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Legal and social aspects of migrant employment in Turkey

Summary

For over a decade, Turkey has been facing mass influx of Syrian citizens – besides Afghans, Iraqis, and Iranians – who are seeking international protection. This humanitarian problem has many different aspects, e.g., providing housing, employment, health services, and education. The general rule regarding the accommodation of refugees and asylum seekers is temporary accommodation centres. But this cannot be realised in the Syrian migrants' case due to their massive numbers. Turkey is hosting 3,6 million Syrians under the temporary protection status. This international protection type does not give them the right to work per se. Like other foreigners who want to work in Turkey, Syrians have to apply for a work permit. In practice, many of the Syrians work informally, which causes major infringements of fundamental rights. Besides the legal aspect, this problem has to be handled by the cooperation of different fields of social sciences, especially by sociology and public policy. The implementation of legal instruments will not solve the social problems unless the integration of the migrants to the host community is realised with appropriate public incentives. This paper examines the national legislation concerning migrant workers. Following this examination, the author analyses the actual situation deriving from practice, based on prior research and reports of national and international organizations.

Keywords: migrant workers, work permit, temporary protection

1. General overview

Before focusing on legal matters, major problems regarding the Turkish labour market should be addressed. The latest official statistics revealed that the unemployment rate is 13.9% for April 2021 in Turkey¹,

¹ <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Istatistikleri-Nisan-2021-37488> (Access date: 21.06.2021; The ratio was 13.4% for February 2021,

whereas the average ratio is 12.20% for January 2021 in OECD statistics². Besides high level of unemployment, unregistered (informal) work constitutes a major problem. The latest statistics reveal that rate of unregistered work as 28.4% considering the period of April 2020 and April 2021³.

Unemployment and unregistered work rates have been standing constantly high for decades and these figures can be interpreted as unemployment and unregistered work issues are the major structural problems for Turkish labour market. While struggling with these structural problems, migrants have become one of the crucial subjects of the labour force agenda due to Syrian war.

According to United Nations High Commissioner for Refugees (UNHCR), Turkey is hosting 3.6 million Syrians⁴ and 320.000 refugees and asylum seekers of other nationalities⁵. Less than two per cent of them are living in temporary accommodation centres, whereas over 98 per cent of refugees live in urban, peri-urban and rural areas⁶. According to legislation⁷, Syrians cannot be granted “refugee” status from Turkey. In order to shelter them in the country, Turkey grants “temporary protection” status to Syrians⁸. Temporary protection status does

<https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Istatistikleri-Subat-2021-37487> (Access date 06.05.2021).

² <https://data.oecd.org/unemp/unemployment-rate.htm#indicator-chart> (Access date 06.05.2021).

³ <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Istatistikleri-Nisan-2021-37488> (Access date 21.06.2021).

⁴ According to the numbers of Ministry of Internal Affairs of Turkey, the total number of Syrians under “temporary protection” in Turkey by the date 12.05.2021 is 3.671.277. <https://www.goc.gov.tr/gecici-koruma5638> (Access date: 21.05.2021).

⁵ <https://www.unhcr.org/tr/wp-content/uploads/sites/14/2021/05/UNHCR-Turkey-Operational-Update-February-March-2021.pdf> (Access date: 06.05.2021) Among these the majority are Afghans (172.000) and Iraqi nationals (142.000), Report on Turkey’s Asylum Law and Policies, Heinrich Böll Stiftung, Istanbul, December 2019, <https://tr.boell.org/sites/default/files/2019-12/ASYLUM%20ENG-S.pdf> (Access date 21.05.2021).

⁶ <https://www.unhcr.org/tr/wp-content/uploads/sites/14/2020/09/UNHCR-Turkey-General-Fact-Sheet-September-2020.pdf>; <https://www.unhcr.org/tr/wp-content/uploads/sites/14/2021/05/UNHCR-Turkey-Operational-Update-February-March-2021.pdf> (Access date: 06.05.2021).

⁷ For further information about national legislation see Report on Turkey’s Asylum Law and Policies, Heinrich Böll Stiftung, Istanbul, December 2019, pp. 13–19.

⁸ <https://help.unhcr.org/turkey/information-for-syrians/temporary-protection-in-turkey/>(Access date 06.05.2021).

not give people the right to work directly. Any foreigner who wants to work in Turkey has to obtain a work permit. The latest official statistics of the General Directorate of International Workforce, which has the legal mandate to issue work permits, indicate that a total of 145.232 of work permits were issued, 63.789 of them were Syrians in 2019⁹.

