

Law on Foreigners and International Protection: A Real Shift in Turkey's Migration Policy?

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Abstract: Even though Turkey has faced different forms of migration since the 1990s, the arrival of Syrian refugees has made the phenomenon of migration more visible in the eyes of the public. However, asylum policies in Turkey became an important issue at the national and international level before the Syrian crisis erupted. Driven by the EU harmonization process and the Syrian crisis, the Law on Foreigners and International Protection (LFIP) came into force in 2014. This paper questions whether the LFIP can be considered a cornerstone for a real shift in migration policy by providing sustainable solutions for protecting the human rights of refugees in Turkey.

Introduction

SINCE THE 1990S, TURKEY HAS FACED DIFFERENT FORMS of migration and has transformed from a country of emigration to a country of immigration. Furthermore, Turkey is now also considered to be a transit country for migrants wishing to move on to European countries. More recently, however, the influx of Syrian refugees to Turkey has changed the dynamics of the migration issue in Turkey, causing the government to adopt a new law and to create new policies regarding refugees.

For many years, the lack of legislation on asylum in Turkey and reservation on the geographical limitationⁱ to the 1951 Geneva Convention were regularly criticized in Turkey Progress Reports prepared by the European Commissionⁱⁱ. Moreover, the European Court of Human Rights (ECHR) made a number of decisions in relation to the insufficient protection system and human rights violations of refugees in Turkey.ⁱⁱⁱ

In response to these criticisms and with the aim of dealing with the Syrian refugee influx, Turkey prepared the Law on Foreigners and International Protection (LFIP) in consultation with experts and civil society actors. The LFIP, which came into force in 2014, has been of crucial importance in filling in lacunae in the legal structure relating to migration and ending *ad hoc* and arbitrary solutions. From this perspective, the LFIP can be seen as a cornerstone of Turkey's long-term migration policy. Turkey nonetheless preserves the geographical limitation, which means that Turkey does not recognize non-European applicants as refugees. This situation creates ambiguity in terms of refugee protection. In addition, the implementation of the law is just as important as the law itself in preventing arbitrary situations arising and ensuring that policies in harmony with the law are carried out.

Thus, this paper aims at questioning whether a real shift in Turkey's migration policy has taken place in practice after the adoption of the LFIP.

Background and Context

From the mid-1980s onwards, due to the Iranian Revolution and instability in the Middle East, Africa and Southeast Asia, Turkey has been confronted with large numbers of non-European asylum seekers.^{iv} The influx of Iraqi Kurdish refugees in 1988 and 1991 further aggravated this situation. Meanwhile, in the summer of 1989, Turks from Bulgaria and then refugees from Eastern Europe fled to Turkey. While refugees from the communist bloc enjoyed the rights provided by the 1951 Convention and ethnic Turkish refugees received positive treatment in terms of protection and integration, other groups of refugees faced *refoulement* due to the lack of protection mechanisms in Turkey.^v The Regulation on Asylum,^{vi} intended to remove ambiguities and provide security, was prepared in 1994 and amended in 1999 and 2006 (Circular). In addition to this, the 1994 Regulation, the Passport Law (No. 5683), the Law on Sojourn and Movement of Aliens (No. 5687), the Law on Settlement (No. 2050), and the Citizenship Law (No. 5682) also contained regulations regarding the obligations and rights of asylum applicants.

Nevertheless, the 1994 Regulation was not sufficient to provide for the protection of the rights of asylum seekers and refugees. Moreover, this asylum mechanism did not involve long-term local integration for non-Europeans. In practice, the asylum mechanism went in parallel with the UNHCR procedure for Refugee Status Determination.^{vii} During their wait for this procedure to be concluded, non-European asylum seekers could only have a temporary residence permit conditional on their continued residence in Turkey^{viii}. Despite the strong cooperation between the Turkish government and the UNHCR, a number of cases were decided against Turkey in the ECHR because of the violations of refu-

gees' human rights resulting from the inadequacy of the 1994 Regulation and forms of malpractice. The decisions given by the ECHR, criticisms made by the EU in Turkey Progress Reports between 1999 and 2012, and the situation arising as a result of the Syrian conflict became the driving forces behind the preparation of a new law, and more importantly a new migration policy in Turkey.

