

TEMPORARY PROTECTION REGIMES IN TÜRKİYE AND GERMANY: COMPARING BOSNIAN SYRIAN AND UKRAINIAN REFUGEE PROTECTION REGIMES

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ABSTRACT

1951 Geneva Convention Relating to the Status of Refugees provides protection and rights for those who are recognized as refugees under its definition. Alternative forms like temporary protection have emerged, as a short-term strategy to secure the urgent needs of refugees in the event of a mass influx. It reveals how states pragmatically ignore the protection regime of the convention. Germany, hosting Europe's largest refugee population inside the European Union (EU) and Türkiye, hosting world's largest refugee population beyond the EU has implemented temporary protection status as a keystone asylum policy. In this context, the study brings together the literature on externalization of the EU asylum policy and integration by comparing the evolution of the temporary protection regimes in Germany and Türkiye. To do this, the policy responses of Turkish and German governments to the refugee "crisis" in Bosnia, Syria and Ukraine are analysed. The research eventually provides an analytical framework to aid policy makers in adapting an accurate asylum policy in both countries as well as in the EU. Consequently, the notion of equal solidarity and human-centric approach should be rethought, when designing asylum policy in both countries as well as in the EU.

Keywords: International Migration, Temporary Protection Status, Türkiye, Germany, The European Union.

TÜRKİYE VE ALMANYA'DAKİ GEÇİCİ KORUMA REJİMLERİ: BOSNALI, SURİYELİ VE UKRAYNALI MÜLTECİLERİ KORUMA REJİMLERİNİN KARŞILAŞTIRILMASI

ÖZ

1951 Mültecilerin Statüsüne İlişkin Cenevre Sözleşmesi'nin mülteci tanımı, bu statüyü alan kişilere koruma ve haklar sağlamaktadır. Öte yandan, kitlesel bir akın durumunda mültecilerin acil ihtiyaçlarını güvence altına almak için kısa vadeli bir strateji olarak, ortaya geçici koruma gibi alternatif biçimler de çıkmıştır. Aslında bu durum devletlerin sözleşmenin koruma rejimini pragmatik olarak nasıl göz ardı ettiğini ortaya koymaktadır. Avrupa Birliği (AB) içinde Avrupa'nın en büyük mülteci nüfusuna ev sahipliği yapan Almanya, dışında ise dünyanın en büyük mülteci nüfusuna ev sahipliği yapan Türkiye, sığınma politikalarının temel taşı olarak geçici koruma statüsünü uygulamaya koymuştur. Bu bağlamda çalışma, Almanya ve Türkiye'deki geçici koruma rejimlerinin gelişimini karşılaştırarak, AB sığınma politikasının dışsallaştırılması ile entegrasyona dair literatürü bir araya getirmektedir. Söz konusu çalışma Türk ve Alman hükümetlerinin Bosna, Suriye ve Ukrayna'daki mülteci "krizlerine" yönelik politika tepkilerini analiz etmektedir. Araştırma politika yapımcılara her iki ülkede ve de AB'de etkin sığınma politikası benimsenmesine yardımcı olacak analitik bir çerçeve sağlayacaktır. Sonuç olarak, hem AB'de hem de her iki ülkede sığınma politikası tasarlanırken eşit dayanışma kavramının ve insan odaklı yaklaşımın yeniden düşünülmesi gerekmektedir.

Anahtar Kelimeler: Uluslararası Göç, Geçici Koruma Statüsü, Türkiye, Almanya, Avrupa Birliği.

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INTRODUCTION

The temporary protection status (TPS) has been a constant theme of discussions regarding the international protection of refugee¹. The 1951 Geneva Convention Relating to the Status of Refugees (Refugee Convention) provides protections and rights for those who are recognized as refugees under its definition.² Beside the internationally recognized definition of a refugee and the legal protection and rights a refugee is entitled to receive defined in the Refugee Convention, the TPS serves as an alternative “short-term strategy to secure the immediate physical safety of refugees” in the event of a mass influx.

One of the most striking features of the international refugee regime over the last twenty-five years is the development of such alternative forms of protection to the Refugee Convention. Hence, it shows how states pragmatically refrain from applying the protection regime provided by the convention. Historically, Germany and Türkiye have implemented the TPS as a keystone asylum policy. The temporary protection regime in the EU (Germany) and beyond the EU (Türkiye) clearly displays the dual system emerged by the EU’s *externalized asylum policies*. Indeed, these emerging policies and practices uncovered the *unequal and selective solidarity/protection* regarding the EU asylum policies.

On a theoretical level, this study aims to understand the TPS granted to large influxes of refugees in Germany and Türkiye by using two theoretical debates on externalization and integration. To do this, the research investigates these states’ responses to three rising refugee flows after the war in Yugoslavia, Syria and Ukraine. By doing so, it examines the temporary protection regimes in Germany and Türkiye and determines state policy towards refugees in order to explain the policy convergence and divergence in both countries along with the EU externalized asylum policies. In addition to the document analysis of laws, for this research, government publications and press statements, secondary literature analysis was conducted. It also draws on our various research reports and statistics, which utilised administrative data to provide additional insights on various aspects of migration.

¹ In this document, the term “refugee” does not point to formal status but is used in a wider sense to cover all persons whose conditions would substantively qualify them for refugee status or another type of international protection in Europe.

² The Convention defines a refugee as: “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”. For more info, see <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>.

