

Turkey: party or non-party State?

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Somewhere between party and non-party to the Refugee Convention, Turkey is a rather unique case from the perspective of refugee law and practice, with its protection regime fundamentally shaped by the Refugee Convention and the optional geographical limitation allowed under it.

Turkey has ratified the 1951 Refugee Convention and its 1967 Protocol but with the optional geographical limitation offered in 1951. This means that Turkey applies the Refugee Convention only to refugees originating from Europe or, to put it more accurately, to those persons who seek protection in Turkey as a result of “events occurring in Europe”.

Located in a region with unstable regimes, Turkey has long considered itself vulnerable to refugee influxes, fearing not only the more general challenges of mass immigration but also its national security implications. The geographical limitation has thus been seen as a protection against these.¹ The European Union (EU), on the other hand, wants Turkey to qualify as a ‘first country of asylum’ or a ‘safe third country’ so that refugees and asylum seekers who travel through Turkey to Europe can be sent back to Turkey. The EU has long demanded the lifting of the geographical limitation, and Turkey was amenable to this if it was part of possible EU accession.

Turkey’s EU membership prospects have – to put it mildly – weakened over the years and, perhaps unsurprisingly, the EU no longer insists on the lifting of the geographical limitation. Instead, it takes the view that Turkey’s new legal framework for migration and asylum (gradually established since 2013) provides appropriate protection despite it.² At the same time, as part of the ongoing reform of the Common European Asylum System, the definitions of safe country rules seem to be moving towards more flexible criteria where they will not be interpreted as demanding that a State has both ratified the Refugee Convention and does not impose a geographical limitation in order to be considered safe.

For the past seven years, Turkey has been hosting more refugees and asylum seekers than any other country. The four million people who have sought protection in Turkey (3.6 million Syrians and about 330,000 persons of other non-European origin) do not, however, do so as a result of events occurring in Europe. It is estimated in fact that there are fewer than 100 persons in the country with actual refugee status as per the Refugee Convention. From this perspective, Turkey can for all practical purposes be regarded as a non-signatory State. At the same time, Turkey has a rather unique position in the international refugee regime. It was among the 26 drafters of the 1951 Convention and, moreover, Turkey has been a member of ExCom, UNHCR’s governing body, since its establishment in 1958. As such, it has been part of the drafting of ExCom conclusions, and has had the chance to substantively affect the interpretation of the Refugee Convention.

Turkey’s fragmented protection regime

The Refugee Convention has had a major influence on Turkey’s protection regime. Those who fulfil the definition of refugee and originate from Europe can get refugee status in Turkey as per the Refugee Convention and the rights that attach to that status. By contrast, those who fulfil that definition but do not originate from Europe can get ‘conditional refugee’ status under Turkish law. The latter allows its holders to remain in Turkey with a very limited set of rights while they wait for UNHCR to resettle them in a third country. Considering the low resettlement quotas, it is clear that only a tiny number of Turkey’s conditional refugees will ever get resettled. Thus, in theory the conditional refugee status is only a temporary status but in practice it is not. In other words,

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the Refugee Convention and the geographical limitation allowed under it have resulted in the creation of an unusual protection status in Turkey with very limited rights attached to it.

The second major shaping influence on Turkey's protection regime has been EU law. In 2013, Turkey enacted the Law on Foreigners and International Protection (LFIP), which contains, alongside refugee and conditional refugee statuses, a 'subsidiary protection beneficiary' status, taken from EU law. That said, the latter status is estimated to have been given to few people, so for all practical purposes Turkey's main international protection status is the conditional refugee status. The country also passed its own Temporary Protection Regulation in 2014, which has since applied to Syrian refugees in Turkey. Turkey's temporary protection regime is inspired by and based on its EU counterpart, the EU Temporary Protection Directive (which, to date, has not been activated). There are, however, fundamental differences between the two, especially when it comes to their 'temporariness'. Firstly, the Turkish temporary protection regime has already been in place for many years, and there is no upper limit on how long it can last. Secondly, it is unclear what will happen to Syrians under temporary protection when that protection is terminated. All in all, Turkey's refugees have limited rights and no long-term prospects in the country.

