foreigners and immigrants. It should be noted among 1605 survey respondents, only 32 are immigrants (2%) and only 4 do not have Turkish citizenship, while some have an immigrant mother (124) or father (140). In this context, 35.8 percent of them stated that they would not like to have people of a different race as neighbours, similarly 36.8 percent do not want people of different religion as their neighbours. 30.5 percent noted that they would not like to have immigrants and foreign workers as neighbours. In a similar vein, 30 percent do not feel comfortable with neighbours speaking another language (WVSW 6, 2010-2014).

In terms of developments statistics, according to the 2016 Report of the United Nations Development Program (UNDP), Turkey's Human Development Index (HDI) value is 0.767, which puts the country in the high human development group, placing it at 71 out of 188 countries and territories.⁷²⁵ The UNDP data point out that while between 1990 and 2015, Turkey's HDI value has increased by 33.2 percent (from 0.576 to 0.767), during the same time period its gross national income per capita increased by 78.2 percent (UNDP, 2017).

⁷²⁵ UNDP, 'Turkey ranks 71st by Human Development Index', published on 21 March 2017, Available at <http://www.tr.undp.org/content/turkey/en/home/presscenter/pressreleases/2017/03/turkey-ranks-71st-by-human-development-index.html> [Accessed 7 March 2018].

When compared with European and Central Asian countries, Turkey's 2016 HDI of 0.767 is above the average of 0.746 for countries in the high human development group and above the average of 0.756 for countries in Europe and Central Asia. The total labour force participation of the country was recorded as 31,643,000 in 2017, making 52.8 percent. However, unemployment in Turkey has been on an upward trajectory since 2012 and reached to the 10.9 percent in early 2018 which is much higher than the average of the members of Organization for Economic Co-operation and Development (OECD) (OECD 2017; TÜİK İşgücü, 2018).

In terms of its Gender Development Index (GDI), the female HDI value for Turkey is 0.724 in contrast with 0.797 for males, resulting in a GDI value of 0.908. Turkey has a Gender Inequality Index value of 0.328, ranking it 69 out of 159 countries in the 2015 index. Female participation in the labour market is 30.4 percent compared to 71.4 for men. Apart from that, for every 100,000 live births, 16 women die from pregnancy related causes; and the adolescent birth rate is 27.6 births per 1,000 women of ages 15-19 (UNDP, 2017).

The details of the political system will be elaborated below in the section on *Organization of the State*. Here it is important to note that Turkey has a multiparty system. The main political cleavage has been between the laicist and conservative-Islamist cleavage (Özbudun, 2014). However, neither this cleavage nor the less intense right-left cleavage traditionally reflect on discourse on migration as the topic has not been considered a politically pressing issue. The mass migration of Syrians since 2011, which is a unique experience in Turkey's immigration history due to the sheer numbers and protracted stay, can expect to make the migration a politically salient issue for political parties, challenging the previous undifferentiation across the political spectrum.

The Justice and Development Party (AKP-AK Party) has been the ruling party since 2002. As the party has controlled an absolute majority in the parliament, it has a dominant legislative power. The opposition parties holding seats in the parliament include Republican People's Party (CHP), Nationalist Action Party (MHP) and the People's Democracy Party (HDP). In 2014, for the first time president, Recep Tayyip Erdoğan was elected president with the popular vote for five-year term. In April 2017, Turkish citizens approved a change to the political system in which the substantial power of the parliament is transferred to the president. The next presidential election and parliamentary elections are scheduled for 2019; however, they are called earlier than expected as on 24 June, 2018. The Turkish political system is on the eve of transition from a parliamentary system to a presidential system that with unique characteristics as it will be discussed in the Section 3 (Musil and Demirkol, 2018).

Brief migration history

Turkey plays a part in the migratory routes of Europe, Asia, the Middle East and North Africa. The country was categorized as country of emigration in the early Republican era; however, since its establishment, Turkey has experienced different phases and diverse migratory movements as a country of emigration, immigration and asylum (Erdoğan and Kaya 2015). Taking 'time and space' into consideration as well as the major political, economic and social changes in the history of Turkey, İçduygu (2010, p.2) argues that the migration history of Turkey can be studied in four periods as follows:

1. From 1923 to 1950: The early Republican period during which the nation state was being constructed under the one party rule;
2. From 1950 to 1980: The period of the multi-party regime and the strengthening of the nation state;
3. From 1980 to 2000: The period of democratic consolidation and economic liberalization;
4. From 2000 to present days: The period in which the EU candidacy and its effects are becoming more significant.

According to İçduygu (2010) Turkey's immigration history starts with its status as a successor state of the Ottoman Empire in 1923 and this government-supported period lasted until the 1950s. During this period, the space dimension was mainly Balkans and mainly immigrants were welcomed with a Turkish identity as a consequence of the homogenization of population policies (Ibid). In this framework, the Exchange of Greek and Turkish Populations regulation of the Lausanne Treaty (1923) resulted with emigration of its non-Muslim population in response to the immigration of Muslims from the Balkans (Baldwin-Edwards, 2006). At least 1.3 million Greeks were expelled from Turkey and some 500,000 Muslims from Greece were received (Ibid., p.2).

During the period of 1950-1980, both time and space dimensions were changing and emigration characteristics were getting notable as Turkey sent labour migrants to Europe for the solution (EUMAGINE, 2010, p.3). This emigration largely began with the arrival of nearly 800,000 labourers in Germany, the Netherlands, and France between 1961 and 1974. The regulated labour migration has combined with family reunification, illegal entries and high numbers of refugees and asylum seekers from Turkey in the 1980s and 1990s. As a result, more than 5 million emigrants from Turkey live abroad, and almost 4 million of them concentrated in Western European countries (Sahin-Mencutek and Baser 2017, p.2). Emigration flows have an impact on Turkey's citizenship legislation, as Turkey accepted dual and multiple citizenships in 1981 (Law Number 403) with an amendment to the Turkish Citizenship Law of 1964, Article 2383 (Ibid. p.8). However, the emigration does not necessarily led to changes in immigration law.

Relations with the European Economic Community started with the signature of the Ankara Agreement (1963). Following the oil crisis in the 1970s and decreasing demand regarding Turkish labour migrants, new destinations for labour immigration appeared in Middle Eastern, North African, as well as the Commonwealth of Independent States countries, which created a 'space' change in terms of migration movements from Turkey. During this period, special bilateral agreements on labour recruitment had been signed with several destination countries.⁷²⁶ Thus, the European labour migration process after the Second World War can be seen as the blue-print for this period. In the post-1980 period, the country hosted a sizable number of asylum seekers and mass migration, movements mainly from Asian, Middle East and African countries. In addition, during this period, Turkey became a source country for asylum with the period predominated by the Kurdish population and asylum, mainly in Europe (İçduygu, 2010, 2012).

Due to the specific focus of RESPOND and this report, mass migration from the Middle East will be discussed in details. Starting from 1980s, the country experienced an influx of refugees and irregular and transit migrants, particularly from the Middle East as well as from Africa and Asia. The period started with an immigration flow from Afghanistan in 1979 and continued with mass influxes from the Middle East. The first mass influx from the Middle East started with the Iranians fleeing from the new regime in Iran after 1979. As similar to the case of Syrians, Turkey adopted an open-door policy, enabling Iranians to enter the country without a visa and stay temporarily. According to some informal data, from 1980 to 1991, a total of 1.5 million Iranians benefited from this policy (Latif, 2002, p.9). The following three major influxes came from Iraq in 1988 and 1991. Due to the war between Iraq and Iran, 51,542 Iraqis asked for asylum in Turkey (Kaynak, 1992, p.25). In the same period, another population movement came to Turkey due to the population exchange between Turkey and Bulgaria in 1989. Between 1992 and 1994 Turkey became a destination country for some Bosnian Muslims who sought temporary refuge in Turkey and Kosovo Albanians in 1999 (UNHCR, 2003, p.2).

⁷²⁶ Available at <http://www.abgs.gov.tr/index.php?p=117&l=2> [Accessed 15 April 2018].

The second flow from Iraq was the consequence of the First Gulf War and in March 1991, 460,000 Iraqis, most of whom were Kurds or Turkmen arrived at the border.⁷²⁷ But they were not allowed into the country and Turkey did not grant de jure refugee status, but considered them to be de facto refugees (Gökalp Aras and Şahin Mencütek, 2015). The year 2011 marked another mass migration towards Turkey from the Middle East, namely from Syria as this report describes in detail. In the same time period (post 1980), after the dissolution of the Soviet Union in 1991 into 15 post-Soviet states; Turkey emerged as a destination for migrants from Eastern Europe and the former Soviet Union, as these new migrants envisage Turkey as a gateway to a new job, a new life, and a stepping stone to employment in the West (IOM, 2008, p.11).

Due to the changing country profile of Turkey and increasing importance of migration and asylum as well as the accession process with the EU, since 2000 Turkey has faced a new period. The EU dimension officially started in Turkey with the Helsinki Summit of the European Council in December 1999 and since then has been changing dynamically. Except for the early changes in asylum policies in the mid-1990s, the EU has played the central role in reforming Turkey's immigration and asylum policy (among others; Lavenex, 2002; İçduygu, 2011a; Tolay, 2012). The main issues in terms of migration and mobility in EU-Turkey relations have always been irregular transit migration of third-country nationals through Turkey en route to Europe (among others; İçduygu 2003 and 2011b; Kirişçi, 2003; Gökalp Aras 2013; Aydın Düzgit and Tocci, 2015; İçduygu and Köşer Akçapar, 2016).

Today, Turkey's migration history is continuing with mixed migratory flows and the diverse migration categories with a complex migration system composed of several different migrant groups, including irregular migrants, transit migrants, asylum-seekers, refugees and regular migrants (İçduygu, 2011, p.4).

3- The Constitutional Organisation of the state and constitutional principles on immigration and asylum

This section reviews the legal and political structure of the Turkish state. It briefly maps its organizational structure, fundamental characteristics, constitutional principles, administration of immigration and asylum, and the role of judiciary in order to lay the groundwork for examining the relevant legislative and institutional frameworks in the following section.

Organizational structure and fundamental characteristics of the Turkish State

Turkey's current organizational structure and fundamental principles are derived from its Constitution dated 1982. Being the third constitution of the Turkish Republic since its establishment in 1923, the 1982 version of Constitution was created after the 1980 coup d'état and reflected a somewhat restrictive perspective especially towards personal freedoms (Bayraktar, 2012, p.314). However, the Constitution was amended several times to enhance its organizational structure as well as to improve the dimension of the rights and freedoms of individuals.

On April 16, 2017, Turkish citizens voted in a constitutional referendum that brought about substantial alterations to the existing system by transforming the current parliamentary structure into a quasi-presidential one. Although the structural change is anticipated to take place in 2019, certain amendments have already been implemented. The following information is based on the currently enforceable provisions of the Constitution.

⁷²⁷ This figure is available at <https://www.revolvy.com/main/index.php?s=iraqis+in+Turkey> [Accessed 29 April 2018].

Organization of the State

To understand immigration and asylum, it is of importance to understand how separation of powers and general policy-making occurs in Turkey. The following subsection provides basics on the general organization of state organs and principles in policy making.

General organization

Pursuant to the Constitution of Turkey, the state organs are formulated to act by according to the principle of separation of powers. Legislative power is vested in the Grand National Assembly (Const., Article 7), executive power is exercised by the President and the Council of Ministers (Const., Article 8) and finally judicial power is carried out by the independent and impartial courts (Const., Article 9).

The Turkish Grand National Assembly (TGNA-Parliament) consist of 550 members (of parliament-MPs) who are designated in elections that are held every four years.⁷²⁸ Significant duties of the TGNA include; enactment, amendment and repeal of laws, approval of budget proposals and the proposal of the final accounts, decisions on printing currency, declaration of war, marital law or state of emergency, ratification of international agreements, supervision of the Board of Ministers and ministers, authorizing the Board of Ministers to issue decrees with the force of law.

Given that it is controlled by the President and the Council of Ministers, currently the executive power in the Turkish state has a dual structure.⁷²⁹ The President is the head of state and represents the Republic of Turkey and the unity of the Turkish nation. The Council of Ministers; however, is composed by the Prime Minister who is designated by the President among the members of the TGNA, and by the ministers who are nominated by the Prime Minister and appointed by the President.

The independence of the courts and the security of tenure for judges and prosecutors are two main principles established by the Constitution for the functioning of judicial power (Const., Article 138 and 139). Legislative and executive organs and the administrations should comply with court decisions; these organs and the administration should neither alter them in any respect, nor delay their execution (Const., Article 138).

Organizational structure of the administration

According to the Turkish Constitution, the administration should be considered as a whole with its formation and functions and should be regulated by law (Const. Article 123). The organization and functions of the administration are based on the principles of centralization and decentralization, affecting the organic and functional aspects of administration (Günday, 2013, p.65).

In terms of central administrative structure, Turkey is divided into provinces by geographical location, economic conditions, and public service requirements; provinces are further divided into lower levels of administrative districts.⁷³⁰ The administration of the

⁷²⁸ The scope and the period of elections for TGNA is subject to the amendment of 16.04.2017; Act. No. 6771. According to the amendment (which is not currently enforceable), elections of TGNA and Presidential elections will be held every five years on the same date.

⁷²⁹ This dual structure is subject to change according to the amendment of 16.04.2017; Act No. 6771. The amendment regulates the President as the sole body to use the executive power. However, it is not currently enforceable and stipulated to come into force when the President starts his/her term following an election which covers both the President and the Parliament (see supra note 12).

⁷³⁰ Turkey is divided into 81 provinces and, under these, 892 districts, Available at <https://portal.cor.europa.eu/divisionpowers/countries/Candidates/Turkey/Pages/default.aspx> [Accessed 3 March 2018].

provinces is based on the principle of devolution of powers. The central administrative authority is composed mainly of ministries, each of which is responsible for conducting and providing certain public services. Policies, funding and the processes of conduction of public services are planned by the ministries at a central level. The provincial authorities on the other hand serve as extensions of the central authorities. The responsibility of these authorities solely consists in following the orders of the central authority (Gözler and Kaplan, 2012, p.754).

The decentralization in Turkish administration, however, consists of two main divisions. There is territorial decentralization and service-based decentralization. Under territorial decentralization, there is a tripartite system dedicated to local administrations. Local administrations subject to decentralization are public corporate bodies established to meet the common local needs of the inhabitants of three geographical areas; provinces, municipal districts and villages. Their principles of constitution and decision-making organs are elected by the electorate and determined by law (Const., Article 127). Apart from these local administrative bodies, some public legal entities are established to carry on certain public services which require technical knowledge and expertise. These entities are the ones which constitute the service-based decentralized structure of the administration.

Fundamental characteristics of the State

According to the Constitution, the Republic of Turkey is a democratic, secular and social state governed by rule of law, with notions of public peace, national solidarity and justice, respecting human rights and, loyalty to the nationalism of Atatürk, the founder of the Republic (Const., Article 2). The preamble of the Constitution further refers to the existence of the Turkish state as an honourable member with equal rights in the family of world nations and highlights the determination of the Turkish state to attain the highest standards of contemporary civilization.⁷³¹

Constitutional principles related to immigration and asylum

By stating that '[e]veryone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable' (Const. Article 12) and that '[e]veryone is equal before the law (...)', the Turkish Constitution, refers to the principle of equality between foreigners and citizens in terms of fundamental rights. The majority of rights under the Constitution are designated for 'everyone', including foreigners. However, there are a few rights which are exclusively safeguarded only for the citizens, such as the right to vote, to be elected and to engage in political activities.

The rights which fall into the majority of the constitutional scope in terms of being attributed to foreigners as well as citizens, may also be limited under some circumstances. However, limitation of the fundamental rights of foreigners is considered an "exception" in Turkish law and should be explicitly designated by law. Hence, the Constitution (Article 16) sets two conditions for the application of the aforementioned exception. First, the restriction must be made by a 'law' (an act of the Parliament), and second, the restriction must be 'compatible with international law'.

Although the right to asylum is not regulated under the Constitution, the right to life and prohibition of torture is guaranteed for 'everyone' (Const., Article 17) enabling a constitutional protection from *refoulement* for foreigners.

⁷³¹ Preamble of the Turkish Constitution (as amended on July 23, 1995; Act No. 4121), para. 2.

The Constitution also provides a legal safeguard for the application of international treaties to which Turkey is a signatory party. International agreements duly put into effect have the force of law (Const., Article 90). (Const., Article 90). However a major difference between laws that are enacted through Parliament (domestic laws) and the international agreements that are duly put into effect is that, international agreements cannot be challenged before the Constitutional Court on the ground of unconstitutionality whereas domestic laws can (Const., Article 90). In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements prevail (Const., Article 90).