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Bosnian Refugees and Temporary Protection Status in German and Turkish Refugee Policies

As a series of ethnic conflict, Yugoslav Wars in between 1991-2002 resulted in the collapse of the Yugoslav Federation. An estimated 650,000 refugees from Bosnia and Kosovo reached European countries and became the first group to acquire “temporary protection” in Europe (Valenta & Ramen 2011). The temporary protection directive (TPD) that was adopted following conflicts in the former Yugoslavia limited the scope of the Refugee Convention and minimized the responsibility of the EU states towards Bosnian and Kosovan refugees (Hageboutros 2016). Even though it was initiated as a Union-wide applicable legal mechanism, European states like Germany presented different schemes to admit displaced people temporarily.

As Joanne Thornborn (1995) notes, the development of temporary protection and burden sharing mechanisms formulated to manage the crisis in former Yugoslavia generally display the flaws of focusing on return as the only goal and seeing the ‘temporary’ as applicable to the duration of stay. Following the first granting of temporary asylum to persons fleeing the unsuccessful October uprisings in Hungary (1956) and Soviet invasion from Czechoslovakia (1968) in Europe, the conflicts of post- colonial and Cold War period led to localized regional protection offered to the large numbers of people displaced in Asia and Africa (Thornborn 1995). All in all, alternative protection mechanisms were developed as forms of protection that fall outside of the provision of a permanent refugee status, ongoing assistance (shelter or encampment), or the durable solutions recognised by the United Nations High Commissioner for Refugees (UNHRC) including voluntary repatriation, local integration, and resettlement (Akram & Syring 2014; Belliveau & Ferguson 2023).

Following the collapse of the Soviet Union in the 1990s, the EU took steps to initiate a common system for managing asylum claims. While common policies have been forged relating to the movement of persons within the EU, asylum policies have tended to be developed at a national and sometimes bi-lateral level, and state responses have generally combined efforts to restrict the entry of asylum-seekers and to set tight limits on recognition rates (Joly et al. 1992; Koser & Black 1999). That is to say, temporary protection of refugees gained surprising prominence during the 1990s as a response to forced migration, while steps were taken to generate a common asylum management system (the Common European Asylum System,

CEAS)³.

When the crisis in the former Yugoslavia began, some countries adopted special measures to allow the admission of these refugees. Hungary, Austria and Italy came as the first countries that accepted several thousands of refugees, and were followed by Sweden, Switzerland, and Germany which admitted tens of thousands of people fleeing the war zone (Barutciski 1994). These countries either dropped the visa requirements for ex-Yugoslav nationals or provided a form of provisional admission (Barutciski 1994).

With the intensification of the war, in early 1992, many countries such as Germany tried to limit the growing numbers of arrivals on their territory by strengthening their entry policies. The restrictive measures were adopted not only by countries that were geographically closer to the war zone such as Austria and Hungary, but also by the former Yugoslav republics of Slovenia and Croatia (Barutciski 1994). To sum up, since the second half of the 1990s, the asylum issue ceased being a topic of major public debates in Germany, and quite a consensus for restrictive policies dominated the political discourse (Borkert & Bosswick 2007).

Bosnian Refugees in Germany

Throughout its history Germany has been an immigration country, recruiting foreign nationals for labour purposes. These migrants integrated themselves successfully into German economy and political system. As they had the right to acquire full citizenship, they were able to articulate and safeguard their interests in the given economic-political structure of West Germany (Borkert & Bosswick 2007). The subjective right to asylum stipulated in the old Article 16 (2) 2 Basic Law was understood by the founders of the Federal Republic as a “continuous humanitarian” duty of Germany towards persecuted people regardless of short-sighted political considerations (Post & Nieman 2007). It was a reaction by the political elite to the experience of National Socialism and the Holocaust (Post & Nieman 2007). The notion of asylum was attached to the broader ideational context of the “new” German State based on a humanitarian orientation and the notion of the rule of law (Post & Nieman 2007).

However, massive refugee movements after the fall of the Iron Curtain, German reunification and the wars in Yugoslavia in the 1990s resulted in sharply rising application figures, growing social unrest, and the escalation of violence. In sum, Germany’s welcome of

³ The CEAS aimed to ensure that the asylum application of any individual in any of the EU Member States will always receive the same result.

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Bosnian refugees ended up with the exclusionary politics of asylum. The restrictive measures to Germany's liberal and open asylum system of the post-War found its expression in the institutionalisation of the *safe third country rule* (Borkert & Bosswick 2007; Post & Nieman 2007). Accordingly, Member States may send applicants to safe third countries with which the applicant has connection and where the applicant has the possibility to seek recognition as a refugee (AIDA, 2023b). Because of these restricted policies of asylum, most of the new Bosnians in the country would not be accepted as legal refugees. Instead, they would be offered TPS (Bosswick 2000; Borkert & Bosswick, 2007). Furthermore, as an important actor on the policy formulation at the EU level, Germany also fostered the accomplishment of the 1990 Dublin Regulation, as a system of *burden sharing* at the EU level (Bosswick 2000).

The central principle of the Dublin regime is that only one Member States is responsible for the examination of an asylum seeker's application, usually the country of first entry. The resolution adopted by the Council of the European Union as early as September 1995 presented burden sharing with regard to the admission and residence of displaced persons on a 'temporary basis,' while the Decision adopted in March 1996 stated an 'alert and emergency procedure' for burden-sharing. The policy of burden sharing paved the way for the initiation of 'The Common European Asylum System' (CEAS). It set up rules on determining the Member State responsible for the examination of an asylum application, standards for fair and efficient asylum procedures, minimum conditions of reception for asylum seekers, and the approximation of rules on the recognition of refugees. In parallel to the first steps to create the CEAS, the TPD was adopted in 2001 in response to the displacement caused by the conflicts in the former Yugoslavia in the late 1990s.

