



# aida

Asylum Information  
Database

Asylum Information Database

# Country Report

# *Turkey*

Refugee  
Rights  
Turkey



**ecre**

European Council  
on Refugees and Exiles

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**The information in this report is up-to-date as of 18 May 2015.**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, CR, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Statistics

**Table 1: Applications and granting of protection at first and second instance in 2014**

	Total applicants in 2014	Refugee status	Subsidiary protection	Rejections (in-merit and admissibility)	Otherwise closed / discontinued	Refugee rate	Subs. Pr. rate	Rejection rate
	A	B	C	E	F	$B/(B+C+D+E)\%$	$C/(B+C+D+E)\%$	$E/(B+C+D+E)\%$
<b>Total numbers</b>	34,112							
<i>Breakdown by country of origin<sup>1</sup></i>								
<b>Iraq</b>	21,947							
<b>Afghanistan</b>	10,052							
<b>Iran</b>	9,836							
<b>Somalia</b>	2,683							
<b>Others</b>	11,028							

Source: Ministry of Interior, Directorate-General for Migration Management, [http://www.goc.gov.tr/icerik6/international-protection\\_915\\_1024\\_4747\\_icerik](http://www.goc.gov.tr/icerik6/international-protection_915_1024_4747_icerik)

In 2013, Turkey received 46,621 applications for international protection. Turkey issued 14,160 refugee status decisions and 1,556 rejection decisions that year.

Source: UNHCR, *Statistical Yearbook 2013*, p. 106.

<sup>1</sup> Information on registered active caseload as of December 2014 provided by UNHCR, *Turkey Monthly Statistics 2014*, available at: <http://bit.ly/1dtxnpQ>.

**Table 2: Syrian nationals under temporary protection as of 1 April 2015**

	<b>Registered Syrian nationals</b>	<b>Percentage</b>
<b>Total number</b>	1,757,262	100%
<b>Outside temporary accommodation centres (camps)</b>	1,502,581	85.55%
<b>In temporary accommodation centres (camps)</b>	254,681	14.45%
<i>Breakdown by temporary accommodation centres (camps)</i>		
<b>Hatay</b>	15,210	0.86%
<b>Gaziantep</b>	41,483	2.36%
<b>Kilis</b>	36,797	2.09%
<b>Şanlıurfa</b>	99,355	5.65%
<b>Kahramanmaraş</b>	17,277	0.98%
<b>Osmaniye</b>	9,200	0.52%
<b>Adiyaman</b>	9,897	0.56%
<b>Adana</b>	10,961	0.62%
<b>Mardin</b>	6,689	0.38%
<b>Malatya</b>	7,632	0.43%

In 2014, Turkey had registered 1,504,122 Syrian nationals under the Temporary Protection Regulation. In 2013, 224,655 Syrian nationals were registered.

Source: Ministry of Interior, Directorate-General for Migration Management, [http://www.goc.gov.tr/icerik6/temporary-protection\\_915\\_1024\\_4748\\_icerik](http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik)

## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions and detention

Title in English	Original Title (TR)	Abbreviation	Web Link
Law on Foreigners and International Protection 11 April 2013	Yabancılar ve Uluslararası Koruma Kanunu 11/4/2013	LFIP	< <a href="http://goc.gov.tr/files/files/YUKK_1%CC%87NGI%CC%87LI%CC%87ZCE_BASKI(1)(1).pdf">http://goc.gov.tr/files/files/YUKK_1%CC%87NGI%CC%87LI%CC%87ZCE_BASKI(1)(1).pdf</a> > (EN)
Law on Work Permits for Foreigners 27 February 2003	Yabancıların Çalışma İzinleri Hakkında Kanun 27/2/2003	LWPF	< <a href="http://goc.gov.tr/files/files/4(1).pdf">http://goc.gov.tr/files/files/4(1).pdf</a> > (TR) < <a href="http://bit.ly/1sCckN">http://bit.ly/1sCckN</a> > (unofficial EN)
Law on Administrative Court Procedures 6 January 1982	İdari Yargılama Usulleri Kanunu 6/1/1982		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2577.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2577.pdf</a> > (TR)
Settlement Law 19 September 2006	İskan Kanunu 19/9/2006		< <a href="http://goc.gov.tr/files/files/3(1).pdf">http://goc.gov.tr/files/files/3(1).pdf</a> > (TR)
Attorneyship Law 19 March 1969	Avukatlık Kanunu 19/3/1969		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1136.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1136.pdf</a> > (TR)
Notaries Law 18 January 1972	Noterlik Kanunu 18/1/1972		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1512.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1512.pdf</a> > (TR)
Law for the Enhancement of Social Assistance and Solidarity 29 May 1986	Sosyal Yardımlaşma ve Dayanışmayı Teşvik Kanunu 29/5/1986		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3294.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3294.pdf</a> > (TR)
Social Insurance and General Security Law 31 May 2006	Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu 31/5/2006		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5510.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5510.pdf</a> > (TR)
Law on Institutional Framework and Mandate of Disaster and Emergencies Agency (AFAD) 29 May 2009	Afet ve Acil Durum Yönetimi Başkanlığının Teşkilat ve Görevleri Hakkında Kanun 29/5/2009		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5902.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5902.pdf</a> > (TR)
Law for the Protection of Children 3 July 2005	Çocuk Koruma Kanunu 3/7/2005		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5395.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5395.pdf</a> > (TR)

**Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.**

Title in English	Original Title (TR)	Abbreviation	Web Link
Regulation on the Establishment and Operations of Reception and Accommodation Centres and Removal Centres 22 April 2014	Kabul ve Barınma Merkezleri ile Geri Gönderme Merkezlerinin Kurulması, Yönetimi, İşletilmesi, İşletirilmesi ve Denetimi Hakkında Yönetmelik 22/4/2014		< <a href="http://www.resmigazete.gov.tr/eskiler/2014/04/20140422-5.htm">http://www.resmigazete.gov.tr/eskiler/2014/04/20140422-5.htm</a> > (TR)
Regulation on DGMM Establishment and Operations 14 November 2013	Göç İdaresi Genel Müdürlüğü Taşra Teşkilatı Kuruluş, Görev ve Çalışma Yönetmeliği 14/11/2013		< <a href="http://www.resmigazete.gov.tr/eskiler/2013/11/20131114-4.htm">http://www.resmigazete.gov.tr/eskiler/2013/11/20131114-4.htm</a> > (TR)
Implementation Regulation of the Law on Work Permits for Foreigners 29 August 2003	Yabancıların Çalışma İzinleri Hakkındaki Kanunun uygulama Yönetmeliği 29/8/2003		< <a href="http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.6244&amp;MevzuatIlski=0&amp;sourceXmIsearch=yabanc%C4%B1lar%C4%B1n%20%C3%A7al%C4%B1%C5%9Fma">http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.6244&amp;MevzuatIlski=0&amp;sourceXmIsearch=yabanc%C4%B1lar%C4%B1n%20%C3%A7al%C4%B1%C5%9Fma</a> > (TR)
Regulation on DGMM Migration Experts 11 July 2013	Göç Uzmanlığı Yönetmeliği 11/7/2013		< <a href="http://www.resmigazete.gov.tr/eskiler/2013/07/20130711-5.htm">http://www.resmigazete.gov.tr/eskiler/2013/07/20130711-5.htm</a> > (TR)
Temporary Protection Regulation 22 October 2014	Geçici Koruma Yönetmeliği 22/10/2014	TPR	< <a href="http://goc.gov.tr/files/files/20141022-15-1.pdf">http://goc.gov.tr/files/files/20141022-15-1.pdf</a> > (TR) < <a href="http://www.goc.gov.tr/files/files/temptemp.pdf">http://www.goc.gov.tr/files/files/temptemp.pdf</a> > (EN)
Prime Ministerial Circular on Turkey-EU Readmission Agreement 16 April 2014	Geri Kabul Anlaşması ile İlgili Başbakanlık Genelgesi 16/4/2014		< <a href="http://www.resmigazete.gov.tr/eskiler/2014/04/20140416-10.htm">http://www.resmigazete.gov.tr/eskiler/2014/04/20140416-10.htm</a> > (TR)
Legal Aid Regulation of the Union of Bar Associations 30 March 2004	Türkiye Barolar Birliği Adli Yardım Yönetmeliği 30/3/2004		< <a href="http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5775&amp;sourceXmIsearch=&amp;MevzuatIlski=0">http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5775&amp;sourceXmIsearch=&amp;MevzuatIlski=0</a> > (TR)
Circular on International Protection	Sayıli Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına ilişkin Usul ve Esaslar - Uluslararası Koruma	CIP	
Circular on Foreigners	Sayıli Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına ilişkin Usul ve Esaslar – Yabancılar	CF	
Implementation Regulation of the Notaries Law	Noterlik Kanunu Yönetmeliği 13/7/1976		< <a href="http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5040&amp;MevzuatIlski=0&amp;sourceXmIsearch=Noterlik%20Kanunu%20Y%F6netme">http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5040&amp;MevzuatIlski=0&amp;sourceXmIsearch=Noterlik%20Kanunu%20Y%F6netme</a> >

13 July 1976			<a href="#">li%F0i</a> > (TR)
AFAD Circular on Healthcare and Other Services for Syrians 9 September 2013	Suriyeli Misafirlerin Sağlık ve Diğer Hizmetleri Hakkında Genelge 9/9/2013		< <a href="https://www.afad.gov.tr/tr/icerikDetay.aspx?ID=44">https://www.afad.gov.tr/tr/icerikDetay.aspx?ID=44</a> > (TR)
Circular on Educational Activities Targeting Foreigners 23 September 2014	Yabancılara Yönelik Eğitim Öğretim Hizmetleri – Genelge 23/9/2014		< <a href="http://mevzuat.meb.gov.tr/html/yabyonegiogr_1/yabyonegiogr_1.html">http://mevzuat.meb.gov.tr/html/yabyonegiogr_1/yabyonegiogr_1.html</a> > (TR)
Regulation on Disaster and Emergencies Response Centres 31 January 2011	Afet ve Acil Durum Yönetim Merkezleri Yönetmeliği 31/1/2011		< <a href="http://mevzuat.basbakanlik.gov.tr/Metin.aspx?MevzuatKod=3.5.20111377&amp;Mevzuatliiski=0&amp;sourceXmlSearch=AFET%20VE%20AC%C4%B0L%20DURUM%20Y&amp;Ouml;NET%C4%B0M%20MERKEZLER%C4%B0">http://mevzuat.basbakanlik.gov.tr/Metin.aspx?MevzuatKod=3.5.20111377&amp;Mevzuatliiski=0&amp;sourceXmlSearch=AFET%20VE%20AC%C4%B0L%20DURUM%20Y&amp;Ouml;NET%C4%B0M%20MERKEZLER%C4%B0</a> > (TR)
Regulation on Marriage Procedures 10 July 1985	Evlendirme Yönetmeliği 10/7/1985		< <a href="http://www.mevzuat.gov.tr/MevzuatMetin/3.5.859747.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/3.5.859747.pdf</a> > (TR)
Information Note on the Documents and Identification Cards issued on the basis of LFIP 19 September 2014	Sayılı YUKK Uyarınca Verilen Belge ve Kimlikler Hakkında 19/9/2014 tarihli 93 numaralı Genel Yazı		< <a href="http://www.tnb.org.tr/GenelgeDetay.aspx?TURU=GENELYAZI&amp;ULAS=78653&amp;K=&gt;">http://www.tnb.org.tr/GenelgeDetay.aspx?TURU=GENELYAZI&amp;ULAS=78653&amp;K=&gt;</a> > (TR)

## Introduction to the Asylum Context in Turkey

Turkey currently hosts both a **mass-influx** asylum seeking population from neighbouring Syria and a surging number of **individually arriving** asylum seekers of other nationalities, most principally originating from Iraq, Afghanistan, Iran and Somalia, among others. These two populations of protection seekers are subject to two different sets of asylum rules and procedures.

- (1) **Asylum seekers from Syria**, who have been characterised as a mass-influx population by the Government of Turkey, are subject to a group-based “**temporary protection**” regime. This regime was recently formalised by a dedicated Regulation on Temporary Protection, which came into force on 22 October 2014. The Turkish “temporary protection” concept amounts to the granting, on *prima facie* basis, of a temporary residence status to all protection seekers originating from Syria, except for persons falling within the exclusion grounds set out in the Temporary Protection Regulation. As such, protection seekers from Syria should be able to formalise their status as “temporary protection” beneficiaries through the mere the act of registering with the Government agency in charge of migration and asylum, the newly created, civilian and specialised Directorate General of Migration Management (DGMM). The Regulation on Temporary Protection sets out a registration procedure, reception conditions and status rights applicable to persons within the scope of Turkey’s temporary protection regime. It is worth noting that UNHCR, which maintains a relatively sizeable presence in Turkey, does *not* partake in any way in the registration and processing of “temporary protection” applicants and status holders.
- (2) On the other hand, so-called **individually arriving asylum seekers from other countries of origin** are subject to Turkey’s new “**international protection**” procedure on the basis of a new, EU-inspired Law on Foreigners and International Protection, which came into force on 4 April 2014.<sup>2</sup> The new Law lays down three forms of individual “international protection” status, as well as elaborating procedural rules and reception conditions for applicants. The newly created DGMM is responsible for registering and processing “international protection” applicants and for granting status pursuant to the criteria established by the Law. For reasons related to Turkey’s unique “geographical limitation” policy on the 1951 Refugee Convention, individual asylum seekers are also expected to file a second, parallel application with UNHCR Turkey, which carries out its own Mandate refugee status determination procedure (RSD) on the same persons and makes resettlement referrals from Turkey. While the DGMM “international protection” procedure and UNHCR’s Mandate RSD procedure are described to be operating *in tandem*, UNHCR RSD status decisions in Turkey do not carry any direct legal effect and the essential and legally relevant “international protection” status decision is made by DGMM – possibly in consideration of the UNHCR RSD assessment on the same person on discretionary basis. Therefore, for all practical purposes, the UNHCR Mandate RSD procedure in Turkey can be described as an extension of the Government “international protection” procedure in place for so-called individually arriving protection seekers, designating asylum seekers from countries of origin other than Syria.

As such, protection seekers from Syria and protection seekers from elsewhere are thus subject to two separate asylum regimes in Turkey, which feature **two entirely distinct sets of procedural rules, reception provisions and detention considerations** as spelt out in the Regulation on Temporary Protection of 22 October 2014 (TPR) and the Law on Foreigners and International Protection of 4 April 2014 (LFIP).

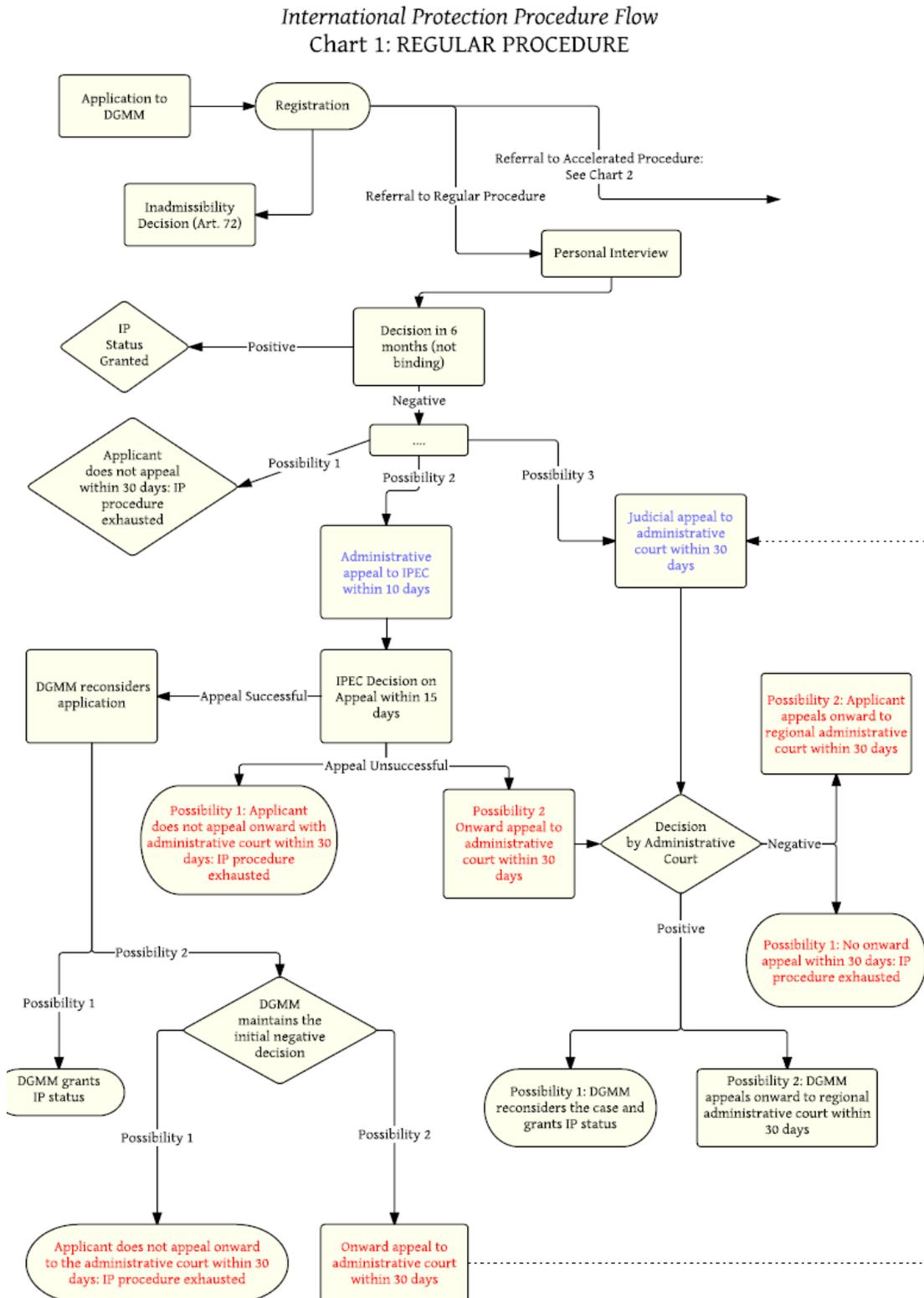
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<sup>2</sup> This is also referred to as ‘EU-ization’ of Turkey’s international protection regime. See A İçduygu, ‘Syrian Refugees in Turkey: The Road Long Ahead’ (April 2015) Transatlantic Council on Migration.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country? Tick the box:

- |   |   |  |
|---|---|--|
| - Regular procedure:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| - Border procedure:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| - Admissibility procedure:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| - Accelerated procedure (labelled as such in national law):   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| - Accelerated examination ("fast-tracking" certain case caseloads as part of regular procedure):                        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| - Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| - Dublin procedure  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

## 3. List the authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (TR)
<b>Application at the border</b>	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)
<b>Application on the territory</b>	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)
<b>Refugee status determination</b>	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)
<b>Appeal procedures</b> <ul style="list-style-type: none"> <li>• <b>First appeal</b></li> <li>• <b>Second (onward) appeal</b></li> </ul>	<ul style="list-style-type: none"> <li>• International Protection Evaluation Commission<sup>3</sup> and/or Administrative Court</li> <li>• Regional Administrative Court<sup>4</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Uluslararası Koruma Değerlendirme Komisyonu ve/veya İdare Mahkemesi</li> <li>• Bölge İdare Mahkemesi</li> </ul>
<b>Subsequent application (admissibility)</b>	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)

## 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

<sup>3</sup> This is an administrative appeal remedy available to applications rejected within the framework of the regular international protection procedure, as opposed to applicants rejected within the framework of the accelerated procedure.

<sup>4</sup> Finalised judicial appeals against negative international protection status decisions issued within the accelerated procedure framework and inadmissibility decisions cannot be appealed onward before a higher court of law. Therefore the Regional Administrative Court remedy is only available to applicants rejected within the regular procedure framework.