Syrians under temporary protection are the majority of the migrants in Turkey. Considering the fact that 98% of Syrians are living outside of the temporary accommodation centres, the regulations for migrant employment are essential to focus on. In addition to legal regulations regarding employment of migrants, social attitudes towards Syrians in working life have to be mentioned in order to maintain a general view about the actual situation in Turkey.

In this paper, national legislation regarding work permits and migration will be evaluated in the light of labour market realities and social partners' approach specifically focusing on Syrian migrants. Prior research about migrant workers conducted in Turkey and legal documents will be examined throughout the paper.

2. Main national legislation with regard to migrants

There are two main legislations regarding migrants in Turkey. The first one is the Law on Foreigners and International Protection (No. 6458)¹⁰, which regulates the principles and procedures about foreigners' entry into, stay in and exit from Turkey, as well as the protection provided for foreigners who seek protection. This Law stipulates the general principles, scope and types of protection for various groups of people who are seeking protection.

The second legal instrument related with our subject is the Law on International Workforce (No. 6735). This Law is the main piece of legislation with regard to work permits of foreigners. Hereinafter, detailed information will be set forth about these two specific Laws.

A. Law on Foreigners and International Protection (No. 6458), defines migration as follows: "regular migration whereby foreigners'

⁹ <https://www.csgb.gov.tr/media/63117/yabanciizin2019.pdf> (Access date: 07.05.2021).

¹⁰ Unofficial translation of the Law numbered 6458 <https://en.goc.gov.tr/kurumlar/en.goc/Ingilizce-kanun/Law-on-Foreigners-and-International-Protection.pdf> (Access date: 12.05.2021).

legally enter into, stay in or exit from Turkey as well as irregular migration whereby foreigners enter into, stay in or exit from Turkey through illegal channels and work in Turkey without a permit; as well as international protection” (3/1).

The Law provides international protection for three sub-group foreigners. International protection covers the status granted for refugees¹¹, conditional refugees¹² and subsidiary protection¹³.

Table 1: International protection applications by years¹⁴

Year	Number of Applications
2010	8.932
2011	17.925

¹¹ A person who as a result of events occurring in European countries and owing to 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 citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process (Law on Foreigners and International Protection Art. 61).

¹² A person who as a result of events occurring outside European countries and owing to 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 or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country (Law on Foreigners and International Protection Art. 62).

¹³ 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 (Law on Foreigners and International Protection Art. 63).

¹⁴ Data gained from official statistics, <https://en.goc.gov.tr/international-protection17> (Access date: 07.05.2021).

2012	29.678
2013	30.311
2014	34.412
2015	64.232
2016	66.167
2017	112.415
2018	114.537
2019	56.417
2020	31.334

Besides these, Law on Foreigners and International Protection regulates another status as temporary protection which constitutes the core subject of this paper. This protection is defined as follows: “Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection”¹⁵. This international protection is the one provided for Syrian migrants. According to national legislation, as mentioned above, Syrian migrants cannot be granted refugee and conditional refugee status or subsidiary protection.

There are significant differences among the international protection types and the temporary protection status concerning the right to work prescribed by the Law on Foreigners and International Protection.

According to the Law on Foreigners and International Protection, the refugee or the subsidiary protection beneficiary, upon being granted the status, may work independently or be employed, without prejudice to the provisions stipulated in other legislation restricting foreigners to engage in certain jobs and professions¹⁶. The identity document to be issued to a refugee or a subsidiary protection beneficiary shall also substitute for a work permit and this information shall be written on the document (Art. 89/4,b). On the other hand, an applicant or

¹⁵ For more information about temporary protection <https://help.unhcr.org/turkey/information-for-syrians/temporary-protection-in-turkey/> (Access date: 07.05.2021).

¹⁶ A few examples of these jobs are judges, prosecutors, lawyers, army officers, police officers etc.

a conditional refugee may apply for a work permit after six months following the lodging date of an international protection claim. So, if a foreigner grants refugee or subsidiary protection status, without any further transaction, s/he becomes entitled to work per se.