All in all, the TPS emerged as the core alternative for the EU to manage the Bosnian refugee flow. As Barbara Franz claims, TPS "resulted directly from attempts to limit the scope and accessibility of the 1951 Convention for Bosnian refugees," in order to minimize the responsibility states had towards refugees (Franz 2010; Hageboutros 2016). The temporary protection regime reduced the financial burden on the state by denying asylum-seekers entitlement to certain financial and social services that would otherwise have been accorded to them as refugees under the Refugee Convention definition (Franz 2005; Hageboutros 2016). At the same time this new status satisfied public opinion and international criticism concerned

about human rights, by offering refugees basic protection and residence rights, albeit on a temporary basis (Hageboutros 2016).

After signing a readmission agreement with Bosnia in November 1996, an intensive repatriation program was launched in 1997. The program resulted in the repatriation of approximately 250,000 refugees to Bosnia-Herzegovina until autumn 1998 (Schlee 1998). Over 92 per cent of the Bosnians who returned between 1997 and 1999 were from Germany. Germany's extensive repatriation policy created minority enclaves in Bosnia and Herzegovina and increased the internally displaced population, which did not help to rebuild and stabilize the war-torn country (Valenta & Ramen 2011).

Bosnian Refugees in Türkiye

Türkiye is one of the few countries that maintain a 'geographical limitation' to the Refugee Convention. According to this limitation clause, Türkiye is only bound to accept people as refugees if they come from European countries⁴. This distinction between European and non-European refugees, (Abdelaaty 2021), in turn created a dual structure in the Turkish asylum system. Responding to foreign-policy considerations as well as domestic identity politics, Turkish officials have used the guesthood tradition (not legally defined) to favour some refugee groups (non-Kurdish Syrians, Iraqi Turkmen, Bosnians and Kosovars), while singling out others (Syrian Kurds, Iraqi Kurds and Chechens), (Abdelaaty 2021). By placing them outside the law, the guest label gave Türkiye the flexibility to vary its treatment of refugee groups who would otherwise belong to the same legal status (Abdelaaty 2021).

Essentially, the Law on Settlement of 1934 has permitted only persons of 'Turkish descent and culture' the right to immigrate, settle, and acquire citizenship in Türkiye. Without determining any criteria on Turkish ethnicity and culture, the Law assigns governments to decide on which category the groups belong. Although it was replaced with an amended version in 2006, it continued to maintain 'Turkishness' for admission and settlement of refugees. Thus, exclusive priority was given to encouraging and accepting immigrants who were either Muslim Turkish speakers, or who were officially considered to belong to ethnic groups that would easily melt into a Turkish identity such as Bosnians, Circassians, and Tatars from the Balkans (Kirişçi 2003). Consequently, Türkiye's asylum policy is based on the

⁴ For the purpose of "geographical limitation" with regards to the interpretation of the 1951 Convention, Government of Türkiye considers Council of Europe Member States as 'European countries of origin'.

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guesthood tradition, persistent temporariness and the preference for resettlement and repatriation, accompanied by Türkiye's (de)-Europeanization efforts (Kirişçi & Yıldız 2023; Kaya 2021).

Starting in March and April 1992, over 20,000 Bosnian Muslims fled to Turkey. They were designated as guests and granted (de-facto) temporary asylum in Turkey during hostilities in the former Yugoslavia. Some of the refugees were housed in a refugee camp near the Bulgarian border, while many went on to stay with relatives in large cities such as Istanbul and Bursa (Kirişçi 2003; 2012). Bosnians were able to take advantage of visa-free entry, reside in urban areas and access public services. Despite pressure from Bosnian immigrant associations, the government considered them 'guests' and gave them only informal (de-facto) temporary protection (Abdelaaty 2021; Kirişçi 1996; Frantz 2003). Whereas refugee status would have permitted them to work, they could not obtain work permits as guests (Abdelaaty 2021). Since the signing of the Dayton Peace Plan in 1995, many of these refugees have been steadily returning to Bosnia (Kirişçi 1996). In consequence, Bosnian refugees were permitted to enter Turkey, to reside where they wished and to access public schools and hospitals (Abdelaaty 2021). However, they were not granted refugee status. Ultimately, the majority repatriated or were resettled. The practice of temporariness in the asylum policies of Turkey continued into the 2000s as the number of asylum seekers arriving to Turkey from the Middle East and North Africa increased (Kirişçi & Yıldız 2023). In consistency with her prevailing approach on asylum, Turkey's responses and reactions to the mass inflow of refugees from Syria maintained Turkey's persistency on the 'guesthood' tradition and 'temporariness'.

Syrian Refugees and Temporary Protection Status in Turkish and German Refugee Policies

The peaceful uprising against the president of Syria in 2011 turned into a full-scale civil war, resulting in the largest refugee and displacement crisis. Over 12 million Syrians remained forcibly displaced in the region, including almost 6.8 million within the Syria and 5.4 million living as refugees in neighbouring countries (UNHCR 2023b). The first group of Syrian nationals found refuge in Türkiye by crossing into the province of Hatay in April 2011. Initially, the AKP government expected that the Assad regime would soon collapse, and it estimated that around 100,000 Syrians at most would stay in Turkey for two or three weeks (Erdoğan 2014; Kaya 2021).

