

Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey

By Meltem Ineli-Ciger

More than 800,000 Syrians registered in Turkey have now been protected under a temporary protection regime, being addressed as ‘guests’ or ‘temporary protection beneficiaries’ by the Turkish authorities. Implementation of the temporary protection policy for Syrians means that Syrians are neither refugees nor asylum seekers under Turkish domestic law. In 2013 Turkey adopted its first law that regulates asylum, namely the Law on Foreigners and International Protection (the 2013 Law), which entered into force in April 2014. The 2013 Law promises better protection standards and more safeguards for asylum seekers and refugees, but how about Syrians in Turkey? In view of recent legal developments on asylum namely, adoption of the 2013 Law and Regulation no. 29153 on Temporary protection (the 2014 Regulation), this article examines the current legal protection regime of Syrians in Turkey.

Introduction

Since March 2011, thousands of Syrians have fled their homes owing to the civil war and have sought refuge in a number of countries, most significantly Turkey, Jordan, Egypt, and Lebanon (Migration Policy Centre Research Report 2012). The number of Syrians registered in Turkey exceeded 869,000 in September 2014, with 160,000 more Syrians awaiting registration (UNHCR Syria Regional Refugee Response Inter-agency Information Sharing Portal 2014). So far, Syrians have been protected under a regime of temporary protection, which means that they are neither asylum seekers nor refugees under Turkish law.

The Turkish government adopted the Law on Foreigners and International Protection in 2013 and the new law promises to provide a better protection framework for refugees and asylum seekers. In October 2014, the Turkish Council of Ministers also adopted Regulation No. 29153 on Temporary protection (the 2014 Regulation), which clarified many aspects of the Turkish temporary protection regime implemented for the protection of Syrians. What are the implications of the entry in force of the 2013 Law and the recently adopted Regulation for the legal status and protection of Syrians in Turkey? This article explores this question, arguing that although the 2013 Law and the 2014 Regulation introduced a clear legal basis of temporary protection and provide safeguards against refoulement as well as a number of essential rights and entitlements for Syrians, there is still room for further improvement and clarification.

Arrivals from Syria to Turkey and Introduction of Temporary Protection

In October 2011, the Turkish government introduced a temporary protection regime for Syrians who arrived to Turkey in order to seek refuge (Turkey’s Response Plan 2014). Under this regime, Turkey protects all Syrians, Palestinian refugees and stateless persons living in Syria (Syria Regional Response Plan Strategic Overview 2014). Initially, both the scope of the temporary protection regime and its legal basis were unclear. Upon a parliamentary inquiry, the Turkish Disaster Emergency Management Presidency (AFAD), an organisation of the Ministry of Interior, described the legal basis of the temporary protection regime as a “Guideline with regard to the reception and admission of stateless and Syrian nationals”

(AFAD Response to the Parliamentary Inquiry 2012). AFAD added in its statement that the Guideline could not be made public (AFAD Response to the Parliament Enquiry 2012). Even after the parliamentary inquiry, there was little information available on the temporary protection regime.

However, Turkish state practice on temporary protection at the time and the declarations of government officials suggested that Syrians crossing the border would not be subjected to individual refugee status determination processes, but would instead be automatically given temporary protected status (Helsinki Citizens Assembly Press Release 2012). This policy means that until the temporary protection regime ends, the refugee status claims of Syrians will not be processed (Turkish Parliament Human Rights Observation Commission Review Report 2012; UNHCR FAQ 2014).