The scope and rules of right to work for temporary protection status are not regulated in detail by the Law on Foreigners and International Protection. Article 91/2 of the Law states that a bylaw will be issued in order to regulate the actions to be carried out for the admission of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations. Bylaw on Temporary Protection has been put into force on 22.10.2014. According to Article 29 of the bylaw, any person who is given a temporary protection identity card is entitled to apply to Ministry of Labour and Social Security for granting a work permit.

Briefly, above-mentioned legal provisions of Law on Foreigners and International Protection and the Directive on Temporary Protection, Syrian migrants as well as the citizens of non-European countries cannot be granted refugee status in Turkey. During the past decade, besides Afghans, Iraqis and Iranians¹⁷ massive number of Syrian citizens entered into Turkey for granting protection. Unless a foreigner is granted refugee status or subsidiary protection, application for a work permit is an obligation in order to work legally in Turkey. The types and application process of work permits will be examined below.

B. Law on International Workforce (numbered 6735)

The Law on International Workforce is the main piece of legislation concerning work permits. There are four distinct types of working permits regulated in the Law. Prior to analysing the types of working permits respectively it shall be useful to highlight the common points of all sorts, namely the working permit for a definite period of time, the working permit for an indefinite period of time and the working

¹⁷ By the end of the year 2020, 22.606 Afghans, 5.875 Iraqis, 1.425 Iranians and 1.428 people from other nationalities applied for international protection from Turkey. <https://en.goc.gov.tr/international-protection17> (Access date: 21.05.2021).

permit which is given to a foreigner for performing an economic activity independently.

The common characteristics of these three kinds of working permit is that the ministry has discretion on granting them. The ministry is not bound to grant permit, whereby all the requirements have been fulfilled by the applicant. The discretion gives the opportunity for examining the actual status of the employment system when the foreigner applies for one of these working permits. As a result of this consideration, the Ministry may decide to accept or reject the application¹⁸.

The types of working permits include:

- a. Working permit for a definite period of time (Art 10/1–2): This working permit could only be given for working in a certain workplace or enterprise, whether it is public or private sector, for a certain job. The validity period of working permit should not exceed one year from the date of issuance. At the end of that period, the working permit may be extended up to two years for the first time, and for the following extension applications it can be extended up to three years, as long as the foreigner continues to work in the same workplace or enterprise and in the same job. If the foreigner wants to work for another employer, this application will be deemed as a new application and only one year of working permit will be issued¹⁹.
- b. Working permit for an indefinite period of time (Art 10/3–4): This type of working permit may be given to the foreigners who have a long-term residence permit or who have worked depending on a working permit for eight years. This type of working permit enables the foreigner to work without restriction in a certain enterprise and/or profession. Long-term residence permit is regulated in the Law numbered 6458 Article 42. An important matter about long-term residence permit is that refugees, conditional refugees and subsidiary protection beneficiaries as well as people under temporary protection or humanitarian residence permit holders are not entitled to apply for a long-term residence permit. Working permit for an indefinite period of time advances freedom of working of the

¹⁸ Yildiz, 214.

¹⁹ Yildiz, 215.

foreigner. However, a foreigner cannot work as a lawyer, notary public, judge, prosecutor, military person or civil servant even if s/he has a work permit for an indefinite period of time. These professions must be performed exclusively by the Turkish citizens. Article 10/4 of the Law on International Workforce specifies that the provisions which are regulated in other laws concerning the jobs and professions for which the foreigners shall not be entitled to work are reserved. The jobs and professions that cannot be performed by the foreigners are regulated in various different legislations in Turkey²⁰.

- c. Permit for Working Independently (Art 10/7–8): Any foreigner who intends to work as a self-employed person in Turkey needs to obtain this kind of working permit. Evaluations regarding the application for the independent working permit will be conducted by considering the applicant's education status and occupational experience. Also, the applicant's investment or economic activity contribution to science and technology, to national development and employment system will be considered.
- d. Turquoise Card (Art 11): This is an exceptional type of work permit. First of all, the main purpose of this type of work permit is to procure skilled foreign labour force. Turquoise Card will be granted in line with the international labour force policy to foreigners whose application will be found appropriate in accordance with the principles and procedures set forth by the Ministry of Labour and Social Security. The applicants' educational background, professional experience, contribution to science and technology, the effect of their activities or investments in Turkey to national economy and employment rate are another criterion while evaluating the application. Turquoise Card will be given for three years as a transition period. The Ministry of Labour will, during the said transition period, supervise the process by requesting information and documents related to the activities carried out from the employer or the foreigner. After the transition period of three years, the permanent Turquoise Card will be issued upon application. Foreigners who are under temporary protection are exempted from Turquoise Card.

