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AVRUPA ARAŞTIRMALARI ENSTİTÜSÜ
AVRUPA HUKUKU ANA BİLİM DALI**

**THE REGULATION OF THE TEMPORARY PROTECTION
IN THE EU AND TURKEY**

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Abstract

People who have taken refuge in a foreign country *en masse* may receive the status of temporary protected persons, however, it is critical to identify the situations that require temporary protection. In this research, the Geneva Convention is considered as the fundamental treaty regarding asylum law as understanding the essence of the temporary protection status. In light of the historical development of the concept of asylum in international law and international protection law, European Union law and Turkish law, the emergence of the concept of temporary protection has been examined. Through a conceptual explanation of temporary protection status, its purpose, conditions, scope in terms of individuals, procedure and duration of temporary protection status and the rights it confers on individuals are examined in detail. Accepting asylum seekers as temporary protection holders does not mean that the procedure is complete. On the contrary, the host country must not only give status holders the right to live, but also take into account the human dignity of each person. When considering the concept of temporary protection, a human rights-based approach should be adopted in order to solve the problems of access to fundamental rights in crisis situations caused by mass influxes. Therefore, shortcomings of each legislations were compared to each other in the light of fundamental treaties in order to understand human rights-based approach on the concept of temporary protection in the EU and Turkey. Thus, the arguments in favour of and against the legal sources in the EU and Turkish legislation by comparison are revealed.

Key Words: Geneva Convention, Temporary Protection, Mass Influx, The Directive, The Regulation

Özet

Toplu halde yabancı bir ÷lkeye sığınan kişiler geçici koruma statüsü alabilirler fakat geçici koruma gerektiren hallerin tanımını yapmak oldukça önemlidir. Geçici koruma terimi, diğer uluslararası koruma statüsünden oldukça farklıdır. Bu araştırmada Cenevre Sözleşmesi, geçici koruma statüsünün özünü anlamak açısından sığınma hukukuna ilişkin temel antlaşma olarak ele alınmaktadır. Uluslararası hukuk, Avrupa Birliği hukuku ve Türk hukukunda iltica kavramının tarihsel gelişimi ışığında, geçici koruma kavramının ortaya çıkışı incelenmiştir. Geçici koruma statüsünün kavramsal açıklaması ile amacı, koşulları, kişiler açısından kapsamı, geçici koruma statüsünün usulü ve süresi ile kişilere sağladığı haklar ayrıntılı olarak incelenmiştir. Sığınmacıların geçici koruma sahibi olarak kabul edilmesi, prosedürün tamamlandığı anlamına gelmemektedir. Aksine, ev sahibi ÷lke statü sahiplerine sadece yaşama hakkı vermekle kalmamalı, aynı zamanda her bir kişinin insanlık onurunu da dikkate almalıdır. Kitlesele akınların neden olduğu krizlerde temel haklara erişime dair sorunları çözmek için, geçici koruma kavramı ele alınırken insan hakları temelli bir yaklaşım kullanılmalıdır. Bu nedenle, AB ve Türkiye'de geçici koruma kavramına insan hakları temelli bir yaklaşımı anlamak için temel anlaşmalar ışığında her bir mevzuatın olumlu yönleri ve eksiklikleri karşılaştırılmalı olarak ortaya konmuştur.

Anahtar Kelimeler: Cenevre Sözleşmesi, Geçici Koruma, Kitlesele Akın, Yönerge, Yönetmelik

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ABBREVIATIONS

AIDA	Asylum Information Database
CEAS	Common European Asylum System
CESCR	The Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECRE	European Council on Refugees and Exiles
EU	European Union
ECtHR	European Court of Human Rights
ECHR	European Convention on Human
EDHR	European Declaration of Human Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ISIS	Islamic State in Iraq and al-Sham
LFIP	Law on Foreigners and International Protection
OAU	Organization of African Unity
OHCHR	United Nations Human Rights Committee
PTSD	Post-traumatic stress disorder
SUT	Social Security Institution Communiqué on Healthcare Practices
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
TPD	Temporary Protection Directive
TPR	Temporary Protection Regulation

INTRODUCTION

Asylum has been a major problem throughout human history and displaced persons are described as people who are leaving their homeland and seeking refuge due to war, armed conflicts, or widespread human rights violations.¹ There is a pressing need to meet the asylum demands of these people who have taken asylum seeker in another country in a massive way. Whether they are fleeing due to persecution, war, armed conflict, or human rights violations; leaving their lands necessitates appropriate regulations in international and national laws.

In the 20. Century historical process, the first notable groups of mass asylum seekers to reach Turkey were those who left their country after *the Iranian Islamic Revolution* in 1979.² It is claimed that one and half million Iranians used Turkey as a transit country between 1980 and 1991. Between 1988 and 1991, approximately six hundred thousand Iraqis sought refuge in Turkey.³ Turkey has recently been experiencing many movements and mass influxes due to the effects of the *Arab Spring* in Syria and the ongoing civil war. The *Arab Spring* began with the burning of *Mohammed Bouazizi* in Tunisia due to many problems such as unemployment, food inflation, political corruption, freedom of speech, irregularities, and poor living conditions in the Arab world. Although, no one believed that a 40-year-old dictatorship could be overthrown by a peddler who set himself on fire. Thus, the beginning of social movements is the search for sparks. Looking at the *Arap Spring* for today, one can see that there have been some positive developments. To illustrate, dictators who ruled their countries with an iron fist have been overthrown and democratic processes, including elections, have begun.⁴ Although economic prosperity cannot extend to all sections of society, hope for the future of the countries has grown. The youth and those who lived through the revolution have become aware of their power, etc. On the other hand, the Arab Spring has increased vulnerability in many countries, creating fragile States like Libya⁵ and easing the transition in Tunisia, Morocco and relatively

¹ International Organization for Migration, *International Migration Law Glossory on Migration*, (Switzerland, IOM, 2004) p.23.

² Ayfer Uyanık, "Rights to Health Access to Health Services for Persons Under Temporary Protection", *Uludağ Journal of Economy and Society*, Volume 37, Issue 2, (2018)

³ *Ibid.*

⁴ To illustrate, In Tunisia, On 3 March 2011, the interim president announced that elections to a Constituent Assembly would be held on 24 July 2011 and on 9 June 2011, the prime minister of Tunisia announced the election would be postponed until 23 October 2011. With the 2013 Egyptian Military Intervention, the army seized power, and Mohammed Morsi, known for her loyalty to the Muslim Brotherhood, became the 5th president with %51 votes, replacing Hosni Mubarak.

⁵ Since 2011, Libya has faced an administration that has lost its monopoly on legitimate violence within the country. Due to the lack of stability in the country, there were occasional clashes between the legitimate government recognized by the United Nations and the regions under the control of General Haftar. Furthermore

in Egypt. However, the example of Syria still stands. The Syrian civil war has been going on for over a decade now, with the *Assad* government's bloody response to the post-Arab Spring protests, and then with the full support of Russia. This war, of course, emphasizes the phenomenon of migration and is the scene of human tragedies. Turkey, meanwhile, is the country that receives the largest number of refugees in the world by accepting refugees from its neighboring country, which has a mile-long border, since the beginning of the war. The "temporary" protection status, which covers the return of "guests" who say they will return anyway, is the result of the search for a solution to this growing displaced persons phenomenon.

These people who have sought asylum in a foreign country may receive different statuses and become refugees, conditional refugees, secondary protection holders, or temporarily protected persons. The term of temporary protection is quite different than the other international protection statuses. Unlike other international protections, temporary protection status can be granted as a result of a mass assessment of asylum seekers rather than individual assessment. Temporary protection status has been relatively newly adopted in the EU law and in Turkish law. It is basically provided to asylum-seekers by States in emergencies and under conditions where individual protection cannot be provided.

In this study, the Turkish Temporary Protection Regulation and the EU Temporary Protection Directive have been addressed and the temporary protection status will be explained. Taking into consideration the historical development of the concept of asylum in international law and Turkish law, how temporary protection was developed will be examined. Additionally, the explanation of nature of the status, its purpose, conditions for the application and duration of temporary protection status will be elaborated. The rights provided by the temporary protection status by two legislations namely the EU legislation and the Turkish legislation will be compared to each other. The main question will be how far the recently enacted Turkish laws are behind or ahead of its European peers and how the concept of temporary protection should be developed from a fundamental rights perspective in Turkey.

see: Matteo Colombo Arturo Varvelli, "Libya: A Failed State in the Middle of the Mediterranean"<<https://www.iemed.org/wp-content/uploads/2021/01/Libya-A-Failed-State-in-the-Middle-of-the-Mediterranean-1.pdf>> Accessed on 17.01.2022.

This thesis aims to provide a comprehensive explanation of the concept of temporary protection, seeking to reveal how it corresponds with international law, and its effects on the Temporary Protection Directive of the EU and Temporary Protection Regulation of Turkey. The 1951 Geneva Convention and the 1967 Protocol are regarded as the foundations of the legal framework supporting temporary protection status and asylum law. As such, they will be analyzed first to understand the spirit and essence which underlies all later developments.

The concept of the temporary protection will be examined on the EU Temporary Protection Directive and its influence on the Temporary Protection Regulation of Turkey. After detailing the historical and legal basis of, the concept of temporary protection status will then be examined through the perspective of the EU Temporary Protection Directive and its subsequent influence on the Temporary Protection Regulation of Turkey which was implemented in 2012 to handle influx of peoples fleeing the Syrian civil war. With this comprehensive analysis, a full understanding of temporary protection status within Turkish asylum law will be provided. Further, compliance in regard to Temporary Protection Regulation of Turkey to Temporary Protection Directive of the EU will be discussed. The idea is to evaluate the shortcomings of each system and try to overcome those shortcomings by the strengths of the other. In this way, the inconsistency of the temporary protection regulation will be seen and hopefully, this thesis will be a light for the new practices.

1. The Legal Sources Regarding Asylum Seekers and Refugees in International Law

1.1. The Historical Process of Asylum Movements

In the early twentieth century, especially after World War I, serious destruction occurred and a high number of population movements took place. Thus, there were various initiatives to solve the problems related to asylum seekers. Modern Refugee law were drafted in the light of these studies which were in response to the population movements.

The 1951 Convention Relating to Status of Refugees⁶ (*Hereinafter* the Geneva Convention) has been the main legal instrument for protection, but there was a succession of refugee non-governmental organizations created to deal with groups of refugees since the establishment of the League of Nations⁷. These organizations will be treated as the precursors to existing refugee law instruments. The agreements for the protection of refugees that existed prior to the Geneva Convention are also presented.⁸

It is known that only in Europe 5 million people sought asylum in the period between 1919 to 1939 due to violent conflicts and political turmoil later on World War I.⁹ The effects of the war continued historically; *“World War I (1914-1918), its preliminaries (the Balkan Wars, 1912-1913) and its aftermath in the Near East (the wars in the Caucasus, 1918-1921, and the Greco-Turkish War, 1919-1922) caused considerable upheavals in the States involved and especially in the Russian Empire. Large numbers of refugees (estimates vary between 1 and 2 million) left Russian — later Soviet — territories for various countries of Europe or Asia Minor, Central and East Asia between 1918 and 1922 and also thereafter.”*¹⁰

Several attempts were made to find a solution for the refugee crisis in Europe by establishing the League of Nations between 1920 and 1930 .¹¹ As a result of the developments after World War I, the League of Nations addressed the issue of asylum as a phenomenon that can be

⁶ Convention relating to the Status of Refugees, (adopted 28 July 1951, entered into force 22 April 1954) 189 U.N.T.S. 150 (Geneva Convention).

⁷League of Nations, *Covenant of the League of Nations*, 28 April 1919, available at: <https://www.refworld.org/docid/3dd8b9854.html> [accessed 22 March 2020].

⁸ Corinne Lewis, ‘UNHCR And International Refugee Law: From Treaties to Innovation’, (PH.D., London School of Economics and Political Science, 2014), p.33.

⁹ Bülent Çiçekli, *Yabancılar ve Mülteci Hukuku*, (6th Edition, Seçkin Publishing, Ankara, April 2016) p.216

¹⁰ Gilbert Jaeger, On the history of the international protection of refugees, IRCC, Volume 83 No 843, (September 2001), p.727.

¹¹ UNHCR, *An Introduction to International Protection: Protecting persons of concern to UNHCR*, (UNHCR, 1 January 2005), p.5-6.

resolved at a bilateral level between States. During the League of Nations period (1921-1946) various organizations were established to provide some or all of the tasks of the High Commissioner for Refugees: the Nansen International Office for Refugees (1931-1938), the Office of the High Commissioner for Refugees coming from Germany (1933-1938), the Office of the High Commissioner of the League of Nations for Refugees (1939-1946) and the Intergovernmental Committee on Refugees (1938-1947).¹² During this period, refugees were provided with international protection through the use of documents of international law concluded by these organizations within the framework of the League of Nations. The main feature of the efforts made during this period is that they are mostly initiatives started around individual names and initiatives that seek to establish new institutions and organizations.¹³

On 28 October 1933 the first comprehensive international document regarding to the refugee law; Convention Relating to the International Status of Refugees¹⁴, (*Hereinafter* The Convention of 1933) was signed by nine countries including France and the United Kingdom.¹⁵ The Convention of 1933 is a “milestone”¹⁶ in the protection of refugees. It would later be used as a model for the Geneva Convention. According to Article 3 of the Convention of 1933, it was guaranteed that refugees cannot be prevented from crossing the border or be deported from the border.¹⁷ In the era between 1920 to 1935, the refugees were described commonly in juridical terms. This clearly showed that they were treated as refugees because of their membership in a community that was not formally protected at any level by the government of its State of origin.¹⁸ Other fundamental developments that left their mark on this period are as follows; the establishment of the International Nansen Refugee Office (1931-38), the activation

¹²İbrahim Kaya and Esra Yılmaz Eren, *Türkiye’deki Suriyelilerin Hukuki Durumu: Arada Kalanların Hakları ve Yükümlülükleri*, (First Edition, Seta Publishing, İstanbul, 2014), p.12; Jaeger, (n 10), p.729

¹³ Çiçekli, (n 9), p.216

¹⁴ League of Nations, *Convention Relating to the International Status of Refugees*, 28 October 1933, League of Nations, Treaty Series Vol. CLIX No. 3663, available at: <https://www.refworld.org/docid/3dd8cf374.html> [accessed 22 March 2020]

¹⁵ UK Put a reservation to Art.3

¹⁶ Jaeger, (n 10), p.730

¹⁷ Article 3 of the Convention Relating to the International Status of Refugees:

“Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order. It undertakes in any case not to refuse entry to refugees at the frontier of their countries of origin. It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorizations and visas permitting them to proceed to another country.”

¹⁸ James C. Hathaway, “The Evolution of Refugee Status in International Law: 1920–1950,” *International and Comparative Law Quarterly*, (1984), p.350

of the High Commission established in London for refugees from Germany (1933-1938), the establishment of United Nations Relief and Rehabilitation Administration (UNRRA, 1943-47), the meeting of the 1943 Bermuda Concert on refugees, and the II. Establishment of the United Nations International Refugee Organization (IRO, 1947-53) in 1947 as an intergovernmental organization to deal with the refugee problem after World War II.¹⁹

Despite these developments, the international system for finding a solution for Europe refugee crisis was unclear and non-continuous.²⁰ These developments were incapable of handling the coming World War. After these dates, World War II took place and population movements occurred on a large scale; nearly 20 million people were displaced as a result of the war between 1944 and 1951.²¹ Even in the 1950's the international community still was lack of a system interested in the refugee crisis worldwide by network of institutions, legal orders and system. Although the League of Nations has appointed a few High Commissioners and Representatives to deal with specific Refugee groups such as Russians, Armenians and Germans, their efforts have not produced into permanent arrangements. It would not be wrong to say the developments for finding a solution to the refugee crisis in this period were *ad hoc* solutions.²²

In line with these developments, the standards for providing protection in the scope of international law and the institutions answering the needs of refugees began to be established. Hereby, the transition from the concrete crisis-oriented approach of the pre-war to an abstract and institutional approach was achieved. The definition of asylum as a fundamental human right has been realized in Article 14 of the Universal Declaration of Human Rights (*Hereinafter* UDHR) dated 1948.²³ It should be noted at this point that there is no mention of an obligation on States to grant asylum to every applicant; it is seen as a right that can be defined as “*the right to apply for asylum*” in terms of legal technique.²⁴ Therefore, the asylum right has to be regulated with a detailed conceptual infrastructure with separate and special contracts. UDHR, being a UN General Assembly decision, is not regarded as a binding source of international law. In other words, it is not a treaty, but a soft law instrument.

¹⁹ Esra Yılmaz Eren, *Mülteci Hukukunda Geçici Koruma*, (First Edition, Seçkin Publishing House, Ankara 2018) p.24

²⁰ UNHCR (n 11)

²¹ Kaya and Eren, (n 12), p.12

²² Çiçekli, (n 9), p.217.

²³ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3rd Sess., U.N. Doc. A/810, 1948.

²⁴ Kaya and Eren, (n 12), p.11

In light of these developments, the representatives of 26 States signed the Geneva Convention on 28 July 1951 in Geneva. The acceptance of the Geneva Convention was a turning point in terms of protection of refugees. The definition of “refugee” was introduced in a binding international law instrument that is directly related to asylum law. Again, the rights and obligations of asylum were regulated in detail in this Convention. This legal document clearly States who is eligible to be considered as a refugee and, attached to that status, what kind of legal protection those persons will be entitled to and what kind of obligations such people have.²⁵ The Geneva Convention, which can be considered as the fundamental treaty regarding asylum law, also inspired many regional human rights documents.

The historical context also assists to clarify both the nature of the Geneva Convention and some of its *prima facie* limitations. “*Just six years before its conclusion, the Charter of the United Nations had identified the principles of sovereignty, independence, and non-interference within the reserved domain of domestic jurisdiction as fundamental to the success of the Organization (Article 2 of the Charter of the United Nations).*”²⁶ In addition, although it does not directly regulate the right of asylum, the European Convention on Human Rights of 1950 (*Hereinafter* the ECHR)²⁷ is also important in terms of the principle of non-refoulement.²⁸ Article 3 of the ECHR also prohibits the torture of refugees, stating “*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*” The persons subject to this article are entitled to claim asylum based on non-refoulement principle.²⁹ Likewise, protection on the of asylum seekers was provided by the ECHR’s judicial legislation relating to articles such as the right to life³⁰, the right to have a fair trial,³¹ the right to respect for private and family law.³² Therefore

²⁵ UNHCR, ‘The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol’ (Geneva, UNHCR, September 2011) <<https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>> Accessed on 06.01.2022 p.1.

²⁶ Guy S. Goodwin-Gill, “Convention Relating To The Status Of Refugees Protocol Relating To The Status Of Refugees”, United Nations Audio-visual Library of International Law, [2008].

²⁷ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html> [accessed 15 December 2021]

²⁸ *Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they are likely to face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle always applies to all migrants, irrespective of migration status.* See more: OHCHR, Available at:

<<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>> [Accessed 4 September 2021].

²⁹ Kaya and Eren, (n 12), p.14

³⁰ Article 2, ECHR; “*If there is a danger of death penalty when an asylum-seeker is repatriated to his/her country, the right to life will be violated if the person is deported.*”

³¹ Article 6, ECHR; “*It is a violation of the right to a fair trial that an asylum-seeker will not be prosecuted when repatriated to his country, as a result of which his liberty may be restricted or he may be sent back in cases where there may be a violation of the right to life in the case.*”

³² Article 8, ECHR

the ECHR constitutes a supporting legal document to the non-refoulement principle relating to the deportation cases.

These developments have also helped to inspire important regional instruments such as the 1969 OAU Refugee Convention³³ in Africa which defines “refugee”³⁴ without any time or geography limitation.³⁵ Another such document was the 1984 Cartagena Declaration in Latin America. Furthermore, it comprises asylum seekers who does not fall within the definition of refugee in the Geneva Convention according to paragraph three.³⁶ The European Union developed a common asylum system under the name of the “*National Asylum Declaration of the Council of Europe*” in 1977 and regulated that the party countries would be granted the right to asylum seekers for “*humanitarian reasons*”.³⁷

1.2. The Geneva Convention as the Founding Instrument

The international community consistently developed a series of guidelines, laws, and conventions throughout the 20th century to ensure that the refugees and their human rights are adequately protected, thus setting the protection standards. The process which began under the League of Nations in 1921 continued until July 1951 when the Convention relating to the Status of Refugees was adopted in a diplomatic conference in Geneva. This was a turning point regarding the formation of institutional structures under refugee law, to meet the needs of refugees. Therefore, the Geneva Convention is the first international treaty defining the rights of refugees and the responsibilities of the international community towards refugees.³⁸ Moreover, it provides the framework of national asylum regulations for signatory States.³⁹

The Geneva Convention contains two limitations in terms of time and geographic location as it focuses on the regulations for population movement that emerged in Europe during and after World War II. In the original Refugee definition in the Geneva Convention, a limitation was imposed as to “*events that occurred in Europe before 1951*”. As it was stipulated in its

³³ Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 45

³⁴ The Article 1(2) of the 1969 OAU Refugee Convention in Africa describes refugee as “*The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*”

³⁵ Kaya and Eren, (n 12), p.16

³⁶ Çiçekli, (n 9) p.240

³⁷ UNHCR, (n 25) p.1

³⁸ Y. Sidar Şahin, ‘Avrupa Birliği Mülteci Hukukunda Üye Devletlerin İltica Başvurusunu Değerlendirme Yetkisinin Çerçevesi’ (L.L.M. Thesis, İstanbul University, 2013), p.16.

³⁹ Işıl Özkan, *Göç, İltica ve Sığınma Hukuku*, (Seçkin Yayıncılık, Ankara, 2013), p.169.

introduction section, the Geneva Convention was only applicable to the “*events in Europe before January 1, 1951*”. However, considering the population movements of the era, the signatory States were called upon to extend the scope of the Geneva Convention beyond 1951. The restriction oversimplified the Geneva Convention to local level although its aim was finding a solution to the refugee issue on an international level. The failure of many refugees to be covered by the Geneva Convention due to these limitations has resulted in numerous problems and the demand for individuals to benefit from the protection granted to refugees covered by the Geneva Convention without any restrictions has been raised. In this context to rectify these issues, the United Nations General Assembly adopted the "Protocol on the Legal Status of Refugees Supplementing the 1951 Convention" in 1967 (*Hereinafter* 1967 Protocol) in New York. Geographical and time restrictions were removed by the Protocol. Thus, the concept of international protection has been moved to a more universal dimension. According to Article 1 (2) of the 1967 Protocol, the words “*as a result of the events that occurred before January 1, 1951*” and “*as a result of these events*” were removed from the definition in the Geneva Convention and the restriction imposed by the Geneva Convention in terms of time was removed. However, the geographic limitation is still retained by some countries such as Turkey. At first, the 1951 Convention was mostly restricted to the protection of European refugees after World War II. However, the 1967 Protocol extended its scope as the issue of displacement spread worldwide.⁴⁰

It must be emphasized that the Geneva Convention is important in several fundamental aspects. These documents aim to identify who shall be considered as a refugee and what kind of legal protection, other assistance and social rights such a person will be entitled to. The Geneva Convention defines a refugee as a person who is out of his country because the person has a well-founded fear of being persecuted due to their race, religion, nationality, political opinion or membership of a social group. This new form of definition is different from the nationality-based group definition of the 1920s. It contains a definition based on the individual.