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
<b>Directorate General for Migration Management (DGMM)</b>	2,640 staff <sup>5</sup> 1,680 experts <sup>6</sup>	Ministry of Interior	Yes <sup>7</sup>

## 5. Short overview of the asylum procedure

Turkey maintains a geographical limitation to the 1951 Refugee Convention, restricting its application to refugees originating from European countries. Accordingly, the Law on Foreigners and International Protection defines 3 types of international protection status:

- a) “Refugee” status,<sup>8</sup> granted to an Article 1A 1951 Convention-type refugee originating from a Council of Europe Member State;
- b) “Conditional refugee” status,<sup>9</sup> granted to an Article 1A 1951 Convention-type refugee *not* originating from a Council of Europe Member State;
- c) “Subsidiary protection” status,<sup>10</sup> based on the “subsidiary protection status” definition in the EU Qualification Directive,<sup>11</sup> which is the international protection status that will be granted to persons unable to return to country of origin due to generalised violence, death penalty or torture, regardless of any geographical limitations on country of origin.

All international protection applicants, regardless of any geographical limitations on country of origin, are subject to the same international protection status determination procedure. There are, however, different sets of rights attached to each of the three types of individual international protection status.

Applications are processed by the Directorate-General for Migration Management (DGMM) within the Ministry of Interior. DGMM was established in 2013 by the LFIP. However, the process of Turkey’s transition to the new legislative and administrative framework is still ongoing. While the Headquarters of

<sup>5</sup> This figure represents the total of number of staff positions allocated to the DGMM by the LFIP to undertake the range of functions within the Agency’s mandate. At present, hiring and training of personnel that will occupy these positions is ongoing.

<sup>6</sup> This figure represents the total number of “migration expert” and “assistant migration expert” positions allocated to the DGMM Headquarters and Provincial DGMM Directorates by the LFIP. These positions will constitute the professional corps of DGMM to be involved as ‘case workers’ dealing with various different categories of foreign nationalas and types of procedures within the DGMM mandate, ranging from legal migration to irregular migration to international protection. At present, there is no publicly available information on the number of “migration expert” and “assistant migration expert” positions that will be assigned to the Department of International Protection within the DGMM, which will be the unit in charge of international protection proceedings at Headquarters and Province levels.

<sup>7</sup> DGMM is structured as a civilian agency within Turkey’s Ministry of Interior. Therefore, as with all agencies operating under the Ministry of Interior, in principle DGMM is subject and potentially susceptible to instructions from the Ministry on matters of policy and implementation.

<sup>8</sup> Article 61 LFIP.

<sup>9</sup> Article 62 LFIP.

<sup>10</sup> Article 63 LFIP.

<sup>11</sup> Article 2(d) and 15 Qualification Directive.

the DGMM are already fully operational, the Provincial DGMM Directorates around the country are yet to take over the actual implementation on the ground, as the process for the recruitment and training of new DGMM personnel and their assignments to Provincial DGMM Directorates around the country is ongoing at present. For that reason, most Provincial DGMM Directorates are not yet fully ready to take over the existing migration and international protection case-load in the province.

During this interim period, the Foreigners Department of the National Police, which was the agency previously in charge of asylum, continues to operate as the *de facto* implementation agency on the ground under the direction of the DGMM Headquarters,<sup>12</sup> under a protocol agreed between the two agencies. Within this framework, officials from the Provincial Foreigners Police branches continue to register and process applications for international protection on behalf of DGMM and in collaboration with the emerging Provincial DGMM Directorates.

Applications may be decided under the regular procedure within a 6-month time-limit, or the accelerated procedure, whereby the personal interview takes place within 3 days following registration and a decision is issued within 5 days from the interview.

The LFIP provides for two levels of appeals against a first instance decision under the regular procedure: one optional administrative appeal remedy and one judicial appeal remedy. Faced with a negative status decision by DGMM, applicants may either file an administrative appeal before the newly created International Protection Evaluation Commissions (IPECs) within 10 days and file an onward judicial appeal before the competent administrative court if the initial administrative appeal is unsuccessful, directly file a judicial appeal before the competent administrative court within 30 days. Both types of appeal have automatic suspensive effect and must be decided within 30 days. A negative decision of the administrative court may be appealed before a higher court.

Under the accelerated procedure, first instance decisions cannot be appealed before the IPECs but must be directly appealed at the competent administrative court within 15 days. The application to the administrative court also carries automatic suspensive effect. The court must decide on the appeal within 15 days. However, the decision by the administrative court is final. It cannot be appealed before a higher court. This means that once and if the administrative court appeal is unsuccessful the international protection procedure proper is considered to have been fully exhausted, and therefore a deportation decision may be taken for the removal of the applicant pursuant to Art 54(1)(I) LFIP.

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<sup>12</sup> Provisional Article 1(4) LFIP.

## B. Procedures

### 1. Registration of the asylum application

#### *Indicators :*

- Are specific time limits laid down in law for asylum seekers to lodge their application?  Yes  No
- Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No

#### **Lodging an application for international protection**

As per the 2013 Law on Foreigners and International Protection (LFIP), the Provincial DGMM Directorate is the responsible authority for receiving and registering applications for international protection.

Applications for international protection are made to the “Governorates” “in person”, indicating that applicants are expected to physically approach the Provincial DGMM Directorate and personally present their request.<sup>13</sup>

Turkey is administratively divided into 81 provinces. The Provincial Governorate is the highest administrative authority in each province. Therefore, technically speaking, provincial directorates of all government agencies report to the Office of the Governor. Within that office, the agency responsible for registering all applications for international protection is the Provincial Directorate of the Directorate General of Migration Management (DGMM), which technically serves under the authority of the Provincial Governorate. DGMM is responsible and authorised to carry out “all tasks and procedures” in the field of “migration”,<sup>14</sup> which is defined by Art 3(1)(I) LFIP as a comprehensive term that covers legal migration, irregular migration and international protection. Therefore, whenever the LFIP makes a reference to the Governorate, the agency actually indicated is the Provincial Directorate of DGMM.

Where a request for international protection is presented to law enforcement agencies on territory or at border gates, the Provincial DGMM Directorate shall be notified “at once”, where upon the Provincial DGMM Directorate shall process the application.<sup>15</sup> Moreover, requests for international protection indicated by persons deprived of their liberty shall also be notified to the Provincial DGMM Directorate “at once”, though the term is not defined by a specific time-limit.<sup>16</sup>

While Article 65 LFIP does not lay down any time limits for persons for lodging an application as such, whether on territory, in detention or at border, Article 65(4) appears to impose on applicants the duty to approach competent authorities “within a reasonable time” as a precondition for being spared from punishment for illegal entry or stay. The notion of “reasonable time” is not defined in the law, however.

Applications for international protection need to be made to the Provincial DGMM Directorate “in person”<sup>17</sup> and may not be made by a lawyer or legal representative.<sup>18</sup>

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<sup>13</sup> Article 65(1) LFIP.

<sup>14</sup> Article 104(1)(c) LFIP.

<sup>15</sup> Article 65(2) LFIP.

<sup>16</sup> Article 65(5) LFIP.

<sup>17</sup> Article 65(1) LFIP.

<sup>18</sup> Article 1.1 CIP.

However, a person can also apply on behalf of accompanying “family members”,<sup>19</sup> defined to cover the spouse, minor children and dependent adult children.<sup>20</sup> Where a person wishes to file an application on behalf of adult family members, the latter’s written consent need be given.

Furthermore, for applicants who are physically unable to approach the Provincial DGMM Directorate premises for the purpose of making an international protection request, officials from the Provincial DGMM Directorate may be directed to the applicant’s location in order to process the application.<sup>21</sup>

The Circular on International Protection (CIP) provides additional guidance on the application process. Application authorities must obtain a hand-written and signed statement from the applicant containing information about the international protection request in a language he or she is able to express themselves.<sup>22</sup> Illiterate applicants are exempt from this requirement. Furthermore, application authorities shall also obtain any supporting documents that the applicant may have with him or her and fill in a standard “International Protection Application Notification Form” for the applicant, which must be delivered to the DGMM Headquarters within 24 hours.

### **Registration of the international protection application**

Article 69 LFIP does not lay down any time limits for the completion of the registration process from the moment an international protection application is received by the competent authority, the Provincial Directorate of DGMM.

Applications for international protection are registered by the Provincial DGMM Directorate.<sup>23</sup> Applicants can request and shall be provided interpretation services for the purpose of the registration interview and, at a later stage, the personal interview.<sup>24</sup>

Article 1.2.1 CIP provides that application authorities notify the applicant a date for his or her registration interview, unless the registration interview can be conducted on the same day.

The registration interview will serve to compile information and any documents from the applicant to identify identity, reasons for leaving and experiences after departure from country of origin, travel route, mode of arrival in Turkey, and any previous applications for international protection in another country.<sup>25</sup> Registration authorities may carry out body search and checks on personal belongings of applicants in order to confirm that all documents are presented.<sup>26</sup>

Where an applicant is unable to present documents to establish his or her identity, registration authorities shall rely on analysis of personal data and information gathered from other modes of research.<sup>27</sup> Where such identification measures fail to provide relevant information, the applicant’s own statements shall be accepted to be true.

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<sup>19</sup> Article 65(3) LFIP.

<sup>20</sup> Article 3(1)(a) LFIP.

<sup>21</sup> Article 1.1 CIP.

<sup>22</sup> Article 1.2.1 CIP.

<sup>23</sup> Article 69(1) LFIP.

<sup>24</sup> Article 70(2) LFIP.

<sup>25</sup> Article 69(2)-(4) LFIP.

<sup>26</sup> Article 69(2) LFIP.

<sup>27</sup> Article 69(3) LFIP.

Applicants must also be provided with information about the international protection procedure, as well as their rights and obligations during the registration stage.<sup>28</sup>

Where there are concerns that an applicant may have a medical condition threatening public health, he or she may be referred to a medical check.<sup>29</sup>

Upon completion of registration, applicants must be issued an “International Protection Applicant Registration Document” free of charge.<sup>30</sup> The Registration Document, conferring upon the applicant the right to remain in Turkey, is valid for 30 days and may be extended by further 30-day periods. This document also contains a Foreigner’s ID Number,<sup>31</sup> which is assigned to the applicant at the end of the registration stage and allows him or her to access rights and entitlements including in key areas of healthcare and education.

A standard “International Protection Application Registration Form” shall be completed by registration authorities on the basis of the registration interview.<sup>32</sup> Applicants must also be notified of the place and date of his or her personal interview at the end of the registration process.<sup>33</sup>

It should be noted that, as an inadmissibility decision can be made “at any stage in the procedure”, the registration process may also result in the issuance of an inadmissibility decision (see Admissibility Procedures below).

Application authorities may also choose to process and register international protection applications of persons deprived of their liberty in the premises where they are detained (see Border Procedure below).<sup>34</sup>

### **Overview of current registration practice**

At present, while the DGMM Headquarters are fully operational, Provincial DGMM Directorates are yet to take full charge of implementation at local level in provinces. Pending the finalisation of the transfer of migration and asylum processing functions from the National Police to DGMM, Provincial Foreigners Police branches continue to undertake processing of international protection applications on behalf of DGMM. Technically, this interim arrangement was formalised between the DGMM and the National Police within the framework of a protocol. While Provincial DGMM Directorates in most provinces are already up and running, efforts for the recruitment and training of DGMM corps at provincial level is yet to be completed. As a part of this process, newly hired DGMM staff work together with the staff of Provincial Foreigners Police to observe and participate in processing, without however taking charge of applications.

Under this arrangement, as of April 2015, provincial Foreigners Police branches continue to be responsible for receiving and registering new applications for international protection in most locations around Turkey.

Depending on the number of new applications received and referred to the province concerned and the administrative capacities of the local Foreigners Police branches, the waiting period between the application and the registration interview varies. This waiting period can turn out be as long as 6 months in some cases.

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<sup>28</sup> Article 70 LFIP.

<sup>29</sup> Article 69-6 LFIP.

<sup>30</sup> Article 69-7 LFIP.

<sup>31</sup> Annex 4 CIP.

<sup>32</sup> Article 3.1 CIP.

<sup>33</sup> Article 69-5 LFIP.

<sup>34</sup> Article 1.2.4 CIP.

This time lag between the application and the registration interview is of particular concern, since applicants cannot be issued their “International Protection Applicant Registration Documents” until after the registration interview is completed. Accordingly, they cannot be assigned a Foreigners ID Number until the Registration Document is issued, and are thereby practically barred from accessing basic rights and entitlements, not least in the crucial area of healthcare.

In provinces where relatively long delays between the application instance and the registration interview are reported, provincial Foreigners Police branches prioritise applicants with disabilities and serious health problems.

However, it appears that this prioritisation is made on an arbitrary basis and only covers these two categories, despite the fact that according to LFIP all “persons with special needs” should be prioritised at all stages of the international protection procedure.<sup>35</sup> It should be noted that the definition of “persons with special needs” covers a larger spectrum of vulnerabilities, not all of which are ‘visible’ vulnerabilities identifiable at the application level. As a result, the identification of “persons with special needs” and their access to necessary and relevant services may be significantly delayed in practice.

Despite the vastly improved legal safeguards provided by the LFIP to secure access to the asylum procedure, there are indications that protection seekers intercepted and apprehended by security forces within mixed flows at land and sea border crossing points or at airport transit zones continue to encounter difficulties in having their asylum claim processed and registered.

Persons intercepted and apprehended on grounds of irregular presence or attempted irregular entry or exit are subject to deportation procedures within the framework of the LFIP. For persons in this situation, a removal decision must be issued within 48 hours of apprehension.<sup>36</sup> On the basis of the removal decision, a separate order of administrative detention for the purpose of removal may be issued.<sup>37</sup> Foreign nationals may be detained up to 12 months for the purpose of removal.<sup>38</sup> The detention facilities dedicated to this purpose are named Removal Centres. In addition to the Removal Centres on the territory, there are detention premises in airport transit areas, which serve to detain persons intercepted in transit or during an attempt to enter Turkey.

Since the LFIP came into force in April 2014, it should be acknowledged that persons who are able to reach UNHCR, lawyers and NGO advocates whilst in detention are generally able to have their international protection applications registered thanks to the assistance and intervention of these intermediaries, as long as they persist despite delays in processing.

Waiting periods and delays in processing, however, can be significant. It is observed that in some cases the delays appear to be caused by shortcomings in administrative capacity or human resources on the part of the Provincial Foreigners Police branch in charge of the Removal Centre or detention premises in question on behalf of DGMM. As a result, protection seekers may have to wait a long time before their applications are processed by the Removal Centre authorities in situations where a high number of irregular migrants are apprehended and transferred to a specific detention facility.

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<sup>35</sup> Article 67(1) LFIP.

<sup>36</sup> Article 53 LFIP.

<sup>37</sup> Article 57 LFIP.

<sup>38</sup> Pre-removal detention differs from detention of international protection applicants, which may not exceed 30 days according to Article 68 LFIP.

It also appears that, in some cases, applicants are held in detention for periods exceeding the 30-day time-limit allowed by Article 68 LFIP for the administrative detention of international protection applicants.

Furthermore, access to the procedure in airport transit areas also seems to raise critical questions. As persons intercepted in transit or prior to entry can be deported back to their country of origin or country of transit in a short period of time, it can be assumed that most protection seekers in that situation do not have the opportunity to get in touch with UNHCR, lawyers or NGOs to seek assistance and intervention, so as to prevent deportation and secure access to Turkey's international protection procedure. Furthermore, there are ongoing practical obstacles to legal representatives' access to persons detained in airport transit areas, including ongoing difficulties in notarising powers of attorney, as a result of which these protection actors may not be able to carry out the requisite swift interventions such as taking legal action if needed.

## Push backs

### *Syrian border*

There have been recent reports of push backs of refugees at the Turkish-Syrian border (see the section on Temporary Protection: Content of Protection below).

### *Greek and Bulgarian border*

At the same time, Turkey is at the receiving end of persons summarily returned at the border from Bulgarian or Greek authorities. In April 2014, Amnesty International expressed deep concern around push backs at the Greek-Turkish border.<sup>39</sup> Latest incidents in March 2015 have been reported in Bulgaria, where border guards allegedly used violence against 2 Iraqi refugees, resulting in their death.<sup>40</sup>

## 2. Regular procedure

### *General (scope, time limits)*

#### *Indicators:*

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months (not binding)
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31 December 2014, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: Not available

## Eligibility for international protection in Turkey

<sup>39</sup> Amnesty International, *Greece: Frontier of hope and fear* (April 2014), EUR 25/004/2014.

<sup>40</sup> UNHCR, 'UNHCR concerned by border practices after deaths of two Iraqis at the Bulgaria-Turkish border' (31 March 2015) available at: <http://www.unhcr.org/551abb606.html>; Human Rights Watch, 'Dispatches: Stopping "Pushbacks" at Bulgaria's Border' (31 March 2015) available at: <http://www.hrw.org/news/2015/03/31/dispatches-stopping-pushbacks-bulgaria-s-border>; European Parliament, *Written question by MEPs Ska Keller and Judith Sargentini: Violent push-backs of refugees by Bulgarian border guards*, 9 April 2015, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2015-005669&format=XML&language=EN>.

The LFIP defines three types of international protection status, in line with Turkey's "geographical limitation" on the 1951 Refugee Convention:

- (a) "Refugee" status,<sup>41</sup> granted to an Article 1A 1951 Convention-type refugee originating from a Council of Europe Member State;
- (b) "Conditional refugee" status,<sup>42</sup> granted to an Article 1A 1951 Convention-type refugee *not* originating from a Council of Europe Member State;
- (c) "Subsidiary protection" status,<sup>43</sup> based on the "subsidiary protection status" definition in the EU Qualification Directive,<sup>44</sup> which is the international protection status that will be granted to persons unable to return to country of origin due to generalised violence, death penalty or torture, regardless of any geographical limitations on country of origin.

All international protection applicants, regardless of any geographical limitations on country of origin, are subject to the same international protection status determination procedure. There are, however, different sets of rights attached to each of the three types of individual international protection status.

Protection seekers from Syria are subject to a separate "temporary protection" regime,<sup>45</sup> which will be elaborated in Chapter II on Temporary Protection below. Persons falling within the scope of Turkey's temporary protection regime are barred from lodging an international protection application.

### **DGMM, the new decision-making authority on asylum applications**

Applications for international protection are processed by DGMM.<sup>46</sup>

DGMM was established by the LFIP and came into legal existence as of 11 April 2013. It is a dedicated, specialised and civilian agency structured within the Ministry of Interior, with comprehensive competence over all policy and implementation on legal migration, irregular migration and international protection.

The Agency is organised in terms of 12 Departments, one of which is the Department of International Protection, the subcomponent of DGMM in charge of registering and deciding on applications for international protection. On the other hand, the Department of Foreigners is in charge of all processing and status decisions concerning the treatment of various categories of legal and irregular migrants that do not fall within the scope of international protection, including removal procedures and administrative detention of foreign nationals for the purpose of removal. As such, decisions on admission to territory and legal stay on territory and international protection eligibility determinations are mandated to different departments within one unified agency in DGMM.

As per the legislative design provided by LFIP, duties related to processing and eligibility determination of international protection applicants will be carried out by expert DGMM staff occupying the "migration expert" and "assistant migration expert" positions at DGMM Headquarters and within Provincial DGMM Directorates.

#### *Ongoing transition and the continuing interim role of the Foreigners Police*

While the DGMM came into legal existence with the adoption of the LFIP on 11 April 2013, the substantial components of the new Law came into force after 12 months, on 11 April 2014. That being said, currently

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<sup>41</sup> Article 61 LFIP.

<sup>42</sup> Article 62 LFIP.

<sup>43</sup> Article 63 LFIP.

<sup>44</sup> Article 2(d) and 15 Qualification Directive.

<sup>45</sup> Article 91 LFIP.

<sup>46</sup> Article 78 LFIP.

the process of Turkey's transition to the new legislative and administrative framework laid down by the LFIP is still ongoing. While the Headquarters of the DGMM are already fully operational, the Provincial DGMM Directorates around the country are yet to take over the actual implementation on the ground. While physical premises have been secured for all Provincial DGMM Directorates and they have technically already become operational, the process for the recruitment and training of new DGMM personnel and their assignments to Provincial DGMM Directorates around the country is ongoing at present. For that reason, most Provincial DGMM Directorates are not yet fully ready to take over the existing migration and international protection case-load in the province.