The ever-changing role of UNHCR

Under the Refugee Convention, States Parties undertake to cooperate with UNHCR in the exercise of its functions, and in particular to facilitate UNHCR's duty of supervising the application of the Convention (Art. 35(1)). Given that Turkey is a State Party but has undertaken to apply the Convention only to European refugees, the exact scope of Turkey's international obligations under this provision is an interesting legal question. In more practical terms, UNHCR's role in Turkey has evolved since it first established a presence in Turkey in 1960 (with a formal agreement only signed in September 2016), and has lately been going through another period of major change. Until recently,

asylum seekers in Turkey registered both with UNHCR and with the Turkish authorities (so-called parallel procedure), and the Turkish authorities largely relied on UNHCR's assessment of applications. Legal research shows that the European Court of Human Rights (ECtHR) judgments against Turkey have been influential in the gradual development of the country's protection regime; the creation of this parallel procedure was one such development and has led to increased cooperation with, and reliance on, UNHCR in the decision-making process.³

With the adoption of its new legal framework, however, Turkey also established the Directorate General of Migration Management as the agency in charge of migration and asylum matters. Following a transitional period, UNHCR announced in September 2018 that it would no longer register applicants or carry out mandate refugee status determination procedures. Since then, the new Turkish agency has been fully in charge. The full impact of this change is yet to be seen but it is worth noting that there have since been multiple reports of problems with access to registration/asylum procedures.

Currently, UNHCR has an important role in Turkey with respect to resettlement. When the Turkish authorities identify cases of particular vulnerability, they refer them to UNHCR, which assesses those cases for resettlement and coordinates with possible resettlement countries. More generally, UNHCR supports the Turkish authorities with capacity building and technical advice.⁴ As a matter of Turkish law, UNHCR is to be given access to international protection applicants in Turkey (including those under administrative detention), as well as to foreigners in removal centres (LFIP Articles 92, 59 and 68); lack of transparency, however, is a major problem with Turkey's protection system, and the question of whether this access is given in practice should be assessed.

The refugee population in Turkey is particularly young (including when compared with the rest of Turkey's population).⁵ As such, access to both education and legal employment is key. In the past few years,

UNHCR has been particularly active in the latter, providing (in cooperation with Turkish partners) counselling, training and entrepreneurship support in different Turkish cities, as well as carrying out a service mapping exercise to achieve better coordination between needs and services.⁶ Most recently, in January 2021, UNHCR announced the completion of a three-and-a-half-year project on the 'Reinforcement of Turkey's National Asylum System', intended to support Turkey's capacity-building efforts.⁷

In recent years, UNHCR's role in Turkey seems to be moving to a more secondary and supporting role. This appears to be mainly due to the establishment of Turkey's specialised agency – the Directorate General of Migration Management – which is in itself a positive development. At the same time, this development should be viewed against the backdrop of the political climate in Turkey, which makes it generally more challenging to operate in the country for organisations

such as UNHCR and international and local NGOs. The full impact of this transition is yet to be seen and should be followed.

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1. See Kirişçi K (1996) 'Is Turkey lifting the 'geographical limitation'?: The November 1994 Regulation on Asylum in Turkey', *International Journal of Refugee Law*, 8(3) <https://doi.org/10.1093/ijrl/8.3.293>
2. See the first (pp16-18) and the third (pp14-15) progress reports on the visa liberalisation roadmap bit.ly/EU-Turkey-1st-progress-report and bit.ly/EU-Turkey-3rd-progress-report
3. See Tokuzlu L B (2016) (Turkish only) <https://dergipark.org.tr/en/download/article-file/229932>
4. UNHCR's role in Turkey: <https://help.unhcr.org/turkey/>
5. See Adalı T and Türkyılmaz AS (2020) 'Demographic Data on Syrians in Turkey: What do we know?', *International Migration*, 58(3) <https://doi.org/10.1111/imig.12614>
6. İçduygu A and Diker E (2017) 'Labor Market Integration of Syrian Refugees in Turkey: From Refugees to Settlers', *Journal of Migration Studies*, 3(1) www.gam.gov.tr/files/5-2.pdf
7. See UNHCR's operational update for Turkey, January 2021 bit.ly/UNHCR-TurkeyJan2021