Syrian Refugees in Türkiye

Following the escalation of the domestic conflicts in Syria, the AKP government declared an open-door policy toward the Syrian refugees in October 2011. In line with the “geographical limitation” Syrians who have fled to Turkey are recognized as “guests” not “refugees” or “asylum seekers”. As more refugees arrived in Türkiye, the legal response of the Turkish government came as to formally define temporary protection regime by adopting comprehensive laws and regulations, which in fact was in the making process, in line with the alignment of migration and asylum laws and regulations with the EU.

Firstly, *the Law on Foreigners and International Protection (LFIP)* of 2013 affirms Türkiye’s obligations towards all persons in need of international protection, regardless of country of origin⁵. Secondly, the *Temporary Protection Regulation* of 2014 set up rights and rules on registration and documentation procedures to be followed by temporarily protected persons⁶. It also defines basic socio-economic rights of to those under temporary protection status. Thirdly, the *Regulation on Work Permits of Foreigners under Temporary Protection* of 2016 states that employers are required to apply for temporary protection holders’ work permits. When Syrian refugees received a work permit, they were allowed to work only in the province where they are registered and only for the company where they received it. In other words, each time they changed an employer, they had to apply for a new work permit (Badalič 2023).

Anecdotal evidence suggests that in Turkey about 95 percent of working-age adult Syrian males have entered the labour market through informal jobs (Tumen 2023). For the Turkish government, the informal economy generated some room to implement a wait-and-see policy before taking any serious action regarding refugee integration (Tumen 2023). Entrepreneurship, skill acquisition, craftsmanship, and other training programs have already

⁵ The LFIP maintains three types of international protection status in compliance with Türkiye’s “geographical limitation”. (a) Persons who fall within the refugee definition of the 1951 Convention and come from a “European country of origin” is eligible for **refugee status** under LFIP (Article 61), in full acknowledgment of Türkiye’s obligations under the 1951 Convention. (b) Persons who fall within the refugee definition of the 1951 Convention but come from a so-called ‘non-European country of origin’ are instead offered **conditional refugee status** under LFIP (Article 62). (c) Persons who do not fulfil the eligibility criteria for either refugee status or conditional refugee status but would however be subjected to death penalty or torture in country of origin if returned or would be at “individualised risk of indiscriminate violence” due to situations or war or internal armed conflict, qualify for **subsidiary protection** status under LFIP (Article 63). Outside the scope of these statuses is temporary protection, outlined in Article 91 of the LFIP, (AİDA 2023).

⁶ In October 2014 the Turkish Council of Ministers adopted Regulation No. 29153 on temporary protection. It introduces a clear right to stay in Turkey until the temporary protection regime is over and clarifies the set of rights and entitlements for the temporary protection beneficiaries.

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implemented in Turkey (Tumen 2023). But most of those efforts have remained small and local, and coordination with the central government has not been particularly strong (Tumen 2023). In general, the legal framework sustained the right to obtain an identity document, access to health services, education and, albeit limited, the right to work. Even though the TPS allows Syrians access to some rights, it does not provide long-term stability (Baban et al. 2017).

The aftermath of the Arab Spring revolutions in the Middle East and North Africa, and the ongoing instability in the southern Mediterranean region, have caused an unprecedented wave of irregular migration towards southern EU borders (Baker 2016). Notably in 2015, more than 850,000 refugees and migrants reached Greek islands (UNHCR 2017). Thus, the Aegean Sea turned into a corridor rather than a route for an ever-increasing number of migrants and refugees arriving to Greek islands from the nearby Turkish coasts. The exponential increase of irregular migration, especially by smuggling boats, through the Mediterranean Sea, has led to growing numbers of deaths and human rights violations of migrants (Baker 2016). The EU's current migration and mobility policy towards the southern Mediterranean region is widely focused on the paradigm of securitising border control, and the externalisation of its management to the EU's periphery Member States, and to third countries (Baker 2016).

All in all, several agreements concluded by the EU with neighbouring countries like Libya, Morocco, or Türkiye clearly shifted the burden on peripheral states. The externalization process has already strengthened Türkiye's role as gatekeeper of Europe (Benvenuti 2017). The EU and Türkiye agreed on the EU-Turkey Joint Action Plan, which was followed by the EU-Turkey Statement (also known as the EU-Turkey Deal) on 8 March 2016. The EU-Turkey Deal stipulated that all new irregular migrants crossing from Türkiye to the Greek islands as of 20 March 2016 would be returned to Türkiye, and the EU would give Türkiye €3 billion to support Syrians in Türkiye, as well as give them legal pathways to seek asylum in Europe.

As opposed to other EU neighbouring countries, Türkiye's position as a potential EU candidate has significantly shaped its migration policies (Fine 2018; İşleyen 2018; İçduygu & Üstübcü, 2011). As a quasi-European state able to negotiate its own role and mediate between the West and the non-West, Türkiye enhanced her bargaining power and capability of political maneuvering, during the negotiations with the EU (Casaglia & Pacciardi, 2022; Özçürümez & Şenses 2011). Indeed, both the 2015 EU–Turkey Joint Action Plan and the 2016 EU–Turkey Statement refer to Türkiye as a *negotiating candidate*, while Reports on the implementation of

the agreement consider Türkiye as *both a candidate and a strategic partner* (Casaglia & Pacciardi 2022). This special status resulted in a complex relationship of interdependence between the EU and Türkiye. Ankara has partly adapted its migration policies to European preferences but has also reclaimed agency by exploiting Europeans' xenophobic fears to gain unique advantages in bargaining with the EU, (Casaglia & Pacciardi 2022; Dempsey & McDowell, 2019).