In this context, on 29 January 2015, the DGMM, the Swiss Secretariat for Migration (SEM) and the International Centre on Migration Policy Development (ICMPD) launched a project for the "Support of a Development-sensitive and Coherent Turkish Migration Policy Framework" (*Sessiz Destek*) with the aim of building DGMM's capacity.<sup>47</sup>

During this interim period, the Foreigners Department of the National Police, which was the agency previously in charge of asylum, continues to operate as the *de facto* implementation agency on the ground under the direction of the DGMM Headquarters,<sup>48</sup> under a protocol agreed between the two agencies. Within this framework, officials from the Provincial Foreigners Police branches continue to register and process applications for international protection on behalf of DGMM and in collaboration with the emerging Provincial DGMM Directorates.

### **Current active caseload and waiting periods**

Under the regular procedure, a decision on the international protection application should be issued within 6 months from the day of registration.<sup>49</sup> However this 6-month interval is not a binding time limit *per se*, as the provision also instructs authorities to notify the applicant in case an application cannot be decided within 6 months. Moreover, applicants with special needs are subject to prioritised procedures.<sup>50</sup> (see Guarantees for Vulnerable Groups of Asylum Seekers below).

As elaborated above, while the newly established DGMM is technically the agency in charge of international protection applications within the framework laid down by the LFIP as of April 2014, the actual transition of the international protection case load from the Provincial Foreigners Police branches to Provincial DGMM Directorates is still ongoing and not yet completed.

During this transitional period, there is a high lack of transparency concerning the precise volume and composition of international protection practices jointly undertaken by the DGMM and the National Police. Specifically, there are currently *no* publicly available statistics and breakdowns on:

- International protection cases transferred to DGMM jurisdiction in April 2014;
- New applications for international protection received by the Provincial Foreigners Police branches on behalf of DGMM since April 2014;
- International protection status decisions finalised and issued by DGMM since April 2014 according to the criteria laid down by the LFIP;
- Applications and final decisions on administrative appeals before International Protection Evaluation Commissions and judicial appeals before competent Administrative Courts filed by applicants rejected in the new international protection procedure since April 2014.

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<sup>47</sup> ICMPD, 'Sessiz Destek' (2015) available at: [http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website\\_2011/Capacity\\_building/Migration\\_and\\_Development/Sessiz\\_Destek/Sessiz\\_Destek\\_Info\\_Sheet\\_ENG-TUR\\_2015-01-27.pdf](http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website_2011/Capacity_building/Migration_and_Development/Sessiz_Destek/Sessiz_Destek_Info_Sheet_ENG-TUR_2015-01-27.pdf).

<sup>48</sup> Provisional Article 1(4) LFIP.

<sup>49</sup> Article 78(1) LFIP.

<sup>50</sup> Article 67(1) LFIP.

As a result, reporting on the present state of practices on the ground is inevitably limited to partial observations based on a modest number of cases that come to the attention of lawyers and NGO legal assistance providers. However, during this transitional period, DGMM appears to refrain from finalising applications and issuing negative or positive status decisions for the vast majority of cases processed within the regular procedure. Therefore, the non-binding 6 months-time limit laid down by the LFIP does not appear to be followed at present.

It remains to be seen whether the agency will adopt a new approach when the full transition of the international protection case-load to Provincial DGMM Directorates and the recruitment and training of DGMM “migration expert” and “assistant migration expert” personnel is complete.

Another factor related to the very limited availability of statistics regards the ongoing uncertainty as to the future role of UNHCR Mandate refugee status determination procedure in Turkey’s new international protection regime and the impact of UNHCR RSD status decisions on the international protection status decisions issued by DGMM on the basis of the criteria laid down in the LFIP.<sup>51</sup>

In the absence of publicly available DGMM statistics on the current international protection case-load, statistics presented by the UNHCR Representation in Turkey offer a meaningful approximation. As of March 2015, UNHCR reported a total 58,275 pending applications, out of which 23,525 were submitted by Iraqi nationals, 10,161 by Afghan and 10,579 by Iranian nationals.<sup>52</sup>

As shown in the Statistics Section, UNHCR Turkey has been approached by 131,189 newly arrived non-Syrian protection seekers during the year of 2014. These are by definition persons subject to Turkey’s new international protection regime under the mandate of DGMM. In practice, in the majority of cases, newly arrived protection seekers first approach UNHCR in Ankara and are “pre-registered” by UNHCR Implementing Partner Association for Solidarity with Asylum-Seekers and Migrants (ASAM). Upon this UNHCR “pre-registration” exercise, they are advised to approach government authorities to initiate an application for international protection with the Government of Turkey. ASAM also communicates to newly arrived asylum seekers the specific province they are advised to report to in order to initiate international protection proceedings. ASAM makes these referrals on the basis of instructions communicated by DGMM to UNHCR Turkey regarding provinces to which newly arrived asylum seekers should be referred, specified by nationalities and referral quotas.

In practice, most newly arrived asylum seekers take approximately 1 month before actually reporting to the assigned province to initiate their international protection application with DGMM. Therefore there is a time lag between the “pre-registration” of a newly arrived asylum seeker with UNHCR and their actual approach to DGMM authorities for the purpose of applying for international protection. Furthermore, part of the newly arrived asylum seekers who “pre-register” with UNHCR choose never to report to the assigned province and as a result never file an international protection application with the Turkish authorities.

Therefore, the UNHCR “pre-registration” figures can only serve as an approximation for the actual number of newly arrived asylum seekers approaching DGMM authorities during any given period of time.

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<sup>51</sup> For an overview of UNHCR’s refugee status determination transition process in Turkey, see UNHCR Policy Development and Evaluation Service, ‘Providing for Protection: Assisting states with the assumption of responsibility for refugee status determination – a preliminary review’ (March 2014) PDES/2014/01.

<sup>52</sup> UNHCR Turkey, *UNHCR Turkey Monthly Statistics as of March 2015*, available at: [http://www.unhcr.org.tr/uploads/root/eng\(26\).pdf](http://www.unhcr.org.tr/uploads/root/eng(26).pdf).

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:  Yes  No
  - o if yes, is the appeal  Judicial  Administrative
  - o If yes, is it suspensive  Yes  No
- Average processing time for the appeal body to make a decision: Not available.<sup>53</sup>

Decisions must be communicated in writing.<sup>54</sup> Notifications of negative decisions should lay down the objective reasons and legal grounds of the negative decision. Where an applicant is not represented by a lawyer, he or she will also be informed about the legal consequences of the decision and applicable appeal mechanisms. Furthermore, Article 100 of the LFIP provides that, for the purpose of notification of all decisions within the scope of the LFIP, due consideration should be given to the fact that “the persons concerned are foreign nationals.” Accordingly, a separate directive is to be issued by DGMM to provide specifics on modalities of written notifications. This provision has created an expectation that DGMM may communicate translated versions of decisions to the applicants concerned.

Having said that, in present practice, the relatively small number of decisions communicated to applicants either by DGMM Headquarters or by Provincial Foreigners Police branches on behalf of DGMM do not contain any substantiated rejection grounds. In the period since April 2014, all written notifications are made in Turkish, and only oral interpretation is provided to the person concerned during the notification instance, with the assistance of an interpreter.

There are two remedies provided against negative decisions issued within the framework of the regular procedure: one optional administrative appeal remedy and one judicial appeal remedy. Faced with a negative status decision by DGMM, applicants may either:

- (1) File an administrative appeal before the newly created International Protection Evaluation Commissions (IPECs) and file an onward judicial appeal before the competent administrative court if the initial administrative appeal is unsuccessful; or
- (2) Directly file a judicial appeal before the competent administrative court.

While an administrative appeal application before the IPECs does not bar applicants from using the judicial appeal remedy, if a person chooses to file both with the IPEC and the competent administrative court, the IPEC appeal will not be processed.<sup>55</sup> Therefore, applicants have to choose whether they want to use and exhaust the IPEC remedy before they consider the judicial remedy, or whether they will instead pursue the judicial remedy directly.

Both types of appeal have automatic suspensive effect.<sup>56</sup>

### **Administrative appeal before the International Protection Evaluation Commissions (IPECs)**

<sup>53</sup> The current number of appeal cases in process is insufficient to allow for meaningful generalisations on average processing time.

<sup>54</sup> Article 78(6) LFIP.

<sup>55</sup> Article 10.2 CIP.

<sup>56</sup> Article 80(1)(e) LFIP.

Negative status decisions in the regular procedure may be appealed at the International Protection Evaluation Commissions within 10 days of the written notification of the decision.<sup>57</sup>

The newly created IPECs are envisioned as a new specialised administrative appeal body, serving under the coordination of DGMM Headquarters.<sup>58</sup> One or more IPECs may be created under the auspices of either DGMM Headquarters or Provincial DGMM Directorates. Each Committee will be chaired by a DGMM representative and will feature a second DGMM official, as well as representatives of the Ministry of Justice and Ministry of Foreign Affairs. UNHCR may be invited to appoint a representative in observer status. DGMM personnel assigned to the IPECs will be appointed for a period of 2 years, whereas the Ministry of Justice and Ministry of Foreign Affairs representatives will be appointed for yearly terms. IPECs are envisioned to serve as full-time specialised asylum tribunals, as their members will not be assigned any additional duties.

IPECs have competence over the evaluation and decision on appeals against:<sup>59</sup>

- Negative status decisions issued in the regular procedure;
- Other negative decisions on applicants and international protection status holders, not pertaining to international protection status matters as such;
- Cessation or cancellation of international protection decisions.

On the other hand, the following decisions fall *outside* the competence of IPECs:<sup>60</sup>

- Orders for administrative detention of international protection applicants;<sup>61</sup>
- Inadmissibility decisions;<sup>62</sup>
- Status and procedure decisions issues under the accelerated procedure.<sup>63</sup>

IPECs review the initial DGMM decision both in terms of procedure and merits.<sup>64</sup> The Commission may request the full case file from DGMM, if deemed necessary. IPECs are authorised to interview applicants where they deem necessary or instruct the competent Provincial DGMM Directorate to hold an additional interview with the applicant.

Whereas the LFIP does not lay down a time limit for decisions on appeals filed with IPECs, the CIP provides that the Commission is to decide on the appeal and notify the applicant within 15 days of receiving the appeal.<sup>65</sup>

IPECs do not have the authority to directly overturn DGMM decisions. The Commission may either reject the appeal application (thereby endorsing the initial DGMM decision), or request DGMM to reconsider its initial decision in terms of procedure and merit. This request for reconsideration by DGMM may or may not lead to an overturning of the initial decision.<sup>66</sup> If the DGMM chooses to uphold its initial negative decision, the applicant will have to file a consequent judicial appeal with the competent administrative court.

If an appeal application is filed with IPEC and rejected, the applicant can file a consequent judicial appeal with the competent administrative court within 30 days of the notification from the IPEC.

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<sup>57</sup> Article 80(1)(a) LFIP.

<sup>58</sup> Article 115 LFIP.

<sup>59</sup> Article 115(2) LFIP.

<sup>60</sup> Articles 80(1)(a) and 115-2 LFIP.

<sup>61</sup> Article 68 LFIP.

<sup>62</sup> Article 72 LFIP.

<sup>63</sup> Article 79 LFIP.

<sup>64</sup> Article 10.1.2 CIP.

<sup>65</sup> Article 10.1.2 CIP.

<sup>66</sup> Article 10.2 CIP.

## Judicial appeal before administrative courts

Negative status decisions in the regular procedure may also be directly appealed before the competent administrative courts within 30 days of the written notification of the decision.<sup>67</sup>

While the LFIP has not created specialised asylum and immigration courts, Article 101 LFIP requires Turkey's High Council of Judges and Prosecutors to determine which administrative court chamber in any given local jurisdiction shall be responsible for appeals brought on administrative acts and decisions within the scope of the LFIP. Therefore, there is an implicit intention to create specialised chambers in each local jurisdiction going forward. That said, the competent chambers will continue to deal with all types of case-load and will not exclusively serve as asylum and immigration appeal bodies.

There are no time limits imposed on administrative courts for deciding of appeals against negative international protection status decisions issued under the regular procedure.

Administrative court applications are normally adjudicated and decided on the basis of written materials. In theory, an applicant can request a hearing, which may or may not be granted by the competent court.

Administrative courts are mandated to examine the DGMM decision both in terms of procedure and merits. If the application is successful, the administrative court judgment annuls the initial negative DGMM status decision, but does not overturn it *per se*. Where an annulment judgment is delivered by the administrative court against an administrative act or decision, the relevant administrative agency is obligated to either revise the challenged act or decision or appeal the administrative court decision in the competent second instance administrative court within 30 days.<sup>68</sup> Accordingly, DGMM will have to either reconsider its initial eligibility assessment on the applicant and issue a positive decision within 30 days, or file an onward appeal with the competent Regional Administrative Court (*Bölge İdare Mahkemesi*).

The CIP remains uninformative in this regard. Article 12 CIP provides that, where an applicant's administrative or judicial appeal application is successful, "the DGMM Headquarters will finalise the application." This infers that DGMM Headquarters will undertake a case by case assessment and decide whether to comply with the appeal outcome or file an onward appeal with the competent Regional Administrative Court.

## Onward appeals

As per Turkey's Law on Administrative Adjudication Procedures, if the initial administrative court appeal is not successful, the applicants have the possibility of filing an onward appeal with the competent Regional Administrative Court within 30 days. There is no time limit for the Regional Administrative Court to decide on the application. If the Regional Administrative Court appeal is also unsuccessful, a final onward appeal can be filed with the Council of State (*Danıştay*) within 30 days. There is no time limit for the Council of State to decide on the application either.

Onward appeals with either the Regional Administrative Court or the Council of State do *not* carry suspensive effect. However, a halt of execution measure may be requested by the applicant on grounds of irreparable harm, although the court will only consider ordering an interim measure after receiving the submissions from the contested government agency. In practice, a halt of execution measure by a higher

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<sup>67</sup> Article 80(1)(ç) LFIP.

<sup>68</sup> Article 28 Law on Administrative Adjudication Procedures.

administrative court would be extremely rare in a case involving a rejected international protection applicant.

### **Individual complaint before the Constitutional Court**

Since September 2012, a new individual complaints procedure was created at Turkey's Constitutional Court, styled after the individual complaints procedure of the European Court of Human Rights (ECtHR) and partially aimed at reducing the high number of complaints against Turkey at the ECtHR. Persons can file an individual complaint with the Constitutional Court on claims of a violation of "any of the fundamental rights and liberties provided by the Turkish Constitution and safeguarded by the ECHR and its Protocols" within 30 days of the exhaustion of all existing administrative and judicial remedies.<sup>69</sup>

While individual complaints to the Constitutional Court do *not* carry suspensive effect, an urgent interim measure can be requested by the applicants on account of "serious risk on the applicant's life, physical and moral integrity."<sup>70</sup>

In the case of a negative international protection status decision under the regular procedure, applicants will have to argue that onward appeals with the Regional Administrative Court or the Council of State do not constitute effective remedies against an imminent deportation risk, so as to justify not exhausting them as a precondition for requesting an interim measure from the Constitutional Court.

The Constitutional Court judgment will establish whether or not the alleged violation has taken place and, in case a violation is identified, order the necessary measures to be taken in order to repair the violation. However, the Constitutional Court cannot institute administrative decisions and acts on its own. Therefore in the case of an individual complaint by an international protection claimant against a negative status decision, the Constitutional Court ruling will not grant international protection status but merely require the competent administrative court to reconsider the application, in accordance with the analysis and guidance of the Constitutional Court.

The Constitutional Court individual complaint mechanism is normally based on a written procedure, but the Court may order a hearing if deemed necessary, whether *ex officio* on its own initiative or upon the request of one of the parties.

### **European Court of Human Rights**

As Turkey is subject to the jurisdiction of the ECtHR, international protection applicants can file an individual complaint against Turkey at ECtHR and at the same time request an urgent interim measure under Rule 39 of the Court as a last resort in order to prevent being deported. The ECtHR application will have to establish, at a minimum, both serious risk of treatment in violation of Article 3 and the ineffectiveness of the domestic remedies summarised above, within the meaning of Article 13 of the European Convention on Human Rights (ECHR).

Since the establishment of the individual complaint procedure before Turkey's Constitutional Court in September 2012, a legal question arose as to whether the Constitutional Court individual complaint procedure can be considered an effective domestic remedy within the meaning of Article 13 ECHR in situations involving an imminent risk of deportation to a country where the person concerned alleges to be at risk of treatment contrary to Article 3 ECHR.

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<sup>69</sup> Articles 45(51) Law on the Structure and Adjudication Procedures of the Constitutional Court.

<sup>70</sup> Article 73 Rules of the Constitutional Court.

As the above individual complaint procedure before the Constitutional Court does not have automatic suspensive effect and a separate interim measure request must be filed and decided by the Court on a case by case basis, it should be concluded that this domestic remedy cannot be considered an effective remedy in imminent *refoulement* situations, as per the ECtHR's established case-law on Article 13 in conjunction with Article 3 in deportation cases. In this connection, the *Al Hanchi v Bosnia & Herzegovina* judgment of the ECtHR is instructive, where the Court concluded that a similar Constitutional Court individual complaint procedure without suspensive effect did not fulfil the Article 13 ECHR standards in imminent *refoulement* cases.<sup>71</sup>

Therefore, Refugee Rights Turkey subscribes to the position that the individual complaint procedure before Turkey's Constitutional Court does not constitute an effective domestic remedy within the meaning of Article 13 of the ECHR in conjunction with Article 3 claims in deportation situations. For this reason, it is not a domestic remedy that must be exhausted by an asylum seeker as a precondition for filing an urgent application with the ECtHR to prevent a risk of imminent expulsion from Turkey.

### Accessibility of appeal mechanisms in practice

While it should be acknowledged that Turkey is at present still transitioning to the new asylum framework laid down by the LFIP and many of the procedural practices envisioned by the new Law have not yet been fully implemented, there are already indications and concerns suggesting that the new set of legal safeguards and remedies provided by the new Law for international protection applicants will be difficult for persons to access in practice. Some of these concerns relate to: (1) access to legal information, assistance and representation; (2) prohibitive court fees; (3) notary issues; (4) access to judicial remedies for detained applicants; (5) existing processing burden on administrative courts; and (6) lack of asylum expertise and specialised knowledge among judges.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
- Are interviews conducted through video conferencing?  Frequently  Rarely  Never

DGMM is required to carry out a personal interview with applicants within 30 days from the day of registration.<sup>72</sup> Applicants are notified of the assigned place and date of their personal interview at the end of their registration interview.<sup>73</sup> Should it be impossible to hold the interview on the assigned date, a new interview date must be issued,<sup>74</sup> no earlier than 10 days after the previous appointment date. Additional interviews may be held with the applicant if deemed necessary.<sup>75</sup>

<sup>71</sup> ECtHR, *Al Hanchi v Bosnia & Herzegovina* App No 48205/09 (ECHR, 15 November 2011).

<sup>72</sup> Article 75(1) LFIP.

<sup>73</sup> Article 69(1) LFIP.

<sup>74</sup> Article 75(4) LFIP.

<sup>75</sup> Article 75(5) LFIP.

Personal interviews of international protection applicants must be conducted by the competent Provincial DGMM Directorate responsible for processing the application.

Applicants must be provided with interpretation services upon request, for the purpose of personal interviews carried out at application, registration and personal interview stages of the processing of their international protection claim.<sup>76</sup>

In personal interviews conducted with applicants with special needs, the particular sensitivities of the applicant shall be taken into consideration.<sup>77</sup> However, no specific guidance is provided either in the LFIP or the CIP as to whether the applicant's preference on the gender of the interpreter should be taken into consideration.

The LFIP contains detailed provisions on the quality of interpretation during the interview. Prior to the interview, the interviewing official must instruct the interpreter on:<sup>78</sup>

- The scope of questions that will be presented to the applicant;
- The interpreter's duty to refrain from offering their personal analysis and interpretation on the applicant's statements, as opposed to providing a word by word and accurate interpretation;
- The interpreter's duty of professionalism and to refrain from expressing their own sentiments to the applicant during the interview;
- The confidentiality requirement, including in relation to any hand notes taken by the interpreter during the interview; and
- The duty to refrain from pursuing personal contact and relations with the applicant in the period after the completion of the interview.