Organizational structure of the Administration of Immigration and Asylum

In 2013, with the introduction of LFIP, Turkey's first law on foreigners and international Protection, which directly deals with immigration and asylum, Turkish asylum law entered into a new era.⁷³² One of the most significant reflections of this era is the establishment of the Directorate General of Migration Management (DGMM) which is a civil public institution responsible for immigration and asylum issues. The DGMM was established under the Ministry of Interior (MoI) to carry out migration policies and strategies, ensure coordination among relevant agencies and organisations, and carry-out functions and actions related to the entry into, stay in and exit from Turkey for foreigners as well as their removal, international protection, temporary protection and the protection of victims of human trafficking (LFIP, Article 103). Hence, the governance of the immigration and asylum area, is mainly subject to centralization.

On the other hand, local administrations are able to contribute to the conveyance of certain services to asylum seekers and immigrants which do not fall within the exclusive jurisdictional scope of the central authority. Services which are carried out by local administrations are mainly related to integration issues (LFIP, Article 96). Hence, in practice some municipalities actively take part in such activities, where some are passive.⁷³³

Constitutionality review of the applicable legislation on immigration and asylum

Turkey is a signatory party to the 1951 Convention and its additional protocol in 1967. However, Turkey has a geographical limitation on the refugee definition of the Convention and recognizes the refugee status only for those who meet the criteria of the Convention

⁷³² For a comparison between Turkey's past practices and the developments in the new era, see Öztürk, N.Ö.: 'Reflections of the Past, Expectations for the Future: a Legal Analysis on the Development of Asylum Law in Turkey', Research and Policy on Turkey,(2017) 2:2, pp. 192-209 (Reflections).

⁷³³ Article 13 of the Law on Municipalities (Law Nr. 5393), enables the municipalities to provide services to enhance social and cultural coherence among all local residents. Pursuant to the aforementioned provision, all residents also have the right to utilize the aids supplied by the municipalities. Given that this provision does not make any distinction between foreigners and citizens, immigrants and asylum seekers are also considered to be eligible to enjoy such services and aids. For a detailed study on the responsibilities of municipalities related to this matter, specifically for the Syrian refugees in the city of Izmir, see, Çamur, A.: "Suriyeli Mülteciler ve Belediyelerin Sorumluluğu: İzmir Örneği", Bitlis Eren Üniversitesi Sosyal Bilimler Enstitüsü Dergisi, (2017), 6: 2, pp. 113-129.

definition due to events happening in European countries.⁷³⁴ Pursuant to article 90 of the Turkish Constitution, the 1951 Convention is considered to be part of Turkish law and is directly applicable in domestic law without being subject to constitutionality review. This is also the case for other (human rights) conventions such as the European Convention on Human Rights.

In addition to the 1951 Convention and other relevant (human rights) conventions, the main piece of legislation which drives the area of immigration and asylum is the LFIP. The LFIP came into force in 2014, following its enactment in 2013. It regulates provisions for foreigners in general as well as for applicants and beneficiaries of international protection. Issues which are directly or indirectly related to the area of immigration and asylum are also designated by dispersed laws.⁷³⁵ All laws enacted by Parliament are subject to constitutional review. This review may be conducted either through the process of action for annulment or by way of contention of unconstitutionality.⁷³⁶ Action for annulment can be requested before the Constitutional Court by the President of the Republic, parliamentary groups of the party in power and of the main opposition party and a minimum of one-fifth of the total members of the TGNA. Contention of unconstitutionality on the other hand, is initiated by general administrative courts and any party involved in a case being under scrutiny before a court. Some provisions of the LFIP were brought before the Constitutional Court on several occasions by administrative courts to be challenged on the basis of unconstitutionality, however, none of these applications resulted in the annulment of the relevant provisions.⁷³⁷

Secondary administrative regulations (by-laws) constitute the second tier of main legal instruments in the area of immigration and asylum. Implementation by-laws of relevant laws fall within this category. The Temporary Protection By-law is the most significant of these instruments issued by the Council of Ministers to specifically govern essential matters of temporary protection. Pursuant to the Constitution, the secondary regulations (by-laws) should ground the laws (*secundum legem*) and should not be contrary to them (*intra legem*) (Const. Art. 124). By-laws which are not consist with these two principles would be subject to annulment by the Council of State (*Danıştay*).

Since the mid-2016, some amendments and additions were made in some legislation on immigration and asylum through state of emergency decrees issued by the Council of Ministers. Although some of these amendments were questioned on the basis of unconstitutionality especially in terms of the right of effective remedy and the effective application of *non-refoulement*⁷³⁸, they cannot be reviewed by the Constitutional Court, due to the fact that the Court had rejected applications for the review of the unconstitutionality of

⁷³⁴ LFIP [Art. 3(1)(b)] defines the term European countries as follows: “[m]ember States of the Council of Europe as well as other countries to be determined by the Council of Ministers.”

⁷³⁵ E.g., issues related right to work for foreigners is mainly regulated under International Labour Force Law (Law Nr. 6735), some issues related to entry into country are regulated under Passport Law (Law Nr. 5682).

⁷³⁶ For more information about the constitutionality review process, see, The Constitutional Court of the Republic of Turkey, Available at <http://www.constitutionalcourt.gov.tr/inlinepages/proceedings/ConstitutionalityReview.html> [Accessed 18 April 2018].

⁷³⁷ See; Case No (E). 2015/36, Decision No.(K) 2015/87, Date (T) 18.10.2015; E. 2016/29, K. 2016/134, T. 14.07.2016; E. 2016/38, K. 2016/34, T. 05.05.2016; E. 2016/37, K. 2016/135, T. 14.07.2016. Decisions are accessible in Turkish, Available at www.anayasa.gov.tr/icsayfalar/kararlar/kbb.html [Accessed 18 April 2018].

⁷³⁸ See; Görendağ, V.: 676 Sayılı KHK ile Mülteci Hukukunun Temel İlkeleri Askıya Alınıyor, Uluslararası Af Örgütü/Blog 2016, Available at <https://www.amnesty.org.tr/icerik/116/2011/676-sayili-khk-ile-multeci-hukukununtemel-ilkeleri-askiya-aliniyor> [Accessed 18 April 2018] and Öztürk, N.Ö.: “Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir Değerlendirme”, AÜHFD, (2017), 66:1, pp. 246, 247.

such decrees, based on the lack of jurisdiction.⁷³⁹ In addition, while some Administrative Courts have halted deportations in some cases⁷⁴⁰, the non-refoulement principle is not uniformly applied in Administrative Court reviews (AIDA, 2016, p.15). Also, the Constitutional Court has issued interim measures to prevent deportations where a risk of refoulement has been identified (Ibid.).

Role of judiciary in the interpretation and definition of applicable legislation

The Turkish Constitution enables and safeguards the recourse to judicial review against all actions and acts of administration (Const., Article 125). Therefore, all administrative decisions about the area of immigration and asylum are subject to judicial review by administrative courts. Since the coming into force of the LFIP, administrative courts have rendered some decisions which enlightened certain concepts or procedures, especially related to the area of asylum law in terms of definition and interpretation.⁷⁴¹ However, considering the lack of specialized immigration and/or asylum courts and the fact that the current asylum system in Turkey is quite new, courts do not have concrete experience in reviewing cases related to asylum. Considerable time is needed to meet a more mature case-law.⁷⁴²

Individual applications are allowed to be made to the Constitutional Court since 23 September 2012⁷⁴³ for the violation of fundamental rights and freedoms secured under the Constitution, which fall into the scope of the European Convention on Human Rights.⁷⁴⁴

⁷³⁹ See; the summary of the rationale of the Court's decision, available at <http://www.anayasa.gov.tr/icsayfalar/basin/kararlarailiskinbasinduyurulari/genelkurul/detay/21.html> (Accessed 18 April 2018).

⁷⁴⁰ See AIDA Report 2018 for the cases of Administrative Court of Istanbul, Decision 2016/2765, 29 December 2016. See also Decision 2016/2646, 21 December 2016; Decision 2016/2593, 16 December 2016; Decision 2016/2535, 7 December 2016; Decision 2016/2542; Decision 2016/2344, 24 November 2016; Decision 2017/233, 15 February 2017, Available at <http://www.asylumineurope.org/reports/country/turkey> [Accessed 27 April 2018].

⁷⁴¹ Some examples include the interpretation of the standard of proof for the subsidiary protection determination and clarifications on the assessment of country of origin information for international protection applicants. For further information on this matter see; Öztürk, Reflections, p.200.

⁷⁴² Ibid.

⁷⁴³ In 2010, an amendment was made to the Constitution to enable individual applications to be submitted to the Constitutional Court on human rights violations caused by natural persons or institutions that execute public power. In order to apply to Constitutional Court on such grounds, the decisions or actions that are claimed to be in violation, should be finalized. Therefore the applicant should have sought all judicial remedies available against these actions or decisions before applying to the Constitutional Court. Further, in 30.03.2011, The Law on Establishment and the Judicial Procedure of the Constitutional Court (Law No. 6215) was enacted. According to the Provisional Article 1 of this Law, The Constitutional Court is authorized to hear individual applications that are based on violation claims due to the actions or decisions finalized as of 23 September 2012. Accordingly, as of 23 September 2012, everyone can apply to the Constitutional Court for alleged violations of the fundamental rights and freedoms guaranteed by the Constitution that fall within the scope of European Convention on Human Rights caused by individuals or institutions executing the public power. Available at <http://www.anayasa.gov.tr/icsayfalar/gorevyetki/bireyselbasvuru.html> [Accessed 19 May 2018].

⁷⁴⁴ For further information about the scope and the procedure of the individual application to the Constitutional Court, Available at <http://www.constitutionalcourt.gov.tr/inlinepages/IndividualApplication/WhoMayApply.html> [Accessed 18 April 2018] and Şirin, T.: Türkiye'de Anayasa Şikayeti (Bireysel Başvuru), İstanbul 2013. General statistics related to individual applications, Available at

Foreigners are eligible to file applications as long as the fundamental rights in question are safeguarded for “everyone” under the Constitution. There have been several applications made to the Constitutional Court by asylum seekers especially for the alleged violation of non-refoulement, right to liberty and security, and effective remedy.⁷⁴⁵ The Constitutional Court also reviews applications for interim measures to immediately and temporarily halt deportation decisions since 2013.⁷⁴⁶

<http://www.constitutionalcourt.gov.tr/inlinepages/IndividualApplication/statistic-12022018.pdf>
[Accessed 18 April 2018].

⁷⁴⁵ For an example of a decision which concluded the existence of violation of aforementioned rights see; K.A. Application, App. No. 2014/13044, 11 November 2015.

⁷⁴⁶ For further information and examples from the Court’s case-law related to immigrants/asylum seekers see; Erol, G.: *Anayasa Mahkemesine Bireysel Başvuruda Tedbir*, TBB Dergisi, (2017), 130, pp. 55-88.

4- The relevant legislative and institutional framework in the field of international protection

Legal framework

The existing legal framework on international protection can be divided into primary and secondary law, which are composed by international conventions duly put into effect, laws (acts of the Parliament), by-laws⁷⁴⁷, directives, circulars, communiques and the Council of Minister decisions.

Pursuant to Turkish law, secondary sources such as by-laws, directives, circulars or any kind of sources which are regulated by administration should be consistent with the primary sources (Const. Article 124).⁷⁴⁸ Secondary sources, in principle should serve as guidelines for the administration to comprehensively designate the procedures of certain duties and obligations assigned to the administration by the primary sources.

Primary law

Turkey's first regulatory document on migrants, refugees and asylum-seekers was the Law on Settlement, (*İskan Kanunu*), which dates from 14 June 1934, and it was replaced in 2006 with the Law No. 5543. The Settlement Law was adopted with respect to the arrival of ethnic Turks in the early years of Republic (Kaiser and Kaya 2015, p.101). The Law states that 'only migrants of Turkish ethnicity and culture, with an objective of settling in Turkey, can obtain immigrant status (Article 3), and that those of non-Turkish origin will not be accepted as immigrants in Turkey, as well as 'anarchists, spies, nomadic Romas [*göçebe çingeneler*], and those that had been previously exiled'.⁷⁴⁹ With regards to immigration policies, the definition of 'migrant' before the LFIP is also important. Between 1934 and 2006, Turkey's Law on Settlement, Law No. 2510, regulated the formal settlement of foreigners in Turkey, '[restricting] the right of asylum and immigration only to the persons of "Turkish descent and culture."' Article 3(d) of Settlement Law of 1934 defines both the refugee and migrant but yet does not explicitly regulate the right of asylum and 'restricting the definition of migrant only to cover the persons of Turkish descent and culture'. '[restricting] the right of asylum and immigration only to the persons of 'Turkish descent and culture.' [Article 3(d)]. When a new Law on Settlement was adopted in 2006, the emphasis on that background was retained, and so 'it is understood that in Turkey, the channel of facilitated formal settlement, which also leads to citizenship in a short period of time, is still reserved for the individuals of such groups'.⁷⁵⁰

Turkey ratified the 1951 Geneva Convention Relating to the Status of Refugees on 30 March 1962 and accessed its Additional Protocol (1967) on 31 July 1968 (UNHCR, 2015).

⁷⁴⁷ The terms by-law and regulation may be interchangeable used.

⁷⁴⁸ See page 42.

⁷⁴⁹ *İskan Kanunu* (Settlement Law), Law No. 2510, of 1934, provides that (Law No. 2510, Available at <http://www.resmigazete.gov.tr/arsiv/2733.pdf> [Accessed 8 March 2018]. This Law has been changed in 2006 and yet its main interpretation regarding who should be considered as an immigrant has remained primarily untouched (See Law No. 5534 on Settlement of 26 September 2006, Available at <http://www.resmigazete.gov.tr/eskiler/2006/09/20060926-1.htm> [Accessed 8 March 2018].

⁷⁵⁰ Law No. 5543, Sept. 19, 2006, available at <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5543.pdf>, archived at <https://perma.cc/D89G-GT6N> and *İskan Kanunu Uygulama Yönetmeliği* (Implementation Regulations of the Settlement Law), Available at <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.11748&MevzuatIliski=0&sourceXmlSearch> [Accessed 15 April 2018].

However, ‘Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol’ (Ibid.). This means that Turkey recognizes the Convention’s refugee status for those who meet the Convention criteria due to events happening in Europe. This limitation is ‘only partially implemented as Turkey allows UNHCR to operate and conduct refugee status determination procedures whereby refugee status is jointly granted by the UNHCR and the MoI with the underlying condition that accepted refugees do not locally integrate but instead resettle in a third country’ (Ibid.). Turkey’s geographical limitation disqualifies a vast number of asylum-seekers and refugees seeking permanent protection from the Turkish state’ (Ibid., 7).

Historically, two main legislation dealing with Turkish immigration and asylum law were the Passport Law (Law No: 5682, Dated 15.07.1950)⁷⁵¹, which was substantially amended in 2013, and still in force, and the Law on Residence and Travel of Foreigners in Turkey (Law No: 5683, Dated 15.07.1950)⁷⁵² which was later abrogated by LFIP, and no longer in force. The former law stipulates that all travellers require a valid passport or travel document whenever they leave or enter the country. The law also regulated visa-related issues however the provisions of the Passport Law pursuant to visa issuance were later abrogated and re-regulated by LFIP. Due to the currently available legal framework regulated by LFIP, with some exceptions, a visa is needed to enter Turkey and for certain countries nationals, it is possible to obtain visas at border gates. In case of asylum or mass migration, those groups are excluded from punishment when violating entry rules, as long as they report to the Turkish government ‘within a reasonable time’.

Regarding citizenship, Turkey had two different pieces of legislation which substantially served for the regulation of acquisition and loss of citizenship until the enactment of the current Citizenship Law of 2009 (Law No. 5901)⁷⁵³. The first one was dated 27.11.1928 (Law No: 1312) and the second one was dated 1964 (Law No: 403)⁷⁵⁴. The currently enforceable Citizenship Law (CL) is the main legal source that regulates acquisition of Turkish citizenship. Accordingly, Turkish citizenship may be obtained by birth or derivatively (CL, Article 5). Acquisition by birth has two forms; acquisition by kinship or acquisition by place of birth. As a rule, which was also regulated under the Constitution (Article 66), ‘[e]veryone bound to the Turkish State through the bond of citizenship is Turkish. The child of a Turkish father or a Turkish mother is Turkish.’ Although place of birth regulated to be effective for the acquisition, birth within the territory of Turkey does not automatically confer citizenship. This way of acquisition is designated to prevent statelessness and therefore is applicable merely for situations where a child, who was born in Turkey does not obtain a citizenship through his father or mother. Derivative acquisition on the other hand has three main forms, namely as; acquisition by the decision of competent authority, acquisition by adoption and acquisition by right of choice. Acquisition by the decision of competent authority is also divided into four different sub-forms. They are; the general way of acquisition, exceptional acquisition, re-acquisition and acquisition by marriage. For the general way of acquisition, the Law states that an alien who has resided in Turkey for at least five years, shown an intent to remain in the country, familiarity with the Turkish language, has adequate means of self-support, good moral character and has no illness that may pose a threat to the public may obtain Turkish citizenship (Article 11, 12). This rule mainly related to regular migration. Provisions related to acquisition by marriage which constitutes another frequently used form of acquisition related to regular migration, stipulate

⁷⁵¹ Available at [http://www.goc.gov.tr/files/files/2\(1\).pdf](http://www.goc.gov.tr/files/files/2(1).pdf) [Accessed 15 April 2018].

