



# aida

Asylum Information  
Database

## Country Report: Turkey



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Edited by:



## ACKNOWLEDGMENTS

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## 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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## Glossary & List of Abbreviations

<i>Adli Yardım sevk merkezi</i>	State-funded legal aid system First reception centre
<b>AFAD</b>	Disaster and Emergency Management Authority
<b>ASAM</b>	Association for Solidarity with Asylum-Seekers and Migrants
<b>CIP</b>	Circular on International Protection
<b>DGMM</b>	Directorate-General for Migration Management
<b>DRC</b>	Danish Refugee Council
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>FIN</b>	Foreigners Identification Number
<b>ICMPD</b>	International Centre for Migration Policy Development
<b>IPEC</b>	International Protection Evaluation Commission
<b>İŞKUR</b>	Turkish Employment Agency
<b>LFIP</b>	Law on Foreigners and International Protection
<b>MFSP</b>	Ministry of Family and Social Policies
<b>RSD</b>	Refugee status determination
<b>SGK</b>	Social Security Agency
<b>SUT</b>	Health Implementation Directive
<b>TPR</b>	Temporary Protection Regulation
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

The total number of persons registered with the Directorate-General for Migration Management (DGMM) as international protection applicants or status holders as of 8 December 2015 was 134,140.

Source: DGMM.

**Table 1: Applications and granting of protection at UNHCR instance: 2015 (January-October)**

	Applicants in 2015	Pending applications in 2015	Refugee status	Rejection	Refugee rate	Rejection rate
<b>Total</b>	114,127	200,720	5,707	735	88.6%	11.4%

Breakdown by countries of origin of the total numbers

Afghanistan	52,167	79,438	125	14	89.9%	10.1%
Iraq	50,236	93,705	3,632	7	99.8%	0.2%
Iran	9,108	17,908	1,724	601	74.1%	25.9%
Somalia	550	1,692	47	6	88.7%	11.3%

Source: UNHCR Turkey, Statistics October 2015, <http://bit.ly/1TRz1R6>.

**Table 2: Gender/age breakdown of UNHCR registered caseload (asylum seekers and refugees): 2015 (January-October)**

	Number	Percentage
<b>Total number of persons</b>	235,901	100%
Men	145,065	61.4%
Women	90,836	38.6%
Children	79,337	33.6%
Unaccompanied children	Not available	Not available

Source: UNHCR Turkey, Statistics October 2015, <http://bit.ly/1TRz1R6>.

**Table 3: Temporary protection beneficiaries registered: 2015 (1 January – 7 December)**

	Temporary protection beneficiaries	Percentage
<b>Total number</b>	2,291,900	100%
Outside camps	2,028,220	88.5%
In camps	263,680	11.5%

Breakdown per camp

Province	Number of camps	Population
Şanlıurfa	5	106,267
Gaziantep	5	41,783
Kilis	2	33,546
Kahramanmaraş	1	17,870
Hatay	5	15,092
Mardin	3	11,635
Adana	1	10,698
Adıyaman	1	9,759
Osmaniye	1	9,222
Malatya	1	7,808
<b>Total</b>	<b>25</b>	<b>263,680</b>

Source: DGMM, Temporary Protection, <http://bit.ly/1Np6Zdd>.

**Table 4: UNHCR-mediated resettlement from Turkey: 2015 (January-October)**

Number of submissions (persons)	Number of departures (persons)
15,292	6,432

Source: UNHCR Turkey.

## Explanatory Note on Available Statistical Data on Asylum in Turkey

The compilation presented above is based on publicly available statistical data from DGMM and AFAD, as well as statistical data obtained by Refugee Rights Turkey from DGMM and UNHCR Turkey, some of which are not publicly available at this time.

It will appear from the overview that statistical data indicating the functioning of a number of key components of Turkey's asylum system is to date not publicly available, mainly for reasons having to do with the fact DGMM is a very recently established agency still in the process of establishing full command on the asylum case load. The newly operational Provincial DGMM Directorates have so far issued a relatively modest number of status decisions, whether positive or negative, and instead targeted resources on registration of both "international protection" applicants and "temporary protection" beneficiaries. To date, DGMM has not communicated externally any statistics on either the agency's asylum processing activities or the dispersal of the registered "international protection" applicants by province.

According to DGMM, as of 8 December 2015, a total of 134,140 persons were registered within the framework of the "international protection" procedure, the vast majority of which are applicants rather than status holders, since to date very small number of positive status decisions were issued by the agency. In addition, as explained in the International Protection chapter below, some Iraqi refugees stay in Turkey on the basis of a "humanitarian residence permit" as per Article 46 of the Law on Foreigners and International Protection (LFIP). They would therefore not be reflected in the "international protection" caseload of DGMM.<sup>1</sup>

On the other hand, as explained in the following General Introduction section, persons subject to Turkey's new "international protection" procedure also register with UNHCR Turkey, which continues to carry out refugee status determination (RSD) activities, 'in tandem' with the DGMM procedure, but on the basis of UNHCR's own mandate.

As explained in the General Introduction section below, the legal significance of UNHCR's refugee status determination (RSD) decisions under Turkish law is vague and the relationship between the DGMM "international protection" procedure and UNHCR Turkey Mandate RSD procedure is yet to be redefined in the framework of the LFIP. It is anticipated that in the near future the DGMM will gradually assert its authority as the sole decision maker in asylum applications in Turkey.

Against this backdrop, the statistical overview above presents data on UNHCR Turkey's current RSD caseload as well as Mandate RSD status decisions issued by UNHCR in 2015, in addition to data on UNHCR-mediated resettlement from Turkey, which serves both refugees from Syria under "temporary protection" and non-Syrian nationalities subject to the new "international protection" procedure.

The total number of persons registered with UNHCR Turkey as of 31 October 2015 was listed as 235,901. For comparison, as mentioned above, the number of persons registered with DGMM within the framework of "international protection" procedure was listed as 134,140 as of 8 December 2015.

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<sup>1</sup> There are no publicly available statistics on the number of Iraqi nationals currently registered with DGMM as "humanitarian residence permit" holders.

The discrepancy between the DGMM caseload figures and the UNHCR Turkey caseload figures can be explained by three factors. Firstly, the current practice on the ground is such that the vast majority of newly arrived asylum seekers first approach UNHCR. Following their registration with UNHCR Turkey, they are referred to a province where they are advised to initiate their “international protection” applications at the Provincial DGMM Directorate. Therefore, the actual initiation of the “international protection” request and the DGMM registration take place after the UNHCR registration. In practice, not all persons who register with UNHCR actually report to their assigned province to initiate their procedures with DGMM. Specifically, it is understood that significant number of Iraqi and Afghan applicants with UNHCR choose not to proceed with the subsequent DGMM registration for a variety of reasons. Secondly, most Provincial DGMM Directorates are currently overburdened by the requirements of duties regarding the registration of “temporary protection” beneficiaries. This leads to delays in the actual completion of the DGMM registration of new “international protection” applicants. Thirdly, as mentioned above, some of the Iraqi refugees who were registered by UNHCR actually stay in Turkey on the basis of “humanitarian residence permits” in accordance with Article 46 LFIP. Therefore, although they are registered with authorities, they will not be reflected in DGMM’s “international protection” caseload as such.

Regarding the “temporary protection” caseload, the compilation above presents the current registration statistics by DGMM. Although, Turkey’s “temporary protection” framework on the basis of the Temporary Protection Regulation (TPR) represents a categorical, *prima facie*-type approach and does not envision a formal status determination exercise, it entails an exclusion assessment as well as considerations on cancellation and cessation of “temporary protection” status, among other, which indicates that there is an implicit status determination assessment applied to persons seeking “temporary protection” in Turkey. As of present, for the same reasons outlined above, there are no publicly available statistics on any such exclusion, cancellation or cessation decisions issued by DGMM on persons within the scope of the “temporary protection” regime in place for refugees from Syria.

With regards to the “temporary protection” caseload, it must be noted that Syrian nationals and stateless Palestinians from Syria covered under the “temporary protection” regime are not registered by UNHCR Turkey except for a very small number of cases where UNHCR Turkey may undertake registration and Mandate RSD for protection reasons. Therefore, the above presented statistics on the UNHCR-registered case load almost entirely pertains to non-Syrian nationalities.

On a final note, a level of caution is advisable in evaluating whether all persons registered with DGMM in Turkey either as “temporary protection” beneficiaries or within the framework of the “international protection” procedure are actually still present in Turkey. In the current practice, while “international protection” applicants are subject to regular reporting requirements by the Provincial DGMM Directorates, there is no mechanism in place to probe and establish whether “temporary protection” beneficiaries continue to stay in the province where they registered. Particularly, in light of the significant increase in irregular crossings from Turkey to EU over the Greek islands throughout 2015, it can be safely assumed that a fraction of the registered “temporary protection” beneficiaries may no longer be present in Turkey. That said, it should be observed that the ongoing irregular transit movement of Syrian refugees over Turkey entails both refugees who may have been previously registered in Turkey and refugees recently arriving from Syria and other host states in the region and therefore never intended to register as “temporary protection” beneficiaries in Turkey.

## 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://bit.ly/1fATdsC">http://bit.ly/1fATdsC</a> > (EN)
Law on Work Permits for Foreigners 27 February 2003	Yabancıların Çalışma İzinleri Hakkında Kanun 27/2/2003	LWPF	< <a href="http://bit.ly/1KabgBj">http://bit.ly/1KabgBj</a> > (TR) < <a href="http://bit.ly/1IsCcKN">http://bit.ly/1IsCcKN</a> > (unofficial EN)
Law on Administrative Court Procedures 6 January 1982	İdari Yargılama Usulleri Kanunu 6/1/1982		< <a href="http://bit.ly/1KcDTzq">http://bit.ly/1KcDTzq</a> > (TR)
Settlement Law 19 September 2006	İskan Kanunu 19/9/2006		< <a href="http://bit.ly/1FB1ZH">http://bit.ly/1FB1ZH</a> > (TR)
Attorneyship Law 19 March 1969	Avukatlık Kanunu 19/3/1969		< <a href="http://bit.ly/1fATsUx">http://bit.ly/1fATsUx</a> > (TR)
Notary Law 18 January 1972	Noterlik Kanunu 18/1/1972		< <a href="http://bit.ly/1Rw8wyN">http://bit.ly/1Rw8wyN</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://bit.ly/1Kab7p">http://bit.ly/1Kab7p</a> > (TR)
Social Insurance and General Security Law 31 May 2006	Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu 31/5/2006		< <a href="http://bit.ly/1e3sFiS">http://bit.ly/1e3sFiS</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://bit.ly/1GyAW4W">http://bit.ly/1GyAW4W</a> > (TR)
Law for the Protection of Children 3 July 2005	Çocuk Koruma Kanunu 3/7/2005		< <a href="http://bit.ly/1NaHQSV">http://bit.ly/1NaHQSV</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
Temporary Protection Regulation, 22 October 2014	Geçici Koruma Yönetmeliği, 22/10/2014	TPR	< <a href="http://bit.ly/1He6wvI">http://bit.ly/1He6wvI</a> > (TR) < <a href="http://bit.ly/1JiGVSl">http://bit.ly/1JiGVSl</a> > (EN)
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, İşlettirilmesi ve Denetimi Hakkında Yönetmelik 22/4/2014		< <a href="http://bit.ly/1Ln6Ojz">http://bit.ly/1Ln6Ojz</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://bit.ly/1LBuTks">http://bit.ly/1LBuTks</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://bit.ly/1JiGOq8">http://bit.ly/1JiGOq8</a> > (TR)
Regulation on DGMM Migration Experts, 11 July 2013	Göç Uzmanlığı Yönetmeliği, 11/7/2013		< <a href="http://bit.ly/1Ln70PP">http://bit.ly/1Ln70PP</a> > (TR)
Prime Ministerial Circular on Turkey-EU Readmission Agreement, 16 April 2014	Gerri Kabul Anlaşması ile İlgili Başbakanlık Genelgesi, 16/4/2014		< <a href="http://bit.ly/1QPTEAj">http://bit.ly/1QPTEAj</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://bit.ly/1dg9Nwd">http://bit.ly/1dg9Nwd</a> > (TR)
Circular on International Protection	Sayıllı Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına ilişkin Usul ve Esaslar - Uluslararası Koruma	CIP	
Circular on Foreigners	Sayıllı Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına ilişkin Usul ve Esaslar – Yabancılar	CF	
Implementation Regulation of the Notaries Law 13 July 1976	Noterlik Kanunu Yönetmeliği, 13/7/1976		< <a href="http://bit.ly/1dgakOF">http://bit.ly/1dgakOF</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="http://bit.ly/1He6Ha2">http://bit.ly/1He6Ha2</a> > (TR)
Circular on Educational Activities Targeting Foreigners, 23 September 2014	Yabancılarla Yönelik Eğitim Öğretim Hizmetleri – Genelge, 23/9/2014		< <a href="http://bit.ly/1fAUAAv">http://bit.ly/1fAUAAv</a> > (TR)
Regulation on Disaster and Emergencies	Afet ve Acil Durum Yönetim Merkezleri Yönetmeliği		< <a href="http://bit.ly/1KabYyt">http://bit.ly/1KabYyt</a> > (TR)

Response Centres, 31 January 2011	31/1/2011		
Regulation on Marriage Procedures, 10 July 1985	Evlendirme Yönetmeliği, 10/7/1985		< <a href="http://bit.ly/1KabY1f">http://bit.ly/1KabY1f</a> > (TR)
Information Note on the Documents and Identification Cards issued on the basis of LFIP, 19 September 2014	Sayıli YUKK Uyarınca Verilen Belge ve Kimlikler Hakkında , 19/9/2014 tarihli 93 numaralı Genel Yazı		< <a href="http://bit.ly/1JiHf3J">http://bit.ly/1JiHf3J</a> > (TR)
Information Note on the Marriage and the Registration of Children of Refugees and Temporary Protection Beneficiaries, 13 October 2015	Mülteciler ve Geçici Koruma Altına Alınanların Evlenme ve Çocuklarının Tanınması Konulu Yazı (T. C. İçişleri Bakanlığı Nüfus ve Vatandaşlık İşleri Genel Müdürlüğü, Tarih: 13/10/2015)		
Circular on Health Benefits for Temporary Protection Beneficiaries, 4 November 2015	Geçici Koruma Altına Alınanlara Verilecek Sağlık Hizmetlerine Dair Esaslar Yönergesi (Sağlık Bakanlığı; 4.11.2015)		< <a href="http://bit.ly/1NLbaz5">http://bit.ly/1NLbaz5</a> > (TR)

## Overview of main changes since the first report

The first report was published in **May 2015**.

The present update entails significant changes and revisions from the first version of the Turkey country report published in May 2015. This new version of the report entails an extended General Introduction to the Turkey Asylum Context, specifically elaborating on the key characteristics of both the “temporary protection” regime in place for refugees from Syria and the new “international protection” procedure that applies to all the other nationalities of individually arriving asylum seekers.

This extended introductory section also outlines the current state of transition to the new legal framework laid down by the Law on Foreigners and International Protection (LFIP) and recent changes in UNHCR’s special role in Turkey as a ‘complementary’ protection actor. The report’s core chapter on the “international protection” procedure was significantly revised and redrafted, presenting much more elaborate analysis of Turkey’s new asylum procedures for non-Syrian individually arriving protection seekers.

This new version of the report also presents a completely redrafted and elaborated version of the chapter on the “temporary protection” regime in place for refugees from Syria, both in terms of the legal framework and an overview of practices on the ground.

Finally, a compilation of up to date statistics as well as a slightly revised overview of the evolving new domestic asylum legislation are presented in the current version of the report. The new section on statistics also entails an explanatory note regarding the limitations of publicly available data on Turkish asylum system.

Turkey currently hosts both a **mass-influx refugee 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 other. These two populations of protection seekers are subject to **two different sets of asylum rules and procedures**. As such, the Turkish asylum system has a **dual structure**.

Turkey maintains a **“geographical limitation” to the 1951 Refugee Convention**, and denies refugees from ‘non-European’ countries of origin the prospect of long-term legal integration in Turkey. That said, in April 2013 Turkey adopted a comprehensive, EU-inspired new **Law on Foreigners and International Protection (LFIP)**, which establishes a dedicated legal framework for asylum in Turkey and affirms Turkey’s obligations towards all persons in need of international protection, regardless of country of origin, at the level of binding domestic law. The new Law also created a brand new, civilian **Directorate General of Migration Management (DGMM)** mandated to take charge of migration and asylum. This new agency is currently still in the process of establishing full operational command on the asylum case load and building a full-fledged new asylum system from scratch.

Turkey implements a **“temporary protection” regime for refugees from Syria**, which grants beneficiaries right to legal stay as well as some level of access to basic rights and services. The “temporary protection” status is acquired on a *prima facie*, group-basis, to Syrian nationals and Stateless Palestinians originating from Syria. DGMM is the responsible authority for the registration and status decisions within the scope of the “temporary protection” regime, which is based on Article 91 of the LFIP and the Temporary Protection Regulation (TPR) of 22 October 2014.

On the other hand, **asylum seekers from other countries of origin** are expected to **apply for an individual “international protection” status under LFIP** and are subject to a status determination procedure conducted by the DGMM. That said, the Provincial DGMM Directorates have only recently become fully operational and so far delivered only a small number of procedure and status decisions on “international protection” applicants.

While DGMM is still in the process of establishing the new national asylum procedure on the basis of LFIP, **UNHCR assumes a key role in Turkey as a ‘complementary’ protection actor**, and continues to undertake refugee status determination (RSD) activities of their own grounded in UNHCR’s Mandate and make resettlement referrals – ‘in tandem’ with the new Government “international protection” procedure. That said, UNHCR Mandate RSD decisions do not have any direct binding effect under LFIP, which firmly establishes DGMM as the sole decision maker in asylum applications.

### **“Temporary Protection” Regime for Refugees from Syria**

Refugees from Syria, who have been treated as a mass-influx population by the Government of Turkey since the very beginning of arrivals in March 2011, benefit from a group-based “temporary protection” regime, which was formalized by the Temporary Protection Regulation (TPR) of 22 October 2014. The Turkish “temporary protection” status grants beneficiaries the right to legal stay, protection from refoulement and access to a set of basic rights and services, including free healthcare. The DGMM is the agency in charge of registering and granting status to refugees from Syria within the scope of the “temporary protection” regime. As of 7 December 2015, the number of refugees from Syria registered as beneficiaries of “temporary protection” was listed at 2,291,900.

Of this registered population of 2,291,900 about 263,000 are accommodated in 25 large-scale refugee camps spread across 10 provinces in the south of Turkey, whereas the remaining majority live in residential areas in private accommodation on their own resources and dispersed all over Turkey, including the big cities of Istanbul, Ankara and Izmir, among other. Turkey's Disaster and Relief Agency (AFAD) is in charge of the camps set up for refugees from Syria and also assumes a coordinating role in regards to provision of rights and services to the non-camp population of "temporary protection" beneficiaries. UNHCR Turkey assumes a limited supplementary role in relation to the population subject to the "temporary protection" regime. The agency does not separately conduct any registration of "temporary protection" beneficiaries, but identifies and processes a relatively modest number of persons for resettlement.<sup>2</sup>

The Turkish "temporary protection" concept represents a *prima facie*, group-based approach, and therefore does not involve a formal status determination procedure as such. All nationals of Syria and stateless Palestinians originating from Syria are eligible for "temporary protection" in Turkey. That said, the TPR entails grounds for exclusion from "temporary protection" as well as cancellation and cessation of "temporary protection" status of a beneficiary. In order to access "temporary protection" status, prospective beneficiaries must register with DGMM and obtain a Temporary Protection Identification Card.

Persons benefitting from "temporary protection" are barred from making a separate individual "international protection" request. The TPR of 22 October 2014 did not impose a set duration on the "temporary protection" regime currently in place for refugees from Syria. Continuation or termination of the policy going forward is entirely within the discretion of the Government. Neither does the TPR strictly guarantee access to the individual "international protection" procedure to former beneficiaries in the event of a future termination of the "temporary protection" regime. Furthermore, as will be discussed below, because of Turkey's "geographical limitation" policy on the 1951 Refugee Convention, an individual "international protection" status under LFIP does not lead to long-term legal integration. The TPR itself also explicitly precludes any prospect of long term legal integration for "temporary protection" beneficiaries.

Therefore, the Turkish "temporary protection" concept in its current form falls short of promising a secure, long-term solution to refugees from Syria seeking safety in Turkey, while it does create a framework for addressing the immediate and short-term protection and humanitarian needs of beneficiaries.

The separate chapter of this report dedicated to the "temporary protection" regime presents the specifics of the current legal framework and implementation of the "temporary protection" regime in place for refugees from Syria on the basis of the TPR.

### **The new "International Protection" Procedure for non-Syrian Nationalities**

When it comes to other nationalities of protection seekers in Turkey outside the group-based "temporary protection" framework, they are subject to the new "international protection" procedure administered by DGMM on the basis of the LFIP, which came into force in April 2014. As of 8 December 2015, a total of 134,140 persons were registered with DGMM in the framework of Turkey's new "international protection" procedure. The LFIP, adopted in April 2013, emerged out of Turkey's EU accession process and is largely based on EU migration and asylum *acquis* – albeit with some notable exceptions, including the "geographical limitation" policy on the 1951 Refugee Convention, which the Law maintains.

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<sup>2</sup> In 2014, UNHCR Turkey has been able to submit a total of 5438 persons to selected resettlement countries. Source: UNHCR.

The LFIP is Turkey's first-ever national law governing matters of asylum. As such, it represents a historic step forward in the evolution of the protection space in Turkey for refugees. In the period before the LFIP, the responsibility for registering and processing asylum seekers was entrusted to the Foreigners Department of the National Police, which for decades governed matters of asylum entirely on the basis of administrative discretion and without the benefit of either appropriate expertise or sufficient dedicated institutional capacities, which led to violations and kept the quality of protection available to refugees in Turkey at a bare minimum.

The LFIP overhauled the entire domestic law framework for management of migration and asylum in Turkey and for the first time provided a proper domestic law basis for the *de facto* protection space that previously existed in Turkey for refugees. The Law also established the new Directorate General of Migration Management (DGMM) – an EU-style, civilian agency under the Ministry of Interior to take over all implementation in the field of migration and asylum from the National Police. At present, the process for the institutionalisation of DGMM and transition to the new legal and administrative framework laid down by the LFIP are still ongoing.

Below, an overview is presented of the eligibility criteria, determination procedure and reception rights provided by the “international protection” procedure under LFIP. It is important to observe however that the new asylum procedure design provided by the LFIP does not yet fully correspond to the reality on the ground. The current state of implementation of the new procedure and UNHCR's continuing role in Turkey as a ‘complementary’ protection actor during this period of transition will be situated in the following subsections below.

The LFIP provides three types of individual “international protection” status in accordance with Turkey's “geographical limitation” policy on the 1951 Convention – which will be further explained below.

- (1) Persons who fall within the refugee definition in Article of the 1951 Convention and come from a ‘European country of origin’<sup>3</sup> qualify for “**refugee**” status under LFIP, in full acknowledgment of Turkey's obligations under the 1951 Convention. The Turkish legal status of “refugee” under LFIP should afford rights and entitlements in accordance with the requirements of the 1951 Convention, including the prospect of long-term legal integration in Turkey. Whereas;
- (2) Persons who fall within the refugee definition in Article of the 1951 Convention but come from a so-called ‘non-European country of origin’, are instead offered “**conditional refugee**” status under LFIP. The “conditional refugee” status is a Turkish legal concept introduced by the LFIP for the purpose of differentiating in treatment between 1951 Convention-type refugees originating from ‘non-European’ states and those originating from ‘European’ states. The Turkish legal status of “conditional refugee” under LFIP affords to beneficiaries a set of rights and entitlements lesser to that granted to “refugee” status holders. Most importantly, “conditional refugee” status holders are not offered the prospect of long-term legal integration in Turkey and excluded from “family unification” rights.
- (3) Persons who do not fulfil the eligibility criteria for either “refugee” status or “conditional refugee” status under LFIP, who would however be subjected to death penalty or torture in country of origin if returned, or would be at “personalized risk of indiscriminate violence” due to situations or war or internal armed conflict, qualify for “**subsidiary protection**” status under LFIP. The Turkish legal status of “subsidiary protection” fully replicates the subsidiary protection eligibility

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<sup>3</sup> For the purpose of “geographical limitation” in regards to the interpretation of the 1951 Convention, Government of Turkey considers Council of Europe member states as ‘European countries of origin’.

definition provided by the EU Qualification Directive. Similar to the “conditional refugee” status holders, “subsidiary protection” beneficiaries receive a lesser set of rights and entitlements as compared to “refugee” status holders and are barred from long-term legal integration in Turkey. Notably however, unlike “conditional refugee” status holders, “subsidiary protection” beneficiaries are granted family unification rights in Turkey.

The LFIP, in addition to laying down the above summarized new eligibility grounds for asylum in Turkey, also provides, for the first time in Turkey, a full-fledged new **“international protection” application and determination procedure**, complete with basic procedural safeguards, including guarantees on access to legal representatives and to UNHCR and new legal remedies that secure applicants’ right to stay in Turkey until the full exhaustion of the procedure. The newly established DGMM is the designated agency in charge of registering and processing “international protection” applications.

In terms of asylum procedures, the LFIP makes no distinction among applicants based on country of origin in relation to the “geographical limitation” policy. All applicants for “international protection”, regardless of nationality, are subject to the same application and determination procedure and benefit from the same procedural safeguards and reception rights. Since the LFIP was largely based on the EU migration and asylum acquis, the new “international protection” procedure incorporates many EU asylum law concepts and procedural approaches, including “accelerated processing” of certain types of claims, administrative detention of applicants under certain conditions, admissibility considerations based on “safe third country” and “first country of asylum” grounds, and the notion of “implicit withdrawal” of asylum request, among other.

Under the LFIP, the regular “international protection” procedure shall aim to issue first instance decisions in 6 months. This time frame is however not binding and may be extended by DGMM if deemed necessary. Under the accelerated procedure, the status determination interview has to be conducted within 3 days of the date of application, and a decision must be issued within 5 days of the interview. The LFIP also provides a differentiated set of remedies against decisions issued within the framework of regular procedure as compared to decisions issued within the framework of accelerated procedure as well as admissibility decisions. Judicial appeals against negative status decisions under accelerated procedure and inadmissibility decisions have to be filed within 15 days. Negative decisions under regular procedure, and other unfavourable decisions, can be challenged at the newly established International Protection Evaluation Commission within 10 days or directly at the competent administrative court within 30 days. All “international protection” appeals carry suspensive effect and guarantee applicants’ right to stay in Turkey until the full exhaustion of remedies.

The LFIP does not commit to providing shelter to “international protection” applicants as a right as such, but it envisions the launch of a small number of “Reception and Accommodation Centres” to accommodate particularly vulnerable applicants. That said, DGMM currently has a very limited capacity to shelter “international protection” applicants, and it remains unclear when such new “Reception and Accommodation Centres” will become available and operational. Under a dispersal policy known as the ‘satellite cities’ policy, “international protection” applicants are assigned by DGMM to a designated province where they are expected to secure private accommodation on their own means and stay until the end of their “international protection” proceedings.

### **“Geographical Limitation” Policy and UNHCR’s Role in Turkey as ‘Complementary’ Protection Actor**

As will be further elaborated in the following subsection, at present the DGMM is still in the process of establishing full command on the “international protection” case load, which it has inherited in April 2014

from the Foreigners Department of the National Police – the agency previously in charge of asylum matters.

In this transitional context, UNHCR continues to assume an important role in Turkey as – what could be characterized – a ‘complementary’ protection actor for non-Syrian individually arriving nationalities of asylum seekers subject to the DGMM “international protection” procedure. At the same time, as Turkey transitions to the new asylum framework established by the LFIP and the DGMM is increasingly taking charge of asylum matters, UNHCR’s traditional role in Turkey as *de facto* asylum decision maker and resettlement broker is also in the process of evolution.

For an historical understanding of UNHCR’s role in Turkish asylum system and its current evolution, it is important to explain Turkey’s “geographical limitation” policy on the 1951 Refugee Convention and UNHCR’s refugee status determination (RSD) activities grounded in the agency’s own mandate, which served as the *de facto* national asylum procedure in Turkey for decades until the adoption of the LFIP.

Although Turkey was among the first signatories of the 1951 Refugee Convention, it became party to the Convention with a “geographical limitation”, which as per Article 1-B of the Convention gave state parties the option of limiting their obligations under the Convention to refugees originating from ‘European’ countries of origin.<sup>4</sup> Although the “geographical limitation” option was dismantled by the 1967 New York Protocol to the Convention, state parties who had signed the Convention prior to 1967 retained the option of maintaining it.<sup>5</sup> Today Turkey remains the only Council of Europe member state, which still maintains this “geographical limitation” policy. Accordingly, as far as refugees originating from ‘European’ countries of origin, Government of Turkey considers itself fully bound by the entire range of obligations towards refugees under 1951 Convention. However, as far as refugees originating from ‘non-European’ countries of origin, Turkey does not consider itself bound by the 1951 Convention obligations – with the exception of the “undertaking to cooperate with UNHCR” under Article 35 of the Convention and the *non-refoulement* principle protected by Article 33 of the Convention, which has since then acquired the status of customary international law.

It is very important to emphasise however that **the “geographical limitation” policy does not mean that Turkey does not undertake any legal obligations towards refugees from ‘non-European’ countries of origin.** It only means that Turkey considers itself bound by the 1951 Convention obligations *per se* only in regards to such ‘European’ refugees. However, **Turkey’s current domestic law framework for asylum, and specifically the LFIP does create a set of binding protection obligations towards all persons seeking international protection in Turkey regardless of country of origin.** The new “international protection” procedure administered by DGMM, and protection from refoulement and other safeguards provided by LFIP apply to all asylum applicants the same way regardless of whether they originate from a ‘European’ country or a ‘non-European’ country. However, as presented above, the LFIP offers a lesser set of rights and entitlements to ‘non-European’ “international protection” status holders – most notably in regards to access to Turkish citizenship and family unification rights, among other.

Historically, because of the “geographical limitation” policy and the Government of Turkey’s reluctance to set up a national asylum system proper, UNHCR Turkey Representation had come to assume the role of identifying persons arriving in Turkey in need of international protection and finding long-term solutions for refugees beyond Turkey in the form of resettlement. For decades starting in the 1950s, UNHCR Turkey

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<sup>4</sup> It is important to emphasize that since the “geographical limitation” policy is based on an option provided by the 1951 Convention itself to signatory states, it is not a reservation as such but a treaty-based optional limitation.

<sup>5</sup> See 1967 Protocol to the Refugee Convention, Article 1(3).

Representation had been carrying out a ‘refugee status determination’ (RSD) procedure grounded in UNHCR’s own Mandate as opposed to any domestic law basis in Turkish law. Under this informal cooperation arrangement, Turkey allowed UNHCR to register and process asylum seekers, allowed applicants with UNHCR to stay in Turkey, and facilitated the resettlement departures of those recognized by UNHCR to be in need of international protection.

The 1994 Asylum Regulation was the first piece of domestic legislation Turkey adopted in order to regulate the processing and treatment of persons seeking asylum in Turkey. Technically this instrument was an implementing regulation as opposed to a law as such, but it remained Turkey’s principal legislation on asylum until the LFIP came into force in April 2014. Under the 1994 Asylum Regulation regime, the Foreigners Department of the National Police served as the designated agency in charge of processing asylum applications on the basis of the principle that all asylum in Turkey was by definition temporary with the understanding that refugees would seek long-term solutions in third countries in the shape of resettlement with UNHCR’s assistance.

Although the 1994 Asylum Regulation did not make any reference to the role of UNHCR Mandate RSD procedure in the Turkish asylum system at the time, in practice protection seekers were advised to make two applications: one to UNHCR Turkey Representation with a view to have UNHCR recognize their need for international protection and subsequently submit their case to a resettlement country; and one to the Foreigners Police for the purpose of regularizing their stay in Turkey and being allowed to stay on a temporary basis until the end of their UNHCR RSD and resettlement proceedings. As such, this arrangement was described as a system of ‘parallel procedures’. Although the UNHCR RSD procedure did not have any grounding in domestic law and officially the Foreigners Police was supposedly the only decision maker in asylum applications, the reality was rather the other way around. In practice, in the vast majority of cases the token Government asylum procedure respected and complied with the UNHCR RSD outcome on the same applicant. Therefore, throughout this period UNHCR’s Mandate RSD procedure served as the Turkish Government’s surrogate mechanism for the screening and determination of international protection needs in Turkey and UNHCR remained as the *de facto* decision maker in asylum cases.

Starting around 2007 and 2008, this arrangement between UNHCR and the Turkish Government began to come under growing strain because as the number of new asylum applications in Turkey acquired an increasing trend, the number of resettlement places made available to UNHCR Turkey by resettlement countries remained more or less stagnant. Therefore, it became increasingly apparent that UNHCR was no longer able to resettle even the majority of ‘non-European’ refugees seeking protection in Turkey. Furthermore, steadily increasing applications also stretched UNHCR’s RSD processing capacity beyond its limit and led to excessive waiting periods at all stages of the UNHCR procedure – from registration through the status determination interview to the eventual first instance decision. By 2013, UNHCR Turkey was already managing the largest UNHCR Mandate RSD operation globally and mightily struggling to process a surging number of new applications.

### **Cooperation Arrangement between DGMM and UNHCR in the framework of the LFIP**

As the Government of Turkey finally adopted the LFIP in April 2013 and made a commitment to build a full-fledged national asylum system from scratch and created – in DGMM – a specialised new Government agency for this purpose, UNHCR Turkey stepped up its focus on supporting Turkey’s asylum capacity-building efforts while preparing to retreat to a more ‘complementary’ role in the context of the new “international protection” procedure provided by the LFIP. Indeed, the LFIP firmly establishes DGMM as the agency designated to process and decide asylum applications in Turkey and does not grant UNHCR a role as decision maker.

At present, while the DGMM is gradually taking control of the “international protection” case load and taking steps towards the full implementation of the provisions of LFIP, UNHCR is also reconsidering the organization and priorities of its Mandate RSD operation in Turkey in conjunction with the emerging new Government procedure. There are ongoing discussions regarding the future modalities of the cooperation arrangement between the two agencies – subject to the understanding that the new “international protection” procedure is the only legally binding asylum procedure in Turkey and DGMM is keen to gradually assert itself as the sole decision maker on asylum applications. That said, in the foreseeable future UNHCR will continue to identify and submit selected cases for resettlement.

Going forward, UNHCR Turkey intends to continue registering newly arrived asylum seekers, who are now principally all subject to the new DGMM “international protection” procedure. The primary purpose of UNHCR registration in the current outlook is for the agency to be aware of the persons seeking “international protection” in Turkey and oversee their access to legal protection mechanisms provided under the new Turkish Government asylum system, with a view to carry out ‘complementary’ protection interventions for selected individuals, where necessary, either vis-a-vis DGMM authorities or for the purpose of resettlement processing – within the confines of the limited quotas made available by resettlement countries to UNHCR Turkey.