Despite the controversies and lack of clarity surrounding the Turkish temporary protection regime, its implementation does not necessarily violate Turkish international obligations. In fact, although Turkey is party to the Convention relating to the status of refugees (the 1951 Convention), it maintains a geographical limitation: with the standing reservation to the 1951 Convention, Turkey is not obligated to grant refugee status to asylum seekers coming from outside of Europe (UNHCR Global Appeal 2013). On this basis, Turkey does not violate its international obligations, in particular the ones related to the principle of non-refoulement, as long as it admits Syrians to its territories and does not return them to Syria or any third state in a manner inconsistent with Article 33 of the 1951 Convention, Article 3 of the Convention against Torture (CAT), Article 3 of the European Convention on Human Rights (ECHR) or Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

Adoption of Turkish Law on Foreigners and International Protection and Regulation No. 29153 on Temporary protection

In 2013, Turkey adopted the Law on Foreigners and International Protection (the 2013 Law) which entered in force in April 2014. Although the 2013 Law introduces a number of safeguards and promises better protection standards for asylum seekers and refugees, it does not lift Turkey's reservation to the 1951 Convention (Kirişçi Turkey's New Draft Law 2012). As such, Turkey can still choose to not process Syrians' asylum claims and this still would not violate its international obligations.

Article 91 of the 2013 Law introduces a legal basis to the temporary protection regime and defines temporary protection "as a measure to be provided to foreigners who, having been forced to leave their country and cannot return to the country they left, have arrived at or crossed the borders of Turkey in masses seeking emergency and temporary protection." Beside this provision, Article 91 of the 2013 Law provides that,

"Proceedings to be followed on reception into, stay in, rights and obligations in, exit from Turkey of such persons, along with measures to be taken against mass movements [...] shall be governed by a regulation to be issued by the Council of Ministers."

The Council of Ministers adopted the 2014 Regulation on 22 October 2014, and it entered into force the same day (UNHCR Operational Update, p. 4). The 2014 Regulation establishes rules on registration and documentation procedures to be followed by temporarily protected persons, introduces a clear right to stay in Turkey until temporary protection regime is over, and clarifies the set of rights and entitlements for the temporary protection beneficiaries. (UNHCR Operational Update, p. 4) As Syrians are currently protected under temporary protection regime in Turkey, all provisions of this Regulation apply to Syrians.

An Analysis of the Temporary Protection Regime Introduced by the 2013 Law and the 2014 Regulation

This section analyses the Turkish temporary protection regime established by the 2013 Law and 2014 Regulation in view of the UNHCR Guidelines on Temporary Protection or Stay Arrangements published in February 2014, the EU Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary protection (EU temporary protection directive), and relevant academic literature on temporary protection.

Eligibility

Arguably, the starting point of regulation temporary protection regimes is identifying the groups eligible for temporary protection; it is necessary for temporary protection regimes to first make clear who would be eligible for temporary protection (Fitzpatrick 2000, p. 305). Under Article 7 of the Regulation on Temporary protection, persons eligible for temporary protection are determined as,

“foreigners who, having been forced to leave their country and cannot return to the country they left, have arrived at or crossed the borders of Turkey individually or in masses seeking emergency and temporary protection and to whom international protection status determination procedures do not apply.”

The 2014 Regulation is capable of protecting a broad range of individuals coming to Turkey for the purpose of seeking refuge when a mass influx occurs. Eligibility for temporary protection is, however, subject to the implementation of the 2014 Regulation. In order for the Regulation to be implemented, the temporary protection regime must be initiated by a decision adopted by the Council of Ministers following a proposal from the Ministry of Interior (Article 9 of the 2014 Regulation). When this happens, the decision of the Council of Ministers has to include a description of the specific group(s) to which the temporary protection regime will apply and the date for the temporary protection regime to take effect (Article 10 of the 2014 Regulation). This means that the Council of Ministers is the sole authority capable of designating groups eligible for temporary protection.

Having outlined the eligibility criteria set out by the 2013 Law and 2014 Regulation, it should be noted that at present all Syrians, Palestinian refugees and stateless persons living in Syria and seeking refuge in Turkey are designated as eligible for temporary protection.

The Principle of Non-refoulement and Admission at the Frontier

A regulation on temporary protection should set out rules related to the principle of non-refoulement and admission at the frontier (Fitzpatrick 2000, p. 305). Article 4 of the 2013 Law provides that,

“No one who falls under the scope of this Law shall be returned to a place where he or she may be subject to torture, inhuman or degrading punishment or treatment, or where his or her life or freedom may be under threat on account of his or her race, religion, nationality, membership of a particular social group or political opinion.”