It also determines the obligations of host countries towards refugees and specifies the conditions for the people who do not qualify as a refugee. The Convention confirms that persons who meet the definition of a refugee should enjoy basic rights and that assistance to refugees is not merely for international compassion or political gain. The Geneva Convention and its 1967 Protocol

⁴⁰ UNHCR, (n 25) p.1.

are the fundamental global legal instruments specifically including the vital aspects for a refugee's living conditions. The convention imposes certain obligations on the signatory parties such as the principle of non-refoulement to places wherein they would be at risk of persecution.

1.2.1. Determining the status of Refugee under the Geneva Convention

A person is considered as a refugee once that person meets the criteria specified in the refugee definition according to the Geneva Convention. The Geneva Convention is the fundamental document that sustains the basis of international refugee law for determining whether a person is a refugee or not according to its provision regarding to definition of refugee⁴¹ Article 1A(2) of the Geneva Convention defines a refugee as any person who:

“owing to 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 [or her] nationality and is unable, or owing to such fear, is unwilling to avail him [or her]self of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.”

The Article States four aspects to determine the refugee status:

I. *“Refugee is outside of one's home country,”*

- In this context, the stateless persons may also obtain the status of the refugee, where country of origin (citizenship) is to be understood as the “country of former habitual residence”.⁴²
- “Those who possess more than one nationality will only be considered as refugees within the Convention if such other nationality or nationalities are ineffective (that is, do not provide protection)”⁴³
- “The refugee must be ‘outside’ his or her country of origin, and the fact of having fled, of having crossed an international frontier, is an intrinsic part of the quality of refugee, understood in its ordinary sense.”⁴⁴

II. *“Because of a ‘well-founded fear’ of persecution”*

- “However, it is not necessary to have fled by reason of fear of persecution, or even actually to have been persecuted. The fear of persecution looks to the future, and can also emerge during an individual's absence from their home country, for example, as a result of intervening political change.”⁴⁵

⁴¹ UNHCR, ‘Procedural Standards For Refugee Status Determination Under UNHCR's Mandate’ (2020) <<https://www.refworld.org/docid/5e870b254.html>> Accessed on 4/10/2021.

⁴² Goodwin-Gill, (n 26), p.3.

⁴³ *ibid.* p.3.

⁴⁴ *ibid.*

⁴⁵ *ibid.*

- *James Hathaway defines persecution as "Regular and systematic violence environment that targets fundamental human rights protected by the State"*⁴⁶

III. “On the basis of one’s”

1. race/ethnicity,
 - It should be interpreted broadly; Virtual or perceived distinctive ethnic identity includes race, color, ancestry, national or ethnic origin, religion.
 - Includes all belief systems; the person’s inner spirit is important.
 - It must be an identity or manner of life, i.e. the identity that the person introduces himself/herself to the community in which he/she is involved is important.
 - Virtual or perceived manner of life is important.
2. nationality,
 - Not only citizenship but also ethnic or linguistic origin is important for the assessment. The national origin and statelessness of the persons are also evaluated.
3. membership in a social group⁴⁷ or
 - “Membership in a particular social group has been designated by UNHCR as; the people who share a common characteristic other than the risk of persecution or the people who are perceived in a group by the rest of the society.”⁴⁸ The group must have common aspects that differ from the others. This feature can be an innate, unchangeable, and inseparable part of a person's identity; thus it cannot be expected from the person to change or reject it.
4. political opinion
 - “It is holistically assessed that the person who has dissenter opinion engaged attention or expected to engage attention by the authorities, the country he/she lives has no respect to human rights values and destruct the people who has dissenter opinion.”⁴⁹

IV. “and he or she can thus not be reasonably expected to return to this country.”⁵⁰

⁴⁶ James Hathaway, *Law of Refugee Status*, (2nd Edition, Cambridge University Press, 2014) chapter 4, particularly at 106; UNHCR, *Interpreting Article 1*, cit., § 2-5 and 17.

⁴⁷In addition to the four reasons for persecution specified in the UNHCR Status, the 1951 Geneva Convention brought the membership of a particular social group to the definition of a refugee as a fifth reason for persecution. See also; Çiçekli, (n 9), p.43.

⁴⁸ UNHCR Guidelines: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention, HCr/GIP/02/02, 07.05.20.

⁴⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under 1951 Convention and the 1967 Protocol relating to status of Refugees*, (UNHCR, 1998) p.80-83.

⁵⁰ “Poverty, climatic conditions, a country’s security situation or even armed conflicts are thus (by themselves) not a ground for asylum.” Furthermore see: Ralph Janik, ‘A (very) Short History of International Refugee Law’, (ralphjanik.com 4 November 2017) <<https://ralphjanik.com/2017/11/04/a-very-short-history-of-international-refugee-law/>> Accessed 29.08.2021.

On the other hand, although they have these characteristics, there are also special groups of people who cannot be granted refugee status. In paragraph (f) of Article 1 of the Geneva Convention, persons who cannot be granted refugee status are stated in three groups:

(a) Those committing crimes against peace or committing war crimes or committing crimes against humanity as defined in international documents,

- Crimes against peace are defined as the “*planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy to commit any of these acts.*”⁵¹
- War crimes, both in the context of international and non-international armed conflicts, include acts such as “*the deliberate killing of protected persons under the four Geneva Conventions torture or other inhuman treatment, including biological experimentation, on these persons deliberately causing great suffering or serious injury to body or health attacking or indiscriminately attacking undefended sites and demilitarized zones taking civilians hostage transferring protected persons in occupied territory into the territory of the occupying power large-scale destruction and appropriation of property not justified by military necessity deliberately depriving a prisoner of war or civilian of the right to a fair and regular trial forcing a prisoner of war to serve in the armed forces of a hostile power looting using prohibited weapons, such as poisonous gases.*”⁵²
- Crime against humanity is defined as “*murder, extermination, enslavement, deportation or forced transfer, imprisonment or other severe deprivation of liberty in violation of the fundamental rules of international law, torture, rape and other forms of serious sexual violence, persecution, enforced disappearance, apartheid and other inhuman acts of a similar nature, when such acts are committed as part of a widespread or systematic attack directed against a civilian population.*”⁵³

(b) Those who commit an important non-political crime outside the country of refugee application,

- Three main points are evaluated here; Firstly, it is necessary to examine whether the applicant has committed the claimed action. Secondly, it will be necessary to assess whether the offense was of a severe nature in terms of the manner in which it was committed and the individual circumstances. Thirdly, it is necessary to examine whether the crime was of a political nature or not.⁵⁴

(c) Those who act against the principles and objectives of the United Nations.

⁵¹ UNHCR, Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, Protection Policy and Legal Advice Section, Department of International Protection, (Geneva, 4 September 2003), p.10.

⁵² *ibid.* p.11.

⁵³ *ibid.* p.13.

⁵⁴ Çiçekli, (n 9), p.260; Guy S. Goodwin-Gill & Jane McAdam, *Refugee in International Law* (3th Edition, Oxford University Press, 2007), p.178.

- “Given the broad, general terms of the purposes and principles of the United Nations, the scope of this category is rather unclear and should therefore be read narrowly. Indeed, it is rarely applied and, in many cases, Article 1F(a) or 1F(b) are anyway likely to apply. Article 1F(c) is only triggered in extreme circumstances by activity which attacks the very basis of the international community's coexistence. Such activity must have an international dimension. Crimes capable of affecting international peace, security and peaceful relations between States, as well as serious and sustained violations of human rights, would fall under this category. Given that Articles 1 and 2 of the United Nations Charter essentially set out the fundamental principles States must uphold in their mutual relations, it would appear that in principle only persons who have been in positions of power in a State or State-like entity would appear capable of committing such acts. In cases involving a terrorist act, a correct application of Article 1F(c) involves an assessment as to the extent to which the act impinges on the international plane in terms of its gravity, international impact, and implications for international peace and security.”⁵⁵

These people are excluded from the scope of the Convention.

According to the provisions of the Geneva Convention, the minimum standard granted to refugees should be the rights granted to a foreigner in a given country and, in many cases, the same treatment as nationals.⁵⁶ To obtain the status of refugee is a vital issue due to providing “international refugee protection” to a person is a special regime that entitles them to certain rights, assistance and protection, and determines their obligations to the host country.⁵⁷ The most remarkable and significant protection is defined under the principle of non-refoulement, as explicitly specified in Article 33(1) of the Geneva Convention.⁵⁸ The status of the refugee is entitled to a number of rights and benefits such as but not limited to; the right to access to the courts in the host country, support to need assignment and provide it, freedom of movement, access to education to at least a primary level, reunification with close family members in the host country as soon as is practicable, special protection measures for the refugees who are particularly vulnerable and providing protection against threats to the refugees’ physical security.⁵⁹

⁵⁵UNHCR (n 51), para.47; Guidelines on International Protection <<https://migration.ucdavis.edu/rs/more.php?id=131>> Accessed on 21.01.2022

⁵⁶ UNHCR, (n 25) p.2

⁵⁷ UNHCR, *Refugee Status Determination: Identifying who is a refugee* (UNHCR, Refugee Status Determination), (Geneva: Switzerland, 2005), p.4

⁵⁸ “Article 33(1) of the 1951 Refugee Convention deals with the principle of non refoulement. It states that no state shall ‘expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.’”

⁵⁹UNHCR, (n 41), op.cit.13–15

1.2.2. The status of refugees in the mass influx situation due to widespread violence or civil war

The status of the refugee determination is conducted by the UNHCR or States⁶⁰ either as a group (*prima facie*) or individually.⁶¹ In the case of mass influx, recognition of refugee status is a very important issue because individual refugee status determination is impractical when there is a large number of people applying as asylum seekers. In this situation, the status of the refugees is granted to members of a particular social group, on a group or *prima facie* basis.⁶²

It should be noted that the misconception that it does not apply to the mass asylum situation stems from the Geneva Convention. In the view of the fact that it grants a refugee status by an individual assessment.⁶³ There is no basis either in the preparation of the contract or in the text of the contract regarding whether the application should be applied to mass influx asylum. States accepted that it is possible to develop solutions for asylum that comes from a mass influx within the framework of the Geneva Convention. Solving the gap is possible by the suspension of individual asylum procedures in such cases by States, not the Geneva Convention itself.

However, there is no definition of the concept of mass influx in the Geneva Convention.⁶⁴ Although mass influx is a term that concerns all States in terms of asylum and asylum law, no definition has been made in the 1951 Geneva Convention and the 1967 Protocol, which is considered as a fundamental text on international protection rights.⁶⁵ In addition, mass influx was mentioned in Article 3(2) of the 1967 United Nations Declaration on Territorial Asylum⁶⁶, and the term remained undefined as well.⁶⁷ It is not an exercise that aims to replace the rules and standards of the Geneva Convention. Yet the concept was not defined this declaration, either. Furthermore, there is no obligation in the Geneva Convention to confer asylum rights on

⁶⁰ UNHCR, Refugee Status Determination Identifying who is a refugee, 1 September 2005, p17.

⁶¹ Jahid Hossain Bhuiyan, *An Introduction to The International Refugee Law: Refugee Status Determination: Analysis And Application*, (Martinus Nijhoff Publishers, Leiden, 2013), p.47

⁶² UNHCR, (n 41), op.cit., 12.

⁶³ Çiçekli, (n 9), p.304; J-F Durieux & J. McAdam "Non-Refoulement through Time: the case for a derogation Clause to the Refugee Convention in mass Influx Emergencies" *International Journal of Refugee Law*, Volume 16, No 1, (2004), p.4-24

⁶⁴ Alice Edwards, "Temporary Protection, Derogation and the 1951 Refugee Convention", *Melbourne Journal of International Law*, Volume 13, (2012) p.12

⁶⁵ Kaya and Eren, (n 12), p.39

⁶⁶ "UN Declaration on Territorial Asylum, 14 December 1967, UNGA Resolution No. 2312 (XXII); Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons."

⁶⁷ *ibid.*

a permanent basis,⁶⁸ regarding permanent residency.⁶⁹ Therefore, the Geneva Convention is essentially a protection instrument; rather than an instrument of permanent migration.⁷⁰

In the UNHCR's text written in 2001 on mass influx, the concept of mass influx was used as a concept expressing both the stage in which States encountered a significant number of refugees and the process in which they host a large number of refugee populations.⁷¹ In this consultation, UNHCR stated that it would not be correct to consider only numerical data while determining the existence of mass influx phenomenon, and an evaluation should be made according to the sources of the state claiming the existence of mass influx.⁷² In the case of mass influx, if the relevant State applies the procedure of determining individual status in the mass influx situation, then the concerns of the special case of mass influx will not be addressed.⁷³ Accordingly, if the host State can determine individual status by evaluating individual applications with normal procedures in terms of its resources, then a mass asylum situation cannot be considered in this situation.⁷⁴ The UNHCR underlines that a spectacular number of people who are coming from the same State and arriving at the host community in a period of time must be sought to be considered as mass influx.⁷⁵

According to UNHCR, the existence of mass asylum should not be determined solely by looking at the numbers. The existence of mass asylum should be evaluated according to the resources of the country in question. If it is possible for the host State to accept mass influx asylum by normal individual status determination, then the existence of a mass asylum situation will not be considered.⁷⁶

The criteria for the definition of mass influx was quoted on UN Document. Conditions of mass influx are determined by “Conclusion on International Cooperation and Burden and

⁶⁸ Edwards (n 64), p.12.

⁶⁹ *ibid.*

⁷⁰ Matthew J Gibney, “Between Control and Humanitarianism: Temporary Protection in Contemporary Europe”, *Georgetown Immigration Law Journal*, Volume 14, (2000), p.689, 692.

⁷¹ Kaya and Eren, (n 12), p.39.

⁷² UNHCR, *Protection of Refugees in Mass Influx Situations: Overall Protection Framework*, (UN Document EC/GC/01/4, UNHCR, 2001) p. 14.

⁷³ UNHCR, ‘Commentary on the Draft European Union Directive on Temporary Protection in the Event of a Mass Influx’ (2000).

⁷⁴ Kaya and Eren, (n 12), p.40; *Protection of Refugees in Mass Influx Situations: Overall Protection Framework*, UNHCR, (2001), UN Document EC/GC/01/4, para.14.

⁷⁵ UNHCR, *Summary Observations of the UNHCR on the Commission Proposal of 26 September 2020*, (Council Document No. 11629/00, ASILE 44) p.13.

⁷⁶ UNHCR, (n 60), para.14.

Responsibility Sharing in Mass Influx Situations No. 100 (LV) – 2004 by UNHCR Executive Committee of the High Commissioner’s Programme”⁷⁷

“Notes that mass influx is a phenomenon that has not been defined, but that, for the purposes of this Conclusion, mass influx situations may, *inter alia*, have some or all of the following characteristics:

- (i) considerable numbers of people arriving over an international border;
- (ii) a rapid rate of arrival;
- (iii) inadequate absorption or response capacity in host States, particularly during the emergency;
- (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers”

Mass influx is the case when the influx is sudden, rapid and significant, and because of these characteristics individual refugee status determination procedures are not possible to apply and it demonstrates a serious burden on the host country's institutions and resources due to this unique characteristic.⁷⁸

In the occasions of mass asylum, the refugee status is determined under the procedure called as “*Refugee at arrival*” (*prima facie*).⁷⁹ Within the scope of this procedure, the status of refugees is determined according to the evident refugee attributes due to the objective situations related to the forceful displacement. The determination of the status of *prima facie*, creates a presumption that the individual members of the group are entitled to international protection.⁸⁰ Thus, “*Refugee at arrival*” (*prima facie*) procedure ensures a decisive positive outcome for the refugee unless the State in question does not come up with a negative decision after a personal investigation against the refugee.⁸¹

People whom are accepted as “*prima facie*” refugees in a situation of mass asylum are entitled to have equal rights as the people whom have been accepted as “*Personal refugees*”.⁸² The status of “*prima facie*” in the States as the parties to the treaty is making the person to benefit from the full-refugee status and also from the treatment standards agreed on in the treaty.⁸³

⁷⁷ UNHCR Executive Committee of the High Commissioner’s Programme, Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) – 2004, (8 October 2005), <<https://www.unhcr.org/excom/exconc/41751fd82/conclusion-international-cooperation-burden-responsibility-sharing-mass.html>> Accessed on 27.11.2021.

⁷⁸ Kaya and Eren, (n 12), p.40.; Goodwin-Gill & McAdam, (n 26) p.335.

⁷⁹ Çiçekli, (n 9), p.304; Durieux & Mcadam, 2004, p.11.

⁸⁰ *ibid.*; I.J. Jackson, The Refugee Concept in Group Situations, (Martinus Nijhoff, the Hague, 1999), p.4.

⁸¹ *ibid.*

⁸² Çiçekli, (n 9), p.305; Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees Chairperson’s Report on Roundtable 2: “International Cooperation to Protect Masses in Flight”, 13 December 2001, 2; Durieux & Mcadam, 2004, p.10.

⁸³ *ibid.*; Durieux & Mcadam, 2004, p.12.

People who are forced to leave their country due to widespread violence or civil war are not considered as refugees within the scope of the Geneva Convention, but are considered as "*de facto* refugees".⁸⁴ These circumstances are deliberately excluded from the protection scope of the Geneva Convention. Three reasons can be stated for this preference.⁸⁵ In the first place, Actions carried out by States in the event of war or widespread violence have the aim of protecting territorial integrity, therefore they are not regarded as persecution.⁸⁶ Additionally, motivation of these actions do not take place based on race, religion, ethnic origin, or political opinion as the Geneva Convention calls for.⁸⁷ Secondly; persons fleeing widespread violence or civil war have not been individually persecuted as the Geneva Convention sought. These people are the victims of the general situation in their country of origin.⁸⁸ Thirdly, it is argued that the principle of non-refoulement does not cover people fleeing civil war and general violence according to the narrow and strict interpretation of the Geneva Convention.⁸⁹ People, who took refuge in a place due to civil conflicts or wars, are not included among the reasons for seeking asylum nor considered in the concept of mass asylum in the Geneva Convention. But both international law and human rights law does not provide any exceptions to the principle of non-refoulement in an event of a sudden mass asylum, regardless of its impact on the country.⁹⁰ Article 33 of the Geneva Treaty does not have a rule that this principle will not be implemented in situations of mass asylum.⁹¹ In the opinions of various international foundations and in many international documents, the principle of non-refoulement is considered as valid in the situations of mass asylum.⁹² At this point, the concept of temporary protection can be interpreted as the principle of non-refoulement, which uses its power in cases of mass asylum. Moreover, this principle allows the States to offer refugees, albeit temporary, protection to the parties.

⁸⁴ Pirkko Kourla, *Broadening the Edges, Refugee Definition and International Protection Revisited*, (Martinus Nijhoff, 1997) p. 157-158.

⁸⁵ Yılmaz Eren, (no 14), p.71.

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ *ibid.* Also see: Goodwin-Gill & McAdam, (n 26) p. 126-127.

⁸⁹ *ibid.* Also see: Davor Sof, "Temporary Protection in Europe After 1990: The "Right to Remain" of Genuine Convention Refugees", *Journal of Law and Policy*, Volume 6, (2001) p.109-156.

⁹⁰ Çiçekli, (n 9), p.303.

⁹¹ Çiçekli, (n 9), p.305.

⁹² *ibid.*; The OAU Refugee Convention, Cartagena Declaration, Executive Committee Decisions, EU Temporary Protection Directive and UNHCR's views unanimously confirm that the principle of non-refoulement will apply in cases of mass asylum: Furthermore Goodwin-Gill & McAdam, 2007, p.336.

Although States are not legally bound by these broad definitions, they may allow these people who escape from widespread violence to remain in their country until the situation in their country of origin improves. The temporary protection will be in question when the relevant protection is made in cases where determination of individual status is impossible and the case is based on mass influx.⁹³

The “Temporary Protection” is a type of protection that was developed for creating urgent solutions on the large scales of migration.⁹⁴ The aims of “Temporary Protections” are to make the refugees have immediate access to a secure environment and to protect ‘foremost’ the principle of non-refoulement alongside the fundamental human rights.⁹⁵ The concept of the “Temporary Protection” is a way for a pragmatic solution to make the principle of non-refoulement efficient and to provide the people some specific rights for those who reach the borders of a country “*en masse*”, but is not an initiative to replace or change the rules of the Geneva Convention.⁹⁶

⁹³ Yılmaz Eren (n 14), p.73; UNHCR, (n 11), p.111

⁹⁴ Çiçekli, (n 9), p.305; Goodwin-Gill & McAdam, (n 26) p.340-345; John Fitzpatrick “Temporary Protection of Refugees: Elements of a Formalized Regime”, American Journal of International Law, 94, (2000) p. 279.

⁹⁵ Çiçekli, (n 9), p.305.

⁹⁶ *ibid.*; Goodwin-Gill & McAdam, (n 26) p.341

2. The Refugee/Asylum Law and Temporary Protection in the EU and in Turkey

The term of temporary protection is understood in various meanings in the terminology.⁹⁷ Temporary admission to the country (temporary admission), temporary stay in the country (temporary stay), temporary refuge / temporary asylum (asylum or temporary asylum) have been implemented as different forms of temporary protection since the 1950s.⁹⁸ However, with the concept of "international protection" embedded in terminology, the term "temporary protection" began to be preferred instead of "temporary asylum" and "temporary refugee".⁹⁹ It is important to understand the distinction between these definitions and examine the development of the concept of temporary protection in order to examine the research question.

2.1. Competence of the EU in Asylum Area

The Geneva Convention grants international protection to all who qualify as refugees by prohibiting signatory States from imposing penalties on refugees who, coming directly from a territory where their life or freedom was threatened, enter or remain in their territory without permission and from deporting them to their country of origin. The problems in the implementation of the Geneva Convention by States naturally arose over a short period of time because of its international nature and the lack of effective implementation and systems to monitor States' conduct. The outcome was a mass of various understandings of the fundamental definitions and objectives of the Geneva Convention. The issues that put burden cannot be ignored: *"the economic crisis of the 1970s; the social and technical developments of the 20th century, such as progress and greater accessibility to travel opportunities; the rise and fall of the Iron Curtain; the conflicts in the former Yugoslavia, etc."* All these facts, combined with different interpretations of the Geneva Convention and even more diverse forms of implementation of asylum policy, eventually led to the *"almost complete paralysis"*¹⁰⁰ of national asylum systems in the early 1990s. Hence the EU found itself as a main actor in the

⁹⁷ Neva Övünç Öztürk, "Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme", Ankara Üniversitesi Hukuk Fakültesi Dergisi, [2017], p.212-213.

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ Nika Bacic "Asylum Policy in Europe - The Competences of the European Union And Inefficiency of the Dublin System", Croatian Yearbook of European Law and Policy, Volume 8, (2012) p.45; N El-Enany and E Thielemann, 'The Impact of EU Asylum Policy on National Asylum Regimes' p.101; S Wolff, F Goudappel and J de Zwaan, *Freedom, Security and Justice After Lisbon and Stockholm* (TMC Asser Press 2011) .

asylum area. Consequently, the gradual transfer of EU competences blazed a trail for the Europeanization and harmonization of asylum policy.¹⁰¹

The power of the EU in immigration and asylum matters has expanded throughout the most recent thirty years. The subjects related to asylum and immigration were largely outside the competence of the EU before the 1990s.¹⁰² The starting point of the EU establishment and its members was complete independence in determining the terms and scope of their individual asylum policies. Asylum issues, along with immigration, were assigned to Justice and Home Affairs of the new "Third Pillar," where Member States had full jurisdiction and exclusive powers.¹⁰³ The Maastricht Treaty expanded the EU's powers in these areas for the first time.¹⁰⁴ These provisions depended on the principle that, in order to achieve the objectives of the EU, specifically the free movement of persons, asylum and immigration policy is a matter of common interest for the Member States.¹⁰⁵

Under the 1999 Amsterdam Treaty, certain policies related to the free movement of persons including asylum, immigration and external border control were transferred from the Third Pillar to the First Pillar. This was incorporated into a new Title IV "Visas, asylum, immigration and other policies related to free movement of persons".¹⁰⁶ Additionally, under the Amsterdam Treaty a Common European Asylum System (CEAS) was established and developed for standards of protection in all Member States.