Seven years since the EU-Turkey Deal was implemented, no mass returns have been made from Greece to Türkiye (Rescueorg 2022). According to the updated report of the Rescue, as of March 2023, approximately, 32,472 Syrian refugees have been resettled from Türkiye to EU Member States under the agreement and only 2,140 people have been returned from Greece to Türkiye under the EU-Turkey Deal, as in many cases, the Greek courts admitted that Türkiye is not a safe third country. (Rescueorg 2022). With the COVID-19 pandemic, push-backs and Turkey's refusal of receiving refugees from Greece since March 2020, the deal turned into a silence. Following unprecedented arrival of refugees and irregular migrants in the EU, which peaked in 2015, the New Pact on Migration and Asylum (2020) is designed to manage and normalise migration for the long term. It addresses some of the inadequacies of the current arrangements also seeks to establish a common approach to migration and asylum that is based on solidarity, and responsibility. But the mechanism of solidarity presents both mandatory but also flexible characteristics (Brycker 2022; Brunetta 2022). As a matter of fact, Member States can choose either to relocate asylum seekers, either to sponsor return or to provide other types of help or funding and even external cooperation for migration management in countries of origin or of transit of migrants (Brycker 2022; Brunetta 2022).

Consequently, in the last decade, securitised and externalised migration controls, management, and temporary protection mechanisms have increasingly been used to curb migration towards Europe (Belliveau & Ferguson 2023; Frelick, Kysel, & Podkul 2016; Missbach & Phillips 2020; Üstübcü & İçduygu 2018). So-called transit countries such as Turkey have limited capacity and political will to offer permanent solutions for millions of displaced people (Belliveau & Ferguson 2023). They function as gatekeepers to apprehend, deport, or provide alternative protection, including temporary permissions to reside, for persons arriving from Syria (Belliveau & Ferguson 2023).

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Syrian Refugees in Germany

Germany takes a leading role in shaping EU policies and advocates that the migration crisis needs to be solved within EU politics (Akin 2017). Following the so-called refugee crisis in 2015, Germany implemented various policies to ‘manage’ the over one million asylum seeker applications and to integrate subsequently recognized refugees and subsidiary protected individuals. The government enforced mandated integration courses and streamlined an asylum process based on country of origin. These responses and reactions were accompanied by shifting public opinion, and intensified restrictions on free movement in line with externalization and militarization of EU borders.

The German ‘exception’ in Europe can be attributed to the leadership of the German chancellor Angela Merkel in opening the doors to refugees and the *welcome culture* (Willkommenskultur) of the German population, which strongly believes in the obligation to support refugees (Hannafi & Marouani 2023). However, as Helbling et al. (2017) highlights, while the attitude of the German population is attributable to humanitarian and cosmopolitan behaviour, it also reflects economic pragmatism given Germany’s aging society and its urgent need for skilled workers (Hannafi & Marouani 2023).

German immigration law required all refugees receiving social welfare benefits to undergo language and civic knowledge tests as a pathway to the labour markets, since 2015. In other words, integration policy constructed a framework of *conditional inclusion* that rewarded participation in language learning and markets (Etzel 2021). To politicians, integration was something that became reified through policy as something that *good foreigners* could *achieve* by fulfilling criteria: by proving one’s worthiness through efforts in language learning, cultural integration and economic contribution (Etzel 2021). Instead of the complete rejection of permanent immigration that was a characteristic of German immigration policies in the 1980s and the 1990s, today migrant groups with specific qualifications are encouraged to come to Germany. Refugees from Syria who are assumed to have a good education and qualification level are welcome to Germany, while others are effectively defined as unwanted from the beginning through the introduction of the concept of safe states. Overall, twelve years after the first uprisings in Syria, the European system still struggles to accommodate and protect Syrians who cannot return to their homeland via rewarding *good foreigners* inside Europe, via shifting the burden to third countries outside Europe.

Ukrainian Refugees and Temporary Protection Status in Turkish and German Refugee Policies

In February 2022, Russia's special military operation against Ukraine generated another mass influx of approximately 7.5 million Ukrainian refugees. The EU is consistently called for cooperation to receive and protect refugees from the armed conflict in Ukraine in terms of solidarity. The decision to invoke the TPD is historical and yet disappointing in that it still applies a double standard and unequal solidarity which prevents non-Ukrainians from having the same legal protection.

Ukrainian Refugees in Germany

Since the Russian invasion of Ukraine on 24 February 2022, nearly one-third of Ukraine's population has been forcibly displaced from their homes⁷. Most refugees are now in wealthier EU countries, but also in Russia and Türkiye, after first crossing into neighbouring countries, notably Poland, Hungary and Romania⁸. Just one week after Russian invasion, the EU unanimously activated the TPD, which had remained inactive in the aftermath of the wars in the former Yugoslavia. It provided an immediate protection with urgent services in the spirit of solidarity with the people of Ukraine, contrary to what happened with the displacement of the Syrians in 2015. Currently, over 5 million refugees from Ukraine have recorded for temporary protection or similar national protection schemes. In the EU, Germany is at the top of the list, with close to 1 million registrations (as of 4 April 2023).