²⁰ For detailed information, Yildiz, 216.

Table 2: Number of work permits given to foreigners by types of permission and years²¹

Year	Type of permission			Total
	Definite	Indefinite	Independent	
2012	32.191	79	9	32.279
2013	45.721	93	9	45.823
2014	52.197	95	3	52.295
2015	64.402	115	4	64.521
2016	73.410	115	24	73.549
2017	87.150	19	13	87.182
2018	115.826	4	7	115.837
2019	145.232	0	0	145.232

2.1. Work Permits of Foreigners Under International Protection

As mentioned above, if a foreigner is granted refugee or subsidiary refugee status, upon being granted the status s/he may work independently or be employed, without prejudice to the provisions stipulated in other legislation restricting foreigners to engage in certain jobs and professions. The identity document to be issued to a refugee or a subsidiary protection beneficiary shall also substitute for a work permit and this information shall be written on the document.

The Law on International Workforce regulates the work permits of foreigners who are under international protection in Article 17. According to the article, any foreigner who has applied for international protection and whose application has not been settled finally or conditional refugees may apply for granting a work permit after six months following their application. Similarly, foreigners under temporary protection may apply for a work permit after six months following the issue of temporary protection identity document.

More detailed regulations regarding the process and evaluation of the application for work permit have been set in the Bylaw on Work

²¹ <https://www.csgb.gov.tr/istatistikler/calisma-hayati-istatistikleri/resmi-istatistik-programi/yabancilarin-calisma-izinleri/> Work Permits of Foreigners Official Statistics 2012-2019 (Access date: 25.05.2021).

Permits of Foreigners Under Temporary Protection. Article 5 of this bylaw regulates a specific matter about work permit exemptions of foreigners under temporary protection. According to this article, seasonal agricultural and livestock workers are exempted from work permit. They can apply to the governor's office of the city in which they gain temporary protection in order to benefit from exemption. Ministry of Labour and Social Security has published an implementation guide for work permits and exemptions of foreigners under temporary protection. A foreigner under temporary protection may apply to be exempted from work permit in order to be employed in seasonal agriculture or livestock work, after fulfilling six months under temporary protection. This application can be made only in the city which the foreigner has been residing under temporary protection. This exemption is limited regarding the scope and geographic area. A foreigner under temporary protection can only be employed in seasonal agricultural or livestock work and s/he can only work in the city where they have been put under temporary protection.

Besides the exemption of work permit in seasonal agricultural and livestock work, any foreigner who is under temporary protection has to issue a work permit in order to work legally in Turkey.

Lastly, there is a general quota for employment of workers who are under temporary protection. Bylaw on Work Permits of Foreigners Under Temporary Protection states that the number of the foreign workers under temporary protection cannot exceed 10% of Turkish citizens employed in a workplace.

3. Foreigners Under Temporary Protection in labour market: facts and actions

Turkish labour market already has its own major problems, such as high unemployment rate and informal work when Syrians mass influx began in May 2011. It was not easy, even not realistic, to keep these massive number of Syrian migrants in temporary accommodation centres. As a result, they try to find jobs, whether formal or not, in order to maintain their households. Since the Syrian migrants became a component of Turkish labour force, many researches have conducted studies on Syrian migrants and working conditions. The results of these

research are mostly in conformity with one another in many ways, as it will be presented below. Before that, it will be useful to focus on the statistical data about work permits issued for Syrians.

Table 3: Number of work permits given Syrians under temporary protection by types of permission and years²²

Year	Number of Syrians under Temporary Protection	Type of permission			Total
		Definite	Indefinite	Independent	
2012	14.237	219	1	0	220
2013	224.655	794	0	0	794
2014	1.519.286	2.541	0	0	2.541
2015	2.503.549	4.019	0	0	4.019
2016	2.834.441	13.288	2	0	13.290
2017	3.426.786	20.966	0	0	20.966
2018	3.623.192	34.570	2	1	34.573
2019	3.576.370	63.789	0	0	63.789
2020	3.641.370	N/A	N/A	N/A	N/A
2021	3.671.277	N/A	N/A	N/A	N/A

As it is shown in Table 3, there is a marked imbalance between the numbers of Syrians under temporary protection and the number of work permits issued to Syrians. This gap between the numbers reveals the fact that many Syrians are working informally.

