

TESEV BRIEFS

5 Years of the Law on Foreigners and International Protection: Problems of Implementation and Suggest Solutions

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Turkey's Law on Foreigners and International Protection (LFIP) was adopted on 4 April 2013 by the Turkish Grand National Assembly. In the five years that has passed since the coming into force of the LFIP in its entirety, it appears that the LFIP has been made to adapt to the conditions of Turkey, rather than the other way around, due to the sheer unexpected size of the phenomenon of immigration into Turkey, and the challenges encountered in establishing the institutional capacity and the inter-institutional cooperation necessary to deal with the inflows as required by the Law.

This discussion paper will attempt to outline the main reasons and consequences of the way in which the Law was implemented, especially in terms of the less discussed issue of managing regular migration, and propose certain concrete steps that can be taken to overcome challenges, which can be summarized under the one suggestion of the correct implementation of the LFIP. This can only be possible, however, through 1) amendments to the Regulation Implementing the Law on Foreigners and International Protection (RILFIP), 2) re-establishment of the Migration Advisory Board with clear standard operating procedures outlining cooperation with other functioning inter-institutional consultative bodies, and 3) deeper and closer cooperation among the relevant Directorate Generals of the Ministry of Interior, Ministry of Foreign Affairs and the Ministry of Family, Labour and Social Services, especially as regards the receipt of residence permit applications from abroad, data integration, analysis and policy development.

Causes for problems in implementation

Inadequate staffing of the Directorate General of Migration Management (DGMM) in relation to the workload

The latest stage of the establishment of the DGMM was completed on 18 May 2015 with the setting up of its provincial directorates and the transfer of operations and data from the Turkish National Police, which previously held the mandate of the DGMM. As for staffing the DGMM, a total of 365 expert/deputy expert positions were allocated for the Directorate General, 2540 for the provincial administration in 81 cities, along with 100 positions in foreign missions, making the total workforce of the DGMM 3005. Of the 3005 slots available, only 1650 have been filled with experts/deputy experts, with small increases over the three years. A greater reliance can be seen on “Temporary Personnel” (i.e. from other institutions, especially TNP) and personnel related to ad hoc service provision, which amounted to 945 and 296 in 2018 respectively.¹

Bearing these figures in mind, it is worth noting the increase in the inflow of migrants and refugees in Turkey over the same years. The number of Syrians under temporary protection has increased from 2,834,441 in 2016 to 3, 623,192 in 2018, while residence permit applications increased from 461,217 in 2016 to 856,470 in 2018. We also see a sharp rise in international protection applications, from 66,167 in 2016 to 114,537 in 2018. It is therefore clear that a smaller number of DGMM staff have found themselves in a position of having to cope with a much larger workload. Furthermore, no personnel have been assigned to foreign missions, as the LFIP stipulates.

Ineffective use of inter-institutional cooperation mechanisms in the LFIP

A very significant novelty for migration management in Turkey introduced by the LFIP were the various inter-institutional and consultative Boards, including the Migration Advisory Board

(Article 114) composed of representatives of public institutions, heads of department at the DGMM, the heads of UNHCR and IOM Turkey offices, along with 5 academics working on migration and the representatives of five NGOs operating in the field of migration. The mandate of the Board was, among others, to monitor migration practices and make recommendations, which had to be placed under consideration by public institutions and the DGMM. Other Boards included the Coordination Board on Combating Irregular Migration (Article 116), and the Commission to Combat Human Trafficking and Protect Victims established in 2016 under Article 117 of the LFIP, which regulated the establishment of “Temporary commissions”.²

With the inauguration of the Presidential system, Article 71 of the Statutory Decree numbered 703 dated 9 July 2018 annulled articles in the LFIP pertaining to the establishment of the Directorate General of Migration Management and its cadres, along with all of the Boards listed above. While the Fourth Presidential Decree reinstated the DGMM with its former Departments as an institution under the Ministry of Interior, the Migration Advisory Board was not reinstated, and can therefore be said to have been terminated. Although the Combating Irregular Migration Board and the Commission to Combat Human Trafficking and Protect Victims still convene, they remain on weak legal footing.