⁷⁵² Available at <http://kanun.hukukokulu.com/tag/yabancilarin-seyahatlari-kanunu> [Accessed 15 April 2018].

⁷⁵³ Available at <http://www.tbmm.gov.tr/kanunlar/k5901.html> [Accessed 16 April 2018].

⁷⁵⁴ Available at http://www.nvi.gov.tr/Files/File/Mevzuat/Yururlukten_Kaldirilanlar/Kanun/pdf/turk_vatandasligi_kanunu.pdf [Accessed 6 April 2018].

three years of marriage as the pre-condition of application (Article 16). In this way, the law aims to avoid sham marriages undertaken by people wishing to stay in the country and eliminates a method of bringing people into the country used by human smugglers and traffickers.

Moreover, to understand legal framework in Turkey, it is of importance to briefly review the process in which Turkey has attempted to meet the EU's pre-accession requirements. Turkey has begun to 'significantly harmonise its migration and asylum related legislation in areas identified in the EU accession partnership document (İçduygu, 2015, p.10). One of the 'most important steps towards achieving the necessary harmonization of Turkey's national legislation with the EU *acquis*' was made in Turkey's adoption of a 'National Action Plan for the Adoption of EU *acquis* in the Field of Asylum and Migration' in March 2005 together with the '2008 National Programme of Turkey for the Adoption of the EU *Acquis*' (Yıldız, 2016, p.109). The action plan set out a detailed timeline listing the steps that Turkey had committed itself to in adjusting its policies to those of the EU relating to 'infrastructure and legislation in terms of three main areas: legal arrangements, institutional capacity building and training facilities' (Ibid., p.110).

The most recent and detailed normative framework about 'international protection' is created with the Law on Foreigners and International Protection (LFIP) (Law No.6458) as of 11 April, 2013. With the LFIP, Turkey finally has a legal framework extending protection to asylum seekers and refugees together with an accompanying physical as well as administrative infrastructure, which represent a major break from past practices (Kirişçi, 2012, p.63). It is the first law, which covers both international protection and the statuses and rights of foreigners in the country. The LFIP also marks the end of a period in which laws relating to foreigners, particularly asylum law, has been regulated by secondary legislation. The scope of this all-encompassing law is:

to regulate the principles and procedures with regard to foreigners' entry into, stay in and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners to seek protection from Turkey, and the establishment, duties, mandate and responsibilities of the Directorate General of Migration Management under the Ministry of Interior.' (Law No. 6458, Article 1)

In determining the criteria for legal entry and stay, the LFIP clearly distinguishes between voluntary versus forced, and regular versus irregular migrants. The LFIP also supplies a comprehensive approach in that, in contrast to the previous legal documents. It defines not only, who is entitled to international protection (refugee, conditional refugee or people who are under subsidiary protection), but also recognizes the existence of such categories as human trafficking victim, unaccompanied minor, stateless person etc.

The Law regulates the entry, exit and partly the visa policy of Turkey. The LFIP abolished the Law on Residence and the Travel of Foreign Nationals in Turkey and invalidated the relevant articles of the Passport Law under Articles 5- 18. Also regarding residency, in Articles 19- 49, quite detailed categories as well as specific application procedures about these categories are given. Concerning to the RESPOND as well as this report, the legal status of foreigners, in particular international protection will be analysed in details later.

Secondary law

Although the 1951 Convention provides the main guidelines for 'international protection', due to the geographical limitation, there was a gap in asylum law in relation to individuals who do not fall within the scope of the Convention. This gap was tried to be filled with a secondary administrative regulation (a By-law) in 1994, which is referred as 1994 Council of Ministers

Regulation.⁷⁵⁵ As a main legal source on the area which served for almost 20 years, this regulation can be seen as the response of Turkey to the 1990s' large influxes of refugees and asylum seekers as well as to increasingly restrictive European immigration policies. The 1994 Regulation included the procedures and the principles related to population movements and aliens arriving in Turkey either as individuals or in groups wishing to seek asylum either from Turkey or to request residence permission in order to seek asylum from another country. This Regulation was abrogated by the entry into force of Temporary Protection Regulation (TPR) on 22 October 2014 which was issued on the basis of Article 91 of the LFIP.

Prior to the TPR, temporary was not defined in domestic law. In fact, the LFIP does not provide the principles and procedures for such a regime and does not specify the framework of reception, stay, rights and obligations under temporary protection in details. But, the TPR with specified in Article 1 gives the objective of the regulation as:

to determine the procedures and principles pertaining to temporary protection proceedings that may be provided to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment ; to determine proceedings to be carried out related to their reception to Turkey, their stay in Turkey, their rights and obligations and their exits from Turkey, to regulate the measures to be taken against mass movements, and the provisions related to the cooperation between national and international organizations under Article 91 of the Law No. 6458 on Foreigners and International Protection of 4/4/2013.

The TPR became the second milestone in Turkey's regularization of immigration in general, and mass migration governance in particular. The TPR builds upon three main pillars: a) unconditional admission under an open-door policy, b) implementation of non-refoulment principle without any exceptions, c) addressing the basic needs and access to rights (TPR-Changes, 2017). The scope of TPR covers those foreigners who arrive at Turkish borders as a result of forced migration as can be seen below.

Foreigners who shall be granted temporary protection

ARTICLE 7 - (1) Temporary protection shall be granted to foreigners who were forced to leave their countries and are unable to return to the countries they left and who arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment.

(2) Temporary protection shall not cover persons who arrived our country from the country or region, where events constituting a basis for the temporary protection announcement take place, prior to the effective date of temporary protection announcement, unless the Council of Ministers decides otherwise.

(3) Persons benefiting from temporary protection shall not be deemed as having been directly acquired one of the international protection statuses as defined in the Law.

Temporary protection decisions are taken by the Council of Ministers upon the Mol's proposal [Article 9(1)]. It is the DGMM's responsibility to 'take individual decisions concerning persons benefiting from temporary protection following Council of Ministers' temporary protection decision' [Article 10(2)]. An access to international protection status is hindered during the application of temporary protection as Article 16 of the TPR explicitly

⁷⁵⁵ By-law of 14/09/1994 on the Principles and Procedures concerning Possible Population Movements and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from another Country, No: 94/6169, the Official Gazette, No. 22127, 30 November, 1994, Available at <http://www.goc.gov.tr/files/files/temptemp.pdf> [Accessed on 18 April 2018]

states that: '[i]ndividual international protection applications filed by foreigners under this regulation shall not be processed in order to ensure the effective implementation of temporary protection measures during the period of the implementation of temporary protection'. Although the said provision refers to the 'period of the implementation', an upper time limit is not determined by the TPR. Pursuant to Article 10 of TPR, determining a certain period for which the temporary protection would be available is subject to the discretion of the Council of Ministers. If Council of Ministers deems necessary, a certain duration could be indicated within the temporary protection decision. The current temporary protection decision however, does not involve a certain duration.

TPR also regulates the termination of temporary protection. Accordingly, the Mol 'may propose to the Council of Ministers to terminate "temporary protection" and by a Council of Ministers decision, temporary protection would be terminated' [Article 11(1)]. Along with a decision to terminate temporary protection, the Council of Ministers can also decide to:

- a) To fully suspend temporary protection and to return of persons benefiting from temporary protection to their countries;
- b) To collectively grant the status, the conditions of which are satisfied by persons benefiting from temporary protection, or to assess the applications of those who applied for international protection on an individual basis;
- c) To allow persons benefiting from temporary protection to stay in Turkey subject to conditions to be determined within the scope of the Law.' (Article 11-2).

Article 11 does not unequivocally provide temporary protection beneficiaries with a right to apply for international protection, as is the case under the EU Temporary Protection Directive. The same risk of exclusion from accessing international protection exists when a temporary protection regime is limited or suspended under Article 15.

According to TPR, illegal entry into or stay in Turkey of individuals who fall under the scope of the Regulation will not be made subject to any administrative fines [Article 5-(1)] or will not face the risk of *refoulement* [Article 6-(1)]. In other terms, in the TPR, the international legal obligation of *non-refoulement*, not returning any refugees to their country of origin or to any place where they risk facing persecution, is clearly acknowledged.

The Regulation on Work Permits of Foreigners under Temporary Protection⁷⁵⁶, which is also categorized as 'by-law' was adopted by the Council of Ministers as a supportive secondary law for the TPR. As Syrians are the only group under temporary protection status, this regulation targets them. Pursuant to this Regulation, following the signing of a job contract, the employer needs to apply for work permit on behalf of the Syrian employee via an online portal of the Ministry of Labour and Social Security [Article 5(2)]. Yet, before submitting a work permit application, the employer should wait for four weeks during which the same employer has to document that there is no Turkish citizen with an equal skillset who could be employed for the particular job under concern [Article 8(3)]. 8(3)]. The number of Syrians under temporary protection cannot exceed 10 percent of the total workforce in any workplace [Article 8(1)]. Third, they need to be paid at least the minimum wage. They are allowed to work only in the provinces they are registered in (Article 7). Finally, the employers of Syrians under temporary protection who hire them to work in seasonal jobs (agriculture and animal husbandry) are exempt from applying for work permits [Article 5(5)].

There are also several circulars related to the procedure of temporary protection. However, as it is not compulsory for the administration to publish these circulars on Official Gazette or through any means especially when they are of critical nature in terms of public order and security, most of them are not publicly accessible. As it is indicated by DGMM,

⁷⁵⁶ Available at <http://www.refworld.org/docid/582c71464.html> [Accessed 18 April 2018].

major circulars related to temporary protection deal with the following issues⁷⁵⁷; determination of the identification, registration, encouragement for registration, limitation of the rights (excluding access to emergency health services) of those who had not registered, access to services, procedures for the exit to third countries, procedures need to be taken for those who are considered to be a threat to public order and security, procedures need to be followed for requests to change provinces of residence.

Apart from temporary protection, there are also effective sources in relation to international protection and/or migration in general, which are of the nature of secondary law. One significant source of this kind is the Implementation Regulation (IR) of the LFIP.⁷⁵⁸ The IR is sourced from LFIP and provides a comprehensive guideline for the provisions under the LFIP both for international protection and for migration related issues. Another important secondary regulation derived from the LFIP is the Regulation on the Labour of Applicants and Beneficiaries of International Protection.⁷⁵⁹ This Regulation reiterates the right to work for beneficiaries of refugee status and subsidiary protection status without having to apply for a work permit provided that their international protection identification documents substitute for work permit.

Another significant secondary legal source is a circular related to the access to education for foreigners in general. This circular dated 2014⁷⁶⁰, enables establishment of temporary education centres for individuals subject to mass influx and also provides procedures for referral of foreigners who do not obtain residence permit, to relevant educational institutions.

Institutional framework

Concerning the institutional aspect, in Turkey, two major ministries are in charge of dealing with migration matters: the MoI and the Ministry of Foreign Affairs (MFA). In addition, some other government institutions, councils and commissions also assume specific responsibilities in migration affairs. The LFIP defines the MFA responsibility as ‘upon receiving the opinion of relevant public institutions and organizations, may call upon other States and international sharing in order to ensure provision of services to the foreigners under this Regulation’ [Article 47 (1)].

The MoI serves as the main ministry dealing with migration issues and has extensive responsibilities. The DGMM was established by the LFIP under the MoI. The LFIP transferred the authority for receiving and registering applications for international protection (on Turkish territory or at border gates) from the Foreigners Department of the National Police (which is also under to the MoI) to the newly established DGMM. The DGMM’s duties and mandate, as specified by Article 104 of LFIP, involves:

⁷⁵⁷ Available at http://www.goc.gov.tr/files/files/gecici_koruma_alaninda_yapilan_calismalarimiz_ek3%281%29.pdf [Accessed 26 April 2018].

⁷⁵⁸ Available at http://www.goc.gov.tr/files/_dokuman5.pdf [Accessed 26 April 2018].

⁷⁵⁹ Available at <http://www.resmigazete.gov.tr/eskiler/2016/04/20160426-1.htm> [Accessed 26 April 2018].

⁷⁶⁰ Available at <http://www.edirnebarosu.org.tr/wp-content/uploads/2016/07/Yabancılara-Yönelik-Eğitim-Öğretim-Hizmetleri.pdf> [Accessed on 26 April 2018].

Role of the Directorate General of Migration Management

- a) develop legislation and administrative capacity and carry-out work developing policies and strategies in the field of migration as well as monitor and coordinate the implementation of policies and strategies determined by the Council of Ministers;
- b) provide secretariat services for the Migration Policies Board and follow up on the implementation of the decisions of the Board;
- c) carry-out activities and actions related to migration;
- d) carry-out activities and actions for the protection of victims of human trafficking;
- e) determine stateless persons in Turkey and carry-out activities and actions related to such persons;
- f) carry-out activities and actions related to harmonization;
- g) carry-out activities and actions related to temporary protection;
- ğ) ensure coordination among law enforcement units and relevant public institutions and agencies, develop measures, and follow up on the implementation of such measures to combat irregular migration.

Persons subject to Turkey's new 'international protection' procedure also register with the UNHCR Turkey, which 'continues to carry out 'refugee status determination (RSD)² activities, "in tandem" with the DGMM procedure, but on the basis of the UNHCR's own mandate' (AIDA, 2015, p.9). Although, the UNHCR mandate RSD decisions do not have any direct binding effect under LFIP, and the DGMM appears as the sole decision maker in asylum applications (AIDA, 2018, p.18), the relationship regarding RSD procedure needs to be redefined.

Article 104 (b) of the LFIP makes reference the Migration Policies Board which, in broad terms, determines Turkey's migration policies and strategies and follow up on their implementation [Law No. 6458, Article 105-3(a)]. As specified under Article 3 of the LFIP, it is the responsibility of the Migration Policies Board to:

- a) determine Turkey's migration policies and strategies and follow up on their implementation;
- b) develop strategy documents as well as programme and implementation documents on migration;
- c) identify methods and measures to be employed in case of a mass influx;
- ç) determine principles and procedures concerning foreigners to be admitted en mass to Turkey on humanitarian grounds, as well as the entry into and stay of such foreigners in Turkey;
- d) determine principles concerning the foreign labour force needed in Turkey;
- e) determine conditions of the long-term residence permits to be issued to foreigners;
- f) determine framework for effective cooperation in the field of migration with foreign countries and international organisations and the relevant studies in this field;
- g) make decisions to ensure coordination among public institutions and agencies working in the field of migration.

The ministries and bodies that are part of the Board include: the Ministry of Family and Social Policies (MFSP), the Ministry for EU Affairs, the Ministry of Labour and Social Security, the MFA, the Mol, the Ministry of Culture and Tourism, the Ministry of Finance, the Ministry of National Education, the Ministry of Health, and Ministry of Transport, Maritime and Communications as well as the President of the Presidency of Turks Abroad and Related Communities and the Director General for Migration Management [LFIP, Article 105 (1)]. It has also been noted that 'depending on the agenda of the meeting, representatives from relevant ministries, other national or international agencies and organisations, and non-governmental organisations may be invited to meetings' [LFIP, Article 105(1)].

Moreover, with the LFIP, three permanent boards and committees were also established under the DGMM which are: The Migration Advisory Board; the International Protection Assessment Committee; and the Coordination Board on Combating Irregular Migration. In terms of international protection, the International Protection Assessment Committee is responsible for:

- a) assess and decide on appeals against decisions on international protection claims as well as other decisions concerning applicants and international protection beneficiaries, with the exception of administrative detention decision, decisions related to inadmissible applications, and decisions made as a result of accelerated procedure;
- b) assess and decide on appeals against decisions concerning the cancellation of international protection.’ [LFIP, Article 115 (2)- a, b)].

Furthermore, the Asylum-Seekers Committee has been established as a sub-committee of the Human Rights Committee, one of the committees of the Grand National Assembly of Turkey. The Committee has seven members from the major political parties.

