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International Protection System of The New Turkish Law: A Conceptual Analysis

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Abstract

International protection is the fundamental concept of international refugee law. Turkey has adopted in April 2013 a new Law No. 6458 on Foreigners and International Protection (LFIP) which is effective as of April 11, 2014. The major reform brought by the LFIP is, undoubtedly, the introduction of the international protection concept in Turkish law for the first time. This article aims to focus on the different statuses under which international protection will be provided according to the LFIP and to evaluate this new law vis-à-vis international protection system in general.

Keywords: international protection; refugee; asylum seeker; Turkish law on foreigners and international protection; international migration.

Introduction

Being a citizen of a country grants a person the right to diplomatic protection of their own state while they are in a foreign country. It is exclusive for citizens and regarded as one of the differences between citizens and foreigners in all legal systems. However, in situations like war, civil war, political turmoil or natural disasters that may pose a threat to people's lives may result in individual or collective fleeing, in other words seeking asylum in foreign countries that are deemed safe. In such cases, protection obligation of the country of origin cannot be provided or is denied for the person. International protection is thus a form of protection substituting citizenship protection in a temporary period and, therefore, it can be defined as whole activities that ensure refugees' and asylum seekers' safety. Its basic function is to provide a surrogate protection when national protection cannot be provided.

International protection is the fundamental concept of international refugee law. As explained above, it is a substitutive protection which is provided when country of origin cannot, or is unwilling to, provide protection, and it is based on the principle that people are entitled to have this protection just because they are human, and mostly granted by the foreign country from which such protection is sought or through

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international, intergovernmental or non-governmental organizations. The term protection refers to protection against human rights violations¹.

Turkey has adopted in April 2013 a new *Law No. 6458 on Foreigners and International Protection (LFIP)* which is effective as of April 11, 2014. The major reform brought by the LFIP is, undoubtedly, the introduction of the international protection concept in Turkish law for the first time. The statuses under which international protection will be provided; in other words, types of international protection provided, and names of such types, vary in each country. Different names attributed to the same concept may therefore cause contradiction in terms. Thus, the concept of international protection does not solely consist of types of international protection acknowledged by applicable legislation in a specific country or of specific legal statuses providing such protection. Rather, it is much broader and supranational. A blunt discussion on the types of international protection without examining its scope or the concepts and subjects involved prevents a realistic evaluation among statuses. This article aims to focus on the different statuses under which international protection will be provided according to the LFIP and to evaluate this new law vis-à-vis international protection system in general.

A) Foreigners Who Can Avail Themselves of International Protection

Persons who can avail themselves of international protection in Turkish law in accordance with the Law on Foreigners and International Protection include (i) refugees; (ii) conditional refugees; (iii) subsidiary/complementary protection beneficiaries and (iv) persons under temporary protection. We will try to examine all these statuses on the basis of concepts and subjects involved.

1) Refugees

The painful experience of the World War II in particular showed that anyone can become a refugee at any time. In order to guarantee the fundamental right to life and then the right to live in humanitarian conditions, states realized the importance of international protection and sought to establish, through mutual agreement, an international convention on who will be deemed a refugee under which conditions with the aim of setting out international protection and determining the limits of international protection obligation. The legal basis of international refugee law is *1951 Geneva Convention relating to the Status of Refugees* and *1967 Protocol relating to the Status of Refugees (New York Protocol)* amending the Convention.

¹ Özkan: 56.



Having participated in the drafting process, Turkey adopted the 1951 Geneva Convention in 1961. Both 1951 Geneva Convention and 1967 New York Protocol amending the Convention determine who will be regarded as refugee in Turkish law. Another arrangement on refugees in national law is available in Article 61 of the LFIP.

It must be noted that in comparative law, the concepts of refugee and asylum seeker are more different than those in Turkish law². The main reason of this terminological difference is the geographical restriction imposed by Turkey on *1951 Convention relating to the Status of Refugees*³. Because of this restriction imposed, Turkey defines as "refugees" only those people who are covered under the scope of this Convention, and defines as "conditional refugees" ("asylum seeker" in the former Law⁴) those people who are out of the geographical scope of the Convention as even if their conditions are the same, and thus ascribes different meanings to these concepts than those acknowledged by international law⁵.