The TFEU made further changes to the scope of EU action in 2009, allowing for the development of a common EU policy on asylum and immigration of third-country nationals in general, rather than being limited to minimum standards. It represented a significant broadening of the EU's powers in this area. The Lisbon Treaty which entered into force in December 2009 folded the pillar structure and subsumed Title IV into a new Title V: the "area of freedom, security and justice" of the TFEU. Policies on border controls, asylum and immigration were

¹⁰¹ Nika Bacic "Asylum Policy in Europe - The Competences of the European Union And Inefficiency of the Dublin System" Croatian Yearbook of European Law and Policy, Volume 8, (2012), p.45.

¹⁰² HM Government "Review of the Balance of Competences between the United Kingdom and the European Union Asylum & non-EU Migration" February 2014 < Review of the Balance of Competences | Asylum & non-EU Migration (publishing.service.gov.uk)> Accessed on 19.01.2022.

¹⁰³ "Between 1992 and 2009, the EU legally comprised three pillars. This structure was introduced with the Treaty of Maastricht and was eventually abandoned on 1 December 2009 upon the entry into force of the Treaty of Lisbon, when the EU obtained a consolidated legal personality."

¹⁰⁴ HM Government (n 102) p.18.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

included as the second chapter of this new Title V. This is defined as an area of shared competence between the EU and its Member States.¹⁰⁷ In the areas of non-exclusive EU competences, the EU shall act only if the objectives of the proposed action can not be sufficiently achieved by the Member States but rather achieved by the EU. The reason is that power should remain with the Member State, except when there is a good reason why it should be given to the EU. The principle of subsidiarity is the key answer to the question in which circumstances the EU or the Member States shall act in the areas such as asylum in which the EU does not have exclusive competence as confirmed in Article 5(3) of the TEU. The basic rationale behind the subsidiarity principle is that the use of entitlements should be as low as possible, provided that this level meets the requirements for adequate effectiveness.¹⁰⁸

“The Lisbon Treaty changed the situation by transforming asylum measures from minimum standards to a common system that includes a uniform status and uniform procedures.

This common system should include the following

- A uniform asylum status;
- A uniform subsidiary protection status.
- A common system of temporary protection;
- Common procedures for granting and withdrawing the uniform status of asylum or subsidiary protection;
- criteria and mechanisms for determining which Member State is responsible for considering an application
- standards for reception conditions;
- partnership and cooperation with non-EU countries”¹⁰⁹

As a guiding principle for asylum and immigration policy, solidarity is mentioned in Article 67 of the TFEU and further elaborated in Article 80 of the TFEU, which clearly provides for the principle of solidarity and fair sharing of responsibility among Member States, including all financial burdens. EU measures on asylum should include appropriate measures to ensure compliance with the principle of solidarity when it is necessary.¹¹⁰ The principles of subsidiarity and solidarity in EU asylum and immigration policies point in a similar course. Both principles simultaneously require the adoption of measures at more centralized or coordinated level in order to provide more balanced commitments by the Member States.¹¹¹

¹⁰⁷ HM Government (n 102) p.19

¹⁰⁸ Marco Bolboni, “Subsidiarity Versus Solidarity? EU Asylum and Immigration Policy” < Subsidiarity Versus Solidarity? EU Asylum and Immigration Policy (e-ir.info)> Accessed n 19.01.2022.

¹⁰⁹ Marion Schmid-Drüner, Asylum Policy (European Parliament Fact Sheets on European Union, September 2021) <Asylum Policy | Fact Sheets on the European Union | European Parliament (europa.eu)> Accessed on 19.02.2022

¹¹⁰ *ibid.*; Bolboni (n 108) p.3.

¹¹¹ Bolboni (n 108) p.5.

2.2. The Emergence of Temporary Protection in the EU Refugee Law

It is stated that the temporary protection status was first brought into practice with the Yugoslavia crisis in the 1990s, though there were many examples of this practice in the past.¹¹² In the wake of the dissolution of Yugoslavia following the end of the Cold War, the Balkans witnessed many civil wars. A mass population movement towards the borders of the EU occurred due to these armed conflicts. People fleeing those conflicts were not included in the definition of refugee as established by the Geneva Convention. Therefore, mass asylum movements caused by the former Yugoslavia crisis have revealed the need for temporary protection to be addressed at the European Union level.¹¹³ The mechanism of temporary protection was formed to deal with the mass influx of asylum seekers.

Asylum claims have been an issue to consider for the members of the EU. After the collapse of the Soviet Bloc and the influence of Eurocommunism that ended in 1990, large numbers of new asylum seekers from Eastern Europe came to the EU. During this time, the people who were fleeing from the conflict in Yugoslavia constituted the biggest group of asylum seekers. A major target of the EU States was the Yugoslavian refugee issue that came from outside the EU. The temporary protection was given to those who reached the EU territory from Yugoslavia under various national arrangements.

The *ad hoc* approach of temporary protection has posed a problem. Yet the pragmatic solution provided by the temporary protection was accepted due to providing immediate protection to asylum seekers. States are reinventing the demand for protection each time they experience mass influx issues in the absence of a universal temporary protection regime with standards. They shape the application and scope of the system according to the pressures coming from the country and the international community, not according to an official and predictable legal regime.¹¹⁴ During this progress, a common instrument on temporary protection in the EU was slowly developing, as Member States lacked the consensus to agree on an acceptable basis for sharing the burden of mass influx required for an EU-wide regulation.

¹¹² Çiçekli, (n 9), p.306.

¹¹³ Davor Sopf, "Temporary Protection in Europe After 1990: The "Right to Remain" of Genuine Convention Refugees", Washington University Journal of Law and Policy, Volume 6, (2001), p.109

¹¹⁴ Joan Fitzpatrick, "Temporary Protection of Refugees: Elements of a Formalized Regime" American Journal of International Law, Volume 94, (2000) p.279, 281.

These developments resulted in the 1999 Treaty of Amsterdam which required the EU to have a temporary protection instrument by 2004 at the latest. This took the form of the Temporary Protection Directive 2001/55/EC (*Hereinafter* the Directive) which was adopted in 2001.¹¹⁵ The Directive established a binding temporary asylum system for Member States. The aim was sharing the burden of asylum fairly with an exceptional mechanism set in motion by the EU institutions.¹¹⁶ The Directive has two main objectives: to set minimum standards required to provide temporary protection and to balance the efforts of Member States that accept displaced persons. The scope of implementation of the Directive includes displaced persons who come from third countries in large numbers and cannot return to their country of origin.

“According to 2001/55 EC Directive the temporary protection is an exceptional measure to provide displaced persons from non-EU countries and unable to return to their country of origin, with immediate and temporary protection. It applies in particular when there is a risk that the standard asylum system is struggling to cope with demand stemming from a mass influx that risks having a negative impact on the processing of claims.”¹¹⁷

As can be understood from its definition; the key concept that distinguishes between a normal asylum system foreseen in the Directive and the functioning of the asylum system is the term of mass influx.¹¹⁸

The same article continues by identifying “*displaced persons*”.

“as ‘displaced persons’ means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organizations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

- (i) persons who have fled areas of armed conflict or endemic violence;
- (ii) persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights;”

According to the article 2/d of the Directive “mass influx” is defined and it “*means arrival in the community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the community was spontaneous or aided, for example through an evacuation programme*”. There must be three points to talk about a mass

¹¹⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L212/12. (TPD).

¹¹⁶ Nuna Arenas, The Concept of Mass Influx on Displaced Persons, *European Journal of Migration & Law*, Volume 7, (2005), p.437.

¹¹⁷ Article 2, TPD.

¹¹⁸ Arenas, (n 116), p.438.

asylum movement within the framework of this definition¹¹⁹: 1) Coming from a certain country
2) High number of people arriving 3) Sudden asylum event

The emergence of temporary protection was controversial at the first appearance. On one hand, the States cannot effectively facilitate individual application and evaluation procedures for a large number of asylum seekers, on the other hand, due to non-refoulement principle, they must not close their doors for a large number of people seeking international protection¹²⁰. Temporary protection status emerges as a temporary and flexible protection mechanism in this process where applications cannot be made or evaluated individually in mass influx.¹²¹ As it can be seen from the above-mentioned mass influx definition, it is neither limited nor determined by an absolute number.¹²² According to Article 5 of the Directive, it will be determined by a European Council Decision adopted by a qualified majority on a proposal from the European Commission. In other words, a mechanism with carefully defined conditions must first be triggered in order for temporary protection measures to become valid within the framework of the Directive¹²³. The European Council has not yet decided on the activation of the Directive. This mechanism will begin only after European Union institutions recognize the existence of a mass influx of displacement. In this context, it is emphasized that the Directive does not introduce a new right of temporary asylum that can be directly claimed by individuals.¹²⁴

The reason for inactivation of the Directive arises from complex legal assessments the long, arduous political process required to reach agreement among Member States on the decision to activate it.¹²⁵ The qualified majority voting method reflects the difficulty of reaching the necessary political agreement among the Members of the Council in mass influx situations.¹²⁶ Moreover, the activation procedure is time-consuming¹²⁷ and could be considered impractical during crises. Member States may prefer to invest time and effort in identifying or securing

¹¹⁹Karolina Kerber, "Temporary Protection Directive", European Journal of Migration and Law, No 4, (2002), p.196-197.

¹²⁰ Jari Pirjola, "Temporary Protection as a Future Model", Nordic Journal of International Law, Volume 64, (1995), p.425.

¹²¹ *ibid.*

¹²²Kerber, (n 119), p.196.

¹²³Çiçekli (n 9) p.209 ; Kerber (n 119) 193-214; Arenas (n 116) p.435-450.

¹²⁴ Çiçekli, (n 9), p.209.

¹²⁵ H. Deniz Genç & N. Aslı Şirin Öner, "Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union" International Journal of Political Science & Urban Studies, Volume 17, (March 2019), p.14.

¹²⁶ *ibid.*

¹²⁷ *Ibid.*

concrete measures with an immediate response, rather than engage in lengthy negotiations with uncertain medium-term outcomes.¹²⁸ As a side note, Member States may have decided not to use the Directive for reasons of "national pride" or prestige due to impression of situation cannot be handled, as the national asylum system may make it difficult to effectively manage peaks in the number of applications for international protection.¹²⁹ The uncertainties surrounding the basic concept of mass influx in the Directive and the difficulties in its implementation have led Member States to pursue different and particularly narrow interpretations and it allows the Council of Europe with a wide margin of discretion.¹³⁰ As a result of all these main reasons, the Directive has not activated, yet.

In the context of the Directive, UNHCR seeks to reach a significant number of people from one country of origin within a short period of time, in order to consider a population asylum movement as mass influx.¹³¹ Nevertheless, the emergence of temporary protection was supported by UNHCR as a productive response to the Yugoslavian refugee crises.¹³² On the bright side, the protection of those who are fleeing war and conflict was accepted by the EU States as a humanitarian obligation. However, there were concerns that UNHCR support for temporary protection did not stand out for the displaced people who should be treated as regular Convention refugees.¹³³ The common EU obligations were not set on the form and extent of protection so each State implemented its own arrangements.¹³⁴ Needless to say, there were concerns that some States used temporary protection to avoid or alleviate obligations under the Geneva Convention.¹³⁵

Apprehensible regulations on temporary protection are essentially based on European Union practice rather than international texts. With the temporary protection status, people who fled

¹²⁸ Hanne Beirens, Sheila Maas, Salvatore Petronella, Maurice van der Velden, 'Study on Temporary Protection Directive Final Report', (January 2016, European Commission), p.35.

¹²⁹ *ibid.*

¹³⁰ Deniz Genç & Şirin Öner, (no 125), p.14.

¹³¹ Summary Observations of the UNHCR on the Commission Proposal of 26 September 2000, Council Document No.11629/00, ASILE 44, p.13.

¹³² Steve Peers, EU Justice and Home Affairs Law (3rd ed, Oxford University Press, 2011) p.34.

¹³³ Gibney, (n 70), p.689.

¹³⁴ Council of European Union, 'Responses to Questionnaire on Temporary Protection and Solidarity - National Measures Taken Regarding Kosovars' 11808/99 (21 October 1999); Council Proposal (Com (2000) 303 Final) for a Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2000] OJ C311 E/251 (31 October 2000) para 2.4; Karol Kerber, "The Temporary Protection Directive", European Journal of Migration and Law, Vol.4, 2002, 36-37; European Commission Press Release (5 March 1997) – table summary of different arrangements across the EU states – available at http://europa.eu/rapid/press-release_IP-97-178_en.htm - The last accessed date on 2.05.2020.

¹³⁵ Fitzpatrick, (n 114), p. 279, 280.

their country *en masse* due to armed conflict, widespread violence or systematic or widespread human rights violations should have been protected under temporary protection under exceptional conditions of emergency and for a limited time¹³⁶. According to the classification of *Eren*, temporary protection serves three purposes in the European Union: *prima facie* is saved from administrative and economic resources through community-based asylum assessment.¹³⁷ Politically, when the situation in the country of origin improves, it is easier to return people, as there will be no cancellation and non-renewal of the residence permit.¹³⁸ In addition, temporary protection shapes the public image by indicating that the situation is temporary and not genuine immigration.¹³⁹ Regardless, of the various approaches, temporary protection could be an appropriate and proper response to mass influxes. Thus, Member States moved towards uniting on the key elements.¹⁴⁰ Consequently, The Directive is the conclusion of a decade-long journey to an agreement.¹⁴¹

2.2.1. The Preparation Process of the Temporary Protection Directive

The Common European Asylum System (CEAS) started developing during the 1990s and is a system of harmonized laws applicable across all EU States.¹⁴² The need for development regarding common obligations and standards for humanitarian reasons to address the growing asylum problem.¹⁴³

The common approach of the EU to the concern of the temporary protection was protecting the EU's Internal Market which has a specific nature. The particular risk for the functioning of the internal market regarding multiple asylum claims is that if the claim is denied by a Member State then there is a possibility that it could be accepted by another Member State.¹⁴⁴ Developing a set of common EU wide asylum rules to manage the crisis was the only logical way to reduce and eliminate various claims.

¹³⁶Yılmaz Eren, (no 14), p.74: Goodwin-gill&McAdam, (n 26) p.340.

¹³⁷ *ibid.*

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰Home Office UK (Research, Development and Statistics Directorate), 'An Assessment of the Impact of Asylum Policies in Europe 1990-2000', Home Office Research Study 259, (June 2003).

¹⁴¹ Kerber, (n 119), p.36-37

¹⁴² "Under the EU Treaties, Denmark, Ireland and UK have various forms of 'opt-outs' from obligations under EU asylum law. While there are some differences between them in general they allow these states to choose, subject to consent by other EU states, which EU asylum laws they wish to adopt and which they do not. TPD does not apply to Denmark, while Ireland and UK have both opted in and accept its obligations." – Furthermore see: Peers (n 132), p.312-314.

¹⁴³ Home Office UK (no 140)

¹⁴⁴ Çiçekli, (n 9), p.210

A key innovation was the so-called Dublin transfer rules which is in the Dublin Regulation.¹⁴⁵ The main feature of these rules is to ensure that the asylum claim can be accepted as a single claim in the EU.¹⁴⁶ On this occasion, an increasing number of asylum requests and actions are hindered.¹⁴⁷

The most important aspect related to the Dublin Regulation in terms of implementation is that it gives the responsibility for asylum assessment to the EU Member State where the asylum seeker first enters.¹⁴⁸ The Dublin rules determine which State is responsible for assessing the claim.¹⁴⁹ It can be said that it is the first instrument that the EU has created regarding refugee policies within its boundaries.¹⁵⁰ Yet, considering the influxes in 1990s and 2015, this system places severe burden on frontline states throughout the eastern and southern parts of the EU.¹⁵¹

In 1997, the EU States agreed on the Treaty of Amsterdam with the purpose of providing a solid and coherent legal framework for the common asylum system.¹⁵² The Dublin transfer rules and Schengen rules abolishing border controls were included by the Amsterdam Treaty¹⁵³ amendments.¹⁵⁴ The most important part of the Amsterdam Treaty amendments is that the EU

¹⁴⁵European Commission Migration and Home Affairs ‘Country responsible for asylum application (Dublin Regulation)’ (ec.europa.eu) <Country responsible for asylum application (Dublin Regulation) (europa.eu)> Accessed 4.05.2020; European Union, *Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention")*, 15 June 1990, Official Journal C 254 , 19/08/1997 p.0001 - 0012

¹⁴⁶ *The current transfer rules are in a 2013 EU Regulation, 604/2013: European Parliament and Council Regulation 604/2013 of 29 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L180/1.*

¹⁴⁷ Nicholas Blake, ‘The Dublin Convention and Rights of Asylum Seekers in the European Union’ in Elspeth Guild and Carol Harlow (eds) (2001) *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Hart Publishing p.104.

¹⁴⁸ Desmond Dinan, *Avrupa Birliği Ansiklopedisi* (Volume 1-2, İstanbul, 2005) p.34.

¹⁴⁹ “There have been a number of adjustments to the rules and further proposals for revision, some of which are considered in this paper – see at section below, 2015 Refugee crisis: responses and temporary relocation; but the main principles of responsibility have been long standing, controversial and subject to extensive criticism, eg.”: Home Office UK (no 140), p.29-30; The Dublin Convention and Rights of Asylum Seekers in the European Union’ in Elspeth Guild and Carol Harlow (eds), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law* (Hart Publishing 2001) p.104.; Minos Mouzourakis, ‘We Need to Talk about Dublin: Responsibility under the Dublin System as a Blockage to Asylum Burden-Sharing in the European Union’ *Refugees Study Centre, University of Oxford, Working Paper Series 105* – available at <www.rsc.ox.ac.uk/files/publications/working-paper-series/wp105-we-need-to-talk-about-dublin.pdf> The last accessed 3.05.2020.

¹⁵⁰Enes Bayraklı and Kazım Keskin, *Türkiye Almanya AB Üçgeninde Mülteci Kriz*, (Issue 143, SETA, November 2015) p.11.

¹⁵¹ Nicholas Blake (n 147) p. 104-166.

¹⁵² Karoline Kerber, “Temporary Protection In The European Union: A Chronology” *Geo. Immigration Law Journal*, Volume 14, (1999), p.35-49.

¹⁵³ European Union, *Treaty on European Union (Consolidated Version)*, Treaty of Amsterdam, 2 October 1997, available at: <https://www.refworld.org/docid/3dec906d4.html> [accessed 30 November 2021].

¹⁵⁴ Johannes Van Der Klaauw, ‘Towards a Common Asylum Procedure’ in Elspeth Guild and Carol Harlow (eds), (2001) *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Hart Publishing

institutions committed to develop a pan-EU temporary mechanism.¹⁵⁵ Article 63 of the Amsterdam Treaty contains important and substantial articles on asylum seekers such as; determining the minimum standards required to provide temporary protection to displaced persons who cannot return to their home country from third countries, those who need international protection for other reasons and promoting a balanced effort between member States in accepting refugees, displaced persons and undertaking their consequences.¹⁵⁶ Despite these regulations which envisage a uniform application on the basis of members within the Union, Article 64 of Amsterdam Treaty grants Member States an area of discretion regarding the maintenance of their domestic law and order, as well as the fulfilment of their responsibilities regarding the protection of internal security. A regulation can provide a legal basis for the temporary protection regime although there is no direct definition in the second paragraph of the same article. According to the relevant provision, it was stated that the European Council may take a precautionary decision, upon the proposal of the European Commission, in the event of an emergency such as a sudden mass influx of third country nationals to the borders of one or more Member States. The relevant decision can be taken with qualified majority voting and the duration of the measure will be limited to 6 months.¹⁵⁷

Taking all of these into account, the Treaty of Amsterdam changes came into force on 1 May 1999, the 39th day of the NATO bombing campaign in Serbia.¹⁵⁸ The objective of the Amsterdam Treaty was to harmonize the asylum policies of the Member States as well as the implementation of these policies. They also attempted to resolve the procedural differences between Member States in both the evaluation of applications and the application of asylum.¹⁵⁹ Due to the divisions over burden sharing was not being determined as an obligation a common position on burden sharing was required from the EU States by the changes of Amsterdam Treaty. A rigid change was necessary to agree on something radically different. Therefore, unanimity is required to change the load sharing mechanism.¹⁶⁰ In place of this, The Directive

¹⁵⁵ The Council adopt measures on refugees and displaced persons under Article 63(2) EC Treaty (as amended by the Treaty of Amsterdam) and following the Treaty of Lisbon changes in 2009, Art 63 EC was replaced by art 78 Treaty on the Functioning of the European Union (TFEU) – (n 46).

¹⁵⁶ Cenk Bolayır, *Amsterdam Anlaşması - Bütünleştirilmiş Haliyle Avrupa Birliği Koruyucu Anlaşmaları*, (162, İktisadi Kalkınma Vakfı, İstanbul, 2000) p. 18.

¹⁵⁷ Yılmaz Eren (n 14) p.75.

¹⁵⁸ Joanne Van Selms, *Kosovo's Refugees in the European Union* (Appendix 2:224, Pinter Publishing, 2000) p.7

¹⁵⁹ Zerrin Savaşan, 'AB'de Sığınma Hakkı: Ortak Sığınma Sistemi Olusturma Amacı ve Devam Eden Kısıtlamalar', *İnsan Hakları Yıllığı*, Cilt 27, (2009), p.24.

¹⁶⁰ "Under TPD, following a proposal from the Commission, Article 25 requires that states, 'shall receive [displaced persons] in a spirit of Community solidarity. They shall indicate – in figures or in general terms - their capacity to receive such persons. This information shall be set out in the Council Decision referred to in Article 5.' The obligation to act in a 'spirit of Community solidarity' lacks juridical force beyond a

reflects the existence of the divisions.¹⁶¹ In light of these developments, the first post-Treaty instrument adopted was the 2001 Temporary Protection Directive.

The developments continued with the Lisbon Treaty, it was also stated that the Union should develop a common policy on asylum, subsidiary protection, and temporary protection in accordance with the 1951 Geneva Convention, the 1967 Protocol, and other international treaties. The aim was to provide appropriate status to third country nationals in need of international protection and to respect the principle of non-refoulement.¹⁶² In order to determine this policy; The European Parliament and the European Council shall provide for third-country nationals a uniform refugee status across the Union. It also provides an international protection status for the third-country nationals in need of a uniform secondary status without obtaining European asylum and a common provisional status for displaced persons. The temporary protection system will lay down common procedures for the granting and revocation of a uniform asylum or subsidiary protection status.¹⁶³

2.2.2. The “Temporary Protection” Concept in the EU Temporary Protection Directive

“The EU-wide temporary protection arrangement was provided by Directive which is a mechanism to activate in a situation of ‘mass influx or imminent mass influx of displaced persons from third countries’ into the EU.”¹⁶⁴ “‘Displaced persons’ is defined in the as persons who have fled areas of armed conflict or endemic violence.”¹⁶⁵ “According to the Directive, the temporary protection status can be obtained for a one-year period initially with the possibility of an extension for a further two years.”¹⁶⁶

Temporary protection is given to a group of displaced persons who require protection.¹⁶⁷ Fitzpatrick explains temporary protection as “expanding the protection of forced migrants who

requirement to consider burden sharing. This is a weak obligation. This is clear, as there is no obligation to declare a minimum capacity vis à vis a criteria. The obligation does not require even a statement of reasons. At best it amounts to a ‘pledging’ mechanism but one under which a state can pledge a lack of capacity. This weakness, and a corresponding pessimism in its effectiveness, is clear in the title of TPD as ‘a measure promoting a balance of efforts between Member States in receiving persons and the consequences thereof’ Furthermore see:

Kerber (n 152) p.46.

