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RESEARCH ARTICLE

## Syrians under Temporary Protection and Their Acquisition of Turkish Citizenship

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### Abstract

This paper describes possible ways of acquiring Turkish citizenship in relation to those Syrians in Turkey who are under temporary protection status. The paper initially provides an overview of the types of international protection statuses under Turkish law following which temporary protection status is examined. Next, the Turkish Citizenship Act is analyzed through the status of Syrians in Turkey. In this regard, initially, the acquisition of Turkish citizenship through kinship and general neutralization are explained, following which exceptional ways of acquisition is elaborated upon. Then, acquiring Turkish citizenship through marriage is explained which is followed by the final section on acquisition of Turkish citizenship through adoption. In providing such explanations, Council of State decisions that reflect the discretionary powers of the administrative authorities as well as the interpretations under the doctrine are taken into account. While certain particularities and restrictions under the relevant laws exist and the discretionary powers of the administrative authorities as well as Turkish public policy concerns may cause obstacles, the Turkish Citizenship Act provides possible legal grounds for the naturalization of Syrians under temporary protection in Turkey.

### Keywords

Temporary Protection, Syrians, Citizenship, Refugees, Acquisition of Turkish Citizenship

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## I. Introduction

The Syrian civil conflict of 2011 is one of the major humanitarian crises that continues to affect the whole world and in particular Turkey. Turkey has applied an open-door policy for Syrians and assisted those who sought asylum in masses. However, due to the deterioration of the situation in Syria and the unresolved internal problems, the situation has taken an unpredictable turn and Turkey has now become the country hosting the largest number of refugees. Turkey has been affected by this process in all economic, legal and political fields. Turkey has granted “temporary protection” status to these asylum seekers arriving at the Turkish border in masses. According to the official data published, as of 2.2.2023, in Turkey there are 3,500,964 Syrians under “temporary protection”.<sup>1</sup> The issue of citizenship applications of Syrians under the “temporary protection” status, who have been residing in Turkey for many years, has come to the Turkish political agenda.

The issue of the acquisition of Turkish citizenship of persons under temporary protection status in Turkey is becoming more and more controversial with each passing day. The fact that the temporary protection status provides a unique protection, distinct from the other international protection statuses, is the most significant factor causing these debates. With this study, it is aimed to discuss this controversial issue in detail and to make a general evaluation in the light of the legal regulations and the opinions put forward in the doctrine.

Firstly, the international protection statuses regulated under Law No. 6458 on Foreigners and International Protection (LFIP)<sup>2</sup> will be briefly mentioned. Afterwards, the difference between temporary protection status and international protection statuses will be explained and its main features will be specified. Following this information on international protection and temporary protection statuses, the conditions for persons under temporary protection status to apply for citizenship will be examined in detail within the scope of the acquisition of citizenship under Turkish Citizenship Law No. 5901 (TCC)<sup>3</sup>.

## II. International Protection and Temporary Protection

### A. International Protection Status

Before addressing the issue of citizenship under Turkish law, it is important to determine the status of Syrian migrants within the international protection status under Turkish law. The international protection status under Turkish law is regulated

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1 For statistics shared on the website of the Turkish Ministry of Internal Affairs, Directorate of Migration Management, see: <https://www.goc.gov.tr/gecici-koruma5638> (Last Accessed: 21 February 2023).

2 Official Gazette no. 11.04.2013/28615.

3 Official Gazette no. 12.06.2009/27256.

under the Law on Foreigners and International Protection (from herein “LFIP”) which was published in the Official Gazette on April 11, 2013. The purpose of the law is defined in Article 1 of the LFIP. According to this Article, the purpose of the law is to regulate the procedures and principles regarding the entry of foreigners into Turkey, their stay in Turkey and their departure from Turkey, as well as the scope and implementation of the protection to be provided to foreigners who request Turkey’s protection. The provisions of this law emerged in the process of harmonization with the European Union and are in accordance with human rights standards. The LFIP constitutes a legal basis for the concept of temporary protection to be granted in cases of mass influx and hence is important in terms of the law to be applied to Syrians who have temporary protection status in Turkey. Furthermore, the LFIP established the “Directorate of Migration Management” under the Ministry of Interior Affairs to carry out the work and operations in the field of migration and international protection.

According to Article 3/1, paragraph (r) of the LFIP, there are three categories of international protection status under Turkish law: refugee, conditional refugee and subsidiary protection. International protection is an umbrella term for these three types. Moreover, the concept of “migrant” refers to all foreigners in a country in the sense of international law. The definition of “foreigner” is set out in the definitions section of Article 3 of the Turkish Citizenship Law. According to this Article, a foreigner is “*a person who has no citizenship ties with the Republic of Turkey*”. There are different types of international protection statuses and each of these statuses grant different rights to the foreigners.

## 1. Refugee

The Convention Relating to the Status of Refugees dated 1951 (hereinafter, “The 1951 Convention”), which Turkey has ratified<sup>4</sup>, includes a definition of refugee in Article 1 and this definition has been taken into account in enacting Turkish domestic laws on international protection. Before moving on to the examination of the definition of a “refugee” under both international and Turkish laws, it is significant to understand the historical background of the emergence of international refugee protection and the 1951 Convention.

The first quarter of the 20<sup>th</sup> century, where the effects of wars were prominently felt, there were many instances of the mass movement of persons due to compelling reasons<sup>5</sup>. The primary foundations of rules of international protection were introduced

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4 Official Gazette no. 05.09.1961/ 10898.

5 Neva Övünç Öztürk, *Mültecinin Hukuki Statüsünün Belirlenmesi*, (Seçkin Yayıncılık, 2015) 74; Hatice Selin Pürselim, “Temel Kavramlar Işığında Mülteci Hukukunun Gelişimi”, *Uluslararası İlişkilerde Göç, Şirin Öner, Aslı/ İhlamur, Öner/ Suna, Gülfer (Editor), (Der Yayınları 2018) 209.*

at these times through the League of Nations, (and more specifically through the establishment of the “International Refugee Organisation” within that) in pursuit of finding a solution to the mass migration problem after the collapse of the Ottoman Empire and as a result of the Russian Revolution<sup>6</sup>. With the establishment of the United Nations in 1945, the former “International Refugee Organization” was dissolved and replaced by the United Nations High Commissioner for Refugees (UNHCR) in 1950<sup>7</sup>. The mandate of the UNCHR is “to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide<sup>8</sup>”. In this background, the 1951 Convention was drafted in order to set forth international rules for refugee protection. The 1951 Convention is also described as the output of the Cold War era<sup>9</sup>.

According to this provision: “*It shall apply to every person who, as a result of events occurring before 1 January 1951 and having a 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 of the protection of that country; or who, having no nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*”. The definition of refugee in the Convention was intended to provide protection to those who had to leave their country for the reasons listed after World War II. However, in 1967, the United Nations signed the New York Protocol in order to make the definition more comprehensive<sup>10</sup> in terms of its temporal and territorial application. In the Protocol, the definition of refugee was reintroduced, and its scope was expanded. While the 1951 Geneva Convention required an element of time and geographical limitation for the definition of a refugee, the New York Protocol abolished this time limitation and left the geographical limitation to the discretion of the contracting states. Currently, there are only four states in the world

6 Öztürk (n 5) 74; Gilbert Jaeger, ‘On the History of the International Protection of Refugees’ (2001) 83(843) *The International Review of Red Cross*, 727, 728-729.