Since temporary protection beneficiaries are included within the scope of the 2013 Law, this provision is applicable to all Syrians who have been granted temporary protected status. In addition to this, Article 6 of the 2014 Regulation introduces a deportation ban and a non-

refoulement clause. Incorporation of the principle of non-refoulement to the 2013 Law and the 2014 Regulation increases the safeguards provided to temporary protection beneficiaries.

In addition to refoulement-related clauses, temporary protection regimes should make clear the rules on admission of persons seeking refuge in mass influx situations. The UNHCR Guidelines provide useful guidance on how to introduce such a clause, requiring states to permit the affected populations or persons entry to the host states and further note that “they should be provided access to territory and protection from direct or indirect refoulement.” (UNHCR Guidelines on Temporary protection 2014, p. 4). Although Article 17 of the 2014 Regulation outlines procedures related to the admission of persons eligible for temporary protection to the Turkish territories, it falls short of establishing an obligation for the Turkish authorities to enable admission of persons designated as eligible for temporary protection to the Turkish territories. Despite absence of such an explicit obligation in the 2013 Law and the 2014 Regulation, in practice Turkey still continues its ‘open door policy’ and admits all persons fleeing Syria to its territories in practice. (UNHCR ‘Revised Syria Regional Response Plan’, p. 83) The fact that so far Turkey has admitted all Syrians to its territories and designated them as eligible for temporary and incorporated non-refoulement related provisions to its national laws is a positive practice that is in line with the UNHCR Guidelines.

Maximum Time-limit and Access to Refugee Status Determination Procedures

It is essential for a regulation on temporary protection to set a maximum time limit for temporary protection. Not doing so may lead to an indefinite temporary protection regime that would also undermine the 1951 Refugee Convention by suggesting an alternative to it for the protection of refugees instead of being an emergency response in mass influx situations (Fitzpatrick 2000, p. 299, 305; Hathaway and Neve 1997, p. 182). Hathaway and Neve suggest that there are two main elements for determining how long temporary protection should last: “the duration should allow revitalization of asylum capacity of states thus be long enough to allow many, if not most refugee-producing phenomena to come to an end [...] and it should respect the physiological needs of refugees.” (Hathaway and Neve 1997, p. 182). A number of commentators and instruments argue that the optimum maximum time limit to temporary protection can be determined as three years. (Hathaway and Castillo 1997, p. 17; EU temporary protection directive 2001; ILA proposal on temporary protection 2002). In another article, Hathaway and Castillo (1997, p. 18) suggest a period of five years as the maximum time limit for temporary protection. Given that the Syrian armed conflict has been ongoing for more than three years, and shows no sign of any durable solutions for the displaced Syrian community, the five years maximum time limit seems more appropriate to the context.

Unfortunately the 2014 Regulation does not provide such a maximum time limit. According to Article 10 of the 2014 Regulation, the Council of Ministers is entitled to set a maximum time limit, yet it is not obliged to do so. So far, the Council of Ministers has not introduced such a time limit to the temporary protection regime implemented for Syrians.

It is also essential for a regulation on temporary protection to clarify when temporary protection beneficiaries can access to individual refugee status determination (RSD) mechanisms. On this matter, Article 16 of the 2014 Regulation establishes that Turkey will not process asylum applications of the temporary protection beneficiaries until the temporary protection regime ends. In addition to this, according to Article 11 of the 2014 Regulation, the Council of Ministers can deprive temporary protection beneficiaries of access to RSD

mechanisms even after the temporary protection ends. Unlike the European Union's temporary protection directive, the 2014 Regulation does not introduce a right of access to individual RSD mechanisms following termination of temporary protection or clarify when this access will be granted, which is problematic for the rights and protection offered to the beneficiaries of temporary protection.