¹⁶¹ Kerber (n 152) p.46.

¹⁶² Yılmaz Eren, (no 14), p.99

¹⁶³ *ibid.*

¹⁶⁴ Article 2(c), TPD

¹⁶⁴ Article 4, TPD

¹⁶⁵ Article 2(c), TPD

¹⁶⁶ Article 4, TPD

¹⁶⁷ Article 2(a), TPD

could not satisfy the criteria under the Geneva Convention by giving group-based protection in 1990s Europe”.¹⁶⁸ Notwithstanding, it is controversial that the Geneva Convention is limited to individualized protection therefore it does not provide protection to a group.¹⁶⁹ The recognition of groups shields from controversy and provides effective protection in this regard. A link is established between the capacity of the asylum system to deal with mass asylum raids and granting of temporary protection status by The Directive.¹⁷⁰ It is stated that temporary protection is an exceptional method applied in mass raids and it will be activated especially when it is not possible to deal with an asylum influx without harming the effective functioning of the current asylum system.¹⁷¹ It can be said that the temporary protection is a pragmatic solution in the need of providing asylum, avoiding delays and an over legalistic or arguably inaccurate narrow interpretation of the protection obligations. In this context, temporary protection meets the urgent need of protection by granting refugee status on *prima facie* or group basis without assessing individual status determination procedures in mass influx.¹⁷² In addition, the concept of temporary protection includes basic protection factors such as admission, fundamental human rights, and the principle of non-refoulement.¹⁷³ In the case of temporary protection, the alternative of returning to the country of origin is seen as the most appropriate solution.¹⁷⁴ Finally, temporary protection measures are seen as part of the need for comprehensive international protection. This implicitly requires burden sharing and international solidarity.¹⁷⁵

The general approach of the Directive is to avoid a narrow interpretation of the obligations. Therefore, the displaced persons are defined as follows under the Article 2(c):

“third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organizations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

¹⁶⁸Fitzpatrick, (n 114), p.280.

¹⁶⁹Jean-François Durieux and Jane McAdam, “Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies” *International Journal Refugee Law*, 16, (2004); UNHCR Guidelines on Temporary Protection or Stay Arrangements (2014).

¹⁷⁰Yilmaz Eren, (no 14), p.82; Arenas, (n 116), p.435-450.

¹⁷¹Article 2(a), TPD; However, France, Germany, Austria, Italy and UK in the Working Group requested that this statement be deleted and stated that the temporary protection should not be dependent on the failure of the asylum system. As a result, the statement “*in particular if*” has been added to the text. Furthermore see: 10209/00 ASILE 29 and 6128/01 ASILE 15, 3.

¹⁷² UN General Assembly, Executive Committee of the High Commissioner’s Programme, *Note in International Protection*, (45. Session, 7 September 1994), para.46.

¹⁷³*ibid.* para 48.

¹⁷⁴*ibid.* para 50.

¹⁷⁵*ibid.* para 51.

- (i) persons who have fled areas of armed conflict or endemic violence;
- (ii) persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights.”

It is significant from article 2(c) of The Directive that it applies to a group of people who arrive from any region in the world. Thus ‘*third country nationals or stateless persons*’ are explicitly protected by The Directive. In this context, temporary protection will not be applied to everyone who comes to the borders *en masse*. While a large-scale displacement is a determining factor for temporary protection to come into force, it is not sufficient by itself.

The application of protection to a group is clearly defined in Article 2(d) of the Directive which states the requirements of ‘mass influx’ as the “*arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided ...*”. In general, it turns out that the temporary protection scheme established by the Directive is a system for "potential refugees" and "displaced persons".¹⁷⁶ Persons fleeing areas of armed conflict or widespread violence, victims of or at risk of systematic or general crescendo of human rights violations are primarily recognized by the Directive. Defining displaced persons who cause mass asylum is important to define the concept of mass asylum. As it is seen, displaced persons due to natural disasters cannot be defined as “displaced person” in spite of the Opinion of the Economic and Social Committee, OJ 2001, C 155/24.¹⁷⁷ Only the political causes are defined in the Directive. But it is not wrong to say that the Directive covers not only situations that can be called armed conflict, but also widespread violence or systematic and generalized human rights violations.¹⁷⁸ In addition, conditions are sought such as being fragmented by a mass influx (Articles 2 (a) and (d)), being third-country nationals or stateless (the EU Citizens are not included), or being evicted from their country and unable to return. Thus, the temporary protection status was expanded the categories of persons under protection and created a new immigrant status.¹⁷⁹

The concept of "mass asylum" constitutes the difference between the usual asylum system and the asylum system envisaged in the Directive. In order for temporary protection to work under

¹⁷⁶ Arenas, (n 116), p.444-445.

¹⁷⁷ Opinion of the Economic and Social Committee on the ‘Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof’ (2001/C 155/06).

¹⁷⁸ Eeva Nykanen, *Fragmented State Power and Forced Migration – A Study on Non-State Actors in Refugee Law*, (Martinus Nijhoff Publishers, 2012) p.332.

¹⁷⁹ Fitzpatrick, (n 114), p.292.

the Directive, the Community institutions need to acknowledge the existence of mass influx displacement.¹⁸⁰ In this context, temporary protection meets the urgent need for protection in cases of mass asylum by granting refugee status on a prima facie or group basis, without applying individual status determination procedures.¹⁸¹ The European Commission stated the 3 conditions that the mass influx must bear:

- 1) *“The mass influx must come from the same country or geographic region,*
- 2) *The fact that the destination of refugees, asylum seekers or displaced persons coming from the same country or region is the same does not solely constitute a justification for the declaration of temporary protection.*
- 3) *Number of the incoming persons is important, although it does not indicate an exact number, this issue will be appreciated by the European Council in terms of concrete incident.”*¹⁸²

The concept of "mass influx" emerges as a concept to be evaluated within the scope of the discretionary power of the European Union institutions. It is not known *a priori* which population movement is mass asylum, and this issue will be shaped at the discretion of the Union's institutions. It is not possible to determine the concept of mass influx, which constitutes the basic factor in the establishment of the temporary protection system. Therefore, it needs to be evaluated separately in each concrete case. At this point, while the European Council acts with "unlimited authority" in deciding the existence of mass influx, it must of course make a systematic comment in the light of Articles 2 (a), (d) and 5 (4) of the Directive.¹⁸³

As mentioned above, granting a temporary protection status in the EU is based on the presence of a mass influx. However, the existence of such an influx is not sufficient. This influx also needs to be determined as a case warranting asylum by the European Union bodies. Article 5 defines the implementation of the decision on activation and triggering. The decision on activation of the mechanism refers to the requirements in the definition of specific groups of persons to whom the temporary protection will be applied. According to Article 5(1) the procedure commences *“by a decision of the Council taken by qualified majority on a proposal from the Commission, which shall also examine any request by a Member State to submit a*

¹⁸⁰ Article 5(1), TPD.

¹⁸¹ UN General Assembly, Executive Committee of the High Commissioner's Programme, *Note on International Protection A/AC. 96/830*, (Forty-Fifth Session, 7 September 1994) para. 46.

¹⁸² Commission Proposal 2000, Explanatory Memorandum (Comment regarding to article 2(d))

¹⁸³ Arenas, (n 116), p.483.

proposal to the Council.” The Directive does not create a right for persons to apply for temporary protection. On the contrary, only the European Council can establish a regime under which persons can claim the status of temporary protection.

When examining the Article, the procedure for a temporary protection decision was initiated by the European Commission either at the request of a Member State or spontaneously by itself. At this point, even if one or more of the Member States were directly affected by the mass influx, the European Commission would be recognized as the only authoritative body at the initiation of the process. According to Directive 5 (2), a proposal made by the European Commission must at minimum include a concrete definition for the group of people to whom the temporary protection will be applied, the date when the temporary protection will enter into force and the estimation of the movement scale and an estimation of the scale of the movement of displaced persons. The decision of the European Council must be correctly justified as it is subject to judicial and political control within the EU. The decision of the European Council should be capable of answering the questions of “who, when and how many”.¹⁸⁴ Given this information, the European Commission must demonstrate that ruling in favor of temporary protection is necessary.

According to Article 5 (3) of the Directive, the minimum elements that must be included in the temporary protection decision, which will mean the entry into force of temporary protection in all Member States, are listed as follows:

- Definition of the private community of persons to whom temporary protection will apply
- The date on which temporary protection will come into effect
- Information received from member states on their hosting capacities
- Information from the European Commission, UNHCR and other relevant non-governmental organizations.

According to Article 5 (4), the ideas to be considered in the decision of the Council are the current situation and the scale of movement of displaced persons, their potential for emergency assistance and the recommendation of temporary protection in the context of the measures to

¹⁸⁴Çiçekli, (n 9), p.310; Arenas, (n 116), p.438.

be taken in place or their inadequacy, and information from the European Commission, UNHCR and other relevant international insights.

Referring to Article 25 of the Directive, States must determine their capacity to receive such persons “*in figures or in general terms*”. The Council assesses the circumstances and the scale of the movements of displaced persons and then votes on the proposal. Under Article 5, activation is assured by qualified majority vote,¹⁸⁵ the unanimity is not required, and the right to veto is not recognized.

It was emphasized that limited protection should be offered, considering the specific character of the conditions laid down by the Directive. According to the Directive, the temporary protection period is one year, unless it is terminated due to the reasons specified in the Directive. This period can be extended for at least one more year in six-month periods.¹⁸⁶ However, if the reasons for temporary protection persist, the European Council, with its qualified majority, can examine any request made by a Member State to submit a proposal to the European Council and, upon a proposal submitted by the European Commission, may decide to extend the period of temporary protection for up to one year.¹⁸⁷ In that case, the duration of temporary protection can be three years at most according to the Directive. In the case a temporary protection regime ends, the (temporary protection) regime stipulated by the Member State's general aliens' law will continue its validity.¹⁸⁸

In addition to all of these, a coherent set of basic rights was provided by The Directive.¹⁸⁹ Chapter III of the Directive regulates the opportunities provided by the States under the heading “*Obligations of the Member States towards persons enjoying temporary protection*”. It includes the key criticisms of national temporary protection arrangements it has replaced.¹⁹⁰ In the

¹⁸⁵“TPD should have been transposed into the domestic law of all the MSs by the end of 2002. It has been reported that not all states have done this as required.” Furthermore see: Hanne Beirens and others, Study on the Temporary Protection Directive Final report, (2016) undertaken by ICF Consulting Services Limited sponsored by EU Commission 14, 16-17 available at <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/final_report_evaluation_tpd_en.pdf> Accessed 3.05.2020, p. 12-13.

¹⁸⁶ Article 4(1), TPD.

¹⁸⁷ Article 4(2), TPD.

¹⁸⁸ Article 20, TPD; Article 21, TPD.

¹⁸⁹ Jean-François Durieux, “Temporary Protection: Hovering at the Edges of Refugee Law”, Netherlands Yearbook of International Law, Volume 45, [2014] p.242-243.

¹⁹⁰Council of European Union, ‘Responses to Questionnaire on Temporary Protection and Solidarity - National Measures Taken Regarding Kosovars’ 11808/99 (21 October 1999); Council Proposal (Com (2000) 303 Final) for a Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and

doctrine, it is claimed that the choice of wording, that is the preference of the concept of "obligation" instead of "right", means that Member States are responsible for providing a minimum standard of living conditions of the host country to persons receiving temporary protection in the international arena.¹⁹¹ Those affected are granted resident permit as well as access to necessary visas, right to work¹⁹², access to accommodation, welfare, healthcare and means of subsistence, access to education, rules on family reunification, and protection measures for unaccompanied minors.¹⁹³

Crucially, accessing the regular asylum processes was secured by Article 17, although processing of the claim can be suspended during the period of operation by The Directive. Therefore, the activation of the Directive would not have disproved the international protection under the Geneva Convention.¹⁹⁴ According to the Directive, persons who will benefit from temporary protection have a position between asylum seekers and refugees defined by the Geneva Convention.¹⁹⁵ In addition, Article 3 (1) of the Directive states that temporary protection will not prevent the recognition of refugee status within the scope of the Geneva Convention. In the implementation of temporary protection, it is stated that the Member States respect the fundamental human rights relating to non-refoulement as well as other fundamental rights and freedoms.¹⁹⁶ In the preface of the Directive, it is confirmed that the Member States will adhere to the obligations of those arising from international law, including the Geneva Convention.¹⁹⁷ It is also reinforced that the rules regarding access to the asylum procedure must be applied during the period of the temporary protection regime.¹⁹⁸ These rights are not more generous than equivalent rights under regular asylum processes, “*so the argument that activation would have acted as pull due to the perceived generosity of the rights is less tenable*”.¹⁹⁹ States preferring to hold people in an exclusive status with the expectation that

bearing the consequences thereof [2000] OJ C311 E/251 (31 October 2000) : “*Explanatory Memorandum para 4.3, The UNHCR described the 1997 proposal as balanced and as providing a constructive basis for action. ... The 1998 revised proposal was welcomed by the UNHCR, which observed that there had been many improvements over the 1997 proposal.*”

¹⁹¹Kerber, (n 119), p.201.

¹⁹²It is not necessarily equal priority with EU citizens.

¹⁹³Articles from 8 to 16, TPD.

¹⁹⁴Home Office UK (no 140), p.35.

¹⁹⁵Çiçekli, (n 9), p.311; Durieux & Hurwitz, p.149.

¹⁹⁶Article 3(2), TPD.

¹⁹⁷Para.10, TPD.

¹⁹⁸Para.18, TPD.

¹⁹⁹Hanne Beirens and others, Study on the Temporary Protection Directive Final report, (2016) undertaken by ICF Consulting Services Limited sponsored by EU Commission 14, 16-17 available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/final_report_evaluation_tpd_en.pdf> Accessed on 3.05.2020, p.15, 35.

these people will soon return to their countries in hopes to prevent their access to the usual asylum system. Therefore, temporary protection is not only provided to people in need of protection for a certain period of time; It is also used to grant more limited rights. The Directive has been criticized in that it “*establishes ‘the binding legal obligation of temporary asylum’ providing more legal security,*”²⁰⁰ and that *The Directive sets out a model temporary protection system which the EU can ‘take off the shelf’ and use in the event of a crisis.*”²⁰¹ According to Goodwin-Gill the concept of temporary protection is a “*practical consequence of the principle of non-refoulement*”, it creates a link between the admission of persons in need of protection to the country and a permanent solution for these persons.²⁰² As mentioned above, Article 17(1) of the Directive regulates that people, who will benefit from temporary protection can apply for the procedure anytime. However, there is no obligation for the duration of evaluation. It refers to the Dublin II Regulation for criteria and mechanisms under which a Member State is responsible for the evaluation of an application.²⁰³

2.3. The Emergence of Temporary Protection in the Turkish Asylum Law

2.3.1. Historical Process for the Asylum Movement in Turkey

The countries surrounding Turkey are located in an extremely troubled region facing many political and economic problems and because of that Turkey has faced to several individual and mass asylum movements throughout history. Turkey, notably having an important geographic position at the crossroads of Europe, Asia and Africa and straddling both, has had to deal with various population movements in general, and refugee movements in particular. Between the years 1923-2005, nearly 2 million people, mostly from Bulgaria, Romania, Greece, Yugoslavia, including Iraq and Afghanistan arrived in Turkey.²⁰⁴ The foremost migration movements took place in the periods between 1950 and 1989 from Bulgaria; between 1988 and 1991 from Iraq; and during the Yugoslavia crisis, namely the Bosnian War, between 1992 and 1995; and Kosovo Crisis in 1999.²⁰⁵

²⁰⁰ Arenas, (n 116), p.435-437.

²⁰¹ Peers, (n 132), p.300.

²⁰² Goodwin-Gill & McAdam, (n 26) p.343.

²⁰³ Çiçekli (n 9) p.311.

²⁰⁴ Deniz Orhan, *1990 Sonrasında Türkiye’ye Yönelen Sığınma Hareketleri ve Etkileri*, (TÜCAUM VI. Ulusal Coğrafya Sempozyumu Bildiriler Kitabı, 2010) pp.92-103.

²⁰⁵ Nuray Ekşi, “Türkiye’de Bulunan Suriyelilerin Hukuki Statüsü”, *Legal Hukuk Dergisi*, Volume 10, (2010), p.3.

From the beginning of 1990s until today, there have been three major mass migrations to Turkey. With these movements, temporary protection found a place in Turkey's agenda²⁰⁶ during the Gulf Crisis (*1. Körfez Krizi*) in 1991, where approximately half a million people came from Iraq to Turkey with the purpose of seeking asylum. These movements continued during the Bosnian War in 1992 and the Kosovo War in 1999.²⁰⁷

The last one is the ongoing Syrian refugee movement since 2011. There have been continuous population movements from Syria to Turkey on a massive scale. As a result, Turkey has been a home to the highest number of refugees in the world. Of the nearly 4 million persons seeking international protection in Turkey, nearly 3.6 million are of Syrian nationality, while 172,000 are Afghans and 142,000 are Iraqis.²⁰⁸ Turkey's "open border policy"²⁰⁹ for Syrians seeking international protection in Turkey, whereby they are not forced to return, the length of stay is not limited, and humanitarian assistance is provided in camps, has effectively established the system of temporary protection in Turkey.²¹⁰ Since 2011, all Syrian citizens, refugees, and stateless persons living in Syria who have sought refuge in Turkey have been deemed eligible, as a group, for temporary protection in Turkey.²¹¹

2.3.2. Asylum Law in Turkey and the Law 6458 on Foreigners and International Protection

Whether or not a State grants asylum rights to foreigners in its country is assessed within the framework of that State's international obligations and national legislation.²¹² This means that if a government has an international obligation to asylum seekers, then it must grant asylum to foreigners who meet the conditions of those legal documents.²¹³ If the State is not the party to a treaty then there is no international customary law, rule, or general legal principle that obliges the State to offer asylum.²¹⁴

²⁰⁶Çiçekli, (n 9), p.314.

²⁰⁷ Orhan (n 204) p. 95.

²⁰⁸UNHCR, 'Syria Regional Refugee Response', <<https://data2.unhcr.org/en/situations/syria/location/113>>, Accessed on 10.03.2020.

²⁰⁹ Kemal Kirişçi, *Misafirliğin Ötesine Geçerken Türkiye'nin "Suriyeli Mülteciler Sınavı"* (Uluslararası Stratejik Araştırmalar Kurumu & Brookings Enstitüsü, Ankara, 2014) p.7.

²¹⁰ Doğa Elçin, Temporary Protection Status Applied To Syrians In Turkey Similarities And Differences Between European Council Directive No. 2001/55 And Temporary Protection Regulation, (2016), 124, TBB Dergisi, p.12.

²¹¹ Heinrich Böll Stiftung Turkey, Report on Turkey's Asylum Law and Policies, (2020) <<https://tr.boell.org/sites/default/files/2019-12/ASYLUM%20ENG-S.pdf>> Accessed on 10.03.2020.

²¹² Hüseyin Pazarcı, *Uluslararası Hukuk* (Turhan Kitabevi, Ankara, 2010) p.215.

²¹³ Elçin, (no 210), p.18

²¹⁴ Edwards (n 64), p.12.

In terms of Turkish law, such obligation was accepted²¹⁵ by the Geneva Convention on the Legal Status of Refugees of 1951²¹⁶ and its annex, the 1967 Protocol²¹⁷. In addition, Turkey is signatory to the 1948 Universal Declaration of Human Rights²¹⁸ and Article 14(1) of the declaration which states that; “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.

With reference to Turkish national law, there was no comprehensive national code in regard to asylum until the Law on Foreigners and International Protection²¹⁹ (*Hereinafter LFIP*) entered into force in 2014. The LFIP includes three parts²²⁰; the first part regulates “foreigners”, the second part regulates “international protection” and the final part regulates the issues regarding to organization in the sense of the general structural relationship.²²¹ Before the LFIP, the issues related to asylum was regulated by regulations on the change of the existing regulations about the Potential Population Movement Procedures and Principles to be Applied in case of Asylum to Turkey or Individual Foreigners Requesting a Residence Permit from Turkey in order to Take Sanctuary in Another Country and Foreigners Who Come to Turkish Borders for Collective Asylum²²² (*Hereinafter Asylum Regulation*), and it was mostly administered via circulars and instructions issued by the Ministry of Interior²²³. In the Asylum Regulation, the

²¹⁵ Turkey's international obligations regarding human rights are regulated in Article 90 of the Constitution of the Republic of Turkey in May 2004. The priority of international human rights has been accepted as follows: “The provisions of international agreements are taken as basis in matters duly put into effect and included in national legislation.” As a result of this acceptance, the problem of superiority between international conventions on fundamental rights and freedoms and domestic law has been resolved in such a way that international conventions are valid. In the light of this acceptance, although lack of adequate law, Turkey has accepted its obligations regarding the right of asylum of foreigners with the Convention. To see More: Özkan Duvan, ‘The Judicial Application of Human Rights Law in Turkey’ [2015] CHKD <<https://dergipark.org.tr/en/download/article-file/14675>>Accessed on 10.03.2020

²¹⁶ Turkey has signed ‘Treaty’ 08/24/1951; Approved on 29.08.1961. Approval date of the approval Law No. 359 on the approval of the Treaty: O.G. 05.10.1961 / 10898.

²¹⁷ O.G. 05.08.1968/12968.

²¹⁸ TBMM İnsan Hakları Komisyonu <<https://www.tbmm.gov.tr/komisyon/insanhaklari/pdf01/203-208.pdf>>Accessed on 10.03.2020.

²¹⁹ Turkey: Law No. 6458 of 2013 on Foreigners and International Protection (as amended 29 Oct 2016) [Turkey], Official Journal of the Turkish Republic 29 October 2016, available at: <https://www.refworld.org/docid/5a1d828f4.html> [accessed 13 December 2021] (LFIP)

²²⁰ Esra, Dardağan Kibar, “An Overview and Discussion of the New Turkish law on Foreigners and International Law”, (2013) Autumn, Vol. XVIII, No.3, PERCEPTIONS, p. 109-128.