7 On the mandate and short history of UNCHR see: <<https://www.refworld.org/publisher,UNHCR,COUNTRYPOS,,0.html>> last accessed 11.04.2023.

8 Ibid, see also “Mandate of the High Commissioner for Refugees and his Office Executive Summary” at: <<https://www.unhcr.org/5a1b53607.pdf>> last accessed 11.04.2023.

9 Guy Goodwin-Gill, “The International Law of Refugee Protection”, in *The Oxford Handbook of Refugee and Forced Migration Studies* (eds. Fiddian-Qasmiyeh, E., et. al), Oxford 2014, 44; Pürselim (n 5) 218-219.

10 Despite the attempt to make the refugee definition under the 1951 Convention more comprehensive through the said Additional Protocol, as of today the definition of “refugees” under the 1951 Convention is being criticised as not being inclusive enough to provide the sufficient international protection in accordance with international human rights laws especially in light of the challenges brought by the changing ecological circumstances (which for instance gave rise to the concept of “climate refugees”); on this discussion see: Jenny Han and Amanda Kuras (2019) 1(1) ‘Climate Change and International Law: A Case for Expanding the Definition of “Refugees” to Accommodate Climate Migrants’ *Fordham Undergraduate Law Review* 50; Abby Kleinman ‘The Definition of a Refugee Under International Law: The Complexities Behind the Initial Deliberations and Modern Implications for Contemporary Refugees’ (2022) (Winter Issue Online Edition Volume 11) *The Yale Review of International Studies* <<http://yris.yira.org/essays/5622>> accessed 10.04.2023; Hatice Selin Pürselim, “Mültecilerin Hukuki Statüsüne İlişkin Cenevre Sözleşmesi’ne Yönelik İki Tartışma: Sözleşme’nin Kapsadığı Kişiler ve Geri Gönderme İlkesinin Bağlayıcılığı”, Prof. Dr. Necla Giritlioğlu’na Armağan, Erman Hasan/Öğüz Tufan/Şıpa Şükran/İnal Emrehan/Baysal Başak (Editors), (On İki Levha Yayıncılık 2020) 523-527.

that are parties to the Geneva Convention or its Additional Protocol that preserve the geographical limitation in the definition of refugee: Turkey, Madagascar, Monaco and Congo.

Based on the 1951 Geneva Convention and the 1967 New York Protocol, Turkey has included the definition of a refugee in Article 61 of the LFIP. According to this definition: *“A foreigner who, as a result of events occurring in European countries, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or a stateless person who, as a result of such events, is outside the country of his former habitual residence and is unable or, owing to such fear, unwilling to return to it, is granted refugee status after the status determination procedures”*.

Pursuant to Article 61 of the LFIP, only those foreigners unable or, unwilling to avail themselves of the protection of their country *“due to events occurring in European countries”* are called refugees. What stands for a “European country” within the meaning of this provision is defined in the definitions section of Article 3 of the LFIP. According to this Article, *“Countries that are members of the Council of Europe and other countries to be determined by the President...”* will be considered a European country. In this case, to recognize a country as a “European” country in addition to being a member of the Council of Europe the decision of the President of the Republic plays an important role. Syria is not a member of the Council of Europe and has not been recognized as a European country by a Presidential decree. In this case, it is not possible to grant refugee status to people migrating from Syria under Turkish law.

## **2. Conditional Refugee**

Article 62 of the LFIP includes the definition of a “conditional refugee.” According to this Article, *“A foreigner who, as a result of events occurring outside European countries, is outside his/her country of nationality and is unable or, owing to such fear, unwilling to avail himself/herself of the protection of that country because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or a stateless person who, as a result of such events, is outside his/her country of former habitual residence and is unable or, owing to such fear, unwilling to return to it, is granted conditional refugee status after the status determination procedures. The conditional refugee is allowed to stay in Turkey until he/she is resettled in a third country”*. What distinguishes Article 62 of the LFIP from Article 61 is the absence of a geographical condition. In this case,

conditional refugee status will not be granted to those who are outside of Europe or seek asylum for reasons other than the five criteria listed in Article 61 of the LFIP. It is also important to note that this definition of “conditional refugee” under Article 61 of the LFIP was first described under Article 3 of the “Regulation on the Procedures and Principles to be Applied to the Individual Foreigners Seeking Asylum in Turkey or Requesting a Residence Permit from Turkey to Take Asylum in Another Country, Foreigners Arriving at Our Border for Collective Asylum and Possible Population Movements<sup>11</sup>” (the so-called “1994 Regulation”) which was the regulation under Turkish law prior that envisaged the rules for the international protection of asylum seekers prior to the enactment of the LFIP. Under the 1994 Regulation the status for such persons was defined as “asylum seeker”.

### 3. Subsidiary Protection

Although the refugee and conditional refugee statuses were created based on the Geneva Convention of 1951 under the LFIP, for those asylum seekers that fall outside of the conditions under the said statuses, “subsidiary protection” status was introduced. Subsidiary protection status is regulated under Article 63 of the LFIP. According to the provision, *“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: a) be sentenced to death or face the execution of the death penalty; b) face torture or inhuman or degrading treatment or punishment; c) 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.”*

The subsidiary protection status regulated in Article 63 of the LFIP is a protection status granted individually in accordance with the “prohibition of refoulement” in international law. It provides a more inclusive protection than other international protection statuses by not requiring the five grounds set out in Articles 61 and 62 of the LFIP.<sup>12</sup> It is applied without geographical limitation to persons who do not fall under the definition of conditional refugee or refugee and who need international protection status for the reasons listed in the said article. This status is generated for the protection of the right to life and the prohibition of torture.<sup>13</sup> In this context, it complements other international protection statuses and is also referred to as

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11 Official Gazette no. 30.11.1994/22127.

12 Aysel Çelikel, Günseli Öztekin Gelgel, *Yabancılar Hukuku* (26<sup>th</sup> edn, Beta Publishing 2021) 25; Öztürk (n 5) 403.

13 Çelikel, Öztekin Gelgel (n 12) 25; Gökçe Arıkan, *Göç Hukukunda Yabancıya Sağlanan Uluslararası, Bölgesel ve Ulusal Koruma* (On İki Levha Publishing 2020) 37.