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

This definition of refugee in the LFIP is exactly the same as the definitions in 1951 Geneva Convention and 1967 New York Protocol amending this Convention, except for geographic restriction. As it is seen, while adopting the Protocol Turkey declared that it will continue to impose geographic restriction⁶. Thus, along with Congo, Madagascar and Monaco,

² ÖZKAN:70-72.

³ Turkey adopted the 1951 Geneva Convention with Approving Law no. 359 of August 29, 1961 (Official Gazette 05 September 1961 - 10898).

⁴ 1994 Regulation (Cabinet Decision Number 94/ 6169 that came into effect on 14.9.1994).

⁵ See ÇELİKEL / GELGEL: 19-23; TEKİNALP: 29, 45, 100, 107; GÖĞER: 2, 22, 63-65; ALTUĞ: 5 et seq.; AYBAY: 24-25; ÇİÇEKLİ, 2003: 128-130.

⁶ A reservation according to which "*No provision of this Convention shall be interpreted as the rights recognized to the refugees in Turkey are more than the ones recognized to the Turkish nationals*" was adopted in article 2 of this approving law. Aforementioned reservation was reiterated during the approval of 1967 New York Protocol. (Cabinet Decision Number 6/10266 of 01 July 1968, Official Gazette dated 05 August 1968 – 12968).



Turkey is among the four countries which grant the refugee status only to those fleeing the events occurring in Europe⁷.

Some examples can be given from Turkey's recent history of refugee incidents. Jews who had fled Nazis into Turkey during the World War II were granted a refugee status in Turkey as they were facing threat of persecution due to their race and religion. Again, before the breakup of Yugoslavia, people fleeing Serbian massacre were granted a refugee status. At this point, it must be mentioned that Turks of Western Thrace fleeing persecution in Bulgaria into Turkey were in "refugee" status as they were actually fleeing the events in Europe. However, as these people were of Turkish origin, they were subject to the Law on Settlement⁸ and granted with "immigrant" status that provides superior rights and advantages compared to refugee status.

One other aspect that should be emphasized is that the refugee status is an individual status, which means it cannot be granted in the case of collective asylum seeking such as mass influx⁹. In this respect, it should be noted that the term "refugee" is wrong to identify the legal status of Syrians who came to Turkey in mass influx. As mentioned before, a long and meticulous examination and investigation procedure is required for each individual application seeking asylum, and it is clear that such an individual and detailed examination cannot be made in case of mass influx, for example in case of temporary protection.

2) Conditional Refugees

Foreigners referred to as conditional refugee in the LFIP are actually people referred to as asylum seeker in Turkish law prior to the introduction of the LFIP.

Pursuant to Article 62 of the LFIP, a person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of

⁷ This practice of Turkey which grants the refugee status to only those who have to flee their home country because of events occurring in Europe by maintaining geographic restriction was criticized during Turkey's accession period to the European Union. Although Turkey faced pressure through several channels to abolish this geographic restriction, it is still taking a firm stance on this point without any compromise. However, we are of the opinion that this attitude should be maintained considering the readmission agreement signed with the European Union.

⁸ Law No. 2510 on Settlement that came into force in 1934, amended with the new Law on Settlement (Law No. 5543) in 2006.

⁹ EKŞİ: 160.



such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees are allowed to stay in Turkey temporarily until they are resettled to a third country.

As can be seen, the definition of conditional refugee is exactly the same as the definition of the refugee set out in Article 61 of the LFIP, except for geographic criterion. As Turkey restricts the refugee status exclusively with the events occurring in European countries, individuals seeking asylum due to events occurring outside European countries are not granted with refugee status even if they meet all other conditions. These people are therefore referred to as conditional refugee in the LFIP.