²²¹ R.G. 11.04.2014/28615

²²² National Legislative Bodies / National Authorities, Turkey: Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens 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 (last amended 2006), 19 January 1994, available at: <https://www.refworld.org/docid/49746cc62.html> [accessed 13 December 2021]

²²³ Neşe Baran Çelik, “Türk Hukukunda Uluslararası Koruma Başvurusunda Bulunan Veya Uluslararası Korumadan Yararlanan Yabancıların Hak ve Yükümlülükleri”, İnönü Üniversitesi Hukuk Fakültesi Dergisi Özel Sayı, Cilt 1, (2015), p.69.

subject of mass influx is addressed in the titles of “*Foreigners who collectively come to or cross country borders for Refugee or Asylum purposes*” and “*Possible Population Movements*”.²²⁴ According to Article 8 of the Asylum Regulation, “*without prejudice to the obligations arising from international law and without a political decision, it is essential to stop the population movement at the border taking into account the land advantages and prevent the asylum seekers from crossing the border. Necessary and effective measures are taken in this regard by the relevant authorities.*” This article remarks that, in the event of a mass influx, it aimed to create a buffer zone.²²⁵ Referring to Article 26 of the Asylum Regulation, in the event of the end of the war, armed conflict or crisis, the return of mass asylum seekers and refugees to the state of their nationality is ensured by the Ministry of Interior in coordination with the General Staff and the Ministry of Foreign Affairs. The Asylum Regulation remained in force for a short time after the LFPI came into force, but was abolished with the Article 61 of Temporary Protection Regulation (*Hereinafter The Regulation*) on 12.10.2014.²²⁶

In Turkish Law, Temporary Protection Status was regulated for the first time²²⁷ in Article 91 of LFIP and it refers as:

“(1) 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 have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection. (2) The actions to be carried out for the reception of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations shall be stipulated in a Regulation to be issued by the Council of Ministers.”

The Temporary Protection Regulation²²⁸ came into force on the 22nd of October 2014.²²⁹ With this legal instrument, the rights and obligations of the Syrian people who came to Turkey were regulated. It should be emphasized that the protections of this legal instrument are not solely

²²⁴ Nuray Ekşi, “Geçici Koruma Yönetmeliği Uyarınca Geçici Korumanın Şartları, Geçici Koruma Usulü, Sağlanan Haklar ve Geçici Korumanın Sona Ermesi”, İstanbul Barosu Dergisi, Cilt 88, Sayı 6, (2014), p.69.

²²⁵ Ekşi (n 205), p.32.

²²⁶ Ekşi (n 224), p.69.

²²⁷ *ibid.*

²²⁸ National Legislative Bodies / National Authorities, *Turkey: Temporary Protection Regulation*, 22 October 2014, available at: <https://www.refworld.org/docid/56572fd74.html> [accessed 13 December 2021] (Hereinafter TPR).

²²⁹ It was published in the Official Gazette number 29153 and entered into force by the Decision of the Council of Ministers numbered 2014/6883. Directive on Acceptance and Accommodation of Citizens of the Syrian Arab Republic and Stateless Persons Residing in the Syrian Arab Republic who Arrived in Turkey for Mass Asylum”, which was prepared before the Regulation envisaged in Article 91 of the LFIP came into force regarding mass incursions into our country from Syria. It was issued by the Ministry on 30.03.2012. The said Directive has not been published in the Official Gazette. For the 2012 Guideline and furthermore see: Çiçekli, (n 9), p.323-325.

for Syrian people. Thus, regardless of where people come from, those who arrive in a situation of mass influx can be protected by this legal instrument.²³⁰ It should be noted that the LFIP is a code and that a new code must be approved by the Grand National Assembly of Turkey in order to improve the rights of aliens regulated by it. On the other hand, regulations can be changed very easily by presidential decree in the new Turkish constitutional system. Thus, contrary to the LFIP, changes in the obligations and services stipulated by the Regulation can easily be made by the President of Turkey.²³¹ Simply and briefly put, the nature of the temporary protection status in Turkey maintains its dynamism in the legal system.

2.3.3. The “Temporary Protection” Concept in the Temporary Protection Regulation

The first section of the Regulation regulates the objective, the basis of the scope and the definition. Article 1 of the Regulation defines the objective of the regulation as:

“The objective of this regulation is 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 regulation has a wide discretion as to whether temporary protection status will be granted. According to the related article’s statement, temporary protection status “may be provided” to seekers despite the status being defined in LFIP code as the status “will provide”. Consequently, the discretionary power should be used in a justifiable manner by the administrative officers.²³²

The term of mass influx is stated in Article 3(j) the Regulation as:

“Situations where a high number of people come from the same country or a geographical region and procedures related to international protection status cannot be individually followed because of the high number of people”

The definition of mass influx in the Regulation has great importance for the activation of the temporary protection status. In defining mass influx, the Regulation focuses on the situation in which the procedures relating to the international protection status cannot be followed individually because of the large number of persons concerned. In other words, situations in

²³⁰Kaya and Eren, (n 12), p.12.

²³¹ In accordance with the Presidential Decision dated 24/12/2019 and numbered 1851 published in the Official Gazette dated 25/12/2019 and numbered 30989, the Temporary Protection Regulation was added to the Presidential Decree section.

²³² Kaya and Eren, (n 12), p.48.

which individual assessment is inadequate are considered as mass influx to trigger temporary protection.

The President of the Turkish Republic is authorized to determine the issues related to the asylum seekers who will be included in the scope of temporary protection. In this regard the President is authorized to determine the following issues: the starting date of the temporary protection and its duration if deemed necessary, the conditions for extending or terminating the temporary protection period, the issues that can be decided and followed by the immigration board²³³, and the limitation or suspension of the proceedings as well as other matters deemed necessary. The individual decisions that can be taken about those benefiting from temporary protection following the temporary protection decision by the President are taken by the General Directorate of Migration Administration.²³⁴

2.3.4. Relation of Temporary Protection with Other International Protection Statuses in Turkish Law

It should be stated at this point that the temporary protection status is different from the complementary protection provided in certain situations. Complementary protection is a legal status granted after individual protection needs have been recognized. Complementary protection measures are a type of protection provided because of individual and specific assessment of whether individuals need international protection or not. On the other hand, temporary protection is based on examining the need for international protection on a group basis because of the conditions in the country of origin. As it was noted before, it is not possible to examine on an individual basis due to the mass influx situation. In this sense, it should be considered that international protection status and temporary protections status concepts differ.

LFIP was regulated to overcome the shortcomings of the Turkish international protection system and is intended to align with the EU *acquis*. Therefore, it can be said that the LFIP is a modern and comprehensive law drafted by considering the shortcomings in the field of asylum and immigration.

²³³ The Migration Board established in accordance with Article 521 of the Presidential Decree No. 1 on the Presidential Organization.

²³⁴ Article 10, TPR.

The term of temporary protection is not used colloquially in Turkey. Instead, Syrians under temporary protection are known for their different international protection status such as "refugees, asylum seekers". It is essential to explain the relationship of temporary protection with other international protections in order to solve this great public misunderstanding of the scope of LFPI. According to this code, there are four statuses for the foreigners who leave their country and make a successful request for asylum; Refugee, Asylum Seekers, Subsidiary Protection and Temporary Protection. Refugee, asylum seeker, and subsidiary protection status have individual characteristics, while temporary protection status is provided for those arriving *en masse*.²³⁵

2.3.4.1.Refugee

The standard of the refugee status is determined by LFIP. ‘Refugee’ is defined in the first article exactly as is in the Geneva Convention. Turkey became a party to the Geneva Convention in 1968.²³⁶

The statement made by Turkey in regards to any provision of the Geneva Convention is that it cannot be interpreted in any way in which the refugees who live in Turkey have more granted rights than Turkish citizens living in Turkey.²³⁷ According to Turkey as a party to the Geneva Convention, refugee status is limited to the geographical location determined as Council of Europe countries. The refugee status can be granted to the people who come to Turkey on the purpose of asylum from the member countries of Council Europe.²³⁸

The conditions to obtain the status of “refugee”, regardless of whether the person who apply for asylum has citizenship or not²³⁹, according to Article 61 are;

“A person who as a result of events occurring in European countries and owing to 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

²³⁵Ekşi (n 224) p.65.

²³⁶ O.G. 05.08.1968-12968.

²³⁷ Ekşi (n 224), p.66 ; Furtermore see: *Offical Gazatte of Turkish Republic* 5 September 1961 No.5927 <https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/08/03/MultecilerinHukukiDurumunaDairSozlesme.pdf>> Accessed on 8.01.2022.

²³⁸ Bahadır Erdem, "*Geçici koruma statüsündeki Suriyelilerin sosyal, siyasi ve vatandaşlık hukuku bakımından Türkiye'deki durumları*", (2017), Volume 37.2, Milletlerarası Hukuk Ve Milletlerarası Özel Hukuk Bülteni, p.332-351.

²³⁹Nuray EKŞİ, *Yabancılar ve Uluslararası Koruma Hukuku*, (5th Edition, Beta Yayınları, 2018) p.47.

such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process.”²⁴⁰

The status of “refugee”, as per Article 61 of the LFIP, is the international protection status granted under the provisions within Article 1 of the 1951 Geneva Convention, i.e. a “refugee” must originate from a Council of Europe Member Country.²⁴¹ Therefore, the Syrian or Afghan people who have requested asylum from Turkey cannot obtain the legal status of refugee even though they fulfill all other requirements. As of January 2018, there are only three persons who have obtained the status of refugee,²⁴² although a report published in March 2018 by the Turkish Grand National Assembly refers to 70 persons.²⁴³

2.3.4.2. Conditional Refugee

The “conditional refugee” status is a Turkish legal concept introduced by Article 62 of the LFIP for the purpose of clarifying the difference between 1951 Convention-type refugees originating from ‘non-European’ Countries and those originating from ‘European’ Countries.

“Conditional refugee is a person who as a result of events occurring outside European countries and owing to 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.”²⁴⁴

The diversity between the terms of refugee and asylum seekers is defined by LFIP. According to the LFIP, the expression of “asylum seekers” can be translated as “conditional refugee”.²⁴⁵ The rights granted to asylum seekers who are in a short-term housing situation are limited compared to those of refugees.²⁴⁶ It does not foresee the given rights of host country as the refugee status continuously does.²⁴⁷ Mostly, the people who requests refugee status are

²⁴⁰ Article 61, LFIP.

²⁴¹ AIDA, ‘Country Report:Turkey’, (December 2015) <https://asylumineurope.org/wp-content/uploads/2015/12/report-download_aida_tr_update.i.pdf> Accessed on 17.01.2022.

²⁴² T24 News Website, ‘4.3 million migrants live in Turkey, although there are 3 persons who were granted the status of refugee’ (17 January 2018) <<http://bit.ly/2D4ByFa>> Accessed on 1.12.2021.

²⁴³ Turkish Grand National Assembly, ‘Göç ve Uyum Raporu’ (2018 March) < https://asylumineurope.org/wp-content/uploads/2018/04/resources_goc_ve_uyum_raporu.pdf> Accessed on 17.01.2022.

²⁴⁴ Asylum in Europe Website, “Content of International Protection” (31/05/2021) <<https://www.asylumineurope.org/reports/country/turkey/content-international-protection>> Accessed on 13.03.2020.

²⁴⁵ Erdem, (n 238), p.332-351.

²⁴⁶ Aybay/Dardağan Kibar, s.20; François Bouchet-Saulnier, *İnsancıl Hukuk Sözlüğü*, (İstanbul 2002) p.252

²⁴⁷ Mehmet Özcan, *Avrupa Birliği Sığınma Hukuku*, Ortak Bir Sığınma Hukukunun Ortaya Çıkışı, (Ankara 2005), s.22; Mesut Odman, *Mülteci Hukuku*, (Ankara 1995), s.189.

considered in this category due to their short-time residence permit.²⁴⁸ Therefore, it is defensible that asylum seekers are “potential refugees” until their request on refugee status are accepted²⁴⁹ by the third safe country.

According to the Turkish law, the status of refugee cannot be granted to people who come from non-European countries. However, referring to the principle of non-refoulement, the asylum seekers cannot be sent back to their home country. Therefore, Turkey's solution in regards to defining a status for the people who have requested asylum is that of “conditional refugee”. As can be seen in Article 62, conditional refugees are assumed to only temporarily remain in Turkey. It is expected that they will remain in Turkey only until they can be resettled in a third safe country. The asylum seekers who are not coming from Europe and who must await resettlement to a third country are defined as “conditional refugees” in their short time residence permit while living in Turkey according to the LFIP.

Although the definitions of the refugee and the conditional refugee are quite similar, there are three main facts distinguish them from each other:

- First, refugee status is recognized due to events in Europe, while conditional refugee status is recognized for events occurring outside of the European countries and to peoples of those countries.
- Second, those who are regulated by the conditional refugee status are waiting to be placed in a safe third country.
- Finally, those who are regulated by the conditional refugee status may only obtain temporary residence permits and only until they are resettled in a safe third country.²⁵⁰

2.3.4.2.Subsidiary Protection

Subsidiary protection status under the LFIP is designated for persons who do not fulfill the criteria for either “refugee” status or “conditional refugee” status under the LFIP but whom would be subjected to the death penalty or torture if returned to their country of origin, or would

²⁴⁸ Pazarcı considers the terms refugee and asylum seeker in the same sense, and uses the term "asylum seeker" for people whose applications may be rejected and who have obtained a permanent residence permit in the country they seek asylum. See: Pazarcı (n 187) p.211.

²⁴⁹ Dünya Mültecilerinin Durumu - 1997-1998, *Bir İnsanlık Sorunu*, (BMMYK Yayınları, Ankara 1997), p.184.

²⁵⁰ Elçin, (no 210), s.45

be at “*individualized risk of indiscriminate violence*” due to situations of war or internal armed conflict.²⁵¹

Although it has similar definition with refugee and conditional refugee, the reason for obtaining subsidiary protection status are different²⁵²:

“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.”²⁵³

The subsidiary protection status is not defined for the emergency or the temporary situations,²⁵⁴ it is a “*complementary*” international protection status which is not in the scope of the Geneva Convention.

To fulfill the non-refoulement obligations arising from international law, the people who do not fulfill the eligibility criteria for refugees or conditional refugees, but are deemed to require international protection because they face the death penalty, torture, or generalized violence as a result of an armed conflict in their country of origin may apply to “subsidiary protection” status according to Turkish law.

To illustrate this point with an example, women who are to be executed by stoning due to fornication in a country where the sharia law applies shall obtain the subsidiary protection status in Turkey on the request of asylum.²⁵⁵ Other examples include the escaping of female circumcision practices in Africa or to avoid the tradition of burning women whose husbands have died in India in specific regions shall obtain the subsidiarity protection status in Turkey.²⁵⁶

²⁵¹Content of International Protection ([asylumineurope.org](https://www.asylumineurope.org/reports/country/turkey/content-international-protection) 31/05/2021)
<<https://www.asylumineurope.org/reports/country/turkey/content-international-protection>> Accessed on 13.03.2020.

²⁵² Aysel Çelikel and Günzeli Öztekin Gelgel, *Yabancılar Hukuku*, (Volume 21, İstanbul 2015), s.26

²⁵³Article 63, LFIP.

²⁵⁴Erdem, (n 238), p.336.

²⁵⁵Ekşi (n 205), p.163.

²⁵⁶Erdem, (n 238), p.337.

3. The Examination of Temporary Protection under the EU's 'Temporary Protection Directive' and Turkey's 'Temporary Protection Regulation'

It would not be wrong to state that according to the common perception, temporary protection status holders are usually seen as a guest in the host country. Although the concept of having guests seems pleasant, after a while some problems start to appear. The host community gets into the psychological reaction to insist on some limitations that are actually non-existent such as enjoying the sea in the summertime by asylum seekers as seen as an undeserved joy by the local community.²⁵⁷ This aggressive approach of the community causes challenges for the “guests” who are given the status of temporary protection to access basic rights. One could argue that the existing system almost promotes the idea that ‘beggars cannot be choosers’.

In the system, the right to live is confused with the right to asylum and therefore dignity of the individual is being neglected to a certain degree. However, it is not sufficient for the host country to only accept the asylum. The host country is also obliged to maintain providing the basic rights to the asylum seekers. Otherwise, such confusion affecting legal sources result in a contradiction between human rights and social/economic reasons connected with the importance of maintaining human dignity. In other words, the service provided to asylum seekers does not solely matter by itself. On the contrary, fundamental human rights hold the primary importance and these rights should be respected at any cost. However, the concept of accepting the asylum seekers as guests leads up to a perception that the courtesy is completed by providing short time welcoming. In fact, fundamental human rights exist, and they cannot be either neglected or ignored, or for that purpose, granted on a limited-time basis. Accepting asylum seekers does not mean that the procedure is completed, and it is not necessary to look after their rights. On the contrary, along with providing the right to live to the asylum seekers, the host country must take human dignity into consideration for each person. To overcome such issues with the mass influx crisis, a human rights-based approach must be adopted while dealing with the concept of temporary protection. In doing so, the rights and obligations to be granted to a temporary protection status holder becomes an integral matter.

²⁵⁷ Milliyet News Website “Florya plajındaki Suriyeliler sosyal medyada tartışma yarattı” (11 October 2019) <https://www.milliyet.com.tr/milliyet-tv/florya-plajindaki-suriyeliler-sosyal-medyada-tartisma-yaratti-video-4627214> Accessed on 17.01.2022.

How the temporary protection status takes its place is handled in international law and Turkish law is the problem of millions of Syrians in Turkey since 2011. The legal obligations of Turkey and the EU States will be examined in this part of the research. Refugee law is a complementary branch of law which means that it is an area that uses human rights instrument for providing protection to people who are deprived to access their basic rights. When people do not have a legal status, they cannot be seen by the State and they turn into ghosts in the system. This section will explain how temporary protection status holder is perceived by the State, their rights, and responsibilities, and how they can access services.

First of all, people must obtain temporary protection status in order to be recognized by the State so that they can be entitled to access fundamental rights. As mentioned above, the existence of mass displacement flows must first be determined by the EU institutions to provide the temporary protection status in the EU according to Article 5 of the Directive. However, this implementation was criticized by the UNHCR that the Directive is designed as a response measure to emergencies. It should remain as an emergency response limited to real events, not the estimated probability of mass influx.²⁵⁸ The primary source on which rights should be recognized in terms of temporary protection holders is the Directive of the EU. Third section of the the Directive is titled as "*Obligations of the Member States against Persons Benefiting from Temporary Protection*". The use of the term "obligations" instead of "rights" in this section means that Member States are obliged to provide certain minimum standards to persons benefiting from temporary protection, but this does not govern subjective rights that can be claimed for individuals.²⁵⁹ "*Persons entitled to refugee protection should be accorded the same treatment regarding assistance as provided to nationals of the Member State.*"²⁶⁰ According to the UNHCR's comment, "*standards of treatment under the Directive should be applied to respect human rights standards guaranteed by the ECHR, and national legislation should refer to the principle of non-discrimination.*"²⁶¹

On the other side, according to the LFIP Article 91, the main condition sought for temporary protection is that foreigners have left their lands *en masse*. Article 7 of the Temporary Protection

²⁵⁸ *ibid.*

²⁵⁹ Elçin, (no 210), s.50.

²⁶⁰ *Ahmad Shah Ayubi v. Bezirkshauptmannschaft Linz-Land* [2018] C 713/17 (CJEU).

²⁶¹ UNHCR Annotated Comments on COUNCIL DIRECTIVE 2001/55/EC Of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, page 9.

Regulation has clarified the Article 91 of the LFIP. It is stipulated that individual arrivals in case of mass influx will be deemed to overcome massively and these persons are subjected to the same status.²⁶² After they meet the conditions to obtain the temporary protection status they will be entitled to access their rights. In the Turkish law, Article 6 of the Temporary Protection Regulation is titled as "*Services to be Provided to Temporary Protected People*". Moreover, the first paragraph of Article 26 refers to those foreigners within the scope of this Regulation can attain health, education, access to the labor market, social assistance and services, translation and similar services. It is stipulated that health, social assistance, education and similar services will be provided to those who are in temporary accommodation centers or to those who are not,²⁶³ as these services are not limited to a particular place. When the Turkish temporary protection regime is examined, it must be accepted that, certain minimum standards are provided to persons benefiting from temporary protection in parallel with the Directive. However, this does not create subjective rights to be claimed for individuals.²⁶⁴ The fact that it was mentioned as services instead of rights in the Regulation and these services were not regulated compulsorily, these are evaluated in accordance with the purpose of temporary protection. According to this view, it may not be possible to provide absolute rights by the accepting State considering the large numbers of people.²⁶⁵ It should not be forgotten that everyone has fundamental rights. These basic rights cannot be restricted by any status. Below, the standards of basic rights and how they are granted to status holders will be discussed on each title.

3.1. The Rights and Obligations Granted by the Temporary Protection in the Directive and the Regulation

3.1.1. The Relationship Between Temporary Protection Status and Non-Refoulment Principle

Non-refoulement is considered as a positive obligation of States. If the State fails to fulfil its effective obligation to both its citizen and to the foreigner, stateless and asylum seeker within its sovereignty, international treaties step in with its complementary role. Although there are no explicit regulations regarding refugees, the principle fulfils its duty as a channel serving the refugee law and where rights must be sought. Non-refoulement principle is defined in many international treaties, moreover it is also mainly defined in the UDHC. The Member States

²⁶² Ekşi, (n 224), p.72.

²⁶³ Article 38, TPR.

²⁶⁴ Çelik (n 223) p.86.

²⁶⁵ Kaya and Eren, (n 12), p.56.

stipulates the treaty obligations starting from UDHR and following Conventions. Through this point the principle of non-refoulement takes its place in the main refugee law instruments as a fundamental character. Article 33 of the Geneva Convention emphasizes that under no circumstances a refugee will be returned or extradited if his/her life or freedom is in danger. This stance of the UN on the principle of non-refoulement is a crucial step towards the right to life of refugees.²⁶⁶ The review of this principle against *jus cogens* standards has an important value for international law.²⁶⁷ The principle of non-refoulement is accepted as a new principle within the limits of international refugee law and accorded the status of a *jus cogens* norm.²⁶⁸ In the case of *Hirsi Jamaa and Others v. Italy* Judge Pinto de Albuquerque clearly stated that the principle of non-refoulement is a principle of customary international law.²⁶⁹ In addition to this statement, Pinto de Albuquerque stated that “the principle of non-refoulement is a principle that binds all States, that the essence of this principle may not be departed from”, and that further, he stated that “no reservations can be made by States to the principle of non-refoulement”, and in his concurring opinion stated that “this principle must be assessed within *jus cogens* standards.”²⁷⁰ Therefore, States may not, under any circumstances, violate the principle of non-refoulement.²⁷¹ In this chapter the principle of non-refoulment will be examined in the scope of Geneva Convention, LFIP, the Regulation and the Directive.

The principle of "Non-Refoulement" as regulated in the Article 33(1) of the Geneva Convention is a concept which generally expresses that “a refugee or asylum-seeker cannot be sent to the country of origin in cases where life or freedom is in danger due to race, religion, citizenship, belonging to a certain social group and political opinions”.²⁷² The principle is one of the most important elements of the Convention, also it has the characteristic of international customary rule. In the case of mass influx, the issue of whether the non-refoulement principle should be

²⁶⁶ Tülay Yıldırım Mat & Selman Özdan, “AB ile Türkiye arasındaki Geri Kabul Anlaşması’nın İnsan Hakları Açısından Değerlendirilmesi” Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, Volume 24, Issue 1, (2018), p.42.

²⁶⁷ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331 “Article 53 : A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”.

²⁶⁸ *ibid.*; Alexander Orakhelashvili, *Peremptory Norms in International Law*, (Oxford University Press, Oxford, 2006) p.22.

²⁶⁹ *Hirsi Jamaa and Others v. Italy*, [2012] 27765/09, (ECtHR), p.67.

²⁷⁰ *ibid.*

²⁷¹ Yıldırım Mat & Özdan, (n 266), p.43.