General Framework and the Practice of the LFIP

As a consequence of pressure from the European Union and the ECHR, the first step in migration policy was made with the establishment of the Asylum and Migration Bureau and Border Management Bureau under the Ministry of the Interior, which have now become the General Directorate of Migration Management. Following this step, the LFIP (Law 6548) dated April 4, 2013 was enacted, and came into force on April 11, 2014.

As previously noted, the LFIP is the first domestic law concerning asylum rights in Turkey. The new law introduces a number of new provisions with the intent of harmonizing Turkish legislation with EU *acquis*. It regulates issues relating to foreigners under the headings Foreigners, International Protection and The Organization.

The transfer of authority over the management of the asylum system from the General Directorate of Security to the Directorate General of Migration Management (DGMM) within the Ministry of the Interior is a significant policy shift which facilitates the adoption of the human rights approach. Nevertheless, hiring former police officers who previously worked in the local Foreigners, Passport, Borders and Asylum Departments is a frequent practice due to their experience in the asylum system. This situation is likely to lead to a continuation of a security rather than rights-based approach.^{ix} Based on testimony given by a lawyer working on LGBT refugees' rights, in Denizli, refugees' interviews are still conducted by former police



officers now working for the DGMM. Another problem is that the number of officers is insufficient to deal with a large population of refugees -- approximately 3 million when we include both Syrians and non-Syrians.^x In particular, this situation delays the registration period necessary for refugees to access basic rights and services.

Taking into consideration the criticism of the ambiguous status of non-European refugees,^{xi} international protection is of essential importance to the new asylum mechanism. For this reason, the third part of the LFIP regulates international protection: four principal terms are used: refugees, conditional refugees, subsidiary refugees and temporary protection. While the term “refugees” is used for European refugees, the term “conditional refugees” was created for non-European refugees due to the preservation of geographical limitation. Moreover, according to Article 62, “*Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country.*” Hence, it can be understood that non-European refugees are expected to leave Turkey after the completion of the resettlement process.^{xii} From this point of view, local integration is not possible for non-European refugees in Turkey. As a result of ECHR decisions on the principle of *non-refoulement*,^{xiii} “subsidiary protection” is provided for the individuals who cannot be deemed “refugees” or “conditional refugees” but who also cannot be sent back to their country of origin or country of (former) habitual residence, where they face the risk of the death penalty, torture or inhuman or degrading treatment or punishment, or where there is generalized violence because of armed conflict (Art. 63).

For both “conditional refugees” and “subsidiary protection”, the accessibility of the procedure for applying for protection is of vital significance. At this point, the LFIP regulates the application procedure in detail (Art. 65 – Art 72). However, based on the author’s informal interviews with lawyers working

on refugee rights, there is a considerable amount of malpractice originating from the officers lacking the information to make decisions and/or arbitrary decisions from the past. Rejected application forms, the applicant not being allowed to contact a lawyer and an absence of translation services are the most commonly encountered forms of malpractice, especially in transit areas such as airports. On the other hand, due to the ECHR case law on Turkey’s arbitrary decisions and lack of regulations regarding deportation and detention, the LFIP clarifies the procedures for these practices. The most important and effective amendments are contained in articles 54/1(i) and 80/1(e), which provide that persons who are subject to a removal decision can remain in Turkey until their final decisions are issued by the courts. Before the LFIP, there was no suspension of deportations *ex officio*. Therefore, deportation could occur before the courts had made their final decision. As a result of this malpractice, in order to prevent deportation in urgent and vital situations lawyers frequently had to apply for interim measures under Rule 39 of the rules of the ECHR.^{xiv}