Under this new approach, UNHCR will continue to encourage all newly arriving asylum seekers to approach their offices and register with UNHCR, in parallel with the “international protection” application they are expected to address to the DGMM.<sup>6</sup> Indeed during the UNHCR registration, new applicants are advised to report to an assigned province in order to initiate their application to DGMM. While UNHCR will continue to register all new arrivals, an actual UNHCR RSD interview will be conducted and a Mandate RSD decision will be issued only in cases where UNHCR considers that the Mandate RSD can generate added-value in addressing the specific protection needs of an asylum seeker, which cannot be addressed in the framework of the Government asylum procedure, or where the person concerned represents a specific and particular vulnerability indicating he/she should be prioritized for resettlement. Currently, the actual operational modalities of this new approach are pending deliberation and finalization on the part of UNHCR Turkey.

In the context of the ongoing massive transition in the Turkish asylum system, a crucial question that emerges in regards to UNHCR’s future role in Turkey concerns the relationship between the new Government “international protection” procedure administered by DGMM and the UNHCR RSD procedure. As of present, these two activities are practically still organised as two separate procedures by two different agencies processing the same asylum seekers ‘in parallel’.

Under LFIP, there is no question that DGMM is the sole decision making authority in Turkey in asylum applications. Neither is there any question that DGMM is very keen to assert its new role and take full charge of the asylum field and of status decisions on persons seeking protection in Turkey going forward. On the other hand, UNHCR Turkey does not anyway have the operational capacity to process the very significant numbers of asylum seekers from Iraq, Afghanistan, Iran and elsewhere, who continue to arrive in Turkey. Therefore, the old cooperation arrangement between the Government of Turkey and UNHCR, which granted UNHCR the role of *de facto* decision maker in asylum cases, is neither feasible nor politically agreeable any longer. That said, as will be elaborated in the following subsection, DGMM has

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<sup>6</sup> It is important to note however that there is no requirement under LFIP for asylum seekers to approach and register with UNHCR before they can make an application for “international protection” with DGMM. Indeed the LFIP makes no mention of the UNHCR RSD procedure at all. In practice however, newly arrived asylum seekers are advised by both UNHCR and DGMM to do so in acknowledgement of UNHCR’s *de facto* ‘complementary’ role in Turkish asylum system.

not yet shown itself fully equipped and capable of fully implementing the new status determination procedure provided by the LFIP and of delivering a significant number of status decisions on applicants.

It is anticipated that in the near future, the DGMM will begin issuing “international protection” status decisions on its own, unlike before, without the benefit of a prior ‘parallel’ UNHCR determination on the applicant. At the same time, UNHCR Turkey will continue efforts to train DGMM personnel and seek to input as much as possible into DGMM status determination assessments in an advisory role.

As of 31 October 2015, there were a total of 235,901 non-Syrian refugees and asylum seekers registered with UNHCR, among which Iraqis (49%), Afghans (35%) and Iranians (10%) constituted the largest groups. On the DGMM-side of the ‘parallel procedures’ arrangement, as of 8 December 2015, a total of 134,140 persons were registered within the framework of Turkey’s “international protection” procedure. The discrepancy between the UNHCR-registered caseload and DGMM-registered caseload begs explanation since the two procedures theoretically encompass the very same protection seekers, who are asked to register with both agencies. This discrepancy can be explained by three factors:

Firstly, the current practice on the ground is such that the vast majority of newly arrived asylum seekers first approach UNHCR. Following their registration with UNHCR Turkey, they are referred to a province where they are advised to initiate their “international protection” applications at the Provincial DGMM Directorate. Therefore, the actual initiation of the “international protection” request and the DGMM registration takes place after the UNHCR registration. In practice, not all persons who register with UNHCR actually report to their assigned province to initiate their procedures with DGMM. Specifically, it is understood that significant number of Iraqi and Afghan applicants with UNHCR choose not to proceed with the subsequent DGMM registration for a variety of reasons. Secondly, most Provincial DGMM Directorates are currently overburdened by the requirements and duties regarding the registration of “temporary protection” beneficiaries. This leads to delays in the actual completion of the DGMM registration of new “international protection” applicants. Thirdly, as will be elaborated in the section below on Treatment of Specific Nationalities, some of the Iraqi protection-seekers registered with UNHCR actually stay in Turkey on the basis of “humanitarian residence permits” in accordance with Article 46 of LFIP and therefore would not be reflected in the DGMM’s “international protection” case load as such.

### **Current State of DGMM Takeover and Transition to the new “International Protection” Procedure**

As observed above, the DGMM is a very recently established agency still in the process of establishing full command on the asylum case load and building institutional capacities, while at the same time also struggling to cope with duties pertaining to the over 2 million-strong mass influx population of refugees from Syria under “temporary protection”. Therefore, the design of the new “international protection” procedure summarised above does not yet fully reflect the reality on the ground.

Although the LFIP came into force on 11 April 2014, DGMM continued to rely on the Foreigners Police branches of Provincial Police Directorates for the processing of foreigners case load, including the asylum case load, since the Provincial DGMM Directorates were not ready to become fully operational at the time. As of 18 May 2015, it was announced that this transitional arrangement was over and the Provincial DGMM Directorates have formally taken over all case load. Furthermore, as of 1 July 2015, Provincial DGMM Directorates were authorised to issue decisions on “international protection” applications. That said, the DGMM is still in the early stages of building the necessary expertise and implementation modalities in order to be able to fully implement the new provisions of LFIP regarding applications for “international protection”.

As a result, Provincial DGMM Directorates have so far issued a relatively modest number of status decisions, whether positive or negative, and instead targeted resources on registration of both “international protection” applicants and “temporary protection” beneficiaries. In the meanwhile, efforts to train the newly hired DGMM personnel continue, including on matters of “international protection” status determination, mainly in the framework of cooperation with UNHCR Turkey. Going forward, it is anticipated that we are likely to see more status decisions issued in 2016 as the Provincial DGMM Directorates continue to build expertise and grow in confidence.

As of present, the relatively small number of decisions issued by DGMM since the LFIP came into force in April 2014 mainly entailed negative decisions issued to a small number of applicants processed in administrative detention within the framework of the new accelerated procedure and a relatively high number of “implicit withdrawal” decisions on applicants who have either failed to report to their assigned province or left their assigned province without permission.

As discussed in the preceding subsection, it is anticipated that in the next period DGMM will begin to determine and issue decision on “international protection” applications, unlike in the period before the LFIP, without the benefit of a prior or parallel UNHCR assessment into the international protection needs of the applicant. In this connection, it is worth noting that UNHCR’s Mandate RSD decisions in Turkey, historically featured exceptionally high recognition rates – which is indeed a reflection of the actual composition of persons seeking asylum in Turkey, involving a high percentage of *bona fide* refugee claimants.<sup>7</sup> Under the traditional informal cooperation arrangement between UNHCR and the Turkish Ministry of Interior, persons recognized to be in need of international protection by UNHCR Turkey were generally not issued negative asylum decisions by the Foreigners Department of the National Police and allowed to stay in Turkey until UNHCR was able to resettle them to a third country. As such, the UNHCR Mandate RSD procedure served as a *de facto* ‘safety net’ for refugees in Turkey, indirectly reinforcing protection from refoulement by the authorities, despite that UNHCR RSD decisions did not have any direct binding effect under Turkish law. In the near future, it remains to be seen how DGMM “international protection” status decisions will turn out and whether the absence of a ‘parallel’ UNHCR assessment on each and every applicant will lead to a higher rate of negative asylum decisions. On the other hand, under LFIP, rejected “international protection” applicants have access to a brand new set of procedural safeguards and judicial remedies to challenge negative asylum decisions by DGMM.

Another key aspect of the current state of Turkey’s transition to the new asylum framework established by the LFIP is that DGMM is yet to finalize and publish the main Implementing Regulation of the new Law, which is expected to spell out the specifics of various implementation modalities and guide Provincial DGMM Directorates regarding how to interpret and apply many of the new legal concepts introduced by the LFIP. Despite the fact that by now it has been over one and a half years since the LFIP came into force, the Implementing Regulation appears still not finalized. Instead, as a transitional measure when the LFIP came into force in April 2014, DGMM generated two circulars to guide implementation of the new provisions pending the publication of the actual Implementing Regulation. While one of the circulars addressed implementation guidance regarding the ‘Foreigners’ section of the LFIP, the other one addressed the ‘International Protection’ section of the new Law.

Although these two Circulars have not been formally made public, they were subsequently shared with key nongovernmental stakeholders on confidential basis. It appeared since then that subsequently a

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<sup>7</sup> To put this observation in context, the Statistics section shows that UNHCR Turkey Mandate RSD decisions made in first instance involved a 90% overall recognition rate. At the same time, it must be explained this exceptionally high recognition rate is partially informed by a UNHCR policy of prioritising the finalisation of cases deserving positive decisions as opposed to cases deserving negative decisions. Regardless, overall UNHCR RSD recognition rates in Turkey have historically always been above 70%.

number of amendments were made to the original April 2014 versions of the Circulars – which are only known to DGMM personnel. It is understood that an evolution of these Circulars of April 2014 shall constitute the basis of the pending Implementing Regulation, which according to DGMM sources is intended to be finally published during the first quarter of 2016.

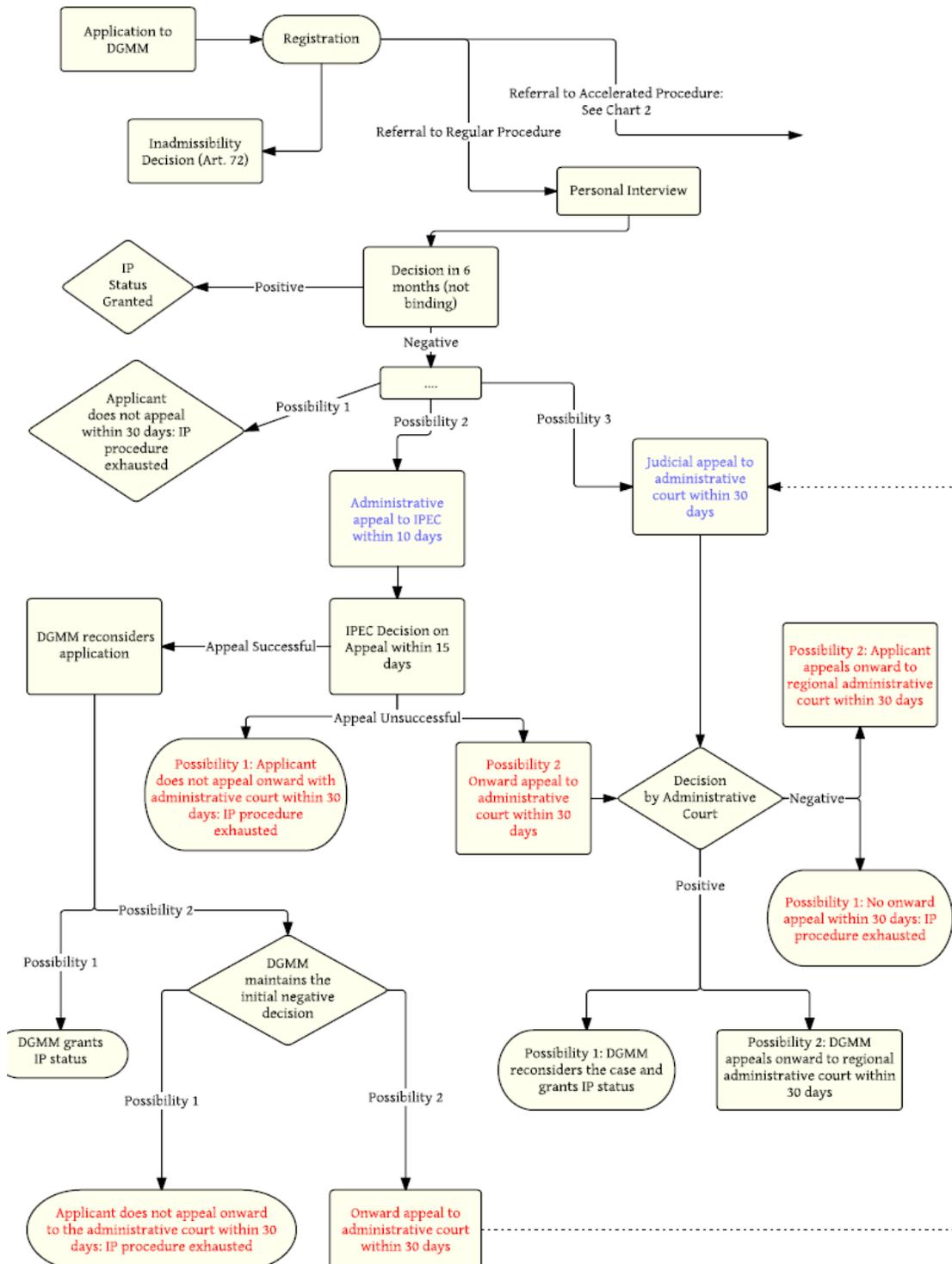
Since the Implementing Regulation is still not available, the analysis in the “international protection” chapter of this report refers to the relevant provisions of the April 2014 dated original versions of the two Circulars.

# Asylum Procedure

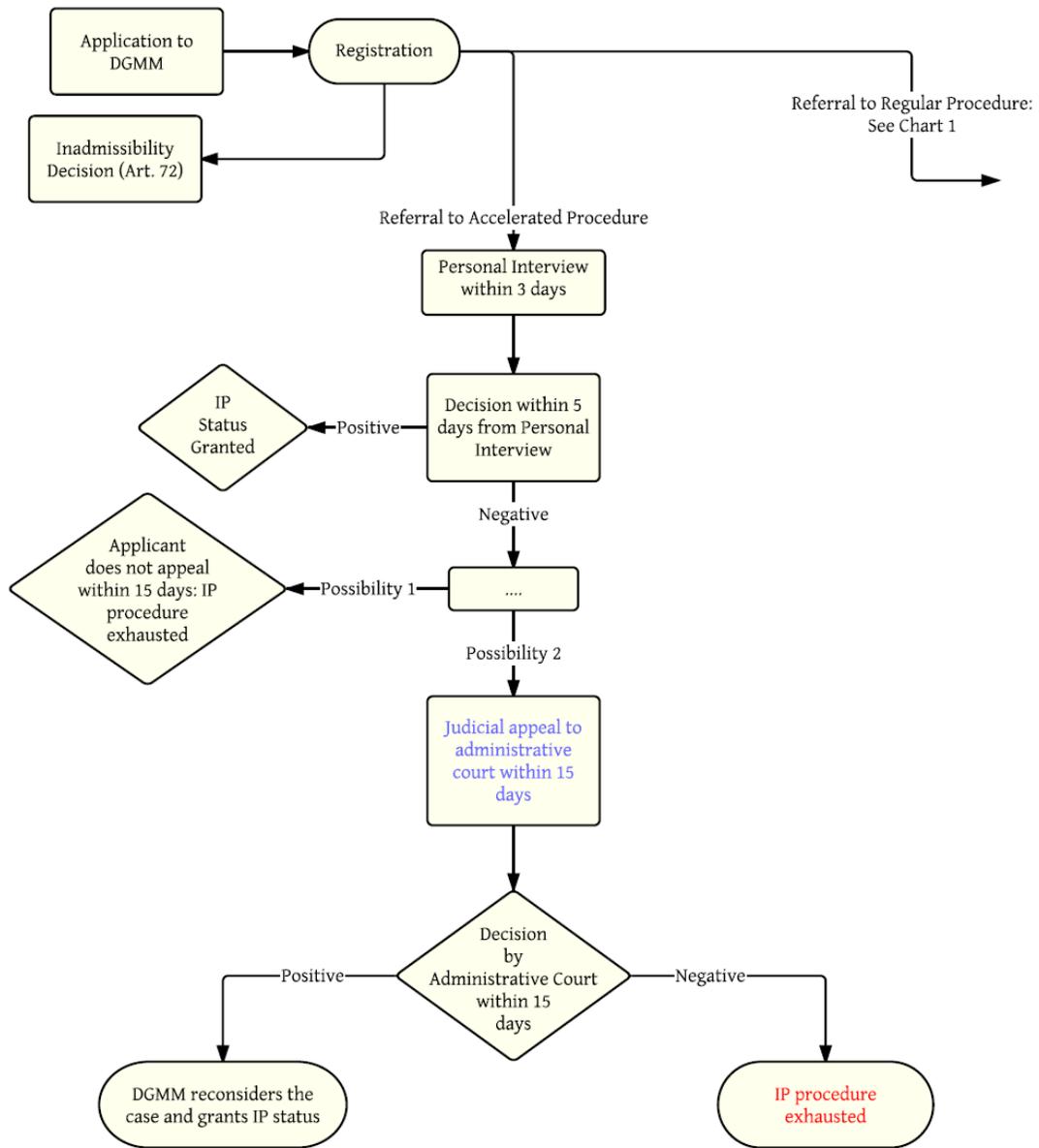
## A. General

### 1. Flow chart

*International Protection Procedure Flow*  
Chart 1: REGULAR PROCEDURE



## International Protection Procedure Flow Chart 2: ACCELERATED PROCEDURE



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>8</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>9</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Admissibility procedure:              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>10</sup>  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other                                 |   |  |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  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>11</sup> and/or Administrative Court</li> <li>• Regional Administrative Court<sup>12</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

<sup>8</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>9</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>10</sup> Labelled as “accelerated procedure” in national law.

<sup>11</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>12</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?
Directorate General for Migration Management (DGMM)	2,640 staff <sup>13</sup> 1,680 experts <sup>14</sup>	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <sup>15</sup>

## 5. Short overview of the asylum procedure

Under the LFIP, the regular “international protection” procedure shall aim to issue first instance decisions in 6 months. This time frame is however not binding and may be extended by DGMM if deemed necessary. Under the accelerated procedure, the status determination interview has to be conducted within 3 days of the date of application, and a decision must be issued within 5 days of the interview. The LFIP also provides a differentiated set of remedies against decisions issued within the framework of regular procedure as compared to decisions issued within the framework of accelerated procedure as well as admissibility decisions. Judicial appeals against negative status decisions under accelerated procedure and inadmissibility decisions have to be filed within 15 days. Negative decisions under regular procedure, and other unfavourable decisions, can be challenged at the newly established International Protection Evaluation Commission (IPEC) within 10 days or directly at the competent administrative court within 30 days. All “international protection” appeals carry suspensive effect and guarantee applicants’ right to stay in Turkey until the full exhaustion of remedies.

<sup>13</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>14</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 nationals 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>15</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.

## B. Procedures

### 1. Registration of the asylum application

#### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?  Yes  No
2. If so, what is the time-limit for lodging an application?
3. 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

#### Applications for international protection

According to LFIP, Provincial DGMM Directorate is the responsible authority for receiving and registering applications for international protection.

According to Art 65-1 of the LFIP, 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>16</sup>

Art per Art 65-1, applications for international protection need to be made to the Provincial DGMM Directorate “in person”. Furthermore, as per Art 1.1 of CIP, applications for international protection may not be made by a lawyer or legal representative. However, as per Art 65-3, a person can also apply on behalf of accompanying “family members”, defined to cover the spouse, minor children and dependent adult children as per Art 3-1-a. Where a person wishes to file an application on behalf of adult family members, the latter’s written approval needs to be taken.

Furthermore, as per Art 1.1 of CIP, 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. In the same connection, Art 3.2 of CIP instructs that registration interviews with unaccompanied minors and other persons who are unable to report to the designated registration premises in the province may be carried out in the locations where they are.

As per Art 65-2, where a request for international protection is presented to law enforcement agencies<sup>17</sup> 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. As per Art 65-5, requests for international protection indicated by persons deprived of their liberty shall also be notified to the Provincial DGMM Directorate “at once”. Therefore, while various state agencies may receive applications for asylum, Art 69-1 of LFIP clearly designates the Provincial DGMM Directorate as the authority responsible for the registration of applications for international protection.

Art 65 of the LFIP does not lay down any time limits on persons for lodging an application as such, whether on territory, in detention or at border, however Art 65-4 appears to impose on applicants the

<sup>16</sup> Turkey is administratively divided into 81 provinces. The provincial governorate is the highest administrative authority in each province. Therefore, provincial directorates of all government agencies report to the Office of the Governor. The agency responsible for registering all applications for international protection is the Provincial DGMM Directorate, which technically serves under the authority of the Provincial Governorate.

<sup>17</sup> In Turkey, while National Police exercises law enforcement duties in residential areas and at border gates, the gendarmerie exerts police duties outside the residential areas.

responsibility of approaching competent authorities “within a reasonable time” as a precondition for being spared from punishment for illegal entry or stay.

The CIP provides additional guidance on the application instance. As per Art 1.2.1 of CIP, application authorities shall obtain a hand-written and signed written statement from the applicant containing information about the international protection request in a language in which he or she is able to express themselves. 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 will be delivered to the DGMM Headquarters within 24 hours.

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

Art 69 of the 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.

As per Art 69-1, applications for international protection shall be registered by the Provincial DGMM Directorate. As per Art 70-2, applicants can request and shall be provided interpretation services for the purpose of the registration interview and later the personal interview.

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

As per Art 69-2, 3 and 4, the registration interview will serve to compile information and any documents from the applicant to identify identity, leave reasons, experiences after departure from country of origin, travel route, mode of arrival in Turkey, and any previous applications for international protection in another country. As per Art 69-2, registration authorities may carry out body search and checks on personal belongings of applicants in order to confirm that all documents are presented.

According to Art 69-3, 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 research. Where such identification measures fail to provide relevant information, the applicant’s own statements shall be accepted to be true.

As per Art 70, applicants shall also be provided information about the international protection procedure, their rights and obligations during the registration stage.

As per Art 69-6, 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.

As per Art 69-7, upon the completion of the registration applicants shall be issued an International Protection Applicant Registration Document free of charge. The Registration Document is valid for 30 days and may be extended by 30 day periods. It endows to the applicant the right to remain in Turkey.

In current practice, it appears that this Registration Document is not issued at all despite the above summarized provisions in the LFIP.

The Registration Document is different from the International Protection Applicant Identification Card issued to applicants when the registration instance is finalized as per Art 76 of LFIP. Whereas the

International Protection Applicant Identification Card also contains a Foreigners Identification Number (FIN) assignment for each applicant, the Registration Document to be issued under Art 69 of LFIP does not include a FIN assignment. Since a FIN designation is required for applicants to access services as asylum seekers, the Registration Document in itself does not provide an applicant access to services such as healthcare and education.

As per Art 69-5, the applicants shall also be notified of the place and date of his or her personal interview at the end of the registration process.

As per Art 3.1 of the CIP, a standard “International Protection Application Registration Form” shall be completed by registration authorities on the basis of the registration interview.

### **Possibility of an inadmissibility decision at registration stage**

Art 72 through 74 of the LFIP lay down the criteria and procedure by which an application for international protection may be determined inadmissible. Furthermore, Art 4 of CIP instructs registration officials to conduct an assessment on the applicant’s situation in relation to the inadmissibility grounds listed in Art 72 of LFIP. According to Art 72-2, an inadmissibility decision can be made “at any stage in the procedure” where ever the inadmissibility criteria laid down in Art 72-1 are identified. Therefore, the registration process may result in an inadmissibility decision.<sup>18</sup>

### **International protection applications in detention places and border locations**

As per Art 1.2.4 of CIP, application authorities may choose to process and register international protection applications of persons deprived of their liberty in the premises where they are detained.<sup>19</sup>

### **Overview of current practice**

Although the LFIP came into force on 11 April 2014, DGMM initially continued to rely on the Foreigners Police branches of Provincial Police Directorates for the processing of foreigners case load, including the asylum case load, since the Provincial DGMM Directorates were not ready to become fully operational at the time. As of 18 May 2015, it was announced that this transitional arrangement was over and the Provincial DGMM Directorates have formally taken over all case load, including the responsibilities regarding registration of new international protection applicants.

That said, most Provincial DGMM Directorates are yet to receive all the new personnel expected to be appointed to their province. Furthermore, Provincial DGMM Directorates are also burdened by duties pertaining to registration of “temporary protection” beneficiaries in their province, in addition to attending duties regarding persons subject to the “international protection” procedure. In most locations, Provincial DGMM Directorates lack sufficient interpreters. Therefore, for a variety of reasons, the waiting period between the application instance and the registration interview may become as long as several months in some locations.

This time lag between the application instance and the registration interview is a concern, since applicants cannot be issued their International Protection Applicant Identification Documents containing a FIN designation until after the registration interview is completed. Therefore, they are unable to access

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<sup>18</sup> Please see the section below on Admissibility Procedure for a discussion on the grounds and legal consequences of an inadmissibility decision at registration stage.

<sup>19</sup> Please refer to the section on Border Procedure below for specific aspects concerning the processing of international protection applications in border locations.

reception services, including the free healthcare coverage. In provinces with long waiting periods, Provincial DGMM Directorates appear to prioritise applicants with disabilities and with serious health problems. On the other hand, the DGMM Headquarters sends down mobile teams from either the Headquarters or neighbouring provinces in order to speed up registration interviews, where possible.

Concerning access to international protection procedure from detention places and border locations, despite the vastly improved legal safeguards provided by the LFIP to secure access to asylum procedure, there are indications that protection seekers intercepted and apprehended by security forces within mixed flows at land and sea border locations 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 as per Art 53 of the LFIP. On the basis of the removal decision, a separate administrative detention for the purpose of removal decision may be issued as per Art 57 of the LFIP. The detention facilities dedicated to this purpose are named Removal Centres. In addition to the Removal Centres on 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 new LFIP came into force in April 2014, there has been an improvement in access to asylum procedure from such detention facilities in so far as persons who manage to take contact with UNHCR, lawyers and NGO advocates are generally able to have their international protection applications registered despite occasional delays in processing. Provincial DGMM Authorities are responsive to interventions by these intermediaries. Waiting periods and delays in processing however can be prolonged and significant in some cases, partially at least due to shortcomings in administrative capacity in locations where a high number of irregular migrants are apprehended and transferred to a specific detention facility.

Furthermore, concerning practices in airport transit areas, as persons intercepted in transit or prior to entry can be deported back to their country of origin or the country of transit from which they arrived in a short period of time, it must 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 to prevent being deported and secure access to Turkey's international protection procedure. Furthermore, there are ongoing practical obstacles in legal representatives' access to persons detained in airport transit areas, including ongoing difficulties in notarizing power of attorneys, as a result of which protection actors may not be able to carry out the swift intervention required, including by taking legal action if needed.

### **Incidents of *refoulement* at borders documented by NGOs**

In the current migration climate, NGO attention at Turkey's border practices has almost entirely been focused on the Syria-Turkey border in recent years. At the same time, irregular border crossings and arrivals of "mixed flows" of refugees and other categories of migrants at Turkey's other land borders, most significantly with Iran and Iraq, has continued. Furthermore, Istanbul Ataturk Airport continues to serve as a key international hub for connection flights from refugee producing regions to European and other Western destinations for asylum.

While the LFIP, for the first time in Turkey, has provided a proper rule of law framework and basic safeguards for persons subject to migration control measures, there is an ongoing gap in regards to any significant level of monitoring presence along Turkey's long land borders in the south and east. Practices

of border security authorities take place largely outside the critical gaze of independent monitoring actors such as NGOs and UNHCR.

The inability of both UNHCR and NGOs to establish monitoring presence in key border locations largely has to do with the vast geography of border crossings and the monitoring actors' very modest human resources on the ground.

In such a context, it is difficult to analyse the current state of practices by Turkish border authorities. Turkey currently does not have a dedicated border agency. Border control functions are shared among the land forces, gendarmerie, coast guard and the National Police.

Against this background, Amnesty International and Human Rights Watch have published a number of reports in recent period, mainly focusing on reported violations along the Turkey-Syria border, but also occasionally making allegations of unlawful returns at other land borders. These reports, while they mainly entail allegations that problematize the shortcomings of Turkey's "temporary protection" regime for refugees from Syria, they also generally indicate alleged practices in detention facilities and border regions that do not comply with the rule of law framework and basic procedural safeguards from arbitrariness established by LFIP.<sup>20</sup>

## 2. Regular procedure

### 2.1. General (scope, time limits)

#### Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months, not binding
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
3. Backlog of pending cases as of 31 December 2015: Not available

#### Eligibility for international protection in Turkey and the decision-making authority

As elaborated in the General Introduction section at the beginning of this chapter, the LFIP defines three types of international protection status, in line with Turkey's 'geographical limitation' on the 1951 Convention:

- The "refugee" status, as per Art 61 of LFIP, which is the international protection status that will be granted to a 1951 Convention Article 1-type refugee originating from a Council of Europe member state;

<sup>20</sup> Amnesty International, "Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees in Turkey", 16 December 2015, <http://bit.ly/1NwzIRu>; Amnesty International, "Fear and Fences: Europe's Approach to Keeping Refugees at Bay", 17 November 2015, <http://bit.ly/1T45UKa>; Amnesty International, "Struggling to Survive: Refugees from Syria in Turkey", 20 November 2014, <http://bit.ly/1mgkl3n>; Human Rights Watch, "Turkey: Syrians Pushed Back at the Border", 23 November 2015, <http://bit.ly/1MwO6Wo>; Human Rights Watch, "Syria/Turkey: Landmines Kill Civilians Fleeing Kobani", 2 December 2014, <http://bit.ly/1LvKoiA>; Human Rights Watch, "Turkey/Azerbaijan: Journalist Deported, Imprisoned", 24 April 2014, <http://bit.ly/1kgvjo9>.

- The “conditional refugee” status, as per Art 62 of LFIP, which is the international protection status that will be granted to a 1951 Convention Article 1-type refugee not originating from a Council of Europe member state;
- The “subsidiary protection” status, as per Art 63, based on the “subsidiary protection” definition in EU Qualification Directive, which is the international protection status that will be granted to persons unable to return to country of origin due to generalized violence, death penalty or torture, regardless of any geographical limitations on country of origin.

In terms of asylum procedures, the LFIP makes no distinction among applicants based on country of origin in relation to the “geographical limitation” policy. All applicants for “international protection”, regardless of nationality, are subject to the same application and determination procedure and benefit from the same procedural safeguards and reception rights.

As per Art 78 of the LFIP, applications for international protection are decided by DGMM. Specifically, the DGMM Department of International Protection is in charge of status determination activities carried out in the Headquarters and by the Provincial DGMM Directorates. Duties related to processing and eligibility determination of international protection applicants are to be carried out by expert DGMM staff occupying the “migration expert” and “assistant migration expert” positions at DGMM Headquarters and with Provincial DGMM Directorates.

Furthermore, as of 1 July 2015, Provincial DGMM Directorates were authorized to issue decisions on “international protection” applications. That said, the DGMM is still in the early stages of building the necessary expertise and implementation modalities in order to be able to fully implement the new provisions of LFIP regarding applications for “international protection”.

### **Regular procedure flow**

As per Art 78-1 of the LFIP, a decision shall be issued within 6 months from the day of registration. However this 6 months interval is not a binding time limit as such, as the provision also instructs that in case an application cannot be decided within 6 months the applicant will be notified. Therefore, this time limit of 6 months foreseen for the processing of international protection applications in regular procedure is not binding on the DGMM.

## **2.2. Fast-track processing**

The LFIP introduces the definition of “persons with special needs” under Article 3-1-(l), which includes unaccompanied minors, elderly, persons with disabilities, pregnant women, single parents with an accompanying child and victims of torture, rape and other serious psychological, physical or sexual violence.

As per Art 67 of the LFIP, “persons with special needs” shall be “given priority with respect to all rights and proceedings” pertaining to the adjudication of international protection applications. While this provision would require DGMM to determine applications by persons of this profile in prioritised fashion, in current practice, since the Provincial DGMM Directorates have not begun to issue status decisions in earnest, there does not appear to be any such “prioritization” of cases on Art 67 grounds.

### 2.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

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

Under the regular procedure, Art 75-1 of LFIP requires DGMM to carry out a personal interview with applicants within 30 days from the day of registration. As per Art 69-5, applicants are notified of the assigned place and date of their personal interview at the end of their registration interview. As per Art 75-4, should the interview cannot be held on the assigned date, a new interview date must be issued. The postponed interview date must be no earlier than 10 days after the previous appointment date. As per Art 75-5, additional interviews may be held with the applicant if deemed necessary.

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

As per Art 70-2, applicants shall be provided with interpretation services, if they request so, for the purpose of personal interviews carried out at application, registration and personal interview stages of the processing of their international protection request.

As per Art 70-3, in personal interviews conducted with applicants who fall within the definition of “persons with special needs”, the particular sensitivities of the applicant shall be taken into consideration. However no specific guidance is provided either in the LFIP or CIP as to whether the applicant’s preference on the gender of the interpreter should and should not be taken into consideration.

Regarding the quality of interpretation during personal interview, Art 6.6 of CIP provides that the personal interview shall be postponed to a later date where the interview official identifies that “the applicant and the interpreter have difficulties understanding each other”. Furthermore, Art 6.3 of CIP requires interview official to instruct the interpreter prior to the interview on

- “The scope of questions that will be presented to the applicant;
- The interpreter’s duty of refraining 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 refraining 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 applicant’s duty of refraining from pursuing personal contact and relations with the applicant in the period after the completion of the interview.”

In current practice, it appears that most Provincial DGMM Directorates have not yet been able to secure a sufficient supply of interpreters. In smaller provinces, individuals from within the registered asylum seeker communities are brought in as interpreters. Applicants generally report concerns regarding such community interpreters’ observance of the confidentiality of the information they share and the quality of

interpretation. In most provinces there are shortages or lack of interpreters in specific rare refugee languages.

In forward looking perspective, according to the legislative design of the DGMM staff structure in the LFIP, a total of 25 staff interpreter positions are to be allocated to the DGMM Headquarters and a total of 36 staff interpreter positions shall be allocated to Provincial DGMM Directorates.<sup>21</sup> Given the current volume of the protection seeker population within the responsibility of Provincial DGMM Directorates around the country, the level of interpreter allocations foreseen by the LFIP design appears to be insufficient.

As per Art 75-6, an interview transcript shall be finalized at the end of the interview, and the applicant shall be given a copy. Additionally, Art 75 provides that audio or video records of the interviews may be taken, though in current practice no such audio or video record are taken.

Art 6.6 of CIP provides additional guidance regarding the production and sharing of interview transcripts. The interview official shall 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 predefined set of questions that must be presented to the applicant covering basic biographic information, profile indicators, leave reasons and fear of return, among other.

As per Art 6.6 of 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 applicants whether they 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 to the interview official. Following this review exercise, the applicant is asked to sign the form and shall be given a signed and finalized copy.

## 2.4. Appeal

### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
  
2. Average processing time for the appeal body to make a decision: Insufficient number of appeals

As per Art 78-1 of the LFIP, DGMM shall issue the decision on the international protection application processed in regular procedure within 6 months from the day of registration. However this 6 months interval is not a binding time limit as such, as the provision also instructs that "in case an application cannot be decided within 6 months the applicant shall be notified."

As per Art 78-3, the situation in the country of origin as well the applicant's personal circumstances should be taken into consideration in the decision making process. As per Art 78-4, consideration may be given to the possibility of an internal protection alternative in the determination of an applicant's international protection needs.

While Art 78 of LFIP designates DGMM Headquarters as the agency authorized to make decisions on international protection applications, on 1 July 2015 the DGMM Headquarters authorized Provincial

<sup>21</sup> Source: LFIP, Attachment to the Main Body of the Law: Staff Positions Allocated to Headquarters, Provincial Directorates and International Cadres of DGMM.

DGMM Directorates to issue status decisions. At present, while some Provincial DGMM Directorates have begun to issue a small number of decisions accordingly, in other cases the Headquarters issues decisions.