Except for geographic criterion, another basic difference between a refugee and a conditional refugee is granting of more limited rights to conditional refugees than refugees. The main objective for those who are granted with a conditional refugee status is to resettle them to a safe third country, and they are allowed to stay in Turkey and granted with a temporary residence permit until such resettlement takes place.

Conditional refugee status is individual as with refugee status¹⁰. Therefore, it cannot be applied in case of a mass influx. For this reason, it is not possible to grant "conditional refugee" status of individual nature to Syrians coming to Turkey since 2011 in mass influx, regardless of the fact that they fled the events occurring outside Europe. Thus, these foreigners shall not be deemed conditional refugee even if they fall under the definition of conditional refugee.

Foreigners granted with a conditional refugee status are allowed to stay in Turkey temporarily and granted with a temporary residence permit until they are resettled to safe third countries through the UNHCR. However, there are times in which the main objective, i.e. finding a safe third country, is impossible to achieve. Indeed, there is no guarantee for resettling conditional refugees to safe third countries¹¹. As a matter of fact, the number of conditional refugees who are admitted to safe third countries from Turkey is declining every passing year¹². The countries admitting conditional refugee from Turkey include Canada, Australia, Sweden, Norway and Finland, while the number of conditional refugees admitted by these countries is extremely low¹³. On the other hand, the United States

¹⁰ EKŞİ: 161.

¹¹ SOYKAN: 162.

¹² SOYKAN: 39.

¹³ SOYKAN: 39.



adopted a special resettlement program exclusive for Iraqi refugees in 2007¹⁴.

Article 74, sub-paragraph 2 of the LFIP sets forth the conditions to fulfill the definition of a “safe country”. Countries meeting the below stated criteria shall be considered as a safe third country:

i) the lives or freedoms of persons are not under threat on account of their race, religion, nationality, membership of a particular social group or, political opinion;

ii) implement the principle of non-refoulement with regard to countries where persons may be subjected to torture, inhuman or degrading punishment or treatment;

iii) provide the opportunity to apply for refugee status, and when the person is granted refugee status, the possibility to provide appropriate protection in compliance with the Convention;

iv) ensure that there is no risk of being subject to serious harm

The assessment of whether or not a country is a safe third country for the applicant shall be made on case by case basis for each applicant, including the assessment of connections between the person and the country according to which it would be reasonable to return the applicant to the third country concerned.

3) Subsidiary Protection

Subsidiary protection¹⁵ is one of the types of international protection granted as per the LFIP. This type of protection known as *complementary protection* in international refugee law was first introduced into Turkish law through the LFIP.

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

¹⁴ SOYKAN: 39.

¹⁵ For details about complementary protection, see KARLSEN, 2009-2010.



As can be seen, subsidiary/complementary protection covers foreigners or stateless persons who are not qualified as a refugee or conditional refugee due to geographic restriction in the Turkish law but nevertheless required to avail themselves of international protection.

It must be noted that, except for the provision in Article 63 of the LFIP setting out subsidiary protection, there are provisions introducing some additional assurances that will produce a similar effect to subsidiary protection indirectly, which are defined in the scope of complementary protection in international refugee law¹⁶. Non-refoulement in Article 4 of the LFIP¹⁷ is one of them. Subsidiary protection and the principle of non-refoulement are two sides of a coin. Pursuant to this article,

As defined in sub-paragraph 1-a, article 55 titled “Exemption from Removal Decision” of the LFIP, people avail themselves of complementary protection “when there are serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned to”.

Other than these, some international conventions, to which Turkey is a party, adopting the principle of non-refoulement of foreigners who are qualifying specific conditions grant similar complementary protection to foreigners falling under their scope. The legislation incorporating non-refoulement includes the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 February 1984¹⁸ (art. 3), European Convention on Extradition¹⁹ (art. 3) and United Nations Convention against Transnational Organized Crime²⁰ (art. 16/14)²¹.

Subsidiary protection is an individual protection as with refugee and conditional refugee statuses²².