Moreover, the personal interview must be postponed to a later date where the interviewing official identifies that "the applicant and the interpreter have difficulties understanding each other."<sup>79</sup>

In current practice, however, pending the completion of the transition of processing responsibility from Provincial Foreigners Police branches to DGMM, it appears that the shortage of interpreters and problems with the quality of interpretation that characterised the period prior to the LFIP are still ongoing. In most provinces around Turkey, individuals from registered asylum seeker communities are informally brought in as interpreters in personal interviews. In most provinces, there are shortages or lack of interpreters for specific languages. Applicants generally report concerns regarding the community interpreter's observance of confidentiality in relation to the information they share and the quality of interpretation.

In a forward-looking perspective, as per the legislative design of the DGMM staff structure in the LFIP, 25 staff interpreter positions are to be allocated to DGMM Headquarters and a total of 36 staff interpreter positions will be allocated to Provincial DGMM Directorates around the country. Given the current volume of the protection seeker population subject to Turkey's international protection procedure, however, the level of interpreter allocations foreseen by the LFIP design appears to be insufficient.

Further, an interview transcript must be finalised at the end of the interview, and a copy is given to the applicant.<sup>80</sup> Additionally, audio or video records of the interviews may be taken. In case an audio or video

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<sup>76</sup> Article 70(2) LFIP.

<sup>77</sup> Article 70(3) LFIP.

<sup>78</sup> Article 6.3 CIP.

<sup>79</sup> Article 6.6 CIP.

<sup>80</sup> Article 75(6) LFIP.

record is taken, the applicant shall be “notified” thereof; this is distinct from an obligation to obtain the permission of the applicant.

Article 6.6 CIP provides additional guidance regarding the production and sharing of interview transcripts. The interview official must use a standard template called the “International Protection Interview Form” to record the applicant’s statements during the personal interview. This form is a template consisting of a pre-defined set of questions that must be presented to the applicant, covering *inter alia* basic biographic information, profile indicators, reasons for leaving and fear of return. Therefore, it must be emphasised that, under the current implementation guidance provided by CIP, interview officials are not empowered to pursue an independent line of questions and inquiry with the applicant during the personal interview.

Under Article 6.6 CIP, the interview official is required to read out the contents of the International Protection Interview Form to the applicant at the end of the interview and ask the applicant whether there are any aspects of the transcript that he or she wants to correct and whether there are any additional information he or she would like to present. Following this review exercise, the applicant is asked to sign the form and given a signed and finalised copy.

Following the interview, the situation in the country of origin as well the applicant’s personal circumstances should be taken into consideration in the decision making process.<sup>81</sup> Consideration may also be given to the possibility of an internal protection alternative in the determination of an applicant’s international protection needs.<sup>82</sup>

### Legal assistance

*Indicators:*

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 Representation during the personal interview     legal advice     both       N/A
- In the appeal against a negative decision, does free legal assistance cover  
 Representation in courts       legal advice     both       N/A

The LFIP provides a set of new safeguards on:

- Guaranteeing international protection applicants’ access to lawyers and legal representatives;
- Committing to the provision of state-funded legal aid at judicial appeal stage; and even
- Acknowledging the legal counselling services provided by NGO providers.

However, the actual supply of free and reliable legal assistance to asylum seekers is very limited, mainly due to practical obstacles. This dearth in the availability of free legal information, counselling and representation services threatens to render the promises of the new framework ‘dead letter’.

<sup>81</sup> Article 78(3) LFIP.

<sup>82</sup> Article 78(4) LFIP.

## **Access to lawyers and NGO legal counselling providers**

All international protection applicants and status holders have a right to be represented by an attorney in regards to “all acts and decisions within the scope of the International Protection section of the LFIP”, under the condition that they pay for the lawyer’s fees themselves.<sup>83</sup> Persons who do not have the financial means to afford a lawyer are to be referred to the state-funded Legal Aid Scheme (*Adli Yardım*) in connection with “judicial appeals” pertaining to any acts and decisions within the international protection procedure.<sup>84</sup>

Moreover, all international protection applicants and status holders are free to seek counselling services provided by NGOs.<sup>85</sup>

Lawyers and legal representatives may accompany applicants during the personal interview,<sup>86</sup> are guaranteed access to all documents in the applicant’s file and may obtain copies thereof – with the exception of documents pertaining to national security, protection of public order and prevention of crime.<sup>87</sup>

The aforementioned safeguards, however, are laid down as “freedoms” as opposed to “entitlements” that would create a positive obligation on the part of the Government to secure the actual supply and provision of legal counselling, assistance and representation services.

In current practice, the actual availability of lawyers and NGO legal assistance providers to the majority of international protection applicants is significantly curtailed by shortage of resources and expertise.

## **Scope and shortcomings of state-funded legal aid services**

While at first sight the aforementioned Article 81(2) LFIP on referral of international protection seekers to the state-funded Legal Aid Scheme resembles a free legal aid provision, in reality the LFIP simply makes reference to the existing Legal Aid Scheme framework, which in theory should be accessible to all financially disadvantaged persons within Turkish jurisdiction. In practice, however, until recently the Legal Aid Scheme did not extend any services to foreign nationals generally, let alone asylum seekers and other categories of vulnerable migrants.

Turkey’s state-funded Legal Aid Scheme is implemented by the bar associations in each province, subject to means and merits criteria. The current involvement of bar associations in the field of refugee law is limited, however. One practical impediment to greater involvement by bar associations is the overall scarcity of legal aid funding that is made available to bar associations from the state budget. While the LFIP makes plentiful reference to the possibility of persons within the scope of the LFIP seeking free legal representation via the Legal Aid Scheme, it does not commit any additional financial resources for the bar associations to build dedicated operational capacities to extend services to asylum seekers and migrants who cannot afford to pay a lawyer.

Another challenge is the currently meagre level of specialised expertise among the Turkish legal practitioners community on asylum and immigration law. Since refugee law is not taught in any of the law

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<sup>83</sup> Article 81(1) LFIP.

<sup>84</sup> Article 81(2) LFIP.

<sup>85</sup> Article 81(3) LFIP.

<sup>86</sup> Article 75(3) LFIP.

<sup>87</sup> Article 94(2) LFIP.

schools around Turkey and very few lawyers have so far chosen to specialise in this field, the overall familiarity and level of expertise in the legal professional community with asylum law and the new criteria and procedures provided by the LFIP is limited. It need also be noted that a very small number of private practice lawyers actually choose to specialise in asylum law, since it is not perceived as lucrative field of legal practice.

In this context, since the Legal Aid Scheme operates on the basis of a case by case means and merits consideration, each Bar Association Board has a margin of discretion allowing them to limit or extend their involvement in the asylum and immigration law cases as they see fit. Although in recent years there have been significant capacity-building and advocacy efforts at both national and local level to increase the coverage of asylum seekers within the Legal Aid Scheme, at present only the Bar Associations of Istanbul, Izmir, Ankara and Van maintain a modest but dedicated engagement to handle a modest number of legal aid cases presented by rejected international protection applicants.

While technically all types of “lawyer services” fall within the scope of legal aid as per Turkey’s Law on the Legal Profession, in practice the Legal Aid Scheme in Turkey provides free legal representation to its beneficiaries in relation with judicial proceedings, as distinct from legal counselling and consultancy services short of recourse to a court of law. This is indeed a principle reaffirmed by Article 81(2) LFIP, which provides that international protection applicants may seek state-funded legal aid in connection with “judicial appeals” pertaining to any acts and decisions within the international protection procedure. Furthermore, while the Legal Aid Scheme covers legal advice and representation fees for the lawyer, it does not cover court and notary fees. These side costs that are not covered by the Legal Aid Scheme are prohibitively high for most asylum seekers.

The minimum cost attached to bringing a case before an administrative court in Turkey in 2015 is around €75. This amount includes notary fees for the power of attorney, certified translations of identity documents, court application and other judicial fees and postal fees. Since the state-funded Legal Aid Scheme only covers a modest attorney fee, applicants are therefore required to cover these prohibitively high costs out of their own resources. Although there is a possibility to request a waiver of these costs from the judge, judges have a wide discretion in granting such exemptions and in the vast majority of cases decline the request without providing any substantial reasons.

With regard to the current Legal Aid Scheme practice in the small number of provinces that actually extend legal aid services to asylum seekers, legal aid lawyers are assigned in a modest number of cases involving either a negative international protection status decision, a removal decision or an administrative detention decision. In relation to negative international protection status decisions, the legal aid lawyer will assist the applicant in filing a judicial appeal with the competent administrative court and any onward appeals as he or she sees fit. The Legal Aid Scheme will generally not extend any further general-type legal information and counselling services to international protection applicants, whether in regard to the status determination procedure or to matters relating to access to rights and services.

The level of financial compensation afforded to lawyers within the state-funded Legal Aid Scheme is modest and typically aimed at attracting young lawyers at the early stages of their professional careers. Payments to legal aid lawyers are made on the basis of the type of legal action undertaken, as opposed to hours spent on the case. Furthermore, it is very difficult for legal aid lawyers to get the bar association to cover any side expenses such as interpretation, translations or expert consultations. As a result, there are insufficient incentives for legal aid lawyers to dedicate generous amounts of time and effort into international protection cases.

### **Resource constraints of NGO legal assistance providers**

In this context, legal information, counselling and assistance services by NGO providers is of crucial importance. However, the present supply of legal assistance services by NGOs seems insignificant when compared to the volume and geographical dispersal of the population engaged in international protection procedures. This shortage of supply is mainly related to resource constraints on the part of NGOs.

In the absence of any dedicated Government funds to fund legal assistance services by NGOs to asylum seekers, the limited amount of project-based external funding available to NGO providers, insufficient prioritisation of direct legal service activities in donor programmes, and stringent bureaucratic requirements of project-based funding make it very difficult for specialised NGO legal service providers to emerge and prosper.

While there are a number of NGOs providing modest legal information and assistance services mainly in the large cities such as Istanbul, Ankara and Izmir, NGO providers do not have the resources and operational capacity to establish a significant level of field presence throughout the country. Considering the size of the international protection seeker population and Turkey's geographical dispersal policy, asylum seekers in most locations do not have the benefit of being able to draw from specialised legal counselling and assistance services by any local NGOs.

### **Availability of legal counselling, assistance and representation at first instance and appeal**

Against the backdrop of short supply discussed above, the actual availability of legal assistance for international protection applicants during the first instance stage is extremely limited. Generally, lawyers are not involved in first instance and the small number of NGO service providers operating on meagre resources provide information and counselling on procedures. Generally speaking, first instance interviews are not conducted in the presence of or monitored by any lawyers. Moreover, Article 75 LFIP does not make any provisions for allowing and securing the participation of NGO representatives in personal interviews.

As for the appeal stage, at present a relatively modest number of Legal Aid Scheme lawyers, a handful of private practice lawyers and less than a handful of NGO legal assistance providers offer legal representation to a relatively small number of rejected international protection applicants in connection with appeal applications.

### **3. Dublin**

Since Turkey is not a Member State of the EU, Dublin considerations do not apply.

### **4. Admissibility procedures**

#### *General (scope, criteria, time limits)*

Articles 72-74 LFIP lay down the criteria and procedure by which an application for international protection may be determined inadmissible.

#### **Grounds for inadmissibility**

There are 4 grounds for considering an application inadmissible:<sup>88</sup>

- (a) A subsequent application where “the applicant submitted the same claim without presenting any new elements”;
- (b) An application submitted by a person, who was previously processed as a family member and signed a waiver to give up on his or her right to make a personal application, where the person submits a personal application
  - i. either after the rejection of the original application, without presenting any additional elements,
  - ii. or at any stage during the processing of the original application, without presenting any justifiable reason;
- (c) An application by a person who arrived in Turkey from a “first country of asylum”, as defined in Article 73 LFIP;
- (ç) An application by a person who arrived in Turkey from a “safe third country”, as defined in Article 74 LFIP.

For the definition and interpretation of “first country of asylum” and “safe third country”, see the section on the Safe Country Concepts below.

### **Procedure for the screening of applications for inadmissibility grounds**

An inadmissibility decision may be made “at any stage in the procedure” where the inadmissibility criteria laid down above are identified.<sup>89</sup> Therefore, an inadmissibility decision may be issued at any stage, whether during the registration process, the personal interview stage or during the evaluation of the application prior to the finalisation of the status decision.

However, according to the implementation instructions set out in Article 4 CIP, the provincial DGMM Directorates must carry out the examination of inadmissibility criteria under Article 72 LFIP and accelerated processing criteria under Article 79 LFIP during the registration stage to determine whether the application is admissible and therefore the authorities can proceed to the onward procedural steps for the determination of the application, and whether the application will be processed by the regular procedure or the accelerated procedure (see Accelerated Procedure below).

Depending on the outcome of the inadmissibility assessment:

- Where an applicant is considered to fall into criteria listed in Article 72(1)(a) – subsequent application, or Article 72(1)(b) – family/personal application, the provincial DGMM Directorate will issue the inadmissibility decision and notify the DGMM Headquarters within 24 hours. However, there is no time-limit for the decision on the inadmissibility assessment by the provincial DGMM Directorate.
- Where an applicant is considered to fall into criteria listed in Article 72(1)(c) – first country of asylum, or Article 72(1)(ç) – safe third country, the provincial DGMM Directorate will refer the file to DGMM Headquarters, which will complete the inadmissibility determination and may or may not issue an inadmissibility decision. There is no time limit for referrals to DGMM Headquarters and their decision on the inadmissibility determination.

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<sup>88</sup> Article 72(1) LFIP.

<sup>89</sup> *Ibid.*

In determining whether the applicant arrived in Turkey from a “first country of asylum” or a “safe third country”, consideration should be given to the “protection of the applicant’s family unity in Turkey.”<sup>90</sup>

Inadmissibility decisions must be communicated to the applicant in writing.<sup>91</sup> Furthermore, the CIP provides that, where a “first country of asylum” or a “safe third country” determination is made for an applicant, he or she must be given the opportunity to present oral or written information and documents against that determination.<sup>92</sup> Yet the problem with this seemingly protective provision is that the CIP does not clarify whether the applicant will be informed and presented with an opportunity to submit evidence before or after the formal written notification of the inadmissibility decision. Therefore it is not clear whether the provision in the CIP properly amounts to an administrative appeal step prior to the actual finalisation of the inadmissibility assessment.

### **Consequences of the inadmissibility decision**

#### *(1) On “first country of asylum” or “safe third country” grounds*

As per Articles 73-74 LFIP, where it is determined that an applicant arrived in Turkey either from a “first country of asylum” or from a “safe third country”, DGMM will initiate proceedings to return the applicant to that country. During the course of the return proceedings, the applicant shall be allowed to stay in Turkey. Should the return attempt not succeed, the DGMM will take the international protection application off the shelf (i.e. deem it admissible) and continue processing. On this point, if the return attempt does not succeed “within a reasonable period”,<sup>93</sup> the application should be taken off the shelf and processed, although the interpretation of what should be considered a “reasonable period” appears to have been left to the discretion of DGMM.

Once an inadmissibility decision is issued to an applicant on “first country of asylum” or “safe third country” grounds, unless he or she files a judicial appeal as will be discussed below, a removal decision will be issued to the applicant for his or her return to the third country identified as such.<sup>94</sup> Crucially, this deportation decision must clearly indicate the name of the third country to which the applicant’s return will be sought, under the presumption that this third country does not present for the applicant any risk of treatment contrary to the *non-refoulement* principle; as the DGMM is bound by the *non-refoulement* obligation as expressly safeguarded in Articles 4 and 55(1)(a) LFIP.

Attached to this removal decision, a separate decision on administrative detention for the purpose of removal may be issued,<sup>95</sup> if the DGMM considers that a ground for detention applies and deprivation of liberty is deemed necessary and justified.<sup>96</sup>

Alternatively, if DGMM finds that the detention grounds in Article 57(2) LFIP do not apply and that there is no justifiable reason for detaining the applicant, it may also issue the applicant with a residence permit on

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<sup>90</sup> Articles 4.2 and 4.4 CIP.

<sup>91</sup> Article 72-3 LFIP.

<sup>92</sup> Articles 4.2 and 4.4 CIP.

<sup>93</sup> Articles 4.2 and 44 CIP.

<sup>94</sup> Article 54(1)(l) LFIP.

<sup>95</sup> Article 57(1) LFIP.

<sup>96</sup> Under Article 57(2) LFIP, detention may be applied where a person presents a risk of absconding; breached the rules of entry or exit from Turkey; has used false documents; has refused to leave Turkey after the period granted to leave; or poses a threat to public order, public security or public health.

humanitarian grounds,<sup>97</sup> which would allow the applicant to reside on the territory during the course of the proceedings for his or her return to the “first country of asylum” or “safe third country” in question.

## (2) On other grounds

Where an inadmissibility decision is issued for an applicant on grounds (a) or (b) listed above, unless he or she files a judicial appeal as discussed below, a removal decision will be issued on the applicant.<sup>98</sup> Attached to this removal decision, DGMM may either issue a so-called “Invitation to Leave” notification to the person,<sup>99</sup> thereby refraining from detaining the person and allowing him or her 30 days to depart from Turkey on their own initiative. As will be discussed in the section on Detention, recourse to Invitations to Leave by DGMM is not considered likely in most cases. The more likely possibility is that, attached to the removal decision mentioned above, DGMM will also issue a decision on administrative detention for the purpose of removal, provided that the criteria listed in Article 57-2 LFIP apply and that deprivation of liberty is deemed necessary and justified.

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:
  - Yes       No
  - o if yes, is the appeal       Judicial       Administrative
  - o If yes, is it suspensive?       Yes       No

As discussed above, inadmissibility decisions are outside the mandate of the International Protection Evaluation Commissions (IPECs), therefore there is no formal administrative appeal mechanism as such to challenge an inadmissibility decision. They must be directly appealed before the competent administrative court within 15 days of the written notification of the decision. Appeals to the administrative court carry automatic suspensive effect.

The competent administrative court must decide on the appeal within 15 days for appeals originating from the accelerated procedure. The decision by the administrative court is final; it cannot be appealed in a higher court. This means that once and if the administrative court appeal is unsuccessful, the international protection procedure proper is considered to have been fully exhausted, and therefore a deportation decision may be taken for the removal of the applicant.

Once the administrative court remedy is exhausted, the only other domestic judicial remedy available to the applicant to prevent being deported is the new individual complaint procedure of the Constitutional Court which, as discussed in the Regular Procedure section above, does not carry suspensive effect. Alternatively, the applicant may file an urgent application with the ECtHR and request an interim measure under Rule 39 of the Rules of the Court, claiming that he or she would be at risk of treatment contrary to Article 3 of the ECHR if returned. Where an inadmissibility decision was made on “first country of asylum” or “safe third country” grounds, the applicant will have to argue that the imminent return to the third country concerned would lead to a real risk of treatment contrary to Article 3 ECHR.

<sup>97</sup> Article 46(1)(d) LFIP.

<sup>98</sup> Article 54(1)(l) LFIP.

<sup>99</sup> Article 56 LFIP.

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure?  No  Yes
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  Yes  No

The provincial DGMM Directorate which received the application and undertakes the registration of the applicant will carry out a screening of the application against the 4 inadmissibility criteria and may decide to hold an additional interview with the applicant for the purpose of inadmissibility assessment.<sup>100</sup>

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice?  Yes  Not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision?  Yes  Not always/with difficulty  No

In theory, the possibility for international protection applicants to be represented by a lawyer in regards to “all acts and decisions within the scope of the International Protection section of the LFIP” discussed above also includes by definition inadmissibility decisions. Similarly, persons who do not have the financial means to pay a lawyer are to be referred to the state-funded Legal Aid Scheme in connection with judicial appeals pertaining to any acts and decisions within the international protection procedure, by definition including judicial proceedings aiming to challenge an inadmissibility decision.

However, in practice, the general shortcomings and weaknesses in the capabilities of Turkey’s state-funded Legal Aid Scheme to extend services to international protection applicants, as elaborated in the section on Regular Procedure above, will make it difficult for an applicant to seek and secure a Legal Aid lawyer for the purpose of challenging an inadmissibility decision.

As will be elaborated in the sections on Accelerated Procedures and Border Procedures below, these practical difficulties will be even more marked and potentially prohibitive in cases where the applicant is being detained during the processing of his or her request for international protection.