As per Art 78-6, decisions must be communicated in written. 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, Art 100 of the LFIP provides that in the notification of all decisions within the scope of the LFIP due consideration shall be given to the fact that “persons concerned are foreign nationals” and that a separate directive shall be issued by DGMM to provide specifics on modalities of written notifications, which created the expectation that the DGMM may communicate translated versions of decisions.

Having said that, in the present practice, the relatively small number of decisions communicated to the applicants so far by DGMM do not contain any substantiation regarding details of the rejection grounds. In the period since April 2014 all written notifications by DGMM, including negative status decisions, are submitted to applicants in Turkish where an oral interpretation is provided to the person concerned during the notification instance with the assistance of an interpreter.

### **Appealing negative status decisions under the regular procedure**

The LFIP provides two separate remedies provided against negative decisions issued under regular procedure, one optional administrative appeal remedy and one judicial appeal remedy. As per Art 80 of LFIP, when faced with a negative status decision by DGMM under regular procedure, applicants

- may either file an administrative appeal with the newly created International Protection Evaluation Commissions (IPEC) within 10 days, and file an onward judicial appeal with the competent administrative court only if the initial administrative appeal is unsuccessful; or
- they can directly file a judicial appeal with the competent administrative court within 30 days without first exhausting the optional administrative appeal remedy at IPEC.

Both types of appeals have automatic suspensive effect. As per Art 80-1-e, applicants shall be allowed to remain in Turkey until the full exhaustion of remedies provided by LFIP against negative decisions.

#### **(1) Administrative Appeal at International Protection Evaluation Commission (IPEC)**

As per Art 80-1-a, 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.

The newly created International Protection Evaluation Commissions (IPEC) are envisioned as a new specialized administrative appeal body. As per Art 115, IPECs will serve under the coordination of the DGMM Headquarters. One or more IPECs may be created under the auspices of either the DGMM Headquarters and/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 Ministry of Justice and Ministry of Foreign Affairs. UNHCR may be invited to assign a representative in observer status. DGMM personnel assigned to the IPECs will be appointed for a period of 2 years where as the Ministry of Justice and Ministry of Foreign Affairs representatives will be appointed for 1 year terms. IPECs are envisioned to serve as full-time specialized asylum tribunals as members will not be assigned any additional duties.

According to Art 115-2, IPECs will be competent to evaluate and decide appeals against

- 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;

Whereas, as per Art 80-1-a,

- administrative detention of international protection applicants as per Art 68,
- inadmissibility decisions as per Art 72
- and status and procedure decisions issued within the framework of the accelerated procedure as per Art 79

are outside the competence of the IPECs.

According to Art 10.1.2 of CIP, IPECs will review the initial DGMM decision both in terms of procedure and merit. The Commission may request the full case file from DGMM if deemed necessary. IPECs are authorized to interview applicants if 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 the finalization of appeals filed with IPECs, Art 10-1-2 of CIP stipulates that the Commission shall finalize the appeal application and notify the applicant within 15 days of receiving the application.

IPECs do not have the authority to directly overturn DGMM decisions. The Commission may either reject the appeal application and thereby endorse the initial DGMM decision, or it may request DGMM to reconsider its initial decision in terms of procedure and merit. According to 10.2 of CIP, the requested reconsideration by DGMM may or may not lead to an overturning of the initial decision. Therefore, decisions by IPEC cannot be considered binding on DGMM. If DGMM chooses to stick to its initial negative decision, the applicant will have to file a consequent judicial appeal with the competent administrative court.

In current practice, the IPECs have not yet been fully institutionalized by DGMM Headquarters. That said, a unit within the Department of International Protection at DGMM Headquarters appears to have assumed the role of IPEC and decided administrative appeals filed by applicants in accordance with Art 80 of LFIP.

It appears that DGMM intends to set up an IPEC in Ankara, before they consider establishing additional IPECs in other localities.

## **(2) Judicial appeal at competent administrative courts**

As per Art 80-1-ç of the LFIP, negative status decisions in the regular procedure may also be directly appealed at the competent administrative courts within 30 days of the written notification of the decision. As will be elaborated separately, there is no requirement for applicants to first exhaust the IPEC step before they file a judicial appeal against a negative decision. However, if they choose to file an administrative appeal with IPEC first, depending on the outcome of the IPEC appeal, they can appeal a negative IPEC decision onward at competent administrative court.

Under Turkish law, administrative court challenges have to be filed in the locality where the act or decision in question was instituted. Depending on whether the status decision was issued by the DGMM

Headquarters in Ankara or the Provincial DGMM Directorate in the applicant's assigned province, the appeal will have to be filed in the competent administrative court in that locality.<sup>22</sup>

While the LFIP has not created specialized asylum and immigration courts, as per Art 101 of LFIP, Turkey's High Council of Judges and Prosecutors shall 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. Earlier in 2015, the Council passed a decision to designate the 1<sup>st</sup> Chamber of each administrative court responsible for appeals against decisions within the scope of LFIP. Thereby, there is an implicit intention to for one designated chamber in each local jurisdiction to specialize in matters of LFIP. That said, these 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 the finalization of appeals against negative international protection status decisions issued within the framework of 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 procedural compliance and the substance. If the application is successful, the administrative court judgement will have annulled the initial negative DGMM status decision, but will not overturn it as such.

As per Art 28 of the Law on Administrative Adjudication Procedures, 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.

Accordingly, the DGMM will have to either reconsider the initial eligibility assessment on the applicant and issue a positive decision within 30 days or file an onward appeal with the Council of State (*Danıştay*), which is the highest administrative court in Turkey.

The CIP remains uninformative in this regard. Art 12 of CIP stipulates that where an applicant's administrative or judicial appeal application is successful, "the DGMM Headquarters will finalize the application", and therefore it must be inferred that the 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 Council of State.

### **Interplay between the IPEC remedy and the judicial appeal remedy**

As per Art 10-2 of CIP, an administrative appeal application with IPEC will not bar applicants from using the administrative court appeal remedy, however if a person chooses to file both with the IPEC and the competent administrative court, the IPEC appeal will not be processed. 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 bypass the IPEC remedy and directly pursue the judicial remedy.

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<sup>22</sup> In Turkey, not all provinces have administrative courts in location. Smaller provinces, which do not have an administrative court in location are attended by courts operating under the auspices of the nearest regional administrative court. The administrative court of each province is divided into several chambers which are designated with numbers.

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.<sup>23</sup>

If the IPEC appeal application is successful and IPEC requests a reconsideration of the initial DGMM decision, the applicant will await the outcome of the requested reconsideration. If the reconsidered decision by DGMM is once again negative, the applicant can file a consequent judicial appeal with the competent administrative court within 30 days of the notification of the final DGMM decision.

### **Onward appeal at Council of State**

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 Council of State within 30 days. There is no time limit for the Council of State to decide the application. The Council of State decision on the onward appeal will constitute the final decision on the application since it cannot be appealed onward.

As per Art 80-1-e, applicants shall be allowed to remain in Turkey until the full exhaustion of remedies provided by LFIP against negative decisions. Therefore, an applicant rejected under regular procedure will be protected from deportation until the negative conclusion of his/her onward appeal at Council of State, if he/she chooses to go all the way.

### **Separate deportation decision after the exhaustion of remedies against negative status decision**

Once an international protection applicant has exhausted the full range of remedies against the negative status decision, and thereby the negative status decision becomes "final", Provincial DGMM Directorate will make a separate assessment on the basis of Art 54 and Art 55 of LFIP to determine whether or not to issue a separate deportation decision on the failed asylum seeker.

Art 54-1-(i) of LFIP provides that persons who have exhausted the international protection procedure may be deported, "unless there are other legal grounds within the framework of LFIP" against their deportation. Art 55 of LFIP provides a set of non-removal grounds, which require DGMM to refrain from deporting a foreign national. Furthermore, all acts and actions by DGMM within the framework of LFIP must respect the *non-refoulement* obligation under Art 4 of LFIP.

The decision to deport a foreign national is issued on the basis of Art 53 of LFIP. A separate associated administrative detention for the purpose of removal decision may or may not be issued on the person in accordance with criteria laid down in Art 57 of LFIP.

As will be elaborated in the section below on Detention of Asylum Seekers, the LFIP provides a separate set of judicial remedies against deportation decisions and administrative detention for the purpose of removal decisions.

This is to say that the final rejection of an international protection application does not automatically lead to a deportation decision. Where a consequent deportation decision is issued on a failed asylum seeker as per Art 54-1-(i) of LFIP, Art 53 of LFIP provides a separate judicial remedy against deportation decisions with automatic suspensive effect. Therefore, there are additional layers of legal protection available to failed asylum seekers under LFIP.

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<sup>23</sup> In this regard, the location of the IPEC processing the appeal will determine which administrative court shall be competent to receive the onward judicial appeal.

## **Individual complaint procedure at Turkish Constitutional Court**

Since September 2012, a new individual complaints procedure was created at Turkey's Constitutional Court, which was styled after the individual complaints procedure of the European Court of Human Rights (ECtHR) and was partially aimed at reducing the high number of complaints against Turkey at 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>24</sup>

While individual complaints to the Constitutional Court do not carry suspensive effect, an urgent interim measure can be requested by the applicants as per Art 73 of the Rules of Court on account of "serious risk on the applicant's life, physical and moral integrity".

Failed international protection applicants who have exhausted all domestic remedies against the negative status decision and the consequent deportation decision can in principle apply to the Constitutional Court and request an Interim Measure to halt their deportation from Turkey. This urgent application procedure by the Turkish Constitutional Court in situations of imminent risk of deportation where the person concerned alleges a risk to his/her life or risk of torture if returned, is similar in nature to the Rule 39 Interim Measure procedure of the ECtHR.

In current practice, there have been a small number of cases brought to the Turkish Constitutional Court by foreign nationals where the Court has agreed to indicate Interim Measures to halt imminent deportation proceedings.

## **Individual complaint to the European Court of Human Rights**

As Turkey is subject to the jurisdiction of the ECtHR, failed international protection applicants also have the option of filing 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 above summarized domestic remedies within the meaning of Article 13 of the ECHR.

Since the establishment of the individual complaint procedure at 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 of 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 of ECHR.

As the above summarized individual complaint procedure at Turkey's 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 must 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 relation to Article 3 of ECHR in deportation cases. In this connection, the *Al Hanchi v Bosnia Herzegovina (48205/09)* 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 ECHR Article 13 standards in imminent refoulement cases. Indeed, in a recent urgent application by Refugee Rights Turkey, the ECtHR has accepted this argument and granted an urgent interim measure to halt the

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<sup>24</sup> Articles 45-51 of the Law No: 6216 on the Structure and Adjudication Procedures of the Constitutional Court.

deportation of complaints despite the fact that the Turkish Constitutional Court urgent application procedure was not used prior to the ECtHR Rule 39 request.<sup>25</sup>

## 2.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

The LFIP provides a set of new safeguards:

- Guaranteeing international protection applicants' unhindered access to lawyers and legal representatives, provided that they compensate lawyers on their own resources;
- Committing provision of state-funded legal aid at judicial appeal stage to applicants who cannot afford to pay lawyer's fees; and
- Acknowledging the legal counselling services provided by NGO providers to international protection applicants.

However the actual supply of free of charge and reliable legal assistance to asylum seekers in Turkey currently remains very limited mainly due to practical obstacles.

### Legislative guarantees regarding access to lawyers and NGO legal counselling providers

As per Art 81-1 of LFIP, 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.

As per Art 81-2, persons who do not have the financial means to pay 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.

As per Art 81-3, international protection applicants and status holders are free to seek counselling services provided by NGOs.

As per Art 75-3, lawyers and legal representatives can accompany applicants during the personal interview. Furthermore, as per Art 94-2, lawyers and legal representatives are also guaranteed access to all documents in the applicant's international protection file and may obtain copies – with the exception of documents pertaining to national security, protection of public order and prevention of crime.

The above referenced safeguards, however, are inscribed 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.

<sup>25</sup> ECtHR, *Sakkal and Fares v Turkey*, Application No. 52902/15. A Rule 39 Interim Measure was indicated to Government of Turkey on 26 October 2015.

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

### **Scope and shortcomings of state-funded Legal Aid services**

As mentioned above, as per Art 81 of LFIP, international protection applicants who do not have the financial means to pay a lawyer are to be referred to the state-funded Legal Aid Scheme (*Adli Yardım*). While at first sight this seems like 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 economically disadvantaged persons in Turkey, including foreign nationals. However in practice, until recently the Legal Aid Scheme did not extend any services to foreign nationals generally, leave 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. Despite efforts to mobilize the Legal Aid mechanism for asylum seekers and capacity-building activities by UNHCR, Refugee Rights Turkey and other NGO actors, the current level of involvement of bar associations in the field of refugee law remains limited. One practical impediment on the way of more involvement by bar associations is the overall scarcity of Legal Aid funding 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 amounts of specialized expertise among Turkish legal practitioner community on asylum and immigration law. Since refugee law is not being taught in any of the law schools around Turkey and very few lawyers have so far chosen to specialize 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 must also be observed that a very small number of private practice lawyers actually choose to specialize in asylum law, since it is not perceived as an income earning field of 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 space of discretion that allows them to limit or extend their involvement in the refugee and immigration law cases as they see fit. Although there have been significant capacity-building and advocacy efforts in recent years at both national and local level to increase the coverage of asylum seekers within the Legal Aid Scheme, at present only a handful of bar associations 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 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 Art 81-2 of the 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 costs associated with bringing a case before an administrative court in Turkey include notary fees for the power of attorney, sanctioned 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 costs from 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 reason.

With regards 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 file 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 more general-type legal information and counselling services to international protection applicants whether in regards the status determination procedure or access to rights and services matters.

The level of financial compensation afforded to lawyers within the state-funded Legal Aid Scheme is modest and is typically aimed to attract young lawyers at the early stages of their professional careers. The 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 asylum 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 is insignificant as compared to the volume and geographical dispersal of the population subject to international protection procedures. This short 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 prioritization of direct legal service activities in donor programs and stringent bureaucratic requirements of project-based funding make it very difficult for specialized 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 big 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 specialized legal counselling and assistance services by any local NGOs.

### **3. Dublin**

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

## **4. Admissibility procedure**

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

#### **Grounds for inadmissibility**

Art 72 through 74 of the LFIP lay down the criteria and procedure by which an application for international protection may be determined inadmissible. According to Art 72-1, there are 4 grounds that require an application to be considered inadmissible:

- (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
  - either after the rejection of the original application, without presenting any additional elements,
  - 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 Art 73 of the LFIP
- (ç) An application by a person who arrived in Turkey from a “safe third country” as defined in Art 74 of the LFIP

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

As per Art 72-2 an inadmissibility decision can be made “at any stage in the procedure” where ever the inadmissibility criteria laid down in Art 72-1 are identified. Therefore, technically an inadmissibility decision may be issued at any stage during the procedure whether during the registration process or the personal interview stage or during the evaluation of the application prior to the finalization of the status decision.

However, Article 4 of CIP instructs implementation authorities that the examination on inadmissibility criteria as per Art 72 of LFIP and the accelerated processing criteria as per Art 79 of LFIP must be carried out by the provincial DGMM Directorates during 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

According to Art 4.1 of CIP, 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 listed in Art 72 of the LFIP, and may or may not hold an additional interview with the applicant for the purpose of inadmissibility assessment.

Depending on the outcome of the inadmissibility assessment by the provincial DGMM directorate,

- If an applicant is considered to fall into criteria listed in (a) or (b) above, 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 finalization of the inadmissibility assessment by the provincial DGMM directorate

- If an applicant is considered to fall into criteria listed in (c) or (ç) above, the provincial DGMM directorate will refer the file to the DGMM Headquarters, which will finalize the inadmissibility determination and may or may not issue an inadmissibility decision. There is no time limit for the referrals to the DGMM Headquarters and the finalization of the inadmissibility determination

As per Art 4.2 and 4.4 of the CIP, 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”

As per Art 72-3 of the LFIP inadmissibility decisions must be communicated to the applicant in written. Furthermore, Art 4.2 and 4.4 of the CIP stipulate 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 the decision. However the problem with this seemingly positive provision is that the CIP does not clarify whether the applicant will be informed and presented 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 CIP properly amounts to an administrative appeal step prior to the actual finalization of the inadmissibility assessment.

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

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

As per Art 73 and 74 of LFIP, where it is determined that an applicant arrived in Turkey either from a “first country of asylum” or a “safe third country”, the DGMM will initiate proceedings for returning the applicant to this third 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 application off the shelf and continue processing. On this point, according to Art 4.2 and 44 of the CIP, if the return attempt does not succeed “within a reasonable period”, 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 discretion.

Once an inadmissibility decision is issued for 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 on the applicant as per Art 54-1-I of the LFIP for his or her return to the third country identified as such. 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 safeguarded in Art 4 and Art 55-1-a of the LFIP.

Attached to this removal decision, a separate administrative detention for the purpose of removal decision as per Art 57 of the LFIP may be issued if the DGMM considers that the criteria listed in Art 57-2 apply and a deprivation of liberty is deemed necessary and justified.

Alternatively, if the DGMM assesses that the criteria in Art 57 of the LFIP do not apply and there is no justifiable reason for detaining the applicant, it may also issue the applicant a “residence permit on humanitarian grounds” as per Art 46-1-d, which would allow the applicant to reside freely during the course of the proceedings for his or her return to the third country identified by DGMM as either a “first country of asylum” or “safe third country”.

## On other grounds

Where an inadmissibility decision is issued for an applicant on grounds (a) or (b) list above, unless he or she files a judicial appeal as will be discussed below, a removal decision will be issued on the applicant as per Art 54-1-I of the LFIP. Attached to this removal decision, the DGMM may either issue a so-called Invitation to Leave notification to the person as per Art 56 of the LFIP and thereby refrain from detaining the person and allow him or her 30 days to depart from Turkey on their own initiative. As will be discussed in the Detention Section, resort to Invitation to Leave course by DGMM is not considered likely in most cases. The more likely possibility is that, attached to the removal decision mentioned above, the DGMM will also issue an administrative detention for the purpose of removal decision as per Art 57 of the LFIP if the DGMM considers that the criteria listed in Art 57-2 apply and a deprivation of liberty is deemed necessary and justified.

### 4.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?  Yes  No
  - ❖ If so, are questions limited to identity, nationality, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
  
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

As per Art 72-2 an inadmissibility decision can be made “at any stage in the procedure” where ever the inadmissibility criteria laid down in Art 72-1 are identified. Therefore, technically an inadmissibility decision may be issued at any stage during the procedure whether during the registration process or the personal interview stage or during the evaluation of the application prior to the finalization of the status decision.

However, Article 4 of CIP instructs implementation authorities that the examination on inadmissibility criteria as per Art 72 of LFIP and the accelerated processing criteria as per Art 79 of LFIP must be carried out by the provincial DGMM Directorates during 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

According to Art 4.1 of CIP, 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 listed in Art 72 of the LFIP, and may or may not hold an additional interview with the applicant for the purpose of inadmissibility assessment.

### 4.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

- |                            |  |   |
|----------------------------|--|---|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
|                            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |

As per Art 80 and Art 115 of the LFIP, 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 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.

Under Turkish law, administrative court challenges have to be filed in the locality where the act or decision in question was instituted. Depending on whether the inadmissibility decision was issued by the DGMM Headquarters in Ankara or the Provincial DGMM Directorate in the applicant's assigned province, the appeal will have to be filed in the competent administrative court in that locality. While the LFIP has not created specialized asylum and immigration courts, as per Art 101 of LFIP, Turkey's High Council of Judges and Prosecutors shall 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. Earlier in 2015, the Council passed a decision to designate the 1<sup>st</sup> Chamber of each administrative court responsible for appeals against decisions within the scope of LFIP.

As per Art 80 of LFIP, the competent administrative court must finalize appeals against inadmissibility decisions within 15 days. 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 as per Art 54-1-i.

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 Turkish Constitutional Court, as elaborated in the above subsection on Appeals in the framework of Regular Procedure. Alternatively, the applicant may also file an urgent application with the ECtHR and request an Interim Measure under Rule 39 of the Rules of Court in claiming that he or she would be at risk of treatment contrary to Article 3 of the ECHR if deported from Turkey.

#### 4.4. Legal assistance

##### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

In theory, as per Art 81 of the LFIP, international protection applicants can choose to be represented by a lawyer in regards to “all acts and decisions within the scope of the International Protection section of the LFIP”. This also includes by definition inadmissibility decisions issued under Art 72.

Similarly, as per Art 81-2, persons who do not have the financial means to pay 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 – once again, 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: Legal Assistance 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 sections on Accelerated Procedure and Border Procedure, these practical difficulties will be even more pronounced 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)

##### 5.1. General (scope, time-limits)

##### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?       Yes       No
2. Can an application made at the border be examined in substance during a border procedure?       Yes       No
3. Is there a maximum time-limit for border procedures laid down in the law?       Yes       No  
❖ If yes, what is the maximum time-limit?      8 days

#### 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>26</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>27</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**

Art 1.2.3 and 15.2 of the CIP further stipulate that applicants referred to accelerated processing at border locations shall be detained in a facility at border premises as per Art 68 of the LFIP during the processing of their international protection application.

Art 68 of the LFIP allows for administrative detention of international protection applicants during the processing of their claim for up to 30 days. Specifically, Art 68-2-b allows for the administrative detention of international protection applicants “at border gates, for the purpose of preventing irregular entry”.

As will be discussed in the Detention section below, Art 68 of the LFIP allows for detention of international protection applicants an exceptional and discretionary measure and requires the examination of the personal circumstances of each applicant and due consideration of alternatives to detention. As such, the instruction in Art 15.2 of the CIP stops short of ordering categorically that all border applications referred to the accelerated procedure shall be detained and refers to criteria laid down in Art 68 of the LFIP, however it strongly indicates to the implementation authorities in that direction.

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

- either to the nearest reception and accommodation centre (as per Art 95 of the LFIP) 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.

In Art 15.2 of the CIP, DGMM also commits to publishing guidelines for the physical standards in facilities used for the detention of international protection applications in border premises. To date, no such written instructions were yet issued by DGMM Headquarters.

### **Accelerated processing at the border**

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<sup>26</sup> Article 1.2.3 CIP.

<sup>27</sup> *Ibid.*

Art 1.2.3 of the CIP requires the DGMM authorities at border to complete the personal interview of the applicant within 3 days and submit the file to the DGMM Headquarters. The DGMM Headquarters will review the file, and

- either finalize a decision within 5 days, as required by Art 79 of the LFIP,
- or refer the application to the regular procedure if it is identified 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 the applicant to report to the city to which he or she will be assigned as per Art 71 of the 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 in regards to procedural flow, personal interview and the appeal as well as the decision-making authority. In theory, it involves a full-fledged examination of the international protection claim in substance as opposed to a mere screening exercise aiming to establish admissibility or identify certain types of claims that shall be excluded from full examination. In current practice, however, it appears that in the limited number of cases processed and decided so far in border locations under the accelerated procedure, all status decisions issued were negative indicating that the status determination assessment was highly superficial.

## 5.2. Personal Interview

### Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are interviews conducted through video conferencing?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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As per the requirements of LFIP, the accelerated procedure undertaken in border premises for the determination of an international protection application must proceed the same way as the accelerated procedure on territory in regards to procedural flow, personal interview and the appeal as well as the decision-making authority.

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

## 5.3. Appeal

### Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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 in regards to procedural flow, personal interview and the appeal as well as the decision-making authority.

As per Art 80 of LFIP, all appeals against negative international protection status decisions carry suspensive effect.

Having said that, since international protection applicants processed in border locations 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 in accessing lawyers and legal assistance providers, whose assistance is crucial in order for them to be able to access the judicial appeal mechanisms foreseen by the LFIP.

#### 5.4. Legal assistance

##### Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

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 procedure

### 6.1. 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.

Article 4 of CIP instructs implementation authorities that the examination on inadmissibility criteria as per Art 72 of LFIP and the accelerated processing criteria as per Art 79 of LFIP must be carried out by the provincial DGMM Directorates during 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.

### **Accelerated procedure time frame**

As per Art 79-2 of the LFIP, in the handling of applications processed under the accelerated procedure the personal interview shall take place within 3 days of the application, and the status decision shall be issued within 5 days of the personal interview.

As per Art 1.2.3 and 1.2.4, the provincial DGMM directorates will be responsible for the registration and personal interview, whereas the DGMM Headquarters will finalize the status decision.

Furthermore, Art 5 of the CIP stipulates that 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.”

As per Art 79-3 of the LFIP, where it is determined that the examination of the application cannot be completed within the time frame laid down in Art 79-2, the applicant may be taken off the accelerated procedure and referred to the regular procedure.

Art 5 of the CIP provides that if the determination cannot be completed within 5 days, it shall be referred to the regular procedure, suggesting that referral to the regular procedure is not a matter of discretion in that case.

In that regard, if the applicant was being detained as per Art 68 of the LFIP while his or her international protection request was being examined under the accelerated procedure, the administrative detention may continue despite the fact that the person is no longer subject to accelerated processing.

### **Link with detention**

As will be discussed in length in the section on Detention below, Art 68 of the LFIP allows for the administrative detention of international protection applicants during the processing of their claim up to 30 days.

Technically, an 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 Art 68 of the LFIP. However, when considering accelerated procedure grounds listed in Art 79 and the additional guidance in the CIP regarding the implementation of the accelerated procedure in tandem with Art 68, it becomes clear that certain categories of applicants will, in the vast majority of cases, be processed in detention under the accelerated procedure.

## 6.2. Personal Interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

In theory, according to LFIP the accelerated procedure shall entail 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 Art 75 of the LFIP also applies to applicants processed in accelerated procedure.

On this point, Art 5 of the CIP stipulates that 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.”

Since to date a relatively small number of cases were processed and decided under the new accelerated procedure, it remains to be seen how in practice the Provincial DGMM Directorates will implement the safeguards and provisions of the LFIP in accelerated procedure cases.

## 6.3. Appeal

### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
  - Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ 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 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)(i) LFIP.

From that point onward, the failed asylum seeker can resort to the separate judicial remedy against the deportation decision within 15 days, which also carries automatic suspensive effect.

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: Appeal](#) 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.

#### 6.4. Legal assistance

##### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

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 Procedure](#) and [Detention: Legal Assistance](#) above.

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

##### Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  
 Yes       With difficulty       No  
❖ Is tailored information provided to unaccompanied children?       Yes       No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  
 Yes       With difficulty       No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  
 Yes       With difficulty       No
3. 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       With difficulty       No

#### Information provision by DGMM

According to Art 70 of LFIP, during registration applicants must be provided information regarding the international protection application and determination procedure, appeal mechanisms and time frames, rights and obligations as asylum applicants, including the consequences of failure to fulfil obligations or cooperate with authorities. If requested by the applicant, interpretation shall be provided for the purpose of interactions with the applicants at registration and status determination interview stages.

Art 16.1 of CIP provides that notifications to applicants at all stages of the procedure shall be made either in the language of his/her country of nationality or in a language they can understand. The CIP also provides a 3-page detailed attachment titled "Information to be Provided to Applicants" consisting of 43 articles divided into 3 sections encompassing the determination procedure, rights of the applicants, and obligations of the applicants respectively. DGMM registration authorities are required to read this entire list to the applicant during registration stage, if needed with the assistance of an interpreter. Upon the completion of this notification exercise, the DGMM official, the applicant and the interpreter have to undersign the 3-page information list in order to document that the notification was provided and received by the applicant. The applicant is provided a copy of the undersigned information list.

These information requirements must equally apply to all applicants regardless of whether the application is subject to the regular procedure or the accelerated procedure, including at border locations.

Apart from the standardized notifications by DGMM registration officials, applicants' access to information and counselling services by NGOs and UNHCR in detention facilities and border premises is generally very limited in current practice.

### **Access to information and counselling services by NGOs**

On a positive note, Art 81-3 of LFIP acknowledges that international protection applicants and status holders are free to seek counselling services provided by NGOs. Since this article governs the provision of legal assistance and counselling services to all international protection applicants, it must be interpreted to also extend to international protection applicants in detention premises.

Currently facilities used to detain international protection applicants are in the category of removal centres as governed by Art 59 of LFIP. There are currently no separate facilities used for the administrative detention of international protection applicants under Art 68 of LFIP. As pointed out elsewhere above, applicants subject to detention under Art 68 are processed within the framework of the accelerated procedure, whether they are held in a removal centre or another detention facility in a border location.

While Art 68-8 provides that detained international protection applicants shall be allowed an opportunity to meet with legal representatives, notary officials and UNHCR representatives, no explicit reference is made to NGO legal counselling providers in this connection. Furthermore, Art 59 of LFIP, which governs the functioning of removal centres provides that "NGOs' visits to removal centres are subject to the permission of DGMM". Currently, no NGOs in Turkey have any formalized arrangement with DGMM to access detention places for the purpose of providing legal information and counselling services to international protection applicants as referred to in Art 81 of LFIP.

In the absence of any such formalized arrangement, the small number of NGO service providers such as Refugee Rights Turkey send down their affiliate lawyers and meet with detained asylum seekers' by taking advantage of the right to meet with legal representatives.

However, the principal practical constraint in that regard has to do with the very limited resources and operational capacities of the small number of NGOs that seek to extend legal information and counselling

services to detained asylum seekers. In the context of a very large country and increasing resort to detention, particularly in border regions, there is simply no sufficient NGO supply to extend counselling services to even a minority of detained protection seekers.

### Access to UNHCR officials

As pointed out above, Art 68-8 of LFIP provides that detained international protection applicants shall be allowed an opportunity to meet with legal representatives, notary officials and UNHCR representatives. Art 92 of LFIP guarantees UNHCR's unhindered access to all international protection applicants. This access provision must be interpreted to extend to applicants in detention under Art 68 of LFIP. Furthermore, Art 59 of LFIP – which governs the functioning of removal centres – also specifically guarantees detained persons' right to meet with UNHCR officials, if they wish so.

In practice however, UNHCR Turkey's actual operational capacity to visit detained asylum seekers is limited due to the very large geography of the country and the high numbers and dispersal of detention practices.

## D. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

While the LFIP does not provide a specific dedicated procedure for the handling of subsequent applications, reference is made to subsequent applications in the legislative guidance concerning admissibility assessment and accelerated processing considerations.

### Subsequent applications and inadmissibility considerations

According to Art 72-1, among the 4 grounds that require an application to be considered inadmissible figures a subsequent application where “the applicant submitted the same claim without presenting any new elements”.

As per Art 72-2 an inadmissibility decision can be made “at any stage in the procedure” where ever the inadmissibility criteria laid down in Art 72-1 are identified. Therefore, technically an inadmissibility decision may be issued at any stage during the procedure whether during the registration process or the personal interview stage or during the evaluation of the application prior to the finalization of the status decision.

However, Article 4 of CIP instructs implementation authorities that the examination on inadmissibility criteria as per Art 72 of LFIP (and the accelerated processing criteria as per Art 79 of LFIP) must be carried out by the provincial DGMM Directorates during registration stage.

Depending on the outcome of the inadmissibility assessment by the provincial DGMM directorate, if an applicant is considered to fall into criteria listed in Art 72-1-(a) above, 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 finalization of the inadmissibility assessment by the provincial DGMM Directorate.

Where an inadmissibility decision is issued for an applicant on Art 72-1-(a) grounds, unless he or she files a judicial appeal against the inadmissibility decision, the person becomes subject to a deportation decision.

Please refer to the above section on Inadmissibility for a discussion of the legal consequences of an inadmissibility decision and available appeal mechanisms.

### **Subsequent applications referred to accelerated processing**

Art 79 of the 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. One of the 7 grounds listed concern subsequent applications is where the applicant “(f) files a subsequent application after his previous application was considered implicitly withdrawn as per Art 77 of the LFIP”.

Art 1.2.4 of the 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” as per Art 79 of the LFIP. One of the situations listed concern subsequent applications: “(e) of persons, who have previously applied for international protection in Turkey but were either rejected or considered to have implicitly withdrawn their application as per Art 77 of the LFIP, when they make a subsequent international protection request”

Article 4 of CIP instructs implementation authorities that the examination on inadmissibility criteria as per Art 72 of LFIP (and the accelerated processing criteria as per Art 79 of LFIP) must be carried out by the provincial DGMM Directorates during 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.

### **Analysis**

In light of the above, while Turkey’s domestic law framework does not lay down a specific procedure for the handling of subsequent applications, persons identified as subsequent applicants may or may not find themselves faced with an inadmissibility decision at registration stage as per Art 72 of the LFIP. If they survive the inadmissibility check, their application will be subject to accelerated processing as per Art 79 of the LFIP.

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

While the legislation does not provide a definition of “subsequent application”, it is indicated that subsequent applicants, who “submit the same claim without presenting any new elements” (LFIP, Art 79-1-a) shall be considered inadmissible. 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”. This is very problematic.

Furthermore, it is also indicated that both persons whose previous application was rejected and persons who were considered to have withdrawn their application (CIP, Art 1.2.4-e) will be treated as subsequent applicants and categorically subject to accelerated processing

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

Where a subsequent applicant is considered inadmissible as per Art 72 of the LFIP, the person concerned will be subject to a removal decision and eventual deportation from Turkey, unless he or she resorts to 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 Art 68 of the LFIP.

### Legal assistance

According to relevant provisions of the LFIP, persons whose applications are treated as “subsequent application”, whether in the context of admissibility or accelerated processing considerations, must have same level of access to legal assistance and representation as other categories of applicants.

In practice, the same practical obstacles already summarized in above sections on Regular Procedure: Legal Assistance and Border Procedure: Legal Assistance also 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: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  For certain categories  No  
❖ If for certain categories, specify which:
  
2. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No  
❖ If for certain categories, specify which:

According to Art 3 of LFIP, “persons with special needs” category includes “unaccompanied minors, handicapped persons, elderly, pregnant women, single parents with minor children, victims of torture, rape and other forms of psychological, physical or sexual violence”.

The LFIP makes a number of special provisions for “persons with special needs” including unaccompanied minors, however overall the current legislative framework falls short of providing comprehensive additional procedural safeguards to vulnerable categories of international protection applicants with the positive exception of unaccompanied minor applicants.

Unaccompanied minor applicants from accelerated processing under Art 79 of LFIP. Neither may they be detained during the processing of their application under Art 68 of LFIP, since Art 66 of LFIP unambiguously orders that unaccompanied minor applicants shall be referred to an appropriate accommodation facility under the authority of the Ministry for Family and Social Services.

Art 67 of LFIP requires “priority” to be given to “persons with special needs” in all procedures, rights and benefits extended to international protection applicants. However, beyond this general notion of “prioritization”, LFIP and CIP make limited specific procedural provisions regarding the treatment of vulnerable applicants.

Art 17.1 of CIP stipulates that registration authorities are required to make an assessment during registration stage whether the applicant belongs in one of the categories defined as “persons with special needs” in Art 3 of LFIP. Art 3.2 of CIP instructs the registration officials to make a note in the applicant’s registration form if he/she was identified to be a “person with special needs”.

Art 17.1 of CIP also foresees the possibility that an applicant may be identified as a “person with special needs” later on in the procedure.

Art 3.2 of CIP instructs that registration interviews with unaccompanied minors and other persons who are unable to report to the designated registration premises in the province may be carried out in the locations where they are.

As per Art 75-3 of LFIP, during status determination interview conducted with “persons with special needs”, the applicant’s sensitive condition shall be taken into account. In interviews conducted with child applicants, the Provincial DGMM Directorate may arrange for the presence of a psychologist, a pedagogue or social worker, a parent or the child’s legal representative, depending on circumstances.