“complementary” or “secondary” protection”.<sup>14</sup> Since Syrian migrants are not at the risk of persecution under Article 63 of the LFIP, they cannot benefit from subsidiary protection status. Finally, of the said three international protection statuses will be applied to the asylum seekers on an individual basis. Therefore, it is not possible to apply such statuses to Syrian asylum seekers who migrated in mass influxes.<sup>15</sup>

## B. Temporary Protection Status

Temporary protection is a tool to provide fundamental rights to asylum seekers in mass influx situations where the individual refugee determination process is set forth under the 1951 Convention. Historically, this status emerged from European states’ inability to grant refugee status to individual asylum seekers because of the mass migration during the Bosnia and Kosovo crisis in the 1990s<sup>16</sup>. Refugee status cannot provide immediate and temporary protection to asylum-seekers who migrate in flows since in order to benefit from this status under the 1951 Convention, the status of each asylum seeker must be determined individually through interviews. On the other hand, when faced with a mass influx due to the obligations arising from international law, states cannot return asylum seekers to places where there is a risk of mistreatment. This is known as the “principle of non-refoulement”<sup>17</sup>. In line with this principle, states provide protection to asylum seekers fleeing in mass influxes and provide some minimum services on the basis of human rights.

The temporary protection regime, which emerged from the need to provide short-term and interim protection to asylum-seekers who migrated to Turkey in mass influx due to the open-door policy implemented after the civil war in Syria, has found its legal basis in Turkish law under Article 91 of LFIP<sup>18</sup>. This regime was applied for

14 Bülent Çiçekli, *6458 Sayılı Kanunla Güncellenmiş Yabancılar ve Mülteci Hukuku* (6<sup>th</sup> edn, Seçkin Publishing 2016), 301; Nuray Ekşi, *Yabancılar ve Uluslararası Koruma Hukuku* (5<sup>th</sup> edn, Beta Publishing 2018), 51; Neşe Baran Çelik, ‘Türk Hukukunda Uluslararası Koruma Başvurusunda Bulunan veya Uluslararası Korumadan Yararlanan Yabancıların Hak ve Yükümlülükleri’ (2015) 1 İnönü Üniversitesi Hukuk Fakültesi Dergisi 78; Ahmet Hamdi Topal, ‘Geçici Koruma Yönetmeliği ve Türkiye’deki Suriyelilerin Hukuki Statüsü’ (2015) 2(1) İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi 13; Süleyman Dost, ‘Ulusal ve Uluslararası Mevzuat Çerçevesinde Ülkemizdeki Suriye’li Sığınmacıların Hukuki Durumu’ (2014) 4(1) Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi 49; B. Bahadır Erdem, ‘Geçici Koruma Statüsündeki Suriyelilerin Sosyal, Siyasi ve Vatandaşlık Hukuku Bakımından Türkiye’deki Durumları’ (2017) 37(2) Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 454; Arıkan (n 13) 40; Kutluhan Bozkurt, *Güncel Gelişmelerle Göç Hukuku* (2<sup>nd</sup> edn, Legal Publishing 2022) 63, 72; Işıl Özkan, *Göç ve Vatandaşlık Hukuku* (Seçkin Publishing 2022) 245.

15 Çelikel, Öztekin Gelgel (n 12) 25; Öztürk (n 5) 403.

16 Joan Fitzpatrick, ‘Temporary Protection of Refugees: Elements of a Formalized Regime’ *The American Journal of International Law* (2000) 94(2), 279, 279-280.

17 For further information on the principle of non-refoulement and its connection to temporary protection see: Jane Jean-François/MCADAM, ‘Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies’ (2004) 16(1) *International Journal of Refugee Law*, 4-24; Pürselim (n 9) 528-535.

18 For further information on temporary protection regime under Turkish law see: Meltem Ece Oba, ‘Türk Hukukunda Geçici Koruma Rejimi’ (PhD thesis, Koç University 2018); Doğa Elçin, ‘Türkiye’de Bulunan Suriyelilere Uygulanan Geçici Koruma Statüsü 2001/55 Sayılı Avrupa Konseyi Yönergesi İle Geçici Koruma Yönetmeliği Arasındaki Benzerlik ve Farklılıklar’ (2016) 124 *Türkiye Barolar Birliği Dergisi* 9; Sema Çörtoğlu Koca, Candan Kavşat, ‘Geçici Koruma Yönetmeliği Uyarınca Geçici Koruma Kararının Kapsamı, Alınması ve Sona Ermesi’ (2015) 1(1) Başkent Üniversitesi Hukuk Fakültesi Dergisi 329; Dost (n 14) 27; for a more international review of temporary protection regimes see: Meltem



the first time to the Syrian mass asylum-seekers. The procedures and principles regarding this temporary protection regime under Turkish law are regulated by the Temporary Protection Regulation and the Regulation on Work Permits of Foreigners under Temporary Protection and circulars of the Ministry of Interior. Temporary protection status is defined by the Directorate General of Migration Management as “*the protection provided to foreigners who have been forced to leave their country, who cannot return to the country they left, who come to or cross our borders in masses in search of immediate and temporary protection, and for whom individual international protection status determination process cannot be pursued*”. Similarly, in the European Union, with Article 2 of the Temporary Protection Directive<sup>19</sup>, a separate status that provides immediate and temporary protection of an exceptional character for displaced persons arriving in a sudden and large mass influx was adopted in 2001. This was introduced as a separate status from refugee status as defined in the 1951 Convention relating to the Legal Status of Refugees to fill the protection gap in the 1951 Convention in the context of mass influxes.<sup>20</sup>

Temporary protection is not an international protection status.<sup>21</sup> It is a type of protection subject to domestic law that is introduced to provide emergency and precautionary protection to persons who arrive in large masses and cannot be assessed individually.<sup>22</sup> In order to be granted temporary protection status, it is necessary to migrate in a mass influx. In this case, the meaning of “mass migration” is defined under Article 3, paragraph 1, subparagraph (j) of the Temporary Protection Regulation. According to this Article, “mass migration” refers to “*situations where migration from the same country or geographical region takes place in a short period of time and in high numbers, and where individual international protection status determination procedures are not procedurally feasible due to the numbers in question*”. In these cases, whether or not migrants will be granted temporary protection status will be determined by the decision of the State authorities.

<sup>19</sup> İneli-Ciğer, *Temporary Protection in Law and Practice* (Brill 2018).

<sup>19</sup> 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, Official Journal L 212, 07/08/2001, bkz. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0055> (Last Accessed: 14.02.2023). For similarities and differences between the European Directive and the Turkish Regulation see Elçin (n 18) 10-77.

<sup>20</sup> Aydoğan Asar, *Yabancılar Hukuku (Temel Konular)* (7<sup>th</sup> edn, Seçkin Publishing 2021) 294; Esra Yılmaz Eren, *Mülteci Hukukunda Geçici Koruma* (2<sup>nd</sup> edn, Seçkin Publishing 2021) 66, 67; Gökçe Konyalı, *Uluslararası Hukukta Sığınma Hakkı* (Seçkin Publishing 2021) 135; Koca, Kavşat (n 18) 331; Elçin (n 18) 23.