4) Temporary Protection

In its shortest form, temporary protection is defined as the type of protection granted to foreigners in mass influx. Unlike the preceding types

¹⁶ ÇIÇEKLI: 309; EKŞİ: 52.

¹⁷ The principle of non-refoulement was set out in Article 4 of the LFIP as follows: “No one within the scope of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion”.

¹⁸ OG. 10.8.1988/19895.

¹⁹ OG. 26.11.1959/ 10365

²⁰ OG. 18.3.2003/ 25052.

²¹

<http://www.aph.gov.au/About Parliament/Parliamentary Departments/Parliamentary Library/pubs/rp/rp0910/10rp07> .

²² EKŞİ: 53.



of international protection detailed above, temporary protection is a collective status granted to foreigners in mass influx, not an individual *status*.

Although it is a new technical concept that has been introduced in Turkish law with the LFIP for the first time, Turkey is a country that has frequently faced mass influx due to its strategic position and mission assumed in international arena. It is therefore observed that even before the introduction of temporary protection concept in Turkish law, different legal statuses were granted to asylum seekers and even to refugees coming into Turkey in mass influx in the recent past, and these people were evaluated under the scope of separate regulations. For example, 350,000 Bulgarian citizens of Turkish origin fled Bulgaria due to oppression and persecution or a threat thereof due to their religion or race into Turkey in 1989, and were granted with immigrant status pursuant to the Settlement Law. As a matter of fact, such people meet the conditions of a refugee defined in 1951 Geneva Convention. However, they fled into Turkey in a mass influx. Furthermore, as people of Turkish origin and Turkish culture are deemed immigrant pursuant to the Settlement Law and immigrant status is a more advantageous status than refugee status, these people who were our kin were granted with immigrant status rather than refugee²³. These people in mass influx were settled in designated camps and naturalized after immigrant status was granted. Having said that, it is entirely a state policy to consider people of Turkish origin and Turkish culture from European countries such as Bulgaria, Greece, former Yugoslavia and Romania in immigrant status even if they are covered under the scope of a refugee status as a rule.

The second largest mass influx in the recent past involved over 500,000 Iraqi Kurds fleeing persecution of Saddam Hussein into Turkey through Iraq border after the Gulf War I²⁴. Although Turkey was unwilling to open borders to such people in the first place, Iraqi people started to be admitted in Turkey, in particular upon the pressure of the international public opinion. This mass influx was prevented for a while through the red line established with the assistance of the UN and these people lived two years in temporary camps and tents established along the border²⁵.

These mass influxes took place before the introduction of the LFIP, and then people of Bosnian, Kosovan and Albanian origin who sought asylum in Turkey between 1992 and 2001 after the breakup of former Yugoslavia

²³ For details see GÜNGÖR: 101-107.

²⁴ http://www.orsam.org.tr/tr/trUploads/Yazilar/Dosyalar/20101126_orsamrapor21.pdf.

²⁵ EKŞİ: 55.



made the holes in Turkish law even more visible from immigration, refugee and asylum points of view. In an attempt to address legal loopholes, a regulation was drafted based on 1951 Geneva Convention and 1967 New York Protocol. This regulation, known as *1994 Regulation*²⁶, was the sole legislation until it was abolished by the *Temporary Protection Regulation* (TPR, article 61) that came into effect in 2014²⁷.

Temporary protection granting international protection in case of mass influxes was first introduced in Turkish law with the LFIP. According to Article 91 of the LFIP, temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection. The actions to be carried out for the reception of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations shall be stipulated in a Directive to be issued by the Council of Ministers. The regulation mentioned was promulgated and came into effect on 22 October 2014.

Considering the Syrians who have been fleeing into Turkey since 2011 in numbers having reached up to four million, it is an important development for Turkish law that these people have finally obtained a legal status through temporary protection. Thanks to the Temporary Protection Regulation, status of Syrians who have been in Turkey for almost seven years now with no clearly established legal statuses, rights and obligations is now clarified. Furthermore, the Temporary Protection Regulation will be applicable for not only Syrians but all foreigners fleeing into Turkey in mass influx regardless of their country of origin.