Furthermore, Art 17.9 of CIP instructs that status determination interviews with children shall be conducted by trained personnel, sufficiently informed on the child’s psychological, emotional and physical development. In status determination assessments on child applicants, the decision making official shall give due regard to the possibility that the child may not have been able to fully substantially his/her request for international protection. Furthermore, if a psychologist, a pedagogue or a social worker was arranged to attend the interview, the expert’s written report on the child shall also be taken into consideration.

No such provisions are made in relation to the status assessment on other categories of vulnerable applicants. With the exemption of unaccompanied minors, applicants of the “persons with special needs” profile may be subjected to accelerated processing whether at borders or inland.

## 2. Use of medical reports

### Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes                       In some cases                       No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
Not known

Art 69-4 of the LFIP provides that at the time of registration, responsible authorities shall request international protection applicants to provide information and documents related to reasons for leaving their country of origin and events that led to the application. This provision can be interpreted as a possibility for the applicant to submit a medical report in support of the application. In addition, there is no provision in the LIFP which bars individuals from presenting documents and information in support of their international protection application at any stage of the determination proceedings.

As per Art 3-1-(l) of LFIP, "victims of torture and other serious physical, psychological and sexual violence" are listed in the definition of "persons with special needs". Art 67 of LIFP stipulates for persons with special needs to be given priority with respect to the rights and procedures referred under the International Protection section of the Law. The article also provides that "victims of torture, sexual assault or other forms of serious psychological, physical or sexual violence" shall be provided with sufficient level of medical treatment in order to mend the damages caused by those acts.

While the LIFP does not provide for any dedicated mechanism for the identification of "persons with special needs", Art 17-1 of CIP instructs that DGMM authorities responsible for registration of a new "international protection" applicant shall determine whether the applicant is a "person with special needs" as defined in Art 3 of LFIP.

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

### Indicators: Unaccompanied Children

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

### Identification and age assessment

Art 17.1 of CIP stipulates that registration authorities are required to make an assessment during registration stage whether the applicant belongs in one of the categories defined as "persons with special needs" in Art 3 of LFIP. Art 3.2 of CIP instructs the registration officials to make a note in the applicant's registration form if he/she was identified to be a "person with special needs". Art 17.1 of CIP also foresees the possibility that an applicant may be identified as a "person with special needs" later on in the procedure.

Art 17.9 of CIP provides additional guidance regarding the role of age assessment in the identification of unaccompanied minor applicants. The Article provides that where the applicant claims to be of minor age, but does not possess any identity documents indicating his/her age, if the registration authorities perceive that the applicant's physical appearance suggests a discrepancy between the reported age and the actual age, the applicant shall be referred to either a state hospital in the province or the State Agency for

Forensic Medicine for age assessment. The applicant shall be notified as to the reason of this referral and the age assessment proceedings that will be undertaken.

If the age assessment exercise indicates without a doubt that the applicant is 18 years of age or older, he/she shall be treated as an adult applicant.

If the age assessment fails to establish conclusively whether the applicant is above or below 18 years of age, the applicant's reported age shall be accepted to be true.

While neither LFIP nor CIP make any provisions regarding the methodology to be used in age assessment examinations on international protection applicants, according to the guidelines of the State Agency for Forensic Medicine, for the purpose of age assessment examinations physical examination and radiography data of the person (including of elbows, wrists, hands, shoulders, pelvis and teeth) are listed as primary sources of evaluation.<sup>28</sup> No reference is made to any psycho-social assessment of the person. According to sources from State Agency for Forensic Medicine interviewed for the purpose of this report, age assessments on international protection applicants referred by DGMM are carried out mainly on the basis of wrist x-rays. Bone tests are carried out only as a last resort when deemed necessary, and no psycho-social evaluations are conducted.

### **Appointment of guardians**

According to Art 66 of LFIP, from the moment an unaccompanied minor international protection applicant is identified, the best interests of the child principle must be observed and the relevant provisions of Turkey's Child Protection Law<sup>29</sup> must be implemented. The child applicant must be referred to an appropriate accommodation facility under the authority of the Ministry for Family and Social Services.

The Child Protection Law reference in Art 66 of LFIP is significant. Unaccompanied minors in Turkey identified as such are taken under state care as per the procedures and provisions of the Child Protection Law. Turkish Civil Code makes provisions for the appointment of a legal guardian to all children under state care, regardless of whether they are citizens or non-citizens.

According to Turkish Civil Code,<sup>30</sup> all children placed under state care must be assigned a guardian. Specifically all children who do not benefit from the custody of parents (*velayet*) must be provided guardianship (*vesayet*).<sup>31</sup> The assignment of guardians is carried by Peace Courts of Civil Jurisdiction (*Sulh Hukuk Mahkemesi*) and guardianship matters are thereafter overseen by Civil Courts of General Jurisdiction (*Asliye Hukuk Mahkemesi*). A guardian under Turkish Civil Code should be "an adult competent to fulfill the requirements of the task", not engaged in an "immoral life style" or have "significant conflict of interest or hostility with the child in question". Relatives are to be given priority to be appointed as guardians.<sup>32</sup> Therefore, as far as the legal requirements, qualified NGO staff, UNHCR staff or Ministry of Family and Social Services staff would qualify to be appointed as guardians for unaccompanied minor asylum seekers.

Guardians are responsible for protecting the personal and material interests of the minors in their responsibility and to represent their interests in legal proceedings.<sup>33</sup> Although not specifically listed in the provisions, asylum proceedings under LFIP would therefore clearly fall within the mandate of the

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<sup>28</sup> Adli Tıp Kurumu Başkanlığı, 2012, available in Turkish at: <http://bit.ly/1OKxnNp>, 4.

<sup>29</sup> Law No:4395 on Child Protection.

<sup>30</sup> Law No: 4721 Civil Code of Turkey.

<sup>31</sup> Article 404 Civil Code.

<sup>32</sup> Articles 413, 414, 418 Civil Code.

<sup>33</sup> Articles 445-448 Civil Code.

guardians. As a rule, a guardian is appointed for 2 years, and thereafter may be reappointed for additional two terms.<sup>34</sup>

In practice however, despite the above summarized unambiguous legislative requirements, unaccompanied minor international protection applicants under state care are not appointed guardians – as the Ministry for Family and Social Services chooses not to initiate the procedure for the appointment of guardians for asylum seeker children. Under the circumstances, Refugee Rights Turkey maintains a modest Child Protection Program and extends legal counselling and representation to unaccompanied minor asylum seekers sheltered in Istanbul in relation to both the DGMM proceedings and UNHCR Mandate RSD determinations that they undergo.

## F. The safe country concepts

Indicators: Safe Country Concepts			
1.	Does national legislation allow for the use of “safe country of origin” concept?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	❖ Is there a national list of safe countries of origin?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	❖ Is the safe country of origin concept used in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2.	Does national legislation allow for the use of “safe third country” concept?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	❖ Is the safe third country concept used in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3.	Does national legislation allow for the use of “first country of asylum” concept?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Safe country concepts come up in admissibility considerations in Turkey’s international protection procedure. As elaborated in the [Admissibility Procedure](#) section above, the LFIP provides “first country 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>35</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

<sup>34</sup> Article 456 Civil Code.

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

- and undertakes practices in compliance with the provisions of the 1951 Convention;
- (c) 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>36</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;
- (c) 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>37</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;
- (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;
- (c) The applicant has previously been in the county 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.

Art 73 of the LFIP defines “first country of asylum” as a third country

- “in which the applicant was previously recognized as a refugee and that he or she can still avail himself or herself of that protection”,
- “or where he or she can still enjoy sufficient and effective protection including protection against refoulement”

According to Art 74 of the LFIP, in order to be considered a “safe third country”, the following conditions must apply:

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<sup>36</sup> Article 74 LFIP. The wording resembles the EU definition in Article 38 recast Asylum Procedures Directive.  
<sup>37</sup> Article 74(3) LFIP.

- (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) 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, she has the possibility of obtaining protection in compliance with the 1951 Convention;
- (ç) the applicant does not stand any risk of being subject to serious harm”

## G. Treatment of specific nationalities

### Refugees from Syria

Refugees from Syria are subject to a group-based, *prima facie*-type “temporary protection” regime in Turkey. The “temporary protection” regime currently in place covers Syrian nationals and Stateless Palestinians originating from Syria.

As per Art 16 of the Temporary Protection Regulation (TPR), persons benefitting from “temporary protection” in Turkey are barred from making a separate application for “international protection” status in Turkey within the framework of the LFIP. Any requests for “international protection” presented to competent authorities shall not be processed as long as the “temporary protection” regime is in place. This principle is also reiterated in Provisional Article 1 of the TPR, which provides the specifics of the “temporary protection” regime declared for refugees from Syria. Syrian nationals and Stateless Palestinians, who arrived in Turkey on 28 April 2011 or later shall be barred from making a separate “international protection” application. If they did already make an application for “international protection” before the publication of the TPR on 22 October 2014, these applications shall be suspended and the persons concerned will instead be processed as “temporary protection” beneficiaries.

There are however 3 situations where a person who falls within the scope of the current “temporary protection” regime, may be treated by DGMM within the framework of the “international protection” procedure instead:

#### 1. *Persons who arrived prior to 28 April 2011*

According to Provisional Article 1 of the TPR, any persons falling within the scope of the “temporary protection” regime currently in place, who however arrived in Turkey prior to the cut-off date of 28 April 2011 and had already made an application for asylum at the time, are given the option of choosing whether they wish to remain within the “international protection” procedure framework<sup>38</sup> or benefit from “temporary protection”. That said, the actual number of Syrian nationals who would be affected by this provision must be very limited, since the population of Syrian asylum seekers in Turkey back in early 2011 before the beginning of the conflict in Syria was quite low.<sup>39</sup>

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<sup>38</sup> Please note that as of the time prior to 28 April 2011, the LFIP was not yet in place. Therefore there was a different asylum procedure in place on the basis of the 1994 Asylum Regulation. That said, persons who had initiated asylum applications before the LFIP came into force in April 2014 have simply been transferred from the Foreigners Police to DGMM and reclassified as “international protection” applicants within the framework of LFIP.

<sup>39</sup> As of 31 December 2010, there were only 224 Syrian nationals registered with UNHCR and Turkish authorities as asylum seekers. (Source: UNHCR Turkey).

## 2. *Persons who did not directly arrive from Syria*

Provisional Article 1 of TPR, which provides the eligibility definition of the group of persons from Syria who shall benefit from “temporary protection”, contains a phrasing which in practice is interpreted by border officials as a requirement for prospective beneficiaries to arrive directly from Syria - as opposed to travelling to Turkey from or via a third country.

The provision speaks of persons who “arrive in our borders” or “have crossed our borders”, whether “individually” or “as part of a mass movement of people”. As such, it actually does not articulate a clear requirement of arriving directly from Syria at all. A person taking a plane from a third country and landing in a Turkish airport may be perfectly understood to have “arrived in our borders” “individually”. However, in practice, it appears that Turkish border officials and DGMM interpret this phrasing as a strict requirement for beneficiaries to arrive directly from Syria.

This means that such persons arriving in Turkey from third countries are not considered to fall within the scope of “temporary protection” regime, and therefore they are subject to general terms and provisions under LFIP:

If they arrive in Turkey with a valid passport, they will be treated like other legally arriving foreign nationals and allowed to enter on the basis of the visa-free regime, which had been in place between Turkey and Syria since the time before the start of the conflict in Syria. This legal entry would allow them to stay in Turkey for 3 months, during which they could apply for a regular “residence permit” like other nationalities – if they wish.

However, if they arrive at a border gate without a valid passport, they will be treated like other nationalities of foreign nationals who do not fulfil the travel document requirement for legal entry to Turkey, and denied access to territory. In such a case, however, there is also the possibility for them to make an “international protection” application at the border – like other nationalities of asylum seekers. That said, the DGMM will in that case carry out an admissibility assessment as per Art 72 of the LFIP and may conclude that the “international protection” application is inadmissible on either “safe third country” or “first country of asylum” grounds.

## 3. *“Repeat arrivals”*

The classification of “repeat arrivals” in the context of “temporary protection” as per Art 13 of TPR concerns former beneficiaries of “temporary protection” who previously left Turkey on their own accord but subsequently came back and seek admission to Turkish territory and possibly also renewed access to “temporary protection” in Turkey.

According to Art 13 of the TPR, admission of persons who have previously benefitted from “temporary protection” in Turkey but subsequently left Turkey on their own initiative, is subject to the discretion of the DGMM. The DGMM is authorized to grant or deny admission to Turkey and renewed access to “temporary protection” status upon repeat arrival to Turkey. According to Art 13 of TPR, where the DGMM refuses to grant access to territory and extend renewed “temporary protection” to a person upon repeat arrival, “general terms and conditions” regarding entry, stay and expulsion of foreign nationals shall apply to the person concerned.

Although Art 13 of TPR does not spell out the content of such “general terms and conditions”, it is possible that where the person concerned is refused entry to Turkey but he/she expresses an objection or

fear of being sent back to the third country he/she came from, under LFIP he/she has the right to apply for “international protection” at border, which the DGMM would be required to process.

### **Iraqi asylum seekers**

As mentioned in the General Introduction to Turkey Asylum Context section at the beginning of this chapter, while asylum seekers from Syria are generally subject to the “international protection” procedure, in the period since February 2015 some Iraqi protection seekers in Turkey have in fact been registered by DGMM as “humanitarian residence permit” holders – outside the “international protection” system. As will be elaborated below, as of present persons arriving from Iraq are currently presented two options, which they are free to choose: They can either make an application for “international protection” and treated in accordance with the rules and procedures described in this chapter; Or they can request and obtain what is termed a “residence permit on humanitarian grounds” as per Art 46 of the LFIP and in that case be treated like other nationalities of legally residing foreign nationals.

Since at least around 2007 and 2008, Iraqi nationals had been the largest group of individually arriving asylum seekers in Turkey. However, in June 2014, around 40-50,000 Yazidi Iraqis have arrived at the Turkish border fleeing the capture of Mosul by ISIS and the atrocities the group targeted on the Yazidi population in Iraq. During this episode, the Turkish Government allowed this mass arrival of refugees to cross the border to reach safety in Turkey. In the period after the events of June 2014, arrivals from Iraq continued at a heightened pace due to the deteriorating security situation in parts of Iraq. As by January 2015, the overall size of the Iraqi protection seeker population in Turkey was estimated at around 200-250,000, not all of which were at time registered by either Turkish authorities or UNHCR.

In response to these developments, it appears that throughout the second half of 2014 the DGMM has considered the possibility of adopting a group-based approach for protection seekers from Iraq – similar to the “temporary protection” regime in place for Syrians. In the end, however, the agency stopped short of formalizing the new approach for Iraqis as a “temporary protection” regime as such, and instead opted on another, an *ad hoc* type route intended to offer a level of legal protection and reception rights to newly arrived Iraqis without further burdening the “international protection” procedure. This *ad hoc* approach was first introduced by DGMM by means of a Circular in August 2014, but later amended by another Circular in February 2015.<sup>40</sup>

A first Circular was issued by DGMM on 21 August 2014 instructing that Iraqi nationals arriving in Turkey May 2014 and onward to seek “urgent international protection”, whether individually or as part of a mass movement of people were no longer to be processed as “international protection” applicants. Instead, the provincial authorities throughout Turkey were instructed to register them, issue identification cards and allow them to take private accommodation in the provinces where they registered. Art 55 of the LFIP, which provides non-removal grounds in the context of deportation decisions, was somewhat arbitrarily referred to by DGMM to provide some level of legal grounding to this new approach.<sup>41</sup> As a result of this

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<sup>40</sup> It must be noted that neither of these two Circulars discussed below regarding the treatment of Iraqi protection seekers were made public by DGMM. Refugee Rights Turkey has obtained and analyzed the Circulars *ipso facto* from confidential sources.

<sup>41</sup> In the 21 August 2014 Circular Art 55-1-(a) of LFIP was referred to as the legal grounding of the new approach to handling Iraqi protection seekers. Art 55 of LFIP lays down the non-removal grounds, in the occurrence of which a foreigner may not be deported from Turkey. Art 55 is actually intended to apply to persons outside the “international protection” procedure, who are subject to a possible deportation decision. Art 55-1-a provides that no deportation decision may be taken for a person if there is serious reason to believe that he/she will face death penalty, torture or inhuman treatment in the country to which he/she would be deported. As such, DGMM somewhat surprisingly chose to rely on this provision to provide grounding to what-is-essentially a “temporary protection”-like approach to handling what they perceived at the time as a mass influx of refugees from Iraq.

Circular, Iraqi protection seekers who arrived in Turkey in May 2014 or later were effectively barred from accessing the “international protection” procedure, while Iraqi nationals who arrived and registered as “international protection” applicants prior to May 2014 continued to stay in the “international protection” procedure.

A second Circular was issued by DGMM on 12 February 2015 regarding the treatment of Iraqi protection seekers, officially replacing the previous Circular of August 2014 while building on the same approach. It appears that the second Circular was at least partially motivated by an assessment that the arrivals from Iraq did not acquire a growing mass influx character during the months following the summer of 2014. The new Circular discontinues the previous approach of barring Iraqi nationals access to the “international protection” procedure, but it maintains the previous approach as a second ‘option’ for persons to choose. The Circular provides that Iraqis may choose to register and be processed as “international protection” applicants, but they are also given the option of applying a “humanitarian residence permit” on the basis of Art 46 of LFIP.<sup>42</sup> While the “humanitarian residence permit” is not an international protection status under LFIP, it does grant the right to legal stay and allows holders to choose where they want to live, where as “international protection” applicants and status holders are subject to freedom of movement limitations and have to live in the province designated by DGMM. “Humanitarian residence holders” are provided a level of free health care, excluding medication costs, therefore lesser than what is afforded to “international protection” applicants.

In the period since the February 2015 Circular, a dual structure came about in regards Iraqis. Whereas the majority of Iraqi protection seekers in Turkey appear to have registered as “international protection” applicants with DGMM, some are registered as “humanitarian residence holders” – outside the asylum framework. It appears that most Iraqi protection seekers are ill informed about the advantages and disadvantages of the two options. On the other hand, UNHCR continues to register all Iraqis approaching their offices, regardless of how they are processed by DGMM. To date, there are no publicly available statistics on how many Iraqis are registered as “international protection” applicants with DGMM and how many as “humanitarian residence holders”.

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<sup>42</sup> Under LFIP this would be the type of residence permit to be issued, among other, to persons who may not be deported on grounds of Art 55 of LFIP. Therefore, this approach builds on the classification introduced by the August 2014 Circular and is based on the presumption that Iraqi nationals choosing this option shall be understood to be persons who fall within the scope of Art 55-1-(a) of LFIP, as explained in the previous footnote.

## Reception Conditions

### A. Access and forms of reception conditions

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

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
- |                           |   |   |                             |
|---------------------------|---|---|-----------------------------|
| ❖ Regular procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure        | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ First appeal            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Onward appeal           | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Subsequent application  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

#### Scope of reception conditions in LFIP

While the LFIP does not employ the term of “reception conditions” as such, Art 88 and 89 of the LFIP commit a set of rights, entitlements and benefits for international protection applicants, which thematically and substantially fall within the scope of the EU Reception Conditions Directive.

Art 88 and 89 of the LFIP govern the level of provision and access that shall be granted to international protection applicants (and status holders) in the areas of education, health care, social assistance and services, access to labour market, financial allowance. As per Art 95 of the LFIP, Turkey does not commit the provision of shelter to international protection on applicants, but authorizes DGMM to extend, on discretionary basis, state-funded accommodation to international protection applicants under the auspices of “Reception and Accommodation Centres”. At present there is only one such “Reception and Accommodation Centres” in operation, but 5 more facilities are in the pipeline. As per Art 70 of the LFIP, DGMM is required to provide information all international protection applicants regarding the asylum process, rights and obligations during the registration interview. Art 67 and 67 of the LFIP makes special provisions concerning the reception of unaccompanied minor applicants and other “persons with special needs”.

As per Art 88-2, rights and benefits granted to international protection applicants and status holders may not exceed the level of rights and benefits afforded to citizens.

#### The interval of eligibility for reception conditions

International protection applicants are entitled to the above summarized “reception conditions”, from the moment they make a “request for international protection” and continue to be eligible until they exhaust the international protection procedure in the meaning of a final negative status decision that cannot be appealed onward.

As per Art 3-1-d of the LFIP, an “international protection applicant” is defined as “a person requesting international protection in Turkey, about whose application a final decision is yet to be taken”. It is instructive to break this definition down into its constitutive elements:

**“...a person requesting international protection”**

As per Art 65 and Art 69, the LFIP differentiates between the act of “requesting international protection” (*uluslararası koruma talebinde bulunan*) which can be expressed to any state authorities and the “registration of an application for international protection” (*uluslararası koruma başvurusunun kaydı*) by DGMM, which is the competent authority as such. Therefore it must be interpreted that persons must be considered as “international protection applicants” as defined in Art 3-1-d from the time they approach state authorities and express a “request to international protection”. The actual registration of an applicant by DGMM may come later.

That said, holding a Foreigners ID Number is an essential prerequisite for all foreign nationals in procedures and proceedings regarding access to basic rights and services. International protection applicants are not assigned a Foreigners ID Number until they are issued an “International Protection Applicant Registration Document” after the registration interview took place. In practice, in many cases the registration interview does not take place on the same day as the application instance, and applicants may be asked to wait for as long as a month or more until they are brought in for a registration interview.

Therefore, while technically it should be sufficient for a person to approach DGMM and apply for international protection to qualify for reception conditions, in practice, reception conditions cannot be accessed until after the registration interview.

**“...about whose application a final decision is yet to be taken”**

As per Art 3-1-ö of the LFIP, the term “final decision” refers to

- “the status decision taken by the DGMM on an international protection application if the applicant chooses not to appeal it”
- and “where the applicant appeals the status decision in court, the final court decision which can not be appealed onward in a higher court of law”

As elaborated in the section on Asylum Procedures above, the appeal mechanisms available to applicants processed in the various procedural modalities are different.

In the case of an applicant appealing a negative status decision taken under the regular procedure, the final decision by the Council of State (Danıştay) would be the final decision where by all available domestic remedies would have been exhausted;

Whereas in the case of an applicant appealing

- either a negative status decision taken under the accelerated procedure as per Art 79 of the LFIP
- or an inadmissibility decision as per Art 72 of the LFIP,

the decision by the competent administrative court would be the final decision, since as per Art 80 of the LFIP they cannot be appealed onward in a higher court of law.

**Restrictions on reception conditions by type of procedure:**

In the way of a global overview, with regards to : (a) information, (b) provisions for family unity, (c) and provisions for vulnerable persons, both regular procedure applicants and accelerated procedure applicants are subject to the same level of rights and benefits. With regards to: (a) documentation; (b)

freedom of movement and accommodation; (c) “material reception conditions” (housing, social assistance and benefits, financial allowance); (d) healthcare; (e) vocational training; (f) schooling and education for minors; (g) and employment, there are differences in level and modalities of reception conditions committed to applicants processed in the regular procedure and those processed in the accelerated procedure.

Furthermore, applicants who are detained during the processing of their application as per Art 68 of the LFIP, and processed under the accelerated procedure – including those detained at border premises – are subject to specific reception modalities.

Applicants about whom an inadmissibility decision is taken – whether their application was being processed under the regular procedure or the accelerated procedure – will continue to be subject to the same reception regime as before, until the inadmissibility decision becomes a “final decision” as clarified above.

### **Means criterion and reduction of reception conditions**

The LFIP introduces a means criterion for some of the reception rights and benefits and not for others. With regards to access to primary and secondary education and access to labour market, there is no means criterion. With regards to healthcare, social assistance and benefits and financial allowance, applicants are subject to different means criteria, as will be pointed out in the relevant sections below.

As per Art 90-1-ç of the LFIP, where it is determined that an applicant has “unduly benefited” from services, assistance and other benefits, they shall be obliged to refund costs in part or in entirety.

Furthermore, as per Art 90-2, for applicants who fail to comply with the obligations listed in Art 89 or about whom a negative status decision was issued, the DGMM “may” reduce rights and benefits, with the exception of education rights for minors and basic healthcare. In this regard, Art 90-2 employs the discretionary “may” wording as opposed to a “shall” wording.

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

### **Indicators: Forms and Levels of Material Reception Conditions**

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2015 (in original currency and in €): N/A

While the LFIP does not employ the term of “reception conditions” as such, Art 88 and 89 of the LFIP commit a set of rights, entitlements and benefits for international protection applicants, which thematically and substantially fall within the scope of the EU Reception Conditions Directive.

As per Art 88-2, rights and benefits granted to international protection applicants and status holders may not exceed the level of rights and benefits afforded to citizens.

### **Accommodation**

The LFIP does not commit to providing shelter to international protection applicants. As per Art 95 of the LFIP, “as a rule, international protection applicants and status holders shall secure their own accommodation by their own means”.

That said, as per Art 95-2, the DGMM is authorized to set up “Reception and Accommodation Centres”, as seen in the section on Types of Accommodation below.

### **Financial allowance**

As per Art 89-5 of the LFIP, international protection applicants who are identified to be “needy”, may be allocated a financial allowance by the DGMM. The DGMM shall establish the criteria and modalities for this financial allowance, and the Ministry of Finance’s input will be sought in determining the amounts. Applicants whose applications are identified to be inadmissible as per Art 72 and those processed in accelerated procedure as per Art 79 are excluded from financial allowance. It must be underlined that this is not a right but rather a benefit that “may be” allocated to “needy” applicant by DGMM on discretionary basis. The DGMM is expected to be put in place implementation guidelines, which may include guidance as to the specific criteria and procedure by which an applicant would be identified as “needy” for the purposes of financial allowance. In this regard, as per Art 90-1, applicants are required to keep the competent Provincial DGMM Directorate informed of their up to date employment status, income, any real estate or other valuables acquired. This indicates that such information may be a factor in the assessment of “neediness” for the purpose of financial allowance.

Currently, there is no implementation of Art 89-5 of LFIP, and therefore the possibility of financial allowance to international protection applicants to date remains only a theoretical possibility.

Since International protection applicants are also registered with UNHCR Turkey Representation in the current practice, there is a limited possibility for UNHCR-registered asylum seekers to seek financial assistance from UNHCR, which is granted on exceptional basis in a relatively small number of cases.

### **Healthcare**

As per Art 89-3, applicants “who do not have any health insurance coverage and do not have the financial means to pay for healthcare services”, are to be covered by the General Health Insurance scheme under Turkey’s public social security scheme. The General Health Insurance premiums of such beneficiaries will be paid for by the DGMM. However, the DGMM may require applicants to refund all or part of the premiums at a later time in consideration of the applicant’s financial means. Coverage under Turkey’s General Health Insurance scheme provides substantial level of free healthcare services and medication, however the LFIP is yet to establish administrative guidelines as to how and on the basis of what criteria the financial means of applicants will be determined. Secondly, as beneficiaries need to have been assigned a Foreigners ID Number as a prerequisite for coverage by the General Health Insurance scheme, applicants processed under the accelerated procedure cannot have access to this benefit since they are not issued the International Protection Applicant Identification Document as per Art 76 of the LFIP – which also assigns the Foreigners ID Number to the applicant concerned. As will be elaborated in Section on Healthcare below, applicants who are not processed under the regular procedure only have resort to “urgent and basic healthcare services”, as defined in Turkey’s healthcare legislation.

Art 16.7.1 of the CIP provides administrative guidance to implementation authorities as to the procedure and criteria by which eligibility for General Health Insurance coverage will be determined as per Art 89-3 of the LFIP.

### **Social assistance and benefits**

As per Art 79-2, international protection applicants identified “to be in need” can seek access to “social assistance and benefits”. It is important to understand that the LFIP does not itself commit to providing

social assistance and benefits to “applicants in need”; instead it merely refers international protection applicants to existing state-funded “social assistance and benefits” dispensed by the provincial governorates as per Turkey’s Law on Social Assistance and Solidarity. The Governorates dispense social assistance and benefits under this scheme by means of the Social Solidarity and Assistance Foundations – which, despite the misleading name, are government agencies structured within the provincial governorates.

As per the Law on Social Assistance and Solidarity, the Governorates dispense both in kind assistance such as coal and wood for heating purposes, food and hygiene items and financial assistance to “poor and needy residents” in the province, including foreign nationals. As provincial Governorates are already responsible to deliver social assistance and benefits as per the Law on Social Assistance and Solidarity, the mention in Art 79-2 is a mere confirmation of the principle that “poor and needy” international protection applicants can apply to the Social Solidarity and Assistance Foundation their assigned province of residence to seek subsistence assistance. Art 16.6 of the CIP instructs the provincial DGMM directorates that the current practices regarding social assistance and benefits are “to be continued until the DGMM provides new guidance”.

As such, it will be up to the provincial Social Solidarity and Assistance Foundation to determine whether they qualify the “poor and needy” threshold. Practice to date in this regard has been very inconsistent. Whereas some asylum seekers have been able to receive some amount of subsistence assistance in some provinces, whether in kind or in financial assistance, the criteria and procedure by which the Governorates assess applications has been inconsistent. Furthermore, the Social Assistance and Solidarity Foundations struggle with limited allocations and do not have the means to cover subsistence needs of all such “needy” asylum seekers residing in the province. The refugee influx from Syria has further strained these agencies and shallowed down their provisions for persons subject to the international protection procedure.

### **Contribution of the applicant to reception costs**

In addition to the specific guidance mentioned above regarding the possibility of DGMM requesting applicants to reimburse parts of all of the General Health Insurance premiums paid by the DGMM on their behalf, Art 90-1-ç provides that where it is identified that an applicant or a status holder has “benefited from services, assistance and other benefits although he or she actually did not fulfil the criteria”, he or she shall be obliged to refund the costs incurred in part or in full. At present, in the absence of more specific implementation guidance by the DGMM, this provision must be seen as a mere expression of the basic principle that international protection applicants are subject to means criteria in relation to several key reception entitlements provided by the LFIP.

### 3. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>43</sup> 1
2. Total number of places in the reception centres: 100
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other
5. Type of accommodation most frequently used in an accelerated procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Detention

One of the most prominent shortcomings of Turkey's previous domestic law framework for asylum was the failure to commit to providing state-funded accommodation to asylum applicants. Under Turkey's dispersal policy for asylum seekers known as 'the satellite city system', persons seeking asylum in Turkey were assigned to one of Turkey's 81 provinces and expected to secure their own self-financed accommodation in the assigned province. Asylum seekers were obliged to stay in their assigned province for the duration of their asylum proceedings in Turkey.

The LFIP has introduced limited improvement in this respect and notably fell behind the EU standard. Art 95 of the LFIP clearly establishes that "as a rule, international protection applicants and status holders shall secure their own accommodation by their own means".

However, as per Art 95-2, the DGMM is authorized to set up "Reception and Accommodation Centres" to be used to address "accommodation, nutrition, healthcare, social and other needs" of "international protection applicants and status holders". Where as in the past Turkey did not have any legal notion or actual provision of EU-style reception facilities to house asylum applicants, the LFIP introduces the concept of "Reception and Accommodation Centres" and authorizes the new agency DGMM to establish such new facilities.

Despite this provision in LFIP, to date there is only one such Reception and Accommodation Centre in operation in the province of **Yozgat** in Eastern Turkey with a modest 100 capacity, and it is unclear how many additional Reception and Accommodation Centres will be built in the near future.

The Reception and Accommodation Centres referred to in Art 95 of the LFIP should not be confused with the large-scale camps in the south of Turkey that accommodate refugees from Syria subject to the Government's "temporary protection" regime. As per the TP Regulation of 22 October 2014, these camps for refugees from Syria are referred to as "Temporary Accommodation Centres" and are strictly used for the accommodation of persons subject to the "temporary protection" regime, where are Reception and Accommodation Centres under Art 95 of LFIP are strictly facilities to be used for the accommodation of persons subject to the "international protection procedure".

The LFIP maintains the previous dispersal policy of assigning each applicant to a specific province where they are required to register with the Provincial DGMM Directorate and stay until the end of their international protection proceedings. As per Art 71, international protection applicants are obliged to reside in the province to which they are assigned by the DGMM, where they are expected to secure their

<sup>43</sup> Both permanent and for first arrivals.

own private accommodation on their own resources. Neither the LFIP nor the CIP indicate any plans to offer international protection applicants financial assistance to cover housing expenses.

### **Recent decision to re-purpose 5/6 of the new EU-funded Reception and Accommodation Centres**

As mentioned above, as of present there is only 1 facility in operation designated as a Reception and Accommodation Centre within the meaning of Art 95 of LFIP, a facility in the province of Yozgat in Eastern Turkey, with an accommodation capacity of 100. This facility was inherited by DGMM from the Foreigners Police in the framework of the transition to LFIP.

Up until recently, there was the expectation that 6 brand new Reception and Accommodation Centres, as envisioned by Art 95 of LFIP, would become operational in 2015 with a cumulative accommodation capacity of 2250 beds. These 6 centres were built within the framework of an EU twinning project and 80% of the construction budget has been financed by the European Commission. The locations chosen for the new centres are **Izmir, Kırklareli, Gaziantep, Erzurum, Kayseri and Van**.<sup>44</sup>

However, it now appears that, at least in the near future, only 1 of the new centres built within the framework of this project, the one in the province of **Erzurum**, will actually be used as a Reception and Accommodation Centre by DGMM. According to DGMM sources, Turkey and EU counterparts have recently agreed to dedicate the remaining 5 centres to be used as “removal centres” to support Turkey’s irregular migration control activities in the context of the Action Plan of Migration agreed between EU and Turkey on 29 November 2015. DGMM sources indicate that they will soon start using the facility in Erzurum with a 750 capacity as a Reception and Accommodation Centre, all the other 5 new buildings are currently undergoing restorations to serve as removal centres.

In this context, it is anticipated that in the short term future, the above mentioned existing facility in Yozgat and the new facility in Erzurum will be the only two Reception and Accommodation Centres available to DGMM to shelter vulnerable profiles of international protection applicants and status holders, with a combined accommodation capacity of 850 persons. It remains to be seen how DGMM is going to use the very modest capacity in these two facilities going forward and what categories of international protection applicants (and status holders) will be prioritized for a place in one of the two centres. This also means that for the foreseeable future, the vast majority of international protection applicants will continue to be expected to secure their own private housing in their assigned provinces.

### **Principles regarding the future operation of Reception and Accommodation Centres**

While the current capacity of Reception and Accommodation Centres is extremely limited as compared to the size of the international protection seeking population in Turkey, Art 95 of the LFIP and the 22 April 2014 dated Ministry of Interior Regulation on the Establishment of Reception and Accommodation Centres and Removal Centres lay down the parameters for the future operation and organizational structure of these facilities.

As per Art 95-3 of the LFIP, “persons with special needs” as defined in Art 3-1-I of the LFIP will have priority access to free accommodation and other reception services provided in these facilities.

As per Art 95-4, reception services provided in the reception and accommodation centres may also be extended to international protection applicants and status holders residing outside the centres, although

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<sup>44</sup> European Commission, Fiche: IPA decentralised National Programmes, Project TR 07 12 17, available at: <http://bit.ly/1JujtXl>.

in practice because of the dispersal policy, only applicants registered and residing in the same province as the Centre would be able to access any such services.