The Disaster and Emergency Management Presidency (AFAD) was established in 2009 and functions under the rule of the Prime Ministry, is another agency with key functions in the field of international protection. In fact, AFAD was first established to single-handedly coordinate and exercise legal authority in cases of disaster, emergencies and the coordination of humanitarian assistance abroad.⁷⁶¹ Its role in responding to the mass refugee flow became apparent in 2011 with the start of Syrian refugee arrivals. It was authorized to provide temporary sheltering and to meet the basic needs of Syrians (AFAD, 2014). It also coordinated relevant ministries and agencies such as the MFA, MoI, the Ministry of Health, the Ministry of Education, the Turkish Red Crescent, and others (AFAD, 2014).

AFAD’s responsibilities in the field of migration were re-organized within the LFIP as the DGMM started to take full responsibility in all migration affairs. AFAD’s role is now limited to managing international humanitarian assistance distributed to foreigners. Article 47 (2) states that ‘assistance and use of in-kind and cash assistance’ provided by international organizations and foreign states ‘shall be coordinated by AFAD upon receiving the opinion of the Ministry of Foreign Affairs and the Ministry’ and (3) ‘AFAD may directly cooperate with public institutions and organizations and governorates, particularly the MFSP, the Turkish Red Crescent Association, and social assistance and solidarity foundations regarding the use of these in-kind and cash assistances.’

The management of temporary settlements has remained the responsibility of AFAD; however, by the amendment to the TPR by Regulation 2018/11208 of 16 March 2018, responsibility for the management of Temporary Accommodation Centres and provision of services such as health care lies with DGMM (AIDA, 2018, p.16). Thus, the DGMM is also the competent authority for ‘temporary protection’ (Ibid.).

Table 5. List the authorities that intervene in each stage of the procedure

⁷⁶¹ AFAD website, Available at <https://www.afad.gov.tr/en/2572/About-Us> [Accessed 3 March 2018]. As a result of these concerns, AFAD was established by Law No.5902 where those agencies that previously assumed mandate in the field were also abolished by the same Law (Ibid.).

Stage of the procedure	Competent authority (EN)	Competent authority (TR)
Application <ul style="list-style-type: none"> ❖ At the border ❖ On the territory 	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)
Refugee status determination	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)
Appeal	International Protection Evaluation Commission Administrative Court	Uluslararası Koruma Değerlendirme Komisyonu İdare Mahkemesi
Onward appeal	Regional Administrative Court Council of State	Bölge İdare Mahkemesi Danıştay
Subsequent application	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)

Source: AIDA 2018. Country Report: Turkey, Asylum Information Database, Last Updated 30.03.2018, 21, Available at: <http://www.asylumineurope.org/reports/country/turkey> [Accessed 27 April 2018].

5- The legal status of foreigners

Beneficiaries of international protection

International protection status is granted to refugees, conditional refugees, and those under subsidiary protection under the LFIP. The DGMM conducts a detailed assessment to decide whether a person seeking asylum in Turkey fulfils the eligibility criteria listed in Turkish law for benefitting from international protection in Turkey. The LFIP provides the criteria for international protection in Turkey. If the decision is positive, depending on the applicants' country of origin and the reasons why they are in need of international protection, the DGMM will grant them one of the three forms of 'international protection status' defined in Turkish law as follows:

International Protection Categories in Turkey's Asylum System:

Refugee status is defined under Article 61(1) of the LFIP, those who are deemed as qualifying for a refugee status are listed as:

A person who as a result of events occurring in European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process.

Conditional refugee status is defined under Article 62 (1) as:

A person who as a result of events occurring outside European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country.

Subsidiary protection status as it is specified under Article 63-(1) as:

A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would:

- a) be sentenced to death or face the execution of the death penalty;
- b) face torture or inhuman or degrading treatment or punishment;
- c) face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.

Among the above-given international protection statuses, 'conditional refugee' status is unique to Turkey and the outcome of Turkey's geographical limitation to the 1951

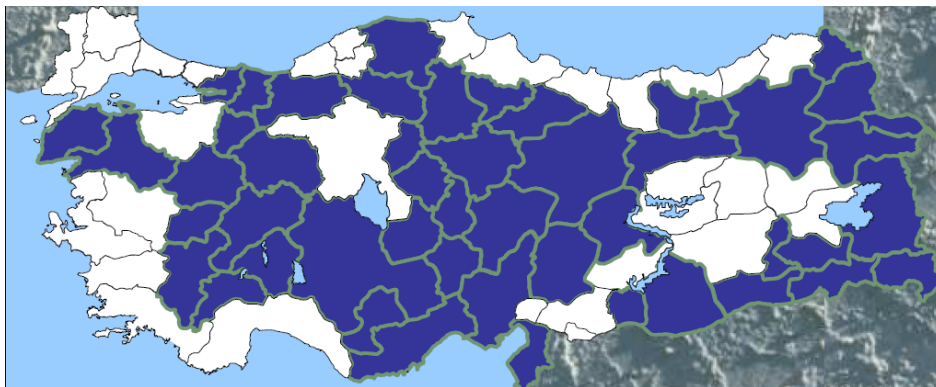
Convention – in effect ensuring Turkey would not grant refugee status to people fleeing from conflicts and persecution in non-European countries. In this regard, if the refugee status determination (RSD) process for an asylum seeker coming from non-European countries has a positive result, Turkey provides ‘conditional refugee status’ and he/she can stay in Turkey until the resettlement to a third-safe country through the UNHCR. As a matter of fact, the conditional refugee status allows the individual to temporarily reside in Turkey and rules out local integration to be a durable solution⁷⁶². Thus, in any account of Turkey’s asylum regime, the ‘geographical limitation’ clause is its most important feature.

According to the LFIP, if a person has left his/her country for reasons of war, persecution or fear of death penalty or torture, and are afraid to go back, applying for ‘international protection’ to the DGMM will give him/her the opportunity to stay in Turkey legally under the applicant status which is the equivalent of asylum seeker status in international law. As an applicant, the person will be safe from the risk of being deported to his/her own country or any other country where s/he would be at risk.

Geography of migrants: satellite cities

Before the LFIP, according to the 1994 Regulation and the 2006 Implementation Circular, non-European asylum seekers must register with the police who make an assessment within a reasonable time to decide whether they are asylum seekers rather than migrants. They are required to stay in ‘satellite cities’ determined by the Mol. The historical and legal origins of Turkey’s satellite city practice can be traced back to the 1950s when the Turkish authorities regulated the residence and travel of foreigners via the Law on Residence and Travel of Foreigners (Law No. 5683). Article 17 of the Law No. 5683 indicates that ‘foreigners who seek asylum for political reasons shall reside at places assigned by the Ministry of Interior’.⁷⁶³ The ‘satellite city’ system where non-European asylum-seekers, ‘upon the completion of registration of their applications, are assigned to reside in certain cities by the Mol, which are currently 51 provinces’.⁷⁶⁴ Accordingly, they are required to check in regularly with local authorities and restricted from movement outside of the city without ‘special permission’. Figure 20 partly displays the spatial dimension of migration in Turkey. Provinces colored in blue represents satellite cities, while white represents non-satellite cities.

Figure 19. Satellite Cities



Source: UNCHR, “The Practice of “Satellite Cities” in Turkey “, available at <http://www.unhcr.org/50a607639.pdf> (Accessed 18 April 2014).

⁷⁶² The term ‘temporary protection’ in that statement was used to refer to the temporariness of the stay, rather than being ‘the temporary protection’ designated as a technical form of protection under TPR (Öztürk, 2017, p.195).

⁷⁶⁴ UNHCR, ‘The Practice of “Satellite Cities” in Turkey’, Available at <http://www.unhcr.org/50a607639.pdf> [Accessed 5 April 20018].

In terms of the spatial aspects of the LFIP, persons applying for international protection in Turkey still do not have the right to choose their city of residence, and administrative obligations may be imposed upon the applicants such as ‘to reside in the designated reception and accommodation centres, a specific location or a province as well as to report to authorities in the form and intervals as requested’ (LFIP, Article 71-1). The DGMM officials will assign the city where they will be asked to go and stay until the finalization of their asylum proceedings in Turkey. If there is a city international protection applicants particularly prefer or where their close relatives live, they can express their preference to PDMM and/or UNHCR officials during registration (Refugee Rights Turkey, 2016, p.5).

For person applying for ‘international protection’, it is very important to report to their assigned city of residence within 15 days, or if they are already in their assigned city of residence to refrain from ever leaving the city without a written authorisation from the PDMM (Ibid., 6). If they leave their assigned city of residence without permission, they will be considered to have ‘implicitly withdrawn’ their international protection request, as a result of which they may come under risk of deportation (Ibid.). As of November 2017, the PDMM have taken over the pre-registration phase of temporary protection (AIDA, 2018, p.16).

In Turkey, asylum-seekers are not provided any form of accommodation support. As a matter of general principle, international protection applicants are expected to find their own accommodation in their assigned city of residence and bear the costs of that accommodation by their own means (Refugee Rights Turkey, 2016, p.5). However, under the temporary protection regime, the TPR also provides access to certain services for temporary protection beneficiaries are designated such as; health, education, access to labour market, social assistance and interpretation services (TPR, Articles 26-31 respectively) as they will be explained in details as a part of “Reforms” heading of the report.

Applicants who are deemed particularly vulnerable may be accommodated free of charge in the Reception and Accommodation Centres for Asylum Seekers, located in the cities of Şanlıurfa, Gaziantep, Kilis, Kahramanmaraş, Mardin, Hatay, Adana, Osmaniye, Adıyaman, and Malatya. Furthermore, unaccompanied children seeking international protection in Turkey should be accommodated free of charge in state facilities deemed appropriate by the MFSP, ‘in the care of their adult relatives or, a foster family, taking the opinion of the unaccompanied child into account.

The situation of ‘international protection’ applicants: arriving from Syria (temporary protection)

Persons who have fled to Turkey from Syria are subject to a separate asylum procedure referred to as ‘temporary protection’ policy. The LFIP defines temporary protection under Article 91-1 and under Article 91-2 notes that the situation concerning these foreigners who arrived to Turkey as a result of forced migration will be regulated later on by a ‘Directive to be issued by the Council of Ministers’. In accordance with this policy, persons arriving from Syria are granted the right to legally stay in Turkey and have access to some rights and services. Refugees from Syria are required to approach DGMM and register to benefit from this policy. Upon registration with the DGMM, they are issued a Temporary Protection Identification Card (İneli-Ciğer 2015, p.32).

In current practice, Syrian nationals, stateless persons from Syria and refugees who were previously resident in Syria, are subject to this arrangement (Lambert, 2017). Since they have the legal right to stay in Turkey and enjoy rights and services as beneficiaries of ‘temporary protection’ policy, Turkish Government does not consider it necessary for them to make an additional application for ‘international protection’. Therefore, persons arriving from

Syria are not given the option of making an ‘international protection’ application in Turkey (Refugee Rights Turkey, 2016, p.3). It implies that Syrians under temporary protection cannot approach to the UNHCR and they are not under the part of resettlement mechanism, which differs them from the others who are under the international protection scheme.

That being said, persons from Syria who arrive in Turkey not directly from Syria but from another country which they previously fled to, may not be extended the opportunity to benefit from Turkey’s ‘temporary protection’ policy. In that case, these persons nevertheless ‘have the right to apply for ‘international protection’ in Turkey if they fear being persecuted or otherwise coming in harm’s way if returned to the country from which they arrived to Turkey or if they fear being deported all the way back to Syria if they return to that country’ (Ibid.). These refugees are required to check in regularly with local authorities and also are restricted from movement outside of the city without ‘special permission’ (Leghtas and Sullivan, 2016, p.5).

Two Different Sets of ‘International Protection’ in terms of procedural rules, reception provisions and detention considerations:

Turkey currently hosts both an asylum-seeking population from Syrian mass migration and a surging number of individually arriving asylum seekers of other nationalities. As it was displayed by Figure 16, most principally originating from Iraq, Afghanistan, Iran and Somalia, among others. These two groups are subject to three different sets of ‘international protection’:

1. Asylum seekers from Syria: They are subject to a group-based ‘temporary protection’.
2. Individually arriving asylum seekers from other countries: The newly created DGMM is responsible for registering and processing “international protection” applicants and for granting status pursuant to the criteria established by the Law. For reasons related to Turkey’s unique “geographical limitation” policy on the 1951 Refugee Convention, individual asylum seekers, as following the RSD procedure, asylum seekers from non-Europe countries may get ‘conditional refugees’ status.

The legal basis of the given settings is spelt out in the LFIP, the LFI and the TPR.

Accelerated procedure

According to Turkish asylum legislation, in certain circumstances the DGMM may decide to process an asylum application within the framework of an ‘accelerated procedure’ as opposed to the regular procedure. This means that the application will be processed and decided much faster. In ‘accelerated processing’, the personal interview with the applicant should be held within 3 days of registration interview, and the decision on the application must be issued within 5 days from the personal interview [LFIP, Article 79 (2)].

If the applicant has made an international protection request after he or she has been placed under administrative detention for the purpose of removal (LFIP, Article 57), then DGMM may also decide to detain an applicant while processing their application in ‘accelerated’ process fashion. The reason why the DGMM chooses to process certain types of application through an ‘accelerated’ procedure is because they believe there are indications that the application may be unfounded, insincere or intended to use the asylum procedure for a reason other than seeking asylum in Turkey (LFIP, Article 57). Applicants processed in ‘accelerated procedure’ must be given the same opportunities to explain and substantiate their reasons for making an asylum application in Turkey as with the applicants processed in the regular procedure, including the right to have a ‘personal interview’ and an interpreter if needed (Ibid.).

Applicants have the right to appeal a negative decision on their international protection application, whether the decision was made in regular procedure or 'accelerated procedure'. In Turkey, the LFIP provides for an appeal against the first instance decision in the regular asylum procedure. Accordingly, the negative decision must be communicated to applicants by the PDMM officials in their locality in written. In case of a negative decisions, there are two remedies: administrative and judicial remedies. Both types of appeal have automatic suspensive effect (AIDA, 2015, p.24). Negative decisions issued in 'accelerated procedure' can be appealed at the competent administrative court within 15 days. The administrative court should finalize their appeal within a maximum of 15 days (Ibid.).

Applicants will be safe from being subjected to a deportation decision for 15 days following the communication of the negative decision to them by the Provincial Directorate of Migration Management (PDMM); and if they choose to file an appeal with the competent court within this time frame, they will be protected from a deportation decision until the finalisation of this appeal application.

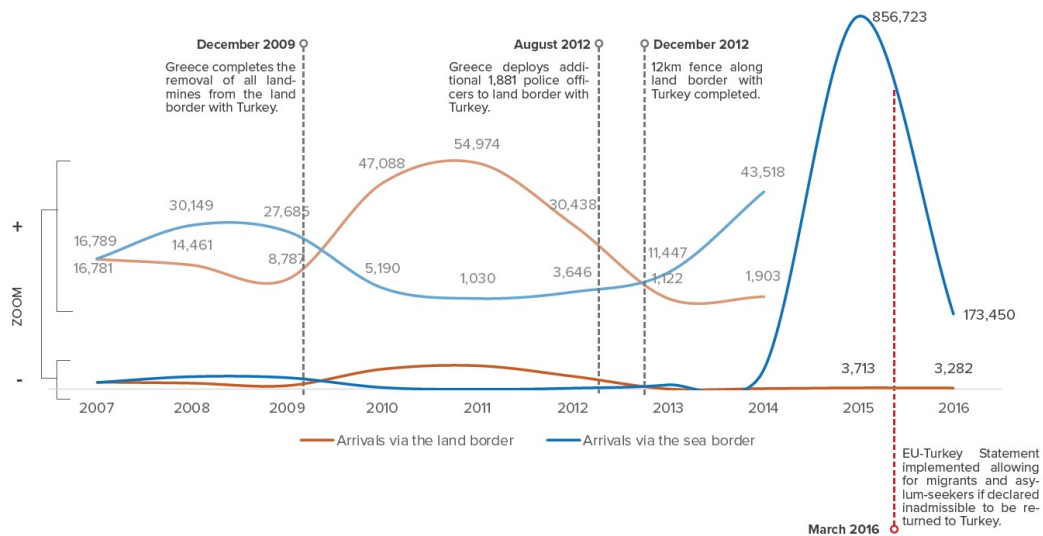
If the administrative court rejects applicants' appeal, the negative decision by the DGMM on their application becomes final. Negative asylum decisions issued within the framework of the 'accelerated procedure' may not be appealed onward at a higher court of law. Therefore, if applicants' appeal with the administrative court is unsuccessful, they will become subject to a deportation decision unless there are other legal grounds that may prove their continued stay in Turkey (Refugee Rights Turkey, 2016, p.21).