The Migration Board, therefore, established by the LFIP as a high level inter-ministerial policy and decision making body chaired by the Minister of Interior, and convening eight times since 2017, simply does not have the necessary back-up it needs in terms of being presented with evidence-based policy alternatives to take well-informed decisions. Despite this, preparation of the National Migration Strategy is ongoing and is due on December 2019.³

Existing risks for migration management in Turkey

The catch-all tourism residence permit

The Regulation on the Implementation of the LFIP (RILFIP), drafted by the Ministry of Interior and published in the Official Gazette numbered

29656 on 17.03.2016, has attempted to alleviate the burden caused by the piling up of residence permits within the country. This was due, first and foremost, to the inability to assign DGMM experts to Turkey's foreign missions, an issue that appears not to have been resolved through the Migration Board meetings. The Regulation tried to provide a solution by changing one of the 14 types of short-term residence permits one can obtain⁴, namely the "tourism residence" permit, into a "catch-all" permit via Article 28(10), which states:

"Requests for residence permits outside of the applications for short term residence permits listed above shall be treated as requests for a residence permit for the purpose of tourism".

The hope here was to cover reasons of short term residence permits not mentioned in the LFIP, but the Article has been widely used as an alternative to deporting large numbers of foreigners while at the same time ensuring that they are registered in the system.

This practice is in direct violation of the LFIP, as each type of residence permit is accorded specific conditions for issuance, refusal, non-renewal or cancellation. Article 32(1)/a of the LFIP enables the individual to apply by claiming one or more of the 14 reasons stipulated in the Law, providing that he/she submits supporting information and documents regarding the application. Which documents need to be submitted to a catch-all permit, however, remains uncertain. In addition, a significant condition for refusing, not renewing or cancelling a short-term residence permit is its use outside the purposes for which it has been issued. Since a catch-all residence permit is not based on a purpose codified in law, there are no grounds for cancellation or non-renewal either, making the renewal of the permit an automatic exercise. Taken into consideration together with Article 22(6) of the RILFIP, which states that the declaration of sufficient and regular income shall be made orally without need of documentation for all residence permits aside from family and long term residence permits, it is possible to see how the catch-all permit can be

exploited, and used as an easier to option compared to a work permit to not only live but also work in Turkey, contributing to the systemic problem of illegal employment in Turkey. In fact, the DGMM states that for the year 2018, 563,093 foreigners were residing in Turkey with short-term residence permits, and only 85,840 with work permits (work permits substitute for residence permit according to Article 27 of the LFIP). The very large discrepancy between the numbers of those staying with short-term residence permits and those staying with work permits is indicative of the difference in the difficulty of obtaining one permit as opposed to the other, and the possibility that foreigners holding short-term residence permits are currently working irregularly.

The effect of the informal economy on migrants and integration efforts

The consequences of illicit work have been well recorded. The UN OHCHR and the Global Migration Group stated in a joint statement in 2010 that "migrants in an irregular situation were more likely to face discrimination, exclusion, exploitation and abuse at all stages of the migration process."⁵ Consideration should also be given to the additional disadvantages faced by women migrants. Studies have shown that women face greater difficulties in reaching information on migration procedures, are more overqualified for the work they do and more concentrated in certain occupations compared to men, while having more limited opportunities to build support networks and access social support, and while facing greater problems in return and reintegration processes as a result of the specific sociological and psychological effects they experience.⁶

The next serious consequence of informal employment would necessarily be trouble integrating into the host society. Integration events, state services and/or courses generally involve registering one's name into state archives, and irregular migrants may show reluctance to engage in such activities. Irregular migrants may also be reluctant to send their children to schools for fear of detection. This lurks as a serious problem

in Turkey today as “lost generations” of children growing up without having sufficiently integrated into the host community can be expected to face major disadvantages in overcoming poverty in the future, thus compounding vulnerabilities for generations to come.