As per Art 14 of the above mentioned 22 April 2014 dated Regulation, DGMM Headquarters shall provide the standards for the various types of reception services that will be provided in the Centres, which are yet to be published. However Art 4 of the Regulation stipulates that a list of 9 general principles must be observed in all functioning and provision in the Centres, including prioritization of persons with special needs, best interest of the child, confidentiality of personal data, due notification of residents and detainees on the nature and consequences of all proceedings they undergo, respect for right to religious affiliations and worship and non-discrimination.

### **Unaccompanied minors**

As elaborated in the subsection below on Special Reception Needs, unaccompanied minors international protection applicants are placed in state care and accommodated in children's shelters operated by the Ministry of Family and Social Services.

### **International protection applicants detained in removal centres**

As elaborated in the section below on Detention, persons who apply for international protection from removal centres may be detained up to 30 days as per Art 68 of LFIP. In practice, it appears that in some cases, persons who express a request to apply for international protection while in removal centres are released from detention and referred to an assigned province in order to initiate an international protection application under the regular procedure. In other cases, their applications are registered and processed in the removal centre within the framework of the accelerated procedure as per Art 79 of LFIP. In that case, they will remain detained in the same removal centre although the legal basis of the detention has changed.

Currently there are no separate dedicated facilities used for the administrative detention of international protection applicants as opposed to persons detained for the purpose of deportation as per Art 57 of LFIP.

## **4. Conditions in reception facilities**

### **Indicators: Conditions in Reception Facilities**

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

As elaborated in section on Types of Accommodation, currently the only Reception and Accommodation Centre in operation to shelter international protection applicants is in the province of Yozgat and has a modest capacity of 100 places. A second new Reception and Accommodation Centre is expected to become operational soon in the province of Erzurum with a capacity of 750 places. Therefore, at this point, it would not be meaningful to analyse reception conditions in Reception and Accommodation Centres generally.

In the current context, almost all international protection applicants are subject to private accommodation in their assigned provinces on their own resources.

## 5. Reduction or withdrawal of reception conditions

### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the law provide for the possibility to withdraw material reception conditions?  
 Yes  No

As per Art 90-2 of LFIP, for applicants who “fail to comply with the obligations listed in Art 90” or “about whom a negative status decision was issued”, the DGMM has the discretion to reduce rights and benefits, with the exception of education rights for minors and basic healthcare. In this regard, Art 90-2 employs the discretionary “may” wording as opposed to a “shall” wording.

Art 90-1 of the LFIP lists the obligations of international protection applicants as follows:

- (a) “report changes in their employment status to the competent DGMM directorate within 30 days,
- (b) report changes in their income, real estate and valuables in their belonging within 30 days,
- (c) report changes in their residence, identity data and civil status within 20 days,
- (ç) refund in part or in full costs incurred where is identified after the fact that he or she has benefited from services, assistance and other benefits although he or she actually did not fulfil the criteria
- (d) comply with any other requests by the DGMM within the framework of various procedural obligations listed in the LFIP for applicants”

The principle expressed in Art 90-1-ç above of the obligation for applicants to refund undeserved services and benefits is further elaborated in Art 89-3 in relation to free healthcare coverage. As per Art 89-3-a, applicants “who do not have any health insurance coverage and do not have the financial means to pay for healthcare services”, are to be covered by the General Health Insurance scheme under Turkey’s public social security scheme. The General Health Insurance premiums of such beneficiaries will be paid for by the DGMM. The DGMM may require applicants to refund all or part of the premiums at a later time in consideration of the applicant’s financial means. Furthermore, as per Art 89-3-b, where it is identified at a later time that the applicant actually did have health insurance coverage or sufficient financial means to pay for his or her own healthcare expenses, the DGMM shall terminate the General Health Insurance coverage of the applicant within 10 days and request the applicant to refund medical treatment and medication costs incurred previously.

As per Art 16.7.1 of the CIP, the Provincial DGMM Directorates are responsible and authorized for making the assessment regarding an applicant’s eligibility for General Health Insurance coverage, in accordance with the procedure and criteria mentioned in section on Forms and Levels of Reception Conditions above. It must be deduced that the decision to request an applicant to refund part or all healthcare expenses incurred for him or her shall be made in accordance with the same financial means criteria listed in Art 16.7.1 of the CIP.

As per Art 90-2 of the LFIP, the decision to reduce or withdraw rights and benefits must be based on a “personalized assessment” by the competent Provincial DGMM Directorate. The applicant must be notified in written. Where he or she is not being represented by a lawyer or legal representative, he or she must be explained the legal consequences of the decision as well as the available appeal mechanisms.

As per Art 80, applicants can either file an administrative appeal against such a decision to reduce or withdraw reception rights with the International Protection Evaluation Commissions (IPECs) within 10 days of the written notification, or they can directly file a judicial appeal with the competent administrative court within 30 days.

The IPECs do not have the authority to directly overturn DGMM decisions. The Commission may either reject the appeal application and thereby endorse the initial DGMM decision, or it may request DGMM to reconsider its initial decision in terms of procedure and merit. According to 10.2 of the CIP, the requested reconsideration by DGMM may or may not lead to an overturning of the initial decision. If the DGMM chooses to stick to its initial negative decision, the applicant will have to file a consequent judicial appeal with the competent administrative court.

Judicial appeals with the competent administrative court, on the other hand, technically seek the annulment of the challenged act or decision of the administration. Therefore if the judicial appeal is successful, although the court decision itself does not overturn the DGMM decision, it requires the DGMM to either issue a new decision to comply with the court's decision or appeal the court's decision in the competent higher court of law. In practice, administrative court adjudication in Turkey is extremely lengthy and therefore could not be considered a practical and effective remedy to challenge a DGMM decision for the reduction or withdrawal of reception conditions.

## 6. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       With limitations       No

In the way of a caveat, as elaborated in the preceding subsections, currently the only Reception and Accommodation Centre in operation to shelter international protection applicants is in the province of Yozgat and has a modest capacity of 100 places. A second new Reception and Accommodation Centre is expected to become operational soon in the province of Erzurum with a capacity of 750 places.

Therefore at this point it would not be meaningful to make a generalized assessment regarding access to reception centres by third parties.

Art 95 of LFIP governs the functioning of Reception and Accommodation Centres in the future. Since Reception and Accommodation Centres are defined as open centres, Art 95 does not make any specific provisions concerning residents' access to family members, legal advisors and UNHCR. In relation to NGOs' access to Reception and Accommodation Centres specifically, according to Art 95-8, NGOs' "visits" to these facilities will be subject to the permission of DGMM.

That said, there is a possibility that dedicated sections within Reception and Accommodation Centres may in the future be used to detain applicants according to Art 68 of LFIP. According to Art 68-8, applicants who are detained during the processing of their international protection applications, shall be allowed to receive visitors. They shall also be given opportunity to meet with lawyers, notary officials and UNHCR representatives.

Furthermore, Art 81 of LFIP guarantees unhindered access to legal representation services by lawyers and counselling services by NGOs for all international protection applicants. This provision must be interpreted to extend to applicants processed while in detention according to Art 68 of LFIP.

Finally, Art 92-3 of LFIP guarantees UNHCR’s access to all international protection applicants. This access provision must be interpreted to extend to applicants accommodated in Reception and Accommodation Centres.

As of present however, since only 1 such Reception and Accommodation Centre is operational in the remote province of Yozgat, it remains to be seen how the access of third parties to reception centres will be regulated by DGMM going forward.

## 7. Addressing special reception needs of vulnerable persons

### Indicators: Special Reception Needs

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

According to Art 3 of LFIP, “persons with special needs” category includes “unaccompanied minors, handicapped persons, elderly, pregnant women, single parents with minor children, victims of torture, rape and other forms of psychological, physical or sexual violence”.

The LFIP framework makes a number of special provisions regarding the reception services to be extended to “persons with special needs” including unaccompanied minors. However overall, the additional reception measures prescribed by the existing legislative and administrative framework is far from sufficient.

Art 67 of LFIP requires “priority” to be given to “persons with special needs” in all procedures, rights and benefits extended to international protection applicants.

Art 17.1 of CIP stipulates that registration authorities are required to make an assessment during registration stage whether the applicant belongs in one of the categories defined as “persons with special needs” in Art 3 of LFIP. Art 3.2 of CIP instructs the registration officials to make a note in the applicant’s registration form if he/she was identified to be a “person with special needs”.

Art 17.1 of CIP also foresees the possibility that an applicant may be identified as a “person with special needs” later on in the procedure.

According to Art 67-2 of LFIP, applicants who are identified as “victims of torture, rape and other forms of psychological, physical or sexual violence” shall be provided appropriate treatment with a view to mending the damages caused by such past experiences. However, as to the actual implementation of this commitment, Art 17.1 of the CIP merely mentions that DGMM authorities may cooperate with relevant public institutions, international organizations and NGOs for this purpose. That said, the free healthcare coverage of international protection applicants under Art 89 of LFIP would also extend to any physical or mental health treatment needs of applicants arising from such past acts of persecution.

As elaborated in Types of Accommodation, international protection applicants do not have a right to shelter in Turkey. However, the LFIP envisions the possibility for DGMM to build Reception and Accommodation Centres to shelter vulnerable categories of applicants. That said, currently there is only 1 such facility in operation with a very modest capacity of 100 places and another one is expected to become operational soon with a capacity of 750 places. These two facilities will have a cumulative capacity of 850 places, which is extremely modest as compared to the size of the registered asylum seeker population in Turkey subject to the “international protection” procedure.

Nevertheless, according Art 95 of LFIP, which authorizes DGMM to establish Reception and Accommodation Centres, applicants identified as “persons with special needs” will have priority access to these facilities.

When it comes to unaccompanied minors, Art 66 of LFIP orders that the principle of “best interests of the child” shall be observed in all decisions concerning unaccompanied minor applicants. While applicants below the age of 16 shall be placed in children’s shelters or other premises under the authority of the Ministry for Family and Social Services, applicants who are above 16 years of age may also be accommodated in dedicated quarters within Reception and Accommodation Centres.

## 8. Provision of information

According to Art 70 of LFIP, during registration applicants must be provided information regarding the determination procedure, appeal mechanisms and time frames, rights and obligations as asylum applicants, including the consequences of failure to fulfil obligations or cooperate with authorities. If requested by the applicant, interpretation shall be provided for the purpose of interactions with the applicants at registration and status determination interview stages.

Art 16.1 of CIP provides that notifications to applicants at all stages of the procedure shall be made either in the language of his/her country of nationality or in a language they can understand. The CIP also provides a 3-page detailed attachment titled “Information to be Provided to Applicants” consisting of 43 articles divided into 3 sections encompassing the determination procedure, rights of the applicants, and obligations of the applicants respectively. DGMM registration authorities are required to read this entire list to the applicant during registration stage, if needed with the assistance of an interpreter. Upon the completion of this notification exercise, the DGMM official, the applicant and the interpreter have to undersign the 3-page information list in order to document that the notification was provided and received by the applicant. The applicant is provided a copy of the undersigned information list.

## 9. Freedom of movement

### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  Yes  No

In Turkey international protection applicants do not get to choose their province of residence. Instead each applicant is assigned to a province by DGMM, where they shall register with the Provincial DGMM Directorate, secure private accommodation on their own means and stay there as long as they are subject to the international protection procedure. This dispersal scheme is based on Art 71 of LFIP, according to which the DGMM is authorized to refer an applicant either to a Reception and Accommodation Centre or to private residence in an assigned province.

As elaborated in the subsections above, currently there is only 1 fully operational Reception and Accommodation Centre with a capacity of 100 places. Therefore currently almost all international protection applicants are in self-financed private accommodation in their assigned provinces.

As of 8 December 2015, a total of 134,140 persons were registered with DGMM within the framework of the international protection procedure. Under the dispersal scheme on the basis of Art 71 of LFIP, this population is dispersed among over 60 provinces around Turkey.<sup>45</sup>

In practice, most new asylum seekers in Turkey first approach UNHCR before they approach DGMM to initiate their application for international protection. During their registration at UNHCR, the applicants are informed of the province to which they should report in order to initiate their DGMM Procedure. That said, it is not UNHCR but the DGMM which actually makes the dispersal assignment decisions for new applicants. DGMM periodically notifies and advises UNHCR as to the provinces to which new applicants should be referred. UNHCR's role is to communicate the assignments to new applicants if they first approached UNHCR.

That said, there is no requirement for applicants to first approach UNHCR. They can also directly approach the Provincial DGMM Directorate where ever they are and initiate their international protection application. In this case, the Provincial DGMM Directorate shall decide whether the applicant will be referred to stay in the province or referred to another province in accordance with Art 71 of LFIP.

Once applicants report to their assigned province, they register their international protection request with the Provincial DGMM Directorate and find their own private accommodation in the province. Once they have an address, they are required to inform the Provincial DGMM Directorate. While the DGMM has the authority to impose on applicants the obligation to reside in a specific address, in practice Provincial DGMM Directorate merely requires the applicant to secure and report a residential address within the bounds of the province.

Applicants are obliged to stay in their assigned province until the end of their international protection proceedings. Any travel outside the assigned province is subject to written permission by the Provincial DGMM Directorate. As per Art 71-1, Provincial DGMM Directorates are authorized to impose periodic reporting requirements on registered applicants in order to monitor the applicants' continued stay in the province. In practice, in most localities, asylum seekers are required to report to the Provincial DGMM Directorate once or several times a week.

The failure to stay in assigned province has very serious consequences for the applicant. As per Art 77 of LFIP, international protection applicants who do not report to their assigned province in time or leave their assigned province without permission are considered to have "implicitly withdrawn" their international protection application.

Furthermore, applicants' access to reception rights and benefits provided by the LFIP are strictly conditional upon their continued residence in their assigned province. The International Protection Applicant Identification Card issued to applicants in accordance with Art 76 of LFIP, which serves to enable applicants' access to health care, primary education and other services is considered valid documentation only within the bounds of the province where the document was issued.

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<sup>45</sup> As of April 2014, there were 62 provinces deemed appropriate by DGMM for the referral of international protection applicants. The list of these 62 locations is presented in Attachment No:9 of the CIP. Turkey is administratively divided into 81 provinces. While the majority of provinces in Turkey are therefore included in the dispersal scheme for asylum applicants, the Western big cities of Istanbul, Ankara, Izmir, Antalya and Bursa, among others, are excluded from this list. While new asylum seekers can possibly initiate their application in a location not listed in the list, they will be subsequently assigned and referred to another province that is on the list.

It is possible for applicants to request DGMM to assign them to another province. Art 8 of the CIP provides that applicants can request to be reassigned to another province on two grounds:

- (a) They can request to be assigned to another province where they have a family member. According to Art 8.2.1 of CIP, if the family members in question are close family members, meaning parents, siblings, children, spouse, or grandparents of the applicant, the reassignment request shall be approved. If the family connection is more distant than that, the DGMM Headquarters will make the final decision.
- (b) They can request to be assigned to another province if they can demonstrate that they have a medical condition, which cannot be treated in their assigned province, provided that they present an official report from a state hospital in the assigned province substantiating that. In such a case, it will be up to the Provincial DGMM Directorate to determine in coordination with Provincial Health Directorate to which province the applicant will be assigned.

Requests for a change in assigned province for other reasons may be granted by the DGMM Headquarters on exceptional basis.

Where an applicant is unhappy about his/her province of residence assignment and his/her request for reassignment is denied, he/she can appeal this denial by filing an administrative appeal with the International Protection Evaluation Commission (IPEC) within 10 days or filing a judicial appeal with the competent administrative court within 30 days – in accordance with the provisions of Art 80 of LFIP. In reality however, the latter judicial remedy will be ill-suited for this purpose since the court proceedings will be lengthy.

## B. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |  |   |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>6 months |
| 2. Does the law allow access to employment only following a labour market test?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors:                                   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 5. Are there restrictions to accessing employment in practice?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |

The LFIP allows international protection applicants to apply for a work permit 6 months after they lodged their international protection application, however does not guarantee their access to the labour market.

As per Article 89-4-a of LFIP, asylum seekers may apply for a work permit after six months following the lodging date of their international protection application.

As per Article 89-4-ç, the principles and procedures governing the employment of applicants or international protection beneficiaries shall be determined by the Ministry of Labour and Social Security in consultation with the Ministry of Interior.

As per Article 12 of Law on Work Permits of Foreigners, the Ministry of Labour and Social security makes the final decision regarding the application within 30 days. As per Article 17 of Law on Work Permits of Foreigners, the applicant can appeal a negative decision at administrative courts within 30 days.

In order to access the labour market, the asylum seeker should make an application for work permit together with the employer who is willing to hire her/him.

As per Article 13 of the Implementation Regulation of the Law on Work Permits for Foreigners, Ministry of Labour and Social security decides work permit applications on the basis of the following "evaluation criteria", among others:

- (1) In order for a work place to be eligible for hiring a foreign national, at least five Turkish citizens must be employed at the same work place. For every additional foreign national to be hired, the work place is obliged to demonstrate another 5 Turkish employees.
- (2) The paid-in capital of the work place should be at least 100.000 TL, or its' gross sales must amount to 800.000 TL, or as an alternative its' export volume should amount to at least 250.000 USD.
- (3) For work permit requests concerning foreigners to be employed by associations and foundations, the aforementioned second clause shall not apply. First and second clauses shall not apply while evaluating work permit applications regarding occupations in the branches of foreign airlines in Turkey, in the education sector or domestic services.
- (4) If the work permit is requested for the co-partner of a company, he or she must own at least 20% of the company's shares, and this percentage must equal to at least 40.000 TL.
- (5) The designated salary for the foreign employee must be in compliance with his or her position and competence.

As per Article 11 of Law on Work Permits for Foreigners, foreigners' access to the labour market may be restricted for a determined period, "where the situation of the labour market and developments in the working life as well as sectoral and economic conditions necessitate". The restrictions may apply to the sectors of agriculture, industry or services, a certain profession or line of business or, certain administrative and geographical areas.

As per Article 16-1-(a) of the Law on Work Permits of Foreigners, if there is a deportation order about an individual, his/her work permit will be annulled.

As per Article 13 of the Implementation Regulation of the Law on Work Permits for Foreigners, the Ministry of Labour will consider the educational background of the foreigner while evaluating the reasons indicated by the work place in substantiating their intention to employ a foreign national for the vacant position instead of a Turkish citizen.

Furthermore several occupations are prohibited for foreign nationals by law.

In practice, largely due to the above summarized stringent requirements and restrictions concerning work permits for foreigners, the vast majority of international protection applicants do not have effective access to employment in practice. As a result most of them work without a work permit, which subjects them to different kinds of abuse and exploitation in the work place.

Most principally among the practical obstacles that prevent asylum seekers from securing legal work, potential employers are discouraged by the high financial costs of employing a foreign national and the bureaucratic burden of the administrative procedures that must be followed.

As most asylum seekers are generally suitable for low-skill work, in sectors like textiles, construction and manufacturing, potential employers do not have an incentive to assume the additional financial and administrative burdens of hiring a foreign national.

Language and lack of information about their rights and work permit procedures are additional practical barriers against asylum seekers' access to the labour market.

While neither LFIP nor other relevant domestic legislation make provisions for asylum seekers' access to vocational training schemes, in practice Public Education Centres under provincial Governorates and Turkish Job Agency (İŞKUR) offer vocational courses to asylum seekers in many localities.

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  Yes  No
2. Are children able to access education in practice?  Yes  No

According to Art 89 of LFIP, international protection applicants and their family members shall have access to elementary and secondary education services in Turkey.

Turkey is one of the State Parties to the UN Convention on the Rights of the Child since 1995. The right to education is also recognized by Art 42 of the Turkish Constitution, which stipulates that “no one shall be deprived of the right of learning and education”. Turkey’s Law on Primary Education and Training <sup>46</sup> provides that primary education is compulsory for all girls and boys between the ages of 6-13 and must be available free of charge in public schools. Currently the 8 year compulsory primary education is divided into two stages of 4 years each. Parents or guardians are responsible for registering school-age children to schools in time. Furthermore, the Basic Law on National Education<sup>47</sup> also explicitly guarantees non-discrimination in extension of education services to children, “regardless of language, race, gender, religion”.

In order for a parent to be able to register his/her child to a public school, the family must have already initiated their international protection application and issued International Protection Applicant Identification Cards under Art 76 of LFIP, which also lists the “Foreigners Identification Number” (FIN) assigned by the General Directorate of Population Affairs to each family member. This FIN registry is a prerequisite for school authorities to be able to process the child’s registration.<sup>48</sup> However, the Ministry of National Education instructs public schools to facilitate the child’s access to school even where the family has not yet completed their international protection registration process at DGMM. Children need to attend school in the province to which the family was assigned by DGMM under Turkey’s dispersal scheme for asylum seekers.

<sup>46</sup> Law No: 222 on Primary Education and Training.

<sup>47</sup> Law No: 1738 Basic Law on National Education.

<sup>48</sup> The specifics of the registration procedure are governed by a 23 September 2014 dated Ministry of National Education Circular No: 2014/21 regarding the Provision of Education and Training Services to Foreign Nationals.

It is considered that the rate of access to schooling for children of asylum seeker parents under the international protection procedure is quite high, unlike the situation involving children subject to the “temporary protection” regime in place for refugees from Syria (see [Temporary Protection: Access to Education](#)). However, some practical obstacles remain.

Since the language of education is Turkish, language barriers present a practical obstacle for asylum seeker children. There is no nation-wide provision of preparatory or catch up classes for asylum seeking children who will start their education in Turkey or who did not attend school for some time due to various reasons. In practice, unaccompanied minor asylum seekers who are accommodated in state shelters are offered Turkish language classes provided in the shelters before they are enrolled in schools. For other asylum seeker children, while in theory they have access to Turkish classes provided by public education centres or the municipalities in their assigned province, in practice such language classes attuned for asylum seeker children are not universally available around Turkey. Neither does the Turkish educational system offer adaptation or catch-up classes to foreign children whose previous education was based on a different curriculum.

Where the child has previous educational experiences prior to arrival to Turkey, he/she will undergo an equivalence assessment by Provincial Education Directorate to determine what grade would be appropriate for him/her to enrol. Particularly in cases where the family does not have any documents demonstrating the child’s previous schooling, the equivalence determination may prove complicated.

Finally, although public schools are free, auxiliary costs such as books, stationary and school uniforms will present a financial burden on parents, who are already finding it very difficult to make ends meet in their assigned provinces.

Regarding asylum seeker children with special needs, Ministry of National Education instructs<sup>49</sup> that where a foreign student is identified to be in need of special education, necessary measure shall be taken in accordance with the Regulation on Special Education Services, which governs the provision of education services to children with physical and mental disabilities.

### C. Health care

#### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes       No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes       Limited       No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Limited       No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes       Limited       No

Turkey’s general health insurance scheme makes it compulsory for all residents of Turkey to have some form of medical insurance coverage, whether public or private. For persons whose income earnings are below a certain threshold and are therefore unable to make premium payments to cover their own medical insurance, the scheme extends free of charge healthcare coverage.<sup>50</sup>

<sup>49</sup> *Ibid.*

<sup>50</sup> The Law No: 5510 on Social Security and General Health Insurance Law lays down the scope and modalities of Turkey’s general health insurance scheme.

Art 89 of LFIP provides that “international protection applicants and status holders who are not covered by any medical insurance scheme and do not have the financial means to afford medical services” shall be considered to be covered under Turkey’s general health insurance scheme and as such have the right to access free of charge healthcare services provided by public healthcare service providers. For such persons, the health insurance premium payments shall be paid by the DGMM.

Art 89 of LFIP also provides that where DGMM at a later stage identifies that an applicant is partially or fully able to pay their own health insurance premiums, he/she may be asked to pay back in part of in full the premium amount paid for by DGMM to the general health insurance scheme.

Although the above summarized provisions indicate that international protection applicants shall be subject to a means assessment before the DGMM agrees to assume the payment of their health insurance premiums, in current practice no such means determination is carried out by Provincial DGMM Directorates and all applicants are extended free healthcare coverage under the general health insurance scheme.

On the other hand, while Art 89 of LFIP designates that DGMM shall make the premium payments on behalf of international protection applicants and status holders, in current practice, the Ministry of Family and Social Services makes the payments in the framework of an arrangement between the two agencies. Despite the fact that currently DGMM does not appear to implement any means assessment for the purpose of healthcare coverage decision on applicants, Art 16.7.1 of CIP provides guidance to Provincial DGMM Directorates regarding this assessment procedure. According to this instruction, provincial authorities shall conduct this assessment on the basis of the following considerations:

- a) whether the applicants have the means to pay for their shelter;
- b) level of monthly income;
- c) number of dependant family members;
- ç) any real estate owned in Turkey or country of origin;
- d) whether they receive financial assistance from family members in Turkey or country of origin;
- e) whether they receive financial assistance from any official bodies in Turkey or NGOs;
- f) whether they already have health insurance coverage;
- g) any other considerations deemed appropriate.

Art 90-2 of LFIP registers that for applicants who fail to comply with the obligations listed in Art 89 of LFIP or about whom a negative status decision was issued, the DGMM “may” reduce rights and benefits, with the exception of education rights for minors and basic healthcare. In this regard, Art 90-2 employs the discretionary “may” wording as opposed to a “shall” wording.

Therefore, it is legally possible for DGMM to reduce or withdraw free healthcare coverage for an international protection applicant, either for failure to comply with administrative requirements or pursuant to a negative international protection status decision. That said, in current practice Refugee Rights Turkey is not aware of any such case.

### **Scope of healthcare coverage**

Under the Turkish health system, differentiation is made among primary, secondary and tertiary public healthcare institutions. Health stations, health centres, maternal and infant care and family planning centres and tuberculosis dispensaries that exist in each district in each province are classified as primary healthcare institutions. State hospitals are classified as secondary healthcare institutions. Research and training hospitals and university hospitals are classified as tertiary healthcare institutions.

Persons covered under the general health insurance scheme are entitled to spontaneously access initial diagnosis, treatment and rehabilitation services at primary healthcare institutions. These providers also undertake screening and immunisation for communicable diseases, specialised services for infants, children and teenagers as well as maternal and reproductive health services.

General health insurance scheme beneficiaries are also entitled to spontaneously approach public hospitals and research and training hospitals in their province. Their access to medical attention and treatment in university hospitals, however, is on the basis of a referral, from a state hospital. In some cases, state hospitals may also refer a beneficiary to a private hospital, where appropriate treatment is not available in any of the public healthcare providers in the province. In such a case, the private hospital are compensated by the general healthcare insurance scheme curity and the beneficiary is not charged.

As a principle referrals to university hospitals and private hospitals are only made for emergency and intensive care services as well as burn injuries and cancer treatment. That said, in situations of medical emergency, persons concerned may also spontaneously approach university hospitals and private hospitals without a referral.

General health insurance scheme beneficiaries' access to secondary and tertiary healthcare services is conditional upon whether the health issue in question falls within the scope of the Ministry of Health's Health Implementation Directive – often referred to by the abbreviation “SUT”.

For treatment of health issues which do not fall within the scope of the “SUT” or for treatment expenses related to health issues covered by the “SUT”, which however exceed the maximum financial compensation amounts allowed by the “SUT”, beneficiaries may be required to make an additional payment.

According to “SUT”, persons covered by the general health insurance scheme are expected to contribute 20% of the total amount of the prescribed medication costs. In addition, beneficiaries are expected to pay 3 TL per medication item up to three items, and 1 TL for each item in more than three items were prescribed.

According to Art 67-2 of LFIP, applicants who are identified as “victims of torture, rape and other forms of psychological, physical or sexual violence” shall be provided appropriate treatment with a view to mending the damages caused by such past experiences. However, as to the actual implementation of this commitment, Art 17.1 of the CIP merely mentions that DGMM authorities may cooperate with relevant public institutions, international organizations and NGOs for this purpose. That said, the free healthcare coverage of international protection applicants would also extend to any mental health treatment needs of applicants arising from such past acts of persecution. In any case, free healthcare coverage under General health insurance scheme also extends to mental health services provided by public healthcare institutions. A number of NGOs are also offering a range of psycho-social services in some locations around Turkey with limited capacity.

### **Practical constraints on access to healthcare**

Under normal circumstances, international protection applicants can access the full range of healthcare services under General health insurance scheme only at public healthcare service providers in their assigned province of residence.

They must be already registered with the Provincial DGMM Directorate and issued an International Protection Applicant Identification Card under Art 76 of LFIP, which also lists the “Foreigners Identification Number” (FIN) assigned by the General Directorate of Population Affairs to each applicant. This FIN designation is a prerequisite for hospitals and other medical service providers to be able to intake and process an asylum seeker.

At present, many Provincial DGMM Directorates are overburdened by responsibilities in relation to the “temporary protection” beneficiaries from Syria in their location in addition to persons subject to the “international protection” procedure. This leads to delays in the finalization of registration procedures for new international protection applicants. During this waiting period, since the new applicant does not yet have an International Protection Applicant Identification Card and a FIN number, he/she cannot fully access healthcare services either – with the exception of emergency medical services.

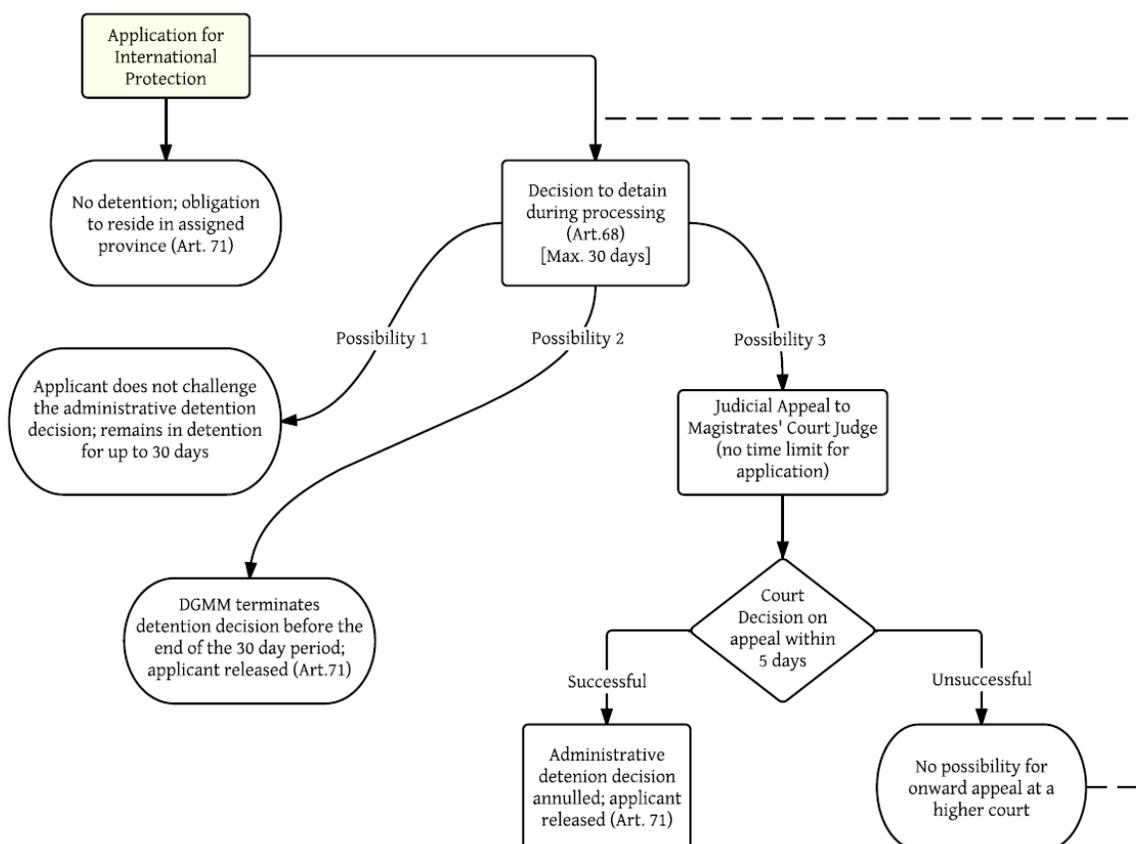
Language barrier is another key problem encountered by asylum seekers in seeking to access to healthcare services. A major practical obstacle for refugees is that hospitals in Turkey give appointments to patients over telephone. Since hospital appointment call centres do not serve prospective patients in any language other than Turkish, foreign nationals need the assistance of a Turkish speaker already at appointment stage.

There is no nation-wide system for the provision of interpretation assistance to international protection applicants and status holders, although NGOs in some locations offer limited services to accompany particularly vulnerable asylum seekers to hospitals.

Where an international protection applicant has a medical issue, for which no treatment is available in his/her assigned province of residence, he/she may request to be assigned to another province to be able to undergo treatment. Art 8 of the CIP instructs that asylum seekers can request to be assigned to another province if they can demonstrate that they have a medical condition, which cannot be treated in their assigned province, provided that they present an official report from a state hospital in the assigned province substantiating that. In such a case, it will be up to the Provincial DGMM Directorate to determine in coordination with Provincial Health Directorate to which province the applicant will be assigned.

## Detention of Asylum Seekers

### *Administrative Detention of International Protection Applicants*



### A. General overview

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015: <sup>51</sup>	Not available
2. Number of asylum seekers in detention at the end of 2015: <sup>52</sup>	Not available
3. Number of detention centres:	20
4. Total capacity of detention centres:	6,730

In current practice in Turkey, most international protection applicants are not detained.

Categories of international protection applicants most commonly detained are:

- Persons who make an international protection application in border premises

<sup>51</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>52</sup> Specify if this is an estimation.

- and persons who apply for international protection after they were intercepted in border regions or apprehended in interior regions for irregular presence, before or after a deportation decision was issued for their removal.

The majority of international protection applicants in Turkey approach the UNHCR Turkey Representation first and 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. Established practice is such that regardless of whether a person entered Turkey regularly or irregularly, if they approach either UNHCR or DGMM authorities on their own initiative to express an asylum request, before they were apprehended for irregular presence, generally speaking they will not be detained during the processing of their international protection application.

The LFIP provides for two types of administrative detention:

- Administrative detention for the purpose of removal, as per Art 57; and
- Administrative detention of international protection applicants during the processing of their applications, as per Art 68.

While removal centres are essentially defined as facilities dedicated for administrative detention for the purpose of removal, as per Art 57, in practice, they are also used to detain international protection applicants.

As will be elaborated below, DGMM considers building

- separate dedicated facilities
- “closed quarters” within the future Reception and Accommodation Centres,
- and special dedicated quarters within Removal Centres

for the purpose of administrative detention of international protection applicants – as distinct from detention of foreigners pending deportation.

However, as of present these new types of facilities envisioned by the LFIP and CIP are not yet in operation, and therefore removal centres are used to detain international protection applicants, without separating international protection applicants from foreign nationals in deportation proceedings.

For reasons mainly having to do with the early stage in Turkey’s transition to the new legislative and administrative framework established by LFIP, there are currently no publicly available statistics on the number of international protection applicants processed while in detention as per Art 68 of the LFIP since April 2014 when the new Law came into force. Neither is there any publicly available information on the number of international protection applicants currently in detention.

According to DGMM, as of March 2015, there were 15 active removal centres in Turkey with a total detention capacity of 2980.

The LFIP does not make any explicit and specific provisions as to the handling of the international protection applications of detained applicants other than requiring as per Art 68-5 that applications of detained applicants must be finalized “as quickly as possible”.