Irregular migrants

Irregular migration in Turkey can be categorized in three main groups (İçduygu and Aksel, 2012), which are: transit migration (illegal entries), circular migration (overstays), and asylum seekers/refugee movements. Until Syrian mass migration started in 2011, the largest group had been irregular transit migrants, entering Turkey with the help of smugglers and intending to continue the journey to Europe via sea and land routes (Ibid.). Between 1995 and 2009, the total number of irregular migrants was 796,494; and 461,934 of these were irregular transit migrants (Iraqis being the most numerous)⁷⁶⁵. Except the decline in 2009 (IOM, 2007, p. 308), there has been an increase since 2010 till the 2016 (UTSAM, 2012, p. 12). Both the EU's and Turkey's figures are similar each other as showing that in October 2015, daily crossings were 10,000 in a single day from Turkey to Greece, while on 20 March it declined to 47 on the daily basis as reflecting the EU-Turkey Statement (18th March 2016).⁷⁶⁶ 175,752 irregular migrants were detected in 2017 (DGMM, 2018, see also Figure 11).

⁴⁹ See Ahmet İçduygu, "The Irregular Migration Corridor between the EU and Turkey: Is it Possible to Block it with a Readmission Agreement?," Migration Research Institute Research Report Case Study EU-US Immigration Systems, No. 2011/14, p.5.

⁷⁶⁶ See European Commission, "EU-Turkey Statement One year On", Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf [Accessed 19 May 2018].

Figure 20: Arrivals in Greece from Turkey Via Land and Sea Borders - 2007 to 2016

Source: UNHCR, 2017. Desperate Journeys, Available at <http://www.unhcr.org/news/updates/2017/2/58b449f54/desperate-journeys-refugees-migrants-entering-crossing-europe-via-mediterranean.html> [Accessed 19 May 2018].

The second sub-group is circular migrants⁷⁶⁷, who enter Turkey legally but overstay or make multiple trips as irregular workers or traders. These are often circular migrants from Eastern Europe and the former Soviet Union. Despite entering legally, they become irregular as soon as their visas expire or they start work without a permit (İçduygu, 2011a, p.4). The numbers of irregular transit migrants were higher than irregular labour migrants/over-stayers from 1995 to 2010, but fluctuations in both overlap, reaching a peak in 2000 and declining afterward (Ibid.). Although, there is no official classification for this group, 334,560 irregular labour migrants were recorded for the 1995–2009 period (Ibid.).

The third group includes asylum seekers and refugees that display characteristics of the ‘migration–asylum’ nexus⁷⁶⁸ as it is stated by Castles (2007), which is strengthened by Turkey’s geographical limitation to the 1951 Convention that blurs the distinction between asylum seekers and irregular migrants.

The aforementioned categories and their governance have become more fluid since 2011. The capture this complexity in irregular migration, Gökalp-Aras and Şahin-Mencütek (forthcoming) suggest that Turkey’s legal and policy framework about irregular migration can be analysed within to time periods as 1990–2011 and 2011 to the present. Within the first-time period, legal and institutional framework for irregular migration governance remained highly fragmented⁷⁶⁹ until LFIP (Özçürümez and Yetkin, 2014). After 2011, Turkey

⁷⁶⁷ IOM defines circular migration as ‘the fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labor needs of countries of origin and destination’ IOM, ‘Key migration terms’, Available at <https://www.iom.int/key-migration-terms#Circular-migration> (Accessed 3 March 2018).

⁷⁶⁸ Stephen Castles defines the asylum–migration nexus as fluid and blurred, with the terminology about migrants and asylum seekers always heavily politically and legally constructed.

⁷⁶⁹ The main legal pieces encompassed the 1) Law on Work Permits for Foreigners (LWPF, Law No. 4817, adopted in 2003) that aimed at preventing irregular labour migration; 2) new articles of the Penal Code introduced in August 2002 that criminalized human smuggling and trafficking, and introduced stricter controls at borders and ports; 3) the amendment in Turkish Citizenship Law (2003)

introduced both ad-hoc responses and new concrete regulations in irregular migration governance. Syrian mass migration and the continuation of the EU externalization mainly drove the direction of responses (Gökalp Aras and Şahin Mencütek, forthcoming). The 2013 LFIP eliminated problems about partiality by defining the irregular migration and the responsible authority to deal with it. It defines irregular migrant as ‘foreigners [who] enter into, stay in or exit from Turkey through illegal channels and work in Turkey without a permit; as well as international protection.’⁷⁷⁰ In terms of the institutional structure, the DGMM is assigned ‘to combat irregular migration’ [LFIP, Article 104 (ğ)] and ‘carry-out activities and actions related to irregular migration [Article 108 (2)]. In addition, the LFIP established the Coordination Board on Combating Irregular Migration. The responsibilities of the Board have been specified under the LFIP, Article 116 (3):

- a) ensure coordination among law enforcement units and relevant public institutions and agencies to effectively combat irregular migration; b) determine the routes for illegal entry into and exit from Turkey and develop counter measures; c) improve the measures against irregular migration; ç) plan the development of legislation related to combating irregular migration and monitor its implementation [LFIP, 116 (3)].

As the Figure 11 displays, the number of apprehended irregular migrants in 2017 are recorded as 175,752 (DGMM, 2018). According to FRONTEX, there were 885,400 irregular border crossings via the Eastern Mediterranean Route in 2015, while 182,537 were recorded in 2016.⁷⁷¹ On the other hand, inside Turkey the number of apprehended irregular migrants increased substantially, from 146,485 in 2015 to 174,466 in 2016 and 175,752 in 2017.⁷⁷² These statistics – showing a clear rise in irregular migrants in Turkey, and a decline crossing into the EU – indicate that Turkey is at risk of becoming a de-facto buffer-zone (Gökalp-Aras and Şahin-Mencütek, forthcoming).

The irregular migrants who apprehended by law enforcement units, should immediately be reported to the governorate for a decision to be made concerning their removal (deportation) status [LFIP, Article 57(1)]. Illegal entry or illegal stay in Turkey do not hinder the right to apply to international protection [LFIP, Article 65(4)]. Therefore, at this stage they may apply for asylum. If they lodge an international protection application to law enforcement units, the application should immediately be reported to the governorates [LFIP, Article 65(2)]. According to LFIP Article 57 (1), the duration between apprehension of the irregular migrants and a decision to be rendered whether they would be removed or not, should not exceed 48 hours. If the decision is “removal”, then the governorate may issue administrative

introducing strict measures to prevent irregular migration via ‘fake marriages’ arranged by people smugglers; 4) the Road Transportation Law (2005) stipulating penalties against human smuggling; 5) amendment in the Article 79 of the new Turkish Penal Code (Law No: 5237) in 2005 introducing heavy sanctions for migrant smugglers (Özçürümez and Şenses, 2011). Moreover, to satisfy the EU’s demands as well as to develop a national approach for combating irregular migration, in 2002–2012 Turkey took several initiatives to harmonize its policies to protect external borders (Özçürümez and Yetkin, 2014; Memişoğlu, 2014). These included setting up a Task Force for Asylum, Migration, and Protection of External Borders, preparing a strategy paper in 2003, adopting twinning projects, action plans, establishing a Directorate for Integrated Border Management under the MoI in 2008, which later became the Bureau for Border Management in 2012.

⁷⁷¹ ESI, “The Refugee Crisis Through Statistics,” (January 30, 2017), Available at <http://www.esiweb.org/pdf/ESI%20-%20The%20refugee%20crisis%20through%20statistics%20-%2030%20Jan%202017.pdf> [Accessed 27 April 2018]

⁷⁷² DGMM, “Number of Irregular Migrants Apprehended in Turkey Per Year (1998 – 2016),” Irregular Migration Statistics, Available http://www.goc.gov.tr/icerik6/irregular-migration_915_1024_4746_icerik [Accessed 27 April 2018].

detention for those, who bear high risk for disappearing or seen as a threat to public order [LFIP, Article 57 (2)]. The duration of administrative detention cannot exceed six months and it can be extended only a maximum of six additional months [Article 57 (3)]. The person has right to appeal against the detention decision (to the Judge of the Criminal Court of Peace), which should be resulted in five days and this decision will be final [LFIP, Article 57(6)]. The person would have the right to be represented by a lawyer and if does not have the means to cover attorney fees, to enjoy legal aid, pursuant to the Attorneys' Law (No: 1136). According to Article 58 and 59 of LFIP, foreigners subject to administrative detention are held in removal centres. The working principles of removal centres and basic rights of the person are regulated under article 59 of the LFIP. Accordingly, detainees may have access to emergency and primary healthcare services, may be given opportunity to meet with their relatives, the notary public, their representatives and lawyers, and may have access to telephone services. They may also have contact with consular official of their country of citizenship and officials of the UNHCR. Representatives of the relevant NGOs with expertise in the field of migration may visit the removal centres upon permission of the DGMM. Families and unaccompanied minors should be accommodated in separate areas and in order to enable children to have access to education the Ministry of national Education should take the necessary measures. The person also have the right to challenge the removal decision. The concerning person, legal representative or lawyer may appeal against the removal decision to the administrative court within fifteen days as of the date of the notification of the removal decision [LFIP, Article 53(3)]. The appeals should be decided within fifteen days and the decision of the court on the appeal is final (Ibid). Appeal has a suspensive effect; therefore the person should not be removed during the judicial appeal period (Ibid). However there is an exception for the suspensive effect of the appeal for those who are given a removal decision due to being leaders, members or supporters of a terrorist organisation or a benefit oriented criminal organisation; posing a threat to public order or public security or public health and being associated with terrorist organizations which have been defined by international institutions and organization (Ibid). Once the detention period is ended, an individual may be removed to his/her country of origin, a transit country or a third country [LFIP, Article 52(1)]. However before each removal action, an assessment for compatibility with non-refoulement needs to be made [LFIP, Article 4; Implementing Regulation of LFIP, Article 4]. Therefore the removal may take place as long as the destination country is a safe in terms of non-refoulement principle. Persons under detention who are subject to implementation of the removal decision are taken to border gates by law enforcement unit [LFIP, Article 60(1)]. If they are unable cover their travel costs, the full or remaining cost of travel should be covered from the budget of the DGMM [LFIP, Article 60(3)].

In practice however, some deficiencies are reported especially in terms of access to justice under detention. Pursuant to a report concluded by Izmir Bar Association, no legal aid applications are made from removal centres through officials. The report indicates that the reason for this is most likely due to the fact that the detainees are not properly informed about their rights to access a lawyer and legal aid, as the lawyers coincidentally are informed about the legal aid needs. The report also brings about some challenges for the physical access of lawyers to removal centres, given that they are located out of city centres and high security precautions might occasionally be obstructing for lawyers to enter into these centres. Challenges on interpretation services and lack of information on the right to apply international protection are also reported (Izmir Barosu 2017) Similar deficiencies are also indicated in the report of the Union of Turkish Bar Associations (Türkiye Barolar Birliği 2016). Also, according to the data of a project implemented by UNDP for Union of Turkish Bar Associations and for Ministry of Justice General Directorate of Criminal Affairs, on "Support to the Improvement of Legal Aid Practices for Access to Justice for All in Turkey" (SILA Project), only 3% of the total number of legal aid services are provided to foreigners.

Language/translation barriers and lack of awareness are shown as first two reasons respectively, for this low ratio (Union of Bar Association 2016).

Regular migrants

The data on regular migration indicates that the number of foreigners entering Turkey has grown steadily from about 20.2 million in 2005 to 32 million in 2017, representing a 63 percent increase (DGMM, 2018). Some arrivals were tourists, some intended to settle in Turkey temporarily or permanently for work and study purposes, and some were transit travellers intending to move on to stay in a third country.

The number of issued residence permits gives an overall idea of the regular migrants that stay in Turkey more than three months. The DGMM reports that 593,151 residence permits were issued in 2017 alone. Of these, 70,364 were issued to nationals of Iraq, 65,348 to nationals of Syria, 49,208 to Azerbaijanis, and 41,025 to Turkmenistan (DGMM, 2018). By March 29, 2018; the DGMM is updated the total number of the issued residence permits as 655,599 (DGMM, 2018).

The Law on Work Permits for Foreigners (No. 4817, dated 15 March 2003) and the LFIP regulate the foreigners' participation in the labour market. The total number of work permits issued by the DGMM was recorded as 56,024 in 2017 (DGMM, 2018). However, there is no accurate data about foreigners working without official working permits, but the estimates are around one million (T24, 2016).

There are no exact official figures of the number of foreigners residing in Turkey, in particular of those settled on a long-term basis. In 2016, the number of foreign-born residents were recorded as 1,777,920, making the 2.2 percent of the total population (TÜİK, 2016).

While different types of residence permit and the conditions that apply to the granting of these different types of permits have been covered in detail under the first section of the report, it should also be noted that LFIP regulates the conditions for refusal, cancelation or non-renewal of residence permit applications lodged in Turkey. Accordingly, under Article 25 of LFIP refers to this aspect:

1. The refusal of an application lodged in Turkey, non-renewal or cancelation of a residence permit and notification of such actions shall be done by the governorates. The decision on the residence permit may be postponed in consideration of elements such as the foreigner's family ties in Turkey, the duration of residence, situation in the country of origin and the best interest of the child during these actions.
2. Refusal, non-renewal or cancelation of the application shall be notified to the foreigner or, to his/her legal representative or lawyer. This notification shall also include information on how foreigners would effectively exercise their right of appeal against the decision as well as other legal rights and obligations applicable in the process.

At this stage regarding 'family reunification', as of 2017, the right to family reunification has been almost entirely suspended in Turkey (AIDA, 2018, p.17). Based on the observations, the most recent AIDA report states that 'PDMM do not allow international and temporary protection beneficiaries to apply for family reunification, unless the sponsor has been accepted for resettlement in another country and the family is to join him or her before departure' (Ibid.).

According to Article 44 of the LFIP, 'without prejudice to acquired rights with respect to social security, and subject to conditions stipulated in applicable legislation governing the

enjoyment of rights, foreigners holding a long-term residence permit shall benefit from the same rights as accorded to Turkish citizens with the exception of the provisions in laws regulating specific areas'. They have no right or obligation for compulsory military service, the right of vote and be elected and entering public service while they are exempted from exemption from customs duties when importing vehicles [Article 44 (1)-a,b,c, ç].

Unaccompanied foreign minors

Turkey is a party to the Convention on the Rights of the Child and domestic child-protection standards are generally in line with international obligations. According to Article 66 of LFIP, from the moment an unaccompanied minor international protection applicant is identified, the best interests of the child principle must be observed and the relevant provisions of Turkey's Child Protection Law must be implemented. The child applicant must be referred to an appropriate accommodation facility under the care of governmental or private organizations (Juvenile Protection Law, Article 10).

The LFIP refers to unaccompanied minors as 'persons with special needs' under Article 3-1-(I), which also includes elderly, persons with disabilities, pregnant women, single parents with an accompanying child and victims of torture, rape and other serious psychological, physical or sexual violence' (AIDA, 2015, p.34).

According to Article 67 of the LFIP, 'persons with special needs' shall be 'given priority with respect to all rights and proceedings' pertaining to the adjudication of international protection applications. This provision requires the DGMM to prioritise applications by persons that fit into this category, yet, as the Provincial DGMM Directorates 'have not begun to issue status decisions in earnest, there does not appear to be any such "prioritization" of cases on Article 67 grounds' (Ibid.).

Article 48 of TPR provides that unaccompanied children shall be treated in accordance with relevant child protection legislation and in consideration of the 'best interest' principle. The 20 October 2015 dated the Ministry of Family and Social Policies (MFSP) Directive on Unaccompanied Minors provides additional guidance about the rights, protection procedures and implementation of services for unaccompanied children. The Directive designates the Provincial DGMM Directorates as the state institution responsible for the identification, registration and documentation of the unaccompanied children. Provincial DGMM Directorates are also 'entrusted the responsibility of providing shelter to unaccompanied children until the completion of the age assessment, health checks and registration/documentation procedures upon which the child is referred to the MFSP' (AIDA, 2015, p.123).

Once the Provincial DGMM Directorate refers the child to the relevant Provincial MFSP Child Protection Directorate, 'temporary protection' beneficiary unaccompanied children aged 0-12 are to be transferred to a child protection institution under the authority MFSP (ibid.). Unaccompanied children between the ages of 13-18, who do not have any special needs may be placed in dedicated "child protection units" providing services within the premises of camps under the authority of the Provincial MFSP Child Protection Directorate (AIDA, 2015, p.123).

Unaccompanied minors cannot be detained during the processing of their application 'under Article 68 of LFIP, since Article 66 of LFIP unambiguously orders that unaccompanied minor applicants shall be referred to an appropriate accommodation facility under the authority of the Ministry for Family and Social Services' (Ibid., 60). Unaccompanied minor international protection applicants are placed in 'state care and accommodated in children's shelters operated by the Ministry of Family and Social Services' (Ibid., 77).