ILO's Ankara Office estimated that out of the 2.16 million Syrians of working age in Turkey, 930.000 are working. A simple comparison between the number of work permits and Syrian population shows that more than 97% of them are working informally. Syrian refugees are mostly employed informally in garment, trade and hospitality, manufacturing, construction and agriculture sectors²³.

²² Data gained from official statistics, <https://en.goc.gov.tr/temporary-protection27>; <https://www.csgb.gov.tr/istatistikler/calisma-hayati-istatistikleri/resmi-istatistik-programi/yabancilarin-calisma-izinleri/> (Access date: 25.05.2021) Work Permits of Foreigners Official statistics 2012–2019; Official statistics regarding work permits for 2020 and 2021 have not been released yet.

²³ https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/genericdocument/wcms_738618.pdf (access date 25.05.2021); Caro, 12–17.

Informal work frequently causes infringement to fundamental rights of workers. As an example, 75% of Syrians work more than 45 hours, which is the legal weekly working time in Turkey. Also, on average Syrians earn less than legal minimum wage²⁴. In addition to these they cannot enjoy collective labour rights, high ratio of child labour is a common issue regarding Syrians²⁵ and limited access to justice²⁶ because of their fragile and insecure existence²⁷ makes the scenario worse. This insecure situation has been examined in the context of “precariat” and interpreted such that Syrian migrants are supplementary and cheap labour force in Turkey, due to their effect on curbing down the remunerations and working conditions to the detriment of national workers²⁸.

For promoting decent work and social inclusion, ILO Ankara Office has been implementing several projects since 2015²⁹. The ongoing projects are as follows:

- Decent Work Opportunities for Refugees and Host Communities in Turkey³⁰;
- Promoting Decent Work for Syrians Under Temporary Protection and Turkish Citizens³¹;
- Job Creation and Entrepreneurship Opportunities for Syrians under Temporary Protection and Host Communities in Turkey³².

Besides ILO’s projects, much research has been carried out in different regional parts and in different branches of industry.

²⁴ https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/genericdocument/wcms_738618.pdf (Access date: 07.05.2021).

²⁵ Lordoglu-Aslan, 724–725, researchers have interviewed 57 families in three different cities (Istanbul, Sanliurfa and Mardin). 62% of 165 children were working, most of them said that they were working 12 hours or more in a day; Caro, 10–11.

²⁶ Toksoz, 10. (Access date: 07.05.2021).

²⁷ DSP-IGAM Report, 2, 4.

²⁸ Adar, 20, 23-25; Dedeoglu, 51, 61.

²⁹ <https://www.ilo.org/ankara/projects/refugee-response/lang--en/index.htm> (Access date: 07.05.2021).

³⁰ https://www.ilo.org/ankara/projects/WCMS_736125/lang--en/index.htm (Access date: 07.05.2021).

³¹ https://www.ilo.org/ankara/projects/WCMS_710959/lang--en/index.htm (Access date: 07.05.2021).

³² https://www.ilo.org/ankara/projects/WCMS_644740/lang--en/index.htm (Access date: 07.05.2021).

One of such research has been conducted in Denizli, also called “global factory city”, which is an important city for export of Turkish manufacturing sector, such as garment and marble. The study revealed that many Syrian migrants work informally although they demand registration to Social Security Institution from their employers. The research also demonstrated that many Syrian workers face discrimination from their co-workers and employer in workplace. Native workers are perceiving Syrian workers as rivals for limited employment opportunities. On the other hand, discrimination on employers’ side reveals itself by paying less salary and/or by not paying properly³³.

Turkey is an important manufacturing hub for garment and textile industry. Factories and ateliers are producing for national and international brands and groups. As a natural consequence of this, the employment rates in garment and textile industry are high. Focusing on textile and garment industry will provide more information about actual status of Syrian migrants who are working in that sector. One of the biggest groups with a significant number of suppliers in Turkey is Inditex. Inditex focuses on migration as a key topic concerning Turkey. The company launched a remediation plan for Syrian workers in order to prevent any type of exploitation, including violations of their human rights. A non-profit organization MUDEM³⁴ (Refugee Support Centre) and Inditex act together in order to ensure fair working conditions and rights for Syrian migrants. In this context, MUDEM informed workers of their rights and advised them to legalize their employment status in Turkey, teaching them Turkish and translating the necessary documents, such as regulations, procedures and health and safety topics³⁵.