## 5. Border procedure (border and transit zones)

<sup>100</sup> Article 4.1 CIP.

## General (scope, time-limits)

### Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
- Are there any substantiated reports of *refoulement* at the border (based on NGO reports, media, testimonies, etc.)?  Yes  No
- Can an application made at the border be examined in substance during a border procedure?  Yes  No

### International protection applications at border locations

While the LFIP does not designate a specific border procedure as such, the CIP provides specific guidance on implementation authorities regarding the handling of international protection applications at the border. The CIP critically draws a distinction between (a) international protection applications expressed after a person has crossed a border gate and thereby gained access to territory as such, and (b) those expressed before the person has crossed a border gate, i.e. in transit zone type locations at land, sea and air border gates.<sup>101</sup>

Applications made *after* the border crossing are subject to the general rules laid down by the LFIP.

However, in relation to applications:

- Expressed before the border crossing proceedings, in the transit area;
- During the border crossing proceedings, at passport check counters;
- Made after a person was denied entry at border,

the competent DGMM authorities will be notified by the border authorities and brought in to handle the application. Designated officials from the provincial DGMM Directorate “are to determine, as first matter of business, whether the application should be subject to the accelerated procedure as per criteria laid down in Article 79 LFIP.”<sup>102</sup>

While the instruction in Article 1.2.3 CIP stops short of categorically ordering all border applications to be processed under the accelerated procedure, which also entails detention as seen below, it therefore indicates that DGMM authorities at border locations should give strong consideration to that effect.

### Detention at the border

Applicants referred to accelerated processing at border locations are detained in a facility in border premises pursuant to Article 68 LFIP during the processing of their international protection application.<sup>103</sup> As will be discussed in the section on Detention below, Article 68 LFIP allows for administrative detention of international protection applicants during the processing of their claim for up to 30 days. Specifically, it allows for the administrative detention of international protection applicants “at border gates, for the purpose of preventing irregular entry.”<sup>104</sup>

Where there is no appropriate detention facility at border premises, the applicant may be transferred:

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<sup>101</sup> Article 1.2.3 CIP.

<sup>102</sup> *Ibid.*

<sup>103</sup> Articles 1.2.3 and 15 CIP.

<sup>104</sup> Article 68(2)(b) LFIP.

- Either to the nearest reception and accommodation centre<sup>105</sup> and detained in the closed section of the facility; or, if this is not possible
- To the nearest removal centre and detained in a dedicated section of the facility.

DGMM also commits to publishing guidelines for living standards in facilities used for the detention of international protection applications in border premises.<sup>106</sup>

### Accelerated procedure at the border

DGMM authorities at the border must complete the personal interview with the applicant within 3 days and submit the file to DGMM Headquarters.<sup>107</sup> The DGMM Headquarters will review the file, and either reach a decision within 5 days, as required by Article 79 LFIP below, or refer the application to the regular procedure they determine that the evaluation cannot be completed within 5 days.

In the latter case, the applicant will be taken outside the accelerated procedure and released with a notification letter instructing him or her to report to the city to which he or she will be assigned as per Article 71 LFIP, within 15 days.

The accelerated procedure undertaken in border premises for the determination of an international protection application proceeds the same way as the accelerated procedure on territory with regard to procedural flow, personal interview and appeal, as well as the decision-making authority. See the section on Accelerated Procedures below for details.

### Appeal

#### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
- o if yes, is the appeal
 

<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
--	---
- o If yes, is it suspensive?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------

The same rules as in Accelerated Procedures below are applicable.

Since international protection applicants processed at the border will be deprived of their liberty and held in remote border locations, removal centres, or detention facilities within airport transit areas, the persons concerned will face serious practical obstacles to accessing lawyers and legal assistance providers, whose assistance is crucial in order for them to be able to effectively access the judicial appeal mechanisms foreseen by the LFIP.

### Personal Interview

#### Indicators:

- 
- <sup>105</sup> Article 95 LFIP.
  - <sup>106</sup> Article 15.2 CIP.
  - <sup>107</sup> Article 1.2.3 CIP.

- Is a personal interview of the asylum seeker conducted in most cases in practice in the border procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  Yes  No

The same rules as in Accelerated Procedures below are applicable.

In practice, due to the distant location of border premises and lack of any systematic monitoring presence in border locations by UNHCR, lawyers or NGO service providers, it is difficult to ascertain the extent to which personal interviews conducted in border locations comply with the requirements in the legislation at present.

### *Legal assistance*

#### *Indicators:*

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice?  Yes  Not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure?  Yes  Not always/with difficulty  No

In addition to the general shortcomings and weaknesses in the capabilities of Turkey's state-funded Legal Aid Scheme to extend services to international protection applicants, as elaborated in the Section on Regular Procedure above, these practical barriers will be even more marked and potentially prohibitive in cases where the applicant is being detained during the processing of his or her request for international protection.

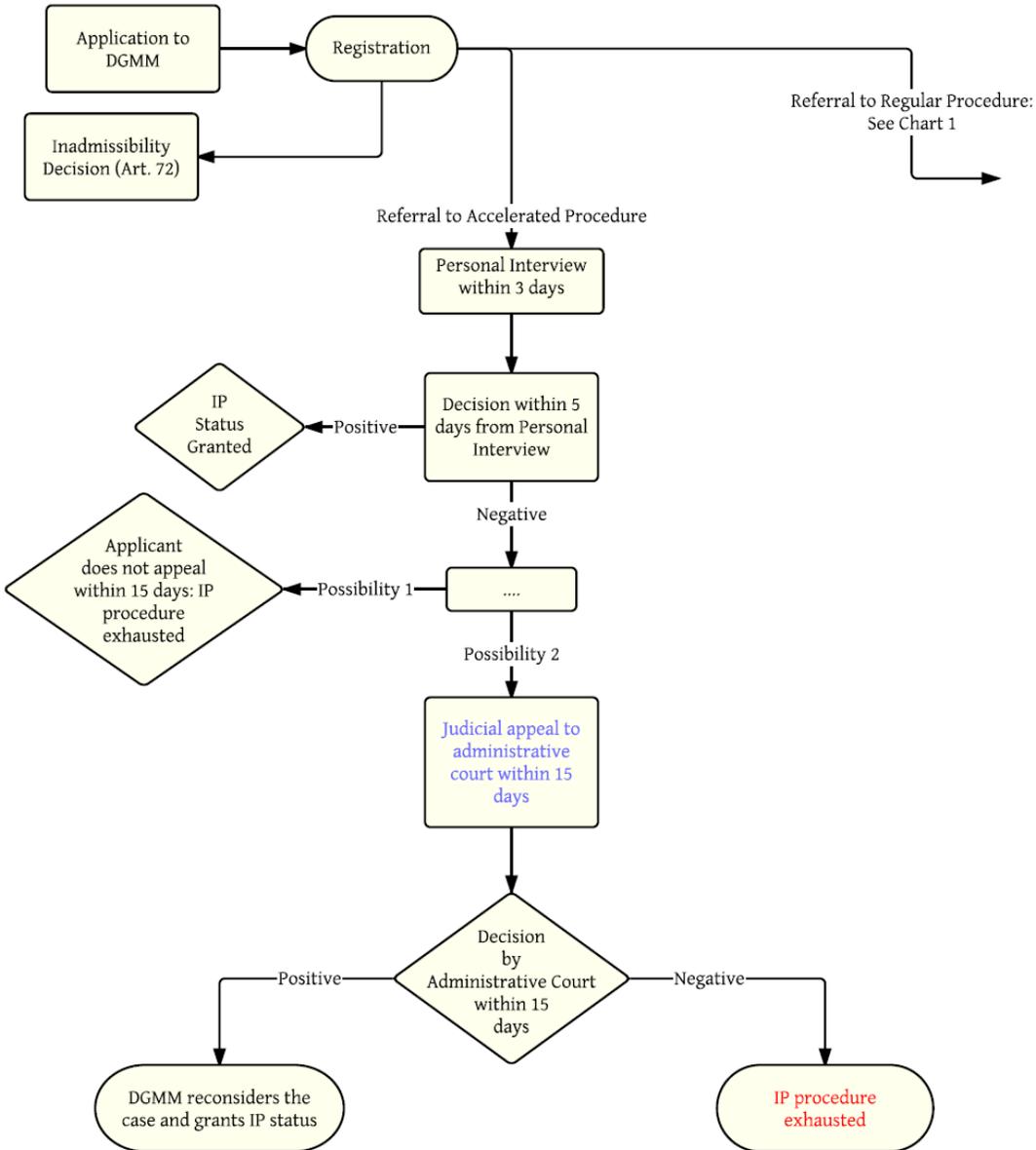
Since applicants in border locations are deprived of their liberty, it is exceedingly difficult for them to seek and secure a legal aid lawyer for the purpose of challenging either an inadmissibility decision or a negative international protection status decision.

Moreover, lawyers representing persons who do not possess valid ID documents face serious obstacles in obtaining a power of attorney due to problems originating from notaries legislation and the general difficulty and high expenses of bringing a notary official to a detention facility often located in a distant area. Even lawyers assigned under the state-funded Legal Aid Scheme experience difficulties in visiting newly assigned clients in detention for want of a power of attorney.

In addition, removal centres and airport transit zones are generally located at the peripheries of provinces. This creates an additional practical obstacle for legal aid lawyers as the state-funded Legal Aid Scheme does not cover transportation costs for lawyers.

## **6. Accelerated procedures**

## International Protection Procedure Flow Chart 2: ACCELERATED PROCEDURE



*General (scope, grounds for accelerated procedures, time limits)*

### Grounds for accelerated processing

Article 79-1 LFIP lays down 7 grounds that require the implementation authorities to refer an application to the accelerated procedure for the determination of the international protection claim:

- (a) The applicant has not raised any issues pertinent to international protection, while submitting his or her personal reasons when lodging an application;

- (b) Has misled the authorities by presenting false documents, or misleading information and documents, or by withholding information or documents that would have a negative impact on the decision;
- (c) Destroyed or disposed of his or her identity or travel document in bad faith in an attempt to prevent determination of his or her identity or nationality;
- (ç) Has made an international protection request after he or she has been placed under administrative detention for the purpose of removal as per Article 57 LFIP;
- (d) Has applied for international protection solely for the purpose of preventing or postponing the execution of a decision that would lead to his or her deportation from Turkey;
- (e) Poses a danger to public order or security, or has previously been deported from Turkey on these grounds;
- (f) Files a subsequent application after his previous application was considered implicitly withdrawn pursuant to Article 77 LFIP.

The CIP provides additional guidance regarding the types of applications that should be processed within the accelerated procedure. As will be recalled from earlier discussion, Article 1.2.3 CIP instructs implementation authorities to “consider” applications made at border locations for accelerated processing. Please see above the section on Border Procedures for a detailed discussion.

Article 1.2.4 CIP further identifies 7 specific situations that call, “as first matter of business”, for an “assessment as to whether the application should be processed under the accelerated procedure” pursuant to Article 79 LFIP:

- (a) Persons previously residing in Turkey legally on other grounds such as work, study, short-term visa, and who express an international protection request after the expiration of their previous residence authorisation;
- (b) Persons previously residing in Turkey on other legal grounds but have committed a crime and therefore a removal decision was issued for their deportation from Turkey under Article 54 LFIP, and who express an international protection request before their transfer to a removal centre;
- (c) Persons expressing an international protection request after having been apprehended by security forces for illegal presence in Turkey;
- (ç) Persons previously deported from Turkey or banned from re-entry, on irregular migration grounds or after having committed a crime, who have re-entered Turkey and express an international protection request,
- (d) Persons expressing an international protection request after they are apprehended by security forces during an attempt to exit Turkey illegally;
- (e) Persons who have previously applied for international protection in Turkey but were either rejected or considered to have implicitly withdrawn their application pursuant Article 77 LFIP, and who make a subsequent international protection request;
- (f) Persons expressing an international protection request while being deprived of their liberty for criminal justice reasons.

### **Authorities & time-limits in accelerated procedures**

According to the CIP, the provincial DGMM Directorates will be responsible for the registration and personal interview in accelerated procedures, whereas the DGMM Headquarters will finalise the status decision.<sup>108</sup>

In the handling of applications processed under the accelerated procedure, the personal interview takes place within 3 days of the application, and the status decision issued within 5 days of the personal

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<sup>108</sup> Articles 1.2.4 and 1.2.5 CIP.

interview.<sup>109</sup> However, as the CIP clarifies, accelerated processing should not compromise in any way “the requirement for the detailed and full-fledged examination of the international protection request in light of the eligibility criteria laid down in the LFIP.”<sup>110</sup>

Where the authorities determine that the examination of the application cannot be completed within the short time-frame laid down in Article 79(2), the applicant may be taken off the accelerated procedure and referred to the regular procedure.<sup>111</sup> While the LFIP provision is worded as an optional clause, Article 5 CIP provides that if the determination cannot be completed within 5 days, the application shall be referred to the regular procedure, suggesting that referral to the regular procedure is not a matter of discretion in such cases.

### Link between accelerated procedure and detention of applicants

Technically, the decision to detain or not an applicant subject to accelerated processing will depend on the competent provincial DGMM Directorate’s interpretation of the applicant’s circumstances against the detention grounds laid down in Article 68 LFIP, discussed in the section on Detention below. However, when considering the Article 79 LFIP acceleration grounds and the additional guidance in the CIP regarding the implementation of the accelerated procedure *in tandem* with Article 68, it becomes clear that certain categories of applicants will, in the vast majority of cases, be processed in detention under the accelerated procedure. This should be an issue of concern.

Moreover, in cases where applications are channelled from accelerated into regular procedure, if the applicant was being detained while his or her international protection request was being examined under the accelerated procedure, administrative detention may continue despite the fact that the person is no longer subject to accelerated processing.

### Appeal

#### Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
  - Yes
  - No
- o if yes, is the appeal:
  - Judicial
  - Administrative
- o If yes, is it suspensive?
  - Yes
  - No

There are several significant differences between appeals in the regular procedure and appeals in the accelerated procedure, regulated in Article 80 LFIP.

Firstly, status decisions taken within the framework of the accelerated procedure cannot be appealed administratively before the IPECs. They must be directly appealed at the competent administrative court within 15 days of the written notification of the decision. The application to the administrative court carries automatic suspensive effect.

Secondly, unlike in cases originating from the regular procedure, the court must decide on the appeal

<sup>109</sup> Article 79(2) LFIP.

<sup>110</sup> Article 5 CIP.

<sup>111</sup> Article 79(3) LFIP.

within 15 days in appeals originating from the accelerated procedure.

Thirdly, the decision by the administrative court is final. It cannot be appealed before a higher court. This means that once and if the administrative court appeal is unsuccessful the international protection procedure proper is considered to have been fully exhausted, and therefore a deportation decision may be taken for the removal of the applicant pursuant to Art 54(1)(l) LFIP.

Once the administrative court remedy is exhausted, the only other domestic judicial remedy available to the applicant to prevent being deported is the new individual complaint procedure of the Constitutional Court which, as discussed in the Regular Procedure section above, does not carry suspensive effect.

Alternatively, the applicant may file an urgent application with the ECtHR and request an interim measure under Rule 39 of the Rules of the Court, claiming that he or she would be at risk of treatment contrary to Article 3 of the ECHR if deported.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the accelerated procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- Are interviews conducted through video conferencing?  Yes  No

In theory, according to LFIP and CIP, the accelerated procedure entails a complete examination of the international protection application by the same standards as the regular procedure. The requirement on the part of DGMM to conduct a personal interview as per Article 75 LFIP also applies to applicants processed in accelerated procedure.

It remains to be seen how practice will shape up as the provincial DGMM Directorates actually take over processing of asylum applications from the Provincial Foreigners Police branches.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice?  Yes  Not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure?  Yes  Not always/with difficulty  No

For an overview of difficulties encountered by applicants subject to accelerated procedure in detention when trying to access legal assistance services, see the section on Border Procedures above.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  
 Yes       not always/with difficulty       No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  
 Yes       not always/with difficulty       No

According to Article 70(1) LFIP, the applicant shall be informed during registration on the procedures which are to be followed throughout the processing of his or her application as well as their rights and obligations. However the mentioned article does not specify the ways of informing the applicant.

The Temporary Protection Regulation (TPR) also has a provision on informing the applicant upon registration. According to the Article 19(5) TPR, an applicant shall be informed on the process related to temporary protection, their rights and obligations and other issues in a language they can understand. This article also mentions that leaflets and documents may be drawn up for dissemination of information when necessary. While there is no information leaflet available yet to applicants under the LFIP, there is a short “Registry Information Leaflet” for the Syrian nationals provided on the website of DGMM.<sup>112</sup>

Applicants’ access to UNHCR is guaranteed under Article 68(8) and Article 59(1)(c) LFIP. These two provisions mainly focus on the access of applicants to UNHCR from detention and removal centres.

Applicants’ access to NGOs are guaranteed under the Article 81 LFIP, entitled “Legal services and counselling”. While an applicant or a beneficiary of international protection is entitled to benefit from legal counselling provided by NGOs under this article, there is no clear definition of the procedure followed, however. Since the implementation of the LFIP in the practice is a recent development, there is no independent report yet on access to NGOs or UNHCR.

## D. Subsequent applications

### Indicators:

- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes       No
  - o At the appeal stage       Yes       No

<sup>112</sup> See DGMM, *Registry Information Leaflet*, available at: <http://www.goc.gov.tr/files/files/EK-4%20Bro%C5%9F%C3%BCr.pdf>.

- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance             Yes  No
  - o At the appeal stage         Yes  No

While the LFIP does not expressly provide a specific dedicated procedure for the handling of subsequent applications, reference is made to subsequent applications in the guidance concerning admissibility assessment<sup>113</sup> and accelerated processing considerations.<sup>114</sup> Accordingly, persons identified as subsequent applicants may or may not find themselves encounter an inadmissibility decision at registration stage. If they pass the inadmissibility check, their application will be subject to accelerated processing.

The provincial DGMM Directorates are responsible for the initial admissibility assessment on subsequent applications and the subsequent examination of the claim under the accelerated procedure. Whereas the inadmissibility decisions are also taken by the provincial DGMM directorates, status decisions in the accelerated procedure will be referred to DGMM Headquarters for finalisation, based on the personal interview conducted by the provincial DGMM Directorate.

While legislation does not provide a definition of “subsequent application”, Article 79(1)(a) LFIP refers to subsequent applicants as persons who “submit the same claim without presenting any new elements.” In the absence of any further legislative guidance, it will be up to the discretion of the provincial DGMM Directorates in charge of registering the application to determine whether or not the applicant “has presented any new elements” or not, thereby raising the risk of arbitrary assessment that could result in inadmissibility or acceleration.

Furthermore, it is also indicated that both applicants whose previous application was rejected and persons who are considered to have withdrawn their previous application will be treated as subsequent applicants,<sup>115</sup> and channelled into accelerated processing.

On the positive side, legislation does not lay down any time limits for lodging a subsequent application or any limitations on the number of many times a person can lodge a subsequent application.

Where a subsequent application is considered inadmissible, the person concerned will be subject to a removal decision and eventual deportation from Turkey, unless he or she resorts to the appeal mechanisms available. Subsequent applicants who are not considered inadmissible at registration stage will be processed like any other applicant subject to accelerated procedure and will be protected from *refoulement* during the course of the status determination proceedings, as elaborated in the section on Accelerated Procedures above.

A subsequent applicant subject to accelerated processing may or may not be detained depending on the competent provincial DGMM directorate’s interpretation of the applicant’s circumstances against the detention grounds laid down in Article 68 LFIP.

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<sup>113</sup> According to Article 72(1)(a) LFIP, a subsequent application where “the applicant submitted the same claim without presenting any new elements” is considered inadmissible. See the Section on Admissibility Procedures for procedure and appeal mechanisms available to persons to whom an inadmissibility decision has been issued.

<sup>114</sup> Article 79(1)(f) LFIP and Article 1.2.4.e CIP lay down subsequent applications as a ground for acceleration. See the Section on Accelerated Procedures for procedure and appeal mechanisms available to persons under accelerated procedures.

<sup>115</sup> Article 1.2.4.e CIP.