The Child Protection Law reference in Article 66 of the LFIP is significant. Unaccompanied minors in Turkey identified as such are taken under state care as per the

procedures and provisions of the Child Protection Law. Turkish Civil Code makes provisions for the appointment of a legal guardian to all children under state care, regardless of whether they are citizens or non-citizens. According to Turkish Civil Code, all children placed under state care must be assigned a guardian (AIDA, 2015, p.63). Specifically, all children who do not benefit from the custody of parents must be provided guardianship (Ibid.). The assignment of guardians is carried by Peace Courts of Civil Jurisdiction (*Sulh Hukuk Mahkemesi*) and guardianship matters are thereafter overseen by Civil Courts of General Jurisdiction (*Asliye Hukuk Mahkemesi*) (Ibid.). A guardian under Turkish Civil Code should be 'an adult competent to fulfil the requirements of the task', not engaged in an 'immoral life style' or have 'significant conflict of interest or hostility with the child in question'. Relatives are to be given priority to be appointed as guardians (Ibid.). Therefore, as far as the legal requirements, qualified NGO staff, the UNHCR staff or the MFSP staff would qualify to be appointed as guardians for unaccompanied minor asylum-seekers (Ibid.).

Guardians are responsible for protecting the personal and material interests of the minors in their responsibility and to represent their interests in legal proceedings. Although not specifically listed in the provisions, asylum proceedings under the LFIP would therefore clearly fall within the mandate of the guardians. As a rule, a guardian is appointed for two years, and then may be reappointed for additional two terms (Ibid., 63-64).

It should be noted that there is very limited up to date publicly available research on unaccompanied minors in Turkey. However, one of the major deficiencies regarding unaccompanied minors is indicated to be on the implementation of guardianship procedure (AIDA, 2018, p.51; Bianet, 2018; Safe Info, 2014, p.31). . Although the law stipulates immediate appointment of guardians to unaccompanied children, due to lack of public guardianship system, the procedure is hindered until a volunteer, usually a social worker, is appointed as a guardian. However it is reported that in recent years, social workers hardly volunteer to be appointed (AIDA, 2018, p.51; Safe Info, 2014, p.31). Another problematic issue in practice is appears to be in relation to age assessment. In practice, bone tests are used to assess the age and if the test results indicate the age to be above 17 or 18, the applicant is deemed as an adult and not granted the benefit of the doubt (AIDA, 2018, p. 49; KOREV, 2017, p.15; Safe Info, 2014 pp.29-30). In terms of access to legally regulated rights, two major problems are indicated to be as the issuance of temporary ID cards and lack of awareness of the rights (KOREV, 2017, pp.11-13). Lack of a systematic coordination between relevant public institutions is also appears to be a challenge for unaccompanied children's access to legally available treatment KOREV, 2017, p.9). The coordination-related issues usually arise between Ministry of Family and Social Policies and the PDMMs (Ibid.). Lastly, a need of expertised personell especially on post traumatic stress disorder for children is stated to be a major concern (Ibid.).

6- Reforms driven from mass migration

Although, the European Refugee Crisis refers the year of 2015, the Syrian mass migration to Turkey started by 2011. Thus, this part covers the reforms and Turkey's policy responses as covering legal and institutional reforms starting from 2011 regarding Turkey's legal and institutional framework in the field of immigration and asylum. Thus, to avoid repetitions, some previously mentioned parts will be briefly touched within this part.

At the time the mass migratory movements originating from Syria towards Turkey emerged in 2011, Turkey was in the process of drafting the LFIP which promised a major reform in the asylum system. Since the Law was not in force yet, 1994 Regulation was the sole legally applicable source. Turkey opened its borders to the newcomers and reassured this policy later when the numbers of individuals reaching Turkey from Syria was around 10.000.⁷⁷³ Although temporary protection was not explicitly designated at the time, Turkey *de facto* provided this protection without a comprehensive legal basis.⁷⁷⁴ The scope of this *de facto* protection involved; admission to country, protection from *refoulement* and access to basic needs.⁷⁷⁵ AFAD was in charge to provide temporary accommodation centres (camps) and provide access to basic needs for individuals. To meet this end, a by-law (regulation) was issued in early 2011 for the establishment of management centres for disaster and emergency situations (Regulation on the Management Centres for Disaster and Emergency Situations).⁷⁷⁶ The Regulation identified, *inter alia*, 'large-scaled asylum related population movements' as emergency situations and included these situations within the scope of the responsibility of these centres and therefore constituted the legal basis for AFAD's activities in response to the migratory movements originating from Syria. Hence these movements were indeed deemed and treated as an emergency situation by Turkey in 2011.

In the beginning of the mass migration, the forced migratory movements in relation to the situation in Syria was deemed to come to an end in a short period of time and the asylum-seekers were perceived as 'guests'.⁷⁷⁷ However, numbers increased dramatically and in 2012 reached over 100.000⁷⁷⁸ which was determined as the psychological limit by the government earlier.⁷⁷⁹ The same year a directive that is exclusively designed for Syrian refugees was issued.⁷⁸⁰ The directive neither was published nor was publicly available (Kirişçi, 2014, p.14), yet served for the implementation of the *de facto* protection until 2014.

In 2014, the LFIP's relevant provisions came into force, including the first legislative designation about temporary protection. Temporary protection is regulated under Article 91 of the LFIP, as an emergency response to mass-influx situations. Although the provision

⁷⁷³ Available at <http://www.dw.com/tr/türkiye-suriyeli-sığınmacılara-kapımız-açık/a-15155526> [Accessed 29 April 2018].

⁷⁷⁴ Statement of Osman Hacıbektaşoğlu, former vice director of DGMM, http://ailetoplum.aile.gov.tr/data/5429366a369dc32358ee2a92/calistay_raporu.pdf [Accessed 27 April 2018].

⁷⁷⁵ Ibid.

⁷⁷⁶ Official Gazette dated 19.02.2011, No. 27851.

⁷⁷⁷ See Report of AFAD, Available at https://www.afad.gov.tr/upload/Node/17962/xfiles/suriyeli-misafirlerimiz_1_.pdf [Accessed 27 April 2018], see also İçduygu, A.: Türkiye'de Suriyeli Sığınmacılar: Siyasallaşan bir sürecin analizi, Toplum ve Bilim, Vol. 140, April 2017, p.29.

⁷⁷⁸ Available at <https://www.sabah.com.tr/gundem/2012/10/16/multeci-sayisi-psikolojik-siniri-asti> [Accessed 27 April 2018].

⁷⁷⁹ Available at <https://www.cnnturk.com/2013/dunya/10/26/davutoglu-siginmacilar-konusunda-kirmizi-cizgi-asildi/728654.0/index.html> [Accessed on 27 April 2018].

⁷⁸⁰ Directive Regarding Reception and Accommodation of Citizens and Stateless Residents of Syrian Arab Republic Who Arrived Turkey in a Mass for Asylum, Available at http://www.goc.gov.tr/icerik3/turkiye'de-gecici-koruma_409_558_1097 [Accessed 27 April 2018].

refers to ‘temporary protection’ for the first time in Turkish law, it does not provide a comprehensive context relating to the procedures need to be taken during the implementation of the temporary protection. Instead, Article 91 delegated a wide discretion to the Council of Ministers to issue a by-law which would be the main legal source of action for the ongoing situation. According to Article 91 of the LFIP, the scope of this discretion which was delegated to the Council of Ministers included the regulation of the substantial issues and procedures in relation to reception, stay, rights and obligations, exits, measures to be taken to prevent mass influxes, cooperation and coordination among national and international institutions and organisations. Delegation of this wide discretion and intention to manage the ongoing migratory flow through a secondary administrative regulation other than a legislative act, was indeed served for a purpose to provide effective control of the situation at hand by maintaining flexibility in terms of legal actions to be taken by the administration (Öztürk, 2017, p.203). Considering the fact that the Syrian mass migration started by the time LFIP was being drafted post-2011, such a tendency can be deemed to be specific to the ongoing mass migration from Syria.

Against this backdrop, Turkey’s most significant legal response to the forced migratory movements originating from Syria; the TPR was issued by the Council of Ministers on October 2014. By the time the Regulation was issued, approximately 1.5 million individuals were subject to temporary protection, majority of which were residing out of the 22 camps in 10 different cities managed by AFAD.⁷⁸¹ TPR authorized AFAD as the responsible institution for providing services to temporarily protected people and stipulated that other institutions would function in coordination with AFAD when distributing these services (TPR, Article 26). Furthermore, following the issuance of the TPR, a circular exclusively designating the scope of AFAD’s said responsibility set forth in the TPR was issued.⁷⁸² It should be noted though, in March 2018, AFAD’s responsibilities were delegated to DGMM, leaving DGMM as the sole operator of services related to temporary protection.⁷⁸³

Under TPR, access to certain services for temporary protection beneficiaries are designated such as; health, education, access to labour market, social assistance and interpretation services (TPR, Articles 26-31 respectively). However, access to international protection statuses which bring about more comprehensive rights and secure statuses compared to temporary protection⁷⁸⁴ was hindered by the TPR (Article 16).

In addition to the TPR, Turkey issued several secondary administrative regulations for the objective of enhancing temporarily protected persons’ access to public services. These secondary legal sources mostly focused on health, education and access to labour market. Pursuant to TPR, temporarily protected persons would have access to health services in or out of temporary accommodation centres. A circular dated 12.10.2015⁷⁸⁵ and a directive

⁷⁸¹ Available at https://www.afad.gov.tr/upload/Node/17962/xfiles/suriyeli-misafirlerimiz_1_.pdf [Accessed 28 April 2018].

⁷⁸² Circular dated 18.12.2014, No. 2014/4, Available at https://www.afad.gov.tr/upload/Node/2311/files/Gecici-Koruma_Altindaki_Yabancılara_Iliskin_Hizmetlerin_Yurutulmesi_2014-4_.pdf [Accessed 28 April 2018].

⁷⁸³ See Regulation No. 2018/11208 Amending the TPR, issued by Official Gazette dated 16.02.2018, No. 30362, Available at <http://www.resmigazete.gov.tr/eskiler/2018/03/20180316.htm> (Accessed 28 April 2018).

⁷⁸⁴ For a comparison see; Öztürk, N.Ö.: Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme, Ankara Üniversitesi Hukuk Fakültesi Dergisi (Journal of Ankara University Faculty of Law), 2017, vol. 66, Issue 1, pp. 201-263.

⁷⁸⁵ Available at https://www.keo.org.tr/dosyalar/Ekim2015/12.10.2015_afad_genelge.pdf [Accessed 29 April 2018].

issued the same year⁷⁸⁶, further provided the procedure of these individuals' access to health services, mainly regulating that they would have access to health services provided that these services are being covered by the Social Security Institution. For such services the costs were earlier deducted from AFAD's budget, however due to the delegations of AFAD's responsibilities to DGMM, since March 2018, DGMM's budget has been utilized to cover the expenses.⁷⁸⁷

For access to education, children under temporary protection has the right to equally access to compulsory education with Turkish citizens, given that Turkish Constitution designates right to education equally to everybody (Const. Article 42). However, a specific circular dated 2014 issued by Turkish Ministry of Education, provides the procedures for the access to education for children under temporary protection.⁷⁸⁸ Pursuant to the circular, children may have access to both temporary education centres specifically designated for temporarily protected individuals or to public schools. A foreigner identification card or temporary protection identification document, in principle is needed for registration. For higher education on the other hand, procedures for access is determined by Turkish Higher Education Council (THEC). Temporarily protected individuals may register to Turkish universities after the completion of high school, provided that they meet the academic criteria set forth by the THEC and by the specific university they are applying to.⁷⁸⁹

To regulate the access of people under temporary protection to formal labor market, 'Regulation on Work Permit of Refugees Under Temporary Protection'⁷⁹⁰ was issued on 15 January 2016. The criterias and procedures to obtain work permit has been addressed under the section on *Secondary Law* page 49 above.

In parallel to the above-given reforms at national level, also the European Refugee Crises and also the ongoing EU-Turkey relations created impact on the legal framework. At the beginning of 2015, the numbers of individuals crossing from Turkey to EU through irregular means have increased up to 880.000 and emerged as a matter of concern.⁷⁹¹ The EU and Turkey had earlier in 2013 signed a Readmission Agreement (RA). The RA came into force on 1 October 2014⁷⁹², however pursuant to Article 24(3) of the Agreement, provisions related to the obligations and procedures for readmission of third country nationals and stateless persons were to come into force three years after the date of entry into force; precisely on 1 October 2017. Therefore, RA was not functional for readmissions from the EU to Turkey at the time when the irregular crossings were taking place intensively

⁷⁸⁶ Available at <https://dosyasb.saglik.gov.tr/Eklenti/1376,saglik-bakanligi-gecici-koruma-yonergesi-25032015pdf.pdf?0> [Accessed 29 April 2018].

⁷⁸⁷ See Regulation No. 2018/11208 Amending the TPR, issued by Official Gazette dated 16.02.2018, No. 30362, Available at <http://www.resmigazete.gov.tr/eskiler/2018/03/20180316.htm> [Accessed 28 April 2018].

⁷⁸⁸ Circular dated 23.09.2014, No. 2014/21, Available at <http://www.edirnebarosu.org.tr/wp-content/uploads/2016/07/Yabancılara-Yönelik-Eğitim-Öğretim-Hizmetleri.pdf> [Accessed 29 April 2018].

⁷⁸⁹ Available at http://www.yok.gov.tr/documents/10279/58373/yurtdisindan_ogrenci_kabulune_il_esas.pdf/e3ded5b2-c26e-46ed-9f05-6b74f302f5e2 [Accessed on 29 April 2018].

⁷⁹⁰ Available at <http://www.refworld.org/docid/582c71464.html> [Accessed 29 April 2018].

⁷⁹¹ Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/managing_the_refugee_crisis_-_eu-turkey_join_action_plan_implementation_report_20160210_en.pdf [Accessed 28 April 2018].

⁷⁹² Published in Official Gazette on 28.06.2014, No. 29044 and Official Gazette dated 02.08.2014, No. 29076; European Commission, Statement of Commissioner on the Entry into Force of the RA between Turkey and the EU, http://europa.eu/rapid/press-release_STATEMENT-14-285_en.htm (Accessed on 28 April 2018).

in 2015. But, as it will be given later under this part of the report, the EU-Turkey Statement of 18th March⁷⁹³ accelerated the process and the readmission of TCNs started by the 4th April in 2016.

The legal basis for the readmissions between Greece and Turkey, is a Readmission Protocol (Greece-Turkey Protocol) between these two countries dated 2002. Later on, it was agreed by the Joint Committee of the RA to facilitate the implementation of the Agreement for third country nationals and stateless individuals by pulling the entry into force date from 1 October 2017 to 1 June 2016⁷⁹⁴. The aim was to initiate the RA alongside with Greece-Turkey Protocol for the readmissions. However, due to lack of reconciliations regarding the visa liberalization dialogue between the Union and Turkey which synchronously took place during the drafting and has been taking place during the implementation of the RA, the approval procedure of the decision to expedite the relevant application of the Agreement was halted by Turkish side⁷⁹⁵. Therefore, only the Greece-Turkey Protocol constituted the legal basis for the readmissions at the time. However, the provisions of the RA related to readmission of third country nationals and the stateless persons automatically came into force and is legally enforceable since 1 October 2017 [RA, Art. 24(3)].

Earlier to the Statement, as one of the most recent is the Joint Action Plan (JAP)⁷⁹⁶ adopted by the EU and Turkey on 15th October 2016. The Plan focuses on the strengthening cooperation to prevent irregular migration as highlighting the external border controls along with the cooperation for the Syria refugee crisis. As following the JAP, Turkey begun to construct the above-mentioned security wall as a part of integrated border management system. The wall was introduced as an 'Integrated Border Security System', which is backed up by fibre optic sensors, cameras, observation balloons and unmanned aerial vehicles to make it a total integrated system (Milliyet, 2017).

To meet the mutual objectives of the JAP, the EU and Turkey agreed upon the Statement which are directly related to the area of migration and asylum. In relation with the crisis driven actions, the Statement accelerated the process and the readmission of TCNs according to the below given principles:

All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order (the EU-Turkey Statement, Article 1).

The statement emphasizes both the EU and international law regarding protection in respect of the non-refoulment principle. However, the Statement also mentions Syrians as it follows:

For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A

⁷⁹³ The EU-Turkey Statement, Available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf> [Accessed 10 April 2018]

⁷⁹⁴ For the Council Decision (EU) 2016/551 of 23 March 2016 establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation from 1 June 2016, see <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32016D0551> (Accessed on 28 April 2018).