Ethical Trade Initiative (ETI), another international group, focuses on Syrian refugees working in Turkey’s garment sector. ETI launched a programme aiming to encourage better employment conditions for both Turkish and Syrian workers. In partnership with ITKIB (General Secretariat of Istanbul Textile and Apparel Exporters’ Associations),

³³ Akbas-Unluturk Ulutas, 188–189.

³⁴ <https://mudem.org/en/about-us/> (Access date: 25.05.2021).

³⁵ Inditex Annual Report 2016, 79. In 2016, Inditex initiated 131 individual remediation cases, addressing the needs of each worker and their families. (http://static.inditex.com/annual_report_2016/en/our-priorities/sustainable-management-of-the-supply-chain/supply-chain-programmes-workers-at-the-centre.php) (Access date: 25.05.2021).

the UN refugee agency UNHCR and the International Middle East Peace Research Centre, ETI trained 178 suppliers on the employment of Syrian refugees in line with a “law and decent work” agenda³⁶.

According to a survey conducted within the ETI project, international brands’ supply chains operating in Turkey do not have significant numbers of Syrian workers in the first circle. As an example, in the first circle suppliers of a firm with around 400 suppliers in Turkey, there are around 20 Syrian workers in total. On the other hand, there are no Syrian members of trade unions in the textile³⁷. These facts also confirm that Syrian workers are working informally in small workplaces rather than middle and big sized factories.

Considering textile sector, one research project was conducted by national researchers between November 2015 and January 2016. The researchers³⁸ focused on 300 Syrians and 303 Turkish workers in the textile sector in Istanbul. This research revealed some unpleasant facts in practice³⁹. First, the proportion of child labour among the 300 Syrians working in the textile sector was 29 per cent. All of the Syrian workers and half of the Turkish workers within the scope of the survey were working informally. Another infringement of national legislation is working hours. Although the legal working week is 45 hours in Turkey, only 2.3% of these workers were in conformity with this. The rest were working the following hours: 46–50 hours (14.26%), 51–55 hours (32.17%), 56–60 hours (19.73%), 61–65 hours (16.58%) and more than 65 hours (14.93%)⁴⁰.

These excessive working hours are not exclusive for garment and textile industry. Generally, Syrian workers work more than native workers. In an average week, they work 52.3 hours, more than a half (53.7%) of the Syrian workers work more than 50 hours a week and 34.7% work 60 or more hours⁴¹.

In addition to exploitation and other consequences of informal work, discrimination is another serious problem. A research conducted

³⁶ <https://www.ethicaltrade.org/programmes/syrian-refugees-working-turkeys-garment-sector> (Access date. 25.05.2021).

³⁷ Korkmaz, 104. Mr. Korkmaz worked as a counsellor at ETI’s Turkey programme.

³⁸ Mutlu et al., 69–92.

³⁹ Mutlu et al., 69.

⁴⁰ Mutlu et al., 81.

⁴¹ Caro, 17.

in Diyarbakir among construction workers reveals that workers who are citizens of Turkey evaluate Syrian workers as “obstacles against local workers for finding jobs”. This attitude derives from discriminatory prejudices as well as the fact that employers are taking advantage of the fragile and insecure situation of Syrian migrants in order to provide cheap labour force. Employers are paying less to Syrian workers in comparison with Turkish citizens. As a result, some of the national workers who have already been suffering from unemployment or facing difficulties with being employed as well as being paid low wages, hold Syrian workers responsible for their struggle⁴². A similar approach has emerged from another research focusing on seasonal agricultural workers. One of the native workers stated that Syrian migrants are working for half of their salary, which makes them preferable for the employer⁴³.