The TPD provided immediate access to social benefits and labour market. Albeit temporary, the harmonized legal status granted to refugees from Ukraine allowed a smooth transition to the reception context and overcame the legal uncertainty caused by waiting times associated with the asylum procedure. All Ukrainian citizens who come to Germany for temporary protection are distributed throughout Germany. The distribution of displaced persons from Ukraine is carried out using the software FREE (a special application for maintaining registers, accounting and initial distribution). During the distribution, the software also

⁷ The number of people who fled Ukraine since February 24 is estimated at 20,636,096, while 12,085,011 have returned to the country since February 28. The UNHCR records 8,163,268 refugees from Ukraine across Europe, while another 5,352,000 million are internally displaced, as of 4 April 2023. For more info, see <https://www.unhcr.org/ua/en> (Accessed on 15.4.2023)

⁸ According to UNHCR (2023a) there are in total close to 4 million refugees and asylum-seekers in Turkey. The figures include 3.6 million Syrian nationals and close to 370,000 registered refugees and asylum seekers of other nationalities, mainly from Afghanistan, Iraq, and Iran.

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considers, among other things, whether the person has a family or an apartment in a particular German city.

Prior to the legal reforms in Germany, applicants as well as beneficiaries of temporary protection were granted social benefits under *the Asylum Seeker's Benefits Act*. As of 1st June 2022, applicants for temporary protection as well as beneficiaries for temporary protection are entitled to social benefits under the regular *Social Code*. Thereby they receive the same benefits as German nationals regarding unemployment benefits, housing allowances, health care, access to the job market, support measures such as language courses, child and parental benefits, and educational support programs. These rights are higher than those under the Asylum Seeker Benefits Act.

According to a nationwide representative study on Ukrainian refugees in Germany (The IAB-BAMF-SOEP Survey of Refugees, 2023), Ukrainian refugees express a need for more support, especially in learning German, seeking employment, obtaining medical care, and finding housing. As the language programs and job placement services are central to integration and participation, the study highlights and suggests that some services should be more widely developed. Due to uncertainty about the course of the war, 27 percent are unsure about their intentions to stay. Therefore, because of the high degree of uncertainty in intentions to stay, various policy areas in Germany are faced with the challenge of creating favourable conditions for participation in the labour market the education and health systems in society. As the TPD was limited towards the third state nationals fleeing Ukraine, it came with a two-tier asylum system. Thus, it has preserved existential reproaches on *unequal solidarity*, as it was seen in the cases of Bosnian and Syrian refugees (Ineli-Ciger, 2023).

Ukrainian Refugees in Turkey

The end of the Cold War provided Ukrainians with the opportunity to travel much more freely and to explore job opportunities abroad, particularly when the Ukrainian economy collapsed in the 1990s. Since the 1990s, Turkey has been one of the key destinations for so-called “shuttle traders” (Shulga 2002) and temporary labour migrants, with mostly Ukrainian women working primarily in the domestic sector, textiles, restaurants and the entertainment sector (İçduygu 2006). Further to them, business trips between the two countries, touristic or educational travels, investor mobility, marriage migration and family reunion have fostered ongoing migration flows from Ukraine to Türkiye (Deniz & Özgür

2022). However, with the Russian invasion of Crimea in 2014, large number of ethnic Ukrainians and Crimean Tatars have left the peninsula. At this background, Ukrainian community in Turkey emerged in big cities and holiday resorts like Istanbul, Ankara and Antalya (Deniz & Özgür 2022).

Ukrainian migrants, most of whom are female, are married to Turkish citizens and have children. They have tried to accommodate themselves to Turkish society unavoidably and adopt dual socio-cultural practices (Deniz & Özgür 2022). Therefore, their experiences have differed from the experiences of other migrant families completely consisting of Ukrainian couples in the Ukrainian diaspora (Deniz & Özgür 2022). Russia's annexation of Crimea has served as the primary factor in the institutionalization of the Ukrainian diaspora in Turkey (Deniz & Özgür 2022).

In addition to the neighbouring countries, Türkiye has also been a destination for Ukrainian refugees fleeing the Russian invasion. The Turkish Ministry of Interior declared that at least 20,550 Ukrainian citizens were evacuated to Turkey between the dates of 24 February and 7 March 2022 (Dünya Doktorları Derneği, 2022). Ukraine's Ambassador to Türkiye Vasily Badly noted that "more than 400 thousand Ukrainian citizens have entered Turkey since February 20, 2022. Most of them returned to Ukraine or other countries" (T24 2022). As of October 2023, 42,875 Ukrainian citizens are temporally residing in Türkiye, (ODP 2023).

On the other hand, Turkey has been also a destination for thousands of Russians that have fled the country since the invasion of Ukraine. According to several accounts, the current migration wave mostly consists of middle-class representatives, and politicized citizens, or oligarchs. As a result, Istanbul turned into a popular choice, both for Ukrainian forced migrants as well as Russian exiles as the closure of European airspace to Russian flights makes Turkey one of the few remaining hubs left.

Consistently, under a visa waiver programme, Ukrainian nationals are able to enter Turkey and stay for up to 90 days without a visa. The Turkish government has several times announced that the entry and stay of Ukrainians in Turkey will be made easier. Thus, the Turkish government has pursued an open-door policy with facilitations of easy entry and stay, which may be called as a *de-facto temporary protection* status.

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The EU and Temporary Protection Status

In the EU, a significant number of displaced Ukrainians remain undecided and do not have specific plans for the future (ICMPD 2023). According to studies and surveys conducted across multiple countries, the factors that influenced intentions of displaced Ukrainians to return include the geographic distance from Ukraine, the length of time spent in host countries, and individual circumstances such as access to suitable housing and stable employment; the same such factors also influence intentions to remain in temporary protection countries (ICMPD 2023). Further to them, the EU's Special Adviser on Ukraine, Lodewijk Asscher, in his May 2023 report warns of "solidarity fatigue" towards Ukrainian refugees, as the EU's economy slows, parallel to the cost of living crisis, direct funding, and communication problems at the EU and local level.