The final category recognized by the LFIP is “temporary protection” which is granted only to refugees coming from Syria.^{xv} As the Syrian conflict began before the adoption of the LFIP, the Disaster and Emergency Management Presidency (AFAD) was designated as the main agency in charge of managing the refugee crisis in Turkey in 2011. The initial approach to Syrian refugees was based on referring to them as “guests”. After a short period, through a “secret regulation” issued in March 2012 by the Ministry of the Interior, “temporary protection” became the status of refugees coming from Syria. Meanwhile, this secrecy was criticized by civil society.^{xvi} After the LFIP entered into force, it was to be implemented under the auspices of the DGMM. However, the management of the refugee camps remained under the control of AFAD. In contrast, Iraqi asylum seekers are not subject to temporary protection, despite their



mass arrival since the second half of 2014. There are currently two options for Iraqi asylum seekers: applying for international protection or requesting a “residence permit on humanitarian grounds”. This uncertainty about their status precludes them from access to services for urgent needs, such as healthcare.^{xvii} Surprisingly, there is no available data showing statistics concerning the number of Iraqi asylum seekers holding “residence permits on humanitarian grounds”. At this point, it is worth questioning why different protection mechanisms apply in very similar situations.

Based on the author's research, according to these aforementioned categories there are different practices and perceptions on the ground. This situation is not only due to the legal framework, but also by the policies followed by the Turkish government. Due to reasons such as media publicity, their large population and the welcoming approach of the government, the Syrian refugees are in the public eye. On the contrary, non-Syrians have been ignored for a long period of time. Furthermore, based on informal interviews with Iraqi and Afghani refugees, this situation is perceived as an emergence of a *hierarchy* among the different refugee groups.

Complications beyond Legal Mis-implementation, and Recommendations

First and foremost, the preservation of the geographical limitation still creates an ambiguous situation in terms of the status of refugees depending on their country of origin. Without resolving this duality, it is not possible to fully respect refugee rights. Therefore, the geographical limitation should definitely be lifted.

Alongside the problems caused by the mis-implementation of the Law, there are also complications stemming from insufficient migration policies. After all these years, the language barrier still remains the essential challenge, affecting the daily lives of refugees in terms of access to education,

healthcare, legal assistance and the labor-market.^{xviii} Together with increasing capacity of Turkish language courses for refugees, the teaching of foreign languages such as Arabic and Farsi to Turkish staff members should also be considered. Since integration is a process that requires reciprocity, educating local people would facilitate a smoother process for both sides.

Another crucial point is the necessity of including the gender perspective in migration policies in Turkey. Needs concerning shelter, physical security, healthcare, psychological treatment, food security, education, income and legal assistance are indispensable in terms of removing the vulnerabilities of women refugees. Moreover, the difficulty in accessing urban women refugees means that projects and policies aimed at them gain more importance.^{xix}

Based on the author's observations, refugees visit municipalities in the first instance in order to solve problems such as financial problems, failure to obtain access to basic services, etc. Local authorities have a key role in reaching refugees, especially those who are in need. From this point of view, with the intention of making service provision more organized and systematic, municipalities should establish departments related to migration including migration consultants. This can also help facilitate the adoption of a rights-based approach in place of “philanthropic” policies.

Also, in order to plan and execute migration policies, the establishment of a Migration Policies Board under the DGMM as prescribed by LFIP should be completed. The adoption and implementation of a human rights approach in migration policies should be taken into account.

The LFIP is a considerable step towards a shift in Turkey's migration policy. However, the law itself is not enough to make a real change on the ground. It should definitely



be consolidated through the simultaneous adoption of good practices.

End Notes:

i Although Turkey was one of the first signatories of 1951 Refugee Convention which aimed at protecting those who became refugees due to events that occurred in Europe before 1 January 1951. After this moment, the Protocol Relating to the Status of Refugees in 1967 (the 1967 Protocol) broadened the scope of the 1951 Convention by removing its geographical and time limitations. Although Turkey ratified the Protocol, it maintained the geographical limitation pursuant to Article 1b of the Convention. Thus, only European asylum seekers can be legally accepted as refugees by Turkey.

ii Between 1999 and 2013, Turkey Progress Reports drew attention to the insufficiency of Turkey's migration policy. For progress reports on Turkey, Ministry for EU Affairs, <http://www.ab.gov.tr/?p=123&l=2>.