Rights and Entitlements of the Temporary Protection Beneficiaries

Furthermore, it is essential for a regulation on temporary protection to specify which rights are to be offered to the temporary protection beneficiaries. The following rights and entitlements should be guaranteed to temporarily protected persons: a) access to emergency care including access to shelter, food, water, medical treatment and physical security; b) access to identity and travel documents, c) access to referral, identification, screening, registration mechanisms and family tracing; and d) access to education (UNHCR Guidelines on Temporary protection 2014, p. 4, 5; EU temporary protection directive; ExCom Conclusion no 22). In addition to these rights, the following entitlements can be offered gradually to the temporary protection beneficiaries depending on the duration of their stay in the host states: access to housing, medical care, higher education, the labour market, and social security mechanisms. (UNHCR Guidelines on Temporary protection 2014, p. 4, 5; EU temporary protection directive; ExCom Conclusion no 22). Furthermore, the right to freedom of movement, provisions on non-discrimination, humane and dignified treatment, and guarantees against prolonged and arbitrary detention may be offered. (UNHCR Guidelines on Temporary protection 2014 p. 4, 5; EU temporary protection directive 2001; ExCom Conclusion no 22).

The 2014 Regulation improved the protection standards afforded to Syrians in Turkey by clarifying rights and entitlements of temporary protection beneficiaries. However, the 2014 Regulation falls short of providing an explicit right to work, education and social assistance to Syrians. According to the 2014 Regulation, persons eligible for temporary protection will be registered upon their arrival to Turkey following identification and a process intended to differentiate between combatants and civilians (Article 14, 18, and 19 of the 2014 Regulation). As a positive aspect, temporary protection beneficiaries are entitled to information and advice concerning the temporary protection regime in their own language (Article 19 (5) of the 2014 Regulation) and free access to emergency health care (Article 27 of the 2014 Regulation). Following the registration, they are provided with temporary protection beneficiary identity cards without any charge, which give them a right to stay in Turkey as long as the temporary protection regime continues. Once registered, they are referred to designated 'accommodation sites' (Article 22 of the 2014 Regulation). Within these temporary accommodation centres, temporary protection beneficiaries are provided with access to shelter, food, health care, social assistance, education and other services (Article 38 of the 2014 Regulation). In addition to these rights, the 2014 Regulation introduces the right not to be detained for the sole reason of irregular entry (Article 5 of the 2014 Regulation), right to access to family unification mechanisms (Article 49 of the 2014 Regulation), right to legal consultation and free access to translation services (Article 31 and 53 of the 2014 Regulation), and access to rehabilitation and other health services (Article 48 of the 2014 Regulation).

The 2014 Regulation does not guarantee an explicit and unlimited right to work, education, and social assistance for temporary protection beneficiaries. The 2014 Regulation indicates that access to primary and higher levels of education and other language and vocational training, access to labour market and social assistance *may be* provided to temporary

protection beneficiaries (Article 28, 29 and 30 of the 2014 Regulation), but the Council of Ministers is free to decide whether these rights will be provided or not. For example, Syrians who hold temporary protection beneficiary identity cards can now apply for work permits under Article 29(2) of the 2014 Regulation; however, there is no guarantee that the government authorities will grant such a work permit. Article 29 of the 2014 Regulation makes clear that the Council of Ministers can limit access of temporary protection beneficiaries to certain sectors, professions or geographical areas (UNHCR Operational Update, p.4).

End of the Temporary Protection

Finally, it is imperative to consider when and how the temporary protection regime will end. Temporary protection regimes are usually terminated when the time limit is reached or when certain requirements are satisfied; the UNHCR Guidelines on Temporary Protection state that temporary protection may end when on the “basis of an objective assessment based on clear indications – that the situation causing the displacement has ended, and voluntary return is reasonable and can be carried out in safety and dignity.” (UNHCR Guidelines on Temporary protection 2014, p. 5). Similarly, Article 6 of the EU temporary protection directive requires the EU Council to consider whether “the situation in the country of origin is such as to permit the safe and durable return of temporary protection with due respect for human rights and fundamental freedoms and Member States” before terminating the temporary protection. In view of the outlined guidance, termination of temporary protection regimes and access of temporary protection beneficiaries to durable solutions should be regulated clearly.