Most of the Member States have already taken post-TPD arrangements into consideration, with some exceptions, like Poland, which recently introduced the possibility for employed beneficiaries to change from temporary protection to residence permits (ICMPD 2023). The prolonged crisis mode of the EU is on the way of generating medium and long-term strategies, as the TPD set to last until March 2025 at the latest. *Some alternatives offered for the future* are as follows: (1) an amendment to the TPD to allow for extensions of the existing temporary protection scheme; (2) the assimilation of temporary protection beneficiaries into EU migration law with appropriate modifications; (3) the incorporation of temporary protection beneficiaries into the CEAS; (4) modified free movement using as a blueprint free movement of EU citizens (Guild & Groenendij 2023).

In addition to them, Asscher called for a *reconstruction permit* valid for up to ten years, which could be launched by a joint statement between the EU and Ukraine. Offering a smooth transition for the post temporary protection scheme, Asscher proposed an automatic shift for another status. But he also pointed out the difficulty in monitoring the integration process due to the lack of clear European overview of the actual labour market status of temporary protection beneficiaries (Asscher 2023). In sum, *the absence of concrete ideas regarding post-TPD arrangements* echoes the need for further solutions to facilitate social inclusion of refugees through a whole-of-society approach, taking into consideration the critical role of national and local actors.

CONCLUSION: HOW LONG IS TEMPORARY?

In order to address the massive crisis of displaced persons after war in Bosnia Herzegovina in 1992, for the first time in the EU the TPS were granted to the refugees on humanitarian grounds. However, the TPS has been criticized as an attempt to de-legalize refugee protection by placing it within the executive power of the state, rather than allowing it to remain subject to legal interpretation of the Refugee Convention (Bastaki 2018).

During the Bosnian crisis, a reason why the UNHCR accepted the compromise of temporary protection was that it was believed that it would encourage more EU countries to accept those who are fleeing ethnic cleansing (Bastaki 2018). In other words, the policy of temporary protection has been heralded as a constructive first step towards harmonization of European asylum policies (Koser & Black 1999). However, this proved not to be the case and may explain why Germany is the only country to have embarked upon mandatory repatriation. Thus, the practice of the TPS came as different implementation among Member States, ranging from granting permanent status or acquiring citizenship to promotion of return and repatriation all of which resulted in an unfair and ineffective burden sharing initiative.

After the war in Yugoslavia, the EU has faced several humanitarian crises through the end of 2010, when Arab revolts erupted in Tunisia, Egypt, and Libya and in Syria in 2011. Ideally, the EU has to develop a coherent response to the unique Syrian crisis, keeping in mind the successes and failures of the Bosnian experience. Rather than activating the TPS in any of these crises, the EU have focused on the priority of keeping refugees at the periphery of the EU. The Syrian refugee crisis has challenged the temporary protection regime, since it demonstrated the unwillingness of the EU Member States, by shifting the burden on peripheral states of the EU.

The TPD, re-issued just one week after Russian large-scale invasion of Ukraine shows a clear respect and welcome to Ukrainian refugees. As Maryellen Fullerton (2023) clearly stated, geographical proximity, the perception of a temporary armed incursion across international borders, the predominantly female composition of the war refugees, the existence of a Ukrainian diaspora in EU Member States, visa-free travel for Ukrainians throughout the EU, and the general absence of racial and religious differences all played a role in an enormous display of social solidarity and civic engagement, which, in turn, led to the initiation of the first EU-wide temporary protection program since the legislation was enacted in 2001. Unlike Syrian refugees, Ukrainian refugees have received more favourable treatment from European

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nations. While it prevents non-Ukrainians from having the same legal protection, TPD demonstrates *double standards* and the persistence of *unequal solidarity and selectivity* in the EU and Member States' asylum systems.

Nevertheless, as Meltem Ineli-Ciger (2023) underlines, the TPD provides only minimum but not common standards. The *lack of standardization* generated uncoordinated practice among different countries thus exposes the lack of a uniform approach in the EU Member States (Andriyiv et.al. 2023). Furthermore, practices towards non-Ukrainian refugees display the *unequal treatment* emerged from the implementation of the TPD. The exclusion of non-Ukrainian nationals has already led to the EU being accused of discrimination in favour of 'white Christian Ukrainians', to the disadvantage of Syrians, Afghans and other non-white, non-ethnic European asylum seekers.

Germany introduced restricted regulations with regards to the asylum procedure, after the fall of Iron Curtain and wars of Yugoslavia. Germany had hoped that admitting Bosnian refugees under shared European TPD would mean burden sharing, but it clearly did not as each country interpreted it differently. Hence 85 percent of all Bosnians in the EU were contained in three countries: Germany, Austria and Sweden (Hageboutros 2016). With the millennium, German migration policies undertook a significant change. Transformed from a self-declared 'non-immigration country' to a country 'with a rational immigration policy', Germany seeks to serve the interests of the country, taking into account demographic change and labour shortages. The term 'welcome culture' is characteristic of Germany's initial public discourse and official response to the hundreds of thousands of refugees arriving to the country in the wake of the Syrian civil war in 2015.

However, in early 2016, concerns about public safety and ways of limiting the number of incoming refugees gained a predominant position in public debate. Essentially, German immigration law required all refugees receiving social welfare benefits to undergo language and civic knowledge tests as a pathway to the labour markets. Through the integration regime redefined the *good and deserving refugees*, refugee in Germany must prove their merit through efforts in language learning, cultural integration and economic contributions.