Effects of the contamination of data on migration management

Finally, while the data of Syrians under temporary protection has been placed under review and updated with great effort by the DGMM, the data regarding residence permits holders remains problematic. It is easy to see how oral declarations of income, along with catch-all residence permits, can lead to a contamination of the data, especially through the use of residence permits for irregular work. The workload in front of the experts and their constantly increasing quotas for daily residence permit applications reviewed, however, makes double checking every application in the required detail nearly impossible.

Such contamination of data makes data analysis of residence permits difficult, resulting in an inability to provide targeted services, be it health, education, social, economic and labour integration, to serve the different needs of different groups of migrants. Such a lack of quality data would also inhibit future options for regular migration management, including exploring the possibility of applying a points based system for labour migration, and ensuring that migrants are placed in jobs that are in line with their skills and certifications.

Concrete suggestions for solutions

The common feature of all of the issues listed above is the wrongful application of the provisions of the LFIP. The following is a list of the concrete steps that need to be taken in order to correct some of these practices:

1. Ensuring that first time residence permit applications are made to Turkish missions abroad according to Article 21(1) of the LFIP.
2. Annuling Article 28(10) of the Regulation on the Implementation of the Law on Foreigners and International Protection, thereby stopping the use of the short-term residence permit for tourism as a catch-all residence permit and being a pull factor for irregular migration.
3. Amending Article 22(6) of the RFLFIP by making the conditions of proof of regular and sufficient income more stringent.
4. In cooperation with the Turkish National Police and the Gendarmerie, reviewing whether foreigners who have been residing with tourism residence permits for over a year in Turkey are doing so for the purpose of tourism (i.e. retirees or lifestyle migrants), transferring those who hold tourism residence permits but who are working in Turkey to work permits in cooperation with the Directorate General for International Labour Force of the Ministry of Family, Labour and Social Services (MFLSS), or to other appropriate residence permits. Initiating the removal procedures to return foreigners who cannot be issued work permits or residence permits. Transferring foreigners who cannot be returned to their country for reasons stipulated in the LFIP to humanitarian residence permits, as regulated under Article 46 of the LFIP.
5. Piloting of an integrated database for regular migrants with data from the DGMM, law enforcement agencies, the Ministry of Foreign Affairs, the Ministry of Family , Labour and Social Services, the Ministry of National Education and the Ministry of Health.
6. Reinstatement of the Migration Advisory Board and drawing up of a standard operating procedure for cooperation between all functioning inter-institutional Boards (i.e. Combating Irregular Migration and Human Trafficking Boards) in order to present joint reports to the Migration Board.

1 The data for 2018 is presented differently than the two previous years. Here alongside “service provision” there are 289 “personnel on temporary contracts” which denotes civil servants who have been hired with renewed contracts rather than fixed term contracts, and who are not already a personnel of another institution, as is the case with “temporary personnel”. Another additional category in the 2018 Activity Report is that of “permanent workers”. The 7616 workers reported in this category are not civil servants, and are mostly employed in camps taken over from AFAD.

2 Article 117 of the LFIP granted authority to the Directorate General, with the approval of the Minister of Interior, to establish temporary commissions in relation to issues that fell under its mandate composed of public institutions, civil society organizations, international organizations and issue experts.

3 Annual Programme of the Presidency of Turkey, 2019, available from: https://www.sbb.gov.tr/wp-content/uploads/2018/11/2019_Yili_Cumhurbaşkanligi_Yillik_Programi.pdf

4 These are elucidated under Article 31 of the LFIP and include stays for scientific research, on account of owning immovable property, establishing business or commercial connections, on the job training programs, student exchange programs, tourism, medical treatment, due to decision of judicial or administrative authority, transfer from a family residence permit, attendance in a Turkish language course, education or research program via a public agency, post graduation from a higher education program, investment to Turkey, and being a citizen of the Turkish Republic of Northern Cyprus.

5 UN OHCHR, (2014) The Economic, Social and Cultural Rights of Migrants in an Irregular Situation, p. 1

6 Kawar, M. (2014). “Gender And Migration: Why Are Women More Vulnerable?”, in Reysoo,

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