However, an analysis of the provisions concerning the accelerated procedure on territory and at borders, in tandem with the above summarized Art 68 grounds for the detention of international protection applicants, indicates that

- certain categories of applicants subject to the accelerated procedure on territory
- and all applicants subject to the accelerated procedure at border

will stand a very high likelihood of being detained as per Art 68 while their international protection claim is processed.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
2. Are asylum seekers detained in practice during the Dublin procedure? N/A
3. Are asylum seekers detained during a regular procedure in practice?  Frequently  Rarely  Never

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>53</sup> Persons “may not be detained for the sole reason of having submitted an international protection application.”<sup>54</sup>

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

- (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>55</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.

<sup>53</sup> Article 68(2) LFIP.

<sup>54</sup> Article 68(1) LFIP.

<sup>55</sup> Note, however, that it figures among the grounds for pre-removal detention under Article 57(2) LFIP.

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>56</sup> The competent authority may end detention at a later time following the detention order and put in place less coercive alternative measures.<sup>57</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>58</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*

Furthermore, applicants falling under Article 79(1)(c) 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>59</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.

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<sup>56</sup> Article 68(5) LFIP.

<sup>57</sup> Article 68(6) LFIP.

<sup>58</sup> Article 68(5) LFIP.

<sup>59</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.

(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>60</sup> See the section on Border Procedure above for more details.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
 Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions  
 Other
2. Are alternatives to detention used in practice? Not known

With regards to alternatives to detention, Art 68-3 LFIP:

- instructs authorities “to consider whether free residence in an assigned province and regular reporting duty as per Art 71 of the LFIP will not constitute a sufficient measure”;
- provides the provincial DGMM directorate discretion space “to provide other alternative measures instead of detention”; and
- instructs that an administrative detention decision shall only be issued where the above listed alternative measures are not deemed sufficient.

## 3. Detention of vulnerable applicants

### Indicators: Detention of Vulnerable Applicants

1. 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
2. Are asylum seeking children in families detained in practice?  
 Frequently  
 Rarely  
 Never

As per Art 68 of the LFIP unaccompanied minor international protection applicants must be categorically excluded from detention, since they must be placed in appropriate accommodation facilities under the authority of the Ministry for Family and Social Services.

<sup>60</sup> Articles 1.2.3 and 15.2 CIP.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |               |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 30 days       |
| 2. 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.

In current practice, one notable problem concerns persons who were already in detention for the purpose of removal and subject to deportation proceedings by the time they made an application for international protection.

As discussed above, once they make an application for international protection, the earlier deportation decision and the associated deportation decision for the purpose of removal will no longer be justified, since international protection applicants are protected from deportation. If the authorities decide to keep the applicant in detention during the processing of the international protection claim in accordance with Article 68, an Art 68 decision must be made accordingly and communicated to the applicant. As such, the person would have transitioned from one detention regime to another, where he/she is no longer being detained for the purpose of removal under Art 57 of LFIP but instead now detained as an international protection applicant under Art 68 of LFIP.

In current practice, however, it appears that Provincial authorities fail to issue an Art 68 decision at all in these situations and assume that the previous Art 57 decision is still valid as the basis of the person's deprivation of liberty. By the same token, provincial authorities fail to observe the very different procedural safeguards required by Art 68 and most notably within that the maximum time limit of 30 days.

Refugee Rights Turkey is aware of multiple such cases where the persons concerned were never communicated Art 68 detention orders and held in detention for more than 30 days while their asylum application was processed by DGMM. This practice is clearly in violation of the requirement of the LFIP.

### C. Detention conditions

#### 1. Place of detention

##### Indicators: Place of Detention

- |  |                              |  |
|--|------------------------------|--|
| 1. Does the law 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)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

As elaborated above, the LFIP clearly differentiates between administrative detention in removal proceedings and administrative detention in international protection procedure, which are governed by Art 57 and Art 68 respectively.

However, while DGMM considers using various new type of facilities for the administrative detention of international protection applicants going forward, as of present these new types of facilities envisioned by the LFIP and CIP are not yet in operation, and therefore removal centres are used to detain international

protection applicants, without separating international protection applicants from foreign nationals in deportation proceedings.

In this regard, Art 15.1 of the CIP provides that

- “where possible”, special quarters within reception and accommodation centres for international protection applicants as per Art 95 will be used for the detention of international protection applicants,
- In locations “where there is no reception and accommodation centres, or the existing reception and accommodation centres do not have appropriate provisions”, special dedicated quarters within removal centres may be used.

As elaborated in the Border Procedures section above, Art 1.2.3 and 15.2 of the CIP further stipulate that applicants referred to accelerated processing at border locations shall be detained in a facility at border premises as per Art 68 of the LFIP during the processing of their international protection application.

According to Art 15.2 of the CIP, where there is no appropriate detention facility at border premises, the applicant may be transferred to

- either to the nearest reception and accommodation centre (as per Art 95 of the LFIP) 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.

According to DGMM, as of March 2015, there were 15 active removal centres in Turkey with a total detention capacity of 2980. The locations and capacities of these centres were listed as follows:

<b>Location</b>	<b>Capacity</b>
ADANA	120
ANTALYA	60
AYDIN	200
BURSA	32
ÇANAKKALE	84
EDİRNE	400
ERZURUM	750
GAZİANTEP	50
HATAY	192
İSTANBUL	300
İZMİR	260
KIRIKKALE	40
KIRKLARELİ	50
TEKİRDAĞ	50
VAN	392
<b>Total</b>	<b>2980</b>

Source: DGMM

In addition, as of March 2015, the construction of 12 additional removal centres was being planned by DGMM for which budgetary allocations were made in the 2014 and 2015 annual budgets of the agency.

The locations and capacities of these new centres were listed as follows:

<b>Location</b>	<b>Capacity</b>
ANKARA	400
AĞRI	400

ÇANAKKALE	250
KOCAELİ	250
KONYA	250
MALATYA	250
TEKİRDAĞ	400
İSTANBUL	400
HATAY	400
KIRIKKALE	400
ANTALYA	120
AYDIN	400
<b>Total</b>	<b>3920</b>

Source: DGMM

According to this plan, as of March 2015 DGMM's stated aim was to have a total of 27 removal centres and with a cumulative capacity of 6,900 places when the planned centres are complete and operational in 2016-2017.

However, in the context of the recent high-level dialogue between EU and Turkey on migration cooperation, and the Action Plan on Migration agreed by the two sides on 29 November 2015, Turkey has not only made a commitment to strengthen efforts to control irregular migration flows across the Aegean, the two sides have also agreed to trigger the implementation of the EU-Turkey readmission agreement signed back in December 2013 earlier than previously envisioned. Under the new political agreement, Turkey has approved to accept the implementation of the return and readmission provisions of the treaty to third country nationals by June 1<sup>st</sup> 2016.

In anticipation of the significantly heightened urgency to increase administrative detention places in light of this political agreement, DGMM has recently started to step up efforts to make further investments in immigration detention capacity.

Most notably, it appears that the two sides have agreed to re-purpose 5 of the 6 Reception and Accommodation Centres, which were recently built with EU funding support within the framework of a twinning project, to be used as removal centres instead. These 5 new facilities are currently undergoing physical revisions in order to become closed facilities as opposed to the original open designs:

<b>Location</b>	<b>Capacity</b>
GAZİANTEP	750
İZMİR	750
KIRKLARELİ	750
VAN	750
KAYSERİ	750
<b>Total</b>	<b>3750</b>

Source: DGMM

These 5 new repurposed removal centres are expected to become operational in the coming months.

In light of the above, the combined capacity of 15 active removal centres as of March 2015 and these 5 new removal centres would amount to 6730.

That said, DGMM sources indicate that the agency plans to increase its current immigration detention facility to a cumulative 10 000 places by 1 June 2016 – when the EU-Turkey readmission agreement is scheduled to come into force for the purpose of readmission and returns of third country nationals.

Furthermore, DGMM recently announced that as of 23 November 2015 the agency has finalized taking over the administration of all active removal centres from the Foreigners Department of the National Police, which was the agency previously mandated to detain foreign nationals.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |   |
|---|---|---|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No   |
| ❖ If yes, is it limited to emergency health care?       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No   |
| 2. Is access to detention centres allowed to            |   |   |
| ❖ Lawyers:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No            |
| ❖ NGOs:   | <input type="checkbox"/> Yes            | <input type="checkbox"/> Limited <input checked="" type="checkbox"/> No |
| ❖ UNHCR:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No            |
| ❖ Family members:                                       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited <input type="checkbox"/> No |

All removal centres in Turkey are under the authority of DGMM. Similarly any other types of detention premises that may be used in the future in immigration context will be under the authority of DGMM.

### Access to lawyers, NGOs and UNHCR

As per Art 68-8 of the LFIP, which governs the administrative detention of international protection applicants, detained applicants will be provided opportunities to meet with their legal representatives, UNHCR officials and notary.

As Art 81-3 of the LFIP establishes that international protection applicants and status holders shall be allowed to benefit from counselling services provided by NGOs, this safeguard must also extend to detained international protection applicants. However, Art 68 fails to make explicit reference 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 must be seen as an arbitrary reduction of the safeguard in Art 68.

Regarding visits by lawyers, UNHCR and notary, Art 15.2 of the CIP requires detention authorities to "present the opportunity" for such meetings to take place, but they will be subject to permission by the detention authority.

As per Art 68-8, detained applicants may also receive visitors. In this regard, Art 15.2 of the CIP all visits will be subject to permission. 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 territory are subject to the permission of the DGMM official in charge of the facility. Request for visiting a detained applicant 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.

As per Art 15.2, 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.

## **Material conditions in detention**

Art 15.1 of the CIP further provides that the DGMM Headquarters will separately issue guidelines regarding the standards to be observed in facilities used for the detention of international protection applicants.

In Art 15.2 of the CIP, DGMM also commits to publishing guidelines for the standards in facilities used for the detention of international protection applications in border premises. However, the DGMM is yet to provide the administrative guidelines on detention standards referred to in the CIP.

## **Healthcare and education**

As 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 DGMM guidelines on detained applicants mentioned above are expected to make specific provisions regarding access to healthcare and education.

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

According to Art 14 of the Regulation on the Establishment of Reception and Accommodation Centres and Removal Centres, residents and detainees in both types of centres shall be provided “urgent and basic healthcare services which cannot be afforded by the person concerned”.

As per Art 14-2 of the Regulation, the DGMM is yet to publish specific administrative guidelines regarding the delivery modalities and standards of services that will be provided in the two types of Centres.

According to Art 89-3 of the 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 “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 must have been issued an International Protection Applicant Identification Document, which also features a Foreigners Identification Number (FIN). However, as per Art 76-2, applicants who are processed within the framework of the accelerated procedure as per Art 79 shall not be issued an International Protection Applicant Identification Document. Therefore, as discussed in the Accelerated Procedures section above, since detained applicants will also be subject to accelerated processing, they will not be eligible for General Health Insurance coverage. Therefore their access to healthcare services will be limited to “urgent and basic healthcare services which cannot be afforded by the person concerned”, as pointed out above.

## **Persons with special needs**

Art 3-1-I of the LFIP provides the definition of persons with special needs. As per Art 67-1 of the LFIP persons with special needs shall be prioritized in all proceedings and access to rights provided by the LFIP to international protection applicants. As per Art 67-2, “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.”

The upcoming 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 of using special quarters within either the 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 is instructive.

As per Art 14 of the 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. As per Article 14-2 of the Regulation, DGMM Headquarters shall provide the standards for the various types of reception services that will be provided in the Centres, which are yet to be published.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?  Yes  No
2. If yes, at what interval is the detention order reviewed?

As per Art 68-4 of LFIP, the decision to detain an international protection applicant during the processing of his or her claim must be communicated in written. The notification letter must provide the reasons justifying detention and the length of detention. The applicants must also be notified of the legal consequences of the detention decision and available appeal procedure, however the provision does not impose a requirement to provide this information in written.

While there is no requirement of automatic periodic review of the detention decision by either 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 at the competent Magistrate's Court Judge.

Art 101 of LFIP authorizes Turkey's High Council of Judges and Prosecutors to determine which Magistrate's Court chamber in any given local jurisdiction shall be responsible for appeals against detention decisions within the scope of LFIP.

In November 2015, the Council passed a decision to designate the 2<sup>nd</sup> Chamber of each Magistrate's Court responsible for appeals against administrative detention decisions within the scope of LFIP. Thereby, there is an implicit intention to for one designated chamber in each local jurisdiction to specialize in matters of LFIP. That said, these competent chambers will continue to deal with all types of case load and will not exclusively serve as asylum and immigration appeal bodies.

The competent Magistrate's Court judge must finalize the appeal within 5 days. The decision of the Magistrate's Court is final it cannot be appealed by either side in a higher court of law. However, there is no limitations on new appeals by the applicant to challenge his or her ongoing detention.

Art 70-2 of the LFIP stipulates that "applicants will be provided interpretation during all interactions with authorities at application, registration and personal interview stages, if they request so". Furthermore, Art 100-2 of the LFIP stipulates 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, however the fact that the provision in Art 68 itself does not establish this as a clear duty on the part of the detention authority is cause for concern.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

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

### Access to State-funded General Legal Aid Scheme

According to Art 68-8 of LFIP, detained international protection applicants must be given opportunity to meet with legal representatives, notary and UNHCR officials, if they wish so.

As per Art 81-1 of LFIP, 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.

As per Art 81-2, persons who do not have the financial means to pay 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. However, as elaborated in the section above on the Regular Procedure, while at first sight this seems like 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 economically disadvantaged persons in Turkey, including foreign nationals. However in practice, until recently the Legal Aid Scheme did not extend any services to foreign nationals generally, leave alone asylum seekers and other categories of vulnerable migrants. At present, very few bar associations extend any meaningful amount of legal aid services to international protection applicants leave alone detained asylum seekers. In this regard, bar associations continue to struggle with capacity and resource limitations as well as a reluctance to extend services to a group hitherto not covered under the legal aid scheme.

Furthermore, the functioning of the General Legal Aid Scheme in Turkey requires the applicant to approach the bar association to make a formal request for legal aid. While some bar associations have been working to build more flexible interpretations of this requirement in recent years in relation to detained migrants and asylum seekers, in practice it is very difficult for a detained asylum seeker to access the legal aid mechanism by himself or herself. In most cases, either an NGO or UNHCR will alert the bar association and seek to ensure the appointment of a legal aid lawyer to the person.

### Access to legal assistance services of NGOs

As per Art 81-3, international protection applicants and status holders are free to seek counselling services provided by NGOs. This safeguard must be understood also to extend to international protection applicants in detention. However, while Art 68-8 provides that detained international protection applicants shall be allowed an opportunity to meet with legal representatives, notary officials and UNHCR representatives, no explicit reference is made to NGO legal counselling providers in this connection.

Furthermore, Art 59 of LFIP, which governs the functioning of removal centres provides that “NGOs’ visits to removal centres are subject to the permission of DGMM”. Currently, no NGOs in Turkey have any formalized arrangement with DGMM to access detention places for the purpose of providing legal information and counselling services to international protection applicants as referred to in Art 81 of LFIP. In the absence of any such formalized arrangement, the small number of NGO service providers such as Refugee Rights Turkey send down their affiliate lawyers and meet with detained asylum seekers’ by taking advantage of the right to meet with legal representatives.

However, the principal practical constraint in that regard has to do with the very limited resources and operational capacities of the small number of NGOs that seek to extend legal information and counselling services to detained asylum seekers. In the context of a very large country and increasing resort to detention, particularly in border regions, there is simply no sufficient NGO supply to extend counselling services to even a minority of detained protection seekers.

### **Problems in authorizing a legal representative**

In Turkey, for a lawyer to be authorized to represent a person, they must obtain a *notarized* power of attorney. This means that a Notary Office must be involved during the certification of the legal representation act between the lawyer and the person. According to the Law No: 1512 on Notaries, an identity document must be presented to the Notary Office by the person seeking to notarize a power of attorney. Art 90 of the Implementing Regulation of the Law on Notaries lists the type of documents that may be presented by persons to Notary Offices for the purpose of establishing identity. In the case of foreign nationals, Notary Offices do not hesitate to accept passports as valid identity documents, they are generally reluctant to proceed with any other type of identification documents presented by foreigners.

After the LFIP came into force, it emerged that various new types of identity documents were being issued to foreign nationals, which Notary Offices were reluctant to recognize and process. In response, on 19 September 2014, the Union of Notaries in Turkey published a regulatory note addressed to Notary Offices, listing the types of documents issued by reference to LFIP, which can be accepted as valid identity documents by Notary Offices.

Crucially, the Note identifies the “International Protection Applicant Registration Document” as a valid identity document for the purpose of notarization of power of attorney. This is a very positive step. However, in practice detained asylum seekers are not issued this document at all, which renders it impossible for them to notarize a power of attorney.

As per Art 69-7, upon the completion of the registration of an international protection applicant, Provincial DGMM Directorate must issue an International Protection Applicant Registration Document to the applicant free of charge. The Registration Document is valid for 30 days and may be extended by 30 day periods. However in current practice, it appears that this Registration Document is not issued at all to detained asylum seekers despite the clear provision in the LFIP. Therefore, detained asylum seekers who do not have any identity documents with them remain completely unable to authorize a legal representative and therefore their ability to effectively use the judicial remedies provided by LFIP is significantly curtailed.

Currently, there are ongoing discussions among refugee rights advocacy actors, DGMM, UNHCR and Union of Notaries to address this lingering problem.

That said, when a legal aid lawyer is appointed by a bar association to represent a person, the official appointment letter can serve as a temporary substitute in place of a notarized power of attorney in certain

types of judicial applications. This is indeed a short cut that is currently being used to help address the problems of access to remedies created by the notarization problem.

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

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

Refugees from the conflict in neighbouring Syria began to arrive at Turkey's borders in March 2011 very quickly after the sparking of the unrest in Syria. Turkey and Syria share 877km of land borders. Immediately in response to the first arrivals, the Turkish political leadership made two key policy decisions that have set the framework for the treatment of all refugee arrivals from Syria ever since.

Although the initial group of arrivals did not number more than 300, the Government spokesmen characterised the incident as a situation of "mass influx" and took measures to treat the arrivals outside the framework of Turkey's asylum system at the time, which was envisioned to process individually arriving protection seekers. Secondly, the Government of Turkey also announced that people approaching Turkey's borders from the conflict in Syria would be allowed to cross the border and admitted to Turkey, as opposed to being intercepted or halted, and that their basic humanitarian needs would be met.

While during the initial months Turkey chose to refer to refugee arrivals from Syria using the terminology of "guests", Turkey's Minister of Interior eventually made a statement in October 2011 during a UNHCR-hosted conference in Geneva and announced that Turkey was implementing a "temporary protection" regime<sup>61</sup> to refugees from Syria and that the policy was based on 3 core principles:

- (1) Turkey's borders shall remain open to persons seeking to cross the border to seek safety in Turkey;
- (2) No persons from Syria shall be sent back to Syria against their will; and
- (3) Basic humanitarian needs of the persons arriving from the conflict in Syria shall be met.<sup>62</sup>

In accordance with this approach, Turkey quickly begun to erect well-supplied camps in several border provinces to accommodate and provide for the refugees, the numbers of which gradually surpassed 100,000 by the summer of 2012.

Thereby, a *de facto* "temporary protection" practice came into shape in regards to growing influx of refugees from Syria, however up until the adoption of the Temporary Protection Regulation (TPR) of 22 October 2014, this practice had at best a scant legal basis in Turkey's domestic asylum legislation. Article 13 of the 1994 Asylum Regulation, which was Turkey's main piece of domestic law governing matters of asylum at the time,<sup>63</sup> provided that as a principle mass influx of refugees was to be "halted at the border line" and "not allowed to reach Turkey's territory", unless there is "Governmental instruction to the contrary".

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<sup>61</sup> It must be observed that while the "temporary protection" branding appears to have been loosely inspired by the EU "temporary protection" concept, the legal and practical specifics of the "temporary protection" regime Turkey put in place do not carry much resemblance to the framework laid down by the EU Temporary Protection Directive.

<sup>62</sup> UNHCR Turkey, *Information Notice Regarding Syrian Nationals Seeking International Protection*, 23 November 2011.

<sup>63</sup> The LFIP, which superseded all previous legislation on matters of asylum, did not come into force until 11 April 2014. Until then, the 1994 Asylum Regulation remained the main piece of legislative guidance on the treatment of asylum seekers, including situations of mass influx.

In relation to the Syrian influx, the Government of Turkey indeed did provide such instruction as referred to in Article 13 of the 1994 Asylum Regulation, for the persons to be allowed by border authorities to cross the border line. However beyond this instruction based on political discretion, Turkey's asylum legislation at the time did not contain a concept of "temporary protection" or any other legal definition and procedural elaborations laying down the legal status, rights and obligations of persons who would be admitted to Turkey in situations of mass influx on such discretionary basis.

As such, it can be concluded that in the period from the beginning of mass arrivals from Syria in March 2011 until the adoption of the Temporary Protection Regulation of 22 October 2014, Turkey's "temporary protection" policy for refugees from Syria did not have a proper domestic law basis and was based entirely on political and administrative discretion, which led to spontaneous, *ad hoc* measures and changing practices in regards to key implementation aspects such as admission to territory, identification and documentation, registration, access to shelter and access to health care, among others.

Throughout this period, while Turkey continued to invest in more camps in provinces of the border region, the number of refugees from Syria crossing the border spontaneously and taking residence in residential areas outside the camps continued to grow exponentially. Dedicated efforts to set up a registration scheme for the growing non-camp population were not initiated until early 2014, and even after that the registration and documentation process was not available, effective and consistent across the country to cope with an increasingly sizeable and dispersed population of refugees. Up until early 2015, the majority of these so-called "non-camp" refugees from Syria remained unregistered and unidentified and continued to move and disperse throughout the country including to big cities such as **Istanbul** in the Western parts of the country.

Another key characteristic of Turkey's policy in relation to refugees from Syria is that the Government of Turkey from the onset chose to take full charge of the setting up and management of camps and the registration and documentation of the population concerned as opposed to handing over these tasks to UNHCR and international relief actors. As will be elaborated in the sections below about the main components of Turkey's Temporary Protection scheme in its current shape, in creating an *ad hoc* temporary protection regime to accommodate the Syrian refugee influx outside the framework of Turkey's asylum system Turkey also kept UNHCR's direct involvement with this population at a minimum – mainly linked up to a modestly sized resettlement program.

Unlike the so-called individually arriving protection seekers from other countries of origin such as Iraq, Afghanistan and Iran, who continued to register both with Turkish Government authorities and UNHCR Turkey, it was agreed among Turkey and UNHCR that persons subject to "temporary protection" would not be registered by UNHCR and would not be processed for refugee status determination under UNHCR's Mandate. UNHCR Turkey's processing of the Syrian refugee population in Turkey continues to be limited to a relatively small number of cases identified for resettlement. UNHCR is not involved in the registration and screening of "temporary protection" beneficiaries. Unlike some of the other countries in the region that have received high numbers of refugees from Syria, in Turkey UNHCR and other UN agencies and nongovernmental relief actors assumed a relatively modest complementary role in Turkey to support the Turkish Government's refugee and humanitarian response.

While Turkey's Disasters and Relief Agency (AFAD) and Turkish Red Crescent, along with relevant provincial departments of various Government ministries were entrusted the tasks of setting up, managing and providing for the large-scale refugee camps established in southern Turkey, National Police and eventually the newly established Directorate General of Migration Management (DGMM)<sup>64</sup>

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<sup>64</sup> DGMM was formally established by the LFIP on 11 April 2013, however the new agency did not fully take over the foreigners case load from National Police, the agency previously in charge of foreigners, until May 2015.

have been in charge of registration and documentation of “temporary protection” beneficiaries. Ministries of Health and Education have been in charge of matters related to educational activities and provision of state-funded free health care services to temporary protection beneficiaries respectively. As will be discussed below, to date the involvement and contributions of national and international NGO service providers in helping to address gaps in healthcare, subsistence, psychosocial and other needs has been relatively modest.

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

Turkey’s EU-inspired new Law on Foreigners and International Protection (LFIP) was adopted in April 2013 and fully came into force in April 2014.<sup>65</sup> The LFIP for the first time introduced a legal concept of “temporary protection” in Turkish law and thereby provided the basic underpinning of a proper domestic law basis for Turkey’s *de facto* “temporary protection” practices in regards to refugees from Syria since March 2011.

Article 91 LFIP envisions the possibility of the implementation of a “temporary protection” regime, in situations of “mass influx” for refugees. The article however does not directly provide any elaboration regarding principles, content and procedures to be applied to persons concerned. Instead, it stipulates the adoption of a separate Board of Ministers Regulation on “temporary protection” to lay down the specifics and implementation framework of any such “temporary protection” practices to be carried out on the basis of Article 91.

While the LFIP itself fully came into force in April 2014, it was not until October 2014 that the Temporary Protection Regulation (TPR) was finally published. As such, the TPR came to constitute the main piece of domestic legislation that was now to govern and regulate Turkey’s existing *de facto* “temporary protection” practice that was already in place since 2011.

It is important to emphasise that the TPR not only provides the legislative framework for the existing “temporary protection” regime already in place for refugees from Syria, but it elaborates generally the “temporary protection” concept provided by Article 91 LFIP and thereby constitutes the legal reference for the possible implementation of Article 91 to other, prospective “mass influx” situations going forward. Technically, the TPR is not a law but a secondary legislation on the basis of Article 91 of the LFIP. It was published on 22 October 2014 and has been in force since then with immediate effect.

The TPR defines, among other matters: the “temporary protection” concept and its core elements; the procedure for the declaration and termination of a “temporary protection” regime on the basis Article 91 LFIP; the criteria for individual eligibility for “temporary protection”; the procedure for requesting and obtaining “temporary protection” status; the procedural safeguards for persons within the scope of “temporary protection” regime; and the link between the “temporary protection” regime and the separate “international protection” procedure that applies to individually arriving protection seekers.

The TPR stipulates that under normal circumstances a “temporary protection” regime is to be declared by a dedicated Board of Ministers Decision. And yet, considering that a *de facto* “temporary protection” regime was already in place at the time of the publication of the TPR on 22 October 2015, the Turkish Government opted to formalise the existing “temporary protection” regime for protection seekers from Syria by means of a provisional article incorporated in the main text of the TPR itself – as opposed to issuing a separate Board of Ministers Decision.

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<sup>65</sup> While the section of LFIP formally establishing the DGMM came into force in April 2013 immediately on the publication of the LFIP, all the remaining sections of the Law came into force after a year, in April 2014.

As will be elaborated below, the Provisional Article 1 TPR specifically establishes a “temporary protection” regime for “Syrian nationals, stateless people and refugees originating from Syria” and provides a number of key transitional measures concerning the treatment of persons within the scope of this declaration who were already in Turkey by the time the TPR was published.

## **B. Legal framework and practice provided by the Temporary Protection Regulation**

### **1. Scope and legal basis**

As per Articles 1 and 3 TPR, “temporary protection” within the scope of Article 91 LFIP is a discretionary measure that may be deployed in situations of mass influx of refugees where individual processing of international protection needs is impractical due to high numbers. As such, “temporary protection” within the framework of TPR is not defined as a form of “international protection” but a complementary measure used in situations where individual “international protection” eligibility processing is deemed impractical.

The legal basis of TPR is Article 91 LFIP. Therefore, technically as a piece of secondary legislation, the provisions and implementation of the TPR must be compliant and consistent with the general normative framework laid down by the LFIP itself.

### **2. Procedure for the declaration and termination of temporary protection**

As per Article 9 TPR, a “temporary protection” regime is to be declared by a Board of Ministers decision. The declaration decision shall elaborate the scope of beneficiaries and start date of the “temporary protection” regime, and – if deemed necessary – its duration.<sup>66</sup> It may or may not designate a limitation on the implementation of the “temporary protection” regime to a specific region in Turkey. An existing “temporary protection” regime in place is to be terminated by a Board of Ministers decision.<sup>67</sup>

### **3. Responsible agencies**

The Directorate General of Migration Management (DGMM) is designated as the competent agency authorised to make decisions on individual eligibility of persons for “temporary protection” in Turkey in light of the scope laid down by the Board of Ministers declaration decision and the general eligibility criteria laid down in TPR.<sup>68</sup>

The Turkish Government’s Disaster and Relief Agency (AFAD) is in charge of building and managing the camps that are used to accommodate “temporary protection” beneficiaries.<sup>69</sup> Furthermore, Article 26 TPR designates AFAD as the ‘coordinating agency’ with regard to the delivery of services and entitlements by relevant Ministries and Government agencies to “temporary protection” beneficiaries, including those in the fields of healthcare, education, access to labour market, social benefits and assistance and interpretation. The 18 December 2014 dated AFAD Circular on the Administration of Services for

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<sup>66</sup> Article 10 TPR.

<sup>67</sup> Article 11 TPR.

<sup>68</sup> Article 10 TPR.

<sup>69</sup> Article 37 TPR.

Temporary Protection Beneficiaries provides further guidance on the specifics of services and entitlements to be delivered in each field.

As per Article 16 TPR, “temporary protection” beneficiaries are barred from making a separate “international protection” request in Turkey in accordance with LFIP. By the same token, as a general policy agreed among UNHCR and DGMM, UNHCR Turkey does not register “temporary protection” beneficiaries and carry out refugee status determination (RSD) proceedings under UNHCR’s Mandate. However, UNHCR does register and process a relatively small number of “temporary protection” beneficiaries on exceptional basis, mainly for the purpose of resettlement but also for protection reasons in a small number of cases.

#### **4. Discretion to limit or suspend the temporary protection measures**

The Board of Ministers has the authority to order “limitations” on temporary protection measures in place, or the “suspension” of existing measures for a specific period or indefinitely, “in the event of circumstances threatening national security, public order, public security and public health”.<sup>70</sup>

In such a case, the Board of Ministers shall have the discretion to determine the specifics of the treatment existing registered “temporary protection” beneficiaries and measures that will be applied to persons within the scope of the “temporary protection” regime who approach Turkey’s borders after the “limitation” or “suspension” decision.

Such very broadly and vaguely defined limitation or suspension measures are different from the actual termination of a “temporary protection” regime by means of a Board of Ministers decision in accordance with Article 11 TPR.

#### **5. Core elements of temporary protection**

The “temporary protection” framework laid down by the TPR, first and foremost, provides a domestic legal status to beneficiaries granting legal stay in Turkey;<sup>71</sup> protection from punishment for illegal entry or presence<sup>72</sup> and protection from *refoulement*.<sup>73</sup>

While the “temporary protection” framework is by definition conceived as a temporary and transitional measure, in fact the “temporary protection” regime currently in place for refugees from Syria does not have a maximum time limit, nor does it strictly guarantee access to the individual “international protection” procedure for beneficiaries in the event of termination of the “temporary protection” regime.

Furthermore, Article 25 TPR explicitly excludes “temporary protection” beneficiaries from the possibility of long term legal integration in Turkey. According to Article 25, the “temporary protection” identification document issued to beneficiaries does not serve as “residence permit” as such, may not lead to “long term residence permit” in Turkey in accordance with Articles 42 and 43 LFIP. Time spent in Turkey as a “temporary protection” beneficiary may not be interpreted to count into the fulfilment of the requirement of 5 years uninterrupted legal residence as a precondition in applications for Turkish citizenship.

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<sup>70</sup> Article 15 TPR.

<sup>71</sup> Article 25 TPR.

<sup>72</sup> Article 5 TPR.

<sup>73</sup> Article 6 TPR.

## 6. No explicit guarantees for admission to territory

While Article 6 of the TPR stipulates that all persons within the scope of the Regulation shall be protected from *refoulement*, the overall framework laid down by the TPR fails to explicitly guarantee the right of access Turkish territory for prospective beneficiaries.

As per Article 17 TPR, which governs matters of admission to territory, persons approaching Turkey's borders without a valid travel document may or may not be admitted to territory within the discretion of the provincial Governorate.

Furthermore, Article 15 of the TPR, which gives Board of Ministers the discretion to order either "limitations" or "suspension" of existing temporary protection measures in place "in the event of circumstances threatening national security, public order, public security and public health", specifically envisions the possibility of the imposition of "additional measures concerning the mass movement of people both along Turkey's borderline or beyond Turkey's borderline". This formulation appears to indicate that the Turkish Government may choose to seal Turkey's borders to persons seeking "temporary protection" in Turkey, either for a specific period or indefinitely, where considerations of national security, public order, public security and public health are deemed to require so.

Having observed that, legally speaking, Article 6 of the TPR very clearly provides that all persons within the scope of the TPR shall be protected from *refoulement* in compliance with Turkey's *non-refoulement* obligations. Indeed, legally speaking, since the TPR is a piece of secondary legislation on the basis of Article 91 of the LFIP itself, Article 4 LFIP which guarantees protection from *refoulement* to all foreign nationals under Turkey's jurisdiction also applies to all persons subject to practices within the framework of TPR.

Established international law concerning the interpretation of the *non-refoulement* obligation clearly provides that states' *non-refoulement* obligations not only apply to practices of expulsion from territory, they also engage practices of admission to territory and denials of access to territory at border. Therefore, legally speaking, the TPR's seemingly discretionary provisions concerning admission of persons concerned to Turkish territory must of course be interpreted and implemented within the bounds of the *non-refoulement* obligation, which is indeed reiterated in Article 6 of the TPR itself.

In practice, it appears that at least since the summer of 2012, the actual number of prospective "temporary protection" beneficiaries allowed to enter via one of Turkey's existing border gates with Syria or designated unofficial crossing points, **on individual basis**, has been very limited, mainly involving medical emergencies or other humanitarian considerations of exceptional nature. The majority of individual arrivals since then have taken place in the form of uncontrolled irregular crossings, without any facilitation or interception by Turkish border authorities, and subject to involvement of people smuggling networks operating on both sides of the border. Therefore, although the official statements by Turkish Government carefully differentiate that Turkey maintains an "open gates" policy as opposed to an "open borders" policy vis-a-vis persons from Syria, in reality at least since the summer of 2012, prospective beneficiaries have been admitted via the border gates and crossing points on very exceptional basis.

On the other hand, there have been two notable **incidents of mass influx**, where large groups of refugees fleeing extreme armed confrontations in the immediate vicinity of the Syria side of the border. In October 2014, about 190,000 Syrian Kurds fleeing the clashes in the Syrian border town of Kobane between PYG forces and ISIS were allowed to cross the border to Turkey. In June 2015, about 25,000 Syrian Arabs, Kurds and Turkoman, escaping clashes once again between ISIS and YPG and other forces in the Syrian border town of Teb Abyad, were allowed to cross the border *en masse*. Therefore, it

cannot be concluded that, while controlled and facilitated admission of prospective beneficiaries on individual basis to date has been very limited, Turkish authorities use discretion to open the border in response to acute emergencies.

## **7. Individual eligibility for temporary protection**

As per Article 10 TPR, the Directorate General of Migration Management (DGMM) is designated as the competent agency authorised to make decisions on individual eligibility of persons for “temporary protection” in Turkey in light of the scope laid down by the Board of Ministers declaration decision and the general eligibility criteria laid down in TPR.

### **7.1. Inclusion as a temporary protection beneficiary in general**

The principal characteristic and justification of the “temporary protection” approach generally is to swiftly attend to protection needs of a large number of protection seekers in a situation of mass influx of refugees where individual processing and assessment of international protection needs is considered both impractical and unnecessary. The “temporary protection” approach is meant to categorically apply to and benefit all persons falling within the scope of beneficiaries formulated by the host Government, without any personalised assessment of international protection needs.