Another problematic topic is unemployment rates and Syrian migrants’ effect on this issue. As has been mentioned above, unemployment rates are significantly high in Turkey considering OECD countries. In 2015, a country-wide research revealed that 56,1% of 1.501 participants considered that “Syrians are taking our jobs from us”⁴⁴. On the other hand, employers’ attitude towards Syrian workers are in general not affirmative concerning employability. Employers’ negative attitude stems from various reasons. Some of them state that employment of Syrian migrants may cause security problems, some of them think that language barrier⁴⁵ causes problems at workplace, another argument is that employing Syrians may endanger workplace order, some of them state that Syrian workers are not educated and qualified enough⁴⁶.

In 2018, ILO Ankara Office published the outcomes of a “need analyses”, focusing on what is needed to be done by trade unions and

⁴² Cinar, 130–131.

⁴³ Dedeoglu, 61.

⁴⁴ Coban, 207.

⁴⁵ DSP-IGAM Report, 3; Varcin et al, 55; In order to tackle with this problem, UNDP and Ministry of National Education launched language education programme, UNDP Annual Report, 16-18.

⁴⁶ Pinar-Siverekli-Demir, 22; https://www.ilo.org/wcmsp5/groups/public/--europe/--ro-geneva/--ilo-ankara/documents/publication/wcms_479272.pdf; Coban, 208; Varcin et al, 157–158.

employers' associations in order to maintain decent work for Syrians who are under "temporary protection" in Turkey⁴⁷. According to the report, there is a consensus about "open gate" policy towards Syrians amongst workers confederations (DISK, HAK-IS, TURK-IS) and employers' confederation (TISK). Additionally, workers' confederations underline the necessity of registered employment of Syrians with equal conditions to national workers. On the other hand, the majority of trade union representatives declared that there were negative attitudes towards Syrians among their members due to concerns about rising unemployment risk because of Syrians. In other words, due to being unregistered, the work provided by Syrians is much cheaper than the work provided by registered national workers. This report reveals that there is a very limited contact with Syrians and trade unions at institutional level. Regarding employers' associations, the situation is the same⁴⁸. Erdogdu points out that migration issues in relation with working life have not been on the agenda of tripartite social dialogue mechanisms such as "Tripartite Consultative Board" or "Labour Assembly"⁴⁹. As a result, need analyses have been finalized as trainings towards social partners in order to create an inclusive working environment for Syrian workers⁵⁰.

4. Conclusion

For over a decade, Syrian migrants have been residing in Turkey. In the early phases of the influx, they were deemed as "guests" by Turkish public opinion. After a short time, the number of Syrian migrants reached millions and the conditions for them to return to their homeland are not favourable.

⁴⁷ https://www.researchgate.net/profile/Seyhan-Erdogdu/publication/330412782_Turkiye%27de_Gecici_Koruma_Altindaki_Suriyeliler_Icin_Insana_Yakisir_Islerin_Desteklenmesi_ISCI_VE_ISVEREN_ORGUTLERI_NE_YAPMALI_Isci_ve_Isveren_Orgutlerinin_Kapasitelerinin_Artirilmasina_Yonelik_Ihtiyac/links/5c3f1914458515a4c72a36a1/Tuerkiyede-Gecici-Koruma-Altindaki-Suriyeliler-Icin-Insana-Yakisir-Islerin-Desteklenmesi-ISCI-VE-ISVEREN-OeRGUeTLERI-NE-YAP-MALI-Isci-ve-Isveren-Oerguetlerinin-Kapasitelerinin-Artirilmasina-Yoenelik-Ih.pdf (Access date: 25.05.2021).

⁴⁸ Erdogdu, 61.

⁴⁹ Erdogdu, 80.

⁵⁰ Erdogdu, 105–108.

Although there are regulatory and protective legal instruments which may be regarded as sufficient for providing legal status and protection for Syrian migrants, in practice there are difficulties with their inclusion. The essential reason for that is the high unemployment rates and unregistered work ratios which have been affecting native workers for decades. As has been mentioned above, Syrian migrants have become the supplementary cheap labour force during the years of their presence. This phenomenon leads to discriminatory perception of Syrian migrants by native workers.

Not only do the national authorities put effort in order to ease the situation, but also international organizations such as ILO, UNCHR, UNDP and NGO develop policy responses for inclusion and equal rights. As a fact, inclusion of migrants and providing decent work for all are goals which take time and profound effort to be reached at. So, the programs and plans for achieving this aim should continue both at national and international level.