The Temporary Protection Regulation has filled an important gap through establishing the missing legal framework for foreigners who come to our borders in mass influx and are admitted to our country. In general, the Temporary Protection Regulation incorporates provisions on the scope of temporary protection, temporary protection decision and relevant procedures, services for temporary protection beneficiaries, obligations of temporary protection beneficiaries, temporary shelters, voluntary return and exit to third country, cooperation, and aid. Although it has some

²⁶ Cabinet Decision Number 94/ 6169 that came into effect on 14.9.1994.

²⁷ OG. 22.10.2014 -29153.



significant deficiencies²⁸, it is considered an important development for Turkish law.

B) Foreigners Who Cannot Avail Themselves of International Protection

The Law on Foreigners and International Protection is quite a liberal legislation that provides significant assurance for international protection and respects the requirements of human rights and refugee law. However, since the concepts such as immigration and refugee are related with state policies to a great extent, followed by international security and economic self-sufficiency, some cases or some people are excluded from international protection.

1) Foreigners Who Cannot Avail Themselves of International Protection Pursuant to the LFIP

Two types of foreigners cannot avail themselves of international protection pursuant to Article 64 of the LFIP. These are people who do not need international protection and those who are not considered worthy of international protection.

a) People Who Do Not Need International Protection

Pursuant to sub-paragraph 1, article 64 of the LFIP, the applicant shall be excluded from international protection if receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; or if recognized by the authorities of the country of [former] residence as having the rights and obligations which are attached to the nationals of that country. This provision is exactly the same as the provisions in Article 1(D) and 1(E) of 1951 Geneva Convention²⁹.

b) People Who Are Deemed Unworthy of International Protection

Sub-paragraph 1(c), article 64 of the LFIP concerns people who are deemed unworthy of international protection as set out in Article 1(F) of 1951 Geneva Convention. Accordingly, a person is excluded from international protection if there is strong evidence to believe that they are guilty of offences specified in Article 1 (F) of 1951 Geneva Convention.

²⁸ The shortcomings of the Temporary Protection Regulation include that economic rights of temporary protection beneficiaries are not arranged in a way to abolish their status of persons in need; that legal grounds and provisions to deport temporary protection beneficiaries who get involved in any act of crime or begging are not provided and explained; and the problem that may result from administrative detention regarding freedom of travel.

²⁹ For further information, see ÇİÇEKLI: 264-265.



Article 1F applies to persons who are not considered to be deserving of international protection³⁰. It excludes some asylum seekers from the protection of the 1951 Convention. It is a mandatory exclusion and therefore where it is applicable it should be relied upon.

In cases where there is evidence to believe that the applicant, prior to international protection claim, have committed inhuman acts for any reason whatsoever outside of Turkey, the assessment shall be done pursuant to sub-paragraph (c) of the first paragraph. Applicants that instigate or otherwise participate in committing the crimes or acts mentioned above shall be excluded from international protection.

In addition, a foreigner or a stateless persons in respect of whom there are serious indications of posing a public order or public security threat, as well as a foreigner or a stateless person outside the scope of sub-paragraph (c) of the first paragraph of article 64 who has previously committed a serious crime for which imprisonment would have been ordered if committed in Turkey, and have left his/her country of origin solely to avoid punishment for that crime, shall be excluded from subsidiary protection. Finally, it must be noted that exclusion of the applicant from international protection shall not require the exclusion of their family members provided that none of the reasons for exclusion applies to other family members.

2) Foreigners Whose Legal Status Is Unregulated Although They Need International Protection

There is another group of foreigners who are not included in international protection by the LFIP and whose legal status is unregulated by any international convention. Although these people strongly need international protection, they are not yet included in any form of international protection. This group of foreigners, which is rather new in terms of refugee and migration law, includes (a) *climate refugees* and (b) *internally displaced persons*.