⁷⁹⁵ See http://www.bbc.com/turkce/haberler/2016/05/160524_erdogan_ab [Accessed 28 April 2018].

⁷⁹⁶ The Joint Action Plan (JAP), Available at http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm [Accessed 10.04.2016].

mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the EU irregularly (The Statement Paragraph 2).

In order to be able to provide temporary protection for Syrians who were returned due to the EU-Turkey Statement, Turkey amended the personal scope of TPR, by extending it to 'Syrian citizens who irregularly reached Aegean islands from Turkey after 20 March 2016 but were subsequently readmitted to Turkey'.⁷⁹⁷ For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU from Turkey directly. According to DGMM Statistics, 13,006 Syrians were resettled to the EU from Turkey due to one-to-one resettlement scheme as of 12.04.2018.⁷⁹⁸

⁷⁹⁷ The Regulation No. 2016/8722 Amending the TPR, was published in Official Gazette dated 07.04.2016, No. 29677, Available at <https://www.lexpera.com.tr/resmi-gazete-disindaki-kaynak/metin/RG801Y2016N29677S20168722> [Accessed 28 April 201].

⁷⁹⁸ Available at http://www.goc.gov.tr/icerik6/gecici-koruma_363_378_4713_icerik [Accessed 28 April 2018].

7. Conclusion

Turkey has been taking steps in terms of improving its asylum management capacity where the impact of both the UN and the EU has been instrumental in transforming Turkish asylum policy. The dominant perspective that has been shaping the policy frame has shifted from that of a 'national security' towards the one putting more emphasis on human rights and international refugee law. This signifies a considerable positive transformation in Turkey's asylum policy in terms of both its preparation process, which has been based on open consultation, and its content, which enshrines for asylum seekers the right to access to asylum and judicial appeal procedures, establishes *non-refoulement* principle, improves detention conditions and access to judicial review. In overall, Turkey has improved the level of its compliance with the international standards by adopting comprehensive legal asylum framework with the LFIP and the TPR. These two legislations guarantee Turkey's compliance with the two main building blocs of the international refugee regime, namely the principle of non-refoulement and provision of basic rights (including health, education, working, and social services) to the asylum seekers. Also, the introduction of the number of status such as subsidiary and conditional refugee status as well as the usage of temporary protection status for millions of Syrians can be evaluated as an improvement as it grants a status to the asylum seekers from the neighboring countries rather than not offering them a protection as being observed in the pre-2011 period. Nevertheless, these new laws are subject to create some legal precarity in relation with their implementation on specific areas as it will be discussed in the subsequent paragraphs.

While Turkey's legal and policy framework in the field of migration has been evolving quite dynamically and there has been some progress in that regard, there are also some areas that require further attention and improvement. There is a need for improvements regarding access to the asylum process, status determination, enhanced facilities for asylum-seekers' protection and, most notably, to lift its geographical limitation on the implementation of the 1951 Geneva Convention. Only limited progress has been made in areas such as the 1951 Convention relating to the status of refugees and the related 1967 Protocol, as Turkey's geographical limitation stance still remains unchanged. The absence of a fully-fledged specific asylum system remains a major concern. The most important consequence of this limitation is creating a legal status, which is 'conditional refugee status'. As it is explained in details as under the 'international protection' part within the report, this status provides only a right to stay in Turkey until resettlement in a third-safe country. However, in practice due to the decreasing quotas of the third-safe countries, the ones who applied to international protection in Turkey and who do not come from Europe, stay in Turkey for long years as remaining in limbo. In addition, according to Article 91(2) of the LFIP, 'temporary protection' can be renewed or cancelled by the decision of the Council of Ministers; while the concerning population cannot apply for international protection. Even if they can, it may bring only 'conditional refugee status' if their application is found grounded. As relying on the exiting figures (see Figure 12) of the nationality of irregular migrants, in the light of the above-mentioned facts, it is hard to ignore the nexus between the forced and irregular migration. In response to the above-mentioned 'temporality' situation, it is a fact that the process of granting citizenship had already begun⁷⁹⁹; however only a limited population among the Syrians who fulfill certain criteria like having lived in Turkey for at least five years, knowledge of the Turkish language at sufficient level, a clean criminal record and 'fitting into

⁷⁹⁹ Interior Ministry General Directorate of Population and Citizenship Affairs Manager Sinan Güner stated that 'the citizenship process of a total of 35,000 Syrians has finished now'. He said a further 15,000 applications were being reviewed, mostly children. According to Interior Ministry figures, over 12,000 other Syrians have been given Turkish citizenship so far. Ministry figures also show Turkey hosts around 3 million Syrian refugees (Dailysabah, 2017).

social harmony and public order', before they can apply at the DGMM for citizenship⁸⁰⁰. In this regards, it should also be stated that there are right-based differences in terms of legal framework between the ones who are under international protection and temporary protection such as the freedom of mobility within the country⁸⁰¹. Although the new system brought about by the enactment of LFIP promises a rights-based approach that is consistent with international law, some concerns arise in terms of practice. For instance, the exception on the suspensive effect of appeal for removal decisions regulated for certain cases [LFIP, Article 53(3)] jeopardises the full implementation of the non-refoulment principle which is progressively regulated under the LFIP without any exceptions. Another point of concern is related to the detention of temporarily protected individuals, as the LFIP does not regulate the reasons and the procedure for the detention of these individuals. Therefore, detention practices on the absence of a removal decision for temporarily protected individuals may likely result in violation of right of personal liberty and freedom designated under article 5 of ECHR and article 19 of the Turkish Constitution, given that there is no legal basis for such detention practises. Furthermore, access to justice in removal centres need to be improved as the practice is reported to be challenging for detainees and for the lawyers.

In terms of unaccompanied children, practice on age assessment, appointment of guardians, expertise on children who experienced trauma and better coordination between concerning institutions is required to be enhanced in order to cope with the "best interest of the child" principle that is the corner stone of both international and national legal standards for the treatment of children.

Another issue that needs to be pointed out is the lack of expertise in the judiciary. Turkey does not have specialized courts on immigration and asylum issues. Considering the fact that the LFIP system is quite new and that the judiciary does not have past experience in dealing with cases especially related to asylum procedure, the legal quality of the decisions given by administrative courts or other relevant courts bear the risk of not meeting the standards of international refugee law. Therefore, consideration of the establishment of specialized courts or conducting intensive trainings on immigration and asylum law appear to be a significant need for the efficient and just implementation of the LFIP regime.

The idea of temporality in governing migration affairs still renders in Turkey's asylum legislation that is reflected on the TPR. The legislation itself generates temporiness and uncertainty due to its design, its coverage of large numbers of refugees currently reside and have potential to arrive to Turkey (from the neighboring countries in the Middle East) in the future. Considering the fact that temporary protection is not the main protection itself but an interim measure provided in emergency situations such as mass-migration movements, it should not be an alternative to international protection. Hence, rights and procedural safeguards attached to temporary protection are lower than the ones attached to international protection. By hindering the access to international protection, temporarily protected individuals face the risk to be subject to an insecure status for an indefinite time, given that TPR the main driver of the temporary protection, is a secondary legal source and enables the administration to use a flexible and wide discretion. Therefore, there is a significant risk of protracted refugee situations where there is no available durable solution other than repatriation. This is also relevant to the fact that the status of temporary protection prevent asylum seekers to approach the UNHCR for resettlement except the very few

⁸⁰⁰ Available at <http://harekact.bordermonitoring.eu/2018/02/02/on-the-issue-of-turkish-citizenship-for-syrians/> [Accessed 28 May 2018].

⁸⁰¹ People who are under the international protection regime of Turkey can reside in the country according to the 'satellite city' policy as it was earlier explained within the report (page 53). However, for the Syrians who under temporary protection, this limitation is only valid for Istanbul and Hatay, where due to the high numbers the new registrations have not been taken since the beginning of 2018. In addition, international protection applications have been taken only from Ankara, which creates mobility difficulties for the concerning population.

emergency and vulnerable cases. The UNHCR is often sidelined by the Turkish central state in implementing temporary protection. Moreover, the TPR gives political authority the power of discretion about the repatriation. The political actors may easily present the repatriation as an option with the legitimization of the temporariness of refugees from the very beginning. The solution is to gradually improve the rights of these individuals or to gradually let them have access to international protection statuses.

Briefly, ensuring equal and fair access to asylum procedures and facilitating the full access of asylum-seekers to legal aid remain priorities to be achieved. Therefore, to develop a fully-fledged national asylum management system, including a national status determination process for asylum-seekers coming from outside Europe, to develop secondary law for complementing the LFIP and most importantly to develop practices by ensuring a better protection framework for asylum-seekers in Turkey appear as the most important areas.

Also, the size of the Syrian population in Turkey reached over 3.5 million make it necessary to delve into mechanisms of ‘integration’ of Syrians instead of approaching the issue from the lense of temporality. Integration appears as an important agenda for Turkey before the existing shortcomings and challenges about refugees, asylum seekers and those under temporary protection turning into a ‘minority issue’.

Appendices

Annex I: Overview of the legal framework on migration, asylum and reception conditions

Legislation title (original and English) and number	Date	Type of law (i.e. legislative act, regulations, etc...)	Object	Link/PDF
Passport Law <i>Pasaport Kanunu</i> Law No. 5682	July 15, 1950 (A number of provisions were repealed in 2013. A clause of article 18 was amended on August 1, 2010.)	Legislative act	Regulating passports, documents and entry visa obligations; to determine persons who are forbidden to enter Turkey; regulations about exceptional measurements in war and exceptional circumstances, for foreign persons" sealed passports, and stateless persons; penal sentences for illegal entries and departures.	http://www.mevzuat.gov.tr/MevzuatMetin/1.3.5682.pdf . [Turkish] http://www.legislationline.org/documents/id/8984 . [English]
Foreign Direct Investment Law <i>Doğrudan Yabancı Yatırımlar Kanunu</i> Law No. 4875	June 5, 2003	Legislative Act	Regulating foreign direct investments and the rights of foreign investors	http://www.goc.gov.tr/files/files/6(1).pdf [Turkish] http://www.invest.gov.tr/en-US/infocenter/publications/Documents/FDI%20Law%20in%20Turkey.pdf . [English]
Turkish Criminal Law <i>Türk Ceza Kanunu</i> Law No. 5237	September 26, 2004	Legislative act	Defining the basic principles for criminal responsibility and types of crimes, punishments and security precautions.	http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf . [Turkish] http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf . [English]
Law for the Protection of Children (Juvenile Protection Law) <i>Çocuk Koruma Kanunu</i> Law No. 5395	July 3, 2005	Legislative act	Regulating the procedures and principles with regard to protecting juveniles who are in need of protection or who are pushed to crime and ensuring their rights and well-being." Art. 1(1).	http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5395.pdf . [Turkish] http://www.lawsturkey.com/law/juvenile-protection-law-5395 [English]
Social Insurance and General Security Law	May 31, 2006	Legislative act	Regulating the rights of beneficiaries and provides for general rules for the functioning	http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5510.pdf . [Turkish]

<i>Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu</i> Law No. 5510			of the insurance system and funding conditions. Also contains provisions on employers and workplaces, short-term and long-term insurances.	http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=74711 [English]
Citizenship Law <i>Vatandaşlık Kanunu</i> Law No. 5901	May 29, 2009	Legislative act	Regulating “the principles and procedures regarding the conduct of operations and transactions for acquisition and loss of Turkish citizenship” Art. 1(1).	http://www.goc.gov.tr/files/files/7(1).pdf [Turkish] http://www.refworld.org/pdfid/4a9d204d2.pdf [English]
Settlement Law <i>İskan Kanunu</i> Law. No 5543	September 19, 2006	Legislative act	Regulating the formal settlement of foreigners.	http://www.resmigazete.gov.tr/eskiler/2006/09/20060926-1.htm . [Turkish]
Law on Institutional Framework and Mandate of Disaster and Emergencies Agency (AFAD) <i>Afet ve Acil Durum Yönetimi Başkanlığının Teşkilat ve Görevleri Hakkında Kanun</i> Law No. 5902	May 29, 2009	Legislative act	Forming the Disaster and Emergency Management Authority (AFAD) in order carry out services in cases of disasters and emergencies	http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5902.pdf [Turkish]
Law on Foreigners and International Protection, LFIP ⁸⁰² <i>Yabancılar ve Uluslararası Koruma Kanunu</i> Law No. 6458	April 4, 2013 (most provisions entered in to force on April 11, 2014) Amended by: Emergency Decree No 676, 29 October 2016	Legislative act	Regulating “the principles and procedures with regard to foreigners’ entry into stay in and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners who seek protection from Turkey, and the establishment, duties, mandate and responsibilities of the Directorate General of Migration Management under the Ministry of Interior.” Art. 1(1).	http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf [Turkish] http://www.goc.gov.tr/files/files/YUKK_I%CC%87NGI%CC%87LI%CC%87ZCE_BASKI(1)(1).pdf . [Official English Translation]
International Labour Force Law ⁸⁰³	July 28, 2016	Legislative act	Determining policies, implementation and monitoring of international labour force in	http://www.resmigazete.gov.tr/eskiler/2016/08/20160813-1.htm . [Turkish]

⁸⁰² The LFIP abrogated the 1) *Law Regarding Residence and Travel of Foreign Subjects in Turkey*, Law No. 5683, 1950; 2) *Asylum Regulation* Law No. 1994/6169, 1994.

⁸⁰³ This Law replaced the Law No 4817 on Work Permits for Foreigners, 27 February 2003.

<p><i>Uluslararası İşgücü Kanunu</i></p> <p>Law No. 6735</p>			<p>Turkey; regulates the processes and transactions to be followed on work permits and work permit exemptions granted to foreigners and the rights and obligations in the field of employment of international workforce.</p>	<p>https://turkishlaborlaw.com/international-workforce-law [English]</p>
<p>Provincial Organisation's Establishment, Duties and Working Regulation</p> <p><i>Göç İdaresi Genel Müdürlüğü Taşra Teşkilatı Kuruluş, Görev ve Çalışma Yönetmeliği</i></p> <p>No.28821 (Official Gazette)</p>	<p>November 14, 2013</p>	<p>Regulation</p>	<p>Determining the protocol principles for establishment and operations of the provincial organization of Directorate General of Migration Management</p>	<p>http://www.resmigazete.gov.tr/eskiler/2013/11/20131114-4.htm.</p>
<p>Circular of the Prime Minister on the Turkey-EU Readmission Agreement</p> <p><i>Geri Kabul Anlaşması ile İlgili Başbakanlık Genelgesi</i></p> <p>No. 28974 (Official Gazette)</p>	<p>April 16, 2014</p>	<p>Circular</p>	<p>President Recep Tayyip Erdoğan's circular addressing DGMM on irregular migration and readmission agreements</p>	<p>http://www.resmigazete.gov.tr/eskiler/2014/04/20140416-10.htm [Turkish]</p>
<p>Regulation on the Establishment and Operations of Reception and Accommodation Centres and Removal Centres</p> <p><i>Kabul ve Barınma Merkezleri ile Geri Gönderme Merkezlerinin Kurulması, Yönetimi, İşletilmesi, İşlettirilmesi ve Denetimi Hakkında Yönetmelik</i></p> <p>No. 28980 (Official Gazette)</p>	<p>April 22, 2014</p>	<p>Regulation</p>	<p>Determining protocol principles for establishment, management, operation, service provision, outsourcing the operation of and auditing the reception, accommodation and removal centres affiliated to Directorate General for Migration Management.</p>	<p>http://www.resmigazete.gov.tr/eskiler/2014/04/20140422-5.htm. [Turkish]</p>
<p>Information Note on the Documents and</p>	<p>September 19, 2014</p>	<p>Circular</p>	<p>Regulating documents and identification cards issued to</p>	<p>http://www.tnb.org.tr/GenelgeDetay.aspx?TURU=GENELYAZ</p>