²⁷² Gökhan Taneri, ‘Uluslararası Hukukta Mülteci ve Sığınmacıların Geri Gönderilmemesi (Non- Refoulment) İlkesi’, (PHD Thesis, Selçuk University, 1th Edition, Bilge Publishing) p.45.

applied causes debate in the doctrine.²⁷³ Since Article 33(1) of the Geneva Convention clearly does not regulate the cases of mass asylum as an exception, the principle of non-refoulement should also be applied in case of migration based on mass influx.²⁷⁴ It is acknowledged in the UNHCR Handbook that the principle of non-refoulement will also be granted to persons who are not duly considered as refugees.²⁷⁵

The principle of non-refoulment is regulated in Article 4 of the LFIP as;

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

The principle is not only for foreigners recognized as refugees; it is applicable to all foreigners. Therefore, it covers all foreigners who benefit from or apply for international protection.²⁷⁶ However, as seen in the *Adolghafoor Rezai Case*²⁷⁷, individuals must prove with concrete evidence that they will be subjected to torture, inhumane treatment or that their lives are in danger due to their race, religious nationality. Non-refoulment principle is particularly regulated in the Article 6 of the Regulation. Currently, the non-refoulement principle is naturally applied for the Syrian temporary protection status holders in Turkey. They cannot be returned to places where their life or freedom would be threatened against their will. As long as the current situation in Syria and the need for protection continues, it is not possible to take a decision to terminate the temporary protection and return of the Syrians to their home country.²⁷⁸

The EU Temporary Protection Directive includes the following provision in its Article 3(2): *"Member states will act in respect of fundamental rights and freedoms and their obligations on non-refoulement while applying temporary protection."* With this provision, it is understood that the prohibition of refoulement has to be complied with temporary protection provided in the case of mass influx.

²⁷³ İrem Bilgen, ‘Geçici Koruma Yönetmeliği ve AB Geçici Koruma Yönergesi Çerçevesinde Geçici Koruma (igamder.org 09/12/2017) <İGAM İltica ve Göç Araştırma Merkezi (igamder.org)> Accessed on 15.12.2020 p.19.

²⁷⁴ Kaya and Eren, (n 12), p.57.

²⁷⁵ *ibid.*

²⁷⁶ Çelik, (n 223), p.88.

²⁷⁷ *Abdolghafoor Rezaei* [2017] Constitutional Court of Turkish Republic, 2015/17762 (Constitutional Court of Turkish Republic)

²⁷⁸ Ahmet Hamdi Topal “Geçici Koruma Yönetmeliği ve Türkiye’deki Suriyelilerin Hukuki Statüsü”, İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi, Volume 2, (2005), p.19.

As a result; the Directive and the Regulation include parallel arrangements and while granting temporary protection status, the principle of non-refoulement is complied with.²⁷⁹ Since the non-refoulement is the main principle of the refugee law, it is strictly regulated in the legal instruments and complies with the obligations deriving from international treaties.

3.1.2. The Residence Permits

The Directive's Third Chapter regulates the obligations of Member States in the EU. According to this, right of residence is explained in the Article 2 (1)(g), as it means any permit or authorization granted by the authorities of a Member State and taking the form provided for in that State's legislation, allowing a third country national or a stateless person to reside on its territory. According to Article 8 of the Directive, Member States will provide residence permits to persons enjoying from temporary protection during the protection period.²⁸⁰ Member States are obliged to provide a document describing the conditions of temporary protection.²⁸¹

In addition, Member States will provide all opportunities for beneficiaries of temporary protection to obtain the required visas. In the Directive, it was stated that the formalities required to obtain a visa should be minimized due to the presence of urgent situations during mass raids. In addition, in accordance with the Directive Article 8(3), no fee will be charged for visas or the fee will be minimized.²⁸² According to Article 11 of the Directive, if a temporary protected person transfers to another State without obtaining permission from the country of protection, the first State which granted protection will take the person to the country.²⁸³

According to Article 42 of the LFIP, the right to transition to a long-term residence permit will not be granted to refugees, conditional refugees and subsidiary protection status holders, humanitarian residence permit holders and those under temporary protection. Instead, article 25 of the Regulation is titled as "the right to reside in the country". The temporary protection status holders are entitled to right to stay in the country. However, the document is not considered equivalent to the document of a residence permit described in LFIP. It does not govern to have long-term residence permit. It in no way stipulates that one must receive a long-term residence permit. The length of stay is not considered as a total residence permit to obtain a residence

²⁷⁹ Bilgen, (n 273) p.20

²⁸⁰ Article 8(1), TPD.

²⁸¹ Article 9, TPD.

²⁸² Elçin, (no 210), s.53.

²⁸³ However, Member States will be able to make arrangements different from these provisions through bilateral agreements.

permit. It does not grant the holder the right to apply for Turkish citizenship. In particular, applying for Turkish citizenship with a long-term residence permit is prohibited by the Regulation. States have the discretion to determine the issues such as who will be granted citizenship under what conditions and on what legal grounds, and in which cases it will be denied.²⁸⁴ Temporary protection identity document provides only the right to stay in Turkey. In addition, another regulation parallel to this was made in accordance with Article 16(2) (c) of the Citizenship Law Implementation Regulation²⁸⁵. Citizenship application of persons who do not have a legal residence permit or who do not show their intention to settle in Turkey, although it is legal, and who are understood to be attached to residence for purposes such as asylum seeker, education, tourism, accompanying their children in education, treatment, are not accepted.

3.1.3. Work Permit and Access to the Labour Market

Article 23 of the UDHR states that “*Everyone has the right to work, to choose his job freely, to work in just and favourable conditions, and to protection against unemployment.*” and “*Everyone, without any discrimination, has the right to equal pay for equal work.*” In the Article 6 of the International Covenant on Economic, Social and Cultural Rights (*Hereinafter ICESCR*)²⁸⁶, it is stated that “*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.*” As can be seen, the subject of the stated rights is “everyone”. This implies that these rights should also be provided to non-citizens, meaning that they too should be provided all, which is given to their citizen counterparts.

The right to work is regulated in Articles 17 and 18 of the Geneva Convention. According to the Geneva Convention, if a State grants the right to work for foreigners in its country, they must give similar treatment to refugees. In addition to that, the State’s parties apply an explicit treatment to foreigners legally residing in their country regarding the right to open their own

²⁸⁴ Ergin Nomer, *Türk Vatandaşlık Hukuku*, (22th Edition, Filiz Kitabevi, İstanbul, Ekim 2016) p.10.

²⁸⁵ Law No. 403, *Amendments to the Turkish Citizenship Law*, *Official Journal of the Turkish Republic* 17 February 1981, available at: <https://www.refworld.org/docid/3ae6b4d210.html> [accessed 14 December 2021]

²⁸⁶ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 14 December 2021]

businesses in agriculture, industry, small arts, and trade and to establish industrial and commercial companies.

In the European Union, work permits and access to the labour market for people benefiting from temporary protection are regulated in Article 12 of the Directive. Accordingly, adults benefiting from temporary protection will be allowed to work as a paid or self-employed person. However, this right may not exceed the temporary protection period. Consequently, these people will be subjected to the same rules and regulations as would be applied to those immigrating under normal circumstances; i.e. according to their desired profession, this including activities such as obtaining work permits, adult education opportunities, vocational training, and internships or trainee programs. In addition, Member States may give priority to EU citizens, citizens of the States parties to the agreement on the European Economic Area²⁸⁷ and legally eligible third-country nationals who take advantage of unemployment benefits due to their labour market policies.²⁸⁸ Access to both employment and the regulation of those working conditions are left to each Member State's own laws as they pertain to the temporary protection system of the EU.²⁸⁹ The UNHCR highlights that it strongly encourages that national legislation is applied equally in regards to access to employment. The UNHCR has regularly appealed to States to provide employment rights to those under temporary protection. Early access to the labour market can help reduce reliance on social assistance, facilitate integration, and an eventual return to the country of origin. In this context, the Directive allows Member States to discriminate against persons under temporary protection in favour of nationals or long-term third-country nationals, including refugees.²⁹⁰

Under Turkish law, work permits of foreigners are regulated in the article of "international labour law".²⁹¹ The work permit is issued by the Ministry of Labour and Social Security. According to the law, foreigners cannot work without a work permit in Turkey or be employed. If the application is approved, a one-year work permit will be granted.

²⁸⁷ Council of the European Communities., & Commission of the European Communities. (1992). *Agreement on the European Economic Area*. Luxembourg: Office for Official Publications of the European Communities

²⁸⁸ Elçin, (n 210), p.55.

²⁸⁹ Kerber, (n 119), p.203.

²⁹⁰ UNHCR Annotated Comments on COUNCIL DIRECTIVE 2001/55/EC Of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof,(Hereinafter UNHCR Note), p.10.

²⁹¹ Turkey;L aw No. 6735 of 2016 on International Labour Law [Turkey], 13 August 2016

The employment of foreigners under temporary protection are regulated in Article 29 of the Regulation. According to this article, those who have a temporary protection identity document will be able to “*apply to the Ministry of Family Labour and Social Security in order to obtain work permits in the business lines and geographical areas determined by the Presidency.*” In other words, as a rule, temporarily protected people are entitled to obtain a work permit. According to paragraph 4 of the same article, the duration of the work permit of temporarily protected persons cannot exceed the temporary protection period. When the temporary protection expires, the work permit granted within this scope ends.

Likewise, the Regulation on Work Permits of Foreigners under Temporary Protection²⁹² (*hereinafter* the Work Permit Regulation) entered into force on 15 January 2016, in order to determine the procedures and principles regarding the work of foreigners under temporary protection of FLIP Article 91 and Temporary Protection Regulation Article 29. According to Article 4 of the Work Permit Regulation, temporary protection holders cannot work without a work permit in Turkey or be employed. The relevant provisions of 4817 Numbered Law on Work Permits of Foreigners dated 27 February 2003²⁹³ shall apply to foreigners under temporary protection who work without a work permit as well as those who employ them. Foreigners under temporary protection can apply to the Ministry of Labour and Social Security to obtain a work permit six months after the temporary protection registration date. Clearly, the six months waiting period is another obstacle to obtaining a work permit for temporary protection holders. During the waiting period, no social support or specific assistance is provided, as provided for in the Regulation. It has been confirmed that a person who has just been taken as a refugee in the country will not be able to work for the first six months, but this leaves the question as to how they will subsist. According to the Directive, there should be no time limit to apply for a work permit. The Directive allows for early access to the labour market, and this was affirmed by the UNHCR to assist in the reduction of dependency upon social assistance and facilitating eventual final return.

²⁹² National Legislative Bodies / National Authorities, *Turkey: Regulation on Work Permits of Foreigners under Temporary Protection*, 11 January 2016, available at: <https://www.refworld.org/docid/582c71464.html> [accessed 14 December 2021]

²⁹³ *Turkey: Law No. 4817 of 2003 on the Work Permit for Foreigners* [Turkey], *Official Journal of the Turkish Republic* 27 February 2003, available at: <https://www.refworld.org/docid/4496b3d44.html> [accessed 14 December 2021]

Temporary protection status holders are subject to the provisions in the work permit legislation regarding the jobs in which foreigners cannot work.²⁹⁴ Applications are cancelled without evaluation for all jobs and professions which are exclusive for Turkish citizens by law. Additionally, healthcare professionals must obtain prior authorization from the Ministry of Health, and education professionals must obtain prior authorization from the Ministry of National Education or the Higher Education Council for submitting their work permit application to the Ministry of Labour and Social Security.

An employment quota is applied to temporary protection status holders in accordance with the Work Permit Regulation. The number of working foreigners under temporary protection in a workplace which facilitates the application of a work permit cannot exceed ten percent of those employed at the workplace, relative to Turkish citizens. Only one foreigner under temporary protection is allowed to work in workplaces with less than ten employees. The only exception where the employment quota will not be applied is determined by the Work Permit Regulation. Accordingly, the employment quota will not apply to applications by an employer if it is documented from the Provincial Directorate of Labour and Employment Agency that there is no such Turkish citizen with the same qualification to do the job in which the foreigner will be employed. It is to be documented within at least four weeks prior to the work permit application date. Another aspect that restricts refugees' access to job opportunities is the quota regulation. In Turkey, which is one of the countries with the highest refugee population, this practice is regulated in a way that does not meet the needs of the people. Therefore, temporary protection holders barely access sustainable life standards via work permits. In 2019, a total of 145,232 work permits were issued in Turkey, of which only 63,789 went to Syrians²⁹⁵ who are most likely to hold temporary protection status. Hence, considering the population of Syrians in Turkey, the data show that it is unreasonably difficult to obtain, a work permit.

Regardless of the type of job, paying less than the minimum wage to those who are temporarily protected is prohibited by the Work Permit Regulation. According to Article 5(2) of Work Permit Regulation “*work permit applications are made by the employer who will employ foreigners under temporary protection through the e-Government Gateway (E-Devlet).*”

²⁹⁴ Article 29(3), TPR.

²⁹⁵ Access to the Labour Market: Turkey (Asylumineurope.org 31/05/2021) <<https://asylumineurope.org/reports/country/turkey/content-temporary-protection/employment-and-education/access-labour-market/>> Accessed on 31.10.2021 ; For more information, see Türk Kızılay, *Syria crisis: Humanitarian relief operation* (October 2018) <<https://bit.ly/2UUS3h0>> Accessed on 2.12.2021.

Foreigners under temporary protection who are eager to apply for an independent work permit can apply on their own behalf.²⁹⁶ According to this regulation, it would be more accurate to say that people with temporary protection do not apply for a work permit to be employed, and that they get permission from their employers to work with a permit. Constituting a vulnerable refugee group, cannot directly access the application system of a work permit. That their employers' must apply to a work permit on their behalf is a method which can be easily abused. In this system, employers may take advantage of cheap labour by not applying for the work permits of workers. It is obvious that law makers must take more efforts in protecting vulnerable foreign workers and to put more burden on employers via new regulations. According to a decision by a Turkish Criminal Court of First Instance, the administrative fine of a foreign worker with a temporary protection identification card who has been found to work without a work permit and was imposed administrative fines for this reason. The case was ruled by the court within the limits of State of necessity²⁹⁷ and therefore it was decided that the administrative fine should be abolished, with a conscientious opinion.²⁹⁸

Consequently, accessing the work permit system in Turkey has many obstacles for a temporary protection status holder. First, they cannot get access to this right within the first six months of their arrival and then they have to integrate into a workplace which will then apply a quota system and get their employer to obtain the work permit for them. It seems preferable for an employer who probably does not want to pay taxes to employ a temporary protection status holder without a work permit. In a system which does not regularly check the legal working status of employed persons and enforce current laws with sufficient fines and penalties there is little reason for unscrupulous employers to withhold access to a work permit and pay below the legal minimum wage. One must have concluded that legislators should grant more functional rights to the temporary protection status holders.

²⁹⁶ Article 5, TPR; Article 1 TPR; Article 2, TPR; Article 3 TPR.

²⁹⁷ Turkey: *Criminal Code* [Turkey], Law no. 5237, *Official Journal of the Turkish Republic* 26 September 2004, Available at: <https://www.refworld.org/docid/4c447a5f2.html> [accessed 17 December 2021]: “No punishment is given to the offender for an act executed to protect himself from a severe and definite danger or an assault against his or another person’s rights, where he has no other choice to eliminate this danger. However, there should be proportional relation between the imminent necessity to protect oneself and the seriousness of danger, and the means used to eliminate this danger.”

²⁹⁸ E. 2018/5264 [2019] (Sivas Peace Court of Criminal Jurisdiction of Turkish Republic)

3.1.4. Right to Access to Housing and Social Assistance

The UDHR states that *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”*

The right to a suitable accommodation is indicated in Article 21 of the Geneva Convention, Article 27 of the Convention on the Rights of the Child²⁹⁹ and Article 43 (d) of the International Convention on the Protection of the Rights of All Migrant Workers and their Family Members³⁰⁰.

In the European Union law, the accommodation conditions of persons benefiting from temporary protection are regulated in the Article 13 of the Directive. Member States shall ensure that beneficiaries of temporary protection have adequate accommodation or have the means to obtain accommodation.³⁰¹ What is meant by shelter centres may be temporary reception centres, public accommodation centres or private living units.³⁰²

If these people do not have sufficient resources in terms of health care, social assistance and livelihood, they will be provided by the necessary assistance. The required assistance, especially for health care, will include at least emergency care and necessary treatment of diseases.³⁰³ In the case that person benefiting from temporary protection work in paid work or have self-employment, their ability to meet their own needs will be taken into account while determining these aids.³⁰⁴

The right to shelter is regulated in the Regulation. While transferring to the temporary accommodation centre determined by the General Directorate, matters such as the foreigner's request, family situation, and whether they have special needs are considered. Accommodation of people with special needs determined by the General Directorate or the governorship in temporary accommodation centres is given priority. However, the word of shelter in the

²⁹⁹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 12 December 2021]

³⁰⁰ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, available at: <https://www.refworld.org/docid/3ae6b3980.html> [accessed 14 December 2021].

³⁰¹ Article 13(1), TPD.

³⁰² Yılmaz Eren, (no 19), p.137.

³⁰³ Article 13(2), TPD.

³⁰⁴ Article 13(4), TPD.

Regulation does not truly mean the shelter right. It states the management of the temporary accommodation centre may allow for a short time in case of urgent need or at the request of public institutions and organizations. Thus, the right to housing is not included as a permanent and solution-providing right in the Regulation. In cases deemed necessitate by the management of the temporary accommodation centre, these persons who will leave the temporary accommodation centre for a short time may be requested to be accompanied by law enforcement officers. The issues regarding the short-term departure of these foreigners from the temporary accommodation centre are determined within the scope of the Regulations regarding the establishment and management of temporary accommodation centres. As can be seen from the procedures for accompanying law enforcement and leaving with permission, the right to housing in the Regulation does not provide people the right have home. In addition to these in the article of restrictions on the exercise of rights says the temporary protection status holders who do not fulfil the obligations partially or completely or within the requested period are warned, if they do not comply with the warnings, the right to stay in the accommodation centres may be restricted for a period or indefinitely.³⁰⁵

In the Turkish law, it is regulated that only health services specified in Article 27 of the Regulation will be performed or will be made under the control and responsibility of the Ministry of Health inside and outside of the temporary accommodation centres. Section Eight of the Regulation is about the establishment, management and operation of dispatch centres and temporary accommodation centres and the services to be provided in temporary accommodation centres.³⁰⁶ Finally, according to the Social Assistance and Solidarity Encouragement Law,³⁰⁷ persons under temporary protection benefit from social assistance³⁰⁸ and a free translation service is provided.³⁰⁹

There can be dozens of different representations of the word ‘home’ in different languages, but the feeling of ‘home’ is universal. Although it might seem easy to live in other countries, especially if your hometown and that country you live in has much in common; it is totally not, particularly if you have been pushed to leave your home. ‘Feels like home’ idiom is commonly

³⁰⁵ Article 35, TPR.

³⁰⁶ Article 36 to 4, TPR.

³⁰⁷ *Turkey: Law No. 4717 of 1986 Social Assistance and Solidarity*, [Turkey] *Official Journal of the Turkish Republic* 29 May 1986.

³⁰⁸ Article 30, TPR.

³⁰⁹ Article 31, TPR.

used. It means that in that place people feel happy, free and in peace.³¹⁰ There are millions of people feeling homesick in a completely different place. Asylum seekers are trying to make a life in a completely different land which they were not given the right to choose. It might be slightly easier for the ones who have the opportunity to go home again, but for asylum seekers this process is likely to be one of the biggest hardships in life. It is expected for temporary protection holders, who suddenly find themselves in another country in order to save their lives, to be taken under protection in shelter centers, since they do not have "home" to go to. Having designed as it currently is, the accommodation facilities provided resembles more of an 'open prison' rather than a 'house'.³¹¹ In shelter centers asylum seekers are often being neglected by being only given the right for education and health and it is perceived as they do not need anything else, since they have their most important needs provided. It is not sufficient for these people that the shelter centers do recognize their right to education and health. Regarding human dignity, it is not a welcoming environment for asylum seekers, most of whom are experiencing Post Traumatic Stress Disorder (PTSD)³¹², and to stay in so-called shelter centers (that have the same service standards with detention centers³¹³) which temporary protection holders can only enter and leave under police supervision on the condition that they obey the rules. States should consider sensitivities of people while fulfilling their responsibilities regarding basic human rights. As a starting point to address this issue, the shelter centers could

³¹⁰Be/feel at Home (Cambridge Dictionary) <<https://dictionary.cambridge.org/tr/s%C3%B6zl%C3%BCk/ingilizce/be-feel-at-home>> Accessed on 17.01.2022

³¹¹İnsan Hakları Derneği İzmir Şubesi Mülteci Komisyonu "Harmandalı: Adı geri gönderme merkezi, ama aslında cezaevi..."(İnsan Hakları Derneği, 22 October 2018) <https://www.ihd.org.tr/harmandali-adi-geri-gonderme-merkezi-ama-aslinda-cezaevi/> Accessed on 17.01.2022, Eda Aktaş "Aydın Geri Gönderme Merkezinde kalan mülteciler: Burası bir merkez mi, hapishane mi?" (evrensel.net, 28 February 2021) <https://www.evrensel.net/haber/426984/aydin-geri-gonderme-merkezinde-kalan-multeciler-burasi-bir-merkez-mi-hapishane-mi> Accessed on 17.01.2022.

³¹² "Post traumatic stress disorder (PTSD) is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat, or rape or who have been threatened with death, sexual violence or serious injury." See More: Felix Torres, M.D., DFAPA, MBA "What is post traumatic disorder?"(psychiatry.org, August 2020) and "Moreover, 90% of the Syrian war refugees who met criteria for PTSD also screened positive for clinically important levels of anxiety, and 85% had clinically significant depressive symptoms." See More: Bruce Jancin "Almost one-third of Syrian refugees in U.S. met PTSD criteria" (mdedge.com, 9 June 2017) <https://www.mdedge.com/psychiatry/article/140148/ptsd/almost-one-third-syrian-refugees-us-met-ptsd-criteria> Accessed at 17.01.2022.

³¹³ The standards of the conditions are regulated in the same legal instrument: National Legislative Bodies / National Authorities, Turkey: *Implementation regulation on the Law on Foreigners and International Protection*, Official Journal of Turkish Republic 17 March 2016, available at: <https://www.refworld.org/docid/5747fb7a4.html> [accessed 17 January 2022] "ARTICLE 125 – (1) Procedures and principles related to removal centers and reception and accommodation centers shall be regulated within the framework of the Regulation on Establishment, Management, Running and Supervision of Reception and Accommodation Centers and Removal Centers, which was published in the Official Journal No. 28980 of 22/4/2014."

be developed with the perception of a “dormitory” concept in mind, rather than an “open prison” concept.

3.1.5. Right to Access to Health Services

The right to health is considered together with the right to life and the prohibition of ill-treatment in international human rights conventions. It is regulated in the Article 25 of UDHR. Importantly the article uses the phrase "everyone" as subject. Health standards are specified in Article 12 of UDHR and again “everyone” is used as the expression. It is important that everyone under the jurisdiction of the State should be enjoying right to access to health services, regardless of whether they are citizens or foreigners or unregistered strangers. In addition, Article 23 of the Geneva Convention provides for the application of the same enigma as governments apply to their own citizens in terms of social assistance and subsistence to refugees.

Accessing the health system is a positive obligation of the States. The rights enshrined in the ICESCR are guaranteed without distinction under Article 2. According to the interpretation of the provision in terms of health, it can be accepted that the right to health applies to all without distinction.³¹⁴

In accordance with General Comment 20, para. 30 of the CESCR:

“The ground of nationality should not prevent access to Covenant rights, e.g. all children within a State, including those with undocumented status, have the right to education and access to adequate nutrition and affordable health care. The rights of the Covenant apply to everyone, including non-citizens such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of their legal status and documentation.”³¹⁵

It has been stated that this paragraph shall not prevent the implementation of Article 2(3) of the ICESCR. The related footnote states, “*Developing countries may determine, with due regard for human rights and their national economies, the extent to which they guarantee to non-nationals the economic rights recognised in this Convention.*”

Given the text of the ICESCR and the CESCR's interpretation, it is clear that the State party cannot exclude anyone under its jurisdiction from the right to health on the basis of any social

³¹⁴ Uyanik, (n 2), p.39.