³⁰ *The full text of Article 1F is as follows:*

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”



a) Climate Refugees

People defined as climate refugees or environmental refugees are those who have to leave their home due to natural or environmental disasters such as flood, earthquake, drought, storm, tsunami, typhoon rather than persecution or humanitarian factors, and move or settle in another place.

Their legal status does not conform to conventional definitions of refugee. Although the extent of threat faced by these people called as climate or environmental refugees due to global warning and climate change is either unknown or overlooked, research indicate that 200 million people will have moved by 2050 due to negative living conditions resulting from climate change³¹; if the sea level rises 1 meter, primarily Maldives and islands such as Marshall Islands, Kiribati and Tuvalu will become uninhabitable or even disappear, and drought, water shortage, desertification and mass extinction (of plants, animals and humans) will occur due to warming³².

Although extent and impacts of danger are imminent on global scale, legal status of climate refugees is neither regulated with any international convention nor there is a common will and attitude on protection of these people or their resettlement to other places across countries. This matter, which is of significance in terms of environmental, human rights, international, refugee and migration laws, strongly requires international regulations imposing obligations on countries to share the burden and grant protection to such people. While the states can find a common ground on mitigation of ever-increasing global warning threats and its impacts, they stay refrained when it comes to matters such as assuming or bearing its consequences for humanity or taking responsibility. Considering Turkey's long distance to places where this crisis will hit first, its current struggle with many ongoing issues and threats, as well as the economic dimension of the matter, we believe that one should consider it normal that Turkey is not among countries that are expected to lead the way, take initiatives or introduce urgent regulations.

b) Internally Displaced Persons

Another group of people who need international protection but are not regulated in the LFIP is internally displaced persons known as *internal refugees*³³. Internally displaced person is a new concept in international law and has therefore no generally accepted international definition yet.

³¹ <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4a4861185>

³² EKŞİ: 171.

³³ For further information, see SARAÇLI: 2011.



However, there is a definition of the concept in the Introduction section of the *Guiding Principles on Internal Displacement* submitted to the United Nations Commission on Human Rights in 1998³⁴. Accordingly, internally displaced persons are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border".

Unlike refugees or asylum seekers, these persons do not leave their country but are internally displaced because of civil war, armed conflict or severe victimization taking into human rights.

As it is seen, the incidents that force these persons to leave their home can be the same as reasons why refugees leave their country. Their difference from refugees is that internally displaced persons do not cross an internationally recognized state border. As per the UNHCR's opinion, number of internally displaced persons around the world is more than the number of refugees³⁵.

There may be different reasons as to why internally displaced persons do not go to another country that may grant international protection to them. While some of them cannot reach to another country safely because of geographic conditions or their own health conditions, some persons have to remain in their country due to restrictions imposed by their country of origin or the country of asylum³⁶.

Although the UNHCR is not obliged to provide internally displaced persons with protection and aid, it is observed that it assumes responsibility, though to a lesser extent, when needed thanks to its experience in durable solutions for refugee issues and practical expertise in humanitarian aids³⁷.

It is noted that the situation of internally displaced persons is much more difficult than refugees or asylum seekers³⁸. These persons are under the threat of an armed conflict, impressment, sexual slavery and violence in their country of origin. Their governments may not only prevent them from leaving their countries but also declare them "enemy of state" if they

³⁴ United Nations, *Guiding Principles on Internal Displacement*, New York, 2001, Introduction, Paragraph 2.

³⁵ <http://www.unhcr.org.tr/?content=33&page=29>.

³⁶ ÖZKAN: 376.

³⁷ <http://www.unhcr.org.tr/?content=33&page=29>.

³⁸ ÖZKAN: 376.



can leave³⁹. Provision of aid such as food, supplies, medicine or clothing by third countries to such persons, who lack international protection of a safe country for accommodation, may be prevented by their own governments. The Taliban regime in Afghanistan, Serbian violence during civil war between 1992 and 1995 in Bosnia and Herzegovina and Kosovo, armed conflict and civil war in Somalia in the early 1990s and Rwandan genocide in 1994 resulted with the displacement of many people in their home country. It was observed that the UNHCR has assumed an assisting role in many similar disasters⁴⁰.