Finally, persons whose applications are treated as “subsequent applications”, whether in the context of admissibility or accelerated processing considerations, must have same level of access to legal assistance and representation as the respective categories of applicants. In practice, the practical obstacles summarised in the sections on Regular Procedure and Border Procedures apply to persons treated as “subsequent applicants”.

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### *Indicators:*

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories (specify \_\_\_\_\_)
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (specify \_\_\_\_\_)

Article 3(1)(l) LFIP introduces the definition of “persons with special needs” to cover unaccompanied minors, elderly persons, persons with disabilities, pregnant women, single partners with an accompanying child, and victims of torture and other serious psychological, physical or sexual violence.

During the registration interview, where Provincial DGMM officials identify the applicant to fall within the scope of the “persons with special needs” definition, this observation should be listed in the International Protection Application Registration Form filled in by the registration officer.<sup>116</sup> However, both LFIP and CIP stop short of designating an explicit mechanism for the identification of “persons with special needs”, particularly persons that are victims of torture and other serious psychological, physical or sexual violence, who represent vulnerabilities that may be difficult to identify without expert assessment.

It should also be mentioned that, according to the legislative design of DGMM structure and cadres in the LFIP, a total of 45 social workers and 30 psychologists is to be recruited for the Provincial DGMM Directorates across the country. There are concerns among field-based asylum advocates as to whether this level of staff allocation would be sufficient for the identification of “persons with special needs”, even after the completion of the transition phase, in light of the massive numbers of international protection applicants currently being processed by DGMM and the National Police.

“Persons with special needs” are to be “given priority with respect to all rights and proceedings” pertaining to the adjudication of international protection applications.<sup>117</sup>

### 2. Use of medical reports

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<sup>116</sup> Article 3.2 CIP.

<sup>117</sup> Article 67(1) LFIP.

*Indicators:*

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       Yes, but not in all cases       No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?       Yes       No

No information is available yet on the use of medical reports in the international protection procedure.

### **3. Age assessment and legal representation of unaccompanied children**

*Indicators:*

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

In 2009, the Council of Europe Commissioner for Human Rights had criticised the Turkish age assessment system for not applying the benefit of the doubt principle when the age of asylum seekers was disputed, thereby often leading to detention of children.<sup>118</sup>

Article 66(1) LFIP contains specific provisions on children, which refer to the best interests of the child principle and to the Child Protection Law in relation to matters concerning unaccompanied children. However, the LFIP makes no express reference to the benefit of the doubt principle for cases where a child's age is disputed.

## **F. The safe country concepts**

*Indicators:*

- Does the law allow for the use of safe country of origin concept?       Yes  No
- Does the law allow for the use of safe third country concept?       Yes  No
- Does the law allow for the use of first country of asylum concept?       Yes  No
- Is there a list of safe countries of origin?       Yes  No
- Is the safe country of origin concept used in practice?      N/A
- Is the safe third country concept used in practice?       Yes  No

Safe country concepts come up in admissibility considerations in Turkey's international protection procedure. As elaborated in the Admissibility Procedures section above, the LFIP provides "first country

<sup>118</sup> Council of Europe Commissioner for Human Rights, *Report by Thomas Hammarberg following his visit to Turkey on 28 June - 3 July 2009*, CommDH(2009)31, para 74.

of asylum” and “safe third country” concepts but no “safe country of origin” concept. Where an applicant is identified to have arrived in Turkey from either a “first country of asylum” or a “safe third country”, an inadmissibility decision will be issued under Article 72 LFIP.

## Definitions and interpretation

### (1) First country of asylum

Article 73 LFIP defines “first country of asylum” as a country (a) “in which the applicant was previously recognised as a refugee and that he or she can still avail himself or herself of that protection” or (b) “or where he or she can still enjoy sufficient and effective protection including protection against *refoulement*.”<sup>119</sup>

The CIP provides additional interpretative guidance as to what can be considered “sufficient and effective protection”. According to Article 4.3 CIP, the following conditions must apply for an applicant to be considered to avail themselves of “sufficient and effective protection” in a third country:

- (a) There is no risk of well-founded fear of persecution or serious harm for the applicant in the third country concerned;
- (b) There is no risk of onward deportation for the applicant from the third country concerned to another country where he or she will be unable to avail themselves of sufficient and effective protection;
- (c) The third country concerned is a state party to the 1951 Refugee Convention and 1967 Protocol and undertakes practices in compliance with the provisions of the 1951 Convention;
- (ç) The sufficient and effective protection provided by the third country concerned to the applicant shall persist until a durable solution can be found for the applicant.

### (2) Safe third country

For a country to be considered a “safe third country”, the following conditions must apply:<sup>120</sup>

- (a) The lives and freedoms of persons are not in danger on the basis of race, religion, nationality, membership to a particular social group or political opinion;
- (b) The principle of *non-refoulement* of persons to countries, in which they will be subject to torture, inhuman or degrading treatment or punishment, is implemented;
- (c) The applicant has an opportunity to apply for refugee status in the country, and in case he or she is granted refugee status by the country authorities, he or she has the possibility of obtaining protection in compliance with the 1951 Refugee Convention;
- (ç) The applicant does not incur any risk of being subjected to serious harm.”

For a country to be considered a “safe third country” for an applicant, an individual evaluation must be carried out, and due consideration must be given to “whether the existing links between the applicant and the third country are of a nature that would make the applicant’s return to that country reasonable.”<sup>121</sup>

Article 4.4 CIP provides additional interpretative guidance as to the interpretation of the “reasonable link” criterion, by requiring at least one of the following conditions to apply:

- (a) The applicant has family members already established in the third country concerned;
- (b) The applicant has previously lived in the third country concerned for purposes such as work, education, long-term settlement;

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<sup>119</sup> Article 73 LFIP. The wording resembles the EU definition in Article 35 of the recast Asylum Procedures Directive.

<sup>120</sup> Article 74 LFIP. The wording resembles the EU definition in Article 38 of the recast Asylum Procedures Directive.

<sup>121</sup> Article 74(3) LFIP.

- (c) The applicant has firm cultural links to the country concerned as demonstrated for example by his or her ability to speak the language of the country at a good level;
- (ç) The applicant has previously been in the country concerned for long term stay purposes as opposed to merely for the purpose of transit.

### **Methodology for the designation of safe third countries**

At present, there is no publicly available information as to whether DGMM Headquarters currently subscribes or will in the future subscribe to a categorical ‘list approach’ in making safe country determinations on international protection applicants. However, the safe country definitions in the LFIP and the implementation guidance laid down in the CIP very demonstrably require a personal assessment as to whether a particular third country can be considered a “first country of asylum” or “safe third country” for a specific applicant.

### **G. Treatment of specific nationalities**

Protection seekers from **Syria** are subject to Turkey’s “temporary protection” regime under the Temporary Protection Regulation (TPR) and are barred from filing a separate individual international protection request.<sup>122</sup>

For a detailed discussion, see Section II on the Temporary Protection regime below.

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<sup>122</sup> Article 16 TPR.

## Reception Conditions

### A. Access and forms of reception conditions

DGMM is preparing to finalise the construction of 6 new Reception and Accommodation Centres. They are expected to be operational in 2015. Therefore there are no independent reports on the practices of these reception and accommodation centres. However, a Regulation on the Establishment and Operations of Reception and Accommodation Centres and Removal Centres, adopted on 22 April 2014, includes provisions on access to centres by third parties.<sup>123</sup>

#### 1. Criteria and restrictions to access reception conditions

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation
  - o During the accelerated procedure?  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During the regular procedure:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o during the Dublin procedure:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During the appeal procedure (first appeal and onward appeal):  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o In case of a subsequent application:  
 Yes                       Yes, but limited to reduced material conditions                       No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?                       Yes                       No

Under the LFIP, “access to social assistance and services may be renewed” to applicants “who are in need”.<sup>124</sup> The needs requirement is not further defined in the law. However, as regards health care, Article 89(3)(a) LFIP extends medical services to applicants who are not covered by medical insurance and do not have financial means to afford services.

#### 2. Forms and levels of material reception conditions

##### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31 December 2014 (per month, in original currency and in euro): Not available

Applicants determined to be “in need” under Article 89(2) LFIP “may be provided with an allowance” upon assent by the Ministry of Finance. The level of such allowance is determined by that Ministry.<sup>125</sup>

No information is available on the level of financial allowances at the time of writing.

<sup>123</sup> Regulation on the Establishment and Operations of Reception and Accommodation Centres and Removal Centres, available at: <http://www.resmigazete.gov.tr/eskiler/2014/04/20140422-5.htm>.

<sup>124</sup> Article 89(2) LFIP.

<sup>125</sup> Article 89(5) LFIP.

### 3. Types of accommodation

DGMM is preparing to finalise the construction of 6 new Reception and Accommodation Centres. The locations and capacity envisioned for these new facilities are as follows:

#### Location and capacity of Reception and Accommodation Centres under construction

Location	Capacity
GAZİANTEP	750
ERZURUM	750
İZMİR	750
KIRKLARELİ	750
VAN	750
KAYSERİ	750
<b>Total</b>	<b>4,500</b>

These new Reception and Accommodation Centres are expected to become operational in 2015. As mentioned below, dedicated sections within these facilities may or may not be used for the purpose of detaining international protection applicants.

### 4. Conditions in reception facilities

No information is available on conditions in Receptions and Accommodation Centres yet.

### 5. Reduction or withdrawal of reception conditions

#### Indicators:

- Does the law provide for the possibility to reduce material reception conditions?  Yes  No
- Does the law provide for the possibility to withdraw material reception conditions?  Yes  No

Pending a decision on the application, an applicant's material reception conditions may be restricted where he or she "does not abide by the obligations set out in [Part Three of the LFIP]."<sup>126</sup> The breadth of this provision is particularly concerning, as it allows restrictions on material reception conditions on the basis of the violation of *any* obligation throughout the asylum procedure, notwithstanding degree of gravity. The same restrictions may be applied when the claim for international protection has been refused.

Nevertheless, access to education and primary health care may *not* be restricted.<sup>127</sup>

### 6. Access to reception centres by third parties

#### Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

<sup>126</sup> Article 90(2) LFIP.

<sup>127</sup> *Ibid.*

Yes       with limitations       No

Access to reception centres by third parties is regulated under Article 95 LFIP. Representatives of the relevant non-governmental organisations with expertise in the area of migration may visit reception and accommodation centres upon permission of the DGMM.

While there is no specific guarantee for or mention of UNHCR and legal advisers, Article 95(9) LFIP refers to the Regulation on the Establishment and Operations of Reception and Accommodation Centres and Removal Centres for all procedures related to the centres. Moreover, Article 11(h) of the Regulation on Reception and Accommodation Centres clearly indicates that one of the responsibilities of the directors of centres is to facilitate and coordinate the visits of legal representatives, NGOs, UNHCR and other related third parties.

There is no independent report about the practice of access to reception centres by third parties.

## **7. Addressing special reception needs of vulnerable persons**

*Indicators:*

- Is there an assessment of special reception needs of vulnerable persons in practice?     Yes     No

No information is available yet.

## **8. Provision of information**

There is no related article or provision in the law on providing information to applicants in reception, accommodation or removal centres.

## **9. Freedom of movement**

There is no secondary legislation on regulations and procedures of the reception centres and, since these centres are not operational yet, there is no information and report on the freedom of movement of persons who are staying therein.

# **B. Employment and education**

## **1. Access to the labour market**

*Indicators:*

- Does the legislation allow for access to the labour market for asylum seekers?     Yes     No
- If applicable, what is the time limit after which asylum seekers can access the labour market:  
6 months

- Are there restrictions to access employment in practice?  Yes  No

Applicants for international protection and “conditional refugees” may apply for a work permit 6 months after submitting their application.<sup>128</sup>

Under the Law on Work Permits for Foreigners (LWPF), work permits have a duration of 1 year and are granted upon payment of a fee of 50 TL (€17),<sup>129</sup> taking into account relevant factors such as current economic conditions.<sup>130</sup> Following this 1-year period, a permit may be extended by a further 3 years in the same occupation, followed by the possibility of an extension of a further 6 years.<sup>131</sup>

Refugees and subsidiary protection beneficiaries have the right to work independently or be employed without restriction,<sup>132</sup> except for cases where restrictions are imposed for a given period due to the situation of the labour market or specific sectors or geographical areas. Such restrictions may not, however, be imposed after a refugee or subsidiary protection beneficiary has resided in Turkey for 3 years.<sup>133</sup>

## 2. Access to education

### Indicators:

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

Article 89(1) LFIP provides for applicants’ and their family members’ access to primary and secondary education. As discussed in the section on Reduction and withdrawal of material reception conditions, asylum seekers’ access to education may not be restricted at any point.

## C. Health care

### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  Yes  No
- In practice, do asylum seekers have adequate access to health care?  Yes  Limited  No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  Yes  Limited  No
- If material reception conditions are reduced / withdrawn are asylum seekers still given access to health care?  Yes  No

<sup>128</sup> Article 89(4)(a) LFIP.

<sup>129</sup> Article 34(1)(a) LWPF.

<sup>130</sup> Article 4 LWPF.

<sup>131</sup> Article 5 LWPF.

<sup>132</sup> Article 89(2)(b) LFIP.

<sup>133</sup> Article 89(2)(c) LFIP.

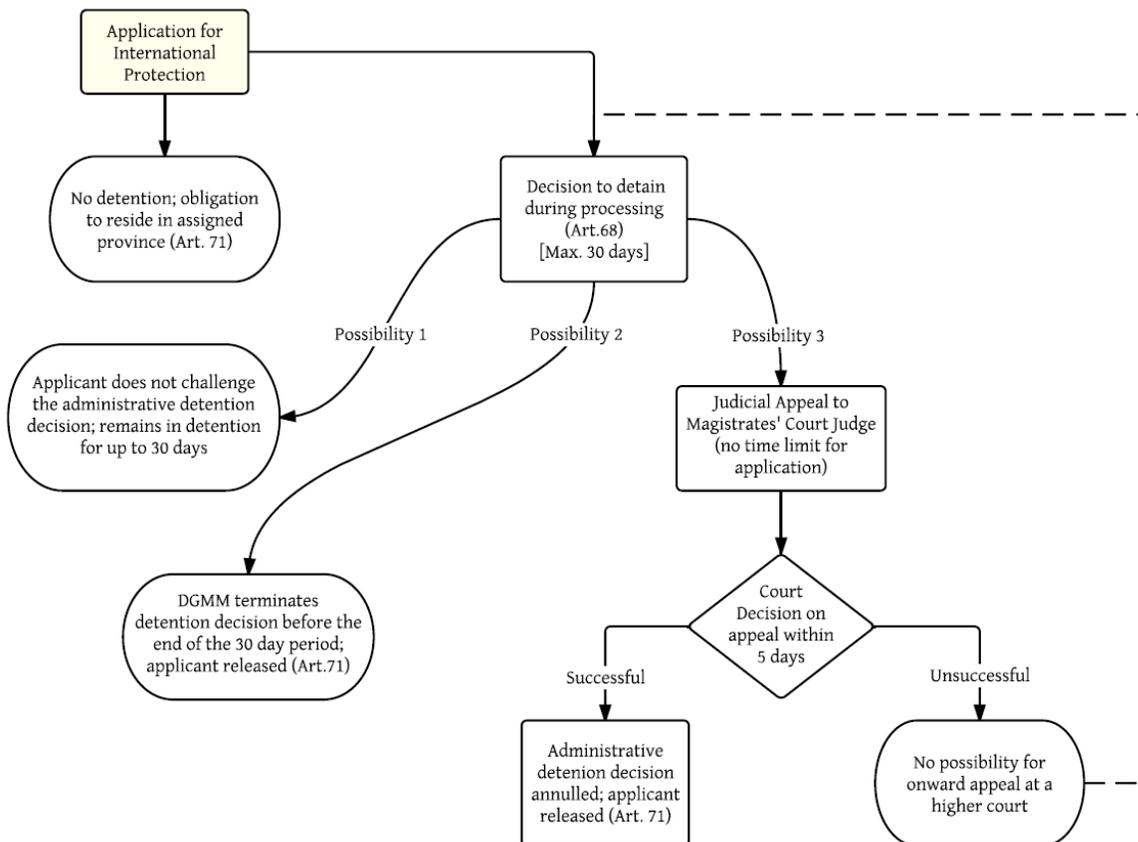
Applicants who are not covered by medical insurance and do not have financial means to afford health care may benefit from universal medical insurance.<sup>134</sup>

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<sup>134</sup> Article 89(3)(a) LFIP.

## Detention of Asylum Seekers

### Administrative Detention of International Protection Applicants



#### A. General

##### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention): Not available
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): Not available
- Number of detention centres: 13
- Total capacity: 1,740

In current practice in Turkey, most international protection applicants are *not* detained. Moreover, the LFIP has now provided a legal foundation for pre-deportation detention and detention of asylum seekers, which has resolved the previous incompatibility of Turkey's detention measures with Article 5 ECHR for want of a legal basis.<sup>135</sup>

<sup>135</sup> See ECtHR, *Abdolkhani & Karimnia v Turkey* App No 30471/08 (ECHR, 22 September 2009), paras 125-135; *Musaev v Turkey* App No 72754/11 (ECHR, 21 October 2014), paras 30-31.

The majority of international protection applicants in Turkey approach the UNHCR Turkey Representation first and are subsequently referred by UNHCR to DGMM authorities to initiate their international protection proceedings. A smaller percentage of applicants directly approach DGMM authorities and file their application. Under established practice, regardless of whether they entered Turkey regularly or irregularly, if a person approaches either UNHCR or DGMM authorities on their own initiative to express an asylum request, before being apprehended for irregular presence, generally speaking they will not be detained during the processing of their international protection application.

Categories of international protection applicants most commonly detained are:

- Persons who make an international protection application at the border;
- Persons who apply for international protection after being intercepted in border region or apprehended on the territory for irregular presence, before or after a deportation decision was issued for their removal.

The LFIP provides for two types of administrative detention: administrative detention for the purpose of removal,<sup>136</sup> and administrative detention of international protection applicants during the processing of their application.<sup>137</sup>

While removal centres are essentially defined as facilities dedicated for administrative detention for the purpose of removal, they are also used to detain international protection applicants in practice, as the LFIP does not specify what facilities shall be used for detention of international protection applicants and whether these facilities will be different from the facilities used to detain foreign nationals pending removal. That being said, Article 15.1 CIP provides that, “where possible”, special quarters within reception and accommodation centres for international protection applicants will be used for the detention of international protection applicants. Moreover, in locations “where there is no reception and accommodation centre, or the existing reception and accommodation centres do not have appropriate capacity, special dedicated quarters within removal centres may be used to detain protection seekers.

With regard to border procedures, as discussed above, where there is no appropriate detention facility at border premises, the applicant may be transferred either to the nearest reception and accommodation centre and detained in the closed section of the facility or, where the former is not possible, to the nearest removal centre and detained in a dedicated section of the facility.<sup>138</sup>

The Reception and Accommodation Centres, Removal Centres and any other facilities used for the detention of international protection applicants are within the authority of the Provincial DGMM Directorate.

As will be elaborated below, DGMM is considering building:

- Separate dedicated facilities for international protection seekers;
- “Closed quarters” within the 6 new Reception and Accommodation Centres, which are expected to become operational in 2015;
- Special dedicated quarters within Removal Centres for international protection applicants.

Pending these envisioned new types of facilities, removal centres are used to detain international protection applicants at present, without placing them separately from foreign nationals in deportation proceedings. That being said, there are currently no publicly available figures on the number of

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<sup>136</sup> Article 57 LFIP.

<sup>137</sup> Article 68 LFIP.

<sup>138</sup> Article 15.2 CIP.

international protection applicants processed while in detention since April 2014, when the LFIP came into force. There is also no publicly available information of the present number of detained international protection applicants more generally.