<sup>21</sup> Çelikel, Öztekin Gelgel (n 12) 26; Çiçekli (n 14) 306; Bülent Çiçekli, *Uluslararası Hukukta Mülteciler ve Sığınmacılar* (Seçkin Publishing 2009) 118; Asar (n 20) 251; Ayşe Yasemin Aydoğmuş, ‘Türk Hukukunda Geçici Korumadan Yararlananların Sınır Dışı Edilmesi’ (2017) 37(2) Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 143; Neva Övünç Öztürk, ‘Geçici Korumanın Uluslararası Koruma Rejimine Uyumu Üzerine Bir İnceleme’ (2017) 66 (1) Ankara Üniversitesi Hukuk Fakültesi Dergisi 242; Sibel Özel, ‘Türkiye’deki Suriyelilerin Hukuki Statüsü’ (2020) 17(2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 722. In the doctrine, there are also those who specify temporary protection as an international protection status, see: Ekşi (n 14), 53, 54 and 151, 152; Nuray Ekşi, ‘Türkiye’de Bulunan Suriyelilerin Hukuki Statüsü’ (2012) 10 (119) Legal Hukuk Dergisi 4; İbrahim Kaya, Esra Yılmaz Eren, *Türkiye’deki Suriyelilerin Hukuki Durumu, Arada Kalanların Hakları ve Yükümlülükleri* (SETA Publishing 2015) 25.

<sup>22</sup> Çelikel, Öztekin Gelgel (n 12) 168; Vahit Doğan, *Türk Yabancılar Hukuku* (6<sup>th</sup> edn, Savaş Publishing 2021) 12; Özel (n 21) 722; Koca, Kavşat (n 18) 341.



Pursuant to Provisional Article 1 of the Temporary Protection Regulation<sup>23</sup>, this status is granted to persons who have arrived in Turkey *“since 28.04.2011 due to the events that took place in the Syrian Arab Republic”*.

The services to be provided to those under temporary protection in Turkey are regulated under the Temporary Protection Regulation. Chapter 6 of the Regulation bears the subtitle “Services to be provided to Temporary Protected Persons”. The Regulation uses the term “services” instead of “rights”. This means that there is no element of obligation. Two examples of these services are health and education. Health services to be provided to temporary protected persons are regulated under Article 27 of the Temporary Protection Regulation. Pursuant to Article 27/f.1 subparagraph (a) of the Temporary Protection Regulation, temporary health centers have been established in temporary accommodation centers for the purpose of providing health services, the working procedures and principles of which are determined by the Ministry of Health. In the first period when the civil unrest in Syria began to emerge, the Temporary Protection Regulation was not yet in force, and the first official document prepared by the Ministry of National Education (MoNE) in the context of education, was the circular titled “Measures for the Syrian Citizens hosted outside the camps in our country”, which was published on April 26 2013. It is stated that the MoNE will be responsible for providing education services. The aim was to ensure that children do not stay away from school and do not have their education interrupted.

Pursuant to Article 9 of the Temporary Protection Regulation, a temporary protection decision is issued by the President of the Republic upon the proposal of the Ministry. In this protection decision, the President of the Republic is authorized to determine who will be covered by this status, the starting date and, if necessary, the duration of this protection and the conditions for its termination.

Pursuant to Article 11 of the same Regulation, the President of the Republic may terminate this status upon the Ministry’s proposal to terminate temporary protection. Upon the termination of this status, the President of the Republic may decide to allow the persons subject to this status to return to their country, to grant the status for which they meet the conditions collectively or to evaluate individual applicants for international protection, or to allow those under temporary protection to continue to stay in the country under conditions to be determined under the law.

In the event that persons with temporary protection status voluntarily leave Turkey, benefit from the protection of another country, die, exit to another third country for humanitarian reasons or resettlement, obtain one of the other types of legal stay specified in the law or acquire Turkish citizenship, their temporary protection ends in accordance with Article 12 of the relevant regulation.

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23 Official Gazette no. 22.10.2014/29153.

The Governorate and the Directorate General are authorized to revoke the status of the person if it is later understood that the person should be excluded from the scope of temporary protection due to a serious conviction that the person is guilty of the acts specified in paragraph (F) of Article 1 of the Convention on the Legal Status of Refugees. The Governorate may also revoke the status of those who fail to fulfill the notification obligation three times in a row without an excuse.

In these cases, foreigners whose temporary protection status has expired and who are nevertheless in the country without any other legal basis become “illegal” migrants.

Syrians under temporary protection should be evaluated separately from those with international protection status in terms of the rights they have and their subsequent transition to Turkish citizenship. In the third part of this paper, the conditions under which Syrians, who are the subjects of this status, can acquire Turkish citizenship will be examined.

### **III. Acquisition of Turkish Citizenship by Syrians under Temporary Protection Status**

The acquisition of Turkish citizenship is regulated under the “Turkish Citizenship Law”. The acquisition of citizenship for those under temporary protection status will also be subject to the provisions of this law. In order to evaluate the applications of temporarily protected Syrians for Turkish citizenship, the acquisition of Turkish citizenship regulated in the TCC should be examined in detail.

#### **A. Acquisition of Turkish Citizenship by Syrians under Temporary Protection Status on the Basis of Place of Birth**

Pursuant to Article 5 of the TCC, “*Turkish citizenship is acquired either by birth or after birth*”. Pursuant to Article 6 of the TCC, “*Turkish citizenship by birth can be acquired by place of birth and/or descent. Citizenship by birth is acquired at the time of birth.*” For the purposes of this paper, acquisition of citizenship on the basis of descent is not evaluated.

Pursuant to Article 8 of the TCC, in order to acquire Turkish citizenship on the basis of place of birth, the person must be born in Turkey and not be able to acquire any other citizenship by birth through his/her parents. It is understood that the legislature, in line with the international conventions to which Turkey is a party, aims not to eliminate the risk of leaving any person “stateless”. In this context, children born in Turkey to stateless parents, for instance those who have lost their Syrian Arab Republic citizenship for a reason, may be granted citizenship based on place of birth within the scope of Article 8 of the TCC.<sup>24</sup>

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24 Nuray Ekşi, ‘Suriyelilere Toplu Olarak Türk Vatandaşlığı Verilebilir mi?’ (2015) 89(2) İstanbul Barosu Dergisi, 198-199;

## B. Acquisition of Turkish Citizenship by Syrians under Temporary Protection Status with the Decision of the Competent Authority

According to Article 9 of the TCC, “*Turkish citizenship shall be acquired after birth with a decision of the competent authority or by adoption or by choice*”. Adoption is one of the cases of acquisition of citizenship after birth, which is subject to the discretion of the competent authority.<sup>25</sup> Hence, adoption is not in itself a separate category but should be considered a type of acquisition with the decision of a competent authority. Therefore, despite the wording under Article 9 of the TCC, the acquisition of Turkish citizenship can be possible in two ways: either by the decision of the competent authority or by the exercise of the right to choose.<sup>26</sup> In terms of the subject of this paper, the acquisition of Turkish citizenship by the decision of the competent authority is evaluated under four headings in detail below.