Unfortunately, there is no collective and efficient protection system from the aspect of human rights and humanitarian law that is binding for countries regarding these incidents which have happened many times in the last quarter century⁴¹. Although the United Nations established several guiding principles in various times⁴², it could not establish a final, efficient and binding legal regulation in this matter⁴³.

Some countries have introduced legislations on internally displaced persons. These countries such as Azerbaijan, Bosnia and Herzegovina, Colombia, Georgia and Russia are home to long-term major population movements⁴⁴. Half of total internally displaced persons around the world are located in Africa. According to the research of Hacettepe University Institute of Population Studies funded by the Prime Ministry State Planning Organization, 950,000 to 1,200,000 persons are determined to have been displaced as of 2006⁴⁵. The main reason behind the number of internally displaced persons in Turkey is terrorist organization PKK's acts of violence and terror that have been ongoing for many years in the east and southeast of Turkey, its oppression on public, policies to spread fear, and terrorist attacks. Unlike many countries hosting internally displaced persons, Turkey adopts an open and constructive approach in a manner that puts emphasis on international cooperation in this matter, by establishing policies which allow internally displaced persons willing to return to be settled in their village or other appropriate places, and to be

³⁹ ÖZKAN: 377.

⁴⁰ For details see <http://www.unhcr.org.tr/?content=33&page=29>.

⁴¹ ÖZKAN: 377.

⁴² For the principles see KALIN: 2005.

⁴³ For further informations see Handbook for The Protection of Internally Displaced Persons (Global Protection Cluster Working Group) (<http://www.refworld.org/docid/4790cbc02.html>); ÖZKAN: 376-383.

⁴⁴ The Internal Displacement Monitoring Centre (IDMC): ([http://www.internal-displacement.org/8025708F004D404D/\(httpPages\)/CC32D8C34EF93C88802570F800517610?OpenDocument](http://www.internal-displacement.org/8025708F004D404D/(httpPages)/CC32D8C34EF93C88802570F800517610?OpenDocument))

⁴⁵ http://www.hips.hacettepe.edu.tr/tgyona/TGYONA_rapor.pdf.



provided with sustainable living conditions in these settlements through several legal regulations⁴⁶.

Conclusion

There was no law on foreigners in Turkish law prior to the introduction of Law No. 6458 on Foreigners and International Protection effective as of 2014. Foreigners' entry into country, residence, traveling and right to work, rights and obligations, acquisition of real property, regulations on refugees and immigrants etc. were all governed in a scattered manner, by different laws, legislations or directives. The LFIP has not only introduced legal regulations on many unregulated matters but also assembled many regulations on foreigners law under the same roof. In this perspective, the LFIP has filled many holes in very critical issues with new regulations and introduced a well-ordered legislation by eliminating the scattered and practically confusing nature widely criticized in terms of the legal system. The major reform brought by the LFIP is, undoubtedly, the introduction of the international protection concept in Turkish law for the first time. Lack of legal regulations in the form of law regarding immigration, refugees, asylum seekers or mass influxes in Turkish law has long been criticized. Mass influx of foreigners with the Syrian crisis in particular has made the legal gap in this matter much more visible, forcing the government to introduce a legal regulation. International protection is a substitutive protection which is provided when country/territory of origin cannot, or is unwilling to, provide protection, and it is based on the principle that people are entitled to have this protection just because they are human, and mostly granted by the foreign country from which such protection is sought or through international, intergovernmental or non-governmental organizations, is essentially temporary. International protection has been subject to several legal regulations at regional, territorial and international level. International protection in Turkey was governed by both 1951 Geneva Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees (New York Protocol) and also the Law on Foreigners and International Protection introduced recently. Introducing four different types of protection, i.e. refugee, conditional refugee, subsidiary protection and temporary protection, the LFIP is generally consistent with these international conventions. However, the LFIP may be criticized because it involves no regulation regarding climate refugees and internally displaced persons. Considering the fact that Turkey has adopted several measures as well as resolutions stipulating aid and assistance for