According to Article 11 of the 2014 Regulation, the Council of Ministers is entitled to decide when temporary protection ends. Unfortunately, the 2014 Regulation does not refer to safe and durable return as prescribed by the UNHCR or outline which criteria should be considered by the Council of Ministers before terminating the temporary protection regime. As for access to durable solutions, Article 14 of the 2014 Regulation notes that, repatriation is the ultimate solution for the temporary protection beneficiaries. Article 42 of the 2014 Regulation provides, Turkish authorities may facilitate and support voluntary repatriation of the temporary protection beneficiaries in cooperation with international organisations and NGO’s. In addition to this, Article 11 of the 2014 Regulation establishes that once temporary protection regime ends, the Council of Ministers *may* decide,

- a) To terminate temporary protection for all of the protected groups and order their return,
- b) To grant temporarily protected groups a group protection status or to process individual international protection claims of the protected persons,
- c) To allow temporarily protected groups to stay in Turkey under conditions that will be determined by the 2013 Law.

This article indicates that the Council of Ministers has the authority to prescribe which durable solutions will be available to temporary protection beneficiaries once temporary protection regime ends. Inclusion of local integration as one of the durable solutions in the 2014 Regulation is an improvement compared to previous legal ambiguity regarding the access of Syrians to durable solutions. However, the fact that the Council of Ministers can order the return of the all Syrians without considering cessation clauses provided in the 1951 Refugee Convention or the availability of return in safety and dignity is problematic.

Conclusion

In conclusion, although the 2013 Law and the 2014 Regulation introduced a clear legal basis of temporary protection, provided safeguards against refoulement as well as a number of essential rights and entitlements for Syrians, there is still room for further improvement and clarification. Introduction of a maximum time limit to temporary protection and unlimited right to work, education, and social assistance to the temporary protection beneficiaries can substantially improve the viability of the temporary protection regime set out by the 2013 Law and the 2014 Regulation. Once the temporary protection ends, it is essential to provide temporary protection beneficiaries access to individual RSD procedures and to limit the discretion of the Council of Ministers to order the return of temporarily protected groups. With additional legal clarification on these issues, it is possible for the Turkish temporary protection regime to become a more open, credible, and viable temporary protection system that is in accordance with Turkey's international obligations and the UNHCR Guidelines on Temporary Protection.

Meltem Ineli-Ciger is a Turkish national. She is currently a PhD student at the University of Bristol Law School and her research examines temporary protection in law and practice. Meltem holds an LLM in international law from University of Bristol. She can be contacted via email at meltem.ineliciger@bris.ac.uk.

Disclaimer: As there is no official translation of the 2014 Regulation on Temporary protection available at the time of writing, the translation of the 2014 Regulation provisions belongs to the author.

REFERENCES

CASTILLO A.C. HATHAWAY C. J., Temporary Protection in Hathaway J. C. Ed *Reconceiving International Refugee Law* (Martinus Nijhoff Publishers 1997) p. 1-19.

EUROPEAN UNION: COUNCIL OF THE EUROPEAN UNION, Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001, OJ L.212-223.

EUROPEAN UNION: COUNCIL OF THE EUROPEAN UNION, Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted OJ L 337, 20.12.2011.

FITZPATRICK, J. (2000) Temporary protection of refugees: Elements of a Formalized Regime, *American Journal of International Law*, p. 279-306.

FITZPATRICK, J. (1998) End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection, *The Geo. Immigr. LJ*, 13, p. 343-383.

HATHAWAY, J.C., NEVE, R.A. (1997) Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection, *Harvard Human Rights Journal*, 10, p. 115-211.

HELSINKI CITIZENS ASSEMBLY (2012) Briefing Note on Syrian Refugees in Turkey <http://www.hyd.org.tr/staticfiles/files/20121116_hca_turkey_briefingnotesyrianrefugees.pdf> accessed 16 June 2014.