³¹⁵ E/C.12/GC/20.

status, including nationality or legal status. However, it should be borne in mind that the obligations of the parties with regard to the right to health may be different. ICESC Committee also stated that there may be differences in the fulfilment of these duties; however, it noted that differentiation must be based on justified grounds that make it possible to avoid discriminatory practices.³¹⁶ The State, which is obliged to ensure the right to health, can provide this to individuals with its own financial measures; it can provide social security from birth or depending on the work, and provide accessible hospitals.

According to the Directive, the Member States are stipulated in cases where the temporarily protected persons do not have sufficient resources, they will provide the necessary conditions to ensure their social welfare and livelihoods and to receive the necessary assistance in order to benefit from medical care facilities. Medically speaking, at least emergency care and the provision of necessary treatment for illnesses are guaranteed.³¹⁷ This assistance does not have to be only financial. Therefore, the Member States' provision of this service in their own hospitals will mean fulfilment of the right to health obligation in the Directive. According to what is stated in the third paragraph of the same article, their capacity to meet their own needs will also be considered while determining assistance for the provision of social welfare and those who benefit from medical care.

The issue of benefiting people with special needs from medical care is specifically regulated in the Regulation similar to LFIP. Medical and other assistance needed person with special needs, such as unaccompanied minors, person who have experienced torture, rape or other serious psychological, physical, or sexual persecution, shall be provided health services without regard to emergency assistance.³¹⁸

Health services are regulated in article 27 of the Regulation. According to Article 27 of the Regulation, health services will be provided both inside and outside the temporary accommodation centres under the control of the Ministry of Health. Assistance to persons under temporary protection with respect to health services is coordinated by the Ministry of Health.³¹⁹ In addition, according to sub-clause (b), a contribution fee can be obtained from the primary

³¹⁶ *ibid.* Para. 12, 18, 19.

³¹⁷ Article 13(2), TPD.

³¹⁸ Article 13(4), TPD.

³¹⁹ Article 27(3), TPR.

and emergency health services, the treatments, and medicines within this scope, at the amount or rate determined by the Health Ministry. Health service costs may not exceed the cost in the health application communicate determined by the presidency of the Social Security Institution for general health insured persons. If it is mandatory to pay a price to health care providers in response to basic and emergency medical services provided under this article; the price cannot be applied to exceed the unit prices set by the presidency of the Social Security Institution for general health insured persons or to include a lower discount. Except for vaccines, those covered by this article may not be provided with health care within the scope of health services that are not covered by the Social Security Institution. On the other hand, it has been stated that those under temporary protection cannot apply to private health institutions directly except in emergency and compulsory situations. At this point, considering the public interest of the preventing admission to private hospitals does not prevail over the consequences of people's inability to access health services.

Precautions regarding infectious diseases and addictions are also mentioned in detail for providing the public health in the Regulation. According to the Regulation: *“all measures shall be taken and necessary vaccinations and scanning activities shall be conducted against the risk of infectious diseases and all measures with respect to conduct of necessary vaccination for children shall be taken.”*³²⁰; *“The competent personnel shall provide information and carry out support activities related to reproductive health and sanitary conditions of the personal and collective use areas shall be monitored and necessary measures shall be taken to remedy identified deficiencies and make the environmental conditions of the temporary shelter suitable in accordance with health considerations.”*³²¹; and *“In the case of drug addiction or psychological problems are detected among foreigners benefiting from temporary protection, necessary measures, including transfer to a health institution, shall be taken.”*³²² It is not wrong to say that the general interest has been given high priority by the legislator. The article on the right to health is regulated in detail.

The access to health of people who have not registered in the system has also been regulated. Considering Turkey's border region to Syria, stating the condition of non-registered persons is a good example. According to the Regulation, *“persons benefiting from temporary protection*

³²⁰ Article 27(1)(e), TPR; Article 27(1)(h), TPR.

³²¹ Article 27(1)(f), TPR; Article 27(1)(g), TPR.

³²² Article 27(1)(ğ) TPR.

*shall be identified and changes in their addresses shall be informed to the Ministry of Health without delay in order to ensure prompt and continuous provision of vaccination and protective health services.”*³²³ It can also be said that with this provision the legislator is encouraging people to register. *“Foreigners under this Regulation, whose registration proceedings are not completed, shall be provided with health services, based on their identification information, in emergency situations and when they are crossing the border for the first time.”*³²⁴

Compared to the Directive, the Regulation is regulated more comprehensively in terms of benefiting from the health services included in Article 27.³²⁵ Health institutions and organizations to provide health services for persons under temporary protection, and voluntary health service to set up foundations or associations that offer this service the working principles of “Principles Of Health Services To Be Provided To Those Under Temporary Protection”³²⁶ Directive (*hereinafter* the Health Directive) was published by the Ministry of Health regarding the implementation of Article 27 of the Regulation. Accordingly, issues such as taking necessary measures to protect mass asylum seekers against the risk of infectious diseases, supervising the health compliance of collective use areas and units where health services are provided, and making the environmental conditions in which temporary accommodation centres are suitable for health will be carried out under the control and responsibility of the Ministry of Health. Even though The Regulation includes many obligations regarding the health services, they are supported by circulars and directives. Hereby, this supports the dynamic system which is conducive to change. This dynamic system is influenced by two aspects of the health care provided to asylum seekers in Turkey. On one hand, the right to health and humanitarian aid as fundamental human rights of asylum seekers must be taken into consideration, and on the other hand, the issue of fair distribution of the financial resources allocated by the State for the provision of health services between citizens and foreigners benefiting from protection.³²⁷ This naturally brings with it the necessity of making a detailed and dynamic regulation for Turkey.

The observance of a human rights-based approach always remains dynamic on the subject of health care. The best example of this would be to examine the impact of the Covid-19 pandemic

³²³ Article 27(3), TPR.

³²⁴ Article 27(4), TPR.

³²⁵ Elçin, (n 210), p.61.

³²⁶ 54567092/9648 Numbered 04.11.2015 Dated Ministry of Health Letter.

³²⁷ Uyanık, (n 2), p.60.

on refugees with legal instruments. With the Covid-19 pandemic starting in March 2020, a communiqué³²⁸ was issued that expanded the scope of the Social Security Institution Communiqué On Healthcare Practices (SUT). The definition of emergency has been extended to "*diagnosis and treatment of pandemic cases during the pandemic*". Medicines for the treatment of the pandemic, which according to the Ministry of Health were dispensed by hospitals during the pandemic, have been included in the scope of the day-care procedures. In this context, the free provision of medicines by health institutions contracted with the social security insurance has become compulsory. In addition, Article 79 was added to the Council of Ministers' Decree no. 2002/3679, attached to the President's Decree no. 2399, dated 13.04.2020. With this article, which came into force on 01.03.2020, the following amendments have entered into force; Regardless of whether people are covered by insurance or not, they will be able to benefit from personal protective equipment, tests, kits and other equipment that will be distributed by the Health Ministry as part of the pandemic, as well as medicines that will be used in the treatment and distributed centrally, free of charge. Persons not covered by insurance i.e. unregistered persons, persons whose protection registration has been cancelled will therefore have free access to all the items listed in Article 79. However, they will have to pay other costs that are not included in this article - included in the SUT and normally free of charge in the context of emergency assistance. Namely, the cost of the available bed in in-patient treatment, the travel costs incurred for the referral of the person to another health facility are some of these other costs. Since a new disease or a new treatment has a great impact on people, as examined, the law must also adapt its language to this dynamic. Consequently, Article 27 which regulates health services must continue to be supported by numerous legal instruments.

Turkey, which receives the largest number of refugees in the world, has a duty to keep its legislation dynamic in the area of health care. In this area, where it is difficult to maintain economic balance and human rights, there are many issues being criticised. Although there are many major topics relating the difficulties arise from accessing health care³²⁹, Turkey has repeatedly claimed that major service unit is the health care from the amount allocated for service expenditure for Syrian refugees.³³⁰

³²⁸31094 Numbered 9.04.2020 Dated Communiqué. < 9 Nisan 2020 (resmigazete.gov.tr)> Accessed on 8.01.2022

³²⁹ Furthermore see: Country Report:Health Care, Turkey 31.05.2021 (Asylumineurope.org) <https://asylumineurope.org/reports/country/turkey/content-temporary-protection/health-care/> Accessed on 7.01.2022.

³³⁰ Al-Monitor, 'Suriyelilere 40 milyar dolar harcandı mı?', 2 November 2019, available in Turkish at: <https://bit.ly/2yd0g9A>. Accessed on 7.01.2022.

3.1.6. The Right to Education and Learning

Universal Human Rights Declaration states in its 26th Article “*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*” Under the Geneva Convention, Member States must apply the same treatment as they apply to their own citizens in basic education, particularly to children of school age who are refugees.

In the context of temporary protection, the right to education has been classified according to age range. According to the Directive, Member States must allow those under the age of 18 to benefit from the education system under conditions equivalent to the conditions offered to their citizens. However, Member States may foresee such opportunities to be limited to the state education system.³³¹ Member States may allow adults benefiting from temporary protection to benefit from the general education system.³³² States will be able to foresee that these opportunities to be granted will be limited to the State’s education system.³³³ It is not mandatory for adults to benefit from the education system. In another saying, Member States have no obligation to provide education system for the adults of temporary protection status holder. In the event of the termination of temporary protection, Member States may allow families of underage children who attend school in a Member State to benefit from residence conditions that allow them to finish their school term.³³⁴

Educational services are regulated in detail by the Article 28 of the Regulation similar with the Article 14 of the Directive.³³⁵ According to Article 28(1) of the Regulation, “*the education activities of foreigners within the scope of the Regulation will be carried out by the Ministry of National Education both in the accommodation centres and outside the centre. In this context, “(a), pre-school education services can be provided to children between 54 and 66 months of age, in clause (b), primary and secondary education age children will be given educational activities, clause (c) language education and vocational training for all age groups. It is stipulated that skill and hobby courses can be organized optionally.*”

³³¹ Article 14(1), TPD.

³³² Article 14(2), TPD.

³³³ Article 14(1), TPD.

³³⁴ Article 23(2), TPD.

³³⁵ Kaya and Eren, (n 12), p.59.

In 2014 it was noted that only 15-20% of the beneficiaries of temporary protection continue to receive education.³³⁶ First, the right to education started in 2011 as a regional activity to meet the educational needs of Syrian children, who are guests in the border provinces of Turkey, so as not to waste years when they return to Syria.³³⁷ However, the need to find other solutions arose due to the increasing number of mass arrivals at the end of 2012. The definition of temporary protection was given a place in the Turkish legislation in 2014, the right to education started to be regulated by the FLIP, the regulation, and consequently the corresponding circular was published to solve the problems in detail and maintain the dynamic character. In this context, the Ministry of National Education General Directorate of Basic Education issued a circular on "Education-Training Services for Foreigners".³³⁸ According to Article 2 of this Circular, a Ministry Commission will be established with the personnel to be assigned from the relevant units under the supervision of the Undersecretary of the Ministry. According to paragraph (c) of the same article; the duties of this Commission have been determined as *"to prepare reports showing the educational needs of foreigners who flock to our country en masse, to coordinate with other relevant public institutions and organizations, non-governmental organizations and / or international organizations that carry out studies on the situation in question"*. In addition, in Article 2, it is stated that a commission will be established within the Provincial Directorates of National Education for educational activities of foreigners. It was stated that the representatives to be determined by the commission from among the foreigners who flocked with them and those experienced in education and training can be invited to the Commission when deemed necessary. In subparagraph (ç) of the same article, establishment of temporary education centres in temporary accommodation centres is regulated. In clause (e), it is regulated that foreigners who want to support education and training voluntarily support the activities in these centres under the supervision of the education coordinator. As can be seen, educational rights are defined in Regulation in more detail than in the Directive. The details of its implementation and the mechanisms that ensure continuity are regulated by circulars.

Although the temporary protection regime was established with the hope that it would not be permanent, it cannot be ignored that the education provided during the period of temporary protection remains permanent. It is clear that the language barrier is the main factor in the

³³⁶ Murat Erdoğan, *Türkiye'deki Suriyeliler: Toplumsal Uyum ve Kabul Araştırması* (Bilgi Üniversitesi Yayınları, İstanbul, 2014).

³³⁷ Esra Yılmaz Eren, "Temporary Protection Status and Evaluation of Services Provided to Syrians in Turkey" [2016] Middle East Journal of Refugee Studies, p.128.

³³⁸ 10230338/235/4145933 Numbered Circular 2014/21.

integration of the large population of temporary protection status holders. Integration is not possible without learning the language of the host community and the language barrier can only be overcome through education. In Turkey, more than half of the population under 18 years of age who are holders of temporary protection need a goal to get over the trauma they have experienced and they need to move on with their lives, young people can only achieve this by being involved in life through education.³³⁹ Thus, the right to education needs to be regulated in detail in Turkey, given its major impact on integration. In view of these realities, the right to education continues to be developed and kept alive through circulars that are updated in the light of changing circumstances and experiences.

3.1.7. The Right to Family Unification Request

It is not possible to give a general and universally valid definition of the term 'family'. For cultural, sociological and religious reasons, the family in society can be understood in different ways. The UDHR recognizes the family as “the natural and fundamental group unit of society” and declares that it is “entitled to protection by society and the State” in the Article 16. There are widely separated families in mass influx situations and this leads to practical problems in bringing family members together or keeping them together. However, the right to family reunification applies in cases of mass asylum, otherwise it would be a violation of right to respect for family life regulated in the Article 8 of the EDHR. The ECtHR accepts the existence of the right to family reunification under the ECHR as a rule. The concept of "family" is interpreted broadly by the ECtHR, but there is no unity in the case law. In this context, the Court examines whether the applicants can live with their families in the country of origin. However, it can be argued that the issue at stake is far from being legally certain and predictable, as it leads to different decisions depending on the characteristics of each concrete case.³⁴⁰

In the European Union, the European Parliament states that the right to family reunification derives directly from the right of residence.³⁴¹ There is the EU Family Reunification Directive 2003/86/EC³⁴² on the family reunification of citizens of the Member States. However, this regulation only entailed obligations for refugees; no arrangements were made regarding the

³³⁹Yılmaz Eren, (n 337), p.131.

³⁴⁰ Zeynep Özgenç “Right to family Reunification of Asylum Seekers” [2018] Volume 37 Issue 2, Uludağ Journal of Economy and Society, p.297-342.

³⁴¹ Yılmaz Eren, (no 14), p.139. ; European Parliament, Resolution on European Immigration Policy, Resolution A3-0280/92 (18 November 1992).

³⁴² Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, [2003] OJ L251/12-251/18.

family reunification of other status holders who enjoy international or temporary protection. The ECRE states that there should be no difference between convention-protected refugees and *de facto* refugees and temporary protected persons on the subject of family reunification.³⁴³

Family members is a very broad definition. They are allowed to live together and help find each other, whether they live in villages, cities, camps or spontaneously.³⁴⁴ It is especially important that unaccompanied minors are reunited with their parents or other family members. Referring to family reunification in Article 15 of the Directive, it begins by specifying which definitions fall within the scope of family. According to the Directive, “sponsor” means a third-country national benefiting from temporary protection in a Member State under a decision adopted in accordance with Article 5 and wishing to be joined by other members of his/her family.³⁴⁵ This broad definition complies with the UNHCR comments. “*The UNHCR encourages Member States to extend the concept of the family to unmarried partners, children of unmarried couples and adult family members who are objectively unable to meet their own needs or are in a particularly vulnerable situation and hence dependent on other members of the family.*”³⁴⁶

The right to family reunification is not explicitly mentioned, there are provisions regarding family reunification in the Article 15 of the Directive. Member States must provide family reunification to persons who are separated from each other within the scope of the discretion granted to them.³⁴⁷ Persons to be considered as family members in the Member States are those who previously existed as a family in the country of origin and were separated from each other as a result of the situation caused by mass asylum.³⁴⁸

Member States have to ensure family reunification- in other words described as close family - among these persons those with whom; where the sponsor's spouse equates unmarried couples with married couples under the laws or practices of the relevant Member State, the sponsor has a stable relationship, and the non-marital partner and the sponsor or spouse are born in or out of wedlock; or their unmarried children who are underage without any distinction regarding their adoption.³⁴⁹ Member States have an obligation to provide family unification for the ensured close family members who are living different Member States according to demand.³⁵⁰

³⁴³ *ibid.*; ECRE, Position on Refugees from the Former Yugoslavia by ECRE December 1996.

³⁴⁴ Elçin, (no 210), p.63.

³⁴⁵ Article 2(1)(h), TPD.

³⁴⁶ UNHCR Note, p.12.

³⁴⁷ Article 15(2), TPD.

³⁴⁸ Article15(1), TPD.

³⁴⁹ Article 15(1)(a), TPD.

³⁵⁰ Article 15(2), TPD.

Distinctly, Member States have the discretion to grant family reunification for the extended family whose members close relatives living together as part of the family community at the time of events leading to mass asylum and who are wholly or largely dependent on the sponsor.³⁵¹ The discretionary powers of the Member States are limited by the great difficulties arise from the suffer of the family members might have in the absence of reunification³⁵². The UNHCR underlines in its comment that *“the absence of documentary evidence of the family relationship should not be an obstacle for the reunification, applications for reunification should be examined as quickly as possible, decisions rejecting the application should be accompanied by a statement of reasons and be open to legal challenge”*.³⁵³

While applying Article 15 on family reunification, the best interests of the child will be considered.³⁵⁴ In fact, Berlin administrative court, *“in its decision regarding family reunification of subsidiary protection persons ruled that applications for a visa for family reunification with subsidiary protection beneficiaries must be treated as particularly urgent if the holder of the right of residence is about to reach the age of 18. The Immigration Office should ensure that such applications are processed preferentially and promptly.”*³⁵⁵

Member States will decide in which State reunification will take place.³⁵⁶ The group and its members are granted a residence permit under temporary protection, and in cases where family members enjoy temporary protection in different Member States, in the event of a transfer from one Member State to another, the residence permit in the transferred Member State will be withdrawn and under temporary protection, related obligations will end.³⁵⁷ Cooperation with international organizations may be possible in order to put family reunification in practice.³⁵⁸

According to the Turkish system, family members are defined in the Article 3 of the Regulation as the foreigner's spouse, minor child, and dependent adult child.³⁵⁹ Because of this definition, family members of persons benefiting from temporary protection have been restricted from family reunification to a great extent.³⁶⁰ As of this definition, it can be considered that the Regulation is insufficient compared to the broad and comprehensive definition of the Directive.

³⁵¹ Article 15(2), TPD.

³⁵² Article 2, TPD; Article 3, TPD.

³⁵³ p.13, UNHCR Note.

³⁵⁴ Article 15(4), TPD.

³⁵⁵ V38 L 442.19 [2019] (Administrative Court of Berlin).

³⁵⁶ Article 15(5), TPD.

³⁵⁷ Article 15(6), TPD.

³⁵⁸ Article 15 (7), TPD.

³⁵⁹ Ekşi, (n 224) p.86.

³⁶⁰ Çelik, (n 223) p.109.

Families may apply for family reunification in Turkey to reunify with the spouses, minor children, and adult dependent children. In this case, minor children and the dependent adult children of the spouse of the foreign national enjoying temporary protection are not covered by family reunification. Given the purpose of the Regulation and the human rights approach, it is clear that dependency cannot be determined on the basis of age criteria. Although the definition of a child refers to a person who has not yet reached the age of eighteen, for instance a minor; family members who have reached the age of eighteen years old should be eligible for the right to family reunification because of a state of physical, mental or economic dependence.³⁶¹ Since the term "spouse" is used in the singular sense, it is not possible for potential other spouses to apply for family reunification. Family reunification procedures for unaccompanied children *"shall be immediately initiated without waiting for the request of the child."*³⁶² These applications are evaluated by the General Directorate and necessary studies can be carried out in cooperation with the relevant public institutions and organizations, international organizations, and non-governmental organizations. Persons registered with the competent authorities under temporary protection have the right to submit an application for family reunification to the Directorate General, as this is the main body responsible for receiving and assessing the application. Where necessary, the General Directorate will cooperate with other relevant institutions. Regarding children who are found to be unaccompanied, proceedings regarding family reunification are initiated immediately, without waiting for the request of the children.

The right to family reunification is not considered an individual right, but a claim related to other fundamental rights. Therefore, in Turkish law, the question of whether or not the family member has a right to family reunification, and if s/he is deemed eligible, the scope and limits of such right are determined by reference to the Regulation and purpose of the fundamental right. The main source that should be taken as a starting point for this is the Turkish Constitution³⁶³. The scope of the rights and freedoms conferred by the Regulation on holders of temporary protection and their families is quite limited. According to Article 16 of the Turkish Constitution, the restriction of the fundamental rights and freedoms of foreigners - including the right to family unity- can only be made by law. In this case, it can be said that in

³⁶¹ Özgenç (n 240) p.335.

³⁶² Article 49(2), TPR.

³⁶³ Özgenç (n 240) p.311.

Turkey, where polygamy, partnerships and same-sex marriages are not accepted according to civil law, the concept of family is strictly regulated in accordance with national law.

3.1.8. Unaccompanied Minors and Special Needs

Third-country nationals under the age of eighteen who enter the territories of the Member States without an adult companion who is responsible for them by law or custom, unless they are actively protected by such a person or stateless persons or minors who are left unaccompanied after entering the Member State, are defined as unaccompanied minors within the scope of the Directive of the European Union.³⁶⁴ People with special needs are defined in the Article 13 of the Directive in a non-restrictive way. Accordingly, people with special needs are persons such as those who have been tortured, raped or otherwise psychologically, physically, or sexually persecuted.³⁶⁵

Necessary health and other assistance for unaccompanied children and people with special needs will be provided by the Member States.³⁶⁶ They will take the necessary measures regarding the residence of persons who have benefited from temporary protection but would not be expected to travel reasonably due to their health conditions. To illustrate, these people are those who will be seriously adversely affected if their treatment is interrupted. *“The persons in question will not be deported as long as this situation continues.”*³⁶⁷ *“The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.”*³⁶⁸ During temporary protection, they will assist unaccompanied minors to be placed with adult relatives, foster families, reception centres providing special conditions for minors or other suitable shelters for minors with the person who took care of the child while fleeing. In order to ensure placement, Member States will take the necessary steps, as well as agreement with the adult person or persons concerned. In addition, depending on the age and maturity of the child, his or her opinion will also be taken into consideration.³⁶⁹

³⁶⁴Article 2(1)(f), TPD.

³⁶⁵ Elçin, (n 210), p.65.

³⁶⁶Article 13(4), TPD.

³⁶⁷Article 23, TPD.

³⁶⁸Article 16, TPD.

³⁶⁹ Elçin, (no 210), p.65.