⁴⁶ <http://www.mfa.gov.tr/turkiye-de-yerlerinden-olmus-kisiler-idp-ler-ve-koye-donus-ve-rehabilitasyon-programi.tr.mfa>.



internally displaced persons in domestic policy; and that it is not among the countries which should be primarily concerned of, and take precautions for climate refugees in geographical terms, it can be suggested that this shortcoming is not a grave one, and several legal regulations can be introduced later in time in line with policies to be developed in the future. Although it has several shortcomings, the introduction of the Temporary Protection Regulation is a significant step towards clarification of the legal status of more than two million Syrian refugees. Located along borders that have witnessed ongoing wars and internal conflicts, Turkey has not been a mere spectator to wars and similar humanitarian predicaments along its borders throughout its history, but instead, extended a helping hand to foreigners fleeing persecution and disasters into Turkey in mass influx. The concept of international protection is the embodiment and legal background of this helping hand.

References

- Altuğ, Y. (1967): *Devletler Hususî Hukuku Bakımından Mülteciler*, İstanbul Üniversitesi Hukuk Fakültesi Yayınları.
- Aybay, R. (2005): *Yabancılar Hukuku* (Vol. 89), İstanbul Bilgi Üniversitesi Yayınları.
- Çelikel, A., & Öztekin Gelgel, G. (2015): *Yabancılar Hukuku*, 21. Baskı, İstanbul, Beta Basım Yayın Dağıtım.
- Çiçekli, B. (2014): *Yabancılar ve Mülteci Hukuku*, Ankara, Seçkin Yayıncılık.
- Ekşi, N. (2015): *Yabancılar ve Uluslararası Koruma Hukuku*, Beta Basım Yayın Dağıtım, İstanbul.
- Göğür, E. (1975): *Yabancılar Hukuku*, Ankara Üniversitesi Hukuk Fakültesi Yayınları, Ankara.
- Güngör, G. (2012): *Tâbiyet Hukuku: Gerçek Kişiler, Tüzel Kişiler, Şeyler*, Yetkin Yayınları, Ankara.
- Özkan, İ. (2013): *Göç, İltica ve Sığınma Hukuku*, Seçkin Yayıncılık, Ankara.
- Tekinalp, G. (1989): *Türk Yabancılar Hukuku*, Beta Basım Yayın Dağıtım, İstanbul.
- Soykan, C. (2012): *The New Draft Law on Foreigners and International Protection in Turkey* in Oxford Monitor of Forced Migration, 2(2), 38-47.
- Karlsen, E. (2009): *Complementary Protection for Asylum Seekers: Overview of the International and Australian Legal Frameworks*, Parliamentary Library, Department of Parliamentary Services. (http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0910/10rp07).
- Saraçlı, M. (2011): *Uluslararası Hukukta Yerinden Edilmiş Kişiler*. Adalet Yayınevi, Ankara.
- Kâlin, W. (2005): Ülke İçinde Yerinden Olma Konusunda Yol Gösterici İlkeler, Açıklayıcı Notlar.
- <http://www.unhcr.org.tr/?content=33&page=29>
 - http://www.mfa.gov.tr/turkiye_de_yerlerinden-olmus-kisiler_idp_ler_-ve-koye-donus-ve-rehabilitasyon-programi.tr.mfa
 - http://www.hips.hacettepe.edu.tr/tgyona/TGYONA_rapor.pdf
 - [http://www.internal-displacement.org/8025708F004D404D/\(httpPages\)/CC32D8C34EF93C88802570F800517610?OpenDocument](http://www.internal-displacement.org/8025708F004D404D/(httpPages)/CC32D8C34EF93C88802570F800517610?OpenDocument)
 - <http://www.refworld.org/docid/4790cbc02.html>
 - <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4a4861185>
 - http://www.orsam.org.tr/tr/trUploads/Yazilar/Dosyalar/20101126_orsamrapor21.pdf
- http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0910/10rp07