As already explained above, Turkey’s TPR stipulates that under normal circumstances a “temporary protection” regime is to be declared by a dedicated Board of Ministers Decision. This Board of Ministers decision declaring a “temporary protection” regime on the basis of Article 91 of LFIP, in response to a “mass influx” of foreign nationals, is to spell out the scope of beneficiaries who shall benefit from “temporary protection”.

### **7.2. Groups covered by TPR in place for persons from Syria**

As pointed out above, while generally a Board of Ministers decision is required for the declaration of a “temporary protection” regime, in the case of the present “temporary protection” regime in place for persons escaping the conflict in Syria, the Turkish Government opted to formalise the existing *de facto* “temporary protection” regime already in place since 2011 by means of a provisional article incorporated in the main text of the TPR itself – as opposed to issuing a separate Board of Ministers Decision.

The Provisional Article 1 of TPR specifically establishes that “Syrian nationals, stateless people and refugees” who have arrived in Turkey, whether individually or as part of a mass movement of people, due to events unfolding in Syria, are eligible for “temporary protection” in Turkey.

#### **Stateless Palestinians from Syria**

This formulation appears to indicate that in addition to Syrian nationals, also stateless persons originating from Syria, including members of the substantial stateless Palestinian population who were resident in Syria at the time of the beginning of the conflict in 2011, are covered by the Turkey’s “temporary protection” regime in its current shape. Indeed, the current practice on the ground in Turkey, is consistent with this interpretation. Stateless Palestinians from Syria are registered as “temporary protection” beneficiaries.

#### **Non-Syrian refugees arriving from Syria**

The formulation also refers to “refugees” arriving in Turkey, due to events unfolding in Syria. The interpretation of this reference is, however, more complicated. According to Article 61 of the LFIP, Turkish law defines “refugee” as a person that fulfils the criteria laid down in Article 1 of the 1951 Geneva Convention, who also originates from a European country – which Turkey interprets as a country that is a member of Council of Europe. Therefore according to this narrow definition provided by Turkish law, any nationals of third countries that are not members of Council of Europe, cannot be considered “refugees”. Since the TPR is a piece of secondary legislation on the basis of Article 91 LFIP, any legal terms mentioned in the TPR should be interpreted as they are defined in the LFIP itself. Therefore, nationals of Iraq, Iran or other countries who may have been residing in Syria as refugees in the broad meaning of the word, are not covered by Turkey’s “temporary protection” regime currently in place for protection seekers from Syria. Therefore, any such non-Syrian refugees moving onward from Syria to Turkey are instead referred to the “international protection” procedure established by the LFIP.

### **“Directly arriving from Syria”**

Provisional Article 1 of TPR contains a phrasing which in practice is interpreted by border officials as a requirement for prospective beneficiaries to arrive directly from Syria - as opposed to travelling to Turkey from or via a third country.

The provision speaks of persons who “arrive in our borders” or “have crossed our borders” , whether “individually” or “as part of a mass movement of people”. As such, it actually does not articulate a clear requirement of arriving directly from Syria at all. A person taking a plane from a third country and landing in a Turkish airport may be perfectly understood to have “arrived in our borders” “individually”. However, in practice, it appears that Turkish border officials and DGMM interpret this phrasing as a strict requirement for beneficiaries to arrive directly from Syria.

This means that such persons arriving in Turkey from third countries are not considered to fall within the scope of “temporary protection” regime, and therefore they are subject to general terms and provisions under LFIP:

If they arrive in Turkey with a valid passport, they will be treated like other legally arriving foreign nationals and allowed to enter on the basis of the visa-free regime, which had been in place between Turkey and Syrian since the time before the start of the conflict in Syria. This legal entry would allow them to stay in Turkey for 3 months, during which they could apply for a regular “residence permit” like other nationalities – if they wish.

However, if they arrive at a border gate without a valid passport, they will be treated like other nationalities of foreign nationals who do not fulfil the travel document requirement for legal entry to Turkey, and denied access to territory. In such a case, however, there is also the possibility for them to make an “international protection” application at the border – like other nationalities of asylum seekers. That said, the DGMM will in that case carry out an admissibility assessment as per Art 72 of the LFIP and may conclude that the “international protection” application is inadmissible on either “safe third country” or “first country of asylum” grounds.

### **The cut-off date of 28 April 2011**

The Provisional Article 1 of TPR also provides a cut-off date for purpose of inclusion in “temporary protection” regime. It provides that persons who have arrived from Syria from 28 April 2011 or later are to be exclusively processed within the framework of the “temporary protection” regime. As such, they shall be barred from making a separate “international protection” application. If they did already make an

application for “international protection” before the publication of the TPR on 22 October 2014, these applications shall be suspended and the persons concerned will instead be processed as “temporary protection” beneficiaries.

Any persons who had arrived in Turkey prior to 28 April 2011 and had already made an application for “international protection” are given the option of choosing whether they wish to remain within the “international protection” procedure framework or benefit from “temporary protection”. The number of Syrian nationals concerned by this provision is however very limited, since the population of Syrian asylum seekers in Turkey back in early 2011 before the beginning of the conflict in Syria was quite low.<sup>74</sup>

### **Syrian nationals with regular “residence permits”**

Similarly, any Syrian nationals who have been legally resident in Turkey as of 28 April 2011 or later, on the basis of a regular “residence permit” completely outside the asylum framework – like other nationalities of legally residing foreigners – are allowed the option of continuing their legal residence in Turkey on this basis, unless they wish to register as “temporary protection” beneficiaries. In fact, the relatively small number of Syrian nationals who have been continuing to arrive in Turkey legally with valid passports in the period since the adoption of the TPR on 22 October 2014 still maintain this option.

In order for a foreign national to request and obtain a “residence permit” after they arrive in Turkey, they need to have legally entered the country with a valid passport and either on the basis of a short-stay visa or visa-exemption grounds depending on the nationality. Indeed, shortly before the beginning of the conflict in Syria, Turkey and Syria had agreed on a visa-free regime, which is considered still in force and grants Syrian nationals visa-free entry to Turkey for a 3 month period. A relatively small number of Syrian nationals have continued to arrive in Turkey by taking advantage of this possibility. This population of legal entrants do indeed have the option of applying for a regular “residence permit” in Turkey – outside the “temporary protection” framework. As of 31 December 2014, there were a total of 31,715 such Syrian nationals who were residing in Turkey on the basis of regular “residence permits”.<sup>75</sup> These are persons who were able to enter Turkey on valid travel documents and did not indicate a request for protection as refugees and instead opted to be subject to general rules of legal residence.

Since such Syrian nationals living in Turkey on grounds of a regular “residence permit” are therefore not registered as “temporary protection” beneficiaries, they will not have access to the rights and services granted under the TPR and treated like other nationalities of legally resident foreigners.

That said, such Syrian nationals who have arrived in Turkey legally on visa exemption grounds, or currently live in Turkey on the basis of a “residence permit”, are free to apply and register as “temporary protection” beneficiaries, if they wish so. One problem encountered by such Syrian “residence permit” holders is that when and if the validity period of their passport expires and they do not manage to have it extended, they are no longer eligible for an extension of their Turkish “residence permit” either. Persons in that situation in any case will have no choice but to register as “temporary protection” beneficiaries in order to maintain legal stay in Turkey.

### **7.3. Exclusion from temporary protection**

As per Article 8 TPR, the following categories of persons are excluded of benefitting from “temporary protection” in Turkey:

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<sup>74</sup> As of 31 December 2010, there were only 224 Syrian nationals registered with UNHCR and Turkish authorities as asylum seekers. Information provided by UNHCR Turkey, December 2015.

<sup>75</sup> Information provided by DGMM, December 2015.

1. Persons for whom there is serious reason to believe that they have been guilty of acts defined in Article 1F of the 1951 Convention;
2. Persons for whom there is serious reason to believe that they have engaged in acts of cruelty, for whatever rationale, prior to arrival in Turkey;
3. Persons who have either participated in or provoked crimes or acts referred to in 1 and 2 above;
4. Persons, who, having participated in armed conflict in country of origin, have not permanently ceased armed activities after arrival in Turkey;
5. Persons proven to have engaged, planned or participated in terrorist activities;
6. Persons who have been convicted of a serious crime and therefore deemed to be presenting a threat against society; and those who are deemed to present danger to national security, public order and public security;
7. Persons, who prior to their arrival in Turkey, committed crimes that would be punishable with a prison sentence in Turkey, and have left country of origin or residence in order to avoid punishment;
8. Persons convicted of crimes against humanity by international courts;
9. Persons who commit any of the crimes listed in Section 4(7) of the Turkish Criminal Code i.e. crimes related to state secrets and espionage.

The DGMM is responsible and authorised to carry out and finalise the exclusion assessments as per Article 8, and to communicate exclusion decisions to the persons concerned. Where it is identified that an existing beneficiary falls within the exclusion grounds listed above, their “temporary protection” status shall be cancelled.<sup>76</sup>

#### **7.4. Cessation and cancellation for an individual beneficiary**

As per Article 12 TPR, “temporary protection” status shall cease for a particular beneficiary in the following circumstances:

- Voluntary departure from Turkey;
- Benefitting from the protection of a third country;
- Admission to a third country on humanitarian grounds or for resettlement.

As discussed in the section on Repeat Arrivals, cessation of temporary protection status in accordance with Article 12 considerations presents an issue in relation to treatment of so-called repeat arrivals.

Also, as per Article 12 of TPR, where it is determined that a beneficiary should have been excluded from “temporary protection” in the first place or he or she came to fall within the exclusion grounds listed in Article 8 of TPR during his or her stay in Turkey, DGMM shall cancel his or her “temporary protection” status. Therefore, the “temporary protection” status can be cancelled where an exclusion assessment is made any time after the prior granting of the status.

### **8. Procedure for reception and registration**

Refugees from Syria began to arrive in Turkey in March 2011. In the period since then, while Turkey continued to invest in more camps in provinces of the border region, the number of refugees from Syria taking spontaneous residence in residential areas outside the camps continued to grow exponentially. Dedicated efforts to set up a registration scheme for the growing non-camp population was not initiated until early 2014, and even after that the registration and documentation process was not available, effective and consistent across the country to cope with an increasingly sizeable and dispersed

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<sup>76</sup> Article 12 TPR.

population of refugees. Up until early 2015, the majority of these so-called “non-camp” refugees from Syria remained unregistered and unidentified and continued to move and disperse throughout the country including to big cities such as Istanbul in the Western parts of the country.

The TPR of 22 October 2014 for the first time established a legal framework and procedure for the reception and registration of persons seeking “temporary protection” in Turkey, and DGMM was designated as the agency responsible for the registration and status decisions on persons within the scope of TPR. Previous to the TPR, the Provincial Foreigners Police Branches were responsible for the registration of Syrians both inside and outside the camps. Because of the lack of a dedicated procedural framework and a country-wide coordination, registration practices varied in this period and failed to encompass the majority of Syrians, particularly those in locations other than the provinces in the immediate border region.

The TPR provides specifics of a procedural flow for the initial reception and registration of new beneficiaries that starts with admission to territory and envisions the establishment of “first reception centres” in border regions for the purpose of registering new arrivals. In reality, however, most refugees from Syria cross into Turkey irregularly and arrive in residential areas without being facilitated or intercepted by border authorities. By the time DGMM was designated as the responsible agency in October 2014 and initiated activities to take over the existing case load and register persons who were until then unregistered, they had to put in place arrangements to process and document a large urban population of Syrian refugees dispersed throughout the country. At the same time, most of the Provincial DGMM Directorates were not yet fully staffed and operational at the time.

In this context, the arrangement that came about is that, while the Provincial DGMM Directorates are formally in charge of “temporary protection” registration, the registration interviews are conducted by officers from the Provincial Police Directorates and mainly take place the premises of either provincial or one or several district police directorates, depending on the location – under the supervision and authority of the Provincial DGMM Directorate. The choice of relying on the personnel and premises of Provincial Police Directorates is due to the capacity constraints of the Provincial DGMM Directorates and the large numbers of people awaiting registration. As at December 2015, this subcontracting arrangement is still in place. The list of registration locations for each province is available at the DGMM website.

In many locations around Turkey, due to high numbers, applicants are given registration appointments and may have to wait up to several weeks in order to register as a beneficiary. This delay in registration leads to problems in accessing healthcare and other services, which require the beneficiary to have a Temporary Protection Identification Card and a “Foreigners Identification Number”, which is listed on the Card. The TPR does not provide a set timeframe for the completion of the registration step and the issuing of the Temporary Protection Identification Card.

DGMM collects biometric data, including fingerprints, during registration and maintains electronic files for each beneficiary in the agency’s new electronic file management system named “Göç-Net”.

As discussed in the section on Individual Eligibility above, Article 8 TPR makes provisions for exclusion of persons from “temporary protection”, without however designating a procedure for the exclusion assessment. However, as Article 22 of TPR instructs that persons who are determined to fall within the exclusion grounds listed in Article 8 shall not be issued a Temporary Protection Identification Card. Therefore, it is implicit from this provision that the registration interview should also entail the exclusion screening of applicants.

### **Current DGMM registration statistics**

According to DGMM, as of 13 November 2015, a total of 2,226,117 persons were registered as “temporary protection” beneficiaries in Turkey (see section on [Statistics](#)).

It must be noted however that, as elaborated in the section on [Shelter and Freedom of Movement](#), currently the DGMM does not impose any reporting requirements on registered beneficiaries. Therefore there is no way for DGMM to know how many of the registered beneficiaries continue to reside in a given province or are still in Turkey for the same reason. In the context of the large numbers of Syrian refugees who have been crossing from Turkey to Greece, particularly since the beginning of 2015, it can be safely assumed that some of the registered beneficiaries are no longer in Turkey. Furthermore, there are also persons who are reluctant to register with the authorities in Turkey for a variety of reasons, including concerns about future treatment in EU countries if they move on from Turkey to EU countries. The fact that the Turkish registration process also entails the collection of fingerprints and other biometric data leads to perceptions on the part of some refugees that registration in Turkey may in the future lead to a transfer back from EU countries to Turkey on the basis of a Turkey-EU cooperation framework.

In light of the above, the DGMM’s registration statistics must be treated with caution and may either overstate or understate the actual numbers depending on how many registered beneficiaries are no longer in Turkey and how many refugees from Syria have never registered with authorities.

### **Temporary Protection Identification Document**

The TPR provides a registration procedure and envisions the issuing of Temporary Protection Identification Documents (*Gecici Koruma Kimlik Belgesi*) to beneficiaries upon registration in accordance with Article 22 TPR. This card serves as the document asserting the concerned person’s status as a beneficiary of “temporary protection”.

#### *The lingering issue concerning “Foreigners Identification Number” assignments*

Temporary Protection Identification Documents also list a “Foreigners Identification Number” (FIN) assigned to each beneficiary by the Directorate General of Population and Citizenship Affairs. In Turkey, all legally resident foreign nationals are assigned FINs which serve to facilitate their access to all government services. “International protection” applicants and status holders within the framework of LFIP are also given such FINs. Currently, FINs assigned to all categories of legally resident foreign nationals, including “temporary protection” beneficiaries, categorically start with the digits of 99.

There is however a lingering problem in the current practice affecting some “temporary protection” beneficiaries originating from the fact that Turkish government agencies’ efforts to register and document the “temporary protection” beneficiary population started before the actual publication of the TPR. The registration documents issued to beneficiaries prior to the publication of TPR on 22 October 2014 either did not contain any “FIN” assignment or they listed a different type of “FIN” starting with the digits of 98.

In the period before the TPR of 22 October 2014, provincial police directorates were entrusted the task of registering persons subject to Turkey’s *de facto* temporary protection regime at the time. While the registration of persons accommodated in the camps in southern Turkey under AFAD jurisdiction has proceeded orderly, from the very beginning of arrivals, efforts to register and document the growing non-camp population have not started until late 2014 and increased in prevalence only as late as early 2015. Furthermore, in this period prior to the adoption of TPR, registration practices varied considerably across provinces around Turkey. For the same reason, in this period, beneficiaries were issued varying types of documents upon registration.

After the TPR came into force on 22 October 2014, the competent authority DGMM chose to take over and integrate previous records of population already registered with authorities in the period before the publication of TPR – instead of starting a new registration exercise from scratch. In fact the Provisional Article 1 TPR provided that any identification documents issued to “temporary protection” beneficiaries prior to TPR are going to remain valid until the persons concerned can be issued new Temporary Protection Identification Documents in accordance with Article 22 TPR.

The issue is that in registration documents issued to “temporary protection” beneficiaries prior to the adoption of the TPR, persons concerned were given FINs that started with the digits of 98 instead of 99. Due to a technical reason having to do with Turkey’s electronic population registry, having a 99-type FIN is a prerequisite for foreign nationals for the purpose of accessing government services, including healthcare. The earlier 98-type assignments used for “temporary protection” beneficiaries cannot be incorporated into the existing infrastructure.

The DGMM is currently in the process of assigning these individuals new 99-type FINs, but until this problem is resolved for all affected beneficiaries, they will continue to encounter obstacles in the processing of their social security provision on the basis of which they are eligible to get free of charge health services at public hospitals and to have a considerable percentage of their medication costs covered by the social security system.

Previously registered beneficiaries are advised to learn about their newly 99-type FIN assignments by using a section of the DGMM website. In practice, it appears that as of present at least in some cases beneficiaries are unable to obtain a new FIN designation through this online portal, in the case of which they are advised to approach the Provincial DGMM Directorate for a solution.

## **9. Repeat arrivals**

According to Article 13 TPR, admission of persons who have previously benefitted from “temporary protection” in Turkey but subsequently left Turkey on their own initiative, is subject to the discretion of the DGMM. The DGMM is authorised to grant or deny admission to Turkey and renewed access to “temporary protection” status upon repeat arrival to Turkey.

The repeat arrivals consideration specifically refers to persons who have previously benefitted from “temporary protection” in Turkey, whose “temporary protection” status was however subsequently “ceased” as per Article 12 of the TPR, due to:

- Voluntary departure from Turkey;
- Benefitting from the protection of a third country;
- Admission to a third country on humanitarian grounds or for resettlement

While Article 13 TPR does not elaborate the principles on the basis of which the DGMM shall make the determination on repeat arrivals, the link to cessation grounds under Article 12 TPR suggests that the DGMM will seek to determine whether the previous grounds for cessation still apply. Therefore, one can deduce that a consideration would have to be given by DGMM as to whether the person concerned can still avail of the protection and long term stay in the third country to which he or she had travelled previously.

In any case, the decision as to whether to not to once again extend “temporary protection” to a person upon repeat arrival is entirely within the discretion of the DGMM. It is implicit in the Article 13 provision that where the DGMM refuses to extend “temporary protection” to a person upon repeat arrivals, “general

terms and conditions” regarding entry, stay and expulsion of foreign nationals provided by the LFIP shall apply to the person concerned.

Although Article 13 of TPR does not spell out the content of such “general terms and conditions”, one can legally interpret the applicable provisions of the LFIP as follows:

- Where the person concerned has arrived to Turkey with a valid travel document, he or she may seek legal entry to Turkey on a short-term visa or visa-exemption grounds and subsequently seek legal residence in Turkey on the basis of a “residence permit”;
- Where the person concerned is refused entry to Turkey for any reason and expresses an objection or fear of return to the third country he or she came from, she can make a request for “international protection” at border, which the DGMM would be required to process.

Therefore, refusal to grant renewed “temporary protection” status upon repeat arrival does not necessarily mean that the person concerned shall be denied access to territory. It should not prevent him or her to make an individual “international protection” request at the border either.

## **10. Detention in the framework of temporary protection**

As a rule, “temporary protection” beneficiaries should not be detained. The TPR does not feature any explicit provision governing administrative detention of persons within the scope of a “temporary protection” regime laying down grounds and procedural safeguards that apply.

There is however a problematic veiled reference to the possibility of containing persons excluded from “temporary protection” according to Article 8 of TPR “without the benefit of an administrative detention decision”.

Furthermore, there are also two distinguishable legal situations under which persons falling within the scope of the “temporary protection” regime may be subject to the general administrative detention provisions of the LFIP itself.

Finally, there is also a current *de facto* administrative detention practice, which appears not to be based on either the above mentioned veiled containment provision of Article 8 TPR or the general administrative detention provisions of LFIP. Below, these three modalities of detention will be analysed.

### **Detention of persons excluded from “temporary protection”**

Despite the fact that the TPR does not feature any explicit provision governing administrative detention of persons within the scope of a “temporary protection” regime, Article 8 TPR, which lays down grounds for the exclusion of persons from “temporary protection” in Turkey, entails a veiled, implicit provision for the detention of persons who have been determined to fall within the exclusion grounds. As argued below, this provision is by definition unlawful and its use would amount to a violation of Turkey’s obligations under Article 5 ECHR.

Article 8 TPR provides that persons determined to fall within the exclusion grounds, “pending repatriation to country of origin”, may be “accommodated” in a special quarter of a refugee camp, in a refugee camp entirely dedicated to this purpose, or in any other facilities deemed appropriate by the provincial Governorate, “without the requirement of an administrative detention decision in accordance with the LFIP”. Article 8 TPR further provides that such excluded persons may be allowed to leave their place of

“accommodation” for short periods for reasons of urgent need or upon the request of state agencies, during which they may or may not be accompanied by law enforcement personnel.<sup>77</sup>

This provision should be interpreted in connection with Article 6 TPR, which guarantees protection from *refoulement* for all persons within the scope of TPR. Article 6(2) TPR authorises the DGMM to resort to appropriate “administrative measures” in regards to “persons who do not fulfil the criteria for legal stay but cannot be deported from Turkey due to the *non-refoulement* obligations”. As such, persons excluded from “temporary protection” on the basis of Article 8 of TPR, who cannot be deported from Turkey due to the *non-refoulement* obligations, may find themselves detained— without the benefit of a duly issued detention decision and the accompanying legal and procedural safeguards.

As will be argued below, Article 8 TPR is manifestly in violation of Turkey’s obligations under Article 9 ICCPR, Article 5 ECHR as well as Articles 16 and 19 of the Turkish Constitution, which mirror the same safeguards. Although the article employs the term “accommodation”, it is clearly implicit in the provision that the indication here is to deprive of their liberty persons excluded from “temporary protection” – without the benefit of a duly issued administrative detention decision.

According Article 16 of the Turkish Constitution, “basic rights and liberties of foreign nationals may only be curtailed on the basis of a law and in compliance with international law”. Article 19 of the Turkish Constitution specifically requires all practices of deprivation of liberty to observe basic standards of lawfulness and the provision of basic procedural safeguards. It is obvious that any deprivation of liberty without the benefit of a detention decision and the provision of basic procedural safeguards against arbitrariness provided by Article 9 ICCPR and Article 5 ECHR can never be considered “in compliance with international law”. Secondly, the TPR itself is not “a law” as such as understood in Turkish legal context but a piece of “secondary legislation” on the basis of the LFIP. The LFIP itself does not entail any provisions detailing grounds and applicable safeguards regarding administrative detention of foreign nationals within the framework of Article 91 LFIP. It is unconstitutional for TPR to authorise any curtailment of right to liberty, since it is not allowed and regulated by the LFIP itself. Therefore, the veiled “mention” of detention in Article 8 TPR cannot be understood to fulfil the requirement of “curtailment by law” ordered by Article 16 of the Turkish Constitution. Furthermore, nor does it entail any provisions regarding the grounds and duration of and remedies against such a detention practice on persons excluded from “temporary protection”. As such, detention of a foreign national by reference to Article 8 TPR, misleadingly referred to as “accommodation”, would be entirely based on the discretion of DGMM – without the benefit of any of the basic legal and procedural safeguards against arbitrariness.

At present, the constitutionality of Article 8 of TPR is yet to be challenged in Turkish courts. It is unclear whether the above summarised implicit administrative detention provisions under Article 8 TPR are currently implemented on any such persons determined to be excluded from “temporary protection”. The authors of this report are concerned that the provision would serve to facilitate arbitrary manifestly arbitrary detention practices in the regions in close proximity to the Syria border and elsewhere.

The TPR itself does not designate any specific appeal mechanisms against unfavourable decisions, including decisions under Article 8 TPR. In the absence of specific remedies established by the TPR, general rules and procedures in Turkey concerning appeals against deprivation of liberty and acts of the administration shall apply. To date no court challenge was yet ever filed on a case involving detention on the grounds of Article 8 TPR.

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<sup>77</sup> In Turkey the National Police exercises law enforcement duties in urban locations whereas the gendarmerie assumed law enforcement duties in rural areas.

## **Detention of persons within the scope of TPR on the basis of the general administrative detention provisions of the LFIP**

Since the TPR is a piece of secondary legislation on the basis of the LFIP itself, on matters not specifically regulated by the TPR itself, persons within the scope of TPR will be subject to the general provisions in the LFIP applicable to all foreign nationals. As mentioned above, there are also two distinguishable legal situations under which persons falling within the scope of the “temporary protection” regime may be subject to the general administrative detention provisions of the LFIP.

As discussed in the chapter on Detention of Asylum Seekers, The LFIP allows for two types of administrative detention of foreign nationals:

- Firstly, as per Article 57 LFIP foreign nationals may be detained up to 12 months for the purpose of removal on the basis of an associated deportation decision as per Article 53 LFIP;
- Secondly, as per Article 68 LFIP foreign nationals may be detained up to 30 days during the processing of their application for international protection.

### *(a) Detention of persons within the scope of “temporary protection” regime for the purpose of deportation*

Article 6 of the TPR guarantees protection from *refoulement* for all persons within the scope of the TPR, consistent with Article 4 of the LFIP itself, which requires all practices within the framework of LFIP to strictly observe Turkey’s *non-refoulement* obligations. The decision to deport a foreign national is taken on the basis of Article 53 LFIP, in accordance with criteria listed in Article 54 LFIP. Some of the grounds listed in Article 54 LFIP may indeed apply to persons within the scope of a “temporary protection” regime on the basis of TPR. However, a deportation decision may only be issued if none of the non-removal grounds listed in Article 55 of LFIP or the *non-refoulement* obligations under Article 4 LFIP are not triggered.

Theoretically, a Syrian national or a stateless Palestinian from Syria, who would normally qualify for “temporary protection” under TPR, could be excluded from “temporary protection” on one of the grounds listed in Article 8 of TPR, and subsequently find him or herself subject to a separate deportation decision as per Article 53 of LFIP provided that the non-removal grounds are not triggered and the deportation decision specifically spells out a safe country of deportation, which would not engage Turkey’s *non-refoulement* obligations.

### *(b) Detention of persons within the scope of “temporary protection” regime during the processing of an “international protection” application*

As per Article 68 of the LFIP foreign nationals may be detained up to 30 days during the processing of their application for international protection. Since persons within the scope of a “temporary protection” regime are barred from making a separate “international protection” request, under normal circumstances, this Article 68-type detention should not come into play in the case of Syrian refugees and stateless Palestinians from Syria. However, as mentioned above in the section on Repeat Arrivals, there may be situations where DGMM may opt to allow a person within the scope of TPR to file an “international protection” application.<sup>78</sup>

Both types of detention can be challenged at the competent Magistrate’s Court (*Sulh Ceza Hakimligi*). The judge has to decide on the appeal within 5 days. While the decision is final and may not be

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<sup>78</sup> For a detailed discussion regarding situations under which a person within the scope of “temporary protection” may be referred to the “international protection” procedure instead, please see the section on Treatment of Specific Nationalities in the core International Protection Procedure chapter of this report.

challenged in a higher court, there is no limitation on further judicial appeals, of a primary nature, to the same court.<sup>79</sup>

### ***De facto* administrative detention of “temporary protection” beneficiaries**

As will be discussed in the section on Shelter and Freedom of Movement below, camps for Syrians officially referred to as “temporary accommodation centres” are established and run by Turkey’s Disaster and Relief Agency (AFAD). It appears that around October 2015, DGMM took over from AFAD one of the newly established camps and began to use it as a *de facto* detention centre mainly to hold selected Syrian nationals who were intercepted in the Western border regions of Turkey during attempts to cross to Greece. The camp is based in the Düziçi district of **Osmaniye** Province. It does not appear that persons held in this facility have been excluded from “temporary protection” as per Article 8 TPR, nor are they subject to a deportation decision and an associated administrative detention order as per Article 57 of LFIP. It appears that DGMM continues to treat them as “temporary protection” beneficiaries, but chooses to detain them on the basis of administrative discretion.

Currently DGMM appears in the process of reconsidering this practice, partially in response to criticisms from the refugee rights advocacy community regarding the legality of detaining foreign nationals entirely on the basis of administrative discretion and without the benefit of any basic legal and procedural safeguards. As of present, it remains unclear whether this emerging practice will remain isolated to the camp in **Osmaniye** and be eventually discontinued or maintained and possibly expanded in the context of the new migration control measures that are being introduced by reference to the Action Plan on Migration agreed between EU and Turkey on 29 November 2015.

In regards to the emerging practice of *de facto* administrative detention of “temporary protection” beneficiaries without any link to either Article 6 TPR or detention grounds in LFIP, similarly the general rules and procedures in Turkey concerning appeals against deprivation of liberty and acts of the administration shall apply.

## **11. Legal remedies against unfavourable decisions and practices**

Unfavourable decisions and practices that may negatively affect persons within the scope of a “temporary protection” regime on the basis of TPR would include: (a) denial of access to territory either at the instance of first arrival or upon repeat arrival as defined by Article 13 TPR; (b) exclusion from “temporary protection” as per Article 8 TPR; (c) deportation decisions in violation of the *non-refoulement* obligations guaranteed by Article 6 TPR and Article 4 LFIP; (d) punishment for irregular entry or presence in violation of Article 5 TPR; (e) arbitrary denials of access to rights and services provided by the TPR to “temporary protection” beneficiaries, among others.

Since the TPR itself does not have a dedicated provision listing specific remedies for persons concerned against unfavourable decisions and practices, all acts and actions of competent authorities within the scope of the TPR are subject to general rules of accountability derived from Turkish administrative law – unless there is a dedicated specific remedy provided in the LFIP itself, which is the legal basis of TPR.

Of the possible unfavourable decisions and practices identified above, there is a specific dedicated remedy provided by the LFIP against deportation decisions. According to Article 53 LFIP, deportation decisions can be challenged at competent administrative court within 15 days. Appeals against

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<sup>79</sup> See the section on Detention: Judicial Review of the Detention Order of this report for a more detailed discussion of appeals against administrative detention decisions under either Article 57 or Article 68 LFIP.

deportation decisions have automatic suspensive effect. The competent administrative court is required to finalise the appeal within 15 days. Administrative court decisions on deportation appeals are final, may not be appealed onward in a higher court.

All other scenarios of possible unfavourable decisions and practices identified above are subject to general rules of accountability derived from Turkish administrative law. Under Article 125 of the Turkish Constitution, all acts and actions of the administration are subject to judicial review. According to Article 7 of the Law on Administrative Court Adjudication Procedures, acts and actions of the administration must be challenged within 60 days at competent administrative courts. Applications with administrative court generally do not carry automatic suspensive effect, but applicants may file an associated halt of execution request, which may or may not be granted. There is no general time limit on administrative courts for the finalisation of the appeal. Unfavourable judgments of administrative courts can be challenged in the higher administrative court.

## **12. Legal assistance**

Article 53 of the TPR guarantees the right to be represented by a lawyer in relation to matters of law and procedure vis-a-vis authorities. It also makes a reference to the provisions of state-funded legal aid (*Adli Yardım*) enshrined in the Attorneyship Law, which provides for state-funded legal counsel to persons who cannot afford to pay a lawyer. In Turkey, the state-funded legal aid is delivered by provincial bar associations, subject to considerations of means and merits.

This reference to the state-funded legal aid system is positive, however it does not reflect the actual dramatically short supply of legal assistance and representation available to Syrian nationals and others subject to Turkey's "temporary protection" regime. While the TPR thereby as a matter of principle confirms that persons within the scope of "temporary protection" can apply to bar associations for state-funded legal aid, in current practice bar associations in Turkey, including those in southern Turkey in provinces hosting significant refugee populations, appoint legal aid lawyers to only a small number of "temporary protection" beneficiaries – due to limitations of legal aid funding and expertise.

Refugee Rights Turkey and UNHCR, among other actors, continue to undertake training and capacity-building efforts targeting bar associations in order to encourage and support increased involvement of bar associations as legal aid providers to refugees from Syria and elsewhere by utilising the existing state-funded legal aid framework. That said, the current supply and availability of legal assistance and representation to either persons subject to Turkey's "temporary protection" regime for refugees from Syria or to persons subject to the "international protection" procedure for non-Syrian protection seekers, is dramatically short of addressing the vast amount of needs on the ground.

Article 51 of the TPR guarantees persons concerned and their legal representatives' access to file and documents, with the exception of "information and documents pertaining to national security, public order, protection of public security, prevention of crime and intelligence". This excessively broad, blanket space of exception generates the risk that in certain situations lawyers representing persons seeking to challenge their treatment will be prevented from being able to access all relevant information. In the current regional context and security environment, with a heavy emphasis on the identification and prevention of persons with alleged links to terrorist groups, the restrictions allowed by Article 51 TPR on lawyers' access to file is concerning.

On a separate note, Article 51 TPR also provides guarantees for the confidentiality of personal information and documents.

## **Lingering impediments in notarisisation of power of attorney**

In Turkey, for a lawyer to be authorised to represent a person, they must obtain a *notarised* power of attorney. This means that a Notary Office must be involved during the certification of the legal representation act between the lawyer and the person. According to the Notaries Law, an identity document must be presented to the Notary Office by the person seeking to notarize a power of attorney. Article 90 of the Implementing Regulation of the Notaries Law lists the type of documents that may be presented by persons to Notary Offices for the purpose of establishing identity. In the case of foreign nationals, Notary Offices do not hesitate to accept passports as valid identity documents, they are generally reluctant to proceed with any other type of identification documents presented by foreigners.

After the LFIP came into force, it emerged that various new types of identity documents were being issued to foreign nationals, which Notary Offices were reluctant to recognise and process. In response, on 19 September 2014, the Union of Notaries in Turkey published a regulatory note addressed to Notary Offices, listing the types of documents issued by reference to LFIP, which can be accepted as valid identity documents by Notary Offices.

While this regulatory note was a positive step forward, since it was drafted and published before the adoption of the TPR on 22 October 2014, it makes no mention of the “Temporary Protection Identification Document” issued to “temporary protection” beneficiaries by DGMM as per Article 22 TPR. For this reason, Notary Office continue to show reluctance in accepting “Temporary Protection Identification Documents” as valid identity cards for the purpose of power of attorney notarisisation. This problem not only affects persons holding a “Temporary Protection Identification Document”, but also affects persons who are subject to deportation proceedings or excluded from “temporary protection” as per Article 8 TPR – unless they have a passport they can use to notarise a power of attorney. Currently, there are ongoing discussions among refugee rights advocacy actors, DGMM, UNHCR and the Union of Notaries to address this lingering problem.

That said, when a legal aid lawyer is appointed by a bar association to represent a person, the official appointment letter can serve as a temporary substitute in place of a notarised power of attorney in certain types of judicial applications. This is indeed a shortcut that is currently being used to help address the problems of access to remedies created by the notarisisation problem.

### **13. Treatment of vulnerable groups within the scope of temporary protection**

As with LFIP, the TPR also contains definitions of “persons with special needs” and “unaccompanied minor” and provides for additional guarantees.

According to Article 3 TPR, “unaccompanied minors, persons with disability, elderly, pregnant women, single parents with accompanying children, victims of torture, sexual assault or other forms of psychological, physical or sexual violence” are to be categorised as “persons with special needs”.