According to the Regulation, a child is a person who has not yet reached the age of eighteen and has not become a mature adult.³⁷⁰ Unaccompanied minor is defined as “*a child who arrives at Turkey without the attendance of an adult who by law or custom is responsible for him/ her or, is left unaccompanied after entry into Turkey, unless he/she is not taken under the active care of a person responsible for him/her*”.³⁷¹ The persons with special needs are defined in the same way as the Directive. The person with special needs is “*an unaccompanied child, disabled, elderly, pregnant person, a single mother or father with her/his child, or a person who have been subjected to torture, sexual assault or other serious psychological, physical or sexual violence*.”³⁷² The definition of special needs person includes much wider groups of people compared to the Directive.³⁷³

Accommodation services for unaccompanied minors are particularly regulated in the Regulation. While transferring the procedures to temporary accommodation centres determined by the General Directorate, issues such as the foreigner's request, family status and whether the person has special needs will be taken into consideration.³⁷⁴ The people with special needs determined by the General Directorate or the governorship will be given priority to be accommodated in temporary accommodation centres.³⁷⁵

All kinds of assistance and support, especially health services, psycho-social support, rehabilitation, to be provided to those with special needs from foreigners within the scope of the Regulation, are provided with priority and free of charge³⁷⁶. In all transactions related to children, the relevant legislation provisions are applied by considering the best interests of the child.³⁷⁷ Preventive and protective measures are immediately taken against foreigners who are considered to be victims of violence within the scope of the Law on the Protection of Family and Prevention of Violence Against Women and the relevant Regulation³⁷⁸. The Article continuous as “*those among the foreigners within the scope of this Regulation, who are assessed*

³⁷⁰Article 3(1)(d), TPR.

³⁷¹Article 3(1)(m), TPR.

³⁷²Article 3(1), TPR.

³⁷³Elçin, (no 204), p.66.

³⁷⁴Article 23(2), TPR.

³⁷⁵TPR Art.23(3), TPR.

³⁷⁶Article 58(1), TPR.

³⁷⁷Article 48(2), TPR.

³⁷⁸Turkey: Law no. 6284 of 2012, Law to Protect Family and Prevent Violence Against Women [Turkey], Official Journal of the Turkish Republic 8 March 2012.

to possibly be victims of human trafficking, necessary measures shall be taken immediately in line with the relevant legislation.”

3.2. Termination of Temporary Protection Status

Contrary to what was foreseen in the Geneva Convention, the temporary protection status was shaped on the axis of the right of persons benefiting from temporary protection to return to their country of origin when the conditions that caused it began to disappear. It is even emphasized that the main feature of the temporary protection status is the return to the country of origin as a human right.³⁷⁹

3.2.1. Exclusion from Temporary Protection Status

Article 28 of the Directive regulates the circumstances in which Member States can be excluded from the temporary protection coverage even if they are included in the group determined by the European Council decision. This regulation includes 4 different reasons as defined in international texts;

- a crime against peace, a war crime or a crime against humanity,
- a serious crime with no political implication,
- persons convicted of acts contrary to the purposes and principles of the United Nations,
- persons for whom there are serious reasons to be deemed dangerous to the security of their country, or who continue to pose a danger to the population of that country, particularly because they have been convicted of a serious ordinary crime.

As can be seen, the Directive regulated the exclusion clause in line with the Geneva Convention.

In the Regulation, Article 8 regulates the persons who will not be granted temporary protection status or who will be cancelled even if it was. The Regulation contains similar provisions to the LFIP's exclusion from international protection and the 1951 Geneva Convention exclusion clause. Article 8 of the Regulation states as:

- “a) Those with respect to whom there are serious reasons to consider that they are guilty of actions defined in Article 1 (F) of the Convention Relating to the Status of Refugees dated 28/7/1951 amended by the 1967 Protocol Relating to the Status of Refugees;
- b) Those regarding whom there are reasons indicating that he or she has committed cruel acts outside of Turkey for any reason whatsoever;
- c) He or she has taken part in the commission of crimes or acts as specified in subparagraphs (a) and (b) of this paragraph or incited others to commit such crimes or acts;
- ç) Those who took part in armed conflicts in his or her country and did not permanently ceased such activities;
- d) Those who are identified as having committed, planned to commit or participated in acts of terrorism;

³⁷⁹ Elçin, (no 210), p.69; Sopf, (n 94), p.112.

- e) Those who are considered to be a threat to public due to being convicted of a serious crime and those who are considered to pose danger to national security, public order, or public security;
- f) Those who have previously committed a crime or crimes for which imprisonment sentence would have been given if committed in Turkey and have left their country of origin or country of residence in order to avoid punishment for that crime;
- g) Those who are convicted of crimes against humanity by international courts; ğ) Those who have committed one of the crimes laid down in Chapter Seven of Section Four of the Turkish Penal Code No. 5237 of 26/9/2004.”

As can be seen, both the Directive and the Regulation have adopted the principles of exclusion from the status in a way that is parallel to the Geneva Convention and does not increase the limits of the conditions. Article 8 of the Regulation contains a wider range of exclusions and lists foreigners who are not covered by temporary protection, whereas the Article 28 of the Directive lists the situations in which a person may be excluded from temporary protection. For instance, the exclusion of temporary protection of persons participating in an armed conflict in their country may be related to the reluctance of the Turkish authorities to grant temporary protection to Syrians fighting ISIS.³⁸⁰

3.2.2. Duration of the Temporary Protection Status

In the European Union, the temporary protection decision may be terminated at the end of the stipulated period or in a parallel procedure to the temporary protection decision. The temporary protection decision can be extended for a maximum of 3 years. In the event of the expiration of the temporary protection regime, the temporary protection regime provided for by the general aliens’ law in force in the Member State will continue to apply.³⁸¹ Furthermore, it has been regulated by the UNHCR that after the temporary protection period has expired, persons who cannot benefit from other forms of protection can be forced to return by the Member States.³⁸²

Unfortunately, there is no regulation regarding the duration of the temporary protection status in the Regulation. The temporary protection application decision can be taken by the Presidency. It was decided that the duration could be foreseen therefore the discretion was left to the presidential decision. In this case, *Ekşi* claims that it is more appropriate to specify a period when considering a combination of possibilities such as the prohibition of repatriation and the people apply for asylum individually due to expiration of temporary protection or

³⁸⁰ Ahmet Apan, “Drawing Lessons from EU Law on Temporary Protection and the Right to Work for Asylum-seekers: What implications does the integration of Syrians with the labour market have in Turkey?” (M.A. Thesis, University of Kent, 2019) p.27.

³⁸¹Article 22, TPD.

³⁸²Elçin, (no 210), p.69; Pirjola (n 120), p.427.

collectively reorganization of a certain status.³⁸³ It is emphasized that even if other protection statuses would be applied for, the guarantees given will disappear at the end of the termination of temporary protection status.³⁸⁴

3.2.3. Termination of Temporary Protection Status

The termination of the temporary protection status is regulated in the Article 6 of the Directive. When the period for the continuation of the temporary protection regime expires in the Directive, it will automatically end without the need for an additional decision. Although there is no provision regulating the expiration, the Article 3(1) of the Directive states that the temporary protection status would not be prejudiced in the context of the Geneva Convention. Persons with temporary protection status cannot benefit from another status seeking asylum at the same time according to the article 19 of the Directive. Member States may provide that the temporary protection cannot coincide with the status of an asylum seeker while the asylum application is under consideration. According to Article 19(2), where a person eligible for or benefiting from temporary protection is not granted refugee status or, where applicable, another form of protection after an asylum application has been examined, the Member States shall, without prejudice to Article 28, provide that the person shall enjoy or continue to enjoy temporary protection for the remaining period of protection.

Like the procedure in which temporary protection was instituted, it can be terminated at any time by the European Commission, either on the request of a Member State or on a spontaneous proposal, by presenting a decision taken by the European Council with a qualified majority vote. Article 6(2) specifies the nature of the decision of the European Council. Accordingly, the decision of the European Council must be taken in respect of fundamental rights and freedoms and obligations on the non-refoulement, and conditions in the country where people will return must be appropriate for return. In such a case, the term expiry condition is not sought. In addition, it has been ensured in Article 3(3) of the Directive that the provision, implementation, and termination of temporary protection will be applying in consultation with the UNHCR and other organizations.

The application part after the termination of temporary protection of the Directive is divided into two voluntary repatriation and compulsory repatriation. It is essential to ensure the voluntary return of persons whose temporary protection period have expired. If the persons

³⁸³Ekşi, (n 205), p.83.

³⁸⁴Elçin, (no 210), p.69; Savaşan (n 153), s.27.

concerned do not return voluntarily, the Member State shall take the necessary measures to repatriate them. Regarding voluntary repatriation, Member States will take the necessary measures to ensure that persons benefiting from temporary protection return at their will or return because the status of temporary protection expires. Member States are obliged to facilitate respecting human dignity on the return of individuals benefiting from temporary protection at their will. For instance, forcing a group of people by law enforcement officers to return without individual protection assessment like an exile may be an example of a treatment by the State that does not accord with human dignity. In addition, Member States should provide the possibility of return to status holders, who wish to return to their country before their temporary protection status expires.³⁸⁵

In the Directive, situations where voluntary return is not possible, are regulated as compulsory repatriation. Member States are obliged to take the necessary measures to ensure that the compulsory repatriation of persons whose temporary protection has expired and who are not eligible for admission within the extended asylum procedures are carried out with respect for human dignity. Deportation is not possible as long as their health problems persist, and the nature of the residence permit to be issued in this case is left to the discretion of the Member State. According to Article 23(2) of the Directive “*The Member States may allow families whose minor children attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period.*” In the doctrine, it was emphasized that this procedure is broader and more comprehensive than the protection contained in Article 33 of the Geneva Convention.³⁸⁶

In the Regulation, the decision is terminated in the same way as the procedure for making a temporary protection decision. The Ministry of Internal Affairs may make a proposal to the President to terminate the temporary protection. Temporary protection is terminated by the decision of the President.

According to the presidential decree, the temporary protection status can be completely terminated by returning to their countries or it may be decided to give the asylum status to people who meet the conditions of, or to evaluate the applications of those who apply for international protection individually or it may be allowed for them to stay in Turkey according to the conditions to be determined under the law. As it can be seen, The Regulation can be

³⁸⁵Article 21(2), TPD.

³⁸⁶Elçin, (no 210), p.79; Kerber, (n 119), p.209.

terminated by a presidential decree with three completely different circumstances. The fact that no binding provision has been determined on this issue remarks that the temporary protection status not to be resolved permanently falls within the authority of the Presidency.³⁸⁷ Upon the Presidential Decision to terminate the temporary protection, it is essential to leave Turkey. According to Article 14(1) of the Regulation *“The period of time during which persons benefiting from temporary protection shall be determined based on the assessment to be conducted by the Directorate General on the situation in the country of origin of the persons benefiting from temporary protection and in the countries they transited through in order arrive in Turkey.”*

Temporary protection status can also be terminated or cancelled individually according to Article 12 of the Regulation. The Directive does not contain such a provision. If people leave Turkey by their will, or they benefit from the protection of a third country, or they adopted under a third country’s protection for humanitarian reasons or re-placement or sign out from Turkey to go to a third country or death of the status holder, or they apply another type of right to a legal stay or acquiring citizenship, temporary protection status is terminated individually. In the event that a person whose status is terminated leaves, the General Directorate decides individually whether the provisions of temporary protection will be applied or not. This means, an individual assessment is carried out by the General Directorate. If temporary protection status holder leaves Turkey by own his or her will then requires returning, he or she may gain temporary protection status again. In the doctrine, it is emphasized that when the European Union law and complementary law are used, the condition that persons under temporary protection cannot return to their countries is sought and it has been stated that Syrians who voluntarily enter and leave Syria's borders, should end their temporary protection status as soon as they leave Turkey of their own free will.³⁸⁸

³⁸⁷ Bülent Çiçekli, (n 9), p.318.

³⁸⁸ Ekşi, (n 181), p.21.

CONCLUSION

Asylum has been a major problem throughout human history and displaced persons are described as people who are leaving their homeland and seeking refuge due to war, armed conflicts, or widespread human rights violations. These people who have taken refuge in a foreign country *en masse* may receive the status of temporary protected persons. The term of temporary protection is quite different than the other international protection status. Therefore, in the first chapter of the present thesis the origins of refugee law and its development is examined to be able to understand the nature of the protection status better.

Modern refugee law was drafted in the need of solving refugee problem which occurred due to the serious destruction after the World War I. The need of defining of refugee has occurred in the early twentieth century and as a solution the Geneva Convention on 28 July 1951 was signed. Therefore, the definition of “refugee” was introduced in a binding international law instrument that is directly related to asylum law. This legal document clearly states who is eligible to be considered as a refugee and, attached to that status, what kind of legal protection those persons will be entitled to and what kind of obligations such people have to the host state. The Geneva Convention is considered as the fundamental treaty regarding asylum law.

The Geneva Convention defines a refugee as a person who is out of his country because the person has a well-founded fear of being persecuted due to their race, religion, nationality, political opinion, or membership of a social group. It contains a definition based on the individual assessment. Thus, recognition of refugee status is a very important issue in the case of mass influx because individual refugee status determination is impractical if not impossible when there is a large number of people applying as asylum seekers. In this situation, the status of the refugees is determined to members of a particular social group, on a group or *prima facie* basis. The logic of mass influx definition is important in this aspect. Mass influx is the case when the influx is sudden, rapid and significant, and because of these characteristics individual refugee status determination procedures are not possible to apply and it demonstrates a serious burden on the host country's institutions and resources due to this unique characteristic. The determination of the status *prima facie*, creates a presumption that the individual members of the group are entitled to international protection. Thus, understanding the fundamentals of refugee law becomes crucial.

Additionally, people who are forced to leave their country due to widespread violence or civil war, are not considered as refugees within the scope of the Geneva Convention but they are considered as "*de facto* refugees". Seeking asylum in a place due to civil conflicts or wars is not included among the reasons for seeking asylum nor considered in the concept of mass asylum in the Geneva Convention. But both international law and human rights law does not provide any exceptions on to the principle of non-refoulement with respect to the right to life in an event of a sudden mass asylum, regardless of its impact on the country. Article 33 of the Geneva Convention does not have a rule that this principle will not be implemented in situations of mass asylum due to civil conflicts or wars. In the opinion of various international foundations and in many international documents, the principle of non-refoulement is considered as valid in the situations of mass asylum. At this point, the concept of "temporary protection" can be interpreted as the principle of non-refoulement using its competence on the mass asylum occasions. The purpose of temporary protection is to make the refugees have immediate access to a secure environment and to protect 'foremost' the principle of non-refoulement alongside the fundamental human rights. The concept of the temporary protection is but a way for a pragmatic solution to make the principle of non-refoulement efficient and to provide the people some specific rights for those who reach the borders of a country "*en masse*", but is not an initiative to replace or change the rules of the Geneva Convention. Furthermore, it allows the States to provide protection for the lots of refugees even though temporarily. Refugee law is stated as the unwanted child of the States.³⁸⁹ Temporary protection stands in a place that creates a major problem for States regarding the refugee law. The main problem is thought to be temporarily and pragmatically solved with the approach of temporary protection status.

In the historical context of the EU, the mass asylum movements caused by the former Yugoslavia crisis have revealed the need for temporary protection to be addressed. The developments resulted in the Treaty of Amsterdam of 1999, which required the EU to have a temporary protection instrument by 2004 at the latest. This took the form of the Temporary Protection Directive which was adopted in 2001. The Directive's aim was sharing the burden of asylum fairly with an exceptional mechanism set in motion by the EU institutions. The scope of implementation of the Directive includes displaced persons who come from third countries in large numbers and cannot return to their country of origin. In this context, temporary

³⁸⁹ Jean Allain "The *jus cogens* Nature of non-refoulement", *International Journal of Refugee Law* Volume 13, (2001), p.1; Byrne R & Shacknove A. "The Safe Country Notion in European Asylum Law" *Harvard Human Rights Journal*, [1996], p.185-226.

protection meets the urgent need of protection by granting refugee status on *prima facie* or group basis without assessing individual status determination procedures in mass influx.

Temporary protection term found its place in the Turkey's agenda in 2011 when there have been continuous population movements from Syria to Turkey on a massive scale. Turkish legislation is strongly inspired and influenced by EU immigration legislation, as a result of Turkey's efforts to comply with the EU *acquis* during the accession negotiations and screening procedures. With reference to Turkish national law, there was no comprehensive national code regarding asylum until the Law on Foreigners and International Protection entered into force in 2014. In the Turkish Law, Temporary Protection Status was regulated for the first time in Article 91 of the LFIP and the term is regulated in detail in the Temporary Protection Regulation. The main condition sought for temporary protection is that foreigners have left their lands *en masse*. It is stipulated that individual arrivals in case of mass influx will be deemed to overcome massively and these persons are subjected to the same status.

The temporary protection will be in question when the relevant protection is made in cases where determination of individual status is impossible, and the case is based on mass influx. Temporary protection status has been newly adopted in EU law and Turkish law. While both laws accept the definition of temporary protection, they have slightly different approach to the definition of "mass influx," which is established to invoke temporary protection status. The Directive does not link mass influx to lack of capacity. The definition of mass influx misses out inadequate individual assessment. However, in addition to the definition of a large number of people coming from the same country in a short period of time, the Regulation provides that a mass influx also occurs if an individual assessment cannot be evaluated. In other words, it can be said that situations where individual evaluation capacity is inadequate can be estimated as mass influx. With all these information, the following conclusion can be drawn; Turkey's practical experience in accommodating the Syrians who have come *en masse* for years can provide the opportunity to make individual assessment of the asylum seekers coming to Turkey with the next movement of migration.

After asylum seekers meet the conditions to obtain the temporary protection status they will be entitled to access certain rights. According to both instrument people can attain health, education services, access to the labor market, social assistance and services, and similar services. When the Turkish temporary protection regime is examined, it reveals that, certain minimum standards are provided to persons benefiting from temporary protection in parallel

with the Directive. In this study, the Turkish Temporary Protection Regulation and the EU Temporary Protection Directive have been investigated and the temporary protection status was examined with reference to the explanation of the nature of the status, its purpose, conditions for the application and duration of temporary protection status.

The rights provided by the temporary protection status by the two legislations were compared in the study. Comparing the rights granted by the temporary protection status aims to provide a comprehensive explanation of the concept of temporary protection, its correspondence with international law, and the effects of the Temporary Protection Directive on Temporary Protection Regulation. The key difference is that the Regulation implemented in much more detail than the Directive. Fundamentally, the rights granted are regulated similarly in both legislations. Notwithstanding the fact that the Regulation was created under the influence of the European Union's Directive, it may be concluded that it was developed further. The main explanation is that the Regulation has been implemented for many years unlike the Directive. Considering the pressing refugee issues of Turkey, and having regard to the new constitutional legal design, it would not be wrong to State that the Regulation is a living legal instrument.

Although the Regulation is regulated in more detail than the Directive, it is possible to comment that it has a few deficiencies on a fundamental basis. Firstly, the shortcoming of Turkish law is manifest in the right to work. Although the six-month waiting period is the rule for granting a work permit to foreigners, it could have been considered differently for temporary protection holders. After all, they are foreigners who did not have any other choice than coming to Turkey or any other country. Facing with this reality, more support should be provided to them for them to be able to cling to life as soon as possible. Instead of providing only vital support for temporary protection holders to sustain a livelihood, the legislature has set a waiting period of six months, introduced a quota system, and grants the work permit with a scheme that can be issued only by the employer. Providing that it becomes inevitable that vulnerable groups will undoubtedly suffer more in terms of having a job. Simply observing the wording of the Law is sufficient to face the unfortunate reality that it falls short of providing protection for the individuals. The fact that people can only apply for a work permit after six months and have limited access to work does not comply with the Directive's relevant articles which were welcomed by the UNHCR. Despite all the differences, this is the most striking deficiency that can be revealed in the part of the thesis where the rights are compared. Hopefully, this remarkable point in the thesis will be a light for the new practices.

The right to shelter means obtaining shelters or suitable accommodation as it is provided for in the Directive. Temporary protection holders, who suddenly find themselves in another country to save their lives are expected to be placed under protection in reception centers, as they have no "home" to go to. As examined above, reception centers, where temporary protection beneficiaries can enter and leave only under police supervision on the condition that they comply with the set rules, renders those shelters more like an "open prison" than a "home" within the meaning of the Regulation. In reception centers asylum seekers are often neglected probably in the view that they are only entitled to education and health care; and the impression is that, they do not need anything else, since their most important needs have been met. In terms of human dignity, it is not a welcoming environment for asylum seekers and to stay in so-called reception centers that have the same service standards as detention centers. As a starting point for addressing this issue, reception centers could be developed with the perception of a "dormitory" concept in mind, rather than an "open prison" concept in the Regulation.

Other obstacles regarding the family reunification arise from the definition of "family" in both legislations. The difference between national regulations on who are accepted as family members stems from the fact that there is no general or precise definition of family in international law instruments. The attempts are made to resolve the issue according to the nature of each concrete dispute. In general sense, family means the nuclear family. However, this author believes that it requires a broad interpretation of the family concept for the temporary protection holders who have to leave the country of origin. The definition of family is given more comprehensively in EU law Directive. Unfortunately, this approach is not adopted by the Regulation, and it causes obstacles for families to be reunited with each other. The Regulation defines the scope of family reunification as containing child, dependent child and spouse. Specially given the situation of those fleeing war, it is crucially necessary that the definition of family should be addressed more clearly since it is not just a matter of official documents, but of humanity. This is also in the best interest of the child and the public. For illustration, children separated from their families are not regulated in this regard. Even though by 'child' an individual who is under the age of 18 is mentioned; physical, mental or economic dependency cannot be covered only with the age criteria itself. Therefore, the "dependent child" should not only be defined with reference to the age criteria. Although the Regulation includes the term of "dependent adult child", a clear explanation is not provided. It is better to define adult dependent child as a person, whose life without other family members would become impossible or very difficult to proceed economically, mentally(?) and/or physically. This thesis

underlines the differences in both legislations and the definition of family should be taken broadly in the Regulation, as the UNHCR has endorsed in the Directive. In this manner that family reunifications can be facilitated.

In the Directive, the temporary protection decision may be terminated at the end of the stipulated period or in a parallel procedure to the temporary protection decision. The temporary protection decision can be extended for a maximum of 3 years. According to the Directive, international protection can be evaluated on application during this period, but in the Regulation, international protection is not possible to ensure the effective implementation of temporary protection. There is no regulation regarding the duration of the temporary protection status in the Regulation and it can be interpreted as the onset of a long term refugee problem. The temporary protection application decision can be taken by the Presidency. It was decided that the duration could be foreseen therefore the discretion was left to the presidential decision. This leaves a big question mark for the duration of this “temporary” period. Yet, a temporary protection system that lacks basic legal safeguards as to its lifespan is highly questionable in terms of its primary function: protection. It would be more accurate to regulate a duration period due to the nature of the temporary protection status. The temporary protection status can be terminated by three completely different circumstances; suspension of status and return of individuals, collective granting of status or assessment of applications for international protection, or allowing individuals to remain in Turkey under the conditions set by the LFIP. Although the relevant articles of the Regulation open the door to any outcome, it is very difficult to predict the time of the termination.

The Regulation has developed itself in the influence of the Directive. Yet, it should be borne in mind that the Directive has never been implemented, so the problems that might arise from its implementation have never been observed. On the contrary, the Regulation has entered into force and many problems have arisen during the implementation period thus it has to improve itself. Day by day, the Regulation tries to respond to the problems with its dynamic structure in order to prevent the effects of the refugee crisis. On this appreciation aside, it can be said that it still needs to improve regarding to time definition of the status, family definition for providing reunification and reform the right to work to enable access to the right to work. For this reason, it is hoped that the findings of Chapter 3 where the contents of the rights are compared will lead to new results and perhaps inspire the Turkish legislative for further improvement.

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