In addition to this, Covid-19 pandemic caused a severe crisis for the world of work. According to ILO, it is the most severe crisis since the Great Depression of 1930s. ILO states that a human-centred recovery should be prioritized in order to help us all⁵¹. Unfortunately, the actual situation is not so encouraging. Until 30th June 2021, there is a restriction on termination of employment contracts in Turkey. Unless the duration of this restriction is not extended, it is possible that we will witness mass dismissals. If this mass redundancies occur, the actual situation regarding unemployment and unregistered work will deteriorate beyond all assumptions. This will deeply affect the most vulnerable, including Syrian migrants as well as native workers.

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⁵¹ ILO Monitor, 20; https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf (Access date: 25.05.2021).

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Aspects juridiques et sociaux de l'emploi des travailleurs migrants en Turquie

Résumé

Depuis plus d'une décennie, la Turquie fait face à un afflux massif de citoyens syriens qui, aux côtés d'Afghans, d'Irakiens et d'Iraniens, demandent une protection internationale. Ce défi humanitaire comporte de nombreux aspects différents, tels que la garantie de logement et d'emplois, l'accès aux services de santé et à l'éducation. Le principe général relatif à l'hébergement des réfugiés et des demandeurs d'asile est la mise à disposition de logements temporaires. Cependant, ce principe ne s'applique pas aux immigrés syriens en raison de l'ampleur du phénomène. La Turquie a accepté 3,6 millions de Syriens, leur accordant un statut temporaire sous protection internationale. Cependant, ce type de protection ne leur donne pas le droit de travailler. Comme les autres étrangers qui souhaitent travailler en Turquie, les Syriens doivent demander un permis de travail. Dans la pratique, de nombreux Syriens travaillent sans permis, ce

qui constitue une grave violation des droits fondamentaux. Outre l'aspect juridique, ce problème doit être résolu par la coopération de divers domaines des sciences sociales, en particulier la sociologie et les politiques publiques. La mise en œuvre d'instruments juridiques ne résoudra les problèmes sociaux que si l'intégration des immigrés dans la communauté d'accueil s'accompagne d'incitations appropriées. Dans cet article on examine la législation nationale réglementant l'emploi des travailleurs migrants, ce qui conduit à une analyse de la situation existante en termes pratiques, basée sur des recherches antérieures et des rapports d'organisations nationales et internationales.

Mots-clés : travailleurs migrants, permis de travail, protection temporaire

Prawne i społeczne aspekty zatrudnienia pracowników migrujących w Turcji

Streszczenie

Od ponad dziesięciu lat Turcja stoi w obliczu masowego napływu obywateli syryjskich, którzy – obok Afgańczyków, Irakijczyków i Irańczyków – ubiegają się o ochronę międzynarodową. To humanitarne wyzwanie ma wiele różnych aspektów, jak np. zapewnienie mieszkań, zapewnienie zatrudnienia, dostęp do usług zdrowotnych i edukacji. Ogólną zasadą regulującą traktowanie uchodźców i osób ubiegających się o azyl jest zapewnienie im tymczasowych ośrodków zakwaterowania. Nie można jej jednak stosować w przypadku syryjskich imigrantów ze względu na masową skalę zjawiska. Turcja przyjęła 3,6 mln Syryjczyków, udzielając im tymczasowego statusu jako podlegających ochronie międzynarodowej. Ten rodzaj ochrony nie daje im jednak prawa do podjęcia pracy. Podobnie jak inni obcokrajowcy, którzy chcą pracować w Turcji, Syryjczycy muszą ubiegać się o pozwolenie na pracę. W praktyce wielu Syryjczyków pracuje bez takiego pozwolenia, co stanowi poważne naruszenie prawa. Poza aspektem prawnym problem ten musi zostać rozwiązany dzięki współpracy różnych dziedzin nauk społecznych, zwłaszcza socjologii i polityki publicznej. Wdrożenie instrumentów prawnych nie rozwiąże problemów społecznych, jeśli integracja imigrantów ze społecznością ich przyjmującą nie zostanie zrealizowana przy użyciu odpowiednich środków motywujących. W artykule omówiono ustawodawstwo krajowe regulujące zatrudnianie pracowników migrujących. Następnie autor analizuje zaistniałą sytuację w aspekcie praktycznym, na podstawie wcześniejszych badań oraz raportów organizacji krajowych i międzynarodowych.

Słowa kluczowe: pracownicy migrujący, pozwolenie na pracę, ochrona tymczasowa