Türkiye has retained the tradition of *guesthood and persistent practice of temporary protection* as main pillars of her asylum policy (Kirişçi & Yıldız 2023). Preserving the geographical limitation to the Refugee Convention, with the efforts to align and then de-align

its migration and asylum policies with the EU, Türkiye's asylum system generated a dual structure, with refugees from Syria granted *temporary protection* as a group, while people of all other nationalities are required to make individual applications for *international protection*. Like the Bosnian refugees, Türkiye labelled Syrian refugees as guests, just to have a flexibility in the treatment of these refugee groups. Once it became clear that Syrians in Turkey were not just temporary 'guests', the policy discourse on integration has been intensified, by giving them the TPS (2014), and then, albeit very limitedly, by providing work permits and transition to citizenship (2016) (İçduygu & Demiryontar 2022). Consistently, contrary to the EU, the crisis framing has been deliberately avoided, which is a sign of an implicit "silencing" via media control (Sert & Daniş 2021), and a choice of discourse that reflects a clear policy to manage public reactions to the mass arrival of refugees (Sert & Daniş 2021). These policies are followed by Turkish authorities' return strategy aiming at limiting the increase of irregular arrivals⁹.

All in all, the TPS falls short of offering a clear long-term perspective for Syrians and leaves them in a deep state of uncertainty. It is not clear what might happen if the TPS is terminated, since voluntary return, given the current conditions on the ground in Syria, does not seem sustainable (Kirişçi & Yıldız 2023). While the government announced that half a million Syrians have since returned to Syria, the UNHCR puts this figure at just over 153,000,135 with less than 57,000 resettlement cases as of December 2022 (Kirişçi & Yıldız 2023). Such barriers to registration hinder access to all other essential services and put asylum seekers in an irregular situation if apprehended. In summary, Turkish state has tended to regulate the future of asylum seekers with plural policy options, in line with the three accepted in the international asylum regime. As Ahmet İçduygu and Birce Demiryontar (2022) underlined, sudden changes in these policies and discourses in response to the domestic and foreign political conjuncture show that the conflicting inconsistency in immigration policies stems from an *instrumental rationality*, causing a problem of inconsistency in the state's policies against Syrian refugees in Turkey.

Parallel to the growing negative perception of refugees in Türkiye, in their report on 2023 elections in Türkiye, Balta et al (2023) clearly expose how the issue of migration became the country's most heated topic of discussion. Syrians became a more noticeable focus of attention in the electoral campaigns in the last two years, and the issue in the 2023 elections, due to the increasing anti-immigrant sentiment in the country (Balta et al. 2023). Indeed, the report presents how party manifestos, in one form or another, addressed the issue of Syrians'

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return, whether emphasizing voluntary return or implementing repatriation measures (2023). The emphasis on return underscores the enduring significance of the Syrian refugee crisis in Turkish politics and the complex interplay between electoral politics and anti-immigration attitudes (Balta et al. 2023).

For both Germany and Türkiye, the lessons that can be drawn from Türkiye's extended TPS are crucially important. In that sense, it is absolutely necessary to ensure the transition *from temporary statutes to permanent statutes*, within a country that is intended to be a legal integration (Mülteci-Der 2021). Legal integration aims to increase the rights of the individual at an evolving momentum as the individual develops and develops bonds with the country, eventually bringing them into equal status as those with citizenship (Mülteci-Der 2021). Acting early will allow the governments to address the needs of refugees in a timely way and minimize any gaps in socioeconomic outcomes of nationals and refugees (Tumen 2023). For both Germany and Türkiye, *labour market integration* is another important component for designing, implementing, and coordinating (post) temporary protection policy, as labour exploitation of informally employed migrants/refugees paves the way for precarious working conditions,

For both Germany and Türkiye, the uncertainty emerged from the prolonged wars in Syria and Ukraine need to be assessed in line with the long-term integration and settlement policies via *transparent and open public debate* including a range of stakeholders like institutions, NGOs, municipalities, at various levels (Ariner 2023). How long is temporary? And how safe will be Syria and Ukraine after the war? These questions have to be evaluated by a comprehensive, unified, and rigorous approach (Ariner 2023). It also requires *greater cooperation between local, national and international level*, including policy makers, practitioners, and civil society organisations as well as international actors.

For the EU, the exit from temporary protection regime should reflect a *concerted and coordinated EU approach*, even though it is challenged by the externalised and securitized asylum policies. The adoption of necessary laws and policies in order to end TPS may facilitate durable solutions in turn may provide all third-country nationals a clear status. Against the background of the exclusive and temporary policies and practices at the national level (Germany and Turkey) and the unequal solidarity and selective protection at the EU level, the notion of equal solidarity and human-centric approach should be rethought, when designing

and implementing migration and asylum policy, so that various forms of unequal treatment towards non-European asylum seekers and refugees will be eliminated. Practices that shift burdens, avoid responsibility, or frustrate access to international protection are inconsistent with global solidarity and responsibility sharing.

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Araştırma ve Yayın Etiği Beyanı

Araştırmacı verilerin toplanmasında, analizinde ve raporlaştırılmasında her türlü etik ilke ve kurala özen gösterdiğini beyan eder.

Yazarların Makaleye Katkı Oranları

Makale tek yazarlı olarak hazırlanmıştır.

Çıkar Beyanı

Makalenin hazırlanmasında herhangi bir çıkar çatışması bulunmamaktadır.

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