Identification Cards issued on the basis of LFIP <i>YUKK Uyarınca Verilen Belge ve Kimlikler Hakkında , 19/9/2014 tarihli 93 numaralı Genel Yazı</i>			foreigners and those under international protection	I&ULAS=78653&K=> [Turkish]
Circular on Educational Activities Targeting Foreigners <i>Yabancılaraya Yönelik Eğitim Öğretim Hizmetleri – Genelge</i>	September 23, 2014	Circular	Regulating educational activities of foreigners including refugees, asylum seekers and those under temporary protection regime	http://mevzuat.meb.gov.tr/dosyalar/1715.pdf . [Turkish]
Temporary Protection Regulation <i>Geçici Koruma Yönetmeliği</i> No. 2014/6883 Amended by: Regulation 2016/8722, 5 April 2016 Amended by: Regulation 2018/11208, 16 March 2018	October 22, 2014	Regulation	Determining “the procedures and principles pertaining to temporary protection proceedings.” Art. 1(1).	http://www.goc.gov.tr/files/files/20141022-15-1.pdf . [Turkish] http://www.goc.gov.tr/files/files/temp-temp.pdf [English] [Official English Translation]
Circular on the Marriage and the Registration of Children of Refugees and Temporary Protection Beneficiaries <i>Mülteciler ve Geçici Koruma Altına Alınanların Evlenme ve Çocuklarının Tanınması Konulu Yazı</i> (Document No. 4000496010.07.01-E.88237)	October 13, 2015	Circular/Note from the Ministry of Interior	Regulating the marriage and the registration of children of refugees and the beneficiaries of temporary protection.	https://www.nvi.gov.tr/PublishingImages/mevzuat/nufus-mevzuati/talimat-a%C3%A7%C4%B1klay%C4%B1c%C4%B1-yaz%C4%B1lar/M%C3%BCteciler%20ve%20Ge%C3%A7ici%20Koruma%20Alt%C4%B1na%20Al%C4%B1nanlar%C4%B1n%20Evlenme%20ve%20C3%87ocuklar%C4%B1n%C4%B1nmas%C4%B1.pdf [Turkish]
Directive on	October 20,	Directive	Regulating the services	http://cocukhizmetler

Unaccompanied Children <i>Refakatsiz Çocuklar Yönergesi</i>	2015		provided to the unaccompanied children by the Ministry of Family and Social Affairs.	i.aile.gov.tr/data/544e26d9369dc318044059b0/REFAKATS%C4%B0Z%20%C3%87OCUK%20Y%C3%96NERGES%C4%B0.pdf . [Turkish]
Circular on Health Benefits for Temporary Protection Beneficiaries <i>Geçici Koruma Altına Alınanlara Verilecek Sağlık Hizmetlerine Dair Esaslar Yönergesi</i>	November 4, 2015	Circular	Regulating the access to public health services by the beneficiaries of temporary protection; regulating the voluntary health services and civil society health services targeting to beneficiaries of temporary protection.	https://dosyasb.saglik.gov.tr/Eklenti/1376,saglik-bakanligi-gecici-koruma-yonergesi-25032015pdf.pdf?0 . [Turkish]
Regulation on Work Permits of Refugees Under Temporary Protection <i>Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine dair Yönetmelik</i> No. 2016/8375 (Council of Ministers)	Jan. 11, 2016	Regulation	Determining “the procedures and principles related to employment of foreigners under temporary protection pursuant to Article 91 of the Law No. 6458 on Foreigners and International Protection dated 4/4/2013.” Art. 1(1).	http://www.resmigazete.gov.tr/eskiler/2016/01/20160115-23.pdf [Turkish] http://www.refworld.org/docid/582c71464.html . [English]
Regulation on the Implementation of the Law on Foreigners and International Protection <i>Yabancılar ve Uluslararası Koruma Kanunu’nun Uygulanmasına Dair Yönetmelik</i>	March 17, 2016	Regulation LFIP Implementing Regulation	Determining “the principles and procedures in the implementation of Law No. 6458 on Foreigners and International Protection dated 4/4/2013.” Art. 1(1).	http://www.goc.gov.tr/files/_dokuman5.pdf . [Turkish]
Regulation on the Fight against Human Trafficking and Protection of Victims <i>İnsan Ticaretiyle Mücadele ve Mağdurların Korunması Hakkında Yönetmelik</i> No. 29656	March 17, 2016	Regulation	Regulating the fight against human trafficking; the protection of victims, granting residence permits to victims and regulating service provisions	http://www.resmigazete.gov.tr/eskiler/2016/03/20160317-9.htm . [Turkish]

<i>(Official Gazette)</i>				
Regulation on Work Permit of Applicants for International Protections and those Granted International Protection <i>Uluslararası Koruma Başvuru Sahibi ve Uluslararası Koruma Statüsüne Sahip Kişilerin Çalışmasına Dair Yönetmelik</i> No. 29695 (Official Gazette)	April 26, 2016	Regulation	Determining the procedures and principles governing the employment of the applicants or the beneficiaries of international protection status based LFIP.	http://www.resmigazete.gov.tr/eskiler/2016/04/20160426-1.htm [Turkish]
Circular of the DGMM on Principles and Procedures for Foreigners under Temporary Protection <i>Geçici Koruma Altındakilere Uygulanacak Prosedürler ve İlkeler Hakkında Genelge</i>	November 29, 2017	Circular	Information about the content of circular has not yet available as of 27 April 2018.	The original document has not yet published on the DGMM web site.

Annex II: List of authorities involved in the migration governance

Authority	Tier of government (national, regional, local)	Type of organization	Area of competence	Link
Migration Policies Board <i>Göç Politikaları Kurulu</i>	National	Board under the authority of Ministry of Interior ⁸⁰⁴	Deciding Turkey's migration policies and strategies and follow up on their implementation	http://www.goc.gov.tr/icerik/6/migration-policies-board_917_1067_4728_icerik
Directorate General for Migration Management <i>Göç İdaresi Genel Müdürlüğü</i>	National Including directorate general, permanent boards and committees ⁸⁰⁵ , central organization, service units, 81 provincial branches across Turkey overseas organizations	Directorate under the authority of Ministry of Interior	Implementing policies and strategies related to foreigners, international protection, temporary protection and protection of victims of human trafficking.	http://www.goc.gov.tr/main/En_3 [English] For organizational chart see http://www.goc.gov.tr/icerik/6/organisation-chart_911_925_955_icerik
Disaster and Emergency Management Authority <i>AFAD</i>	National Including Central and 81 provincial branches across Turkey	Agency under the under the Prime Ministry	Managing international humanitarian assistance that will be distributed to foreigners. It is main responsibility is on emergency and disaster management.	https://www.afad.gov.tr/en/ [English]
United Nations High Commissioner for Refugees in Turkey	International		Supporting Turkey's national refugee governance in terms of capacity building to provide humanitarian aid to refugees; registration of non-Syrian refugees, conducting RSD ⁸⁰⁶ and	http://www.unhcr.org/tr/ [Turkish]

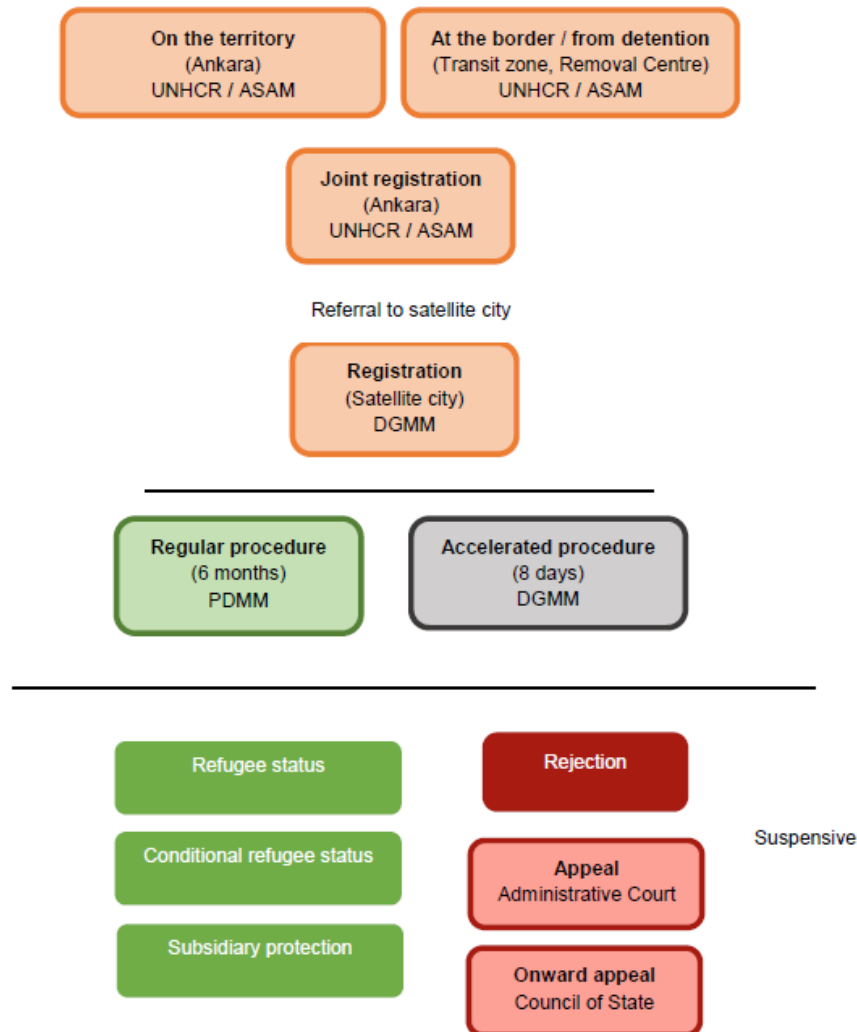
⁸⁰⁴ Migration Policies Board operates under the chairmanship of the Interior Minister and is comprised of the undersecretaries of the Ministry of Family and Social Policies, Ministry for European Affairs, Ministry of Labour and Social Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Culture and Tourism, Ministry of Finance, Ministry of National Education, Ministry of Health, Ministry of Transport, Maritime Affairs and Communications as well as the President of the Presidency of the Turks Abroad and Related Communities and the Director General of Migration Management.

⁸⁰⁵ These include Migration Advisory Board; International Protection Assessment Committee; and Coordination Board on Combating Irregular Migration.

⁸⁰⁶ UNHCR mandate RSD decisions do not have any direct binding effect under LFIP as it recognizes the DGMM as the main decision maker in asylum applications.

			pursue resettlement procedures.	
Sub-Committee for the Rights of Asylum-Seekers <i>Mülteci Hakları Alt Komisyonu</i>	National	Parliamentary Sub-Committee of Human Rights Monitoring Committee at Grand National Assembly of Turkey	Investigation and monitoring of legal and practical problems experienced by asylum seekers, refugees, migrants, irregular migrants, making recommendation for solutions	https://www.tbmm.gov.tr/komisyon/insanhaklari/altkom_2018_2.htm [Turkish]

Annex IV: Flow chart of asylum procedure



Source: AIDA 2018. Country Report: Turkey, Asylum Information Database, Last Updated 30.03.2018. p.20,
Available at: <http://www.asylumineurope.org/reports/country/turkey> [Accessed 27 April 2018].

Annex V: List of European Court of Human Rights and European Commission of Human Rights Decisions⁸⁰⁷

A.K. v. TURKEY (Application no. 14401/88, 12/01/1991)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=664978&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

F. ET AL v. TURKEY (Application no. 13624/88, 11/07/1991)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=665086&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

A.G. AND OTHERS v. TURKEY (Application no. 40229/98, 15 June 1999)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=669016&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

JABARI v. TURKEY (Application no. 40035/98, 11/07/2000, Final 11/10/2000)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696777&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
http://www.yargitay.gov.tr/aihm/upload/40035_98.pdf

G.H.H AND OTHERS v. TURKEY (Application no. 43258/98, 11/07/2000, Final 11/10/2000)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696776&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

MOHAMMED KHADJAWI v. TURKEY (Application no. 52239/99, 6/01/2000)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=669168&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

M.T. AND OTHERS v. TURKEY (Application no. 46765/99, 30/05/2002)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=670768&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

A.E. AND OTHERS v. TURKEY (Application no. 45279/99, 30/05/2002)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=670769&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

AFFAIRE MÜSLIM v. TURKEY (Application no. 53566/99, 26/7/2005)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=755852&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

MAMATKULOV AND ASKAROV v. TURKEY (Applications nos. 46827/99 and 46951/99, 4/02/2005)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=717615&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

D. AND OTHERS v. TURKEY (Application no. 24245/03, 22/06/2006)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=806148&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
http://www.yargitay.gov.tr/aihm/upload/24245_03.pdf

⁸⁰⁷ Available at http://www.goc.gov.tr/icerik6/list-of-echr-decisions_913_1001_1002_icerik [Accessed 27 April 2018].

ROZA TALEGHANI AND OTHERS v. TURKEY (Application no.34202/07, 6/11/2007)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=826892&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

FRAYDUN AHMET KORDIAN v. TURKEY (Application no.6575/06, 4/07/2006)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=807852&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

ANVAR MOHAMMADI v. TURKEY (Application no.3373/06, 30/08/2007)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=823709&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

N.M. v. TURKEY (Application no.42175/05, 18/03/2008)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=833993&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/42175-05.pdf>

ABDOLKHANI AND KARIMNIA v. TURKEY (Application no.30471/08, 22/09/2009)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=854351&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/30471-08.pdf>

ABDOLKHANI AND KARIMNIA v. TURKEY (Application no. 50213/08, 27/07/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871876&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

Z.N.S v. TURKEY (Application no. 21896/08, 19/01/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=861159&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/21896-08.pdf>

TEHRANI AND OTHERS v. TURKEY (Applications nos. 32940/08, 41626/08, 43616/08, 13/04/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866319&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/43616-08.pdf>

KESHMIRI v. TURKEY (Application no. 36370/08, 13/04/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866321&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/36370-08.pdf>

CHARAHILI v. TURKEY (Application no. 46605/07, 13/04/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866317&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/46605-07.pdf>

RANJBAR AND OTHERS v. TURKEY (Application no.37040/07, 13/04/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866315&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
<http://www.yargitay.gov.tr/aihm/upload/37040-07.pdf>

AHMADPOUR v. TURKEY (Application no. 12717/08, 15/06/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=869911&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

M.B. AND OTHERS v. TURKEY (Application no.36009/08, 15/06/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=869909&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
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D.B. v. TURKEY (Application no.33526/08, 13/07/2010)
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871173&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>
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Keshmiri v.TURKEY (No.II) (Application No. 22426/10, 17 Ocak 2012)
[http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{"appno":\["22426/10"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-108627"\]}](http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{)

Athary v.TURKEY (ApplicationNo. 50372/09, 11 Aralık 2012)
[http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{"appno":\["50372/09"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-115170"\]}](http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{)

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[http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{"appno":\["43875/09"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-142399"\]}](http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{)

Zalim Yarashonen v.TURKEY (Application NO: 72710/11, 24 Haziran 2014)
[http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{"appno":\["72710/11"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-145011"\]}](http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{)

A.D and Others v.TURKEY (Application No:22681/09, 22 Temmuz 2014)
[http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{"appno":\["22681/09"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-145708"\]}](http://hudoc.echr.coe.int/sites/tur/Pages/search.aspx#{)

Annex VI: Glossary

This short glossary is prepared as considering the focus of the report. Since the report reflects the national legal and institutional framework for Turkey, thus the items are taken from the Law on Foreigner and International Protection (LFIP).

Accelerated procedure: Procedure in which asylum application will be processed and decided much faster than regular asylum procedure. The personal interview with the applicant should be held within 3 days of registration interview, and the decision on the application must be issued within 5 days from the personal interview (LFIP, Article 79 (2)).

Conditional refugee status: Status granted to “a person who as a result of events occurring outside European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country. (LFIP, Article 62 (1))

DGMM: The state agency under the Ministry of Interior which carries out migration policies and strategies, ensure coordination among relevant agencies and organisations, and carry-out functions and actions related to the entry into, stay in and exit from Turkey for foreigners as well as their removal, international protection, temporary protection and the protection of victims of human trafficking (LFIP, Article 103)

Geographical limitation: Turkey is the signatory of the 1951 Geneva Convention Relating to the Status of Refugees (1951 Convention), and its associated 1967 Protocol. It recognizes the Convention’s refugee status for those who meet the Convention criteria due to events happening in Europe, but does not grant refugee status to people fleeing from conflicts and persecution in non-European countries

Irregular migration: Migration whereby foreigners enter into, stay in or exit from Turkey through illegal channels and work in Turkey without a permit or international protection status (LFIP, Article 3).

International protection: The status granted to ‘refugees, conditional refugees, and those needing subsidiary protection’ (LFIP, Article 3(1)-r)

Persons with special needs: unaccompanied minors, elderly, persons with disabilities, pregnant women, single parents with an accompanying child and victims of torture, rape and other serious psychological, physical or sexual violence. (LFIP Article 3-1-(I))

Refugee status: Status granted to “a person who as a result of events occurring in European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process.” (LFIP, Article 61(1))

Satellite cities: Provinces assigned by the Ministry of Interior for foreigners who seek asylum for political reasons to temporarily reside.

Subsidiary protection status: Status granted to “A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would: a) be sentenced to death or face the execution of the death penalty; b) face torture or inhuman or degrading treatment or punishment; c) face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.” (LFIP Article 63-(1))

Temporary protection: Protection provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and who have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection (LFIP, Article 91).

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