iii See also,
Abdolkhani and Karimnia v. Turkey (no. 30471/08)
Z.N.S v. Turkey (no. 21896/08)
Charahili v. Turkey (no. 46605/07)
Tehrani and Others v. Turkey (no. 32940/08, 41626/08, 43616/08)

iv Kemal Kirişçi, "Turkey's New Draft Law on Asylum: What to Make of It?", in *Turkey, Migration and the EU: Potentials, Challenges and Opportunities*, ed. Seçil Paçacı Elitok and Thomas Straubhaar, Hamburg University Press, pp. 63-83. http://hup.sub.uni-hamburg.de/volltexte/2012/118/chapter/HamburgUP_HWWI5_Migration_Kirisci.pdf

v Kemal Kirişçi, "The Legal Status of ASylum Seekers in Turkey: Problems and Prospects", *International Journal of Refugee Law* Vol. 3, No. 3, Oxford University Press, 1991.

vi Original name of the regulation was The 1994 Regulation on Procedures and Principles related to Mass Influx and Foreigners arriving in Turkey either as Individuals or in Groups wishing to seek Asylum either from Turkey or requesting Residence Permits with the Intension of seeking Asylum from a Third Country, No: 94/6169, The Official Gazette, No. 22127, 30 November, 1994.

vii According to the definition given by UNHCR, "Refugee Status Determination is the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law." UNHCR, RSD, <http://www.unhcr.org/pages/4a16b1d06.html>

viii Cavidan Soykan, "The New Draft Law on Foreigners and International Protection in Turkey", *Oxford Monitor of Forced Migration*, 2012, Volume 2, Number 2, pp. 38-47.

ix Türkiye'de Mültecilik ve Uygulamada Karşılaşılan Sorunlar, <http://www.umhd.org.tr/?s=5>

x European Commission, http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf

xi Refugees coming from Syria are not taken into consideration under "conditional status". Syrian refugees are protected under "temporary protection".

xii Soykan, p. 45.

xiii Ahmadpour v. Turkey (no. 12717/08)
Dbouba v. Turkey (no. 15916/09)
D. and Others v. Turkey (no. 24245/03)

xiv "Interim measures are urgent measures which, according to the Court's well-established practice, apply only where there is an imminent risk of irreparable harm." For the further information, Fact sheet – Interim measures, ECHR, http://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf.



xv Asylum Information Database, Country Report: Turkey, http://www.mhd.org.tr/assets/aida_tr_update.i.pdf

xvi Kemal Kirişçi, Syrian Refugees and Turkey's Challenges: Going Beyond Hospitality, Brookings, 2014, <http://www.brookings.edu/~media/research/files/reports/2014/05/12-turkey-syrian-refugees-kirisci/syrian-refugees-and-turkeys-challenges-may-14-2014.pdf>

xvii Irak'tan Gelen Mülteciler Sağlık Hizmetlerine Erişemiyor, <http://www.multeci.org.tr/haberdetay.aspx?Id=108>

xviii See the reports:

Stephani Dorman, "Educational Needs Assessment of Urban Syrian Refugees in Turkey", YUVA Association, September 2014;

Mülteci-Der, "Türkiye'de Mülteci Olmak: Uydu Kentler İzleme ve Raporlama Projesi Kapanış Toplantısı Notları";

Migration Policy Center, "The Educational and Mental Health Needs of Syrian Refugee Children", <http://www.migrationpolicy.org/research/educational-and-mental-health-needs-syrian-refugee-children>.

xix Amanda Jessen, The Government of Turkey and Syrian Refugees: A Gender Assessment of Humanitarian Assistance Programme, Georgetown Institute for Women, Peace&Security, September 2013, <https://giwps.georgetown.edu/sites/giwps/files/The%20Government%20of%20Turkey%20and%20Syrian%20Refugees%20-%20A%20Gender%20Assessment%20of%20Humanitarian%20Assistance%20Programming.pdf>

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