### 1. Evaluation of Persons under Temporary Protection Status in terms of the General Conditions for Acquisition of Turkish Citizenship

The first issue to be addressed regarding the acquisition of Turkish citizenship by the decision of the competent authority is the general naturalization. Article 11 of the TCC lists the conditions that a foreigner who wishes to acquire Turkish citizenship in a general way must meet. According to the Article, the conditions sought are as follows:

- a) *To be of age of consent possessing the power of discernment according to his/her national law or Turkish law if he/she is stateless,*
- b) *To reside in Turkey for an uninterrupted period of five years prior to the date of application,*
- c) *Have the intention of settling in Turkey and confirm by their behavior that they have decided to settle in Turkey,*

Kaya, Yılmaz Eren (n 21) 64; Mesut Aygün, Cansu Kaya, ‘Yabancılar ve Uluslararası Koruma Hukukunda Kalıcı Bir Çözüm Olarak Yerel Entegrasyon’ (2016) 7(1) İnönü Üniversitesi Hukuk Fakültesi Dergisi 132.

25 Ergin Nomer, *Türk Vatandaşlık Hukuku* (28<sup>th</sup> edn, Filiz Publishing 2021) 109; B. Bahadır Erdem, *Türk Vatandaşlık Hukuku* (8<sup>th</sup> edn, Beta Publishing 2020) 184, 185; Bilgin Tiryakioğlu, ‘Yeni Türk Vatandaşlığı Kanununun Eleştirel Analizi’, *Vatandaşlık, Göç, Mülteci ve Yabancılar Hukukundaki Güncel Gelişmeler*, Türkiye Barolar Birliği Uluslararası Sempozyum, Ankara, 2010, 45; Gülin Güngör, *Tâbiyet Hukuku* (9<sup>th</sup> edn, Yetkin Publishing 2021) 82; Musa Aygül, ‘Evlât Edinme Yolu ile Vatandaşlığın Kaybedilmesi ve Kazanılması’ (2012) 99 Türkiye Barolar Birliği Dergisi 68-69; Rona Aybay, Nimet Özbek, Gizem Ersen Perçin, *Vatandaşlık Hukuku* (Siyasal Publishing 2019) 145-146. Under the doctrine, certain authors consider the acquisition of Turkish citizenship through adoption as a separate way from acquisition by the decision of the competent authority, for further information see: Rifat Erten, ‘5901 Sayılı Türk Vatandaşlığı Kanununa Göre Türk Vatandaşlığının Kazanılması’ (Turhan Publishing 2010), 953. In addition, under the doctrine, one view considers the acquisition of Turkish citizenship through adoption as a separate way from acquisition by the decision of the competent authority, nevertheless states that “...the legal nature of the acquisition of citizenship through adoption is closer to the acquisition of citizenship by the decision of the competent authority...”, see: Turgut Turhan, Feriha Bilge Tanrıbilir, *Vatandaşlık Hukuku* (4<sup>th</sup> edn, Yetkin Publishing 2017) 108; Vahit Doğan, *Türk Vatandaşlık Hukuku* (18<sup>th</sup> edn, Savaş Publishing 2021) 58.

26 Doğan (n 25) 55.

c) *Not having a disease that poses a danger to general health,*

d) *Having good morals,*

e) *To speak Turkish sufficiently,*

f) *Have an income or occupation in Turkey that will provide a livelihood for oneself and one's dependents,*

g) *Not having any situation that would constitute an obstacle in terms of national security and public order,*

Regarding Syrians under temporary protection, the requirement of five years of uninterrupted residence prior to the date of application under Article 11/1(b) of the TCC is of particular importance. Article 3/1(h) of the Regulation on the Implementation of the Turkish Citizenship Law<sup>27</sup> clearly states that the residence requirement of the Law can only be met by being in Turkey with legal permission. Article 25 of the Temporary Protection Regulation, on the other hand, clearly stipulates that the identity document issued to persons under temporary protection status only grants them a right to stay in Turkey, and that this document shall not be considered equivalent to a legal residence permit or a document substituting for a residence permit, shall not grant the right to transition to a long-term residence permit, and its duration shall not be taken into account in the total duration of the residence permit, and therefore does not entitle the holder to apply for Turkish citizenship. Therefore, it is concluded that Syrians under temporary protection status cannot become Turkish citizens through the general acquisition of citizenship.<sup>28</sup>

## **2. Exceptional Acquisition of Turkish Citizenship by Persons under Temporary Protection Status**

In addition to the general acquisition of citizenship under Article 11, the TCC also regulates the acquisition of citizenship in some exceptional cases without the need to fulfill the conditions of Article 11. The exceptional cases of acquisition of citizenship are set out in Article 12 of the TCC.

According to Article 12/1(a) of the TCC, “*persons who bring industrial facilities to Turkey or who have rendered or are expected to render extraordinary services in scientific, technological, economic, social, sportive, cultural, artistic fields and for*

27 Official Gazette no. 06.04.2010/27544.

28 Ekşi (n 14) 200; Aygün, Kaya (n 15) 133; Sibel Özel, ‘Suriyeli Sığınmacıların Kitleli Olarak Türk Vatandaşlığına Alınması Meselesinin Hukuki Açısından Değerlendirilmesi’ (2017) 91(3) İstanbul Barosu Dergisi 21; Ali Kemal Nurdogan, Mustafa Öztürk, ‘Geçici Koruma Statüsü ile Türkiye’de Bulunan Suriyelilerin Vatandaşlık Hakkı’ (2018) 23(3) Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi 1171; Aybay, Özbek, Ersen Perçin (n 25) 118; Özel (n 21) 729; Özkan (n 14) 276; Rümeyza Partalci, ‘Geçici Koruma Statüsündeki Kişilerin Türk Vatandaşlığına Başvuru Şartları’, Uluslararası Hukukta Göç ve Vatandaşlık (Yetkin Yayıncılık Ankara 2022) 316.

*whom a reasoned proposal is made by the relevant ministries*” may be naturalized by a Presidential decree, provided that they do not have any obstacles in terms of national security and public order. Therefore, Syrians under temporary protection status who individually meet the conditions in this paragraph can be naturalized as Turkish citizens.<sup>29</sup>

Paragraph (b) of Article 12 of the TCC also states that foreigners who have a residence permit pursuant to Article 31/1(j) of the LFIP and Turquoise Card holders, their foreign spouses, and the minor or dependent foreign child of the foreign spouse may also acquire citizenship exceptionally. The said Article 31/1(j) of the LFIP regulates that “*foreigners who are not working in Turkey but who will make investments within the scope and amount to be determined by the President of the Republic and their foreign spouses and their and their spouses’ minor or dependent foreign children*” may obtain a short term residence permit. The necessary investments mentioned in this provision are determined by the Presidential Decree No. 106 published in the Official Gazette in 2018. Hence, Syrians who made the necessary investments and acquired a short-term residence permit may apply for the acquisition of Turkish citizenship through the “exceptional” way. However, there exists three significant obstacles before Syrians in relation to the said exceptional way of acquiring Turkish citizenship through investments: (i) Syrians under temporary protection cannot be granted a short-term residence permit; (ii) There exists a legal restriction on the rights of Syrians (be under temporary protection or not) in acquiring immovable property in Turkey. (iii) Syrians under temporary protection cannot obtain a Turquoise Card.