According to DGMM, as of March 2015, there were 13 operating removal centres in Turkey with a total detention capacity of 1,740 persons. The locations and capacity of these centres are listed as follows:

#### Location and capacity of operating removal centres

Location	Capacity
ADANA	50
ANTALYA	60
AYDIN	200
BURSA	48
ÇANAKKALE	32
EDİRNE	400
GAZİANTEP	50
İSTANBUL	300
İZMİR	260
KIRIKKALE	40
KIRKLARELİ	50
TEKİRDAĞ	50
VAN	200
<b>Total</b>	<b>1,740</b>

In addition, DGMM is planning the construction of 10 additional removal centres, for which budgetary allocations were made in the 2014 and 2015 annual budgets of the agency. The locations and capacities of these new centres under construction is listed as follows:

#### Location and capacity of removal centres under construction

Location	Capacity
ANKARA	400
AĞRI	400
ANAKKALE	250
KOCAELİ	250
ONYA	250
MALATYA	250
TEKİRDAĞ	400
BURSA	400
HATAY	400
KIRIKKALE	400
<b>Total</b>	<b>3,400</b>

These new centres are expected to add a further capacity of 3,000 persons. According to this plan, DGMM aims to reach a total capacity of 23 removal centres hosting up to 5,140 detainees when the planned centres are complete and operational in 2016-2017.

As mentioned in the Reception Conditions section above, DGMM is also preparing to finalise the construction of 6 new Reception and Accommodation Centres. The locations and capacity envisioned for these new facilities are as follows:

## Location and capacity of Reception and Accommodation Centres under construction

Location	Capacity
GAZIANTEP	750
ERZURUM	750
İZMİR	750
KIRKLARELİ	750
VAN	750
KAYSERİ	750
<b>Total</b>	<b>4,500</b>

These new Reception and Accommodation Centres are expected to become operational in 2015. As mentioned above, dedicated sections within these facilities may or may not be used for the purpose of detaining international protection applicants.

### B. Grounds for detention

#### Indicators:

In practice, are most asylum seekers detained

- on the territory:  Yes  No
- at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure? N/A
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
  - If frequently or rarely, are they only detained in border/transit zones?  Yes  No
- Are asylum seeking children in families detained in practice?  Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (incl. extensions): 30 days
- In practice, how long in average are asylum seekers detained? Not available

Article 68 LFIP allows for administrative detention of international protection applicants during the processing of their claim for up to 30 days. The decision to detain an international protection applicant is issued by the competent DGMM Directorate. That being said, administrative detention of international protection applicants must be an “exceptional measure”.<sup>139</sup> Persons “may not be detained for the sole reason of having submitted an international protection application.”<sup>140</sup>

Moreover, unaccompanied minor international protection applicants are categorically excluded from detention in the LFIP.<sup>141</sup>

Article 68(2) LFIP identifies 4 grounds that may justify detention of international protection applicants:

<sup>139</sup> Article 68(2) LFIP.

<sup>140</sup> Article 68(1) LFIP.

<sup>141</sup> Article 66 LFIP.

- (a) In case there is serious doubt as to the truthfulness of identity and nationality information submitted by the applicant for the purpose of verification of identity and nationality;
- (b) At border gates, for the purpose of preventing irregular entry;
- (c) Where it would not be possible to identify the main elements of the applicant's international protection claim unless administrative detention is applied;
- (ç) Where the applicant poses a serious danger to public order or public security.

Notably, "risk of absconding" is not listed in Article 68(2) LFIP as a justifiable ground for detaining international protection applicants.<sup>142</sup>

Furthermore, the wording in Article 68(2) is optional, meaning that the identification of one of the 4 justifiable grounds listed above does not create a duty on the part of authorities to impose administrative detention.

Article 68(3) LFIP requires a personal assessment as to the need to detain, and the consideration of less coercive alternatives to detention before an administrative detention decision is issued. The provision:

- Instructs authorities "to consider whether free residence in an assigned province and regular reporting duty pursuant to Article 71 of the LFIP will not constitute a sufficient measure;
- Provides the provincial DGMM Directorate with discretion "to provide other alternative measures instead of detention"; and
- Provides that an administrative detention decision shall only be issued where the above listed alternative measures are not deemed sufficient.

Administrative detention of international protection applicants may not exceed 30 days under any circumstances and "shall be ended at once" where the initial ground justifying detention no longer applies.<sup>143</sup> The competent authority may end detention at a later time following the detention order and put in place less coercive alternative measures.<sup>144</sup>

### **Detention in the accelerated procedure**

The LFIP does not make any express and specific provisions relating to the handling of international protection applications of detained applicants, other than requiring that applications of detained applicants be processed "as quickly as possible".<sup>145</sup> However, an analysis of the provisions concerning the accelerated procedure on territory and at borders, in conjunction with the Article 68-2 grounds indicates that (a) certain applicants subject to the accelerated procedure in the territory and (b) all applicants subject to the accelerated procedure at the border, will stand a very high likelihood of being detained while their international protection claim is processed.

Detention during an accelerated procedure is likely to be applied in the following situations:

#### *(1) Doubts on nationality and identity*

The identification of the grounds listed in Article 79(1)(b) LFIP (false, misleading or withheld documents) and Article 79(1)(c) LFIP (destroying identity or travel document in bad faith to prevent determination of identity of nationality) is likely to lead to an administrative detention decision under Art 68(1)(a) LFIP.

#### *(2) Persons already in detention for the purpose of removal or subject to deportation proceedings*

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<sup>142</sup> Note, however, that it figures among the grounds for pre-removal detention under Article 57(2) LFIP.

<sup>143</sup> Article 68(5) LFIP.

<sup>144</sup> Article 68(6) LFIP.

<sup>145</sup> Article 68(5) LFIP.

Furthermore, applicants falling under Article 79(1)(ç) LFIP (application after being placed in detention for the purpose of removal) and Article 79(1)(d) LFIP (application to prevent or postpone deportation) will be by definition persons either already in detention for the purpose of removal or apprehended for irregular entry, presence or exit and in the process for deportation.<sup>146</sup>

It may be inferred that applicants who are either already in detention for the purpose of deportation or subject to deportation proceedings at the time of their international protection request may find themselves detained with reference to Article 68(1)(c) LFIP (necessary for the identification of main elements of the claim). The extremely vague wording of this ground seems open to an excessively wide interpretation and therefore likely lead to arbitrary detention of asylum seekers.

In sum, both the legislative provision and the administrative guidance suggest that persons who are either already in detention for the purpose of deportation or subject to deportation proceedings at the time of their international protection request will likely be kept in detention.

However, the legal basis of detention will be different, as they will be subject to the detention regime within the international protection procedure under Article 68 LFIP as opposed to the detention regime linked to deportation proceedings under Article 57 LFIP.

*(3) Detention during accelerated procedure at the border*

Article 68(2)(b) LFIP allows for the administrative detention of international protection applicants “at border gates, for the purpose of preventing irregular entry”.

While the LFIP does not designate a specific border procedure as such, the CIP provides specific guidance on implementation authorities regarding the handling of international protection applications at the border. It will be recalled that authorities are instructed to detain applicants referred to accelerated processing in a facility in border premises during the processing of their claim.<sup>147</sup> See the section on Border Procedures above for more details.

### C. Detention conditions

*Indicators:*

- Does national legislation allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
- If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No

<sup>146</sup> In the same respect, among the 7 criteria flagged in Article 1.2.4 CIP for potential referral to accelerated processing, persons falling under the grounds listed in Article 1.2.4.a, b, c, ç, d and f CIP are by definition persons who are either already in detention or subject to deportation proceedings on grounds of irregular entry, presence or exit.

<sup>147</sup> Articles 1.2.3 and 15.2 CIP.

- UNHCR:                    Yes                    Yes, but with some limitations                    No
- Family members:        Yes                    Yes, but with some limitations                    No

Article 15.1 CIP requires DGMM Headquarters to issue separate guidelines regarding the standards to be observed in facilities used for the detention of international protection applicants. The same commitment is made in relation to detention in border premises under Article 15.2 CIP. However, DGMM is yet to provide the administrative guidelines on detention standards referred to in the CIP.

### **Access to lawyers, NGOs, UNHCR, notaries and visitors**

Detained applicants are provided with opportunities to meet with their legal representatives, UNHCR officials and notary.<sup>148</sup>

As Article 81(3) LFIP establishes that international protection applicants and status holders are allowed to benefit from counselling services provided by NGOs, this safeguard should also extend to detained international protection applicants. However, Article 68 LFIP fails to expressly refer to the right of detained applicants to meet with NGO representatives. It is considered that this deliberate absence is meant to limit or deny detained applicants' access to NGO legal counsellors, which may only be read as an arbitrary restriction of the scope of the safeguard.

Regarding visits by lawyers, UNHCR and notary, the CIP requires detention authorities to “present the opportunity” for such meetings to take place, subject to permission by the detention authority.<sup>149</sup>

As per Art 68(8) LFIP, detained applicants may also receive visitors. In this regard, all visits are subject to permission.<sup>150</sup> Visits to detained applicants at border premises are subject to permission from the Vice-Governor's Office in charge of the border gate. Visits to detained applicants on the territory are subject to the permission of the DGMM official in charge of the facility. Requests for visiting a detainee may be turned down where the “applicant's condition and the general circumstances are not suitable”. This extremely vague formulation must be a cause of concern.

Detention authorities shall determine the duration of the approved meetings and visits. On the other hand, they are required to take measures to ensure confidentiality of the encounters.<sup>151</sup>

### **Healthcare and education and other conditions in detention**

On one hand, the LFIP does not make any specific provisions for detained international protection applicants with regards to access to healthcare and education. On the other hand, the aforementioned DGMM guidelines on detained applicants are expected to make specific provisions regarding access to healthcare and education.

In the interim, since DGMM intends to use special quarters either within Removal and Accommodation Centres or Removal Centres for the purpose of detaining international protection applicants, specific guidance applicable to these two types of centres may be instructive.

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<sup>148</sup> Article 68(8) LFIP.

<sup>149</sup> Article 15.2 CIP.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

According to Article 14 of the Regulation on the Establishment of Reception and Accommodation Centres and Removal Centres, residents and detainees in both types of centres must be provided “urgent and basic healthcare services which cannot be afforded by the person concerned.” The delivery modalities and standards of services provided in these centres are to be published under specific guidelines by DGMM.<sup>152</sup>

Under Article 89(3) LFIP, all international protection applicants are eligible to be covered under Turkey’s General Health Insurance scheme, which actually provides a level of healthcare that goes beyond the “urgent and basic healthcare services” minimum referred to in the Regulation on Reception and Accommodation Centres and Removal Centres. However, in order for an applicant to have access to the General Health Insurance, they be issued an International Protection Applicant Identification Document, which also features a Foreigners ID Number. Yet applicants who are processed within the framework of the accelerated procedure are issued an International Protection Applicant Identification Document.<sup>153</sup> As discussed in the Accelerated Procedures section above, as detained applicants will also be subject to accelerated processing, they will not be eligible for General Health Insurance.

In practice, detention conditions in Turkey remain problematic. Regarding the Kumkapı Removal Centre, In October 2014, the ECtHR ruled in *Musaev v Turkey* that, on the basis of clear evidence of overcrowding and the lack of access to outdoor exercise, the conditions of detention amounted to inhuman or degrading treatment under Article 3 ECHR.<sup>154</sup>

### **Persons with special needs**

As discussed in the sections on Procedures and Reception Conditions above, persons with special needs are to be prioritised in all proceedings and access to rights provided by the LFIP to international protection applicants,<sup>155</sup> while “victims of torture, sexual assault and other forms of serious psychological, physical, or sexual violence, shall be provided a sufficient level of medical treatment for the purpose of recovery from damages caused by such acts.”<sup>156</sup> The DGMM guidelines on detained applicants mentioned above are expected to make specific provisions regarding the treatment of persons with special needs.

In the interim, considering DGMM’s intentions to use special quarters either within Removal and Accommodation Centres or Removal Centres for the purpose of detaining international protection applicants, the general guidance in the Regulation on the Establishment of Reception and Accommodation Centres and Removal Centres regarding persons with special needs will be instructive.

As per Article 14 of that Regulation, “psychological and social support activities” and “prescription of suitable quarters to persons with special needs” are listed among the services that shall be provided in both types of centres.

## **D. Procedural safeguards and judicial review of the detention order**

<sup>152</sup> Article 14(2) Regulation on the Establishment of Reception and Accommodation Centres and Removal Centres.

<sup>153</sup> Article 76(2) LFIP.

<sup>154</sup> ECtHR, *Musaev v Turkey* App No 72754/11 (ECHR, 21 October 2014), para 60-61. For a summary, see EDAL, *Musaev v Turkey*, available at: <http://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93-musaev-v-turkey-application-no-7275411#content>.

<sup>155</sup> Article 67(1) LFIP.

<sup>156</sup> Article 67(2) LFIP.

*Indicators:*

- Is there an automatic review of the lawfulness of detention?  Yes  No

The decision to detain an international protection applicant during the processing of his or her claim must be communicated by DGMM in writing.<sup>157</sup> The notification letter must provide the reasons justifying detention and the length of detention. Applicants must also be notified of the legal consequences of the detention decision and available appeal procedure, yet the provision does not impose a requirement to provide this information in writing.

Article 70(2) LFIP provides that “applicants will be provided interpretation during all interactions with authorities at application, registration and personal interview stages, if they request so”. Furthermore, Article 100(2) LFIP states that “in all written notification within the scope of the LFIP, due consideration shall be given to the fact that the persons concerned are foreign nationals”. It must follow from these provisions that the written notification of the detention decision must be made in a language the applicant will understand. Accordingly, failure to establish this as a clear duty on the part of the detention authority under Article 68 LFIP should raise concerns in practice.

While there is no requirement of automatic periodic review of the detention decision either by the judiciary or the detention authority itself, administrative detention of international protection applicants is subject to judicial review. The decision to detain can be challenged before the competent Magistrates’ Court. The Magistrates’ Court judge must decide on the appeal within 5 days. The decision of the Magistrates’ Court is final; it cannot be appealed by either side before a higher court of law. However, there is no limitation on subsequent appeals by the applicant to challenge his or her ongoing detention.

## E. Legal assistance

*Indicators:*

- Does the law provide for access to free legal assistance for the review of detention?  Yes  No
- Do asylum seekers have effective access to free legal assistance in practice?  Yes  No

The general right to free legal assistance applies to detention.<sup>158</sup> For a discussion of the obstacles to free legal aid in practice, see the section on Asylum Procedure: Regular Procedure: Legal Assistance.

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<sup>157</sup> Article 68(4) LFIP.

<sup>158</sup> Article 81(2) LFIP.

## A. Introduction: Turkey's temporary protection regime for refugees from Syria

### 1. 2011-2014: Temporary protection based on political discretion and improvisation

Prior to the Temporary Protection Regulation (TPR) adopted in 2014, Turkey offered temporary protection on the basis of political discretion, as the concept of “temporary protection” was not defined in domestic law.

Temporary protection was afforded following crucial policy decisions at the very onset of the Syrian crisis: arrivals from Syria were characterised as a situation of “mass influx”, and the provision for Syrians’ international protection needs outside the individual asylum framework was acknowledged. From a policy perspective, the discourse on Syrian entrants also shifted from a “guest” terminology<sup>159</sup> to one of “temporary protection”.

The government relied on 3 principles to define its *de facto* temporary protection practice: (1) it applied an ‘open door’ policy at the Syrian border; (2) it prohibited forcible returns to Syria; and (3) it made provision for humanitarian needs.

Temporary protection was offered by the government in full charge. The role of UNHCR, other international organisations and civil society actors was limited and complementary.

Yet the *ad hoc*, improvised nature of this temporary protection regime led to a set of policies and rules in constant flux. Moreover, the implementation of temporary protection was often inconsistent across different time periods and locations in the country. The majority of beneficiaries remained unregistered and undocumented. This applied to both the population in large-scale camps at the border and to the growing population in urban centres. Moreover, significant shortcomings and failures were witnessed with regard to identification of vulnerable persons and protection needs, as well as access to basic rights and services.

### 2. The Temporary Protection Regulation of 22 October 2014

The Law on Foreigners and International Protection (LFIP), which entered into force in April 2014, provided for the possibility of temporary protection in “a mass influx situation”.<sup>160</sup> The provision does not elaborate on the principles and procedures for such a regime, and leaves the definition of the framework of reception, stay, rights and obligations under temporary protection to a dedicated legislative act by the Council of Ministers.<sup>161</sup>

The TPR was published on 22 October 2014 and has entered into force with immediate effect. The Regulation defines *inter alia*: the temporary protection concept and its core elements; the procedure for the declaration and termination of a temporary protection regime; the criteria for eligibility; the procedure for obtaining temporary protection status; procedural safeguards; the link between temporary protection and international protection; and the obligations of temporary protection beneficiaries.

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<sup>159</sup> A İçduygu, ‘Syrian Refugees in Turkey: The Road Long Ahead’, 7.

<sup>160</sup> Article 91(1) LFIP.

<sup>161</sup> Article 91(2) LFIP.

As such, the TPR is a legislative act not merely providing legal basis to the existing temporary protection regime that was in place for refugees from Syria, but also constitutes the implementation framework for Turkey's temporary protection practices from now on.

The existence of a temporary protection regime for refugees from Syria means that these persons do not fall within the scope of international protection.

As the Directorate-General for Migration Management (DGMM) is still developing, it has yet to issue any significant regulations defining the contours of temporary protection.<sup>162</sup> However, while the Regulation requires a decision of the Council of Ministers for the declaration of a temporary protection regime, the Turkish government instead opted for formalising the existing temporary protection regime for persons from Syria through a provisional article incorporated in the main body of the TPR.<sup>163</sup>

Provisional Article 1 TPR formalises temporary protection for arrivals, as of 28 April 2011 and onwards, of Syrians, Palestinians and stateless persons coming from Syria. In practice, Palestinians have occasionally encountered problems in being admitted to the territory, particularly when arriving at air borders. Other nationalities such as Iraqi and Somali nationals, who may or may not have been registered with UNHCR in Syria prior to their entry in Turkey, were subject to the individual international protection procedure.

Persons who arrived prior to 28 April 2011 have the option of remaining within the international protection procedure framework, while legally arriving Syrian nationals have the option of remaining subject to a regular residence permit as opposed to temporary protection. Since the onset of the conflict in Syria, a relatively small number of Syrian nationals continued to arrive in Turkey with valid passports and entered under the visa-free regime already in place between Turkey and Syria since 2009. These persons had the option of applying for a regular residence permit within the 90-day short visit period provided by visa-free entry. At the end of 2014, there were up to 100,000 such Syrian residence permit holders, who are not treated as temporary protection beneficiaries and have access to the same rights as other legally residence foreign nationals.

Finally, Provisional Article 1 regulates the status of various forms of registration documents issued before 22 October 2014 for persons who fall within the scope of the temporary protection regime.

## B. Scope and legal basis

### 1. Scope of temporary protection

Articles 1 and 3 TPR define temporary protection as applicable to a “mass influx” situation, where the individual processing of international protection needs becomes impractical due to the high number of persons seeking protection. Temporary protection is a discretionary measure that may be deployed in such situations, as opposed to individual examination of protection needs.

The Regulation defines the concept of “international protection” strictly in relation to the 3 forms of international protection status defined in the LFIP: refugee status, conditional refugee status and subsidiary protection. As such, temporary protection is defined as *complementary* to international

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<sup>162</sup> S Bidinger, ‘Syrian refugees and the right to work: Developing temporary protection in Turkey’ (2015) 33 Boston Uni Int LJ 223, 230.

<sup>163</sup> Provisional Article 1 TPR establishes a temporary protection regime for refugees from Syria and contains a number of transitional measures.

protection rather than a form of international protection. This approach is consistent with Article 91 LFIP, which refers to temporary protection in a special dedicated section.

The legal basis of the TPR is Article 91 LFIP.<sup>164</sup> This has important legal consequences for the temporary protection framework. Given its subordinate position in the legislative hierarchy as a piece of secondary legislation, the TPR must be compatible and consistent with the general normative framework set out in the LFIP.

## **2. Interplay with international protection**

Throughout the duration of a temporary protection regime, applications for international protection are *not* processed.<sup>165</sup> Upon termination of the regime, the decision ending temporary protection may contain specific courses of action allowing for access to international protection procedures (see below). However, the optional wording of Article 11 TPR relating to the consequences of termination of a temporary protection regime is problematic, as it does not unequivocally provide former temporary protection beneficiaries with a right to apply for international protection, as is the case under the EU Temporary Protection Directive, for instance.<sup>166</sup> The same risk of exclusion from accessing international protection procedure exists when a temporary protection regime is limited or suspended under Article 15 TPR (see below).