The same article defines an “unaccompanied minor” as “a child who arrives in Turkey without being accompanied by an adult who by law or custom is responsible for him/her, or, a child left unaccompanied after entry into Turkey, provided that he or she did not subsequently come under the active care of a responsible adult”.

The TPR and other related secondary legislation providing the legal framework and procedures for the provision of services to “temporary protection” beneficiaries identify the Ministry of Family and Social Policies (MFSP) as the responsible authority for “persons with special needs”.

As provided by the AFAD Circular No: 2014/4 on “Administration of Services to Foreigners under the Temporary Protection Regime”, “services such as accommodation, care and oversight of unaccompanied minors, persons with disabilities and other persons with special needs are the responsibility of Ministry of Family and Social Policies. The Ministry is responsible for the referral of vulnerable persons to children centres, women shelters or other appropriate places.”

Being identified and registered as a “person with special needs” entitles beneficiaries to additional safeguards and prioritised access to rights and services. As per Article 48 of TPR, they should be provided “healthcare services, psycho-social assistance, rehabilitation and other support and services free of charge and on priority basis, subject to the limitations of capacity.”

### **Unaccompanied children<sup>80</sup>**

Turkey is a party to the Convention on the Rights of the Child and domestic child-protection standards are generally in line with international obligations. According to Turkish Law, unaccompanied children, once identified, should be taken under state protection with due diligence under the authority of the MFSP.

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

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

Although according the Turkish Civil Code children who are under state protection must be appointed a legal guardian or a trustee, it is observed that in practice unaccompanied children within the scope of Turkey’s “temporary protection” regime are not appointed any legal guardian. Since the above mentioned 20 October 2015 dated Directive does not provide any further instructions regarding the appointment of a guardian or a trustee, it is expected that this problem will continue at least in short term. The Directive however provides that each child placed under state protection shall be appointed an “advisor” from Provincial MFSP Directorate, who will be responsible for the child’s adaptation in the facility and oversee his/her participation in educational and other support activities.

As discussed in Family Reunification section below, Article 49 TPR appears to grant “temporary protection” beneficiaries the possibility of “making a request” for family unification in Turkey with family members outside Turkey. The article also provides that in the case of unaccompanied children, “family unification steps shall be initiated without delay without the need for the child to make a request”.

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<sup>80</sup> The information summarized in this subsection is based on child-protection related provisions of the Law No: 5395 on Child Protection and the Turkish Criminal Code, Law No: 2828 on Provision of Social Services and the 20 October 2015 dated Ministry of Family and Social Policies Directive on Unaccompanied Minors.

## **Protection of women and girls**

In regards protection of women, Article 48 TPR refers to Turkey's Law No: 6284 on Protection of the Family and Prevention of Violence, and the Implementing Regulation of this law, which provides a series of preventive and protection measures for women who are either victim or at risk of violence.

Women subjected to or at risk of domestic violence or sexual or gender-based violence by people other than family members must be protected by the competent state authorities. When a woman contacts the police or any other state institution or a third party informs the authorities, depending on the case, either preventive or protective measures should be taken. "Temporary protection" beneficiary women can also benefit from these measures.

On the basis of a referral from either the police, Centres for the Elimination and Monitoring of Violence under Provincial MFSP Directorates or other state institutions, women can be referred to women's shelters run by either the MFSP, municipalities or NGOs. The problem however is that the overall number and capacity of the women shelters in Turkey falls very much short of the need. Since women shelters are meant to accommodate both Turkish and foreign nationals in the locality, "temporary protection" beneficiary women shall also be affected by the capacity problems.

Another related practical limitation is that although the law clearly provides that both women at risk of violence and women who have actually been subjected to violence should be able to access shelters, in practice due to capacity problems only women who had actually been subjected to violence are offered access to existing shelters. As a rule women placed in shelters can stay in the facility up to 6 months. This period can be extended on exceptional basis.

The Regulation on Women's Shelters clearly indicates that for a woman to be admitted to a shelter, she is not required to provide a valid identity document. However, it is reported that in practice a Temporary Protection Identification Card is required of women seeking to be admitted to shelters.

In addition to violence, protection of women and girls below 18 involved in early marriages and unofficial polygamous marriages is another important concern. While both practices are criminalised under Turkish law, in practice "temporary protection" beneficiaries have limited opportunities to claim the relevant legal safeguards and protection measures for lack of sufficient public information and crucially very short supply of counselling and legal assistance services available to refugee women.

## **Torture survivors**

Both LFIP and TPR identify "torture survivors" among persons with special needs. Article of TPR provides that all persons with special needs shall be provided free of charge medical, psycho-social, rehabilitation and other services, within the bounds of available services in the locality.

Torture survivors, like all other "temporary protection" beneficiaries, have access to a range of healthcare services in public hospitals, including psychiatric assistance. There are also a small number of NGOs that specialise in providing treatment and rehabilitation services to torture survivors.

## **14. Resettlement and family reunification departures of beneficiaries**

As elaborated in the [Introduction](#) above, “temporary protection” beneficiaries are barred from making a separate “international protection” request in Turkey in accordance with LFIP. By the same token, as a general policy UNHCR Turkey does not register “temporary protection” beneficiaries and carry out refugee status determination (RSD) proceedings under UNHCR’s Mandate. However, UNHCR does register and process a relatively small number of “temporary protection” beneficiaries on exceptional basis, mainly for the purpose of resettlement but also for protection reasons in a small number of cases.

UNHCR Turkey intends to have submitted a total 10,000 Syrians in Turkey to resettlement countries by the end of 2015. At present UNHCR assumes the role of identifying and submitting cases for resettlement from Turkey.

Until 2015, UNHCR Turkey had largely been relying on its own Implementing Partners for the purpose of initial pre-identification of cases among “temporary protection” beneficiaries for possible resettlement consideration. The UNHCR Turkey Resettlement Unit in turn carries out screening on such pre-identified cases and finalises the selection of cases that are in turn submitted to resettlement countries. Starting in 2015 however, the DGMM has also started to pre-identify cases for resettlement consideration among the registered “temporary protection” caseload through the Provincial DGMM Directorates and make referrals to UNHCR. It remains to be seen how the coordination and cooperation between UNHCR and DGMM on the identification and processing of resettlement cases will evolve going forward.<sup>81</sup>

As per Article 44 TPR, departure of “temporary protection” beneficiaries to third countries for the purpose of resettlement is subject to the permission of the DGMM. A so-called “exit permission” must be issued in order for a beneficiary to be allowed to exit Turkey to a third country either for the purpose of a temporary visit or on a permanent basis for the purpose of resettlement. In order to be eligible for an “exit permission”, the person concerned must of course first register with DGMM and regularise his or her legal status as “temporary protection” beneficiary. Therefore, registration as a “temporary protection” beneficiary is a prerequisite for Syrians if they hope to be processed by UNHCR Turkey for resettlement.

The same “exit permission” requirement also applies to “temporary protection” beneficiaries in process to depart from Turkey for the purpose of family reunification with family members in third countries. And again by the same token, Syrians seeking a family reunification departure from Turkey must first register with DGMM as a “temporary protection” beneficiary before they can subsequently request and obtain an “exit permission” to leave Turkey to a third country.

In practice, Syrians and others in resettlement procedure as well as persons seeking to leave Turkey for family reunification reasons occasionally encounter problems and delays in obtaining the necessary “exit permission” from DGMM, which may in turn lead to delays in departure.

On the question of “exit permission” requirement both for resettlement and family reunification purposes, one should clarify the separate regime that applies to the relatively small number of Syrian nationals who are present in Turkey legally but outside the “temporary protection” framework. As explained in the [Individual Eligibility](#) section above, these are Syrian nationals who have arrived in Turkey with valid passports and been allowed to enter by reference to the visa exemption in place for Syrians dating back to the time before the Syria conflict. Some of these legally arrived Syrians have subsequently obtained regular “residence permits” within the 3-month time frame allowed by the visa-exemption, and continue to live in Turkey on that basis. Others may have arrived in Turkey legally with passports recently and may be currently present in Turkey on visa-exemption grounds valid for 3 months. These Syrian nationals who are present Turkey legally either on “residence permits” or visa-exemption grounds, still have valid Syrian passports, would not need an “exit permission” in order to depart from Turkey to third countries. That said,

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<sup>81</sup> Information provided during a briefing by UNHCR Turkey Resettlement Unit, October 2015, Istanbul.

since they are not beneficiaries of “temporary protection”, they will not be identified and processed for resettlement by UNHCR either, and therefore they do not have access to resettlement. However, in the case of family reunification departures, theoretically if they manage to obtain a visa from the target family unification country, they will be free to leave from Turkey to which ever third country they wish - the way other foreigners can, that is, without any “exit permission” requirements. In practice, however, since the vast majority of Syrians in Turkey have not entered Turkey on valid travel documents, they will need to first register as “temporary protection” beneficiary and seek the required “exit permission” if they wish to leave Turkey for family reunification reasons.

## **15. Link between temporary protection and international protection procedure**

As per Article 16 TPR, persons within the scope of the “temporary protection” regime in place are explicitly barred from making a separate application for “international protection” status in Turkey within the framework of the LFIP. Any requests for international protection presented to competent authorities shall not be processed as long as the “temporary protection” regime is in place.

This principle is also reiterated in Provisional Article 1 TPR, which provides the specifics of the “temporary protection” regime declared for protection seekers from Syria. Persons who arrived on 28 April 2011 or later shall be barred from making a separate “international protection” application. If they did already make an application for “international protection” before the publication of the TPR on 22 October 2014, these applications shall be suspended and the persons concerned will instead be processed as “temporary protection” beneficiaries.

This approach in itself is typical of “temporary protection” measures and is also mirrored by the EU Temporary Protection Directive, for example, which loosely inspired Turkey’s “temporary protection” conception by the same name.

What is concerning, however, in this connection is the fact that the TPR does not provide a strict guarantee for beneficiaries to access the individual “international protection” procedure in the event of a termination of the “temporary protection” regime in place.

As per Article 11, where a “temporary protection” regime is terminated, the Board of Ministers decision for termination may or may not order a specific course of action concerning treatment of former beneficiaries. In Article 11, it is provided that the decision “may”:

- “order the return of all former beneficiaries to country of origin” – which would appear to imply a concerning categorical denial of access to “international protection” procedure for any of the former “temporary protection” beneficiaries; or
- “order the granting of a relevant individual “international protection” status to all former beneficiaries on prima facie/group basis – which is meant to say without carrying out status determination on individual basis; or
- “allow for the individual processing and determination of any “international protection” requests made by former beneficiaries” – where the “may and “or” wording would indicate that this shall be subject to Board of Ministers discretion; or
- “allow for continued stay of former beneficiaries in Turkey subject to conditions to be laid down within the framework of the LFIP” – which appears to indicate some form of legal residence status outside the “international protection” framework.

Furthermore, as discussed above, as per Article 15 TPR, “temporary protection” measures may be “limited” or “suspended” by the Board of Directors, “for a specific period of time or indefinitely”, in the

event of circumstances threatening national security, public order, public security and public health. In such a case, the Board of Ministers shall have the discretion to decide on the specifics of the treatment of existing “temporary protection beneficiaries – which once again indicates a course of action that does not explicitly guarantee access to individual “international protection” procedure for persons concerned in the event of such a discretionary “limitation” or “suspension”.

Lastly on this question, once again as mentioned above, according to Article 10 of the TPR, the Board of Ministers decision declaring a “temporary protection” regime in response to a specific situation of mass influx, “may or may not” elaborate a set duration for the “temporary protection” measure and terms and conditions for its extension beyond this set initial duration. Therefore, the TPR leaves it up to the discretion of the Board of Ministers to determine whether to impose a specific time limit to the “temporary protection” regime declared or declare it “indefinitely” and thereby subject to termination at any time on the basis of Board of Ministers discretion. Indeed, in the Provisional Article 1 of the TPR, which provides the specifics of the “temporary protection” regime Turkey declared for protection seekers from Syria, no such time limit is provided.

In light of these aspects of the TPR framework presented above, it must be concluded that from a forward-looking point of concern from the vantage point of beneficiaries, Turkey’s “temporary protection” concept fails to provide a sufficiently secure and predictable legal status to persons concerned, since:

- A “temporary protection” regime implemented within the framework of the TPR does not have a set duration; it can be “limited”, “suspended”<sup>82</sup> or “terminated”<sup>83</sup> any time based on the discretion of Turkey’s Board of Ministers;
- Where the TPR does not provide an explicit and strict guarantee for persons concerned to be given an opportunity to file an individual “international protection” application, if they have lingering reasons as to why they should not be returned to country of origin.

## C. Rights attached to temporary protection status

### 1. Shelter and freedom of movement

#### Shelter

The TPR does not provide a right to government-provided shelter as such for “temporary protection” beneficiaries. However, Article 37 TPR authorises AFAD to build camps to accommodate “temporary protection” beneficiaries. These camps are officially referred to as “temporary accommodation centres”.<sup>84</sup>

Articles 23 and 24 TPR authorise DGMM to determine whether a “temporary protection” beneficiary shall be referred to one of the existing camps or allowed to reside outside the camps on their own means in a province determined by the DGMM. Article 24 TPR authorises DGMM to allow “temporary protection” beneficiaries to reside outside the camp in provinces to be determined by the DGMM. It also commits that out of “temporary protection” beneficiaries living outside the camps, those who are economically needy may be accommodated in other facilities identified by the Governorate.

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<sup>82</sup> Article 15 TPR.

<sup>83</sup> Article 11 TPR.

<sup>84</sup> Article 3 TPR.

As of 23 November 2015, there were 25 such large-scale camps operated by AFAD accommodating a total of 276,384 “temporary protection” beneficiaries. These 25 camps are spread across 10 provinces in Southern Turkey in the larger Syria border region. The populations hosted in these 25 camps range from 1,368 persons in the smallest one to 28,814 persons in the largest one.<sup>85</sup>

While the overall size of the “temporary protection” beneficiary population sheltered in the camps is not insignificant at all, the vast majority of the current population subject to Turkey’s “temporary protection” regime reside outside the camps in residential areas in Southern Turkey as well as other regions of the country, including the large western cities of **Istanbul** and **Izmir**. As of 13 November 2015, the total population of “temporary protection” beneficiaries registered with Turkish authorities was listed as 2,226,117, of which 260,963 were accommodated in the camps whereas 1,965,154 were resident outside the camps.<sup>86</sup>

### **Freedom of movement**

In the period from the beginning of refugee arrivals from Syria, as the population of Syrian protection seekers outside the camps grew to its current level, until recently there were no controls imposed on this population’s freedom of movement within Turkey. In any case, since Government authorities did not undertake any systematic initiative to register and document the non-camp population until early 2015, it would not be feasible to implement residential requirements on persons living outside the camps such as regular reporting duties of the kind applied to international protection applicants.

When the TPR was published on 22 October 2014, this Regulation which served to formalise and provide a legal basis for the *de facto* “temporary protection” practice until that time included provisions that authorised and gave discretion to the Government and DGMM to impose restrictions on freedom of movement of “temporary protection” beneficiaries if deemed necessary.

As per Article 10 TPR, in the “temporary protection” declaration decision Board of Ministers may choose to contain the implementation of “temporary protection” measures to a specific region within Turkey as opposed to country-wide implementation. As per Article 15 TPR, the Board of Ministers has the authority to order “limitations” on temporary protection measures in place, or the “suspension” of existing measures for a specific period or indefinitely, “in the event of circumstances threatening national security, public order, public security and public health”. In such a case, the Board of Ministers shall have the discretion to determine the specifics of the treatment existing registered “temporary protection” beneficiaries and measures that will be applied to persons within the scope of the “temporary protection” regime who approach Turkey’s borders after the “limitation” or “suspension” decision.

These provisions can potentially serve to underpin limitations of freedom of movement of “temporary protection” beneficiaries beyond the contours of a specific region or a particular province.

In fact, without the need for a Board of Ministers decision on “limitation” or “suspension” of “temporary protection” measures, Article 33 TPR provides that are “obliged to comply with administrative requirements, failure of which will result in administrative sanctions”. Among other requirements, they may be “obliged to reside in the assigned province, temporary accommodation centre or other location” and comply with “reporting requirements as determined by provincial Governorates”. This provision clearly authorises DGMM to limit freedom of movement of “temporary protection” beneficiaries to a particular province, a particular camp or another location.

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<sup>85</sup> Information provided by AFAD, December 2015.

<sup>86</sup> Information provided by DGMM, December 2015.

While the TPR of 22 October 2014 thereby created the legal basis for imposition of residential requirements and controls on freedom of movement of “temporary protection” beneficiaries, it was not until August 2015 that Turkish Government authorities imposed a dedicated instruction to introduce controls and limitations on the movement of Syrians within Turkey.

On 29 August 2015, a DGMM written instruction signed by the Minister of Interior was circulated to the Governorates across Turkey, specifically ordering the institution of a range of measures by provincial authorities to control and prevent the movement of Syrians inside Turkey.<sup>87</sup> It must be noted that this written instruction has to date not been made publicly available. Its existence became known when security agencies particularly in the southern provinces began to act on this instruction and started intercepting Syrians seeking to travel to western regions of the country. It appears that the impetus behind this measure was to halt the growing irregular sea crossings of Syrian nationals to Greek islands along the Aegean coast.

The instruction explicitly refers to the ongoing problems arising from the “movement of Syrians outside the provinces where they are registered” and the increasing incidents of “attempted illegal crossing by Syrians to third countries”, and orders all Governorates to take appropriate measures to control the movement of Syrians inside Turkey, including by undertaking frequent document checks on inter-city highways and issuing warnings to travel operators. Any Syrians identified not to be registered, are to be referred to the nearest registration centre. Any Syrians identified to have left the province where they were registered without written permission, are to be referred or taken back to their province of legal residence. While the instruction also orders Governorates and the Provincial DGMM Directorates in each province to introduce regular reporting and signature duties on “temporary protection” beneficiaries, to date no such reporting duties are being implemented anywhere due to the sheer size of the populations subject to the “temporary protection” regime and associated practical difficulty of enforcing such measures. As of present, it is also unclear to what extent this written instruction has led to actual decrease in such irregular movement of Syrians inside Turkey across provinces.

## 2. Health care<sup>88</sup>

### **Eligibility and conditions for free health care**

All registered “temporary protection” beneficiaries, whether residing in the camps or outside the camps, are covered under Turkey’s general health insurance scheme and as such have the right to access free of charge health care services provided by public health care service providers. Persons who are eligible for “temporary protection” but have not yet completed their registration, have only access to emergency medical services and health services pertaining to communicable diseases as delivered by primary health care institutions.

“Temporary protection” beneficiaries are only entitled to access health care services in the province where they are registered. However, where appropriate treatment is not available in the province of registration or where deemed necessary for other medical reasons, the person concerned may be

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<sup>87</sup> DGMM Written Instruction No:55327416-000-22771, 29 August 2015, on “The Population Movements of Syrians within the Scope of Temporary Protection”, signed by Sebahattin Ozturk, Minister of Interior.

<sup>88</sup> The summary information presented in this section is derived from Article 27 TPR, 18 December 2014 dated AFAD Circular No: 2014/4 on “Administration of Services to Foreigners under the Temporary Protection Regime”, and 4 November 2015 dated Ministry of Health Directive on “Healthcare Services to be provided to Temporary Protection Beneficiaries”.

referred to another province. For emergency medical conditions, “temporary protection” beneficiaries can receive health care services without any restrictions on location.

It is important to point out that Syrian nationals who reside in Turkey on the basis of a regular “residence permit” (see section on [Individual Eligibility](#)) and therefore are not registered as “temporary protection” beneficiaries, cannot benefit from free health care services available to persons under “temporary protection” regime. That said, one of the key requirements for obtaining a regular “residence permit” is to have a private health insurance policy valid for the duration of the “residence permit” sought. Thus, persons who stay in Turkey on the basis of regular “residence permits” are expected to rely on the coverage of their own private health insurance where necessary.

### **Scope of health care coverage**

Under the Turkish health system, differentiation is made among primary, secondary and tertiary public health care institutions. Health stations, health centres, maternal and infant care and family planning centres and tuberculosis dispensaries that exist in each district in each province are classified as primary healthcare institutions. State hospitals are classified as secondary health care institutions. Research and training hospitals and university hospitals are classified as tertiary health care institutions.

“Temporary protection” beneficiaries are entitled to spontaneously access initial diagnosis, treatment and rehabilitation services at primary health care institutions. These providers also undertake screening and immunisation for communicable diseases, specialised services for infants, children and teenagers as well as maternal and reproductive health services.

“Temporary protection” beneficiaries are also entitled to spontaneously approach public hospitals and research and training hospitals in their province. Their access to medical attention and treatment in university hospitals, however, is on the basis of a referral, from a state hospital. In some cases, state hospitals may also refer a beneficiary to a private hospital, where appropriate treatment is not available in any of the public healthcare providers in the province. In such a case, the private hospital are compensated by the general healthcare insurance scheme curity and the beneficiary is not charged.

As a principle referrals to university hospitals and private hospitals are only made for emergency and intensive care services as well as burn injuries and cancer treatment. That said, in situations of medical emergency, persons concerned may also spontaneously approach university hospitals and private hospitals without a referral.

“Temporary protection” beneficiaries’ access to secondary and tertiary health care services is conditional upon whether the health issue in question falls within the scope of the Ministry of Health’s Health Implementation Directive (SUT).

For treatment of health issues which do not fall within the scope of the SUT or for treatment expenses related to health issues covered by the SUT, which however exceed the maximum financial compensation amounts allowed by the SUT, beneficiaries may be required to make an additional payment.

Free health care coverage for registered “temporary protection” beneficiaries also extends to mental health services provided by public health care institutions. A number of NGOs are also offering a range of psycho-social services in some locations around Turkey with limited capacity.

### **Medication Costs**

According to “SUT”, persons covered by the general health insurance scheme are expected to contribute 20% of the total amount of the prescribed medication costs. The same rule also applies also to “temporary protection” beneficiaries. In addition, beneficiaries are expected to pay 3 TL (€0.93) per medication item up to three items, and 1 TL (€0.31) for each item in more than three items were prescribed.

That said, in terms of access to medication, complications and inconsistent implementation are observed across the country. The new 4 November 2015 dated Ministry of Health Directive on “Healthcare Services to be provided to Temporary Protection Beneficiaries” is expected to resolve the ongoing implementation problems and inconsistencies going forward.

To begin with, before the adoption of this Directive, pharmacies in some provinces, including Istanbul, were reluctant to provide medication to “temporary protection” beneficiaries because of ongoing delays in reimbursement payments to pharmacies. Although the new Directive promises to resolve the delays in payment, it is reported that at least some pharmacies are still reluctant to provide medication to “temporary protection” beneficiaries due to past problems.

Another inconsistency in the practices before the Directive concerns the percentage of medication costs beneficiaries are actually required to contribute. It is reported that whereas in some provinces “temporary protection” beneficiaries are expected to pay a 20% contribution like Turkish citizens covered under the general health insurance scheme, on a positive diversion in some other provinces medication costs of “temporary protection” beneficiaries are fully covered with no contribution by the beneficiary.

### **Problems of access related to language barriers**

Language barrier is one of the key problems encountered by “temporary protection” beneficiaries in seeking to access healthcare services. Although there are interpreters available in some public health institutions in some provinces in the south of Turkey, in most health care facilities no such interpretation services are available. A major practical obstacle for refugees is that hospitals in Turkey give appointments to patients over telephone. Since hospital appointment call centres do not serve prospective patients in any language other than Turkish, foreign nationals need the assistance of a Turkish speaker already at appointment stage.

The Ministry of Health operates a free hotline that provides limited distance interpretation services to “temporary protection” beneficiaries, doctors and pharmacists. However, the hotline does not provide any general counselling to beneficiaries about the healthcare system or assistance in obtaining appointments at hospitals. The Danish Refugee Council also operates a limited free hotline service providing interpretation services to Syrians in Arabic and Turkish for the purpose of facilitating interactions with healthcare providers.

### **Problems of access related to “Foreigners Identification Number”**

As explained in the section on [Reception and Registration](#) above, there is an ongoing problem regarding registration and documentation that affects “temporary protection” beneficiaries who were registered by authorities before the TPR of 22 October 2014. In Turkey, foreign nationals are assigned a “Foreigners Identification Number” by the Directorate General of Population and Citizenship Matters.

The various different types of registration documents issued to beneficiaries before the TPR came into force, either did not include a FIN assignment or featured a FIN that started with the digits of 98, whereas

all the other categories of legally resident foreign nationals in Turkey – including “international protection” applicants and beneficiaries – are assigned FINs that start with the digits of 99.

However, for a technical reason having to do with the electronic infrastructure governing the delivery of public services, Foreigners Identification Numbers that start with the digits of 98 cannot be processed by public agencies, including the public healthcare institutions for the purpose of general health insurance coverage of beneficiaries.

In order for “temporary protection” beneficiaries to start accessing healthcare coverage, an initial activation needs to be made, by which ever public healthcare provider they approached first, in the electronic infrastructure of Turkey’s Social Security Agency (SGK). It appears that this activation step is not possible unless the person concerned has a FIN that starts with the digits of 99.

Although the DGMM and the Directorate General of Population and Citizenship Affairs have worked out a way for previously registered “temporary protection” beneficiaries to be assigned or reassigned new FIN that start with the digits of 99, in practice due to faults and delays, not all such previously registered “temporary protection” beneficiaries have at present been able to obtain their new numbers. As a result, they remain unable to access free healthcare services. That said, this implementation problem is expected to be fully resolved in the near future.

### **3. Education<sup>89</sup>**

#### **Basic education**

Under Turkish law, “basic education” for children consists of 12 years, divided into 3 levels of 4 years each. All children in Turkish jurisdiction, including foreign nationals, have the right to access “basic education” services delivered by public schools.

All children registered as “temporary protection” beneficiaries have the right to be registered at public schools for the purpose of “basic education”. However, currently in practice there are continuing difficulties and shortcomings in the access of Syrian children at school age to educational services.

By and large, the children accommodated in the camps have unimpeded and virtually full access to basic education mainly at “temporary education centres” administered inside the camps, which are schools under the supervision of Turkish Ministry of Education, which however provide instruction in Arabic by Syrian teachers, who deliver an adjusted version of the Syrian school curriculum.

On the other hand, children of school age outside the camps, have the option of either attending a public school in the locality, which teach the Turkish school curriculum and instruct in Turkish, or one of the many private schools run by Syrian charities, which are classified as “temporary education centres” by the Ministry of Education like the schools in the camps, and feature Syrian teachers who provide instruction in Arabic and follow their own adaptations of the Syrian school curriculum.

The Ministry of Education Circular No:2014/21 on “Education Services for Foreign Nationals” of 23 September 2014 for the first time introduced the concept of “temporary accommodation centres” and

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<sup>89</sup> The summary information presented in this section is derived from Art 28 of TPR, the 18 December 2014 dated AFAD Circular No: 2014/4 on “Administration of Services to Foreigners under the Temporary Protection Regime” and the Turkish Ministry of Education Circular No:2014/21 on “Education Services for Foreign Nationals” of 23 September 2014.

provided a legal framework for the supervision and monitoring of the aforementioned private schools run by Syrians – which had hitherto existed outside the regulatory framework of the Turkish Ministry of Education and were therefore categorically unlawful but tolerated by the provincial authorities.

“Temporary education centres” are specifically defined as schools established and run for the purpose of providing educational services to persons arriving in Turkey for temporary period as part of a mass influx. As per the Circular, the establishment and operations of such entities as well as the curricula they will teach are subject to the regulations and approval of the Provincial Directorate of Education. That said, since this Circular mainly aimed to regulate and incorporate the large number of existing private schools run by Syrian charities, the existing schools were invited to seek protocols with the Provincial Directorate of Education in order to regularise their activities and be allowed to continue to operate provided that they comply with the operational and curriculum requirements laid down by the Ministry of Education. Under the new regulations, “temporary education centres” are also required and assisted to provide Turkish classes to their students.

In practice, the process for the incorporation and regularisation of such existing private schools by Syrian charities is currently ongoing. Those schools which fail to comply with these new Ministry of Education regulatory requirements shall be forced to close down.

Such private Syrian schools are generally not free. They charge students varying amounts of fees. It remains unclear what legal validity any diplomas or certificates issued by the “temporary education centres” will have going forward, while the Provincial Directorate of Education authorities are authorised to determine such questions if and where the child is subsequently admitted to a public school or a university in Turkey.

Public schools in Turkey on the other hand are free of charge. They instruct in Turkish and teach a standardised Turkish Ministry of Education curriculum, and are authorised to dispense certificates and diplomas to foreign national children with full validity.

In order to enrol in public schools, children and their parents need to have completed their “temporary protection” registration and issued Temporary Protection Beneficiary Identification Cards. Children who are not yet registered can be temporarily enrolled as a “guest student” which means that they can attend classes however will not be provided any documentation or diploma in return, unless they subsequently complete their “temporary protection” registration and are officially admitted by the school.

Where a foreign national child is enrolled at public schools, the Provincial Directorate of Education is responsible to examine and assess the former educational background of the student and determine to which grade-level the child should be registered. In case there is no documentation regarding the past educational background, the Provincial Directorate shall conduct necessary tests and interviews to assess the appropriate grade-level to which student shall be assigned.

As of 31 October 2015, the state of enrolment of school-age children under “temporary protection” regime is reported as follows:

<b>Enrolment of school-age children under temporary protection regime</b>	
Estimated number of children at school age	<b>756,000</b>
Number of children enrolled	<b>276,890</b>
- <i>In temporary education centres in camps</i>	78,707

- <i>In temporary education centres outside camps</i>	144,823
- <i>In public schools</i>	55,360
<b>Rate of enrolment</b>	<b>36.8%</b>

Source: UNHCR Turkey

### Higher education

“Temporary protection” beneficiaries also have the right to higher education in Turkey. In order to apply and register with an institution of higher education, students are required to have completed either the 12 years of Turkish “basic education” or an equivalent educational experience. Children who have attended a certified “temporary education centre” can also be approved to have fulfilled that requirement on the basis of the equivalence determination carried out by the competent Provincial Directorate of Education.

In Turkey, admission to universities is subject to the requirement of taking a standardised university entrance examination and additional requirements by each university.

### Turkish classes and vocational training

“Temporary protection” beneficiaries, regardless of their age, can benefit from free of charge language education courses as well as vocational courses offered by “Public Education Centres” structured under each Provincial Directorate of Education. Some NGOs also provide free language courses and vocational courses to “temporary protection” beneficiaries in some localities.

## 4. Access to the labour market<sup>90</sup>

“Temporary protection” beneficiaries do not have direct access to Turkey’s labour market, but TPR grants them the right to “apply for a work permit” – subject to conditions and limitations to be introduced by the Board of Ministers, as will be explained below. Since these conditions and limitations have not yet been delivered by the Government, at present “temporary protection” beneficiaries’ legal access to Turkey’s labour market remains theoretical. As a result, Syrians’ participation in Turkey’s labour market almost entirely consists of involvement in the informal labour market and subject to exploitative terms and pay.

In Turkey, foreign nationals’ access to labour market is governed by the general conditions and requirements provided by the Law on Work Permits for Foreign Nationals.<sup>91</sup> According to Article 12 of this law, in principle applications for work permits must be made at Turkey’s diplomatic representations before the applicant arrives in Turkey. However, foreign nationals who are already legally resident in Turkey on the basis of a valid “residence permit”, can also apply from within Turkey.

This means that generally speaking a foreign national who is already in Turkey must have a valid “residence permit” in order to be able to make an application for a work permit from the Ministry of Labor and Social Security. “Temporary protection” beneficiaries are not issued “residence permits”, they are to be issued Temporary Protection Identification Cards as per Article 22 TPR.

<sup>90</sup> The summary information presented in this section is derived from Art 29 of TPR and the 18 December 2014 dated AFAD Circular No: 2014/4 on “Administration of Services to Foreigners under the Temporary Protection Regime”.

<sup>91</sup> Law No: 4817, Law on Work Permits for Foreign Nationals, published on 27 February 2003.

Article 29 TPR does, crucially, grant temporary protection beneficiaries the right to apply for a work permit on the basis of a Temporary Protection Identification Card, subject to regulations and directions to be provided by the Board of Ministers. As per Article 29, the Board of Ministers shall develop necessary regulations and determine specific sectors and geographical areas in which “temporary protection” beneficiaries can apply for work permits. At present, since these specific directions have not yet been provided by the Board of Ministers, it remains unclear how Turkey’s general rules and limitations governing the issuing of work permits to foreign nationals apply to “temporary protection” beneficiaries.

According to the general terms of the Law on Work Permits for Foreign Nationals, a foreign national should make an application for work permit together with the employer who is willing to hire her or him. As per Article 13 of the Implementation Regulation of the Law on Work Permits for Foreigners, the Ministry of Labour and Social Security decides work permit applications on the basis of considerations regarding the “state of the labour market” and “sectoral, geographical and general economic conditions”, among others. Furthermore, foreign nationals are categorically excluded from working in certain professions and areas of work.

That said, in April 2013, the Department of Work Permits for Foreigners under the Ministry of Labour and Social Security published an announcement on its website where it was stated that “general assessment criteria [for granting work permits to foreigners] shall not be applied to Syrians who possess valid residence permits”. That is, employers seeking to obtain work permits for Syrian nationals with valid residence permits were to be exempted from general requirements applied to applications by other nationalities of work permit applicants. It is important to note that this announcement was made back in April 2013, that is, before the adoption of the TPR, and it only concerned work permits sought by Syrian nationals who have valid “residence permits”.

The table below outlines the very meagre number of work permits issued to Syrian nationals as by the end of 2014:<sup>92</sup>

<b>Year</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
2011	96	22	118
2012	194	26	220
2013	724	70	794
2014	2,384	157	2,541
<b>Total</b>	<b>3,398</b>	<b>275</b>	<b>3,673</b>

As it can be discerned from the table, only a total of 3,673 Syrian nationals, out of a population which is now well over 2 million, were able to obtain work permits in four years.

In light of the above, until the much awaited Board of Ministers direction regarding the processing of work permit applications by “temporary protection” beneficiaries as per Article 29 TPR is issued, the legal access of Syrians and other “temporary protection” beneficiaries to Turkey’s labour market will remain on hold.

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<sup>92</sup> This statistical overview is derived from the official statistics published by the Ministry of Labour and Social Security on work permits granted by nationality, available at: <http://bit.ly/1jY2qgh>, <http://bit.ly/1Qo3W9X> and <http://bit.ly/1Qo3Uj5>.

## 5. Family reunification

Article 49 TPR appears to grant “temporary protection” beneficiaries the possibility of “making a request” for family unification in Turkey with family members outside Turkey. While the article provides that DGMM shall “evaluate such requests” and may cooperate with relevant international organisations and NGOs if deemed necessary, it is important to emphasise that the wording and specifics of this provision do not indicate strictly a right to family reunification on the part of beneficiaries. It is rather worded as a possibility subject to the discretion of DGMM.

The authors of this report are not aware of any cases where this family reunification provision was actually implemented in practice. It remains to be seen what practices will emerge of this provision going forward, particularly in relation to “temporary protection” beneficiaries in Turkey who may have family members in other countries in the region.

According to Article 3 TPR, a beneficiary’s spouse, minor children and dependent adult children are defined as family members. The article also stipulates that in the case of unaccompanied children, “family unification steps shall be initiated without delay without the need for the child to make a request”.