Relating to the first obstacle facing Syrians in acquiring Turkish citizenship through investment, the rule under Article 25 of the Temporary Protection Regulation constitutes a barrier in obtaining a short-term residence permit. This rule states that the right to stay in Turkey granted to those under temporary protection is not equivalent to a legal residence permit. Hence, Syrians under temporary protection cannot apply for the acquisition of Turkish citizenship through Article 12 (b) of the TCC<sup>30</sup>. Consequently, only those Syrians who had entered Turkish territory before the entry into force of the temporary protection decision by the Turkish authorities and hence those who are not under temporary protection may apply and receive a short-term residence permit.

Relating to the second obstacle facing Syrians in acquiring Turkish citizenship through investment, the restrictions in the acquisition of immovable property by Syrians in Turkey should be addressed. Article 35 of the Land Registry Law states that “*Foreign real persons who are citizens of countries determined by the President*

29 Özel (n 28) 24; Nurdoğan, Öztürk (n 28) 1171; Özel (n 21) 730.

30 Neşe Baran Çelik, “Güncel Gelişmeler Işığında Türk Vatandaşlığının İstisnai Haller Kapsamında Kazanılması” (2017) Türkiye Barolar Birliği Dergisi, 357, 408; Özel (n 21) 730.

of the Republic in terms of international bilateral relations and in cases where the interests of the country require it, may acquire immovable property and limited real rights in Turkey, provided that the legal restrictions are complied with". In this case, the President of the Republic is granted a wide discretionary power on this matter. Before moving on to the discretionary power of the President, it is necessary to assess the legal limitations to this issue as well, since where other legal limitations exist, the President will only be able to act in accordance with such limitations. Indeed, such limitations exist regarding real estate ownership of Syrians due to a conflict resulting from former land reforms in Syria.

In 1958, the land reform in Syria led to serious restrictions on the right to property. In Syria, foreign nationals cannot acquire immovable property through inheritance according to the Syrian inheritance law; therefore, Turkish citizens could not exercise their property rights on immovable properties in Syria which caused a serious loss of rights on behalf of Turkish citizens. Therefore, in line with the principle of reciprocity, the Turkish treasury has seized the immovable properties of Syrian nationals in Turkey. Pursuant to Law No. 1062<sup>31</sup> on Mutual Reciprocity, it is not possible for private and legal persons of Syrian nationality to acquire immovable property in Turkey. Indeed, regarding the immovable property in Turkey owned by Syrian citizens before Law No. 1062 was annotated, in the declarations section of relevant land registry reads as "seized in accordance with Law No. 1062". Syrian nationals are prohibited from acquiring new immovable property in Turkey<sup>32</sup>. On the other hand, it is disputed under the doctrine as to whether such restrictions are applicable to Syrians holding multiple or dual citizenships<sup>33</sup>. One view<sup>34</sup> argues that the restrictions apply to Syrian citizens and hence even if they hold other citizenships Syrians will still not be able to acquire immovable property in Turkey, and this includes holding of Turkish citizenship as dual citizenship as well. Another view<sup>35</sup>, advocates that Law No. 1062 cannot be interpreted to restrict the ownership rights of a Syrian citizen if he/she holds another citizenship of a country against whom no such political sanctions can be applied. A different view<sup>36</sup> on the other hand, argues that the country with which the person whose ownership rights are in question has the closest connection shall determine whether Syrian citizenship and hence the sanctions under Law No. 1062 shall be taken into account or not. As a result, due to the restrictions

31 Official Gazette no. 15.06.1927/608

32 On the issues regarding the acquisition of immovables of Syrians in Turkey also see: Ayşe Yasemin Aydoğmuş, *Aiths' e Ek 1 No 'lu Protokole Göre Yabancıların Türkiye' de Taşınmaz Edinmesi* (On İki Levha Publishing 2016) 105; Burak Huysal, "Suriye Arap Cumhuriyeti Vatandaşlarının Türkiye' de Bulunan Taşınmazlarına İlişkin Bazı Sorunlar ve Tespitler" (2007) 2 *Maltepe Üniversitesi Hukuk Fakültesi Dergisi*, 387; Fügen Sargın, *Yabancı Gerçek Kişilerin Türkiye' de Taşınmaz Mal Edinmeleri ve Sınırlı Aynı Haklardan Yararlanmaları* (Yetkin Yayınları 1997).

33 Güven Yazar, *Yabancıların Türkiye' de Taşınmaz Mal Edinmeleri*" (On İki Levha 2018) 92-93.

34 Selim Levi, *Yabancıların Taşınmaz Mal Edinmeleri*, (Legal Yayıncılık, 2006) 131.

35 Sait Kemal Obut, *Türk Hukukunda Yabancı Hakiki ve Hükmi Şahısların Aynı Haklardan İstifadesi* (Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, 1956) 27, 99.

36 Huysal (n 32), 404-405.

under the said Law numbered 1062, it is not possible for Syrians to acquire Turkish citizenship exceptionally through investment by acquiring immovable property in Turkey.

In relation to the third obstacle that Syrians under temporary protection face in obtaining Turkish citizenship through Article 12 (b) of the TCC conditions for Turquoise Card ownership should be taken into account. The Turquoise Card is given to foreigners with the aim of attracting a qualified labor force to Turkey who will contribute to Turkey's economy and employment with their professional experience and level of education. Their spouses and dependent children are also given a document showing that they are relatives of the Turquoise Card holder, replacing the residence permit. However, pursuant to Article 11 of the International Workforce Law<sup>37</sup> it is not possible to issue the Turquoise Card to foreigners under temporary protection status. Therefore, the acquisition of Turkish citizenship through holding a Turquoise Card is not an option for Syrians under temporary protection.<sup>38</sup>

Finally, pursuant to Article 12 subparagraph (c) of the TCC, persons who are deemed necessary to be naturalized by a Presidential decree and persons who are accepted as "migrants" pursuant to subparagraph (d) may also acquire citizenship exceptionally. In practice, it seems possible to naturalize persons under temporary protection within the scope of the infinite discretionary power granted to the administration by Article 12/1(c) of the TCC. On the other hand, since Syrian nationals are not considered "migrants" pursuant to the Settlement Law, it does not seem possible for Syrians under temporary protection to benefit from the said subparagraph to acquire Turkish citizenship.

In the light of the aforementioned information, it can be said that persons under temporary protection status may apply for citizenship under the TCC not through the general way but only through some exceptional ways. However, before concluding this issue, it is necessary to examine the ways of acquiring citizenship through marriage.

### **3. Acquisition of Turkish Citizenship by Persons under Temporary Protection Status through Marriage**

Article 16 of the TCC sets forth the conditions for the acquisition of Turkish citizenship through marriage. According to this Article, foreigners who have been married to a Turkish citizen for at least three years and whose marriage has been ongoing may apply for citizenship provided that they live in a family union, do not engage in activities incompatible with the union of marriage, and do not have any

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37 Official Gazette No. 30007/14.03.2017.