## **C. Declaration and termination of temporary protection**

### **1. Declaration**

The declaration of a temporary protection regime upon a “mass influx” of foreigners seeking protection is made by a Decision of the Council of Ministers, pursuant to a proposal by the Ministry of Interior.<sup>167</sup> This decision must elaborate: the scope of covered beneficiaries; the start date and duration of the temporary protection regime, when necessary; the conditions for extension and termination; the geographical scope in specific regions or across the entire territory of Turkey, where appropriate; specific measures concerning the limitation or suspension of the temporary protection regime.<sup>168</sup>

The principles and procedures for the implementation of the temporary protection decision are to be determined by the newly created Migration Policies Board,<sup>169</sup> and to be implemented by relevant government agencies such as the DGMM and the Disaster and Emergency Management Authority (AFAD). The DGMM is in charge of individual decisions regarding temporary protection beneficiaries.<sup>170</sup>

### **2. Termination**

The temporary protection regime is terminated by a subsequent decision of the Council of Ministers, pursuant again to a proposal by the Ministry of Interior.<sup>171</sup> A termination decision may order a specific course of action concerning the treatment of former temporary protection beneficiaries. It may:

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<sup>164</sup> Article 2 TPR.

<sup>165</sup> Article 16 TPR.

<sup>166</sup> M Ineli-Ciger, ‘Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey’, 31.

<sup>167</sup> Article 9 TPR.

<sup>168</sup> Article 10 TPR.

<sup>169</sup> Article 9 TPR. The Migration Policies Board is established under Article 105 LFIP.

<sup>170</sup> Article 10 TPR.

<sup>171</sup> Article 11 TPR.

- Categorically order their return to the country of origin;
- Order the granting of a relevant individual international protection status on a *prima facie* / group basis;
- Allow for individual processing and determination of any international protection applications made by former temporary protection beneficiaries;
- Allow for their continued stay in Turkey subject to conditions to be set out within the LFIP framework.<sup>172</sup>

While all the above options are available to the Council of Ministers upon a termination decision, the Regulation hints a preferred course of action. Article 14 TPR notes that repatriation is the “ultimate solution” for temporary protection beneficiaries, while Article 42 TPR provides that Turkish authorities may facilitate and support voluntary repatriation of temporary protection beneficiaries. This emphasis on repatriation without due consideration of the applicability of durable solutions is regrettable, as it could result in cases where temporary protection beneficiaries are returned without consideration of whether the circumstances in their country of origin are such as to warrant cessation of refugee status under the 1951 Refugee Convention.<sup>173</sup>

### 3. Limitation or suspension

Without a termination decision, the Council of Ministers may order the (1) limitation or (2) suspension of temporary protection measures for a specific period or indefinitely, in the event of circumstances which may threaten national security, public order, public security or public health.<sup>174</sup> This decision must determine the modalities of treatment of existing temporary protection beneficiaries, as well as measures to be applied to new protection seekers.

In situations that warrant an Article 15 TPR decision, the government may resort to additional measures concerning the mass movement of people either along or beyond Turkey’s borderline. The limitation or suspension decision may:

- Grant *prima facie* international protection status;
- Grant legal residence on other grounds, not specified in the provision; or
- Allow for individual processing of international protection application

## D. Criteria for eligibility

Temporary protection is offered to foreign nationals:

- (1) Who, having been forced to leave their country and cannot return to that country, either arrived or crossed Turkey’s borders;
- (2) Who either as part of a mass inflow of persons or individually during a situation of mass influx; and
- (3) For whom it is deemed unnecessary or impractical to carry out individual international protection status determination.<sup>175</sup>

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<sup>172</sup> *Ibid.*

<sup>173</sup> M Ineli-Ciger, ‘Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey’ (2014) 4 :2 OxMo 28, 33.

<sup>174</sup> Article 15 TPR.

<sup>175</sup> Article 7 TPR.

As such, Article 7 TPR presumes the existence of a temporary protection declaration decision and does not spell out any additional inclusion criteria. At present, all Syrians, Palestinians and stateless persons formerly living in Syria are designated as eligible for temporary protection.<sup>176</sup>

However, Article 8 TPR provides for exclusion from temporary protection status under individualised grounds. A person may be excluded from temporary protection status where:

- (1) There are serious reasons to believe he or she has been guilty of acts defined in Article 1F of the 1951 Refugee Convention;
- (2) There are serious reasons to believe he or she has engaged in acts of cruelty, for whatever reason, prior to arrival in Turkey;
- (3) He or she has either participated in or provoked crimes or acts under (1) and (2);
- (4) He or she, having participated in armed conflict in the country of origin, has not permanently ceased armed activities after arrival in Turkey;
- (5) He or she has engaged, planned or participated in terrorist activities;
- (6) He or she has been convicted of a serious crime and is therefore deemed to present a threat against society *or* is deemed to present a danger to national security, public order and public security;
- (7) He or she has committed, prior to arrival in Turkey, crimes which would be punishable by a prison sentence in Turkey, and has left the country of origin or residence to avoid punishment;
- (8) He or she is convicted of crimes against humanity by international courts;
- (9) He or she has committed crimes related to state secrets and espionage, as defined in Section 4(7) of the Turkish Criminal Code.

The DGMM is responsible for carrying out and finalising the exclusion assessment under Article 8 TPR and for communicating an exclusion decision to the persons concerned. Temporary protection may also be cancelled where an exclusion assessment is made at any time after the granting of status.<sup>177</sup> Persons excluded from temporary protection may be “accommodated” i.e. detained in special quarters of temporary accommodation centres (camps), in a dedicated temporary accommodation centre or in any other facility deemed appropriate by the Governorate, “pending their repatriation to the country of origin”.<sup>178</sup> Accordingly, detention need not be based on the grounds for administrative detention under Article 57 LFIP. Family members of persons excluded from temporary protection may be detained in the same premises, if they wish so, notwithstanding their own individual temporary protection status.

Repatriation of persons excluded from temporary protection may be prohibited under the *non-refoulement* principle.<sup>179</sup> Nevertheless, the DGMM is authorised to impose “administrative measures” i.e. detention on persons who cannot be deported for *non-refoulement* reasons, although they should be deported “as per applicable provisions in the legislation”.<sup>180</sup> This provision raises considerable tension with the LFIP, which recognises *non-refoulement* as a core principle in the normative framework of international protection. In that light, the TPR should not allow for the detention of persons who are not deportable under *refoulement* protection on the premise that they *should* be deported under the law.

Moreover, temporary protection status may be ceased where a person:

- (1) Voluntarily departs from Turkey;
- (2) Benefits from the protection of a third country;
- (3) Is admitted to a third country on humanitarian grounds or for resettlement;

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<sup>176</sup> M Ineli-Ciger, ‘Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey’, 30.

<sup>177</sup> Article 12 TPR.

<sup>178</sup> Article 8 TPR.

<sup>179</sup> Article 6(2) TPR.

<sup>180</sup> Article 8 TPR.

(4) Departs to a third country.<sup>181</sup>

The grounds for cessation seem to create risks in practice. More particularly, the concept of protection in a third country is ambiguously formulated and may be subject to overly restrictive interpretation. Furthermore, the cessation clause has significant effects on repeat arrivals. DGMM is authorised to deny access to temporary protection status in situations of repeat arrival of persons whose status had previously ceased.<sup>182</sup> While the provision does not determine the principles underlying the repeat arrivals assessment, it follows from the cessation grounds that any former beneficiary re-entering Turkey would need to establish again his or her need for temporary protection in Turkey.

## E. Procedure for requesting and obtaining temporary protection

### 1. General

The Ministry of Interior shall specify border gates and border crossing points “for the admission of persons arriving at Turkey’s land and sea borders, for the purpose of seeking urgent and temporary protection.”<sup>183</sup> However, the admission of persons arriving without valid documents is subject to the discretion of the Governorate.

The authorities also carry out a security check of persons, their belongings and vehicles upon arrival, and compile bio data, the date and place of entry and other necessary information in a written record, prior to transferring the persons to the nearest First Reception Centre (*sevk merkezi*).<sup>184</sup> Persons already on Turkish territory are required to approach Governorates in order to be “referred to the nearest first reception centre. Where they are apprehended by the authorities, they are “escorted” thereto.<sup>185</sup> Moreover, upon arrival, armed elements are disarmed and separated from civilians.<sup>186</sup>

Special guarantees are foreseen for children, unaccompanied children and persons with special needs, which are covered throughout various references in the Regulation.<sup>187</sup> According to the Turkish government, at least 50% of refugees under the temporary protection regime are in need of psychosocial support at community level.<sup>188</sup>

Detention for the sole reason of irregular entry is prohibited.<sup>189</sup> While the TPR does not feature any explicit provisions concerning detention of persons within the scope of the temporary protection regime, it indicates that the persons concerned may be deprived of their liberty for administrative reasons under two identifiable circumstances: (1) during registration within First Reception Centre premises; and (2) upon an exclusion assessment.

### 2. Registration at the First Reception Centre

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<sup>181</sup> Article 12 TPR.

<sup>182</sup> Article 13 TPR.

<sup>183</sup> Article 17 TPR.

<sup>184</sup> The “First Reception Centre” is defined in Article 3(1)(n) TPR.

<sup>185</sup> Article 17 TPR.

<sup>186</sup> Article 18 TPR.

<sup>187</sup> Article 48 TPR.

<sup>188</sup> UNHCR, *3RP Turkey Monthly Update: Protection – March 2015*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=8700>.

<sup>189</sup> Article 5 TPR.

At the First Reception Centre, applicants are identified and registered by qualified DGMM officials,<sup>190</sup> and undergo a medical check.<sup>191</sup> Where necessary, additional personnel may be seconded by the Governorate, while other premises identified by the Governorate may be used for identification and registration proceedings in the event of insufficient capacity at the First Reception Centre.<sup>192</sup>

During registration, applicants must present their details accurately, submit any other documents they may possess to establish their identity, and cooperate with the authorities. They are also informed of the process for requesting and obtaining temporary protection status and their rights and obligations “in a language they can understand”.<sup>193</sup>

Nevertheless, Article 19 TPR provides no specific time-limits. Therefore the Regulation appears to leave the duration of registration proceedings entirely up to the discretion of local authorities and DGMM to determine either how long it may take for a newly arrived applicant to be transferred from the border to the First Reception Centre, or how long it may take for the registration to be completed and for an identification document or exclusion decision to be finalised.<sup>194</sup>

Upon completion of registration, a Temporary Protection Identification Document is issued free of charge. The document may have a duration of validity,<sup>195</sup> depending on whether a duration has been set in the declaration of a temporary protection regime.

Since the beginning of arrivals from Syria, the Turkish government took full charge of all registration and reception rather than delegating to UNHCR and other international organisations. UNHCR does not maintain a presence in the camps and does not register persons falling within the TPR regime. As these persons are not processed under the international protection procedure, they are not registered and processed for the parallel UNHCR Mandate RSD procedure either.

Currently, as DGMM is yet to consolidate and operationalise Provincial Directorates (see Asylum Procedure: Regular Procedure above), the Turkish Police has been delegated the task of registering temporary protection beneficiaries. The “Göç-net” Registration Database has been envisioned to electronically incorporate all registration and processing data for all categories of foreign nationals within the scope of the LFIP. The database became operational in January 2015 and led to increased registration figures since the beginning of the year.<sup>196</sup>

At the same time, efforts are being made to register the population of refugees residing outside camps. These efforts began as late as 2013 and did not pick up pace until June 2014, when police directorates across Turkey were entrusted this task. As of May 2015, almost 1,760,000 temporary protection beneficiaries have been registered.<sup>197</sup>

### **3. Procedural safeguards**

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<sup>190</sup> Article 21 TPR.

<sup>191</sup> Article 20 TPR.

<sup>192</sup> Article 19 TPR.

<sup>193</sup> *Ibid.*

<sup>194</sup> While the Regulation does not specify when an exclusion decision is taken, Article 22 TPR provides that persons shall not be issued with a Temporary Protection Identification Document where the exclusion grounds apply. This implies that an ‘exclusion screening’ is carried out during registration.

<sup>195</sup> Article 22 TPR.

<sup>196</sup> UNHCR, *3RP Turkey Monthly Update: Protection – March 2015*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=8700>.

<sup>197</sup> UNHCR, *Syria Regional Response Plan* (May 2015), available at: <http://data.unhcr.org/syrianrefugees/country.php?id=224>.

Throughout the procedure, applicants for international protection have access to interpretation services,<sup>198</sup> and the right to legal representation,<sup>199</sup> confidentiality<sup>200</sup> and communication of decisions.<sup>201</sup>

Persons applying for temporary protection may encounter a wide array of negative decisions under the temporary protection regime: denial of access to the territory, either upon first or repeat arrival; exclusion from status; administrative detention at registration stage or pursuant to an exclusion assessment; *refoulement*; arbitrary punishment for irregular entry or presence; substandard conditions and ill-treatment in the First Reception Centre or temporary accommodation centre; denial of status rights and entitlements; partial or full withdrawal of rights for failure to abide by administrative requirements; entry ban.

Nevertheless, the TPR makes *no* reference to appeal mechanism. Therefore it is not clear whether appeal mechanisms and remedies applicable under the LFIP are by deduction applicable in the TPR context (see section on Asylum Procedure above). If the LFIP appeal provisions are not applicable, it is also not clear what general rules and administrative remedies would be available in domestic law.

## F. Content of temporary protection

### 1. Core elements

The central features of temporary protection under the TPR relate to the prohibition on punishment of illegal entry or presence in Turkey,<sup>202</sup> on one hand, and the *non-refoulement* principle on the other.<sup>203</sup>

However, while *non-refoulement* applies both to expulsion from territory *and* to denial of access to the territory at the border, the TPR reads the principle narrowly. Article 17 TPR does not provide persons under the TPR's scope with a 'right to access the territory'. Persons who approach the border without valid travel documents may or may not be admitted at the discretion of Governorates.

While in general Turkey continues its 'open door policy' in respect of persons fleeing Syria, there have been reports of recent push backs at the border. A November 2014 report by Amnesty International documented cases of violence at the border, ranging "from live ammunition to beatings resulting in deaths (17 deaths between December 2013 and August 2014) or injuries."<sup>204</sup> Turkish officials have acknowledged that official border crossings are only accessible to persons holding passports or "an urgent medical or humanitarian need". Nevertheless, the same report also referred to positive developments relating to access to the territory such as the facilitation of open and regulated border crossings at Yumurtalik for refugees coming from the Kobani area.<sup>205</sup>

Moreover, under Article 15 TPR, the limitation or suspension of temporary protection enables the establishment of "additional measures concerning the mass movement of people both along Turkey's borderline or beyond Turkey's borderline", which appears to indicate that the government may choose to

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<sup>198</sup> Article 31 TPR.

<sup>199</sup> Article 53 TPR, referring to the state-funded Legal Aid Scheme (*Adli Yardım*).

<sup>200</sup> Article 51 TPR.

<sup>201</sup> Article 53 TPR.

<sup>202</sup> Article 5 TPR.

<sup>203</sup> Article 6 TPR.

<sup>204</sup> Amnesty International, *Struggling to Survive: Refugees from Syria in Turkey* (November 2014) EUR 44/017/2014, 9-10 and 14.

<sup>205</sup> *Ibid*, 10.

seal borders for a specific period or indefinitely where ever considerations of national security, public order, public security and public health are deemed to require so.

## 2. Residence and accommodation

Temporary protection status grants a right to remain in Turkey.<sup>206</sup> As temporary protection measures may be implemented country-wide or in a specific region, as discussed above, residence in an assigned province may be ordered under a dispersal policy.<sup>207</sup> The TPR does not provide for a right to accommodation as such. It only includes the possibility of placement in a temporary accommodation centre or the possibility of private or state-provided accommodation in a specific province.<sup>208</sup> However, services provided at temporary accommodation centres, including shelter, food, healthcare, social assistance, education and other services, may be extended to urban residents.<sup>209</sup>

There are currently 22 camps, “temporary accommodation centres”, in the Turkish-Syrian border region, run by AFAD. These are large-scale camps spread across 10 provinces, including several additional camps in construction. AFAD will remain in charge of camp administration and management under the TPR.

Nevertheless, the vast majority of temporary protection beneficiaries remain in private accommodation in urban centres. As of April 2015, over 85% of beneficiaries resided outside camps. The majority of non-camp refugees live in Southern Turkey, in provinces along the border, with the largest concentrations in Gaziantep (41,483), Sanliurfa (36,797) and Kilis (99,355) provinces as of April 2015.<sup>210</sup> There are probably more non-camp refugees in these provinces who have not registered with AFAD and are therefore not reported by UNHCR, although at the end of March 2015 the government reported to have almost completed the registration of all Syrians in Turkey.<sup>211</sup>

Among the difficulties faced by non-camp refugees, an April 2014 survey of 2,100 Syrian families residing in the Hatay province by the Danish Refugee Council (DRC) identified lack of jobs or self-employment opportunities, difficulties in accessing humanitarian assistance, insufficient food supply and discrimination from host communities.<sup>212</sup>

## 3. Access to employment and education

Access to education,<sup>213</sup> employment<sup>214</sup> and social assistance<sup>215</sup> may be provided at the discretion of the Council of Ministers declaring the temporary protection regime. For example, Syrian nationals who hold temporary protection identity documents can now apply for work permits under Article 29(2) TPR. However, there is no guarantee that the authorities will grant such a work permit, as access can be

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<sup>206</sup> Article 25 TPR.

<sup>207</sup> Article 24 TPR.

<sup>208</sup> Articles 23-24 TPR.

<sup>209</sup> Article 38 TPR.

<sup>210</sup> DGMM, *Temporary Protection Statistics 1 April 2015*, available at: [http://www.goc.gov.tr/icerik6/temporary-protection\\_915\\_1024\\_4748\\_icerik](http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik).

<sup>211</sup> UNHCR, *3RP Turkey Monthly Update: Protection – March 2015*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=8700>. Note, however, ongoing difficulties with birth registration for Syrian children: Refugees International, *Birth Registration in Turkey: Protecting the Future for Syrian Children* (30 April 2015) available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/150430\\_turkey\\_birth\\_registration.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/150430_turkey_birth_registration.pdf).

<sup>212</sup> L Seferis, ‘DRC experiences of cash assistance to non-camp refugees in Lebanon and Turkey’ (2014) 48 *Field Exchange*, available at: <http://www.enonline.net/fex/48/drcexperiences>.

<sup>213</sup> Article 28 TPR.

<sup>214</sup> Article 29 TPR.

<sup>215</sup> Article 30 TPR.

limited to certain sectors or geographical areas under Article 29.<sup>216</sup> According to an April 2014 survey by the DRC, non-camp refugees face language barriers and have few social ties, resulting in tension with host communities,<sup>217</sup> as well as difficulty securing employment or rent. Since temporary protection beneficiaries have no actual right to work in Turkey, their employment status is very precarious and cannot ensure that they are always remunerated.

Syrian Kurds are the notable exception, as they can integrate into Kurdish areas of Southern Turkey such as the Şanlıurfa province and enjoy better access to social networks and community support. This is also consistent with findings from DRC's livelihood programming in the Kurdish regions of Iraq, where Syrian Kurds who receive business grants have a high success rate due to their social networks and therefore access to credit, resources, connections and a customer base.

Moreover, access to education remains highly problematic in practice, even though the legislative framework under the LFIP supports the right of refugees to have free access to schools. At the end of March 2015, over 70% of school-aged children were not accessing education in Turkey.<sup>218</sup> In April 2015, UNHCR Turkey will implement a project to provide Turkish language courses to approximately 1,000 men in Language Training Centres in Şanlıurfa and 4,600 women in Women's Cultural Centres.<sup>219</sup>

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<sup>216</sup> M Ineli-Ciger, 'Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey', 32; UNHCR, *Turkey Operational Update 26-31 October 2014*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=7412>, 4.

<sup>217</sup> See A İçduygu, 'Syrian Refugees in Turkey: The Road Long Ahead', 10-11.

<sup>218</sup> UNHCR, *3RP Turkey Monthly Update: Education – March 2015*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=8701>.

<sup>219</sup> UNHCR, *3RP Turkey Monthly Update: Livelihoods – March 2015*, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=8705>.