INTERNATIONAL LAW ASSOCIATION, Report of the Committee on Refugee Procedures of the International Law Association (Delhi Conference, 2002). Final Report and Draft Guidelines on Temporary Protection, 2002, available at: <http://www.refworld.org/docid/428090994.html> [accessed 3 September 2014] referred as ILA proposal.

KIRIŞCI, K. (2012) ‘Turkey’s New Draft Law on Asylum: What to Make of It?’ in *Turkey, Migration and the EU: Potentials, Challenges and Opportunities* Seçil Paçacı Elitok and Thomas Straubhaar *edn* Hamburg University Press.

KIRIŞCI K. (2014) ‘Syrian Refugees and Turkey’s Challenges: going beyond hospitality’ *Brooking Institution Reports* May 2014 <<http://www.brookings.edu/~media/research/files/reports/2014/05/12%20turkey%20syrian%20refugees%20kirisci/syrian%20refugees%20and%20turkeys%20challenges%20may%2014%202014.pdf>> accessed 3 December 2014.

MIGRATION POLICY CENTRE, Migration Policy Centre Research Report, ‘Migration after the Arab Spring’ 2012/09.

SOYKAN C. ‘Syrian Refugees in Turkey’ Migration Policy Centre Research Report 2013/05.

TURKISH DISASTER EMERGENCY MANAGEMENT PRESIDENCY MANAGEMENT (AFAD) (2012) AFAD’s Response to Melda Onur’s Enquiry. Doc No B.05.0AAD.0.00.0.00-610-160 , 25th June 2012.

TURKEY Law No. 6458 on 2013 of Foreigners and International Protection [Turkey], 4 April 2013, <<http://www.refworld.org/docid/5167fbb20.html>>accessed 16 July 2014.

TURKEY Regulation No. 29153 on Temporary protection [Turkey], 22 October 2013, <http://www.tkhk.gov.tr/DB/14/1673_gecici-koruma-yonetim> accessed 30 December 2014.

TURKISH PARLIAMENT HUMAN RIGHTS OBSERVATION COMMISSION (2012) ‘Review Report with regard to the tent camps where Syrian Nationals who have been sought refuge in Turkey are residing’ <http://www.amnesty.org.tr/ai/system/files/TBMM_IHIK_rapor.pdf> accessed 21 March 2014.

UNHCR (2013) ‘Frequently asked question with regard to the Syrian Refugees’ <http://www.unhcr.org.tr/uploads/root/faq_-_turkish.pdf> accessed 23 March 2014.

UNHCR (2014) Turkey's Response Plan < <http://www.unhcr.org/syriarrp6/> > accessed 25 July 2014.

UNHCR (2014) Syria Regional Refugee Response< <http://data.unhcr.org/syrianrefugees/country.php?id=224>> accessed 25 July 2014.

UNHCR (2014) Guidelines on Temporary Protection or Stay Arrangements, <<http://www.refworld.org/docid/52fba2404.html>> accessed 1 April 2014.

UNHCR (2014) UNHCR Syria Regional Refugee Response Inter-agency Information Sharing Portal < <http://data.unhcr.org/syrianrefugees/regional.php>> accessed 14 October 2014.

UNHCR (2014) UNHCR Syria Regional Refugee Response Inter-agency Information Sharing Portal < <http://data.unhcr.org/syrianrefugees/regional.php>> accessed 14 October 2014.

UNHCR (2014) UNHCR Turkey Operational Update 26 – 31 October 2014 <<http://data.unhcr.org/syrianrefugees/download.php?id=7412> > accessed 1 January 2014.

UNHCR EXCOM (1981) Conclusion no 22- 1981 “Protection of Asylum-Seekers in Situations of Large-Scale Influx” < <http://www.unhcr.org/refworld/pdfid/4b28bf1f2.pdf>.> accessed 20 September 2014.

UNGA, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

YEGINSU C. (2014) ‘Turkey Strengthens Rights of Syrian Refugees’ New York Times, 29 December 2014, < <http://www.nytimes.com/2014/12/30/world/europe/turkey-strengthens-rights-of-syrian-refugees.html?emc=eta1>> accessed 1 January 2014.