38 Partalcı (n 28) 317; Çelik (n 30) 407.



circumstances that would constitute an obstacle in terms of national security and public order. Hence, Syrians under temporary protection status and who are married to a Turkish citizen may be naturalized if they also meet the said conditions under Article 16 of TCC.<sup>39</sup>

Article 16 of the TCC clearly lists the conditions for applying for citizenship through marriage. On the other hand, Article 10 of the TCC stipulates that “*a foreigner who wishes to acquire Turkish citizenship may acquire Turkish citizenship by the decision of the competent authority if he/she meets the conditions specified in this Law. However, fulfillment of the conditions does not confer an absolute right to acquire Turkish citizenship*”. Indeed, a review of judicial decisions in Turkey in recent years reveals that applications to acquire Turkish citizenship through marriage have been rejected in significant numbers, some of which have been appealed to the higher courts. In one of the decisions of the Council of State<sup>40</sup>, the discretionary power of the administration has been emphasized and it has been stated that “*According to the information and documents to be obtained as a result of the investigation of whether the plaintiff meets the conditions sought in the legislation by the administration, it is undoubted that the request to be naturalized as a Turkish citizen may be rejected by the administration for reasonable and acceptable reasons in accordance with the law, and that the administration may examine and finalize the application based on its discretionary powers by evaluating the information and documents in the file regarding the transactions established concerning naturalization.*” Similarly, in another decision, the Council of State<sup>41</sup> has emphasized that along with the foreign applicant the Turkish spouse may also be evaluated within the scope of the conditions under Article 16 of TCC, especially on the condition of public security. This examination has been considered as within the scope of the discretionary authority of the administration. It has been held in a decision by the Council of State that “*it is a consequence of the sovereignty right of the State in the matter of citizenship that the application conditions stipulated in the legislation that the applicants must meet for the acquisition of Turkish citizenship through marriage should be examined not only in terms of the applicant foreigner but also in a way to cover both spouses.*”. It is also evident that the relationship between the applicant and his/her Turkish spouse as well as their family life are taken into consideration along with the conditions that the applicant needs to fulfill individually himself/herself. For example, in another decision, the Council of State<sup>42</sup> has stated that “*...in this case; although it was reported*

39 Ekşi (n 14) 199; Kaya, Eren Yılmaz (n 21) 64; Aygün, Kaya (n 15) 134; Nurdoğan, Öztürk (n 28) 1171; Özel (n 21) 731; Özkan (n 14) 275; Partalçı (n 28) 319.

40 10<sup>th</sup> Chamber of the Council of State, Case No. 2016/813, Decision No. 2020/4671.

41 District Administrative Court of Ankara 10<sup>th</sup> Administrative Law Chamber, Case no. 2020/1250 Decision no. 2020/1427 Date. 15.09.2020.

42 District Administrative Court of Ankara 10<sup>th</sup> Administrative Law Chamber, Case no. 2020/380 Decision no. 2020/1705 Date. 6.10.2020.

*in the security investigation that the plaintiff's marriage with his spouse was intended to establish a family, from the information and documents attached to the file, some negative findings were seen regarding the life of the plaintiff's spouse and his family before marriage, while it is understood that there are no children born within his marriage. On the other hand, meeting the conditions sought by the legislation does not give an absolute right to the person, and that the discretion of the administration is wide within the scope of the State's sovereignty right in this regard...".*

Pursuant to Article 16 of the TCC, the marriage must be a genuine marriage and couples must live in a family union. In one of its judgments, the Council of State<sup>43</sup> drew attention to some of the elements sought for the condition of living in family unity by stating that "...the parties do not have a common residence, they do not live in family unity, no one in the neighborhood where the plaintiff lives has seen or knows the Turkish citizen spouse, the Turkish citizen spouse works as a watchman and gardener and the owner of the house where the plaintiff lives does not have any knowledge about either the marriage or the plaintiff...". On the other hand, it is also important to explain what "family unity" means in terms of acquiring citizenship in this way. "Family unity" is a broader condition than the condition of actually living together in a household -a condition that used to be sought under the previous Turkish Citizenship Act no. 403<sup>44</sup>. The condition of living in a family unity while encapsulating sharing the same household does not necessarily exclude the instances where the spouses do not live together due to compelling reasons<sup>45</sup>. For example in a previous case subjected to decision by the Council of State<sup>46</sup>, the foreign spouse who was not sharing the same household with Turkish spouse who was at the time in prison was nevertheless granted Turkish citizenship through marriage since the spouses were morally bound to be together as the foreign spouse continued living the same apartment as her Turkish spouse and was supporting the Turkish spouse financially during the time he was in prison.

Death of the Turkish spouse will not constitute an obstacle to fulfill this condition of maintaining family union on the condition that the application to acquire Turkish citizenship was made before the death of the Turkish spouse. Article 16/2 of TCC stipulates that family unity will not be sought in the event of the death of the Turkish citizen spouse if the death occurs *after* the application of the foreigner. It is stated that if the marriage is terminated due to the death of the Turkish citizen spouse, the condition of "unity of marriage" will no longer be sought. This rule is also echoed under Article 25 of the Regulation on the Implementation of the Turkish Citizenship

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43 10<sup>th</sup> Chamber of the Turkish Council of State, Case no. 2012/5540 Decision no. 2015/4312 Dated 10.03.2021.

44 Official Gazette no. 22.02.1964/11638.

45 Güngör (n 25) 139-140.

46 10<sup>th</sup> Chamber of the Turkish Council of State, Case no. 2016/13579 Decision no. 2021/1030 Dated 13.10. 2015

Code<sup>47</sup>, and accordingly it is stated that prior to the date of application for the acquisition of Turkish citizenship through marriage, if the marriage is terminated due to reasons such as death, then the application shall be inadmissible.

It is possible for a person who has a temporary protection status and acquires Turkish citizenship through marriage with a Turkish citizen to maintain his/her Turkish citizenship upon divorce from his/her Turkish spouse. According to Article 12 (e) of the Temporary Protection Regulation, acquisition of Turkish citizenship is one of the individual terminations of this status. In this case, the person becomes a Turkish citizen and the divorce will not result in the loss of his/her acquired citizenship.

In the event that the marriage of the Turkish spouse and the foreigner is null and void, Article 16/3 of TCC states that “*foreigners who acquire Turkish citizenship through marriage shall retain their Turkish citizenship if they are in good faith in the marriage in the event that the marriage is null and void.*” Therefore, the good faith of the Syrian under temporary protection will be important for the acquisition or continuation of citizenship in case the marriage is null and void.

In terms of the citizenship of the children born in a marriage between a Turkish citizen and a person under temporary protection status, Article 7/1 of the TCC shall be taken into account. This Article stipulates that a child born in a marriage to a Turkish citizen mother or father will be a Turkish citizen, regardless of whether they are born in or outside of Turkish territory.

In the light of the explanations above on Article 16 of TCC, it is concluded that it is legally possible for Syrians under temporary protection status to acquire Turkish citizenship through marriage. However, the acceptance of such application for acquiring citizenship will depend on the discretionary power of the administration by passing through various examinations whether the conditions are met in accordance with the relevant legal provision. Where the marriage concluded under Syrian law is considered as manifestly contrary to Turkish public policy which indirectly affects the acquisition of the Turkish citizenship of a Syrian under temporary protection.

#### **4. Acquisition of Turkish Citizenship by Persons under Temporary Protection Status through Adoption**

Pursuant to Article 17 of the TCC, “*A minor adopted by a Turkish citizen may acquire Turkish citizenship as of the date of the decision, provided that he/she does not have a situation that would constitute an obstacle in terms of national security and public order*”.

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47 Official Gazette no. 06.04.2010/27544.

It should be noted that there is no legal obstacle for minors under temporary protection status who are adopted by a Turkish citizen to acquire Turkish citizenship in accordance with Article 17 of the TCC, provided that such an adoption does not constitute an obstacle to national security and public order.<sup>48</sup> An adoptee under temporary protection status may acquire citizenship upon a court decision authorizing the adoption and the decision of the Ministry of Interior Affairs.<sup>49</sup> However, in practice, the General Directorate of Child Services of the Ministry of Family and Social Services is of the opinion that Turkish citizens can only be foster parents for persons under temporary protection status. Article 5 of the Directive on Unaccompanied Minors of the General Directorate of Child Services<sup>50</sup> states that children will benefit from foster family services, considering their views and best interests. Despite this approach in practice, theoretically according to Article 17 of the TCC, to acquire citizenship, the adoption of persons under temporary protection status by Turkish citizens shall be a possible way of acquiring Turkish citizenship<sup>51</sup>.

Finally, it is important to note that Syrian nationals who acquire Turkish citizenship though any of the possible ways described above might later encounter problems with regards to the validity of their marriage if they had concluded multiple marriages under Syrian law which allows for polygamy under certain conditions. In a recent judgment the 2<sup>nd</sup> Chamber of the Turkish Court of Cassation<sup>52</sup> annulled the second marriage of a Syrian national based on the provisions of Turkish Civil Code which stipulates former marriage as an obstacle to conclude a valid marriage. Further, when it is considered that the Republic of Turkey was established as a secular state under the Constitution, polygamy shall be strictly against Turkish public policy. In the said judgment, the Syrian national who had acquired Turkish citizenship had two marriages both of which are valid under Syrian law. Nevertheless, following his acquisition of Turkish citizenship, his second marriage was annulled by the Court of Cassation. It is important to note that in this judgment Çetin Durak, a member of the 2<sup>nd</sup> Civil Chamber of the Court of Cassation, provided a dissenting opinion. Accordingly, in his view the marriages had taken place while both of the spouses were Syrian nationals. Pursuant to Article 13 of the Turkish Private International Law and International Civil Procedure Law, the legal capacity to marry and the conditions thereof shall be governed by the respective national laws of the parties at the time of the marriage, which in this case points out Syrian law that allows for polygamy. Whilst the said decision had significant critical media coverage<sup>53</sup>, until a different

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48 Kaya, Eren Yılmaz (n 21) 64.

49 Özkan (n 14) 276.

50 For the text of the directive, see <https://www.aile.gov.tr/uploads/sgb/uploads/pages/yonergeler/refakatsiz-cocuklar-yonergesi-20-10-2015.pdf>, (Access date: 21.02.2023).

51 Partalçı (n 28) 320.

52 The decision is not yet been publicly available.

53 Examples to such media coverage could be shown as follows: Cumhuriyet Newspaper “Precedent by the Court of Cassation

Court of Cassation decision is made, the practice shall be that the second marriages concluded under Syrian law shall be annulled if one of the spouses acquire Turkish citizenship.

#### IV. Conclusion

This paper examines the conditions under which Syrians under temporary protection status in Turkey may apply for a Turkish citizenship. In examining this issue, the paper initially focuses on the types of international protection statuses under Turkish international protection law namely “refugee”, “conditional refugee” and “subsidiary protection” statuses. Following a brief review of the said statuses, the temporary protection status is explained. In this context, it is concluded that temporary protection is not a type of international protection status but a precautionary protection status subject to domestic law.

Following the examination and characterization of the temporary protection status, the possible ways of acquisition of Turkish citizenship by Syrians under temporary protection status are analyzed. Firstly, the acquisition of Turkish citizenship by birth is described through the rules set forth under TCC and the Turkish Constitution.

For those under temporary protection status, it is stated that there may be some exceptional cases where the principle of place of birth under Article 8 of the TCC may be applied. Following this, ways of acquisition of Turkish citizenship by the decision of the competent authority are evaluated in detail. In this regard, initially, the conditions for general naturalization are taken into consideration. Article 25 of the Temporary Protection Regulation states that the right to stay in Turkey granted to those under temporary protection is not equivalent to a legal residence permit, which constitutes an obstacle in terms of the five-year uninterrupted residence requirement set out in Article 11/1(b) of the TCC for general naturalization. Therefore, it is concluded in this section that Syrians under temporary protection status will not be able to acquire Turkish citizenship through the general naturalization route.

Secondly, within the scope of acquisition of Turkish citizenship by the decision of the competent authority, the conditions for exceptional naturalization under Article 12 of the TCC are examined. Within the scope of this Article, it is concluded that Syrians under temporary protection status who individually fall within the scope of Article 12/1(a) of the TCC may be naturalized as Turkish citizens. In addition, it is also explained in this section that, in practice, it seems possible to naturalize persons

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regarding ‘polygamous’ Syrians who acquired Turkish citizenship” <<https://www.cumhuriyet.com.tr/turkiye/yargitaydan-turk-vatandasligina-gecen-cok-esli-suriyelilere-iliskin-emsal-karar-2023964>> accessed: 13.04.2023; DHA News Agency “Approval from the Court of Cassation to the annulment of the second marriage of a Syrian Turkish citizen” <<https://www.dha.com.tr/gundem/yargitaydan-turk-vatandasi-suriyelinin-ikinci-evliliginin-iptaline-onama-2194251>> accessed: 13.04.2023.

under temporary protection within the scope of the infinite discretionary power granted to the administration by Article 12/1(c) of the TCC. It is also stated under this section that Syrians under temporary protection are not authorized to own real estate in Turkey, cannot be granted a short-term residence permit or that they cannot hold Turquoise Card due to the restrictions stated under relevant laws. Therefore, the acquisition of Turkish citizenship through real estate investments or as a holder of a Turquoise Card are not possible routes for Syrians under temporary protection.

The other provisions examined under the section regarding naturalization by the decision of the competent authority are Article 16 and Article 17 of the TCC. Article 16 of the TCC stipulates the conditions for naturalization through marriage. Syrians under temporary protection can acquire citizenship through a marriage with a Turkish citizen if they meet the conditions set forth under Article 16 of TCC. Article 17 of the TCC regulates naturalization through adoption. Theoretically, there is no obstacle for Syrians under temporary protection status to be naturalized under Article 17 of the TCC. However, in practice, Turkish citizens are only accepted as foster parents for minors under temporary protection status and adoption of Syrian minors is not allowed.

Overall, this paper sets forth possible ways of obtaining Turkish citizenship for those Syrian citizens that are under temporary protection status in Turkey. While certain particularities and restrictions under the relevant law, the discretionary powers of the administrative authorities as well as Turkish public policy concerns may cause obstacles in the acquisition of Turkish citizenship, theoretically there are various possible ways of naturalization for Syrians that are under temporary protection in Turkey.

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